



Appeal Decision

Site visit made on 28 January 2025

by **J Smith MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/C4615/W/24/3354432

Land adjacent to Farthings Lane, Dudley DY2 8UB

- 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 Matthew Stimpson of Zest Eco against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P24/0505.
 - The development proposed is redevelopment of the site to provide an EV Charging HUB comprising, EV charging bays, a coffee pod and supported by ancillary electrical equipment, installation of new lighting columns and Zest totem.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name on the application form and the appeal form do not match. I have sought the clarification of this matter from the appellant and secured their confirmation on this situation. Both named individuals are employed by Zest Eco. I have utilised the name on the appeal form.

Main Issues

3. The main issues are:
 - whether the risk to land stability has been mitigated through an appropriate Coal Mining Risk Assessment;
 - the effect of the proposal on visual amenity through the removal of protected trees; and,
 - whether the proposed development would fail to protect areas of the Green Network.

Reasons

Land stability

4. The appeal site falls within a defined Development High Risk Area, which has the potential for historic coal mining-related features and hazards. The application has been supported by a CON29M Coal Mining Report. This is a factual report. It does not provide an assessment of the potential risks posed to the development from historical coal mining activity.
5. Policy D4 of the Dudley Borough Development Strategy 2017 (DDS) states that where it is known or suspected that land stability may have an impact on any development, planning applications must be accompanied by sufficient and proportionate information

to determine the extent of the instability. The application is absent of detailed technical information in this regard. In the absence of such technical information, significant doubt must remain as to the potential for geo-technical factors to occur that may directly influence the proposal.

6. Therefore, the development proposal is in conflict with Policy D4 of the DDS which anticipates the provision of appropriate levels of technical information to support at-risk development proposals.

Trees and visual amenity

7. The appeal site is located between the A461 and Thornleigh Trading Estate, which contains buildings and structures of varying age, style and appearance. The site is located on an isolated parcel of land due to roads which surround it. It is also surrounded by fencing around certain areas of the site and contains a range of mature trees and foliage. The parcel of land which the appeal site forms is subject to a site wide Tree Preservation Order (TPO)¹.
8. The trees subject to the TPO vary in their appearance, size and height. Due to their close relationship with public vantage points such as the A461 and public footpaths, this grouping of trees is highly prominent in the public realm. As such, this does provide some level of visual amenity and forms a visual break from Thornleigh Trading Estate when travelling along the A461. However, this is a small and isolated area of woodland. As such, whilst providing some positive level of visual amenity, this is limited by its small cluster and isolated nature.
9. Policy S22 of the DDS notes that the Council will ensure that woodland, as well as ancient, notable or veteran trees are protected and will seek to encourage the appropriate management of existing trees and woodland. The proposed development would directly affect a significant number of these trees through their removal from the appeal site. Consequently, the proposal would be in conflict with Policy S22 of the DDS.
10. However, whilst I acknowledge that trees assist in the reduction of carbon emissions, the proposed development seeks to provide ten EV rapid charging bays which can be utilised by members of the public. The Framework notes that opportunities should be realised from proposed transport infrastructure and changing transport technology. The Framework also notes in Paragraph 161 that the planning system should support the transition to net zero by 2050 and should help to support renewable and low carbon infrastructure. This development would introduce infrastructure which seeks to reduce carbon emissions through its support to electric vehicles. The evidence suggests that there is a need for EV charging bays in the area. I ascribe significant weight to this matter in my decision.
11. To the west of the site is a greater and substantial area of trees which follow the A461 and form a wider area known as the Parkhead Locks Conservation Area. This area is noted to form an important green wedge within the urban environment. The appeal site is located outside of this area. In addition, to the north and west of the site are lines of trees which are located to either side of the A461. These trees provide a strong contribution to visual amenity. As such, whilst the loss of these trees at the appeal site would conflict with Policy S22 of the DDS, the surrounding trees to the west and other groups of stronger visual amenity value would help to preserve the verdant character of the area. I ascribe significant weight to this matter in my decision.

