



Appeal Decision

Site visit made on 28 February 2018

by **S J Lee BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **21st March 2018**

Appeal Ref: APP/B3030/W/17/3184393

Land at Green Lane, Newark on Trent, Nottinghamshire NG24 4BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Levi Spratt against the decision of Newark & Sherwood District Council.
 - The application Ref 16/01978/FUL, dated 31 October 2016, was refused by notice dated 12 May 2017.
 - The development proposed was originally described as 'change of use from overgrown, unused allotment to construction of new dwelling'.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a new dwelling at land at Green Lane, Newark on Trent, Nottinghamshire NG24 4BN in accordance with the terms of the application, Ref 16/01978/FUL, dated 31 October 2016, subject to the following conditions in the attached schedule.

Procedural Matter

2. The description of development in the header above is taken from the application form. I have amended this in my formal decision to remove superfluous information relating to the pre-existing nature of the site.

Main Issues

3. The main issues in this case are the effect of the development on:
 - The character and appearance of the area, with particular regard to the effect on trees; and
 - Highway and pedestrian safety, with particular regard to the vehicular access.

Reasons

Character and appearance

4. The appeal relates to an overgrown plot which was ostensibly previously used as a private allotment. A detached bungalow sits to one side and an array of garages line the opposite side of the lane. What appears to be a domestic garden sits to the other side of the site. To the rear are the gardens of dwellings fronting onto Boundary Road. The Council raises no concerns over

- the principle of a dwelling in this location or the impact of the bungalow itself on local character. I see no reason to come to a different conclusion.
5. While the site is currently open and undeveloped, it is still in the midst of a predominantly residential area. An additional low profile building in this location is unlikely to cause material harm to the character and appearance of Green Lane. The bungalow would be in-keeping with that next door and would not lead to an over intensive or unduly prominent form of development.
 6. The protected trees lining Green Lane do however form an important part of the area's character. The development does not propose the removal of any trees, though there would have to be some pruning to facilitate construction. While the Council's statement suggests some concern over the effect of the development on the crowns of trees T10 and T8, there is nothing to suggest that the long term health of these trees would be at risk, particularly if the proposed tree protection measures proposed are implemented. This can be addressed by condition.
 7. A concern regarding pruning appears to be that it would lead to rapid regrowth which, in turn, would result in repeat pruning operations in the future. In addition, the Council has referred to the dropping of honeydew from the Lime trees, which could cause a particular nuisance to cars parked on the forecourt area of the site.
 8. I recognise that both seasonal leaf drop and honeydew can be a source of inconvenience. However, the management of such matters in the appeal proposal would be no different to that of many other developments or dwellings that are located close to trees, whether protected or not. I see nothing unusual in this case that would suggest seasonal leaf drop or other perceived nuisance would give rise to a sustainable reason to heavily, or unacceptably, prune or fell the trees. Moreover, no substantive evidence has been provided to suggest that such issues have led to any harm to protected trees within the local authority area.
 9. The dwelling itself would be set back sufficiently far from the trees fronting the site to ensure that there would be no harmful effect on internal living conditions which might justify removal at a later date. The trees to the rear of the site are not protected and are of less amenity value than those on the front. While the plans suggest they are to be retained, if they were to be removed at some point I do not consider that this would result in undue harm to the character of the area. However, it is not unusual to have gardens with trees within them or on the boundary, and it is not automatic that future occupants would wish to remove them. Indeed, it is likely that retaining trees in and around the site would enhance the quality of the environment to an extent.
 10. I have noted reference to unauthorised works to trees associated with No 3. However, there is no reason for me to assume that future occupiers of the development would not adhere to the necessary requirements associated with protected trees were I to allow the appeal. Moreover, the evidence does not suggest that the trees nearest to No 3 are unhealthy or have been unduly harmed by the works carried out. This does not therefore add weight to the argument that an additional dwelling, that would have a similar relationship to trees as at No 3, would cause unacceptable risks.

