



Appeal Decision

Site visit made on 25 September 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal Ref: APP/C4615/W/24/3341277

Vacant land rear of 98 to 114 Meriden Avenue, Wollaston DY8 4QR

- 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 Scott Brown against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/1534.
 - The development proposed is erection of 2 no. bungalows.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address in the banner heading above is taken from the Council's decision notice rather than the application form as it is a more accurate description of the location. I have also included a post code as those provided appear to be incorrect.
3. I have also taken the description of development in the banner heading above directly from the Council's Decision Notice as it more accurately describes that for which permission is sought.
4. There is disagreement between the parties as to whether the site constitutes previously developed land. Annex 2 of the National Planning Policy Framework (the Framework) defines previously developed land as land which is or was occupied by a permanent structure including the curtilage of the developed land and any associated fixed surface infrastructure. It excludes from this definition land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
5. I observed during my site visit that the land was densely overgrown, and the land was uneven and hard to navigate. Therefore, even if large areas of hardstanding are located on the land, they are no longer evident. As such, on the evidence before me and my own observations, I do not consider that the appeal site meets the definition of previously developed land. I have dealt with the appeal on that basis.

Main Issues

6. The main issues are the effect of the proposed development on;
 - the character and appearance of the area;

- trees covered by Tree Preservation Order's; and
- protected species, specifically badgers.

Reasons

Character and appearance

7. The appeal site represents an undeveloped piece of land within a residential area, at the rear of properties that front Meriden Avenue and Bridle Road. The land is unused and overgrown.
8. The trees on the appeal site and within the rear gardens of neighbouring properties, are visually prominent from Meriden Avenue. They are a feature which soften the otherwise built form of the locality and contribute to the character and appearance of the area. Therefore, they offer some amenity value within the street scene.
9. Meriden Avenue is predominantly characterised by two-storey semi-detached dwellings of a uniform appearance, arranged along the road frontage, with a consistent front building line. Likewise, the existing dwellings on Bridle Road are also two storey and front the road.
10. Contrary to this current uniformity, the proposed dwellings would be bungalows and they would be accessed via a long, unmade driveway, which would pass to the side and in between 104 and 106 Meriden Avenue. As a result, the proposed bungalows would occupy a backland location.
11. The single storey height of the proposed dwellings, in a backland location, would be largely obscured from view within the street scene. However, the loss of trees and vegetation, to accommodate the proposals, would open up views of the site and the proposed development from within the street scene. As a result, the additional built form and mass of the proposed buildings, as well as new boundary fencing, parking, and circulation areas, would be noticeable between the gaps of existing dwellings on Meriden Avenue and the access driveway.
12. Consequently, the introduction of detached bungalows, in a backland location, would be at odds with the prevailing linear pattern of development in the area. Therefore, even though the bungalows would have a conventional design, the location and built form of the proposals would appear stark and inharmonious within the context of the area. As a result, the proposed development would be incongruous.
13. For the above reasons, I conclude on this main issue that the proposed development would be unacceptably harmful to the character and appearance of the area. Therefore, the proposal would fail to accord with Policy ENV2 of the Black Country Core Strategy (2011) (BCCS), and Policies L1 and S8 of the Dudley Borough Development Strategy (2017) (DS), which together, amongst other things, seeks new development to be designed so that it reinforces and enhances local distinctiveness and respects the context and character of the surrounding area.
14. The proposed development would also be contrary to the principles set out in the Residential Design Guide Supplementary Planning Document May 2023,

and the design objectives of the Framework, which seek development that is appropriate and sympathetic to its surroundings, and well-designed.

Trees

15. The proposed dwellings would be located amongst the existing trees within the site and on neighbouring land. The trees on the site are covered by an area Tree Preservation Order (TPO). A number of other trees beyond the site boundaries are also covered by a separate TPO.
16. I observed during my site visit that the abundance of trees and their canopies, as well as dense vegetation, result in large proportions of the site being shaded.
17. The submitted Pre-Development Tree Survey, dated April 2021 (the Tree Survey), indicates that a number of trees would need to be removed to facilitate the proposed development. However, a number of the large mature trees would be retained, including those on neighbouring land, close to the site boundaries.
18. The large canopies of the trees on the site and particularly those within neighbouring gardens would overhang the proposed dwellings and their garden areas. In particular, the rear elevation of plot 2, which contains the windows of habitable rooms, due to its orientation and the proximity to tree canopies, is unlikely to receive much direct sunlight. As such, the habitable windows and garden area of that plot are likely to be in shade for much of the day and throughout the year. Similarly, the position of habitable room windows of plot 1 would also be in shade throughout the day due to its orientation and the presence of tree canopies.
19. While reference is made within the Tree Survey to possible shading, it lacks substantive details of the effect of shading from trees on the proposed dwellings. Therefore, I have no objective means of assessing the true effect of shading caused by trees on the site and immediately adjacent to it. I am also mindful that the Tree Survey is now over three years old. Consequently, and despite the TPO that is in place, I am not satisfied that the Tree Survey is robust in concluding that the proposed development for two dwellings would not lead to additional pressure for the removal of trees to improve the living conditions of future occupiers.
20. My attention has been drawn to a previous appeal decision¹ on the site for the erection of a new dwellinghouse. The Inspector in the previous appeal found that the proposed development would not be detrimental to the protected trees on the site. Nonetheless, the full details and plans of the previous appeal scheme have not been provided. However, the proposal before me is for two dwellings and the amount of built development proposed on the site is likely to be much greater than the previous appeal scheme for one dwelling. As a result, the appeal scheme before me would have a materially greater effect on trees than the previous appeal. Likewise, the effect of trees on the proposed development would also be much greater. Given this, the previous appeal decision does not ease my concern that harm would arise in this case, which I have determined on its own merits.

