
Appeal Decision

Site visit made on 14 February 2017

by S D Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 2nd March 2017

Appeal Ref: APP/V4630/W/16/3164025
15 Green Lane, Pelsall, Walsall WS3 4PA

- 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 Ms Lisa Ball against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 16/1152, dated 12 August 2016, was refused by notice dated 8 November 2016.
 - The development proposed is erection of a new two storey dwelling to rear of 15 Green Lane, Pelsall, Walsall.
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Preliminary Matters

1. The description of development and site location as shown on the planning application form are as set out above. On the decision notice the Council describes the proposal as erection of two storey detached house fronting Canterbury Close. The plans show the proposed dwelling would have eaves of a similar height to those of the nearby two storey houses but would have accommodation in the roof space. For the purposes of this appeal, and as more fully describing the proposals as shown on the plans, I take the description of development to be the erection of a two storey detached dwelling plus accommodation in the roof space with access to Canterbury Close.
2. The evidence before me refers to a number of planning policies. In my deliberations I have focussed primarily on those policies explicitly referred to in the reasons for refusal set out on the decision notice and of which copies have been provided in the submitted evidence.

Decision

3. The appeal is allowed and planning permission is granted for the erection of a two storey detached dwelling plus accommodation in the roof space with access to Canterbury Close on land to the rear of 15 Green Lane, Pelsall, Walsall WS3 4PA in accordance with the terms of the application Ref 16/1152, dated 12 August 2016, and subject to the conditions set out in the attached schedule.

Main Issues

4. I consider the main issues in this appeal to be: the effect of the proposal on the character and appearance of the street scene taking particular account of size and mass; and the effect of the proposal on the living conditions of occupants of adjacent properties taking particular account of privacy, outlook and light.
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Reasons

5. Applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise¹. For the purposes of this appeal the development plan comprises the Saved Policies of the Walsall Unitary Development Plan 2005 (the UDP) and the Black Country Core Strategy 2011 (the BCCS). The Designing Walsall Supplementary Planning Document for Urban Design (the SPD) and the National Planning Policy Framework (the Framework)² are material considerations. Although the development plan pre dates the Framework those policies³ that seek sustainable development of good design that respects the character of the area and the living conditions of occupants of land and buildings are in accordance with similar principles in the Framework.

Character and appearance

6. Green Lane and Canterbury Close (the Close) are mainly residential streets. The properties in the area are mixed in style, size and design with detached, semi-detached and terraced houses as well as bungalows nearby. Nos 15 and 13 Green Lane are a hipped roof bungalow and house respectively. The Close is a short cul de sac which rises up from the junction with Green Lane. The properties on the Close are mainly semi-detached houses but there is also a detached house and two bungalows. From the location plan and my observations during my site visit it would appear that nearby properties on Green Lane have longer gardens than those on the Close.
7. For the reasons set out above I consider the street scene to be of mixed character. The appeal site is adjacent to No 1 Canterbury Close which is one half of a pair of semi-detached houses.
8. The semi-detached houses are generally of red brick. Those on the appeal side of the Close have hipped roofs and attached garages to the side. In most cases the house plus attached garage together fill the width of most of their respective plots. During my site visit I observed a side dormer serving accommodation in a roof space at one of the properties. The detached house is of similar design to the other houses but has an integral garage. On the other side of the Close the properties have gable roofs. Some properties have been extended above the garage.
9. The proposed dwelling would have a hipped roof, a dormer to the rear, roof lights to the sides and an integral garage. It would be constructed of red brick. It would be wider than an individual semi-detached house but not significantly wider than the detached house further along the Close. Although part of the first floor would be set back giving a more complex roof shape I conclude that the proposed design of the house would not be out of character with other properties on the street in terms of size, scale, mass and appearance.
10. The proposed house would be set at a lower level than No 1 and its eaves would appear lower. This would accord with the pattern of the other properties which follow the rising levels of the Close and step up from Green Lane. The front of the proposed house would fill the width of the plot and would be set

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

² Paragraph 13 of the Framework

³ Policies ENV32 and GP2 of the UDP; Policies CSP4, ENV2, ENV3 of the BCCS

back from the footpath edge on a similar building line to the houses at Nos 1–19 (odds). In these ways the proposed house would integrate with existing buildings. The plan indicates a drive and grassed area to the front of the house similar to the other properties on the Close. Whilst the proposal would result in the loss of the existing low brick wall and the loss of a small part of the highway verge I do not consider these changes would significantly erode the overall appearance of the area or the street.

