
Appeal Decision

Site visit made on 3 October 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/C4615/W/24/3340397

Land located off The Straits, The Straits, Lower Gornal, Dudley

Easting: 390041, Northing: 291845

- 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 P Adams, of Elan Homes Midlands Ltd, against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P22/1853.
 - The development proposed is demolition of 129A The Straits and erection of 14 dwellings with associated access, parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of 129A The Straits and erection of 14 dwellings with associated access, parking and landscaping at Land located off The Straits, The Straits, Lower Gornal, Dudley, Easting: 390041, Northing: 291845, in accordance with the terms of the application, Ref P22/1853, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr P Adams, of Elan Homes Midlands Ltd, against the decision of Dudley Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matter

3. The appellant's Statement of Case includes updated drainage information and plans. The Council has had an opportunity to comment on the updated drainage information and plans, as have other interested parties. Having regard to the principles established in *Holborn Studios Ltd*¹, I am satisfied that no party has been prejudiced in this regard and I have taken the additional drainage information and plans into account in determining this appeal.

Main Issue

4. The main issue raised by this appeal is whether or not the proposed development would increase the risk of surface water flooding.

Reasons

5. The appeal site is an undeveloped field located to the rear of a linear row of residential dwellings that front The Straits. The land has a gentle slope that

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

falls from north to south. The proposed dwellings would form a cul-de-sac of properties, accessed via a single point of access onto The Straits.

6. Paragraph 173 of the National Planning Policy Framework (the Framework) advises that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere. It also makes clear that major developments should incorporate sustainable drainage systems, unless there is clear evidence that this would be inappropriate. The systems used should, amongst other matters, take account of advice from the lead local flood authority (LLFA), have appropriate minimum standards, and have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.
7. It is suggested that neighbouring land² has flooded previously and the appeal site is located on a flood plain and rainwater collects on the land. Nonetheless, the site lies in Flood Zone 1 which represents the lowest risk of flooding from rivers or the sea and is less than a hectare in size. As such, Policy S4 of the Dudley Borough Development Strategy (2017) (DS) does not require a Flood Risk Assessment to be submitted. However, Policy S5 of the DS identifies that all new development and any adaptation of existing development shall minimise flood risk, help improve water quality and promote sustainable drainage, through a number of identified measures.
8. The proposal would increase the amount of built development on the land including areas of hardstanding, which may lead to an increase in water run-off. The use of sustainable urban drainage systems for the proposed development has been explored. However, it has been established that surface water from the proposed development would not be efficiently discharged by soakaway drainage due to the geology of the site. As a result, the drainage information proposes an on-site attenuated storm water system, consisting of underground storm water storage tanks in conjunction with a hydro-brake to control / restrict the storm water run-off rates to an agreed discharge rate into the sewer network.
9. The LLFA has recommended that planning permission is not granted for the proposed development until an acceptable drainage strategy is proposed and outstanding matters are resolved. Specifically, it is identified that infiltration testing of the drainage method has not been carried out in accordance with appropriate standards; no evidence of the use of permeable materials has been provided; and there are no plans to demonstrate flow paths of all hardstanding and soft landscaping in the event of exceedance of the drainage system.
10. Paragraph 55 of the Framework indicates that decision-takers should consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
11. The updated drainage information and plans further identifies why soakaways are not possible for the appeal site. In addition, finished floor levels and flow paths, have been submitted, along with a proposed management and maintenance plan for the surface water drainage system. These details were requested by the LLFA and in the absence of any further substantive technical information or advice to the contrary, and on the evidence before me, a robust

² Himley Gardens, Wallows Wood and High Arcal Road

and reasonable approach to surface water drainage has been demonstrated for the proposed development. However, whilst a proportionate amount of information has been submitted, final details of the proposed drainage system for the development would need to be secured by a suitably worded planning condition. In the context of this development and the level of information provided, this approach would be in accordance with the objectives of the Framework and the relevant guidance of the national Planning Practice Guidance (the PPG), which seek decision takers to approach proposed development in a positive and creative way.

12. Consequently, for the reasons given and on the evidence before me, I conclude that the proposed development would not increase the risk of surface water flooding. Therefore, the proposal would not conflict with Policy ENV5 of the Black Country Core Strategy (2011), Policies S4 and S5 of the DS and the objectives and guidance of the Framework. These, together and amongst other things, seek to minimise flood risk and promote sustainable drainage.