11. The proposed access and driveway for the development would interfere with the root protection areas (RPA) of a number of trees. The appellant has proposed a no-dig cellular confinement solution to address this. The Council has noted that some of the trees' RPAs affected would exceed the 20% recommended by BS5837. This stems mainly from the existing hardstanding along Green Lane. The development would add to the existing extent of RPAs affected.
12. The appellant has suggested a condition could be used to agree details of solution and has suggested that either the materials used for the forecourt, or the area given over to hardstanding, could be addressed by condition. I am satisfied that there is sufficient space within the site to minimise any impact on relevant RPAs. I accept that this might still mean an increase above the recommended guideline of 20% RPA affected for some of the trees. However, the Council's evidence is not persuasive that this would inevitably lead to harm or an unacceptable level of risk to their health. I am satisfied that there would be sufficient scope to address this issue through appropriately worded conditions relating to hard and soft landscaping and tree protection.
13. Taking all relevant matters into account, I am satisfied that the development would not result in undue pressure to unacceptably prune or remove protected trees, and that the works required would not result in unacceptable risks to their long term health. Accordingly, the development would not lead to an unacceptable impact on the character and appearance of the area. As such, there would be no conflict with Core Policy 9 of the Newark and Sherwood Core Strategy (CS)(2011) or Policy DM5 of the Newark and Sherwood Allocations and Development Management Development Plan Document (ADM)(2013). Taken together, these policies seek, amongst other things, to ensure local distinctiveness is maintained.

Highway Safety

14. The Council's concern relates to the nature of the existing access between Green Lane and Albert Street. This already serves No 3 and I saw a number of garages and other accesses along the lane. While the Council suggests not all of these are used, there is nothing before me to suggest that there is any impediment to their potential use at some point. The appellant has also drawn my attention to a recent permission for a garage on the lane. Whatever the circumstances of this permission, it helps to demonstrate that Green Lane is, or could be, used by a number of vehicles on a daily basis.
15. I recognise that irrespective of there being good access to facilities and public transport, the development is likely to lead to some additional trips to and from the site. However, one dwelling is unlikely to result in a significant cumulative increase in vehicle movements and I see no reason why, in the context of the lane's current or potential use, further small scale development would not be acceptable in principle. The lane is relatively narrow and there is some evidence of cars using the verges. However, there is good visibility along the lane and even with a marginal increase in use I cannot see how the development would lead to any material increase in risk to pedestrians or other vehicles using the lane itself.
16. The existing junction with Albert Street does not conform to the recommended width as set out in the 6Cs Guidance. Nevertheless, the junction has clearly been in place for some time and I have not been provided with any evidence to

suggest that it has been the cause of any accidents or other incidents. There is a bus stop in close proximity to the junction, but passengers waiting at the stop would not be at undue risk. There is adequate space to queue on the opposite side of the stop to the access. Moreover, Green Lane is sufficiently long and straight to ensure that drivers would be able to clearly see people waiting at the stop and vice versa. Drivers and pedestrians would be able to take appropriate precautions to ensure reasonable safety.

17. At the time of my visit, visibility in both directions was constrained to a degree by parked cars and I have no reason to assume that this is not a regular occurrence. However, the markings for the bus stop are likely to provide some degree of clearance to either side of the access. The boundary treatments of buildings either side of the access also create some degree of constraint. It may be necessary on occasion to edge out across the reasonably wide pavement before being able to see clearly into the carriageway. This should not have any particular effect on the safety of passing vehicles, as there would be little or no need to enter the carriageway in order to see clearly in both directions.
18. Regular drivers, cyclists and pedestrians in the area will be aware of the potential for vehicles to be exiting from this junction and potentially from other vehicular accesses along the street. The long standing use of the access by an existing dwelling or garage users means that drivers, pedestrians and cyclists are likely to be aware of the potential for vehicles existing onto Albert Street. The presence of the access is also fairly obvious in the street scene, thus any passers-by are likely to be cognisant of the need to pay due care and attention to vehicles entering and exiting the site.
19. There may be occasions where buses dropping off or picking up passengers would block the access for a short period. This might result in drivers wishing to enter the lane having to wait in the carriageway. This might already happen with the existing use of the lane and it is unlikely that the marginal increase in potential usage would result in significant issues of delay or inconvenience for road users. Even with regular bus services, the potential for conflict is likely to be quite low and fleeting in nature.
20. Taking all relevant factors into account, I am not convinced by the evidence before me that the development would result in an unacceptable risk to highway or pedestrian safety. Accordingly, there would be no conflict with Spatial Policy 7 of the CS or Policy DM5 of the ADM which seek, amongst other things, to ensure development provides safe access.

