
Appeal Decisions

Site visit made on 8 August 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 29th August 2017

Appeal A - Ref: APP/V4630/W/17/3172728

Land south of 8 Oaklands Way, Pelsall, Walsall, WS3 4BG.

- 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 Harveys Estate Agents against the decision of Walsall Metropolitan Borough Council.
 - The application Ref. 15/1835, dated 2 December 2016, was refused by notice dated 3 April 2017.
 - The development proposed is the change of use of car park area and erection of a single detached house.
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Appeal B - Ref: APP/V4630/W/17/3172730

Land south of 8 Oaklands Way, Pelsall, Walsall, WS3 4BG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Harveys Estate Agents against the decision of Walsall Metropolitan Borough Council.
 - The application Ref. 15/1833, dated 24 November 2015, was refused by notice dated 3 April 2017.
 - The application sought planning permission for the construction and layout out of a permanent hard wearing surface without complying with a condition attached to planning permission Ref EA/4133, dated 10 July 1963.
 - The condition in dispute is No. 4A which states that: The car parking area shown on the deposited plan shall be properly laid out and constructed with a permanent hard wearing surface to a specification approved by the local planning authority.
 - The reason given for the condition is: To enhance and maintain the visual amenities of the area.
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Decisions

1. Appeal A is allowed and planning permission is granted for the change of use of the car parking area and the erection of a single detached house at Land south of 8 Oaklands Way, Pelsall, Walsall, WS3 4BG, in accordance with the terms of the application, Ref 15/1835, dated 2 December 2016, and the plans submitted with it, subject to the conditions set out in the attached Schedule.

Appeal B is allowed and the planning permission Ref. EA/4133 for the erection of 8 flats, one pair of semi-detached houses and 9 garages at Land south of 8 Oaklands Way, Pelsall, Walsall, WS3 4BG, granted on the 10 July 1963 by Aldridge Urban District Council, is varied by deleting condition 4A.

Main Issues

2. The main issues are;

- Whether there is an overriding planning requirement to retain the appeal site as an area for car parking;
- The effect of the new house proposed on highway safety and the free flow of traffic;
- The effect of the new house and ancillary fence on the character and appearance of the area.

Reasons

Background

3. The appeal site lies towards the end of Oakland Way, a cul-de-sac of residential properties and comprises a triangular area of land adjacent to No. 8 - a detached house in separate ownership to the appeal site. The southern end of the site borders the turning head in Oaklands Way and to the south of this lie a staggered terrace of 8 flats/maisonettes with a rear garage court of 9 garages to the east of the terrace. There is a belt of mature trees along the south-western boundary of the site which also forms the boundary with the Pelsell Common and Old Pelsell Conservation Area lying to the west.
4. It is proposed in Appeal A to erect a detached dwelling with an integral garage on the land. To facilitate this, the scheme in Appeal B seeks to have deleted the requirements of condition 4A imposed on permission EA/4133 where planning permission was granted in 1963 for the erection of 8 flats and a pair of semi-detached dwellings and the wording of this condition is set out in the bullet points above. Condition 4B requires the submission, agreement and implementation of a landscaping scheme for the car park area.
5. The appellant says that the appeal site is privately owned, having been sold by the Council in 1982, and there are no legal rights for the public or local residents to park there. At the time of my visit a close boarded fence had been erected along the edge of the appeal site adjoining the pavement and the turning head which restricted vehicular access to the site, although space for pedestrian access to the side of No. 8 was maintained.

Policy context

6. The development plan includes the Black Country Core Strategy (BCCS) 2011 and the Walsall Unitary Development Plan (UDP) adopted in 2005.
7. It is apparent from the Council's representations that there is no policy objection in principle to some form of development in the local area of the appeal site, notwithstanding the site specific issue about the loss of the parking area and the detailed effects about the impact on highway safety and the flow of traffic, and amenity.

