
Appeal Decision

Site visit made on 23 June 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 July 2025

Appeal Ref: APP/P4605/W/25/3363240

Land rear of 12-24 Clive Road, Quinton, Birmingham, B32 1HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mrs K Kaur against the decision of Birmingham City Council.
- The application Ref is 202405691/PA.
- The development proposed is an outline planning application for the erection of 2no. self-build dwellinghouses with matters of access, layout and scale, with appearance and landscaping reserved.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mrs K Kaur against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the description of development from the decision notice for reasons of clarity.
4. The application is in outline, with only the matters of access, layout and scale to be considered at this stage. Appearance and landscaping are reserved for future consideration. I have considered the appeal accordingly.
5. At appeal stage the appellant submitted further information in the form of an updated Preliminary Ecological Appraisal and badger camera surveys, following an additional survey after the planning application was refused by the Council. As the Council, interested third parties, and consultees would have had the opportunity to view this new evidence, and comment on it, I have chosen to accept it and consider it in my decision.
6. At final comments stage they also submitted additional information including a Biodiversity Impact Assessment, baseline habitat map, landscaping and ecological enhancement scheme, DEFRA statutory metric and an 'Enviro All-in One non-residential search report'. I have chosen not to accept these documents. To accept them would prejudice the interests of the Council, interested third parties and consultees, who have not been consulted on this new information and who may have observations to make.

Main Issues

7. The main issues are the effect of the proposed development on:

- the provision of sports facilities in the area; and
- legally protected species and whether it would result in a net gain for biodiversity

Reasons

Sports facilities

8. The appeal site comprises a parcel of land to the rear of properties along Clive Road. The evidence before me outlines how the site was historically used as two tennis courts, however they have been disused since 1994. At present, the site is significantly overgrown with scrub, trees and vegetation. The surrounding area is residential in character, predominately consistency of detached family dwellings set back from the highway. The scheme would result in the redevelopment of the site to construct two dwellings. The dwellings would be accessed via an existing access off Clive Road.
9. Policy TP11 of The Birmingham Development Plan (2017) (LP) outlines how sports and physical activity facilities will be protected from development, unless it can be demonstrated that they are surplus to requirements through a robust and up to date assessment of need. No assessment of need or information to demonstrate that the tennis courts are surplus to requirements has been provided by the appellant.
10. Policy TP11 goes on to explain that where there is identified need for particular sports and physical recreation facilities, the loss of existing sports facilities for these sports will not be allowed unless an equivalent or better quantity and quality replacement provision is provided.
11. The Council's Playing Pitch & Outdoor Sports Strategy Executive Summary (2023) (PPOSS) identifies a large amount of unmet and latent demand for non-club tennis courts. It goes on to recommend that disused courts are repurposed to meet other sporting needs or retained as a strategic reserve should tennis demand grow. The scheme would therefore be contrary to the objectives set out in the PPOSS. I acknowledge that when the site was in operation as a tennis club, it was members only and not open to the public. Nonetheless, this document indicates a demand for the sport.
12. The Council's Leisure Services have sought a contribution of £40,000 (£80,000 in total) per court through a Section 106 agreement. They explain that this figure is the estimated cost for refurbishing an existing court excluding any land purchase costs. The appellant indicates in their design and access statement that although they do not consider there to be a need to replace the loss of the courts, the applicant proposed an '*ex gratia*' contribution of £9000. They then explain in their statement of case that this offer has expired. The evidence explaining how the figure of £80,000 has been reached is somewhat limited. Notwithstanding this, there is evidence to suggest there is an identified need for tennis facilities and to off-set the loss, an equivalent should be provided, which could be by way of a financial contribution. However, there is no mechanism securing such a provision before me.
13. Notwithstanding the above, the appellant contends that the site is abandoned and the tennis court use is non-existent and therefore there is no need to off-set the

loss of this use. The concept of abandonment applies when a building or land remains unused for a considerable time, in such circumstances that a reasonable onlooker might conclude that the previous use had been abandoned. Case law has established four criteria for abandonment. These are: the physical condition of the land or building; the period of non-use; whether there has been any other use; and the owner's intentions as to whether to suspend the use or to cease it permanently.