¹ Appeal Reference: APP/C4615/W/21/3289276

21. For the above reasons, I conclude on this main issue that the proposed development would unacceptably harm trees covered by Tree Preservation Order's. Therefore, the proposal would fail to accord with Policy S22 of the DS and the Nature Conservation Supplementary Planning Document (2016) (SPD), which together and amongst other things, require full details of any impact of development to trees to be provided.
22. In addition, the proposal would fail to accord with the objectives of the Framework which seek to create places with a high standard of amenity. It also recognises the importance of trees.

Protected species

23. Badgers and their setts are protected under the Protection of Badgers Act 1992. Paragraph 186 of the Framework states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
24. Two ecological reports were submitted in support of the application and accompany this appeal. The latest of these is a Badger Survey and Badger Mitigation Report (the Survey Report), dated May 2023, produced by Ascerta, which expands on a Phase 1 Preliminary Ecological Appraisal. The Survey Report identifies that badger setts are located on the land and badger activity on the site is evident.
25. The Survey Report establishes a robust baseline for badger activity on the site and the likely effect of the proposed development on badgers. The Survey Report also proposes a series of mitigation measures. In particular, an area within the appeal site would be retained for badgers with their welfare in mind. Therefore, I am satisfied that adequate measures to mitigate and compensate the disturbance to badgers have been explored and identified, and the development would maintain the status of the local badger population. A suitably worded planning condition to secure mitigation measures, prior to any development taking place on the land, would be reasonable and necessary in this context.
26. Furthermore, I am also mindful that there is also protection through the licencing regime and Natural England would not issue a licence if it was not satisfied that the existing setts could be closed or that construction activities would disturb badgers. The precise details would be addressed at the license stage and under this process the appellant would be required to carry out further survey work and revise the mitigation strategy if necessary.
27. Therefore, for the above reasons and on the evidence before me, I conclude on this main issue that adequate measures to mitigate and compensate the disturbance to badgers has been explored and identified. As such, the proposed development would not conflict with Policy ENV1 of the BCCS, Policy S21 of the DS and the SPD and the Framework. These seek, amongst other things, to ensure that developments safeguard and enhance nature conservation sites, habitats and features.

Other Matters

28. The appeal site is not located within a conservation area; however, it is adjacent to the boundary of the Wollaston Conservation Area (CA). The

significance of the CA largely derives from its historic interest as an 'industrial village' resulting from rapid industrialisation in the mid-nineteenth century onwards. Features include mainly two-storey development of a modest scale, open space, landscaping and the pattern of streets, which reflect the historical development of Wollaston. These features make a positive contribution to the character, appearance, and significance of the CA.

29. The appeal site, due to its backland location, does not positively contribute to the setting of the CA and views of the proposed development from the CA would be limited. Therefore, within this context, I conclude that the development would preserve the CA. The Council has also not raised concerns and I see no reason to disagree.
30. No objections have been raised with regards to neighbouring living conditions, access or parking arrangements. Nevertheless, these are requirements of planning policy and taken together they carry neutral weight.
31. I understand that the appeal site has attracted a degree of antisocial behaviour, primarily from fly-tipping. As such, the construction of two dwellings, that could be occupied by families, would redevelop the land, in an accessible urban, residential location, which has good links to public transport and the town centre. The proposed development would also add to the mix of dwelling types in the area, particularly bungalows. In addition, the proposals would also contribute to boosting the supply of housing, utilising a smaller windfall site that is vacant and underutilised, which could be delivered relatively quickly. The proposal would offer sustainability credentials also, as well as provide social and economic benefits to local services during the construction and occupancy phases without conflict with neighbouring land uses. Some environmental and biodiversity enhancements could also be achieved. However, these benefits would be limited by virtue of the proposal only adding two dwellings to the housing supply in the area.
32. Notwithstanding that the appellant suggests that the proposal would provide a dwelling type for which demand currently greatly outstrips supply, I have no substantive evidence before me to demonstrate that is the case. Nonetheless, even if I were to accept that were to be the case, taking all of the above matters into consideration, the benefits of the proposed development would not outweigh the identified harm that would be caused to the character and appearance of the area and on protected trees.

Conclusion

33. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole and there are no material considerations, including the Framework, that indicate that the development should be determined otherwise than in accordance with it. For these reasons, the appeal should be dismissed.

N Bromley

INSPECTOR