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## Appeal Decision

Site visit made on 17 January 2017

**by Andrew Owen BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 27 January 2017**

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**Appeal Ref: APP/Z3445/W/16/3163280**

**19 Orchard Street, The Leys, Tamworth, Staffordshire B79 7RF**

- 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 Jim Buckley against the decision of Tamworth Borough Council.
  - The application Ref 0139/2016, dated 29 February 2016, was refused by notice dated 18 May 2016.
  - The development proposed is to erect a single storey self-contained one bedroom unit to rear of 19 Orchard Street, Tamworth, Staffs.
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### Decision

1. The appeal is allowed and planning permission is granted for a single storey self-contained one bedroom unit to the rear of 19 Orchard Street, The Leys, Tamworth, Staffordshire B79 7RF in accordance with the terms of the application, Ref 0139/2016, dated 29 February 2016, subject to the following conditions:
    - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
    - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan at 1:1250, Block Plan at 1:500, P1-ORCHARD-015 ISSUE #2, except in respect of the parking layout shown on plan P1-ORCHARD-015 ISSUE #2.
    - 3) No development shall take place until an amended site layout plan has been submitted to and approved in writing by the local planning authority. Development shall be carried out and thereafter maintained in accordance with the approved details.
    - 4) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
    - 5) Prior to the commencement of development, details of all walls, fences and other means of enclosure shall be submitted to and approved by the local planning authority in writing. The works shall be carried out in accordance with the approved details.
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## **Main Issues**

2. The main issues are the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings in respect of light, outlook and amenity space.

## **Procedural matter**

3. The appellant submitted an additional plan with their final comments showing an amended site layout. This plan has not previously been seen by the Council and not at all by any neighbouring residents whom may wish to comment on it. Indeed, the final comments stage of the appeal process should not be used to submit new evidence. I have therefore had no regard to this plan.

## **Reasons**

### *Light and outlook*

4. The proposed dwelling would be located in the rear garden of No 19 Orchard Street. There is currently a small pitched roof building room in the garden, constructed of red brick. The proposed building would be similar to this existing building in terms of its height, width and proximity to the house at No 19. As such I do not consider the development would have any materially greater effect on the outlook from, or the light received by, the kitchen and lounge windows on the rear elevation of No 19.
5. The proposed building would extend most of the length of the existing rear garden. At the end of the garden there is an access road which provides access to the rear of the adjoining properties in Orchard Street and some of the properties in Halford Street and Alfred Street. No 2 Halford Road is on the opposite side of this road to the appeal site. There is a ground floor window on the side elevation of No 2 which would face the development. However due to the width of the access road, the single storey nature of the development, its hipped roof design and the fact that the proposed dwelling would not be directly in line with this window, I do not consider that the outlook from, or the light received by, this window would be significantly affected.
6. Therefore for these reasons the development would not adversely affect the living conditions of the residents of the neighbouring properties in respect of light or outlook. Consequently the development would accord with Policy EN5 of the Tamworth Local Plan which aims to ensure development minimises the impacts of development on existing occupiers of neighbouring land

### *Amenity space*

7. The submitted plans show two parking spaces to be provided in a tandem orientation adjacent to the proposed dwelling which, with the proposed building, would occupy most of the existing garden. The Council's Highways Officer has commented that no car parking spaces are necessary for the proposal due to its proximity to Tamworth town centre.
8. The appellant has stated that No 19 is currently used by a number of individual tenants sharing a kitchen and bathroom, not a single family. From my site visit I saw that the majority of the garden is littered, untidy and not currently used for recreational purposes. Indeed the proportion of the site that does appear

to be used as garden area is similar to some of the other properties in Orchard Street whose gardens are largely occupied by car parking or built development.

9. I accept that the future use of No 19 may be as a family home and that an amount of amenity space would be desirable in order to provide a high quality home. However the Council currently have no adopted standards advising what size area of amenity space would be appropriate. Furthermore they have advised that there is open space available nearby at Broadmeadow local nature reserve.
10. As such I consider the development would retain sufficient amenity space for the occupiers of No 19 such that their living conditions would not be adversely affected. Therefore, for this reason also, the proposal would comply with Policy EN5 of the Local Plan.

#### *Other Matters*

11. A unilateral undertaking has been submitted to secure contributions to open space provision. This undertaking is unsigned, is not accompanied by a plan indicating the site, and does not indicate which area of public open space the contribution would go towards. However, although the Council have stated that Broadmeadow nature reserve is nearby, I am unclear if the contribution would be targeted towards this or another area of public open space, what within the public open space the contribution would help fund, or if any funding is needed<sup>1</sup>. As such it has not been demonstrated that the contribution is necessary to make the development acceptable and therefore I cannot take it into account.
12. I do not consider the outlook from the proposed dwelling would be unacceptable or that the building would be poorly lit by sunlight or daylight, as its windows would not face any nearby buildings.
13. The proposed dwelling would have no garden area as all the ancillary space would be occupied by parking. However as the Council have confirmed no parking is necessary at the site, it is possible that this parking could be removed from the proposals and substituted with garden space to serve the proposal, and also possibly the existing dwelling. The formal submission of an amended site layout plan could be secured by a planning condition.
14. I recognise the concern that the development could set a precedent. Though the adjacent properties in Orchard Street are similar to the appeal site, any proposals for development at these properties must be considered on their own merits.

#### **Conditions**

15. I have considered those conditions suggested by the Council against the requirements of the Planning Practise Guidance (PPG) and the National Planning Policy Framework (the 'Framework'). Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect this guidance. Some conditions require compliance prior to the

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<sup>1</sup> Paragraph N.3.3 of the Procedural Guide: Planning Appeals – England, identifies the information that is likely to be needed to enable an assessment to be made as to whether a planning obligation meets the tests in paragraph 204 of the Framework.

commencement of development so that the effects of the proposal are properly mitigated for in order to make the development acceptable.

16. In accordance with the requirements of the PPG and the Framework I have imposed, the standard condition relating to the commencement of development, a condition specifying the relevant plans in order to provide certainty, and a condition relating to finishing materials in the interests of preserving the character and appearance of the area.
17. As no parking is necessary at the site, I have not attached the suggested condition to ensure the parking spaces are provided. However, I have attached a condition to secure an amended site layout plan so that some amenity space can be provided instead.
18. I have altered the condition relating to boundary treatment as I see no reason why the height of such treatment along the boundary with the access road should be limited to 600mm. Traffic speeds along the access road are very slow and it has not been suggested to me that an unobstructed visibility splay is necessary.
19. The PPG advises conditions which restrict permitted development rights are rarely necessary and should only be used in exceptional circumstances. I do not consider there are any exceptional circumstances in this appeal and therefore that suggested condition is not necessary.

### **Conclusions**

20. For the reasons given above, and taking account of all other considerations, I conclude that the appeal should be allowed.

*Andrew Owen*

INSPECTOR