Other Matters

13. I am mindful that a number of interested parties have objected to the proposal. In addition to the main issue, concerns were raised about the principle of housing development on greenfield, agricultural land, to the detriment of grass, trees, and habitat. The need for the development, and the lack of affordable housing are also raised as concerns and it is suggested that brownfield land should be prioritised, in accordance with the Framework. Concerns are also raised regarding the impact of the development on neighbouring residential amenity and the community, including overshadowing, loss of space, privacy and light, increased air, light and noise pollution, as well as the health and wellbeing of residents. Issues of ground stability and hazardous substances are highlighted by objectors also, as is the effect on protected species and the local infrastructure including shops, schools, doctors, and dentists. These factors are not in dispute between the main parties and were addressed in the Councils Planning Committee report, with the Council concluding that there would be no material harm in these regards. No substantiated evidence has been submitted that leads me to any different view. Given my findings above, and the suggested conditions by the Council, I have found no justification to dismiss the appeal.
14. Furthermore, potential highway safety issues from increased traffic generated by the proposed development, as well as concerns about the access, have also been cited as a concern, but the Council has raised no objection, subject to appropriate conditions which are included in the schedule. I have no reason to form a different view.
15. I acknowledge that the development would change the view from nearby properties and that concerns have been raised regarding property values. However, the planning system does not exist to protect such matters. In addition, while comments have been made that the site is Green Belt and an Area of Outstanding Natural Beauty, no substantiated evidence is before me which identifies that the land is designated as such.

Conditions

16. The Council has suggested several conditions, some of which I have amended for the sake of clarity and precision. I have also had regard to the Framework

and the PPG. In addition to the conditions set out in the main issues, and the standard time limit condition, it is necessary to impose a condition that requires the development to be carried out in accordance with the approved plans for certainty.

17. As very limited details have been provided regarding tree felling / pruning, and the landscaping of the development or the protection of existing trees and hedges on the site, conditions relating to such matters are necessary to ensure visually significant trees are retained and supplemented with new planting to conserve the character and appearance of the area. A management plan is also necessary to ensure soft landscaping works within areas of open space and any communal areas are appropriately maintained. To protect and enhance the ecological value of the site it is also necessary to condition that the development is undertaken in accordance with the submitted ecological report.
18. Conditions relating to the construction of the initial site access and driveway, including their gradient, the provision of visibility splays, parking and turning spaces are all necessary in the interests of ensuring highway safety. A condition to secure the approval of bin storage arrangements is necessary to ensure that appropriate storage and collection arrangements are in place to avoid waste and pollution issues in the future.
19. Remediation, verification and unexpected ground contamination conditions are required to prevent risk to the environment and to protect the living conditions of future occupants of the development. Similarly, conditions to secure details of existing site levels and finished ground floor levels, dust mitigation measures, as well as a restriction on construction hours, are necessary to protect the living conditions of neighbouring occupants.
20. A condition which promotes the use of renewable or low-carbon energy sources is necessary in the interests of reducing the effect of the proposed development on climate change. Likewise, a condition which minimises emissions from gas boilers is necessary in the interests of reducing adverse air quality effects.
21. To ensure that the appearance of the development is satisfactory, conditions are imposed to require details of the external materials, hardstandings and boundary treatments to be approved.
22. Conditions 3-10 relate to pre-commencement activities. In each case I am satisfied that the conditions are necessary to make the development acceptable in planning terms and that it would have otherwise been necessary to refuse planning permission. The appellant has provided written agreement to the terms of these conditions.

Conclusion

23. The proposed development would accord with the development plan, and there are no material considerations to lead me to determine the appeal other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal is allowed.

