
Appeal Decision

Site visit made on 24 July 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 15th August 2017

Appeal Ref: APP/R1845/W/17/3173912

232 Hoo Road, Kidderminster, Worcestershire DY10 1LT

- 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 A Warren against the decision of Wyre Forest District Council.
 - The application Ref 16/0738/FULL, dated 13 December 2016, was refused by notice dated 28 February 2017.
 - The development proposed is a new detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the development would accord with the Council's housing strategy;
 - the effect of the development on the character and appearance of the area;
 - the effect on the living conditions of the occupants of neighbouring residential properties, with regard to privacy, outlook, light and noise and disturbance; and
 - whether the development would provide adequate living conditions for future occupants, with regard to private amenity space.

Reasons

Housing Strategy

3. Policy DS01 of the Wyre Forest District Council Core Strategy (the CS) 2010 states that new development will be concentrated on brownfield sites within the urban areas of Kidderminster and Stour-on-Severn. Policy SAL.DPL1 of the Wyre Forest District Council Site Allocations and Policies Local Plan (the LP) 2013 follows on from Policy DS01, supporting residential development on previously developed sites within areas allocated primarily for residential development in the urban areas of Kidderminster.
4. The appeal site forms part of the garden area of No 232 Hoo Road. The appellant does not dispute the Council's contention that the site is not previously developed land, a view which I share. I acknowledge that the site is

within a well-established residential area and has good access to shops, services and facilities.

5. Policy DS01 only permits the development of brownfield land, which can reasonably be interpreted as previously developed land. In addition, Policy SAL.DPL1 is explicitly clear that only previously developed sites will be allowed. Paragraph 4.12 in the reasoned justification for Policy SAL.DPL1 provides further support by making particular reference to the exclusion of garden land from the definition of previously developed land. Therefore, it seems to me that in support of Policy DS01, Policy SAL.DPL1 does allow residential development within areas allocated primarily for residential development in the urban areas of Kidderminster. However, this excludes the development of garden land.
6. Therefore, as the site is not previously developed land, it fails to fall within any of the locations where residential development would be allowed as identified in Policies DS01 or SAL.DPL1. As such, the development would fail to accord with the Council's housing strategy.

Character and Appearance

7. The appeal site is located in a predominantly residential area that comprises two-storey, detached, semi-detached and terraced properties. The properties vary in their design, period, scale and appearance. The clearly defined building lines, the properties being set back from the road and the regularity of their positioning provides a spaciousness character to the leafy suburban area. Moreover, rear gardens backing onto each other create large green spaces that make a positive contribution to the area's openness.
8. The appeal site comprises part of the large rear garden of No 232 Hoo Road. A wide driveway to the side of the existing dwelling serves the rear garden. The site is rectangular in shape and shares boundaries with the rear gardens of properties on Hoo Road and Aggborough Crescent. Overall, the site reflects the open character of the area.
9. The proposed dwelling would be surrounded by the rear gardens of a number of properties. Due to its set back position and the siting of the existing dwelling to the front, the dwelling would not be readily visible from the nearest public highway, Hoo Road, and as a result would fail to engage with the streetscene.
10. Furthermore, the limited amount of private amenity space would be in marked contrast to the generally spacious rear gardens of the surrounding properties. I note that properties on College Road also have small gardens. However, these properties are smaller than the proposed four bedroom detached dwelling.
11. In addition, the dwelling would accommodate almost the full width of the site, which would fail to reflect the spacing to the side of neighbouring properties and the general openness of the area.
12. The appellant refers to examples of development in rear gardens in the locality. I have had the opportunity to view the buildings to the rear of No 25 Aggborough Crescent and can confirm that it is not a dwelling. It is a garage and hobby/store room that was originally associated with No 25. Furthermore, whilst it is a large outbuilding, it is significantly smaller than the surrounding

dwelling. I do not agree with the appellant's argument that it has the appearance of a dwelling. Whilst it does have a separate driveway, the large garage door and single window in the front elevation are not typical of a dwelling. Furthermore, I also observed the outbuildings at Saxifrage Place. I agree that buildings in rear gardens are present in the locality, which is not uncommon in residential areas. However, there is a clear distinction between outbuildings and dwellings. The residential character of the area is partly informed by dwellings that have a frontage with the road. The proposed dwelling would have no such relationship. Due to it being located so far from the road, the dwelling would not have any visual relationship with the public realm.