11. The rear garden boundary would be a continuation of the line of the rear boundaries of Nos 1 and 3. The plans state that the amenity space would be 120 sqm which is challenged by local residents. It is not clear how the appellant has calculated this and the plans show a rear single storey projection that would interrupt the proposed patio. Nevertheless the useable rear garden would be substantially wider than the proposed house and it appears the garden area would exceed the 68 sqm sought for a house in the SPD guidance.
12. The appeal site has been cleared but this could have been carried out in any event. Appropriate boundary treatment could be secured by condition in the event that planning permission was to be granted.
13. The proposed house would have four rooms plus bathroom on the first floor and a bedroom with en-suite in the roof space. The proposed house could have a higher property value than other houses on the Close; could be occupied by a family; and could have more occupants than other properties do at the moment, but this would not necessarily be the case. Even were it to be so, I conclude this would not be so out of character with the local demographics as to justify withholding planning permission on these grounds. Moreover, I see no reason to suppose that future occupants of the proposed house would be more likely to move than occupants of existing properties or to create a space that would not feel safe, secure or welcoming.
14. The Framework excludes land in built up areas such as private gardens from the definition of previously developed land. The evidence indicates that most of the appeal site was formerly garden, whether as part of No 15 or No 13, and as such it would not fall within that definition. Paragraph 53 of the Framework says local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens. The evidence does not indicate that the Council has adopted such a policy.
15. Although the proposed development would take place on garden land, for the reasons set out above I conclude that it would not result in an incongruous feature, would not adversely affect the character and appearance of the area or the street scene and would not amount to inappropriate development of garden land. Accordingly it would not conflict with those parts of the development plan, the guidance in the SPD; or those principles of the Framework that seek good design that respects the character and appearance of the local area.

Living conditions

16. No 1 has a long single storey building adjacent to the shared boundary. The front wall of the proposed house would be on a similar line to that of No 1. Although the proposed rear two storey wall would be slightly behind the rear house wall of No 1 it would not project beyond the single storey building. I acknowledge that the building at No 41 Mount Road already partly overlaps the rear boundary of No 1. However, as the proposed house would be angled

slightly away from the house at No 1 and due to the distances between them the proposed house would not contravene the 45 degree code envisaged in the SPD. On balance and even taking into account the personal circumstances of the occupant of No 1, I conclude that the proposed house would not have such an unacceptable effect on outlook or light from the rear windows or garden of No 1, even during the winter, as to justify refusal on these grounds.

17. No 1 has a first floor side window facing the appeal site. However, the evidence suggests this is a landing window⁴. The outlook from this window would be interrupted by the side wall of the proposed house. However, as this window is not to a habitable room this would not be sufficient reason to refuse the proposed development.
18. The proposal would result in additional windows at first and second floor level facing towards the garden of No 17 Green Lane and more obliquely towards the gardens of No 41 Mount Road and No 1 Canterbury Close. However, a certain level of overlooking of gardens is to be expected in urban areas and these gardens already experience some degree of overlooking from nearby houses. There would be skylights in the proposed side elevations. However, as these would be high level the degree of overlooking from these would be limited.
19. Whilst I acknowledge that residents would prefer to retain the living conditions they currently enjoy, on balance, I conclude that the degree of overlooking from the proposed house would not result in such an unacceptable loss of privacy as to justify refusal of the proposed development. Nor do I consider that the occupation of one additional house would generate such a substantial degree of vehicle movements, noise and disturbance by way of activities in the garden, of opening and closing car doors, headlights or sounds of voices that the proposed development should be refused on these grounds.
20. For the reasons set out above I conclude that the proposed development would not adversely affect the living conditions of occupants of adjacent properties to the extent that would justify refusal of planning permission. Accordingly it would not conflict with those parts of the development plan, including Policy GP2 of the UDP and Policy HOU2 of the BCCS, the guidance in the SPD or those principles of the Framework that seek a good standard of amenity for existing and future occupants of land and buildings.

