



Appeal Decision

Site visit made on 7 January 2025

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2025

Appeal Ref: APP/Q4625/W/24/3350013

1 Thorngrove Avenue, Hillfield, Solihull B91 3XJ

- 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 Charles Mulira on behalf of Netherwood Properties Ltd against the decision of Solihull Metropolitan Borough Council.
 - The application Ref is PL/2023/02467/PPFL.
 - The development proposed is demolition of existing garage and erection of new 4 bedroomed dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for demolition of existing garage and erection of new four bedroomed dwelling at 1 Thorngrove Avenue, Hillfield, Solihull B91 3XJ in accordance with the terms of the application, Ref PL/2023/02467/PPFL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Government published a revised National Planning Policy Framework (the Framework) on 12 December 2024. Those parts of the Framework most relevant to this appeal have not been substantially amended. As a result, I have not sought submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. As part of the appeal, the appellant has submitted an Arboricultural Statement, dated July 2024. Although this is new information it does not result in a substantial or fundamental change to result in a different application. Moreover, as the Arboricultural Statement was submitted with the appeal documents the Council has had an opportunity to comment on it. As such, neither main party would be unfairly prejudiced and I, therefore, have considered the submitted information in determining this appeal.

Main Issue

4. The main issue is the effect of the development on trees and biodiversity, including the protected Oak tree.

Reasons

5. The appeal site comprises the garage and side garden to 1 Thorngrove Avenue, a detached dwelling within a residential area. The side garden is enclosed in close boarded fencing. Outside the side of the site is the pavement and grass verge of Alderminster Road and a large Oak tree which is protected by a Tree Preservation Order (TPO).

6. The Oak is one of a number of trees along Alderminster Road which form a landscaped belt breaking up the visual appearance of the housing estate and provide a pleasant appearance to the street scene. They are part of the character of the area and are a significant positive benefit to visual amenity.
7. Documents were submitted by the appellant during the Council's consideration of the planning application including Tree Surveys, Arboricultural Impact Assessments, Method Statements, and a letter from Harling Bridge Consulting Engineers providing their opinion of the potential foundation options for the development. I have considered all of the submitted documents alongside the Council Officer report, consultation responses and my own observations.
8. The tree has reached maturity and, consequently, is unlikely to grow significantly, even though it has a predicted lifespan of over forty years. The proposed dwelling would be within the identified root protection area (RPA) of the tree but would be built outside of the canopy. The development, therefore, has the potential to affect the tree through disturbance of the RPA and would result in further encroachment of hard surfacing and built development into the RPA.
9. Currently, within the appeal site, approximately 13% of the RPA is hard surfaced. The proposal would include additional built development and hard surfacing. However, contrary to the Council Tree Officer's comments, the additional encroachment into the RPA would be less than 20% of new permanent hard surfacing, or built development, of existing unsurfaced ground within the RPA. The existing 13% hard surfacing is already there and already affecting the tree. The effect of the development can only be from the additional hard surfacing not the total hard surfacing. The additional 13% encroachment would, therefore, comply with the advice set out in paragraph 7.4.2.3 of BS5837:2012, Trees in relation to design, demolition, and construction - recommendations.
10. The submitted Method Statement also details the proposed tree protection measures for the development, including protective fencing, ground protection, ensuring that work within the RPA is carried out with hand tools or machinery from existing hard surfaced areas, and under supervision. The proposal also recommends pile, pad, or post foundations to enable the dwelling to be built above ground level with minimal below ground excavation. It would be reasonable and appropriate to require the details of the foundations and levels of the site, including cross sections, to be submitted as a condition and this would allow the Council to control the risk of damage to the tree. I have no compelling evidence that there would be any need to significantly reduce, or increase, the ground levels around the tree to enable the construction of the dwelling.
11. Given my observations of the shape and position of the tree, in my judgement, the tree would not be a constraint on the development of the site for one dwelling and the development would not result in loss of the tree, or pressure to remove or substantially prune the tree, beyond the extent of pruning already regularly undertaken. Furthermore, any works to the tree would now require separate consent from the Council due to the TPO. The proposed mitigation measures, method statement and the details in the Arboricultural Impact Assessment could be secured by a condition to ensure that the effect on the tree is minimised both during and after the development.

