
Appeal Decision

Site visit made on 10 July 2017

by Chris Couper BA (Hons) DipTP MRTPI

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

Decision date: 25th August 2017

Appeal Ref: APP/C4615/W/17/3173547
Land at School Street, Pensnett DY5 4HQ

- 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 Carl Ferguson (C Ferguson Roofing Ltd) against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/0675, dated 9 May 2016, was refused by notice dated 18 October 2016.
 - The proposed development is the erection of five dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of five dwellings on land at School Street, Pensnett DY5 4HQ in accordance with the terms of the application, Ref P16/0675, dated 9 May 2016, subject to the conditions on the attached schedule.

Procedural matter

2. The application was amended during its consideration by the Council and revised drawings were submitted depicting the erection of five dwellings. I have therefore taken the description of the proposal from the appeal form, which is consistent with that on the decision notice, and I have considered the appeal on the basis of the amended scheme.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance

4. The appeal site comprises two parcels of open space, with scattered individual trees, within a residential area. It is bounded by the boundary walls and blank single storey flanks of properties on Church Street and Bell Street, and by the side wall of No.12 School Street. Other School Street properties to the south overlook the site across the highway. The dwellings here vary in style, but are often arranged in semi-detached pairs, which are set back from the road, on fairly modestly-proportioned plots.

5. This fairly dense residential area is interspersed with small patches of green space, often forming narrow strips adjacent to the roads. In the wider area there are some much larger open spaces such as at Barrow Hill and Fens Pool.
6. The proposed dwellings would follow the general pattern of development on Church Street and Bell Street, by having a similar set back from those roads and proportions broadly commensurate with their neighbours. The style and appearance of the dwellings, and the size and configuration of their plots, would respect the area's character. Consequently, the scheme would not appear 'over-developed' compared to the surrounding area.
7. The scheme would entail the loss of a proportion of the open spaces. The submitted representations and petitions demonstrate that those spaces are valued by the local community for their visual contribution to the area's character. However, two narrower strips of land, depicted on drawing no. 1624/001 Rev A as 'public open space with new tree planting' would be retained. The strip closest to Church Street would have a broadly similar width to the open space on the opposite side of the road, and to some others nearby, such as further south on Church Street. Although the trees that would be removed contribute collectively to the area's greenery, they are not particularly impressive as individual specimens, and replacement planting could mitigate the impact of their loss. The Council's Planning Policy Team ('the PPT') comments that the retained areas of public open space should be enhanced with replacement tree planting, enclosure by a low wall, and nature conservation measures. I agree, and those are matters that could be addressed by conditions.
8. Consequently, although the size of the open spaces would be reduced, subject to those qualitative enhancements, the scheme would not harm the area's character and appearance. Dudley Borough Unitary Development Plan 2005 ('UDP') Policy DD4, which specifically addresses residential areas, requires development not to have an adverse effect on the area's character or upon residential amenity, and for the scale, nature and intensity of development to be in keeping with its surroundings. Amongst other things, UDP Policy DD1 requires proposals to make a positive contribution to the character and appearance of the area. Consequently, those two policies are not entirely consistent.
9. For the reasons above, the scheme's impact on the area's character and appearance would be broadly neutral. Consequently, it would comply with UDP Policy DD4, but not with Policy DD1.

Other matters

10. As pointed out by the PPT there is significant planning policy support, both in the development plan and in the National Planning Policy Framework ('Framework') for the retention of areas of public open space for sport and recreation. However, in pre-application comments the PPT stated that the site would not be covered by open space policies in the UDP or in the Black Country Core Strategy 2011 ('CS'). Given the limited size and the configuration of these two spaces, and their proximity to housing and roads, I agree with the PPT that they have very limited recreational value as safe areas to play, although they are no doubt used for instance as areas to walk through, or for dog exercising. However, in my view, those purposes would be equally served by narrower strips of land with enhanced landscaping and boundary enclosures.

I also note that there are much larger areas of open space within a short walking distance.

