



Appeal Decision

Site visit made on 11 June 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2024

Appeal Ref: APP/D4635/W/23/3330364

**Land at 390996-301925, to the rear of 2-30 Eccleshall Avenue,
Wolverhampton WV10 6TW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Poonia against the decision of the City of Wolverhampton Council.
 - The application ref is 22/01049/OUT.
 - The development proposed is residential development for one dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Poonia against the City of Wolverhampton Council. This application will be the subject of a separate decision.

Preliminary Matters

3. The appeal scheme is for outline planning permission with detailed approval sought for access, layout, and scale. Matters relating to appearance, and landscaping are reserved for future approval.
4. The description of development is usually taken from the application form. However, the original description lacked the detail of the number of houses proposed. The appeal form reflects the description on the Council's decision notice, confirming the appellant's agreement to the change. I shall, therefore, proceed on the basis of the description, as set out in the banner heading above.

Main Issues

5. The main issues are the effect of the proposed development on:
 - highway safety and health and safety, including provision of emergency access; and
 - the Cannock Chase Special Area of Conservation (SAC).

Reasons

Highway safety, health and safety and emergency access

6. The appeal site is a parcel of land to the rear of existing houses on Eccleshall Avenue, Churchfield Road and Beech Road. It is accessed from a narrow track

off Eccleshall Avenue which, from the evidence submitted by a third-party representation, also serves as access to several other parcels, an electricity substation, and a set of garages. At my visit I saw that the parcels of land to the side of the appeal site are open to the access track but were overgrown and do not appear to be regularly used. Other access points, the set of garages and a separate garage/outbuilding along the track do appear to be in use. The access track and its junction with Eccleshall Avenue is existing and serves as access to other properties and parcels of land both by vehicles and pedestrians. The existing uses would generate a level of vehicle movements though this is likely to be low.

7. However, the rights of access over it, including the risk of other landowners and the utility company blocking it, and any covenants on the land are civil matters between the parties and are not determinative in this appeal. Moreover, the submitted plans show the layout of the proposed dwelling, parking, and turning area all within a gated area set back on land within the appellant's ownership. I, therefore, have no substantive evidence that access to the other parcels of land served by the track would not continue to be available.
8. The access is narrow and would only be wide enough for one vehicle. Furthermore, the access track is longer than 45m and narrower than the minimum width of 3.7m between kerbs required to provide access for fire service vehicles as set out in paragraph 3.219 of the City of Wolverhampton Council Highways and Transportation Technical Guidance Note, July 2016 (the Technical Guidance Note), which also reflects the advice set out in Manual for Streets (2019). Albeit that Manual for Streets notes that the 3.7m width could be reduced to 2.75m over short distances the access track is even less than this reduced width and I consider it could not be defined as a short distance in length. The appeal proposal, therefore, would not provide sufficient means of access for emergency vehicles.
9. The appellant is seeking to rely on a sprinkler system to negate the requirement for access for fire fighting vehicles. However, notwithstanding the comments in the Council Officer's committee report, I do not have any compelling evidence that such sprinkler systems would satisfy Building Regulations or the local Fire Service. Manual for Streets acknowledges that residential sprinkler systems are highly regarded by Fire Services, but only in that their presence allows a longer response time to be used and that developments may become acceptable if equipped with such systems. Manual for Streets does not accept that sprinkler systems are automatically appropriate where access is constrained and advises consulting the local Fire Safety Officer if access widths are proposed less than 3.7m wide. Although the appellant has noted that they have taken advice on the matter of emergency access I do not have any evidence that either the appellant or the Council consulted the local fire service.
10. Based on the evidence before me, I am not convinced that the proposed sprinkler system would negate the need to provide access for a fire service vehicle and the access width is not sufficient to provide for this requirement. Moreover, notwithstanding the appellant's assertion, I do not have any evidence of Wolverhampton Fire Service accepting sprinkler systems for developments where access by a fire service vehicle would not be possible, such is the case before me.

