

Appeal Decision

Site visit made on 20 August 2024

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal Ref: APP/K3415/W/23/3332628

Isha Lodge, Endwood Drive, Sutton Coldfield B74 3AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Lady Sajida Zafar and Lord Zafar Iqbal against the decision of Lichfield District Council.
 - The application Ref is 20/00979/FUL.
 - The application sought planning permission for the demolition of dwelling and erection of a 5 bedroom detached dwelling and associated works without complying with a condition attached to planning permission Ref 17/00230/FUL, dated 27 April 2017.
 - The condition in dispute is No 2 which states that: *The development authorised by this permission shall be carried out in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.*
 - The reason given for the condition is: *For the avoidance of doubt and in accordance with the applicants' stated intentions in order to meet the requirements of Policy BE1 of the Local Plan Strategy and the guidance contained within the government document 'Greater Flexibility for Planning Permissions'.*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of dwelling and erection of a 5 bedroom detached dwelling and associated works at Isha Lodge, Endwood Drive, Sutton Coldfield B74 3AJ without compliance with condition No 2 previously imposed on planning permission Ref 17/00230/FUL, dated 27 April 2017, but subject to the following conditions;
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
Amended Floor Plans, Drawing No: 2018_141_01 Rev B and Amended Elevations, Drawing No: 2018_141_02 Rev B.

- 2) The roof terrace hereby approved shall not be brought into use until the 1.8m high opaque screen shown on drawing 2018_141_02 Rev B has been erected in full. Thereafter the screen shall be retained and maintained for the lifetime of the development.
- 3) The development shall be carried out in full accordance with the details contained within the Wharton Arboricultural Method Statement Ref: 030417 0419 AMS V1 April 17.

Preliminary Matters

2. The address on the Council's decision notice more accurately reflects the location of the appeal site than that on the application form. I have therefore used it in the banner heading above.
3. The Council granted planning permission on 27 April 2017 for a new dwelling as a replacement to a previous dwelling at the corner of Endwood Drive and Roman Road, subject to conditions. At the time of my site visit, the dwelling had been constructed and was occupied.
4. The appeal proposal seeks to alter the design of the approved dwelling to amend the roof shape of a single storey part of the dwelling to incorporate a flat roof terrace with railings and a privacy screen; and to erect a covered veranda with railings along part of the side elevation of the dwelling. These changes are sought through the variation of condition No 2 of the planning permission for the dwelling, which specifies plans.
5. I saw at my site visit that the altered design had been partially carried out insofar as a veranda with railings had been constructed on the west (side) elevation of the dwelling. The design of a single storey projection on the north (rear) elevation of the dwelling had also been altered to incorporate a full flat roof with railings around the top. However, as the privacy screen shown on the submitted plans had not been erected, for the avoidance of doubt, I have considered the appeal on the basis of the information shown on the plans before me as a proposed development.
6. The Council raised no objection to the veranda with railings. On the evidence presented, and my observations on site, I find no reason to disagree. My deliberations and decision are therefore focused solely upon the altered design of the single storey part of the dwelling on the north (rear) elevation.
7. The appeal site is located within the Little Aston Conservation Area (LACA). In accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the LACA.

Main Issues

8. The main issues are:
 - whether varying the condition would preserve or enhance the character or appearance of the LACA;

- the effect that varying the condition would have on the living conditions of occupants of neighbouring properties Al-Andalus and Hamilton, with particular regard to outlook; and,
- the effect of varying the condition on protected trees.

