



Appeal Decision

Site visit made on 17 September 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/V4630/W/24/3342031

20 Harness Close, Walsall WS5 4PZ

- 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 Ricky Nandra against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 23/0509.
 - The development proposed is described as "Title split at 20 Harness Close, Walsall, WS5 4PZ. This will create a plot for a proposed 3 bedroom property. A shared front drive will serve both properties. The house has been based on the proportions and material palette of 20 Harness Close."
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Policy ENV3 of the Black Country Core Strategy 2011 (BCCS) was cited in the decision notice, but I was told that it had since been replaced. Therefore, a copy of the policy was not provided with the appeal questionnaire. As a result, I have determined the appeal in its absence.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the living conditions of the neighbouring occupiers of 73 and 75 Brockhurst Crescent with particular regard to privacy;
 - existing trees; and
 - the living conditions of the occupiers of 20 Harness Close (the host property), in respect of outlook.

Reasons

Living conditions of 73 and 75 Brockhurst Crescent

4. The appeal site forms part of the rear garden of the host property, a two-storey detached dwelling, located at the end of a linear row of detached properties within a small residential cul-de-sac. The properties on Harness Close occupy a significantly lower ground level than dwellings located beyond the rear boundary, which front Brockhurst Crescent.
5. The proposed dwelling would be located to the side of the host property and would contain windows at ground floor and first floor in its rear elevation. The

windows would directly face the rear elevation of 75 Brockhurst Crescent (No 75), which contains windows at ground and first floor. However, due to the difference in ground levels the first floor windows of the proposed dwelling would be at a similar height to the rear ground floor windows of No 75. There would be a similar relationship, albeit on an angle, between the first floor windows of the proposed dwelling and the ground floor windows of 73 Brockhurst Crescent (No 73).

6. The proposed first floor windows would serve two bedrooms. They would be the only windows to the bedrooms and while the rooms would be relatively small, the proposal is for a family dwelling. As such, they are likely to be occupied as typical bedrooms during the day and at night. Therefore, on the evidence before me, the windows would serve habitable rooms.
7. The Council highlight that Appendix D of the Designing Walsall Supplementary Planning Document revised 2013 (SPD), requires separation distances, between habitable windows, of 24 metres. However, despite requests, a copy of Appendix D has not been forthcoming.
8. The appellant has submitted plans which demonstrate that separation distances between the rear elevations of the proposed dwelling and No 75 would be approximately 22.5 metres. The separation distance would be much lower between No 73, at a distance of 16.5 metres.
9. The proposed separation distances and juxtaposition of the proposed rear facing first floor bedroom windows would allow direct and uninterrupted views towards the ground floor windows and rear garden of No 75. As such, even with a 1.8 metre high fence on the rear boundary, this relationship would result in an unacceptable level of intrusive overlooking and loss of privacy to the occupiers of No 75.
10. Likewise, while the proposed rear first floor habitable windows would not directly face the rear habitable windows and garden of No 73, views at close quarters from the windows would be possible, nonetheless. Therefore, on the evidence before me, and my own observations on site, the proposed development would result in an unacceptable level of overlooking and loss of privacy to the neighbouring occupiers.
11. It is the case that the rear elevations of other properties, within the adjacent row of houses on Harness Close, including the host dwelling, also face rear walls and their habitable windows of properties on Brockhurst Crescent. However, while some measurements have been provided of the rear garden sizes of properties on Brockhurst Crescent, the separation distances between existing properties or the relationship between their habitable windows has not been provided. Nonetheless, it appears on the evidence before me that in many instances those properties have a greater separation distance between their rear elevations compared to the proposed dwelling and No 73 and No 75. Given this, the relationship between existing adjacent properties does not ease my concern that harm would arise in this case. Therefore, I have determined the case before me on the site-specific circumstances and on its own merits.
12. For the reasons set out above, I conclude on this main issue that the proposed development would cause unacceptable harm to the living conditions of the occupiers of 73 and 75 Brockhurst Crescent, with particular regard to privacy. As such, it would conflict with Policies GP2 and ENV32 of the Walsall Unitary

Development Plan 2005 (UDP), Policy CSP4 of the BCCS, Policy HC2 of the Walsall Site Allocations Document (2019) (SAD), and the SPD, which seek, together and amongst other things, to ensure that developments do not result in overlooking and loss of privacy and take account of their surroundings to provide a satisfactory residential environment.

13. The proposed development would also be contrary to the objectives of the National Planning Policy Framework (the Framework), which seeks to create places with a high standard of amenity.