Other Matters

21. Local residents consider the way the proposals and site location have been described in the planning application is misleading and draw attention to inaccurate labelling of photographs. However, the proposal is clearly shown on the submitted plans. The Council does not challenge their accuracy and I have seen no substantive evidence to lead me to conclude that the proposal could not be accommodated as shown. The number of representations received demonstrates that nearby residents have had the opportunity to respond to the proposals. Accordingly whether or not the written descriptions could have been expressed more accurately does not lead me to any different conclusions.
22. Whether or not the appellant consulted local residents, the Council only carried out statutory consultations, or that the Planning Committee reached a different conclusion to that recommended in the Officer report does not go to the heart

⁴ Planning Committee report

of the planning considerations of the appeal. I have exercised my own judgement based on the planning evidence put before me and my observations during my site visit.

23. Local residents are concerned that the proposed garage may be used for storage and that additional on street parking could impede the free and safe flow of traffic and inconvenience existing residents. However, the plans show a garage and drive and the Council has raised no objections in this respect. Whether or not others users of the highway park inconsiderately does not lead me to conclude that future occupants of the proposed house would do so or that any additional on street parking which might arise as a result of the development would create significant congestion or highway safety problems.
24. Concern has been expressed about the impact of the proposal on wildlife in the area in particular in relation to Pelsall Common and whether the site is an important wildlife "stepping stone". I have seen no substantive evidence to demonstrate this would be the case and, as the site has been cleared, I give this matter little weight in my consideration of this appeal.
25. It is the responsibility of the developer to ensure that any necessary Order in relation to the highway verge is secured, that no damage takes place to adjacent properties and to ensure that all other legislation is complied with.
26. It would appear that the appellant may not have owned the majority of the site until sometime after the planning application was submitted. From the evidence it appears that the appellant did own the majority of the site and a corrected Certificate of Ownership was submitted to the Council with Notice served on the Highway Authority before the planning application was decided. I have seen no evidence that this has led to a serious prejudice of the interests of any party and in these circumstances I conclude that, although there has been a technical breach of the Regulations, this in itself does not invalidate the decision on the planning application or this appeal.

Sustainable development and Human Rights

27. The development plan and the Framework contain a presumption in favour of sustainable development. This is defined in the Framework as having three dimensions.
28. The appeal site is within walking distance of public transport routes and Pelsall local centre where there are shops, a library and a doctor's surgery. On this basis I consider the appeal site is in an accessible location for residential development for the purposes of the development plan and the Framework. I have concluded that the proposed development would not have an unacceptable effect on the character of the area or the living conditions of occupiers of nearby properties. For these reasons the proposal would satisfy the environmental dimension of sustainable development.
29. The proposal would provide a family sized house. Whilst this would not be affordable housing as defined in the Framework, and would not meet the needs of those who wish to downsize, nevertheless it would make a small but positive contribution to the supply of housing in the Borough. The proposal would provide employment during construction and could secure a New Homes Bonus for the community. Together these benefits would satisfy the social and economic dimensions of sustainable development.

30. Representations have been made to the effect that the rights of the residents of Canterbury Close and Green Lane, under the Human Rights Act 1998, Articles 1 and 8 of the First Protocol, would be violated if the appeal were allowed. I do not consider this argument to be well-founded, because I have found that the proposed development would not cause unacceptable harm to the living conditions of residents of Canterbury Close or Green Lane. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Articles 1 or 8 of the First Protocol.