12. The tree canopy would be to the side of the proposed dwelling, next to the gable end. The dwelling would not be built under the tree canopy. Consequently, any leaf litter, twigs, small branches, or acorns would fall on the ground and existing landscaping under the tree, as they currently do. This may cause nuisance for the future occupiers of the dwelling but not to the extent that would affect the maintenance of the dwelling or justify removal of the tree.
13. There are no windows proposed in the side of the dwelling and the garden is well outside the canopy of the tree. The tree already casts shadow over the garden of the host dwelling, as shown in the appellant's evidence. The effect on the living conditions of the future occupants of the proposed dwelling would, therefore, be no greater than the effect on the occupants of the existing dwelling and there would be times and dates without significant shading over the garden. In my judgement, the tree would not cause unacceptable living conditions for the future occupants of the development.
14. As I have found that the development, even though it is close to the tree, would not result in pressure to reduce or remove the protected tree there would be no harm to the established row of mature trees that runs along Alderminster Road. The development would result in the removal of other vegetation, however, this would be to the front of the site, on Thorngrove Avenue, to enable the driveway to be widened and provide parking. The limited vegetation proposed to be removed would not affect the vegetation buffer along Alderminster Road or the green corridor it creates. There would, therefore, not be unacceptable loss of habitat for biodiversity, including nesting birds or foraging and commuting bats.
15. For the above reasons, I find that the proposed development would not have an adverse effect on trees and biodiversity, including the protected Oak tree. It, therefore, complies with the requirements of Policies P10 and P14 of the Solihull Local Plan (the LP) which, taken together, recognise the importance of a healthy natural environment and its contribution to the green economy, the health of residents and the potential for reducing climate change; seek to protect, enhance and restore landscape features; halt and where possible reverse the degrading of the Arden landscape; conserve, enhance and restore biodiversity; and safeguard important trees.

Other Matters

16. The proposed dwelling would extend further back than the host dwelling at 1 Thorngrove Avenue and include first floor windows in the rear. This would be closer to the property behind which is also situated on higher ground. The neighbour would be able to see the proposed dwelling and vice versa. However, from the evidence before me and my own observations on site, there would be sufficient distance between the proposed dwelling and this neighbouring property to ensure that the development would not result in unacceptable loss of privacy to the occupiers of the property to the rear.
17. Policy P14 of the LP seeks to protect and enhance the amenity of existing and potential occupiers, requiring development to be a good neighbour. It does not contain any specific separation distances. The advice in the Solihull House Extension Guidelines Supplementary Planning Document, February 2010, although more relevant for extending houses than for new housing development, also does not include any specific separation distance requirements.

18. The Solihull Planning Guidelines for Housing Development, January 1994, advises, on page 12, that the length of back gardens should not normally be less than 11 metres and development should ensure reasonable standards of privacy and amenity. However, the advice is also guidelines to be flexibly, rather than rigidly, applied.
19. In this case, I have considered the appeal against Policy 14 of the LP and taken into account the advice in both guidance documents and find that there is no conflict with any of the Council's policies or guidance in regard to the living conditions of the occupants of the neighbouring property.

Conditions

20. I was not supplied with any suggested conditions by the Council. However, I sought both main parties' views on the conditions I was minded to impose.
21. In addition to the standard condition which limits the lifespan of the planning permission I have specified the approved plans for the avoidance of doubt and in the interests of proper planning. In order to ensure a satisfactory appearance, I have included a condition requiring the submission of samples of the materials to be used for the external surfaces of the dwelling.
22. To ensure sufficient parking is provided for both the existing and proposed dwelling, I have included a condition to require the submission of the details of the parking areas and to require them to be provided prior to occupation of the approved dwelling.
23. In the interests of ensuring that the development would not adversely affect the Oak tree, which is protected by a TPO, a condition is required to ensure that the development is carried out in accordance with the submitted Tree Survey, Method Statement and Arboricultural Impact Assessment. It is also necessary and relevant to include conditions to require the details of the levels of the site and details of the foundations.
24. The Council has also requested a condition to secure the submission and implementation of a landscaping scheme for the development. However, given the scale of the development and that the landscaping would consist of a domestic garden area I do not consider such a condition is necessary.

Conclusion

25. For the reasons given above, I conclude that the proposal would accord with the development plan and the Framework, and therefore the appeal is allowed subject to the condition set out.

K Townend

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 A101, A103 Rev 1 and A104 dated 16.02.24.
- 3) No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of the existing ground levels and the proposed finished levels, above ordnance datum, of the ground floor of the proposed dwelling, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall take place until full details of the proposed foundations for the approved dwelling have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 6) The development hereby permitted shall not be occupied until a plan showing the vehicle parking spaces for both the proposed and existing dwellings has been submitted to and approved in writing by the local planning authority. The spaces shall be provided in accordance with the approved details prior to the first occupation of the new dwelling and shall, thereafter, be retained for the parking of vehicles only.
- 7) The development hereby approved shall be carried out strictly in accordance with the submitted BS5837 Tree Survey, dated October 2023, the BS5837 Method Statement, dated January 2024 and the Arboricultural Impact Assessment, dated March 2024.

*** END OF CONDITIONS ***