13. I also note the appellant's reference to properties being viewed as behind others at Saxifrage Place. However, these are not examples of back land development. The dwellings have their own frontage with a road and do not have the same relationship the appeal property would have with the existing dwelling and the streetscene. Therefore I attribute this matter limited weight.
14. As a result, the siting of the dwelling in this location would represent a cramped form of back land development that would conflict with the well-established pattern of development in the area; failing to respect the relationship existing properties have with each other and their adjacent roads and eroding the openness of the area.
15. I find therefore that the dwelling would significantly harm the character and appearance of the area. As such, it would fail to comply with Policy SAL.UP7 of the LP and Policy CP11 of the CS, which, amongst other matters, seek to ensure that new development has appropriate regard to the common building line and historic street pattern; integrates well with the existing streetscene; and, sensitively connects to the surrounding streets, spaces and communities.

Living Conditions of the Occupants of Neighbouring Properties

16. The appellant states that the Council does not provide any minimum standards for separation distances. The Council does not dispute this. Accordingly, I have determined the appeal based on the evidence before me and my own observations.
17. The rear garden of No 231 Hoo Road would back onto the access serving the dwelling and would not have any significantly harm effect on the living conditions of its occupants. Furthermore, the dwelling would be sufficient distance from the rear garden of No 232 Hoo Road to ensure that there would not be any adverse overlooking.
18. Notwithstanding the above, the rear elevation of the dwelling would be approximately 4m from the eastern boundary of the rear garden of No 53 Aggborough Crescent. These windows would serve bedrooms. Whilst bedrooms are typically used in the evening and early morning, it is entirely plausible that they could also be used throughout the day. For example, these rooms could be used as a study, by children playing in their bedroom, or, by occupant's who work unsociable hours. As a result of the proximity of the windows on the rear elevation, there would be overlooking of much of No 53's rear garden. I note the appellant's argument that only a small section of the garden would be overlooked. However, I do not agree. The field of view from the windows would likely cover a considerable portion of the garden.

19. I therefore find that overlooking as a result of the first floor rear windows would significantly diminish the level of privacy afforded to the occupants of No 53, to the extent that it would significantly harm their living conditions.
20. The dwelling would also be in proximity of the rear boundary and rear elevation of No 53a Aggborough Crescent. The rear garden of No 53a is relatively shallow and the boundary comprises a close boarded timber fence and hedge. No 53a has a number of windows in the rear elevation that would face onto the proposed dwelling. The proposed two-storey building would rise substantially above the boundary fence/hedge and given its close proximity it would significantly reduce the outlook from these windows and the garden resulting in an unacceptable over bearing impact on the occupants of the property. I appreciate that the garden of No 53a is wide. However, the dwelling would dominate the outlook from much of it.
21. I note that neighbouring dwellings fronting onto College Road already overlook the rear garden of No 233 to some extent. Due to the proposed dwelling's parallel position to the shared boundary, views of No 233's garden from the dwelling would be at oblique angles. Whilst there would be some overlooking of No 233's rear garden from the first floor bedroom windows, I do not consider that this would be to such an extent that it would materially harm the privacy enjoyed by its occupants.
22. The dwelling would likely result in some loss of direct sunlight serving No 233's garden during the later hours of the day. However, given the length of No 233's garden, I do not consider that this would be significantly harmful. Moreover, the dwelling would be sufficient distance from the conservatory on No 233 that it would not materially reduce the amount of light serving it. In reaching this conclusion I have had regard to the personal circumstances of the occupants of No 233.
23. The proposed parking spaces serving the dwelling would be to the front of the dwelling, which would be in close proximity to the rear of No 233. However, they would be no closer than the existing car parking spaces to the front of No 232 or Hoo Road to the front of the site. Whilst cars coming into and out of the site would generate some noise and disturbance and would emit fumes, given that it is a single dwelling, I am satisfied that these traffic movements would not be so frequent that they would significantly harm the occupants of No 233.
24. I find therefore that the dwelling would significantly harm the living conditions of the occupants of neighbouring dwellings with regard to privacy and outlook. In their reasons for refusal regarding this issue, the Council cite Policy SAL.UP7 of the CS. However, it seems to me that this policy does not relate to residential amenity. Accordingly, I do not consider that this policy is relevant. Nevertheless, the proposal would fail to accord with the core planning principles of the National Planning Policy Framework (the Framework); in particular, it would not provide a good standard of amenity for all existing occupants.