Trees

14. The proposed dwelling would be located adjacent to the side boundary of the appeal site. There are a number of trees located close to the side boundary which is shared with an area of public open space.
15. A 'TREE REPORT, Ecological Statement & Habitat Regulation Assessment, dated August 2023, (the tree report), accompanies this appeal. Additional tree information has also been submitted during the appeal. The tree report and additional tree information identifies that the trees on the side boundary consist of a mature conifer hedge, four individual conifers and an Ash tree. The proposed development would be within close proximity to the Ash tree which is located within the public open space. Indeed, the proposed dwelling would be located within the Root Protection Area (RPA) of the Ash tree, which is a category B tree due to its condition and visual value. Therefore, it is an attractive and visually prominent tree.
16. The tree report and additional information identifies that, notwithstanding the RPA of the Ash tree, the site conditions, in particular the tarmac driveway, are not conducive to rooting and the driveway would protect any roots underneath it. Nonetheless, there is a lack of specific and accurate detail within the tree report and additional information regarding the extent of investigations that have been carried out in order to identify tree roots.
17. Additionally, there is a lack of substantive details within the tree report and additional information regarding the amount of works necessary to accommodate the proposed development and any subsequent impact on the Ash tree, as well as any potential mitigation measures and long-term management. The location of underground services and infrastructure for the proposed dwelling has also not been shown, and what harm, if any, would be caused to the adjacent trees. Therefore, on the evidence before me, I am not persuaded that the proposed development could be accommodated on the appeal site without causing harm to the Ash tree and its longevity.
18. The individual conifers are category C trees and whilst their removal would open up the appeal site to wider views from within the public open space, replacement planting would help to compensate the loss of the conifers. Replacement tree planting could be secured by condition as part of a detailed soft landscaping scheme for the site, which could also address the Council's concerns about the adequacy of the existing landscaping plan.
19. While the juxtaposition of the adjacent trees could result in overshadowing of the proposed dwelling, and pressure for the lopping of the trees, I am satisfied that the orientation of the proposed dwelling and the position of habitable

windows, would avoid any significant harm to the living conditions of future occupiers.

20. For the reasons given above, I conclude that the evidence before me fails to demonstrate that the proposed development would not cause significant harm to existing trees. Therefore, I cannot be certain that the proposed development would comply with Policies ENV18 and ENV32 of the UDP, which amongst other things, requires development to take into account the surroundings and not unacceptably affect trees and hedgerows on and near the site.
21. The proposed development would also be contrary to the guidance and policies of the Conserving Walsall's Natural Environment SPD (revised 2013), which seeks to ensure that development contributes positively to Walsall's natural environment and does not detract from or erode it. It would also conflict with the Framework which similarly sets out the importance of trees.

Living conditions of the host property

22. The proposed development would be built up close to the side gable of the host property, which has a set of double doors in its side elevation. The double doors serve a habitable room.
23. The Council suggest that Appendix D of the SPD requires a minimum distance of 13 metres between habitable room windows and blank walls exceeding 3 metres in height. As already set out, despite requests, a copy of Appendix D has not been forthcoming.
24. The habitable room of the host property is also served by a large window on the front elevation. The window is large and provides an outlook to the front of the property. Therefore, while the side gable of the proposed dwelling would create an oppressive outlook from the double doors, the occupiers of the host property would continue to benefit from the large window. As a result, the large window would continue to provide a satisfactory outlook for the size of room.
25. Consequently, for the reasons outlined above, I conclude on this main issue that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of 20 Harness Close, in respect of outlook. As such, the proposed development would not conflict with Policy GP2 of the UDP, and Policy HC2 of the SAD, which seek, together and amongst other things, to ensure that developments take account of their surroundings to provide a satisfactory residential environment.
26. The Council's reason for refusal on this issue refers to Policy DW5 of the SPD. However, this does not clearly relate to this main issue concerning living conditions and so is not directly relevant.

Other Matters

27. The creation of an additional dwelling in an accessible urban area, would contribute to boosting the supply of new housing, as referenced in the Framework. I also acknowledge that there would be social and economic benefits to local services during the construction and occupancy phases without conflict with neighbouring land uses. However, these benefits would be limited by virtue of the proposal only adding one additional dwelling to the housing supply in the area. Therefore, taking the above matters into consideration, the

benefits would not outweigh the identified harm that would be caused to the living conditions of neighbouring properties and existing trees.

28. I acknowledge the appellants comments with regard to the Council's handling of the planning application, particularly, feedback and updates during the application process. However, I confirm that I have considered the proposed development on its planning merits.

Conclusion

29. Notwithstanding my conclusions on the living conditions of the occupiers of the host property, the proposal would conflict with policies contained within the development plan as a whole. I have found no other material circumstances that would outweigh that conflict. As such, I conclude that the appeal should be dismissed.

N Bromley

INSPECTOR