Conclusion and Conditions

31. For the reasons set out above I conclude that the proposed development would not conflict with Policies ENV32 or GP2 of the UDP; Policies CSP4, ENV3 or ENV2 of the BCCS and would accord with the development plan and the Framework taken as a whole. Taking into account all other relevant matters raised I conclude the appeal should succeed.
32. I have considered the conditions proposed by the Council in the light of the Framework and the National Planning Policy Guidance (the PPG). As well as the standard condition specifying the time limits for commencement of development compliance with the approved plans/approved details is necessary to provide certainty.
33. Approval of the external facing materials, boundary treatments and planting is necessary in the interests of the appearance of the area. The Stopping Up of the highway as required and the provision and retention of the driveway and footway crossing are necessary in the interests of highway safety and management. Details of drainage and site investigation/gas monitoring are required in the interests of public safety. Restrictions on the hours of construction are necessary in the interests of reducing noise and disturbance.
34. As advised in the PPG a condition restricting the future use of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) will rarely pass the test of necessity and should only be used in exceptional circumstance. I have seen no such exceptional circumstance to justify such a condition in this case. The Mandatory Building Regulations which cover the physical security of dwellings came into force on 1 October 2015 and so it is not necessary to impose a condition in relation to "Secure by Design" specifications.

SDHarley

INSPECTOR

Schedule of 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: Existing Site Plans & Site Survey Drawing 1097 001 1 August 2016; Proposed Site Plans & Street Scene Drawing 1097 002 Rev B dated 21 October 2016; Proposed Plans & Elevations Drawing 1097 003 Rev A dated 21 October 2016; Coal Mining Risk Assessment by FWS Geological & Geo-Environmental Consultants (31210R01 Sept 2016) submitted 21st September 2016.

- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 4) No development shall commence on site until details of the disposal of both surface and foul water drainage have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 5) Prior to the commencement of the development, a highway Stopping Up Order under Section 247 of the Town and Country Planning Act 1990 shall be confirmed for the removal of highway rights over the area of highway land within the red line boundary.
- 6) Prior to the commencement of any development of the site the following shall be submitted to and approved in writing by the Local Planning Authority:
 - A scheme of intrusive site investigation/gas monitoring
 - A report of the findings arising from the intrusive site investigations/gas monitoring
 - A scheme of remedial works/mitigation

The remedial works/mitigation shall be fully implemented in accordance with the approved scheme prior to the first occupation of the dwelling hereby permitted.

- 7) Prior to the first occupation of the new dwelling, the driveway/parking area shall be fully consolidated, hard surfaced and drained so that surface water run-off from this area does not discharge onto the highway or into any highway drain. This area shall thereafter be retained and used for no other purpose than driveway/parking.
- 8) Prior to the driveway/parking area first coming into use, a new vehicle footway crossing to align with the new access shall be installed in accordance with the Council's footway crossing specification SD11/8 dated January 2008. All works within the public highway shall be in accordance with all statutory requirements. The new crossing shall not exceed five 900mm flat kerbs and two 900mm taper kerbs.
- 9) Notwithstanding the details shown on the submitted plans prior to first occupation of the dwelling hereby permitted a full landscaping scheme, including boundary treatment, hedging and trees, shall be submitted to and approved in writing by the Local Planning Authority.
- 10) The landscaping scheme shall be completed in accordance with the approved details before the development is first occupied. All planting shall be maintained for a period of 3 years from the full completion of the scheme. Within this period any trees, shrubs or plants which die, becomes seriously diseased, damaged or is removed shall be replaced with a tree, shrub or plant of the same or greater size and same species as that originally required to be planted.
- 11) No construction or engineering works, (including land reclamation, stabilisation, preparation, remediation or investigation), shall take place

on any Sunday, Bank Holiday or Public Holiday*, and such works shall only take place between the hours of 08.00 to 18.00 Monday to Fridays and 08.00 to 14.00 on Saturdays. No plant, machinery or equipment associated with such works shall be started up or be operational on the development site outside of these permitted hours. (* Bank and Public holidays for this purpose shall be: Christmas Day; Boxing Day; New Year's Day; Good Friday; Easter Monday; May Day; Spring Bank Holiday Monday and August Bank Holiday Monday).

End of Conditions