Loss of parking area

8. The approved plan for permission EA/4133 shows the layout of the 8 flats and pair of semis, together with the side garage court and the land the subject of the appeal which is annotated with the words 'car parking area'. However, I

have not been advised of any further more detailed layout of this parking area. I note that the actual wording of condition No. 4A refers to the area being laid out with a 'permanent hard wearing surface' but to my mind this seeks to specify the type of surface required and to distinguish it from, for example, a surface of loose gravel, rather than stipulate that the parking area has to be retained at all times after being laid out and surfaced. Further, the formal reason specified for the imposition of condition 4 is "To enhance and maintain the visual amenities of the area". The reason does not distinguish between parts A and B of condition No.4 but going on the explicit formal reason I find that the condition does not state or imply that the car parking area is required to be kept for this purpose in perpetuity. Further, it appears to me that there was adequate parking provision put forward at that time for the scale and nature of the development permitted. The 8 flats and the pair of semi-detached houses would all have had a least one parking space off the highway away from the turning head and the driveway to the garage court. I noted at my site visit these spaces still remain today.

9. The Council and the highway authority submit that the condition No.4 meets the tests of conditions set out in paragraph 206 of the National Planning Policy Framework (the Framework) but I do not consider that the wording of the condition and the reason for imposing it show that the condition is *precise* or *necessary*. Further, the evidence submitted shows that it was complied with when it was laid out with a hard wearing surface. Therefore, condition 4A has no further effect that can now be enforced against. The application in Appeal B is therefore not necessary but the appeal should nevertheless be decided.
10. I conclude on this issue that even though it appears that in the intervening years some of the local residents have used the appeal site for off-street parking, and notwithstanding the Council's decisions on applications BC/04967P and 15/0839/FUL, as private land separate from the public highway I find that there is not an over-riding planning restriction that the appeal site must only be used as a parking area and not for any other purpose. The loss of the parking area is therefore not a barrier to new development.

Effect on highway safety and the free flow of traffic

11. The Council and the highway authority say that the appellant has not submitted the necessary car parking study to indicate that there is not a need for vehicles to park on the site as 'public' parking. However given my conclusions on the first issue that there is not an on-going planning restriction in place to require the land to be used for off-street parking, the onus is on the Council and the highway authority to demonstrate how the proposed new house would harm highway safety and the flow of traffic.
12. The Council alleges that the proposal would result in residents having to park on the street and I note the photographs presented by residents which show on-street parking and appear to show problems with delivery and service vehicles turning at the end of the cul-de-sac. However, at my site visit I observed that, other than the maisonettes/flats, the houses around the end of Oaklands Way tend to have the normal layout of parking provision of a garage and a driveway within each curtilage of the property and I am not aware of any exceptional requirement for additional parking for these properties. The presence of the individual driveways onto Oaklands Way and the need to avoid their obstruction also limits the potential for on-street parking.

13. The scheme proposes a garage and a driveway which together could reasonably accommodate three vehicles off the highway and there is no indication that this arrangement would be inadequate provision for the scale of dwelling proposed or would not accord with the Council and highway authority's adopted parking standards set out in Policy T13 of the UDP.
14. These factors suggest to me that there is unlikely to be a significant increase in on-street parking or demonstrate that this would be materially harmful to highway safety. In terms of the effect on the flow of traffic, I have to take into account that the site lies at the end of a residential cul-de-sac without through traffic and this limits the weight that can be given to the need to maintain the flow of traffic in the street.
15. Overall on this issue, I find that it has not been demonstrated that the proposal would conflict with the saved policies GP2(Vii), T7 or T13 of the UDP, nor TRAN2 of the BCCS.

