

Appeal Decision

Site visit made on 19 April 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/C4615/W/16/3167640

**King Edward VI Sports Ground, Swinford Road, Oldswinford, Dudley
DY8 2LD**

- 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 The Trustees, King Edward VI College against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P15/1306, dated 26 August 2015, was refused by notice dated 20 October 2016.
 - The development proposed is formation of access off Oakleigh Road and provision of 15 No. parking spaces.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by The Trustees, King Edward VI College against Dudley Metropolitan Borough Council. This application will be the subject of a separate Decision.

Procedural Matter

3. The decision notice refers to the Dudley Unitary Development Plan (UDP) (2005). Following the adoption of the Dudley Borough Development Strategy (DBDS) in February 2017 the UDP no longer forms part of the development plan for the area. This now comprises the Black Country Core Strategy (2011) (BCCS) and the DBDS. The Council has provided a short statement on the application of policies within the DBDS to the appeal proposal and I have taken those submissions into account. The appellants indicated that they did not wish to make a formal statement on this matter. I have considered the appeal having regard to the development plan as it now exists.

Main Issues

4. The main issues are the effects on:(a) the living conditions of occupiers of neighbouring dwellings at numbers 117-121 Love Lane with regard to noise and disturbance and (b) the free flow of traffic and highway safety on nearby roads.
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Reasons

Living conditions

5. The rear garden of number 121 Love Lane is enclosed by a timber fence of about 1.8 metres in height. The rear fences to the dwellings at Nos. 117 and 119 are much lower in height. The land immediately adjacent to these rear boundaries comprises an area of rough grass which lies outside of the run-off area to Pitch 1. The occupiers of these properties are likely to experience some noise when football matches are taking place on Pitch 1 but that pitch is some distance from their rear boundaries.
6. The proposed parking spaces would be immediately adjacent to those rear fences, in close proximity both to the gardens and to windows in the rear elevations of the bungalows. The noise generated by the coming and going of vehicles, the opening and closing of vehicle doors, car radios and sound systems, and the conversation and chatter of people as they leave and return to their vehicles has considerable potential to cause disturbance to the occupiers of those properties. Noise would also be generated by vehicles turning around and leaving the site when the parking spaces are fully occupied.
7. The appellant contends that noise from such activities would be limited to 3 or 4 minutes when vehicles arrive at the parking area and a similar period when they leave. However, given that a number of matches take place at any one time and that the start and finish times are often staggered, that is an unrealistic assessment. In practice such noise is likely to extend over much longer periods. The use of the car spaces and the associated increase in levels of activity in this part of the sports ground would be likely to cause disturbance to residents of the adjacent properties, particularly on warm evenings and at weekends when they should be able to sit in and enjoy their gardens without such disturbance.
8. Accordingly, I find that the proposed access and parking spaces would give rise to unacceptable noise and disturbance to the occupiers of Nos. 117-121 Love Lane. For this reason the proposal conflicts with DBDS Policy D2 which states that development will not be permitted if it is incompatible with surrounding uses in terms of its environmental impact, particularly as a result of its effect on the amenity of the occupiers of nearby dwellings.

Highway matters

9. Due to the siting of the proposed access on the inside of the bend, a driver of a vehicle leaving the car park would have good visibility in both directions along Oakleigh Road and Cobham Road and a clear view of a vehicle waiting at the give way line on Love Lane. There is limited forward visibility through the bend but drivers approaching on either of those roads would be able to see a vehicle waiting to exit from the proposed access. Subject to the satisfactory relocation of the bus stop the proposed access would, therefore, be likely to operate in a safe and satisfactory manner. Although there is a steady flow of traffic on this part of the network, the frequent gaps in that flow would be more than adequate to allow a vehicle to leave the site safely.