11. In the event of a fire, without access by a fire fighting vehicle, with hoses and ladders, it is not clear that persons could be rescued, or any fire appropriately dealt with. Consequently, any fire at the proposed dwelling would place the future occupants at risk of loss of life. The risk to life and property damage would result in the health and safety of the future occupants of the property being compromised.
12. Although the access is narrower than the minimum width for new private accesses serving a single dwelling as set out in Section DG18 of the Technical Guidance Note, the access is existing. The proposal does not provide a new access. With the exception of emergency vehicles, smaller vehicles, such as cars and vans could continue to use the access track both during the construction and post construction.
13. Albeit narrow and long the access track is straight. The proposed plot can be seen from the access junction with Eccleshall Avenue and, at the time of my visit, the car parked opposite the end of the access junction could be seen from the appeal site. The relatively straight line would allow for direct intervisibility between any vehicle leaving the proposed dwelling and a vehicle entering the track or travelling along it, and vice versa. Consequently, any reversing would not have to be lengthy. Although this could result in vehicles stopping suddenly or reversing out onto Eccleshall Avenue this is the situation at present and Eccleshall Avenue does not appear to be heavily trafficked.
14. Furthermore, the access is existing and already serves a number of different parcels of land. Although the proposal would result in regular vehicle movements to and from the dwelling, the appeal before me proposes the removal of the existing garages and would, therefore, result in the reduction of the potential level of vehicle movements from the access track. These vehicle movements would be displaced elsewhere; however, the appellant could demolish the garages and displace these movements without the proposed development. As a further matter, I observed vehicles parked within the appeal site. These vehicle movements would be replaced by the vehicle movements associated with the dwelling. Acknowledging the concerns of interested parties, in my judgement, while the existing vehicle movements along the track would be likely to be low, the proposed development would not significantly increase the vehicle movements that could be carried out on the track.
15. I have no reason to believe that visitors to the proposed dwelling would not use the access track and the proposed development includes three parking spaces and a turning area. Moreover, I have no substantive evidence that on-street parking on Eccleshall Avenue is at a premium and could not accommodate visitor parking for the proposed dwelling, if in fact they wished to park there. On-street parking was available at the time of my visit and although there was a car parked opposite the junction this did not prevent a car from turning out. Although a snapshot in time, I have no grounds to consider what I saw is not broadly representative of the general situation on the road.
16. I also acknowledge that the length of the track is longer than the maximum carry distance for refuse collection as detailed in the Technical Guidance Note. However, the appellant could provide a bin store in the location of the existing garages, therefore closer to the access point. Although this would still be further than the recommended 25m it would be less of a distance for the residents to have to move their bins.

17. Moreover, the Technical Guidance Note advises, at 3.2, that the Council are prepared to be flexible. The appellant has drawn my attention to the Council Highway Officer's consultation response which, although raising concerns about the width and length of the access, accepted that the track is existing and already provides vehicular access and, as such, raised no objection to the proposal. The proposed development would not result in severe highway conditions which the National Planning Policy Framework (the Framework) sets as the test for refusal of planning permission on highway grounds.
18. Overall, although the access is narrow, it would be adequate to serve the day-to-day requirements of single dwelling proposed, with the exception of providing emergency access. The nature of the access track and its existing use are material factors in this decision and the development would not cause any greater risk of blocking the local highways, the access or reducing visibility splays.
19. However, the access width is not sufficient for access by some emergency vehicles, and this would place the future occupants of the property at significant risk of loss of life. The development would, therefore, not be appropriate in terms of health and safety or provide appropriate emergency access.
20. For the above reasons, although I find that the proposed development would not have an unacceptable adverse effect on highway safety, it would result in adverse health and safety conditions for the future occupants of the property and not provide suitable access for emergency vehicles. Consequently, the proposed development would not comply with policies H6 and AM15 of the Wolverhampton Unitary Development Plan 2001-2011 (the UDP) or Policy CSP4 of the CS. Collectively these policies, amongst other matters, seek to ensure that development is of a high quality urban design, provides appropriate access arrangements and contributes towards improving road safety and personal security.
21. The Council have also referred to Policy AM12 of the UDP in their reason for refusal. However, this policy seeks to ensure maximum levels of car parking are provided for new developments. Although the policy seeks to ensure that developments also address safety and amenity issues, this is in regard to parking provision. The car parking provision for the development would comply with the maximum set out in Policy AM12 of the UDP and, consequently, I find no conflict with AM12.

