
Appeal Decision

Site visit made on 5 February 2019

by A McCormack BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2019

Appeal Ref: APP/P4605/W/18/3212335

Land to the rear of 29-39 Reddicap Heath Road, Sutton Coldfield B75 7DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Massey Limited against Birmingham City Council.
 - The application Ref 2018/02839/PA is dated 10 April 2018.
 - The development proposed is demolition of 33-35 Reddicap Heath Road and the erection of 10 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of 33-35 Reddicap Heath Road and the erection of 10 dwellings at Land to the rear of 29-39 Reddicap Heath Road, Sutton Coldfield B75 7DU in accordance with the terms of application Ref: 2018/02839/PA, dated 10 April 2018, and subject to the conditions set out in the schedule attached to this Decision letter.

Procedural Matters

2. The application form indicates the proposal includes the demolition of one dwelling. However, from the submitted evidence and plans, I note the proposal in fact involves the demolition of two semi-detached dwellings (33-35 Reddicap Heath Road). This is confirmed on the appeal form and in the Council's appeal statement. As such, the description of the proposed development has been amended and this is reflected in the heading to this Decision. Accordingly, I have assessed and determined this appeal on that basis.
3. The Council did not issue a decision within the prescribed period. Therefore, the appellant exercised their right to appeal against the failure of the local planning authority to determine the application. The Council has set out its concerns about the proposal. These relate to its impact on the local area and streetscene, separation distances between proposed and existing properties leading to a loss of privacy for occupiers and also how the proposal does not sufficiently demonstrate that protected species and habitats would not be harmed by the scheme. Furthermore, the Council indicates the proposed servicing facilities for the site would be inadequate and would lead to a detrimental impact on highway safety. Having reviewed its submissions, I find the above covers the Council's main issues.

Main Issues

4. Therefore, the main issues are the effect of the proposed development on:
 - the living conditions of neighbouring and future occupiers with regard to privacy and overlooking;

- the existing protected species and habitats on the appeal site; and
- highway safety.

Reasons

5. The appeal relates to a site comprising several existing rear gardens which are proposed to be accessed directly from Reddicap Heath Road by the demolition of the pair of semi-detached properties at 33-35 Reddicap Heath Road. The site is surrounded by residential properties of predominantly two-storey terrace, detached and semi-detached dwellings.

Living conditions

6. The Council identifies the proposed garden lengths for dwellings on Plots 5 and 7 of the proposed scheme would be insufficient to meet distance requirements to ensure undue overlooking and a loss of privacy to neighbouring properties does not occur. I note the proposed dwellings on those plots are indicated to have bedrooms on the second floor with rear facing windows overlooking the garden area and the gardens of neighbouring properties at 4 and 5 Hollyfield Crescent.
7. I have had regard to the minimum distances set out in the Places for Living Supplementary Planning Guidance (SPG) which states that 5 metres per storey should be provided to limit overlooking and a loss of privacy for neighbouring properties and occupiers. From the submitted plans, dwellings on Plots 5 and 7 would not meet these minimum standards as originally submitted. As such, I have also had regard to the revised plans regarding house types on the plots which would reduce the impact on neighbouring properties and occupiers. Moreover, I note the properties at 4 and 5 Hollyfield Crescent have substantial rear gardens and as such, the properties are a significant distance from the proposed dwellings.
8. Taking account of the evidence before me, I find whilst the proposal would not fully meet the minimum distance requirements in relation to Plots 5 and 7, the minimum garden space for the proposed dwellings set out in the SPD would be met. Notwithstanding this, having considered the above, I find the dwellings on these northern most plots of the proposed development would not result in any unacceptable overlooking or loss of privacy for neighbouring occupiers. This is due to the cumulative effect of the distance between the existing and proposed dwellings, the revised house types proposed on the relevant plots, the large gardens of 4 and 5 Hollyfield Crescent and also the potential planting on the boundaries between the properties and the resultant screening effect.
9. The appellant states the separation distances between existing and proposed properties comply with the Council's standards. Particular reference is made to the distance between proposed Plot 4 and 15 Hollyfield Road. From the evidence, I note the Council asked for further details from the appellant to confirm that the relationship between those properties was compliant in terms of the distance between the existing rear windows of No. 15 and the flank wall of the proposed dwelling at Plot 4. Based on the appellant's further submissions, and the lack of any subsequent concerns raised by the Council on the matter, I am satisfied in what I have seen and read that this relationship meets the relevant standards and is acceptable.
10. The appellant also indicates the proposed dwelling on Plot 1 complies with the 45 degree code in terms of its position relating to the rear habitable room windows at 37 Reddicap Heath Road. The submitted plans indicate this to be correct and therefore, in the absence of any contrary argument from the Council or other interested parties, I find no reason to consider this not to be the case.