N Bromley INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos. WHB-SA[20]0001 Rev P01 – Site Location Plan; WHBSA[20]0010 Rev P05 – Site Plan as Proposed; WHB-SA[20]002 Rev P01 – Site Survey Plan; WHBSA[21]0001 Rev P01 – Site Sections (Sheet 1); WHB-SA[21]0002 Rev P0 – Site Sections (Sheet 2); MAJ-G-P/4HA-01 Rev E – 4B House A- SHAKESPEARE; MAJG- P/4HA-02 Rev A – 4B House A- SHAKESPEARE; MAJ-G-P/4.02-01 Rev D Crofton (4.02); MAJ-G-P/4.02-02 Rev A Crofton (4.02); MAJ-G-P/4.01-01 Rev C Beckbury (4.01); MAJ-G-P/4.01-02 Rev A Beckbury (4.01); MAJ-G-P/3.02-01 Rev E Brocton (4.02) Type 1; G-SG2-MAJ1 Rev B Single Garage; G-SG2-MAJ2 Rev B Single Garage Details; G-SG2-MAJ3 Twin Garage Details and G-SG2-MAJ4 Rev A Single Garage Details (6318 x 3206).
- 3) No development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority. The remediation scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied. Following approval, such remediation scheme shall be implemented on site in complete accordance with the approved details.
- 4) No development hereby permitted shall take place until a final sustainable surface water drainage strategy and a foul water drainage scheme (the final drainage scheme) for the site has been submitted to and approved in writing by the Local Planning Authority. The final drainage scheme shall be based on the Drainage Layout Plans - Drawing No 21/260/1B and 21/260/10. The final drainage scheme shall include, but not be limited to, the following additional details;
 - a) information about the design storm period and intensity,
 - b) the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and / or surface waters;
 - c) a timetable for its implementation; and
 - d) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout the lifetime of the development.

None of the dwellinghouses shall be occupied until the final drainage scheme has been implemented in accordance with the approved details. Thereafter it shall be retained for the lifetime of the development.

- 5) No development shall commence (excluding demolition, site clearance and initial ground investigation works) until details of the access(es) into the site, together with parking and turning area(s) [including details of lines, widths, levels, gradients, cross sections, drainage, and lighting] have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the access(es) into the site, together with parking and turning area(s) within the site have been laid out in accordance with the approved details. These area(s) shall thereafter be retained and not be used for any other purpose for the lifetime of the development.
- 6) No development shall commence (excluding demolition, site clearance and initial ground works) until detailed plans and sections showing existing site levels and proposed ground floor levels of the dwellinghouses hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be implemented in complete accordance with the approved details.
- 7) No development shall commence until details of the tree protection measures on site have been submitted to and approved in writing by the Local Planning Authority. The agreed tree protection measures shall be erected / installed prior to the commencement of the development and shall not be taken down moved or amended in any way without prior written approval of the Local Planning Authority. The tree protection measures shall include:
 - a. a plan showing the location and identification (with reference to a survey schedule if necessary) of all trees on, or directly adjacent to the development site, that are to be retained during construction. These trees are to be marked with a continuous outline;
 - b. a plan showing the location and identification (with reference to a survey schedule if necessary) of all the trees on, or directly adjacent to the development site that are to be removed prior to, or during development. These trees are to be marked with a dashed outline;
 - c. a plan showing the extent of the Root Protection Area, which is to be protected by physical barriers during development. The extent of the area that is to be protected will be calculated in accordance with Clause 4.6 of British Standard BS:5837 - 2012 'Trees in Relation to Design, Demolition and Construction- Recommendations'; and
 - d. design details of the proposed protective barriers and ground protection to be erected around the trees during development. Any protection barriers should be designed and constructed in accordance with the provisions set out in section 6.2 of British Standard BS:5837 - 2012 'Trees in Relation to Design, Demolition and Construction- Recommendations'.
- 8) No development shall commence until a detailed tree felling / pruning specification has been submitted to and approved in writing by the Local Planning Authority. All tree felling and pruning shall be carried out in full accordance with the approved specification and the requirements of British Standard 3998 (2010) Recommendations for Tree Work.

- 9) No development shall commence until a method statement for the control of dust and emissions arising from the construction of the development has been submitted to and approved in writing by the Local Planning Authority. The development thereafter shall be carried out in accordance with the approved details.
- 10) No development shall commence until a detailed services (gas, electricity and telecoms) layout has been submitted to and approved in writing by the Local Planning Authority. Such layout shall provide for the long-term retention of the trees. The development thereafter shall be implemented in complete accordance with the approved details.
- 11) No above ground construction of the development hereby permitted shall commence until a landscaping scheme for the site has been submitted to and approved in writing by the Local Planning Authority. These details must include, where appropriate:
- a. planting plans, including accurate plotting of all existing landscape features;
 - b. written specifications;
 - c. a schedule of plants including species, plant sizes and proposed numbers/densities; and
 - d. a programme of implementation.