Special Area of Conservation

22. The site is located within 15km of the Cannock Chase Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not forming part of the Council's reason for refusal, it is incumbent upon me as the competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC.
23. The Cannock Chase SAC is designated due to its European Dry Heath and Northern Atlantic wet heath habitat. The habitat species include plants of restricted occurrence, and the SAC has important populations of butterflies, beetles, bats, and European nightjar.

24. The objective of the SAC is to ensure that the integrity of the site, the extent and distribution of qualifying natural habitats, the structure and function of qualifying natural habitats and the supporting processes on which the habitats rely, are maintained, or restored, and to ensure that the site contributes to achieving Favourable Conservation Status.
25. The evidence, provided within the Memorandum of Understanding of the Cannock Chase SAC, advises the main effects from development are the fragmentation of habitat from paths, tracks and path widening through erosion, trampling and compaction. Eutrophication from dog fouling and increased vehicle emissions are also noted as a threat. Research has shown that 75% of all visitors to the Cannock Chase SAC are from within a 15km radius and that, in the absence of mitigation, residential growth in this zone is likely to have a significant effect on the SAC.
26. Given the evidence before me, I consider that the proposal, by itself and in combination with other development in the area, would have a likely significant effect on the SAC due to disturbance and erosion through increased recreational activity. It is therefore necessary that I, as the competent authority, conduct an Appropriate Assessment in relation to the effect of the development on the integrity of the SAC.
27. Given the modest scale of development, there is no scope for on-site mitigation. In this instance, it is appropriate to secure a financial contribution towards the Detailed Implementation Plan and table of mitigation measures set out in the Memorandum of Understanding. This contribution would support the mitigation of the effect of the additional house on the integrity and the qualifying features of the SAC.
28. Natural England has been consulted as part of this Appropriate Assessment and has confirmed that the financial contribution would suitably address the effects associated with the proposal and relieve pressure on the SAC.
29. The appellant has provided a Unilateral Undertaking (UU) which, from the evidence before me, follows the Council template for such agreements set out in the City of Wolverhampton "Planning guidance to mitigate the impact of new residential on Cannock Chase Special Area of Conservation".
30. However, although I have been sent a document with witness signatures the appellant has not signed the UU and there are a number of other errors and omissions in the document. Therefore, the UU cannot be relied on and there is no mechanism in place by which the required mitigation can be secured and controlled. Consequently, I cannot be sure that an appropriate means of securing adequate mitigation has been provided nor, therefore, that the proposal would not adversely affect the integrity of the SAC.
31. The evidence indicates that there is a likelihood of recreational disturbance to the SAC through additional activity associated with the proposed development, which has the potential to affect the integrity of the SAC. The Habitats Regulations require me to consider whether there are any alternative solutions. I am not satisfied that the proposed mitigation has been secured. No other solutions have been put to me and I have found none myself.
32. I must also consider whether there are any imperative reasons of overriding public interest. The provision of a single dwelling is not sufficient to amount to

such overriding public interest. Consequently, having regard to the Habitat Regulations, permission must not be granted. The proposed development would adversely affect the integrity of the Cannock Chase SAC, contrary to Policy ENV1 of the Black Country Core Strategy, adopted 2011 (CS) which, amongst other matters seeks to safeguard nature conservation and resist development which would harm the SAC.