14. Regarding the physical condition of the site, it is not disputed that the site is currently significantly overgrown. On my site visit I was unable to see any evidence of the existence of tennis courts and the site had largely been left to return to nature, with small trees and other vegetation growing. In a previous appeal at the site (Ref: APP/P4605/A/2216605) in 2014, the Inspector advised that the site was very overgrown. There is also no evidence of a club house/pavilion which I understand was demolished following an arson attack in 1998.
15. Turning to the period of non-use, both parties accept that the use ceased in 1994, some 30 years ago. There is nothing before me to suggest there has been any intervening use to supplant the tennis club use.
16. The final test relates to the owner's intentions. The test of the owner's intentions should be objective, not subjective. That is, what would the reasonable person equipped with all circumstances consider the intention of the owners to be, as opposed to what the owners themselves maintain their intentions to be. Although the ownership of the club has changed hands in recent years, I understand that numerous attempts have been made over the last few years to develop the site for residential purposes. Planning applications for residential development were refused in 1999, 2001, 2002 and 2013. There was also pre-application advice requests submitted to the Council in 2013, 2023 and 2024. The site was removed from business rate listing in 2005. The Council stated in the 2024 pre-application advice request response (Ref: 2024/03122/PA) that there didn't appear to be any intention on the owner's part to resume the tennis use. Apart from a brief attempt at gaining lottery funding in 1997, the evidence before me does not indicate that there is, or has been, any intention to reintroduce the tennis court use over the last number of decades.
17. I therefore find that an objective assessment of all available evidence before me, when considered as a whole, leads to the conclusion that the tennis club use of the site had been abandoned sometime in the mid to late 1990's.
18. The Council explain in their evidence that in an appeal decision from 2013 (Ref: APP/P4605/A/14/2216605), there was no suggestion that the abandonment argument was put forward. They explain that the Inspector did not consider there to have been abandonment and therefore they maintain that position now. However, just because that argument was not put forward in the past, does not preclude it from being pursued at this stage. The Inspector did not explicitly conclude that abandonment had not occurred. I have afforded this consideration limited weight in favour of the Council's position.
19. Given the above, the proposed development would not result in the loss of sports facilities, as the tennis club use was abandoned. I find no conflict with Policy TP11 of the LP in this regard.

Protected species and biodiversity

20. Policy TP8 of the LP sets out that development proposals which are likely to affect any designated site or important habitat or species must be supported by adequate information to ensure that the likely impact of the proposed development can be fully assessed.
21. The evidence before me outlines how a badger sett was previously identified on the site in 2019 and was subsequently closed. Given this, badger camera surveys were carried out in February- March 2025. These surveys found no signs of badger setts in the main surveyed areas and concluded a likely absence of badger setts within the development zone. The report advises that the proposal is not anticipated to impact active badger setts or disturb individuals. As such, a precautionary working method during construction was recommended, with various mitigation and enhancement measures advised.
22. The Council have not considered the updated surveys in their statement of case, instead concluding that no badger surveys have been submitted. Nonetheless, based on the evidence before me, I am satisfied that, subject to the implementation of the precautionary working method and mitigation and enhancement measure recommended, the proposed development would not harm badgers.
23. Concerns are also raised that the scheme would not provide a net gain for biodiversity, particularly when measured against the baseline of the site prior to previous clearance. The Council explain that the site has undergone a large amount of vegetative clearance in the recent past and trees that have been removed could have contained potential roost features. A further loss of vegetative habitat would also be required to facilitate development. There is limited information before me to demonstrate that the scheme would achieve biodiversity net gain (BNG).
24. The appellant however stipulates that they would be exempt from providing BNG as they are self-builders. There is however no mechanism before me to ensure that the development would be self or custom build housing, rather than market housing.
25. I am not satisfied that specifying that the dwellings are self-build in the description of development, providing an exemption certificate from an ecologist or being on the Council's self-build register are sufficient to ensure they are constructed as self-build dwellings. The submission of a Community Infrastructure Level Self Build Exemption Claim Form, or documents to demonstrate they are self-build upon completion of the properties, are not sufficient, in my view, to ensure that the dwellings are constructed as self-build.
26. Whilst presumably there would not have been many trees or vegetation on the site whilst the tennis courts were in use some 30 years ago, at present the site is clearly overgrown with trees and vegetation now. I therefore do not agree that the loss of biodiversity would be zero.
27. The evidence suggests that excavations at the site confirmed that both courts have a clay surface and are therefore not permeable. The appellant explains that this lack of drainage kills plants and trees, and the plants do not root into clay. However, it was evident from my site visit that there is an abundance of vegetation

including small trees growing on site. Furthermore, the appellants own evidence discusses the removal of trees, suggesting that vegetation has been able to grow.