11. Consequently, I conclude that the proposed development would have no significant adverse impact on the living conditions of neighbouring occupiers with regard to privacy and overlooking. Therefore, it would comply with Policies PG3 and TP27 of the Birmingham Development Plan 2017 (BDP), saved Paragraph 3.14C of the Birmingham Unitary Development Plan 2005 (UDP) and relevant guidance in the SPG and the National Planning Policy Framework 2018 (the Framework). Amongst other matters, these policies and guidance seek to ensure development has no significant detrimental impact on the living conditions or residential amenity of its neighbouring and future occupiers.

Ecological impact

12. I note that a preliminary ecological appraisal was undertaken in March 2018 and this concluded habitats on the site have low ecological value. However, it is also stated there is the potential for the habitats to support a number of protected and notable species. As such, further surveys and mitigation is recommended, particularly in relation to bats and birds. From the evidence, I note further survey work is best placed to be undertaken in April 2019 at the earliest. As such, this has not formed part of the supporting evidence for the proposal. Therefore, the Council could not fully assess the impact of the proposal in this regard when it determined the application. From what I have seen and read, the appellant indicates a willingness to carry out these surveys and adhere to any conditions regarding the implementation of mitigation measures resulting from the findings of that assessment. The Council has submitted no evidence to indicate a contrary view to the provision of such mitigation and has suggested conditions to that end.
13. As a result, subject to the additional survey work and the resulting recommended mitigation being implemented appropriately, I find this matter would no longer be in dispute between the parties. As such, I am satisfied, subject to compliance with suitably worded conditions, the proposed scheme would not lead to any significant adverse impact on the ecological qualities of the site, including protected species and their habitats. Moreover, I find that any limited harm identified in this regard could reasonably and appropriately be addressed by conditions.
14. Consequently, I conclude that subject to conditions, the proposed scheme would have no substantive detrimental effect on the existing protected species and their habitats within the site and surrounding area. Furthermore, I find the further survey work required would appropriately inform any mitigation measures needed to protect these species and habitats into the future. Therefore, the proposal would accord with Policies PG3 and TP8 of the BDP and relevant sections of the Framework. These policies and guidance seek to ensure development is sustainable and supports, maintains and where possible enhances the natural environment. It should also seek to assist in the successful management of biodiversity and geodiversity.

Highway safety

15. I note the proposed development provides parking for each dwelling within its curtilage and/or within an associated garage. As such, the number of parking spaces provided would be about twice the number of dwellings proposed. This parking provision would comply with the Council's relevant policies and standards. Nonetheless, the Council argues the over provision of resident parking would limited visitor parking within the site and therefore increase demand for on-street parking in the wider area, which itself is limited.
16. As acknowledged by the Council, an over provision of parking is proposed on site. Therefore, in my view, it is reasonable to consider that some of this over provision

could be reassigned for visitor parking to be available within the site. Moreover, I note the highway authority has suggested conditions to address these matters and has indicated that by adhering to such measures, the scheme would be acceptable.