11. Consequently, although the PPT refers to the immediate neighbourhood's deficiency in accessible green space, this scheme would not have a significant impact on local residents' accessibility to areas for play or recreation.
12. Given the site's location within the town, future occupants would not need to be reliant on the private car to meet all their day to day needs. Adjacent roads are busy and narrow, and have significant on-road parking pressures. However, I have no persuasive evidence that the limited additional traffic arising from 5 dwellings in this sustainable location would have a significant impact on highway safety - including at the cross roads formed by School Street and Bell Street. Each of the proposed dwellings would have two off-road parking spaces, and the scheme would not therefore add significantly to on-road parking pressures. My conclusions are supported by the absence of an objection from the Council, including from its Highways Department.
13. The blank side walls of the proposed dwellings on plots 1, 3 and 5 would be set in slightly from the flanks of 15 and 20 Bell Street and 44 Church Street. The orientation of the proposed dwellings would be consistent with those properties, and they would be similar in scale. Consequently, and as the main habitable room windows in the principal elevations of those neighbouring properties do not face the appeal site, the scheme would not result in their occupants experiencing a significant loss of light or privacy, overlooking, or an adverse outlook. Although the scheme would bring built development closer to the front faces of the properties on the opposite side of School Street, there would still be a significant gap across the public highway and the retained open spaces. Consequently, the scheme would not impact the living conditions of nearby occupiers to a harmful degree. The size of the proposed dwellings and their gardens would be broadly comparable to some nearby properties, and would provide the future occupants with satisfactory living conditions.
14. There would inevitably be some disruption and noise to local residents during construction, some of whom, adjacent to the site, have medical conditions or disabilities. However, the principal elevations of the adjacent properties to the north and east do not directly face the appeal site, the Council's Environmental Safety and Health Team had no adverse comments in respect of noise or air quality issues, and the impacts from the construction of this relatively small scale development would be temporary.
15. Having had due regard to the 3 aims of the Public Sector Equality Duty ('PSED') contained in the Equality Act 2010, and applying a proportionate approach, I am satisfied that the imposition of a construction management plan, which would include details of working hours, areas for loading and unloading and parking of site operatives' vehicles, and measures to control dust emissions, as suggested to both main parties in an email dated 15 August 2017, would significantly minimise the impact on nearby occupiers, including those with relevant protected characteristics.
16. As planning is concerned with land use in the public interest, the protection of purely private interests, such as impacts on property values, is not a material consideration. The scheme was accompanied by appropriately scaled drawings to enable dimensions to be measured. I have little information to conclude that the site is of significant ecological value, and little or no substantiated

evidence to indicate that there is a reasonable likelihood of protected species being present and adversely affected by the proposal.

17. In its favour, the scheme would deliver housing in a sustainable town location. In that regard it would accord with the Framework's requirement to deliver the homes the country needs, and would contribute towards the targets for housing growth in the CS. Whilst some interested parties have suggested that there are other sites better suited to development, I have dealt with the scheme before me on its merits and against relevant planning policies.

Conditions and Conclusion

18. Summing up, on the main issue, subject to suitable conditions, the scheme's impact on the character and appearance of the area would be broadly neutral. It would thereby comply with UDP Policy DD4. Whilst there would not be the positive contribution required by UDP Policy DD1, the housing the scheme would deliver weighs heavily in its favour. Planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. Having considered the other material considerations in this case, and with due regard to all other matters raised, including the aims of the PSED, the appeal will therefore be allowed.
19. Turning to the matter of conditions, I have considered those suggested by the Council against the Framework's tests, making amendments where necessary to improve precision, clarity and enforceability. I have imposed the standard time limit condition, and, in the interests of certainty, a condition requiring that the development be carried out in accordance with the approved plans.
20. In the interests of the character and appearance of the area, samples of the dwellings' facing materials, and the surfacing of the driveways are required. For the same reason, and to ensure that the retained areas of open space are enhanced, conditions are necessary requiring the approval of a landscaping strategy and scheme, including nature conservation measures. For the same reason, and in order to ensure suitable living conditions, I have imposed a condition requiring the submission and approval of boundary treatment details.
21. In the interests of highway safety, conditions are necessary requiring the access and parking areas to be laid out in accordance with details to be approved, and for the accesses to be provided with suitable visibility splays. In the interests of sustainability, and in accordance with the Dudley Parking Standards Supplementary Planning Document – Review 2012, I have imposed a condition requiring that the dwellings be provided with electric vehicle charging points. In the interests of pollution prevention, and ensuring appropriate living conditions, a condition is also necessary requiring appropriate actions following the discovery of unexpected contamination.
22. The Council intends to place a restrictive covenant on the open land/green space requiring its retention for that purpose. It has suggested a condition removing permitted development rights for the approved landscaping areas and requiring them not to be used for any other purpose. The retention of the open spaces as a public amenity area is addressed by my condition no. 6. Although permitted development rights should only be exceptionally withdrawn, the erection of additional boundary treatment within these prominent open spaces could significantly harm the area's character. I have therefore imposed a condition removing Schedule 2, Part 2, Class A permitted

development rights for the areas of open space, but not for the remainder of the site, where such structures would have less of a visual impact.

