



Appeal Decision

Site visit made on 17 April 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 22 July 2024

Appeal Ref: APP/N4720/W/24/3338895

Land Former 2 St Martins Road, Potternewton, Leeds LS7 3LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ben Machekanyanga of MacLeeds (St Martins) LLP against the decision of Leeds City Council.
 - The application Ref is 23/05039/FU.
 - The development proposed is erection of two, three-bedroom dwellings with associated access parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published in December 2023. The Framework has not, however, raised any new matters which are determinative to this appeal.

Main Issues

3. The main issues are the effects of the proposal on:
 - the character and appearance of the area, including the setting of the Chapeltown Conservation Area (CA); and
 - the effect on climate change, air pollution and biodiversity.

Reasons

Character and appearance and the CA

4. The appeal site is a corner plot at the junction of St Martins Road and Chapeltown Road, within an area of residential and commercial buildings. A previous dwelling on the site has been demolished and it now consists of an area of hardstanding and is overgrown with vegetation. Two mature trees are located near one corner of the site and are covered by a Tree Preservation Order (TPO)¹.
5. The site is located just outside, but within the setting of the CA. The Chapeltown Conservation Area Appraisal²(CAA) provides guidance on the significance of the CA and has identified that this stems from middle-class housing dating from the mid-19th to the early 20th centuries surviving in a

¹ City of Leeds Tree Preservation Order (No 78) 2002 (2 St Martins Road Leeds)

² Adopted by Leeds City Council on 21 May 2003 as supplementary planning guidance.

relatively unaltered state. The CAA also identifies that 'trees in private gardens and the verges of the highway dominate the scene and are one of the area's main attractions.' The height and prominence of both the TPO trees on the site, as well as other trees growing within the grounds of properties along Chapeltown Road are an important part of the setting of the CA and contribute to its significance.

6. The proposed development is for two, linked, two-storey dwellings built close to the boundary with 4 St Martins Road. The front elevations would face St Martins Road, with one house roughly following the front building line of No 4. The second house would be set back from the front building line by some distance. This would result in the side elevation of the second house protruding significantly forward of the building line that exists on Chapeltown Road. There are similar arrangements on the opposite corner of St Martins Road and at the junction of St Martins Avenue. Whilst this approach is commonly used on corner plots, the appeal site has not adopted a similar layout, as it has sought to avoid disturbance of the TPO trees. However, this irregular footprint on such a prominent corner plot would be at odds with the pattern of other housing close to the site.
7. The defining characteristics of the surrounding residential area are detached and semi-detached houses, commonly with hipped roofs. The proposal has two linked roofs, with hips on the front and rear elevations. This roof form would not reflect the character of the buildings around it and would appear incongruous in this location. Although the proposed dwellings would be built of similar materials, the fenestration pattern would not reflect other housing surrounding it, many of which have projecting bay windows. The extensive brickwork, with limited openings on the elevation facing Chapeltown Road would not provide a distinctive design and add to the overall character of the area. Although the appellant's design brief identified local precedents, the location and scale of these developments would not be comparable to this site.
8. The dwellings would be smaller and lower than those around it which would visually reduce their prominence. However, on a key corner plot on a main route into the city, the scale and design of the proposed development would not reinforce local distinctiveness or improve the character and appearance of the area.
9. The TPO trees are a mature Lime, T1, and a Horse chestnut, T2. The Arboricultural Impact Assessment (AIA)³ classifies T1 as a category B tree, considered to be in good physiological condition. T2 is a category C tree, in fair physiological condition and is suffering from bleeding and bark splitting and cracking, symptomatic of Horse Chestnut bleeding canker disease. The trunk of the tree is also growing against and moving the adjacent stone wall. Nevertheless, the trees retain a high degree of amenity value and are worthy of retention.
10. Whilst the dwellings would be outside the Root Protection Area (RPA) of the two trees, the access and parking would be within it. The Arboricultural Method Statement⁴ (AMA) provides mitigation measures to protect the RPAs of T1 and T2 during the construction period including a load bearing cellular confinement

³ Revision I, 27 July 2023

⁴ Rev D, 27 July 2023

system⁵ which would be used both during the construction period and in part, post-development. The cellular confinement system would minimise severing of the roots and the compaction of the soil, thereby allowing water and oxygen transfer to continue between the soil, tree roots and air to remain viable. Whilst a porous surface would be laid on top to create the car park, some block paving would be laid within the RPA of T1.