17. The Council also raised concerns regarding the appellant's tracking assessment of service vehicles within the proposed site layout which related to a smaller refuse vehicle than used by the local authority. As such, a further assessment with the correct vehicle size has been provided. In addition, I note the highway authority has also requested the removal of garages adjacent to either side of the turning head within the site to be replaced by parking spaces. This is to enable the space for the necessary manoeuvres of appropriate refuse vehicles to enter and leave the site in forward gear. The appellant has expressed a willingness to undertake such changes and has submitted details to demonstrate that these are possible. Moreover, I note the highway authority has suggested conditions relating to such matters to ensure they are carried out in order to make the proposal acceptable.
18. Notwithstanding this, the Council argues the proposal would have an adverse impact on the free flow of traffic, highway safety and the safety of all road users in the local area. From what I have seen, I find the proposed over-provision of off-street parking on the site and amendments to the highway layout, ensured through conditions, would not lead to circumstances which would adversely affect the free flow of traffic or highway safety in the area. Moreover, whilst each case must be assessed on its merits, I note the Council approved a more intensive scheme on the appeal site in 2007 and its renewal in 2010. As such, I find it likely that those approved schemes would have resulted in greater traffic generation in the local area than would be the case with the appeal scheme before me.
19. Having carefully considered all matters relating to highway safety, subject to suitable conditions, I find the adverse impacts of the proposed scheme, as set out by the Council, could be appropriately and reasonably addressed. Therefore, based on the available evidence and subject to the acceptable discharging of the conditions I have attached, I find the proposed development would be acceptable both in planning and highway safety terms.
20. Consequently, I conclude that the proposed development would not provide inadequate servicing facilities which would lead to a detrimental impact on highway safety on the site and the local highway network. As a result, it would not be contrary to Policies PG3 and TP44 of the BDP and the relevant sections of the Framework. Amongst other matters, these policies and guidance seek to ensure development is of a high quality of design and has no adverse impact on the local highway network or on highway safety and the safety of all its users.

Other Matters

21. The Council has referred to the scale, design and layout of the development and argued these elements would have an adverse impact on the character of the local area and streetscene. I note these matters were not of such significant concern to be included in the reasons for refusal. Nevertheless, I have had due regard to them as material considerations in my determination of this appeal.
22. From the evidence, I note the height of some of the proposed dwellings would result in the units being visible behind, above and between the existing frontage dwellings in the local streetscene. Such visibility is often the case with proposals in such locations. Nonetheless, in this case, taking into consideration the limited viewpoints from the surrounding streetscene at street level, I find the proposed scheme would not have an unduly dominant or prominent appearance in the wider area. Whilst it would be clearly visible from the public highway at the access point

to the site, the scale and design of the properties to the front of the site, closest to Reddicap Heath Road, would be in keeping with existing properties. I note the proposed dwelling at Plot 1 would be slightly taller than existing dwellings. However, given its position at the site entrance, I find this would provide a subtle change in the street scene to demarcate the entry point to the development.

23. I appreciate some of the proposed dwellings would be taller than surrounding dwellings. However, these would be set back from the existing street frontages in the area. As such, their visual impact would be principally limited to glimpsed views from street level between existing dwellings surrounding the site. As a result, the greater height of the proposed dwellings would not be readily experienced by those in the area who are likely to be travelling at street level. In addition, the scale of the proposed units would be largely screened by existing dwellings from most locations. Moreover, from my observations on site and in the surrounding area, I note there are very limited opportunities for longer distance, wider views of the site within its surroundings. Accordingly, the visual impacts which the Council refers to in wider views of the site would not be experienced.
24. For these reasons, based on the evidence before me, I consider the proposal would not represent a poor design or cause material harm to the prevailing character and appearance of the area. Notwithstanding this, it is noted that whilst such concerns were raised in the Council's statement, these were not expressed explicitly within the reasons for refusal. As such, whilst I have had due regard to these matters, I give limited weight to them in my assessment and determination of this appeal.

Conditions

25. I have had regard to the conditions suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the conditions to better reflect the relevant parts of the Planning Practice Guidance (PPG).
26. In addition to the standard conditions relating to time and the approved plans, conditions are attached relating to external materials, site levels, ecological mitigation, land contamination, landscaping and highways and parking. These are necessary for reasons of character and appearance, ecology, sustainability and highway safety. In addition, I have included conditions regarding site drainage, noise insulation and the removal of permitted development (PD) rights. These are required in the interests of residential amenity. The PPG indicates conditions to remove PD rights should not normally be used. However, in this case, I find the circumstances to be exceptional and PD rights should be removed to ensure a reasonable level of amenity for neighbouring and future occupiers. The Council's suggested conditions regarding PD rights have been combined for conciseness.
27. It is necessary that the requirements of Conditions 4, 5, 6, 7 and 8 are agreed prior to the commencement of the development hereby permitted to ensure an acceptable development and for reasons of character and appearance, residential amenity and in the interests of sustainability, biodiversity and ecology.

