
Appeal Decision

Site visit made on 21 February 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 21 March 2017

Appeal Ref: APP/P1805/W/16/3161752

40 Marlborough Avenue, Bromsgrove B60 2PD

- 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 Mike Lewis against the decision of Bromsgrove District Council.
 - The application Ref 16/0820, dated 16 August 2016, was refused by notice dated 5 October 2016.
 - The development proposed is the demolition of existing dwelling house and the construction of a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling house and the construction of a replacement dwelling at 40 Marlborough Avenue, Bromsgrove B60 2PD in accordance with the terms of the application, Ref 16/0820, dated 16 August 2016, subject to the following conditions:
 - 1) The construction of the dwelling 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: P01-Scheme 3/B, P02-Scheme 3/B, P03-Scheme 3/B, P04-Scheme 3/B, P05-Scheme 3/B and S01.
 - 3) The construction of the dwelling hereby permitted shall not commence until details / samples of the materials to be used in the construction of the external surfaces of the dwelling, including the windows and doors, 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.

Preliminary Matters

2. It has been brought to my attention that the Bromsgrove District Plan 2011-2030(BDP) was adopted on the 25 January 2017. The BDP replaces the saved policies of the Bromsgrove District Local Plan referred to in the Council's reason for refusal. Both parties are aware of this and have had a chance to comment. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
 3. I noted at my site visit that the garage and porch to the appeal property have been demolished. I have dealt with the appeal on this basis.
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Main Issues

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

- The living conditions of the occupiers of 42 Marlborough Avenue (No 42) with regard to daylight and outlook; and
- The character and appearance of the area.

Reasons

Living conditions

5. The appeal site currently comprises a two storey dwelling and its associated gardens and access drive. The proposed dwelling would replace and it would be in a similar position on the site to the existing dwelling. It would have a larger footprint and would be wider at ground and first floor levels than that dwelling.
6. No 42 is at a slightly lower level than the appeal property due to the sloping topography. The main 2-storey side elevation of No 42 is an appreciable distance from the boundary with the appeal property. An access drive to a garage is located between the side elevation and the boundary. There are 3 windows in the side elevation of No 42 that look towards the boundary with the appeal site. These windows are to a sitting room and a dining room. There is also a window to the front elevation and a glazed door to the rear elevation that also serve these rooms. I acknowledge that the glazed door is an internal door into a conservatory.
7. The Council make no differentiation between sunlight and daylight in the reason for refusal. However, the minutes of the Council's Committee Meeting make reference to loss of daylight. Furthermore, the windows that would face the proposal are north-east facing and so receive no direct sunlight. I shall therefore concentrate on the effect on daylight. The proposed dwelling would be a similar height to the existing dwelling but it would be closer to the side elevation of No 42. Due to this closer proximity it is likely that the proposal would reduce the amount of daylight to the side elevation windows.
8. I acknowledge that the Council's Residential Design Guide Supplementary Planning Guide Note 1 (SPG) states that to achieve good natural lighting within a site there needs to be a spacing to height ratio of just over 2:1. However, the existing dwelling breaches this ratio. Furthermore, the spacing between the dwellings would still be appreciable and the rooms would have alternate sources of daylight through the window and door on the front and rear elevations respectively.
9. I note that the materials to be used for the side elevations appear to be brickwork but a planning condition would ensure that the Council would have control over the materials to be used. No technical evidence has been submitted, but my assessment of the appeal site and its relationship to the proposed development lead me to conclude that it is likely that the proposal would not significantly reduce the amount of daylight received in the dining/sitting rooms to No 42.
10. The combination of the siting of the existing dwelling and No 42's garage already serve to create a sense of enclosure and somewhat restrict the outlook

from the 3 side facing sitting/dining room windows of No 42. I noted at my site visit that there is an open aspect from the sitting room windows, albeit at an angle, between the rear elevation of the existing dwelling and No 42's garage. This open aspect would be reduced by the proposal but an open aspect would remain above the garage beyond the rear elevation of the proposal.

