



Appeal Decision

Site visit made on 2 May 2025

By S. Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 09 May 2025

Appeal Ref: APP/X3405/W/25/3360872

35 Rowan Road, Cannock, Staffordshire, WS11 1JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr. Lee Davenport against the decision of Cannock Chase District Council.
 - The application reference number is CH/24/242
 - The development proposed is the erection of a boundary fence and the change of use of the land to a residential garden area to the side of 35 Rowan Road.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of a boundary fence and the change of use of the land to a residential garden area at 35 Rowan Road, Cannock, Staffordshire, WS11 1JJ in accordance with the terms of the application ref: CH/24/242, subject to the following conditions: -
 - 1) The development hereby permitted shall be carried out and retained in accordance with the following approved plans: MDA-A-000 (Site location & block plan); MDA-A-004(Proposed block plan); MDA-A-005 (Existing & proposed elevations); and picture of present fence to Rowan Road
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no development within Part 1 of Schedule 2 to the Order shall be carried out without an express grant of planning permission by the Local Planning Authority, namely with regard to the following: -
 - the enlargement, improvement or other alteration of the dwellinghouse;
 - the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;
 - the provision within the curtilage of the dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such;
 - the erection or provision within the curtilage of the dwellinghouse of a container for the storage of oil for domestic heating.
 - 3) The development hereby permitted shall be removed and the land restored to its condition prior to the carrying out of the operation within 6 calendar months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 calendar months of the date of this decision, details of a scheme for the biodiversity enhancement of the appealed land shall have been submitted

for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 4 calendar months of the date of this decision, the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined, and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained and remain as approved.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Procedural Matters

- 2. The National Planning Policy Framework was revised in December 2024 and amended on 7 February 2025 to correct cross references from footnotes 7 and 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear. The 2025 Framework (the Framework) has not materially changed in terms of the identified main issues below and therefore it has not been necessary for me to seek comments from the main parties.
- 3. The appeal is made retrospectively for development already implemented.

Main issue

- 4. The main issue is the impact of the proposed development upon biodiversity.

Reasons

- 5. The appeal property is a semi-detached, two-storey dwelling located in a residential area at the end of a cul-de-sac. It has hard standing to the front, used for parking, and a rear garden. To the side of the property is a plot of land which is the subject of the appeal, and which has been incorporated into the garden of the dwelling, and which has been enclosed by close boarded fencing. The land includes four protected trees.
- 6. The local planning authority (LPA) has no objections to the change of use of the land or to the design, height or appearance of the fence. I have no reason to disagree with the position of the LPA.
- 7. Its objection, as outlined in its statement of case, is that the fence '*may lead to the destruction of habitats, loss of green space and disruption to wildlife*', while the Council's Committee members, when determining the application, were unable to assess the previously open space as the area had already been fenced off. The

Council's Committee members were unable to assess the impact upon the protected trees because of the restricted access to the land caused by the fencing and no environmental statement was submitted by the applicant.

8. However, there is no specific evidence before me to support the concern that the fencing or the change of use of the land has, or is likely to have, an adverse impact upon the protected trees. The officer report to Committee states that the Council's tree officer has no objection to the fence or to the change of use of the land. The trees continue to be protected by the tree preservation order.
9. Similarly, I have no reason before me to support the concern of the LPA that the development has, or will have, an adverse effect in terms of biodiversity and habitats on (or in close proximity to) the site.
10. No biodiversity net gain (BNG) metric or base line information was submitted with the application, with the applicant stating that he was advised by the LPA that, as the application was made on a retrospective basis, no such requirement applies. The LPA, in its appeal statement, does not argue that a BNG submission is required.
11. In circumstances where BNG is required, it follows that a pre-commencement condition would have to be included if the application were to be approved. However, where, as in this case, an application is made retrospectively for development which has already taken place, it is not possible to include such a pre-commencement condition.
12. For this reason, I consider that the lack of a BNG submission is no reason for the dismissal of the appeal. Nevertheless, paragraph 187 of the Framework requires some enhancement to biodiversity, even if this is not cast within the parameters of the BNG legislation and requirements.
13. It states, *'planning policies and decisions should contribute to and enhance the natural and local environment'* by amongst other things, *'minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs'*.
14. In this case, there is no evidence to suggest that such a requirement of the Framework would not be capable of being achieved by way of a condition.
15. Subject to the imposition of such a condition, I conclude that the development accords with Policy CP12 of the Cannock Chase Local Plan (2014) which aims to protect, conserve and enhance the District's biodiversity assets, and with chapter 15 of the Framework which also aims to protect and enhance sites of biodiversity value.

Other Matters

16. Third parties have raised concerns regarding the possible future uses of the appeal land and the effect which these might have upon the protected trees, a concern intensified by alleged attempts at their removal in the past. However, the LPA has powers to prevent works to them provided by the tree preservation order, and where such protection is strengthened by its powers to prosecute any offences. In addition, I shall give added protection to the trees by removing specified permitted

development rights in respect of the provision of additional development in the proposed addition to the garden of the host property.

17. Therefore, I do not consider that the possible harm to the protected trees outweighs my conclusion upon the main issue.

Conditions

18. I have imposed a condition relating to the approved plans, for the avoidance of doubt and in the interests of certainty.
19. The LPA has suggested the removal of permitted development rights in order to protect the living conditions of surrounding neighbours and the character and appearance of the area, though these are not concerns outlined in its submissions. However, while paragraph 55 of the Framework advises that '*planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so*', I consider that there is clear justification for the removal of specified permitted development rights in order to ensure additional safeguards to the protected trees. I have therefore amended the LPA's proposed condition to meet this requirement. I also consider it necessary to impose a condition requiring biodiversity enhancement. The main parties were afforded an opportunity to comment upon this condition which was not originally suggested by the LPA.

Conclusion

20. There are no material planning considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, the appeal should be allowed.

S. Hartley

INSPECTOR