Conclusion

28. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be allowed.

Andrew McCormack

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be implemented in accordance with the details submitted with the application ref: 2018/02839/PA and shown on the following approved plans and drawings ('the approved plans'):

2159/03 Rev C; 2159/20 Rev A (House Type 941); 2159/20 Rev A (Plot 5-6 only); 2159/20 (Plot 7-8 only); 2159/20 Rev A (House Type 1371); 2159/20 Rev A (House Type 976) and 2159/12 Rev A.
3. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period. The demolition shall be implemented in accordance with the approved details. The CMS shall provide details of:
 - the parking of vehicles of site operatives and visitors;
 - location of loading and unloading of plant and materials;
 - hours of demolition/construction/delivery; and
 - methods of demolition.
4. Samples of all materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority prior to their use. The development shall be implemented in accordance with the approved details.
5. No development shall take place (excluding demolition) until details of finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings have been submitted to and approved in writing by the local planning authority. The details shall include the proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details.
6. No development (excluding demolition) shall take place until such time as a scheme for drainage of the site has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details and thereafter maintained.
7. No development shall take place (excluding demolition) until details of the number, design, location and post-development monitoring arrangements of bird nesting boxes/bat boxes/bricks/tubes to be provided as part of the development has been submitted to and approved in writing by the local planning authority. These shall be installed in accordance with the approved details and thereafter maintained.
8. No development shall take place, including any works of demolition, until the following components of a site assessment and, if required, remediation scheme to deal with the risks associated with contamination of the site for the intended use has been submitted to and approved in writing by the local planning authority:
 - 1) A preliminary risk assessment, which has identified:
 - all previous uses;
 - potential contaminants associated with those uses;
 - a conceptual model of the site indicating sources, pathways and receptors; and
 - potentially unacceptable risks arising from contamination of the site.
 - 2) A site investigation scheme, based on (1) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
 - 3) If contamination is found present and assessed as an unacceptable risk to human health, safety and the environment an options appraisal and remediation strategy shall be submitted giving the full details of the remediation measures required and how they are to be undertaken, timetable of works and site management procedures.
 - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to the above components require the written consent of the local planning authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the intended use of the land after remediation.

9. Prior to occupation of any part of the development, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the local planning authority.
10. Details of hard and/or soft landscape works shall be submitted to and approved in writing by the local planning authority prior to occupation and these works shall be carried out as approved. These details shall include proposed finished levels or contours, means of enclosure, hard surfacing materials, minor artefacts and structures, proposed and existing functional services above and below ground, fully annotated planting plans to a scale of 1:100 showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another and the locations of any individual specimen shrubs. Other information shall include planting schedules noting species, plant sizes and proposed numbers/densities and details of the proposed planting implementation programme. The works shall be implemented prior to the occupation of any part of the development or in accordance with a programme agreed with the local planning authority and thereafter maintained. Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of a similar size and species.
11. Details of the proposed boundary treatment of the site shall be submitted to and approved in writing by the local planning authority prior to its installation. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before occupation of the dwelling hereby permitted and shall be retained thereafter.
12. Prior to the occupation of the dwellings, a scheme of noise insulation shall be submitted to and agreed in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details to ensure that all windows and any other glazed areas and external doors to habitable rooms provide a weighted sound reduction index ($R_w + C_{tr}$) of at least 38dB. Any ventilation on this elevation to habitable rooms shall be provided by means of acoustic vents achieving weighted element normalised level difference ($D_{ne, w} + C_{tr}$) of at least 44dB.
13. The development hereby permitted shall not be occupied until a package of highway measures has been approved by the local highway authority and the approved measures have been substantially completed. The package of measures shall include full details of the new vehicular and pedestrian access from the public highway (Reddicap Heath Road) into the site and are to be carried out at the applicant's expense to Birmingham City Council specification.
14. No fewer than one charging point for electric vehicles shall be provided at each residential unit with dedicated parking. No fewer than 10% of non-dedicated parking spaces shall be provided with electric vehicle charging points.
15. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of a dwellinghouse or its roof shall be carried out without further subsequent planning approval of the local planning authority. Furthermore, no windows/dormer windows shall be inserted or constructed and no garages shall be erected other than those expressly authorised by this permission.

END OF SCHEDULE