10. The Banners Gate Transportation surveys demonstrate that parking demand when football matches are taking place exceeds the capacity of the existing 24 space car park off Swinford Road. Those surveys indicate a maximum of 28 cars parked on the road but the evidence from Ward Councillors and local residents is that peak demand exceeds that level by a significant degree.
11. The response from the Group Engineer (Highways) refers to occasions when 30 vehicles have been parked on the site and 40 on the street, indicating an excess demand of over 50 vehicles. The Action Committee reports that on-street parking has reached 100 or more vehicles and suggests that peak demand is for evening and weekend matches when the nearby schools are closed. Whichever of these figures is the more accurate, it is clear that the 15 additional spaces proposed would not be sufficient to satisfy peak demand. The overflow of parking onto nearby streets would, therefore, continue even if permission was granted for the appeal proposal.
12. I saw that the existing on-site parking was not available for use at the time of my site visit. The Action Committee's evidence suggests that this situation has existed for some weeks because the surface treatment used in the construction of that car park fails in poor weather conditions. As the same treatment would be used for the proposed parking area it is likely that those 15 spaces would also need to be closed off at certain times of the year, thereby further increasing the demand for on-street parking.
13. The surveys and photographs show that the heaviest parking currently takes place on Swinford Road in close proximity to the existing access to the sports ground, suggesting that drivers unable to get into the car park choose to park as close as possible to the site entrance. On this evidence it is likely that, if drivers were to enter the proposed car park and find it to be full, they would seek to park on Oakleigh Avenue, Love Lane or Cobham Road rather than driving round to Swinford Road.
14. The sports ground's long frontage to Swinford Road provides an opportunity for a large number of cars to park without obstructing driveways or otherwise inconveniencing residents of houses on the opposite side of the road but that same opportunity does not exist on the other side of the sports ground. There are residential properties on both sides of Oakleigh Road and Cobham Road and the sections of road that are most free of driveways are those on the east side of Cobham Road and the south side of Love Lane.
15. Because of their location, on-street parking within these sections of road would have an adverse effect on the free flow of traffic through the bend and the road junction. This effect might not be so severe as to justify a refusal of permission on these grounds but case law¹ has established that the 'severity test' set out in paragraph 32 of the National Planning Policy Framework applies to highway capacity and congestion and not to highway safety.
16. If a number of cars were to be parked in these sections of road, drivers of passing vehicles would be forced into the centre of the relatively narrow carriageway to the detriment of the safety of those drivers and other road users. Such parking could also pose a safety risk to people boarding and alighting from the bus, if the bus stop is relocated close to the junction.

¹ Paragraph 29 of judgment in *Mayowa-Emmanal v Royal Borough of Greenwich* [2015] EWHC 4076 (Admin).

Parking close to the road junction and bend could, possibly, be prevented by means of a traffic regulation order. However, the likely consequence of such action would be that parking would be displaced to other sections of Love Lane and Oakleigh Avenue where there are relatively few opportunities for on-street parking without obstructing driveways and where traffic calming measures are already in place. Such displacement would increase the risk to the safety of pedestrians, cyclists and other users of these residential roads.

17. I find that these increased risks to the safety of highway users would give rise to a conflict with BCCS Policy TRAN2 which states that permission will not be granted for proposals that are likely to have significant transport implications in relation to an acceptable level of safety. It would also conflict with DBDS Policy S17 which requires that development proposals should make adequate and safe provision for access and egress and for other road users.
18. I accept that the appeal proposal represents a genuine attempt to help alleviate the problems caused by existing on-street parking. However, rather than achieving that result, it would spread those problems into other residential streets where there are fewer opportunities to accommodate such parking without a significant risk to highway safety.

Other Matters

19. Objectors have expressed concerns about the loss of an existing tree to facilitate the construction of the site access. That tree is protected by a Tree Preservation Order but its removal would not cause significant harm to the visual amenity of the area and adequate measures could be taken to protect the other trees during the construction of the proposed access.
20. I recognise the importance of the sports ground facilities to the College and that the shared use of the facilities brings both social benefits and benefit in terms of the revenue that this generates for the College. However, these benefits are not sufficient to outweigh the harm that would be caused by the proposal.

Conclusions

21. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

Paul Singleton

INSPECTOR