Effect on character and appearance

16. The Council's objection under this ground appears to relate to the present position of a fence erected along the frontage of the site and adjacent to the pavement, however, the majority of this fence is not part of the planning application proposal and is a separate matter for the Council and the highway authority.
17. A small element of fence is proposed with the scheme for a dwelling but this is shown sited alongside the side garden on an alignment which would continue the front wall of the proposed house. I am satisfied that a 2m high fence in this location with the backdrop of vegetation behind it would not be prominent or intrusive in the street scene and would not be harmful to the character or appearance of the area.
18. Turning to the proposed house itself, although a detached property whereas many other properties in Oaklands Way are 'semis', I am satisfied that the overall appearance of the new property and its siting are compatible with the general street scene and the development would not be a discordant feature. Many other local properties have open front gardens with landscaping but the submitted plans do not show how the front garden would be treated, however, this issue can be dealt with by the imposition of a condition.
19. Overall on this issue I find that the proposal does not conflict with the requirements of Policy ENV3 of the BCCS or saved policy GP2 of the UDP.

Planning balance

20. Bringing together my conclusions on the main issues I have found that condition No.4A imposed on permission EA/4133 does not require the appeal site to be retained as a parking area in perpetuity and the development proposed on private land is not precluded by the terms of this permission. Therefore no planning objection can be raised to the loss of the car parking facility.
21. Although I understand the residents concern about the potential increase in on-street parking that may take place at the end of the cul-de-sac of Oaklands Way, it has not been demonstrated that the local circumstances are exceptional. The proposed house would make adequate provision to accommodate its own

parking needs. Further, the evidence put in does not demonstrate that highway safety or the flow of traffic will be made worse by the proposal.

22. In terms of the character and appearance of the area, the fence proposed as part of the scheme would not be prominent or harmful to the area and on its own merits the proposed house would fit in with the existing street scene.
23. Overall, I am satisfied that the proposal amounts to sustainable development as encouraged by the Framework and the development generally accords with the provisions of the development plan when considered as a whole. The adverse effects raised against the proposal do not outweigh this conclusion. I will therefore allow both appeals in accordance with the provisions of the third bullet point of paragraph 14 of the Framework.

Conditions

24. In terms of conditions the Council recommends 9 which I will consider under the same numbering. In addition to the statutory condition on the commencement of development (No.1) a condition specifying the plans that are approved is necessary in the interest of clarity (No.2). Further, a condition to require the submission and agreement of external materials (No.3) and boundary treatment (No.5) on the site are reasonable and necessary to ensure that the appearance of the development is acceptable although I will expand the latter so that the scheme to be submitted includes the landscaping of the land to the front to the house.
25. In order to avoid pollution or flood risk a condition to require the submission of details for the disposal of foul and surface water and its implementation is necessary (No.4) and I will also impose conditions 6, 7 and 8 in the interest of highway safety and to ensure that the development has adequate off-street parking and visibility at the access but amended as necessary as no public spaces are proposed. Finally, the condition on the timing of construction work is reasonable and necessary given the proximity of other houses and the general need to respect the living conditions of the occupiers.

Conclusions

26. For the reasons given above I conclude that the appeals should be allowed.

David Murray

INSPECTOR

Appeal A - Ref: APP/V4630/W/17/3172728

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: drawing No's: 238:01; 238:L.
- 3) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the house hereby permitted and the driveways have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of this permission, drainage details for the disposal of surface water and foul sewage shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be fully implemented in accordance with the approved details before the development is first brought into use and retained thereafter.
- 5) Prior to the commencement of the development a scheme of details of all boundary treatments and the landscaping of the area to the front of the property shall be submitted to and approved in writing by the Local Planning Authority. The agreed landscaping scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Prior to the first occupation of the new dwelling, the driveway parking area serving the dwelling shall be fully consolidated, hard surfaced and drained so that surface water run-off from these areas does not discharge onto the highway or into any highway drain. These areas shall thereafter be retained and used for no other purpose.
- 7) Prior to the driveway and parking areas first coming into use;-
 - i) a new vehicle footway crossing serving the access point shall be installed in accordance with the Council's footway crossing specification SD11/8 dated January 2008 and,
 - ii) ii) the existing car park dropped kerb access point, made redundant under the development proposals, shall be reinstated back to full kerb height.
- 8) A 2.4m x 3.4m pedestrian visibility splay shall be provided at the new vehicle access point, within which no structure or planting shall exceed 600mm in height above footway levels.
- 9) 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 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*)