Living Conditions of the Occupants of the Proposed Dwelling

25. As with separation distances, the Council does not have minimum standards for amenity space. The rear garden of the proposed dwelling would be approximately 4m deep and 8m wide. There would be significantly more space to the front. However, this would comprise tarmac, ground cover shrubs

and parking. Therefore its usability would be considerably less than the lawned and patio area to the rear.

26. I note that the garden would be large enough for some typical outdoor activities such as sitting out and drying clothes. However, the proposal is a four bedroom dwelling and therefore it is reasonable to conclude that it would be occupied by a family. I do not consider that the rear private garden would be large enough to provide sufficient space for the needs of a family. I am not satisfied that this space could adequately accommodate bins, outdoor seating, a clothes line and provide sufficient useable space for children to play.
27. Furthermore, due to the limited depth of the garden and its westerly orientation the rear garden would not receive much sun light which would contribute towards the inadequacies of the private amenity space.
28. I find therefore that the dwelling would not provide adequate living conditions for future occupants of the dwelling having regard to the amount of private amenity space. In their reasons for refusal regarding this issue, the Council again cite Policy SAL.UP7 of the LP. However, it seems to me that this policy does not relate to residential amenity. Accordingly, I do not consider that this policy is relevant. Nevertheless, the proposal would fail to accord with the core planning principles of the Framework; in particular, it would not provide a good standard of amenity for all future occupants.

Other matters

29. The appellant contends that the existing dwelling is in a state of disrepair and that the proposed dwelling is inextricably linked to its renovation as it would help subsidise the necessary works. Whilst I noted during my site visit that the dwelling was in a poor state of repair, I do not accept that the renovation works can only be funded by the proceeds from the proposed dwelling. It is likely that the cost of building the new dwelling would exceed the renovation costs and there is no mechanism before me to ensure that the proceeds would be used as such. Accordingly, I attribute this matter limited weight.
30. Submissions were made relating to Article 8 of the European Convention on Human Rights and I recognise that Mr and Mrs Cull of No 233 Hoo Road considers that the proposal would interfere with their right to the peaceful enjoyment of all of their possessions and their right to respect for their private and family life. However, this must be weighed against the wider public interest. In this instance, whilst I have found that the dwelling would not significantly harm the living conditions of the occupants of No 233, any interference with Mr and Mrs Cull's peaceful enjoyment of their property and their right to respect for their private and family life is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol. In any event, I have dismissed the appeal.
31. I have also had regard to Mr and Mrs Cull's argument with regard to 'right to light'. Whilst the effect of the development on the amount of light is a material consideration, the 'right to light' referred to is not and therefore has not had a bearing on my consideration of the planning merits of the proposal.
32. I have had regard to the concerns raised regarding highway safety. There may be occasions when a car has to wait in the road to access the property. However, such instances would be infrequent and would not pose a severe risk

to highway safety. I note that the local highway authority has not objected to the proposal and in the absence of any substantive evidence to the contrary I find no reason to disagree with this view.

33. With regard to safety concerns, the access would be narrow. However, there is no evidence before me that emergency services could not access the property. Moreover, with regard to security, contrary to concerns raised, the dwelling would provide greater natural surveillance of neighbouring properties, thus reducing the risk of crime.
34. Concerns raised regarding the stability of existing trees and the potential safety issues should they fall have not had a bearing on my consideration of the planning merits of the proposal.

Conclusion

35. I have had regard to the sites accessibility to a range of shop's, services and facilities and that the proposal would provide an additional family sized dwelling that would make a positive contribution to the supply of housing in the area. However, these benefits do not outweigh the harm I have identified.
36. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Alexander Walker

INSPECTOR