¹ TPO Reference: TPO/0290/NET

12. In its current condition, there is evidence of fly tipping and littering at the appeal site and this was observed during my site visit. Although located in close distance to an industrial area where this is not immediately harmful when viewed in this context, it nevertheless reduces the positive amenity value of the appeal site in its current condition. The development proposal would assist in tidying the site and creating an area where fly tipping is less likely to occur due to its managed appearance. This is a positive, but limited benefit of the proposal.
13. The Council note that it is likely that there are multiple brownfield sites in close proximity to the site which could facilitate this form of development without the harm to protected trees. However, no available brownfield sites have been identified. I have assessed the appeal on its merits in connection with this site.
14. Therefore, in consideration of the wider visual characteristics of the area, the improved appearance of the site through the removal of litter but more decisively, the benefits associated with public charging facilities would outweigh, in the circumstances of this particular case, the harm to the loss of trees and its effect on visual amenity.
15. To conclude, there would be conflict with Policy S22 of the DDS. However, the circumstances of this particular case, indicate that a decision should be taken other than in accordance with this policy.
16. The Council refer to Policy S19 of the DDS in their decision. This policy is concerned with Dudley Boroughs Green Network. This policy is therefore not directly related to the effect of development proposals on trees. In addition, as the effect of the proposal on the Green Network is a main issue in this appeal, I have considered this policy later in my decision.

Green Network

17. The appeal site is designated as an area of the Green Network. This is an isolated area of land which is separated from other areas of Green Infrastructure by Farthings Lane, the A461 and the road network throughout the trading estate. Policy S19 of the DDS notes that the Green Network has a multifunctional role as a wildlife corridor and as an area which accommodates pedestrian and cycle paths which link the urban area to the Green Belt and open countryside as well as residential and employment locations. The Green Network also seeks to provide opportunities for informal recreation, provide a break between distinct areas and centres, areas for grazing and a means of maintaining the integrity of water courses.
18. With regard to Policy S19 of the DDS, the space does not host a pedestrian or cycle path and is not connected to nearby paths found to the west further along Farthings Lane. It does not link the urban area to the Green Belt, open countryside, or residential and employment locations specifically as it is absent of a cycle or public footpath. Due to established areas of high fencing and the thick density of trees and bushes, accessibility into this space for informal recreation is highly difficult. Although I acknowledge the presence of the Dudley Canal a close distance away, this specific parcel of land is not directly next to a water course. It does not provide an area of land for the grazing of livestock. Although it does provide a break between the A461 and the Thornleigh Trading Estate, this is limited due to its overall small area size. For these reasons, this parcel of land makes a limited contribution to the aims and roles of the Green Network.

19. Policy S19 of the DDS notes that areas of Green Infrastructure provide wildlife corridors and ecological networks. The proposal is supported by an Ecological Appraisal and Biodiversity Net Gain Baseline Assessment (Baker Consultants, 2024). This assessment notes that the site holds very few species, or opportunities for habitats to support species. It does find that scrub habitat is found within the site and is of a poor ecological condition, but nevertheless, this could be a habitat for various species. However, due to its disconnection from other scrub habitat, small area size, seclusion and the overall absence of species diversity, it is only acknowledged to be of site value. The evidence suggests that the site is of limited value in its role as a connecting wildlife corridor. The Council also comment that the site offers limited ecological constraints in the form of protected species.
20. Nevertheless, Policy S19 also notes that all development proposals, except householder applications, shall strengthen and support existing wildlife corridors through habitat creation and restoration. Policy ENV1 of the Black Country Core Strategy 2011 (CS) also notes that a mitigation strategy must accompany relevant planning applications. However, there is no convincing evidence that this site forms an ecological function as a wildlife corridor or as a connecting feature to wider areas of Green Infrastructure. The evidence suggests that the site offers a very limited contribution with regard to its role as a wildlife corridor and therefore, makes a limited contribution to this aim and role of the Green Network.
21. In the context of the evidence provided, there is no convincing justification to require that mitigation through habitat creation and restoration is relevant, necessary and should be provided for. This is due to the limited findings of the Ecological Appraisal and Biodiversity Net Gain Baseline Assessment and the limited role of the appeal site as a wildlife corridor with regard to Policy S19 of the DDS.
22. To conclude, there would be no conflict with Policy S19 of the DDS and Policy ENV1 of the CS. These policies seek to safeguard nature conservation by ensuring that the movement of wildlife within the Black Country and its adjoining areas through linear habitats such as wildlife corridors is not impeded by development and notes that adequate information must be submitted with planning applications for proposals which may affect any designated site or important habitat to ensure that the likely impacts of the proposal can be fully assessed.

Other Matters

23. Biodiversity Net Gain is discussed in the officer report. In discussion of this matter, the Council note that the information submitted would need to be updated prior to any future resubmission. Had I been minded to allow the appeal, I would have sought the views as to whether the Biodiversity Net Gain requirements could be met.

Conclusion

24. The appeal should be dismissed for the reasons given above.

J Smith

INSPECTOR