The approved landscaping scheme shall be carried out not later than the first planting season following the substantial completion of the development or occupation of the building, whichever is the sooner. Any trees or plants which, within a period of five years, die, are removed, or have become seriously damaged or diseased shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority, unless written consent has been obtained from the Local Planning Authority for any variation.

- 12) No above ground construction of the development hereby permitted shall commence until a schedule of the types, colours, and textures of the materials to be used on the external surfaces of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.
- 13) No above ground construction of the development hereby permitted shall commence until details of the types, colours, and textures of the materials to be used in the hard surfacing of the development hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details and retained for the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.
- 14) No above ground construction of the development hereby permitted shall commence until details of the types, sizes, and locations of the boundary treatments around the site and between the proposed plots has been submitted to

and approved in writing by the Local Planning Authority. The boundary treatments shall be carried out in complete accordance with the approved details prior to the occupation of the dwellings hereby approved and shall thereafter be retained for the lifetime of the development unless otherwise agreed in writing with the Local Planning Authority.

- 15) No part of the development hereby permitted shall be occupied until visibility splays to the new accesses have been provided at the junction between the proposed means of access and the highway with an 'x' set back distance of 2.4m metres and a 'y' distance of 59 metres. No structure or vegetation exceeding 600mm in height above the adjoining highway shall be placed or allowed to grow within the visibility splay for the life of the development unless otherwise agreed in writing by the Local Planning Authority.
- 16) The dwellinghouses hereby permitted shall not be first occupied until a schedule of landscape maintenance to the areas of open space and any communal areas (excluding private gardens), including details of its implementation for a minimum period of five years from first planting has been submitted to and approved in writing by the Local Planning Authority. The open space and any communal areas shall thereafter be cared for in accordance with the approved landscape maintenance scheme.
- 17) The dwellinghouses hereby permitted shall not be first occupied until the nature conservation enhancement and / or mitigation works which are recommended within the submitted Ecological Appraisal (reference PEA 22-10 257.2) have been undertaken and completed. The nature conservation enhancement and / or mitigation works shall thereafter be retained and maintained in accordance with the recommendations of the Ecological Appraisal or for the lifetime of the development.
- 18) The dwellinghouses hereby permitted shall not be first occupied until details of the bin stores have been submitted to and approved in writing by the Local Planning Authority. The bin stores shall be provided in accordance with the approved details prior to the first occupation of the dwellinghouses and shall thereafter be retained and maintained for no other purpose for the lifetime of the development.
- 19) At least 10% of the energy supply of the development shall be secured on site from renewable or low-carbon energy sources. Details and a timetable showing how this is to be achieved for each phase of development including details of physical works on site, shall be submitted to and approved in writing by the Local Planning Authority prior to any above ground level construction of the development hereby permitted. The approved details shall be implemented in accordance with the approved timetable and retained as operational thereafter.
- 20) The existing trees shown on the approved plans to be retained shall not be damaged or destroyed, uprooted, felled, lopped, or topped during the construction period of the development without prior written consent of the Local Planning Authority. Any trees removed without such consent or dying or being seriously damaged or diseased during that period shall be replaced with healthy trees of such size and species as may be submitted to and agreed in writing by the Local Planning Authority. The replacement trees shall thereafter be provided in accordance with a timetable to be submitted to and agreed in writing by the Local

Planning Authority and shall thereafter be retained for the lifetime of the development.

- 21) Demolition or construction works shall not take place outside the hours of 07:00 to 18:00 hours Mondays to Fridays and 08:00 hours to 17:00 hours on Saturdays nor at any time on Sundays or Public Holidays.
- 22) In the event that contamination is found at any time when carrying out the approved development which was not previously identified, development shall STOP on that part of the site affected by the unexpected contamination and it must be immediately reported in writing to the Local Planning Authority. An additional investigation and risk assessment must be undertaken and where remediation is necessary, a remediation scheme must be prepared, which shall be submitted to and approved in writing by the Local Planning Authority. Following approval, such remediation scheme shall be implemented on site in complete accordance with approved details unless otherwise agreed in writing by the Local Planning Authority.
- 23) In order to minimise the impact of the development hereby permitted on local air quality, any gas boilers provided within the development must meet a dry NOx emission concentration rate of <40mg/kWh. The specification of the gas boilers shall be submitted to and approved in writing by the Local Planning Authority and the approved specification of boilers shall thereafter be fitted in accordance with such details.