28. The appellant puts forward that Policy TP8 of the LP should be disregarded as the national policy for BNG came into effect after it. However, as outlined above, I am not satisfied that there are adequate mechanisms in place to ensure the properties would be self-build. Given this lack of mechanism, they would not be exempt from BNG. In any instance, Policy TP8 of the LP requires development to support the enhancement of Birmingham's natural environment.
29. My attention has been drawn to another scheme in Quinton whereby the submission of a scheme for ecological/biodiversity/enhancement measures was ensured through a planning condition (Ref: 2020/00357/PA). However, I have not been provided with information that satisfies me that the considerations regarding ecology and biodiversity in that appeal were the same as those in the appeal before me.
30. For the above reasons, based on the evidence before me I am satisfied that the proposed development would not harm protected species i.e. badgers. It however has not been demonstrated that the scheme would result in a net gain for biodiversity. The proposed development would therefore fail to meet the requirements of Policy TP8 of the Local Plan in this regard. This policy, amongst other matters, seeks to ensure that development supports the enhancement of the natural environment.

Other Matters

31. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.
32. Whilst two previous pre-application responses (Ref: 2023/00983/PA and 2024/01322/PA) advised that the principle of development could be acceptable, they also outlined the need for ecological assessments and BNG. The Council's Planning Policy team advised that the site had been identified as suitable for housing development in the Housing and Economic Land Availability Assessment 2023 (HELAA). It was however not proposed for allocation within the Birmingham Local Plan Preferred Options Document. In any instance, the correspondence from the Planning Policy team advised that the HELAA does not constitute a guarantee that a site will receive planning permission.
33. The appellant outlines how the site experiences vandalism and antisocial behaviour which causes problems for local residents and has a negative impact on the surrounding area. No third-party representations have however raised concerns associated with these issues. Even if this is the case, I am not satisfied that this would outweigh the harm identified above.
34. Whilst family members of the appellant may have experience in the building industry, this does not outweigh the harm identified.
35. The dwelling's internal layouts may comply with the Council's residential design guide and National Space Standards. They may be built to current building regulation standards and be of sustainable design with cycle storage. Retained

trees may also provide screening and privacy and fire safety and adequate drainage may be ensured. Regulatory Services and the Council's Tree Officer have no objection to the scheme. These are however neutral factors and would not weigh in favour of, nor against, the appeal.

Planning Balance

36. The Council outline how under paragraph 226 of the Framework, Councils which have an emerging local plan that has reached Regulation 18 stage, including both a policies map and proposed allocations towards meeting housing need, need to demonstrate only a four-year housing land supply. They go on to explain that they have a 4.38-year housing land supply and therefore paragraph 11(d) of the Framework does not apply.
37. However, this paragraph is no longer applicable, following changes made to the Framework in December 2024. Despite the Council submitting their statement of case after the changes to the Framework, they maintain this position in it.
38. As stated, the evidence before me outlines how the Council can only demonstrate a 4.38-year supply of deliverable housing sites. This is a reasonable shortfall. In these circumstances paragraph 11(d) of the Framework is engaged. There is nothing before me to suggest that there are any policies in the Framework that protect areas or assets of particular importance that provide a strong reason for refusing the development under paragraph 11(d)(i).
39. Therefore, the balance in paragraph 11(d)(ii) applies such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
40. The scheme would provide housing in a sustainable location. It would also make effective use of brownfield land. The dwellings may incorporate secure by design standards, electric vehicle charging and would provide some temporary and ongoing economic benefits through their construction and lifetime. However, given the relatively small scale of development I attribute these benefits limited weight.
41. Accordingly, I find that the adverse impacts arising from the development in terms of its failure to provide BNG would significantly and demonstrably outweigh the limited weight attributed to the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does not apply in these circumstances.

Conclusion

42. Notwithstanding my favourable findings with regard to the provisions of sports facilities and the impact on protected species (badgers), the failure of the scheme to provide BNG and the resulting conflict with the development plan are such that the proposed scheme would not comply with the development plan considered as a whole. As no material considerations outweigh this finding, the appeal should be dismissed.

S Burch - INSPECTOR