11. The proposal would be closer to the 3 side facing windows and it would be extended in length to that of the existing dwelling. However, I do not consider that the outlook from the sitting/dining rooms would be substantially altered as the windows would still be looking at a 2-storey blank wall, albeit somewhat nearer and longer. Moreover, as stated above there is a glazed door on the rear of the property and a window to the front that also serve the sitting/dining rooms. The conservatory at the rear of No 42 does restrict the outlook from the glazed door but it does provide an alternative outlook for that room and this would be little changed.
12. Both parties have referred to a previous appeal decision¹ on the appeal site. However, in that case the effect on the living conditions of the occupiers of 38 Marlborough Avenue (No 38) with regard to outlook was the main reason for refusal. Furthermore, the design and layout of the dwelling has been amended and I note that the Council have not raised concern in this respect in relation to the present case. I have no reason to dispute this finding and I consider that the scheme before me would overcome the concerns identified by the previous Inspector in respect to the living conditions of the occupiers of No 38.
13. In conclusion the proposal would not significantly harm the living conditions of the occupiers of No 42 with regard to daylight and outlook. It follows that it would comply with BDP Policy BDP1 which, amongst other things, seeks proposals to have regard to the impact on residential amenity. Despite technical breaches of the guidelines in the SPG, in relation to the spacing to height ratio, the site specific circumstances of this appeal mean that the scheme would still comply with the overall daylight and outlook aims of the guidance.

Character and appearance

14. The area in the vicinity of the appeal site is characterised by a variety of age, form and style of buildings. The majority in the immediate vicinity of the appeal site appear to date from the early to mid-20th Century and they are made up of a mixture of semi-detached and detached dwellings. However, despite this variety there is a clear linear pattern of development with well-spaced, dwellings set in generous plots. The majority of dwellings are set back behind front gardens and have single storey garages to one side. This gives the area an open and spacious character and appearance.
15. I note that the gap between the new dwelling and the boundary with No 42 would be reduced to around 1.5 metres. The gap between the proposal and the boundary with No 38 would be similar to the existing situation. Even though the gap with No 42 would be reduced the resultant spacing would be comparable to that between other properties in the immediate vicinity of the site. The architectural style and materials would not be out of context with the appearance of other dwellings in Marlborough Avenue.

¹ APP/P1805/W/16/3143815 – 19 April 2016

16. I acknowledge that the Inspector in the previous case stated that *"I have found harm in respect of outlook which in itself is indicative of the proposed overdevelopment of the site"*. However, in this case I have not found harm in respect of outlook or daylight. I acknowledge that the proposal would have a slightly greater footprint than the dwelling proposed as part of the previous appeal case.
17. However, the proposal before me has a single storey garage to one side and only one gable feature on the front elevation. As such it would have an appreciably narrower first floor than the previous appeal case, when viewed from Marlborough Avenue. I am satisfied that these alterations would achieve a satisfactory relationship with existing development and as stated above I consider that the scheme before me would overcome the concerns identified by the previous Inspector.
18. Taking all of the above into account the proposal would sit comfortably within its surroundings and as such it would not constitute overdevelopment of the site. Consequently, I consider that the proposal would not harm the character and appearance of the area. It follows that the proposal would comply with BDP Policy BDP19 which seeks development that, amongst other things, delivers good design.

Other Matters

19. Concern has been raised by the neighbouring occupiers in relation to encroachment or damage caused to property during construction. However, this would be a private matter between the parties involved.

Conditions

20. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the suggested conditions has been amended.
21. I have altered the standard time limit condition to reflect the fact that part of the demolition has taken place. I have imposed a condition specifying the relevant drawings as this provides certainty. The condition in relation to materials is necessary in the interests of visual amenity of the area.
22. The PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In the case of the pre-commencement condition, I consider that resolution of the matter specified to be so fundamental to the development that it would otherwise be necessary to refuse the application.

Conclusion

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

D. Boffin

INSPECTOR