11. It is recommended that new services and drainage routes should be outside the RPA of trees, however, air excavation would be used for these within the RPA of T1 and for the foundations close to the roots. Measures such as extending the no dig protection area further into the site to allow extra space for future root growth, the de-compaction of soil, including where new trees would be planted, and mulch being added to the backfill would improve the soil for the roots of T1 and T2.
12. Both parties refer to the BS⁶ which details that new permanent hard surfacing should not exceed more than 20% of an existing unsurfaced area within an RPA. The amount of development within the RPA has been reduced from the previous scheme⁷ which exceeded the recommendation. The hard surfacing now covers 19.7% of T1 and 15.2% of T2, below the figure recommended by the BS. Therefore, the submitted evidence suggests that these measures would be providing appropriate protection of the existing trees.
13. However, the position of the trees, particularly T1, means that the roots are likely to extend underneath the pavement which would need to be excavated for the new access. Whilst this would be done using hand tools, the proposal would need to bridge the differences in height inside and outside the site. The engineer's technical specification states that the cellular confinement system is achievable with these level changes which are annotated on the plans as being negligible. Drawings showing a cross-section of the cellular system both during and post construction and including the proposed finishes has been submitted, including a longitudinal section where the levels change. However, there is little substantive evidence of how the access would be bridged and how the cellular system would be finished in this location. The installation guide which covers edge constraints does not mention dropped kerbs and how this system would be installed in such a location.
14. Examples have been provided in the AIA of several case studies that have used a cellular confinement system. Whilst the Keats Case study was highlighting how to overcome significant levels on a site, the position of the tree in relation to the development is not comparable to the appeal case, whilst the other cases do not provide any details of the extent of the RPA. Therefore, from the submitted evidence I cannot be assured that, other than providing examples where the cellular confinement system has been used, these are directly comparable to the appeal case.
15. Information has been provided of a study which tested cellular confinement systems carried out by an independent party, EPG, which the appellant contends demonstrates that the method is successful at minimising compaction within RPAs allowing trees to remain viable. Only the conclusions and

⁵ Guidance Note 12: The Use of Cellular Confinement Stems near Trees: A Guide to Good Practice Arboricultural Association 2020.

⁶ BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations, BSI Standards Publication.

⁷ APP/N4720/W/23/3324038

recommendations were submitted, although it states that it was a trial construction and there are no details of the conditions and time-scale for the test. Therefore, it provides limited evidence in support of the appeal.

16. Whilst the distance between the trees and the dwellings would accord with Leeds Council Guidelines⁸, the future spread of T1 would extend over the parking area. T1 is a lime tree, which produces a sticky residue which would drop onto the cars parked in this area. The shading arc of T1 extends over the whole proposal, apart from a small area of the rear garden of one property. The shading arc of T2 extends over the front and sides of the building. Paragraph 5.3.4 of the BS highlights that shading of buildings and open spaces by trees can be a problem, as well as future pressure for removal. The proposal does not seek to remove or do any works to the trees. However, the location of the trees close to the proposed housing would likely lead to pressure for future pruning and potentially felling. As the trees are protected by the TPO, an application to the Council would be required if any works to them are proposed, however, works to the trees could result if the trees are considered to be a nuisance to future residents.
17. The lifespan of the trees is identified in the AIA as being 20 or more years for T1, whilst T2 would be at least 10 years. However, the trees, located on the edge of the pavement, and T2 adjacent to a wall, are already subject to disease and stress. Based on the age and condition of the trees, plus a precautionary approach towards tree protection should be adopted, and there should be minimal risk of adverse impact on trees to be retained, the development of the site risks the long-term health of the trees.
18. Therefore, given the importance of the trees, I remain concerned that the proposed mitigation would not be sufficient to offer appropriate protection, and, in any event, the development is likely to add to increased pressure to fell or prune the trees, which would be harmful. This, combined with the scale and design of the proposed dwellings, which would be at odds with the style and form of residential development in the area, would not reinforce local distinctiveness. Therefore, the character and appearance of the area, including the setting of the CA, would be unacceptably harmed.
19. Paragraph 205 of the Framework advises that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. As the proposal is a relatively small site, limited in scale, the proposal would lead to less than substantial harm to the significance of the CA. However, any harm must be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
20. The proposal would result in the construction of two new dwellings. Although part of the site is previously developed, the adjoining garden land, based on the definition in the Framework, does not constitute previously developed land. The development proposal would, however, contribute to the housing supply in a location with good transport links. It would also contribute to the local economy during the construction period and from future occupiers using local services and facilities. However, two houses would provide only a limited public benefit, particularly as the Council has stated that they have more than a five-year housing land supply. Whilst the development would make some limited

⁸ Guideline Distances from Development to Trees, Leeds City Council, revised February 2021.

contribution to biodiversity and tackling climate change, this would not, however, outweigh the less than substantial harm to the significance of the CA.