23. Finally, in the interests of protecting nearby residents' living conditions, a condition is necessary requiring the submission of, and adherence to, a Construction Method Statement.

24. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

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: 1624/001 Rev A and 1624/002 Rev A.
- 3) No above ground development shall commence until samples of the materials to be used on the external surfaces of the dwellings hereby approved, and on the front driveways, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 4) No development shall commence (excluding demolition, site clearance and initial ground works) until a landscaping strategy for the site has been submitted to and approved in writing by the Local Planning Authority. The strategy shall include a timetable for the implementation of the works and their ongoing maintenance, and shall be implemented in accordance with the approved details.
- 5) No development shall commence (excluding demolition, site clearance and initial ground works) until full details of a soft landscaping scheme for the site, including replacement trees and nature conservation measures, have been submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be implemented in accordance with the approved details before the end of the first planting season following first occupation of the development. Any trees or shrubs planted in accordance with the condition, which are removed, uprooted, severely damaged, destroyed or die within a period of five years from the date of planting, shall be replaced in the next planting season with others of a similar size and species.
- 6) The landscaping scheme and strategy shall include details for the laying out as public amenity areas of those parts of the site annotated 'public open space with new tree planting' on drawing no. 1624/001 Rev A, and that land shall not thereafter be used for any other purpose.
- 7) No above ground development shall begin until details of the types, sizes and locations of the boundary treatments around and within the site have been submitted to and approved in writing by the Local Planning Authority. The boundary treatments shall be carried out in complete accordance with the approved details prior to the occupation of the dwellings hereby approved and shall thereafter be retained for the lifetime of the development.
- 8) No development shall commence (excluding demolition, site clearance and initial ground investigation works) until details of the accesses into the site, including details of levels, gradients, cross sections, and drainage of the parking areas have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the accesses and parking areas within the site have been laid out in accordance with the approved details. These areas shall thereafter be retained and shall not be used for any other purpose for the lifetime of the development.
- 9) The dwellings shall not be occupied until visibility splays to the new accesses have been provided at the junction between the proposed

means of access and the highway with an 'x' set back distance of 2.4 metres and a 'y' distance of 33 metres. No structure or vegetation exceeding 600mm in height above the adjoining highway shall be placed or allowed to grow within the visibility splay for the lifetime of the development.

- 10) In the event that contamination is found at any time when carrying out the approved development, development must be halted on that part of the site affected by the unexpected contamination and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared and approved in writing by the Local Planning Authority. Implementation of the approved remediation scheme shall be monitored by suitably qualified contaminated land practitioners. Following the completion of measures identified in the approved remediation scheme, the suitably qualified contaminated land practitioners shall submit a verification report to demonstrate the effectiveness of the remediation carried out for approval in writing by the Local Planning Authority. No part of the development affected by the unexpected contamination shall be occupied or brought into use until an approved scheme of remediation has been completed and such completion has been certified in accordance with the requirements of this condition.
- 11) Details of electric vehicle charging points for the dwellings, in accordance with the Council's Parking Standards Supplementary Planning Document – Review 2012, shall be submitted to and approved in writing by the Local Planning Authority. The electric vehicle charging points shall be provided in accordance with the approved details prior to the first occupation of the dwellings and shall thereafter be maintained for the life of the development.
- 12) Other than as required by condition no. 7, notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order revoking or re-enacting that Order with or without modification) no development referred to in Schedule 2, Part 2, Class A of that Order shall be carried out within those parts of the site annotated 'public open space with new tree planting' on drawing no. 1624/001 Rev A.
- 13) No development shall take place, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; wheel washing facilities; measures to control the emission of dust and dirt during construction; a scheme for recycling/disposing of waste resulting from demolition and construction works; and delivery, demolition and construction working hours. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