Reasons

Character and Appearance

9. Situated within the LACA, the appeal property is a recently constructed large, detached building positioned relatively centrally within a spacious plot. The LACA boundary encompasses the remnant parkland estate of Little Aston Hall. It is generally characterised by an eclectic mix of large, architecturally designed detached houses set within spacious plots containing mature vegetation. Filtered views of dwellings set back from the road and screened by trees, hedges or fences can be obtained from the network of private roads in the LACA.
10. The significance of the LACA is derived, in part, from this variety of large residential properties set within generous plots amongst tree lined streets and mature boundary vegetation, which provides a cohesive sylvan setting. Individual plots along Endwood Drive, including the appeal site, reflect the spacious and verdant characteristics of the LACA, making a positive contribution to its significance.
11. The revised design of the single storey projection on the north elevation of the appeal property would incorporate a substantial-sized flat roof that would be used as a roof terrace. Access to the roof terrace would be from a first floor bedroom. Although of significant expanse, the flat roof design would reflect that of the flat roof garage on the eastern elevation of the dwelling and would thus not appear incongruous.
12. The railings on the roof would be low and constructed in wrought iron to match the railings on the veranda, gates and the first floor balconies. In this respect, they would not be seen as out of character with the host dwelling. However, the proposed opaque privacy screen would be higher than the railings and would protrude above them. Consequently, it would be a noticeable feature when observed from within the grounds of the property and from the neighbouring property to the east, Al-Andalus.
13. Nevertheless, due to the substantial, dense tree and vegetation cover along the boundaries of the appeal site, and the set back of this part of the building from surrounding roads, the railings and screen would not be readily visible from street level, with the exception of glimpsed views obtained from the gated driveways to the property on Endwood Drive and Roman Road, but these views would be brief and restricted. This would still be the case during the months when surrounding trees and vegetation would not be in full leaf.
14. The revised design of this part of the dwelling, including the lightweight opaque screen, would be seen in the context of a backdrop of surrounding trees. Furthermore, against the scale of the host building, it would remain subordinate in form and the overall appearance of the dwelling would continue to contribute to the variety of properties in the LACA.

15. Overall, I find the revised design, would not diminish the quality or integrity of the building or the streetscene to the extent that it would be harmful to the character and appearance of the LACA.
16. Consequently, I conclude on this main issue that varying the condition would preserve the character and appearance of the LACA. As such it would not conflict with Policy BE1 and Core Policy 14 of the Lichfield Local Plan Strategy 2015 (LPS). These seek, among other things, to ensure that development is of high quality, inclusive design and that the significance of designated heritage assets and their settings is conserved and enhanced. There would also be no conflict with the guidance set out in the Council's Historic Environment Supplementary Planning Document 2015. This, in part, seeks that development is of good quality design and that the importance of the historic environment is recognised.
17. Furthermore, the variation of the condition would accord with the approach in Section 16 of the National Planning Policy Framework (the Framework) which is concerned with the conservation and enhancement of heritage assets.

Living Conditions

18. The original design of the single storey element on the north elevation included a mansard-style roof with a central flat area set within it, which included for a balcony leading off the first floor bedroom. The altered design would result in the balcony area extending up to the outer edges of the flat roof to create a large roof terrace.
19. From my site visit and from the roof terrace there are views over the side and rear garden of the neighbouring property, Al-Andalus. Although the rear windows of this neighbour's house can currently be seen from the terrace, the proposed obscure glazed fixed screen would prevent overlooking from occurring towards this property due to its height. The Council argue that shapes would still be evident behind the screen when viewed from the neighbour's garden. However, due to the angle of view and the intervening detached outbuilding and vegetation along this boundary, views of activity being carried out on the roof terrace would not be readily perceptible.
20. The opaque screen would be a relatively conspicuous feature when viewed from this neighbouring property. While it would introduce a utilitarian structure in proximity to the garden boundary of this neighbour, a generous gap would be retained between the screen and the boundary. The railings and screen would not extend significantly beyond the two storey side elevation of the appeal property and thus would not appear overbearing or oppressive when viewed from within the house or garden of Al-Andalus.
21. Glimpses of the driveway, front garden and front elevation of the neighbouring property Hamilton are also visible from the roof terrace, but the opaque screen would prevent views towards this property. Moreover, the notable distance and intervening dense tree cover and vegetation between the appeal site and Hamilton would ensure the altered roof design, including the screen, would not appear overbearing when viewed from this neighbouring property, or any other nearby property.

22. I am therefore satisfied that varying the condition would not have an adverse effect on the living conditions of occupants of the neighbouring properties Al-Andalus and Hamilton, with particular regard to outlook. In this respect, the variation of the condition would not conflict with Policy BE1 of the LPS which seeks, amongst other things, that development is of high quality.
23. There would also be no conflict with guidance at Appendix A of the Council's Sustainable Design Supplementary Planning Document, updated 2019. This is insofar as it seeks that development provides adequate space about dwellings in order to achieve, amongst other matters, a satisfactory level of outlook within new development and in relation to existing development. The altered design would accord with paragraph 135 (f) of the Framework which is concerned with the creation of places that have a high standard of amenity.