Other Matters

33. Turning to the additional concerns of interested parties, although the immediately surrounding houses on Eccleshall Avenue, Churchfield Road and Beech Road are all semi-detached and of similar designs there are other detached houses in the wider area, including on Lodge Road. Moreover, the appeal site is not part of the street scene of any of the surrounding roads. It, therefore, would not need to be a semi-detached house to fit into the street scene. The appearance of the dwelling is reserved for later approval and could include a hipped roof and other features from the surrounding houses so as not to appear significantly different.
34. I accept that the site would not fall within the definition of Previously Developed Land as set out in Annex 2 of the Framework as the land is garden within a built-up area. However, the proposal can still be considered as a windfall site as it is being proposed for housing development and is not allocated for development in the local plan. If I were to accept that the land is garden, then it is already in residential use. Whether the land should be the subject of an enforcement notice to tidy up the site is not before me to consider as part of this appeal and would be a matter for the Council.
35. The appeal site lies on higher ground than the houses around it. Furthermore, all of the houses around have their rear elevations facing towards the proposed development. Consequently, the dwelling would be visible from the surrounding houses. However, the separation distances between the existing housing and the proposed dwelling would ensure that the development would not result in unacceptable loss of sunlight or daylight to the neighbouring dwellings and would limit any loss of privacy.
36. Although the land is currently partially green it is also used for parking and storage and includes outbuildings. It is currently viewed by the neighbours as green space; however, it is not public green space and there is a public park nearby which provides open and green space for the local community. The new house would be visible from gardens around but would not be oppressive in these views, even considering the image submitted by an interested party. The loss of a private view, from either a house or a garden would not justify dismissing the appeal.
37. A number of the trees on the boundary are to be retained and any which would be removed could be replaced with other new tree planting within the proposed garden area and other ecological enhancements could be secured.
38. I have no compelling evidence to show that the occupants of the proposed development, albeit behind the existing houses, would feel isolated or not feel part of the community in which they live. The access to the new property would be from an existing residential street and the occupiers of the dwelling would pass through the existing housing to access the services and facilities in the area. The layout proposed indicates sufficient garden area around the dwelling

for the size of the unit and also sufficient space for parking and turning. Consequently, the proposal would promote a healthy and safe community, as required by the Framework.

39. The existing track is gated at the Eccleshall Avenue end and, from the evidence before me, all the owners with access rights have access to open this gate, including the appellant. The removal of the gate may increase the risk of crime along the track. However, the proposed dwelling would increase the natural surveillance of the track which would reduce the risk of crime and disorder. Moreover, as noted by third parties, whether the gate can be removed is a civil matter.
40. I am determining the appeal before me which is for one dwelling. Any use other than a private dwelling may require separate planning permission. That there are other houses in the local area that are for sale would not provide substantive evidence that there is not a need for additional housing in Wolverhampton and the development would comply with the Framework aim of boosting housing supply.
41. Furthermore, I have not been provided with any evidence of similar plots of land which have existing access and are a similar distance from the neighbouring properties to indicate that in allowing this appeal I would be setting a precedent for other garden development. Although other parcels of land off the same access track could be developed any such proposals would need to be considered, as would any other site, on its own merits existing at that time and against the development plan.
42. The final details of the drainage connection are not part of the appeal and would be a matter for the appellant and the utility provider to resolve. I have no substantive evidence that an appropriate drainage scheme would not be achievable, even considering the length of the access track and the level difference between the site and Eccleshall Avenue.
43. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 which sets out the relevant protected characteristics. Since I have been made aware that there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the Act. The negative effects of allowing this appeal would arise from the noise and disruption during the construction works and post completion. However, the construction works can be controlled by condition and the noise from traffic after the completion of the development would not be significantly different to the existing traffic noise along the access track. Having regard to this, and to the need to eliminate discrimination and promote equality of opportunity, in my view if I were to allow the scheme the adverse effect on those with protected characteristics would be proportionate.

Conclusion

44. While I have found no harm with regard to highway safety I have found harm to health and safety and harm from the lack of appropriate access for emergency vehicles. Furthermore, I have found that the development would likely adversely affect the Cannock Chase SAC. Even if taken individually, I conclude that there is conflict with the development plan as a whole. There are no other material considerations, including the identified benefits, that would

indicate that the proposal should be determined other than in accordance with the development plan. Therefore, the appeal is dismissed.

K Townsend

INSPECTOR