21. Therefore, the proposal would not accord with Leeds Local Plan Core Strategy, 2019⁹ (CS) Policy H2 which does not allow new housing on non-allocated sites where greenfield land makes a valuable contribution to the visual and historic character of an area, in this case as a result of the trees. It would also not accord with CS Policies P10, P11 and P12 and Policies BD5, GP5 and N19 of the Leeds Unitary Development Plan (Review 2006) (UDP), and the advice in Neighbourhoods for Living,¹⁰ 2003. These collectively require high quality design that respects and enhances the character and quality of the area and historic assets, including conservation areas. Furthermore, it would not accord with Policy LD1 of the UDP and Policy LAND2 of the Council's Natural Resources and Waste Development Plan Documents, 2010 (DPD) which seeks amongst other things to protect existing trees. It would also conflict with chapters 12 and 16 of the Framework.

Climate change, air pollution and biodiversity

22. Policy G9 of the CS sets out that there should be an overall net gain for biodiversity commensurate with the scale of the development, whilst Policy LD1 of the UDP and Policy LAND2 of the Council's Natural Resources and Waste Development Plan Documents, 2010 (DPD) seeks amongst other things to protect existing trees and introduce new tree planting to create a high-quality environment and to enhance the public realm. Policy P10 of the CS and GP5 of the UDP requires, as well as other issues, that development must protect and enhance air quality and avoid pollution.
23. The proposed development includes the planting of three trees. These would take some time to mature and would provide only limited biodiversity net gain. Moreover, if the health of the existing mature trees is affected by the proposal, the overall biodiversity of the site would be harmed.
24. Paragraph 136 of the Framework highlights the important contribution that trees make to the character and quality of urban environments and that they help to mitigate and adapt to climate change. Therefore, whilst the trees would help to address climate change, this would take a long time to achieve and would provide only limited benefits.
25. The proposed development is required to protect and enhance air quality and avoid pollution. Neither party has provided substantiated evidence as to whether air quality would be protected and improved, and whether pollution would be avoided. However, the development is relatively small-scale and the retention of the existing trees, as well as the planting of new ones would assist in a limited way to dealing with air pollution.
26. In conclusion, the planting of three trees would provide some limited benefits to biodiversity and to tackling climate change and air pollution. Therefore, in regard to this issue, the proposal would accord with Policy G9 and P10 of the CS, Policy LD1 and GP5 of the UDP, as well as Policy LAND2 of the DPD as set out above.

⁹ Core Strategy (as amended by the Core Strategy Selective Review 2019) adopted 2014, amendments adopted 2019.

¹⁰ Supplementary Planning Guidance 13.

Other Matters

27. There have been two dismissed appeals¹¹ on this site and the development proposal has sought to overcome these previous concerns with regards to trees, biodiversity and living conditions by designing two, three-bedroom family homes. A new mitigation strategy has been designed and the percentage of works within the RPA has been reduced. Whilst the Council's officer report has provided varying assessments of the effect on the trees and there is limited evidence from the Council's Landscape Officer, I have made my decision based on the evidence before me.
28. Matters of space within and outside the property are not in dispute or living conditions with regards to outlook and daylight. There would be no harm to neighbouring properties, and there is no highway safety, drainage, flood risk or other environmental concerns. This lack of harm is neutral and weighs neither for nor against the proposal.

Planning Balance

29. The proposed development would provide two new houses. However, the existing trees on the site make a significant and positive contribution to the visual amenity of the area and the setting of the CA. They also make some contribution to biodiversity and to tackling climate change and air pollution. There would be development within the RPA of the TPO trees and despite the proposed mitigation, it would risk their long-term health and survival. This is as well as the other harm that I have found to the character and appearance of the area and to the significance of the CA by development within its setting.

Conclusion

30. The proposed development proposal conflicts with the development plan when considered as a whole and there are no material considerations, including the provisions of the Framework, that outweigh the identified harm and that warrant a decision other than in accordance with the development plan.
31. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

M J Francis

INSPECTOR

¹¹ APP/N4720/W/23/3324038 and APP/N4720/W/22/3298352