Other Matters

21. Given that I have concluded the development would be acceptable, I see no reason why my decision would necessarily lead to harmful development on other sites in the area. Should proposals come forward on other plots along Green Lane, they would be assessed on their own merits.
22. The Council raises no objections in terms of the impact on the living conditions of neighbours. The existing boundary treatment would provide adequate screening between the ground floor windows of the development and No 3. The height of the development would also ensure there would be no undue impact in terms of overlooking or light. The effect on outlook from No 3 would also be limited by the relatively low profile of the development. There is also

no reason why a small scale residential development should have any unacceptable impacts in terms of noise or disturbance. I am satisfied therefore that the development would not harm nearby living conditions.

23. The Council also raises no objections in terms of the effect on biodiversity and there is nothing before me that would lead me to a different conclusion. While the current unmaintained nature of the site might provide some scope for wildlife, there is nothing before me to suggest that the development would affect any protected species. As such, it would not be appropriate to withhold planning permission on biodiversity grounds.
24. Issues relating to the right of access to the site are not matters before me and have had no bearing on my decision.

Conditions

25. I have considered the suggested conditions from the Council in accordance with the Planning Practice Guidance (PPG). In addition to the standard condition which limits the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
26. Condition 3 is necessary in the interests of character and appearance. I have amended the suggested wording in the interests of precision. Conditions 4, 5, 6 and 7 are necessary in the interests of the character and appearance of the area and tree protection. Notwithstanding the evidence submitted with the application, I consider it necessary for the specific details of the extent of the forecourt, materials and tree protection measures to be agreed prior to development commencing. This is necessary to ensure the development proceeds in accordance with the approved details. I have also made minor amendments to the suggested wording in the interests of clarity and precision. Condition 8 is necessary in the interests of the living conditions of nearby residents and highway safety.
27. I have not imposed the suggested condition relating to tree or hedge removal as this does not form part of the proposal and is thus unnecessary.

Conclusion

28. For the reasons given above I conclude that the appeal should be allowed.

S J Lee

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Other than as required by conditions 4, the development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan as proposed – 422 -101; Plans as proposed – 422 – 102; Elevations as proposed – 422 -200; Construction notes and section – 422-300.

- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on drawing: Construction notes and section – 422-300.
- 4) No development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - i. A schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species.
 - ii. means of enclosure;
 - iii. the extent and nature of hard surfacing materials;
- 5) The approved soft landscaping scheme shall be completed during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the current or next (whichever is the sooner) planting season (1st November to 31st March) with others of similar size and species unless otherwise agreed in writing by the local planning authority. The approved hard landscaping shall be completed prior to the occupation of the dwelling hereby approved.
- 6) No works or development shall take place until a scheme for protection of the retained trees has been agreed in writing with the local planning authority. This scheme shall include:
 - a. A plan showing details and positions of the ground protection areas.
 - b. Details and position of protection barriers.
 - c. Details and position of underground service runs and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
 - d. Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, surfacing).
 - e. Details of working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - f. Details of any scaffolding erection within the root protection areas
 - g. Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be thereafter be carried out in full accordance with the approved tree/hedgerow protection scheme.
- 7) The following activities must not be carried out under any circumstances.

- a. No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
 - b. No equipment, signage or fencing shall be attached to or be supported by any retained tree on or adjacent to the application site,
 - c. No temporary access within designated root protection areas without the prior written approval of the local planning authority.
 - d. No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
 - e. No soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - f. No stripping of top soils, excavations or changing of levels to occur within the root protection areas of any retained tree on or adjacent to the application site, unless approved under conditions 4 and 7.
 - g. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - h. No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the local planning authority.
- 8) No part of the development hereby permitted shall be brought into use until the parking area is provided in accordance with the approved plans. The parking area shall not be used for any purpose other than the parking of vehicles.