Trees

24. There are several protected trees on, and surrounding, the appeal site. I have been provided with a copy of Tree Preservation Order No 171, 1996 (TPO) which identifies two protected trees between the northern boundary of the site and the single storey element of the scheme which is the subject of this appeal. These trees are identified as an oak (T1) and a sycamore (T2).
25. The Council's third reason for refusal makes no reference to development plan policy or national guidance. However, I note that Policy BE1 of the LPS has been submitted by the Council in the appeal documentation. This requires that development has a positive impact on the natural environment. In this regard, I observed at my site visit that T1 and T2 are mature trees which make a significant contribution to the character and appearance of the LACA and to biodiversity in the area. Their loss would be to the detriment of the surrounding area and would result in harm to the LACA.
26. No tree assessment specific to the appeal scheme has been submitted by the appellant, although the evidence before me suggests that an arboricultural assessment was previously submitted in relation to the 2017 permission. A condition on that permission required the development to be carried out in accordance with the details contained within a specific arboricultural method statement. The proximity of the building in relation to T1 and T2 would therefore have been taken into account in the assessment of the 2017 scheme, along with its effect upon trees.
27. The footprint of the dwelling would not change. Only the design of the roof of that part of the building close to T1 and T2 would be altered from the 2017 permission. It would not necessitate the use of mechanical equipment to excavate the ground. As such the likelihood of root damage occurring to the trees would be unlikely.
28. Nonetheless, the effect of the altered design would be that the extended roof terrace would be beneath much of the canopy of T1 and, to a lesser extent, the canopy of T2. However, this would also be the case with the 2017 permission. The height of the opaque screen would be marginally higher than the overall roof height of the 2017 scheme on this part of the dwelling. However, from my own observations, the addition of the slim screen to the

railings would not require removal of any part of T1 or T2. Nevertheless, due to the extent of the canopy and allowing for further future growth, the use of the roof terrace could result in pressure to prune the canopy of these trees.

29. The roof terrace would be accessed from a bedroom and would not be the only area of outdoor amenity space for occupants of the dwelling. Therefore, its use would be likely to be very limited. In any event, the future of T1 and T2 would be protected by virtue of their TPO status and location in the LACA. The Council would have full control over any future works to the trees to ensure that their long-term amenity value would be protected. No compelling reason has been provided to demonstrate, on the basis of the limited scale of the alterations, that a detailed tree assessment would be required in order to assess the effect of the development on protected trees, or that, in the event that I allowed the appeal, it would unduly increase the likelihood for the trees to be damaged or removed.
30. Consequently, the amended design would not have an adverse impact on the protected oak and sycamore trees and the contribution they make to the character and appearance of the area and the LACA would not be harmed. In respect of this main issue, it would accord with Policy BE1 of the LPS which seeks, amongst other things, development of high quality that does not harm the natural environment. It would also comply with the aim set out in paragraph 136 of the Framework to ensure, where appropriate, existing trees are retained.

Conditions

31. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also re-state the conditions imposed on earlier permissions that continue to have effect. I have also considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the PPG.
32. There is no dispute that the development has commenced, and I have therefore omitted the standard time limit condition as this is no longer necessary. I have varied the disputed condition No 2 to specify the new approved plans as this provides certainty and defines the permission. Furthermore, I have omitted the 'tailpiece' from the condition attached to the original permission. This is in the interests of certainty; conditions should not offer the prospect of an informal variation or waiver.
33. The original condition No 3 regarding details of materials is no longer necessary as the dwelling is complete and occupied. However, I have replaced that condition with the suggested condition in relation to the opaque screen. This is to ensure that the screen is provided prior to the roof terrace being brought into use to protect the living conditions of neighbouring residents.
34. As I have no information before me about the status of the condition in relation to the arboricultural method statement, I shall re-impose it in full in order to ensure works to the relevant trees adhere to the method statement and that the character and appearance of the area and biodiversity interests are retained. In the event that this condition has in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

35. For the above reasons, and having regard to all other matters raised, I conclude that the appeal is allowed, and a new planning permission is granted.

A Veevers

INSPECTOR