

Appeal Decision

Site visit made on 3 April 2019

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Appeal Ref: APP/G4620/W/19/3220040

**Scott Arms Shopping Centre, Walsall Road, Great Barr, Birmingham
B42 1TQ**

- 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 London and Cambridge Properties Limited against the decision of Sandwell Metropolitan Borough Council.
 - The application, ref. DC/18/61760, dated 17 May 2018, was refused by notice dated 10 August 2018.
 - The development proposed is an outline application for the construction of 5 dwellings with all matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was made in outline, with appearance, layout, scale, access and landscaping as reserved matters. The Council made their decision based upon a Design and Access Statement, a location plan¹, a noise report,² and a transport report³. These reports, statement and plan reflect the description of the development. As the Council had regard to these in determining the application, I have dealt with the appeal on the same basis.
3. Whilst I note that access is a matter that is reserved for later approval, in assessing the principle of development there appears to be some confusion between both parties with regards to which access might be used to serve the development. Bromford Walk (which is currently aligned with bollards at the appeal site) is indicated as the access for vehicles in the appellant's design and access statement which supported the application. The council assessed the basis of access from a service road (Newton Road) and this is confirmed in the appellants statement of case that vehicular access would be from Newton Road and pedestrian and cycle access would be from Bromford Walk. I have therefore assessed the access on this basis having regard to the implications of the shared route.

¹ Location Plan, Proposed new residential Scheme, Drawing No 17/2267/03, By GH Design, May 2017

² Scott Arms, Great Barr External Building Fabric Assessment, By RBA Acoustics 21 July 2017

³ Residential Scheme at Scott Arms Shopping Centre Transport Statement. By IMA Transport Planning, August 2017

Application for costs

4. An application for costs was made by the appellant against Sandwell Metropolitan District Council. This application is the subject of a separate decision.

Main Issues

5. The main issues are:

- Whether there is a suitable access to serve the proposed development;
- Whether or not future occupants of the proposed development would have acceptable living conditions with regard to outlook, noise and odours; and
- The safety and convenience of users of the highway as a result of loss of vehicular parking.

Reasons

Access

6. The appeal site is a hard surfaced car park that is located to the rear of the Scott Arms Shopping Centre (SC). Whilst this car park serves the SC, another car park is located to the front of the SC, having recently been reconfigured to allow an increase in parking spaces.
7. Whilst the appellant considers that access was not a justified reason for refusal, it is clearly necessary to test the planning merits of the proposal in principle and acceptability by establishing whether a suitable access can be provided. The Design and Access Statement is quite clear that the development is to provide five car parking spaces for five dwellinghouses which is in accordance with the description of the development.
8. The location plan submitted with the original application shows that the only possible ways that the site could be accessed would be from Bromford Walk (which was stated in the Appellant's Design and Access Statement as the access route), a no-through road which ends in concrete bollards where vehicles are prevented from accessing the appeal site. The other possible access would be the current situation which consists of a private service road which currently accesses the car park and the service yard to the rear of the SC, as well as some residential flats which were constructed as part of the SC development.
9. In assessing the principle of whether the site can be accessed appropriately, the Sandwell Council *Revised Supplementary Residential Design Guide Appendix 3* (RDG) states that shared accesses for car parks and parking courts cannot be used to jointly serve car parking for individual dwellings, and that family dwellings will need their own distinctive drive or private access to provide full separation from any shared parking areas. The guidance makes it clear that there is a distinction between 'family dwellings' and general residential development such as flatted schemes. Whilst I acknowledge comments that the accesses already serve both residential and commercial uses, none of the developments are recent with the policy position having changed considerably since then. The residential units in question above the SC are also flatted schemes, rather than family dwellinghouses which are specifically referenced in the RDG as requiring their own distinct access.

10. It is clear to me that based on the evidence presented and from what I saw on my site visit that neither of the 'available' accesses would comply with this criterion as specified by the RDG for family dwellinghouses. Whilst I appreciate that the RDG is guidance rather than policy, so there may be exceptions based on circumstances, the Council considers that the site does not have a suitable access for family dwellinghouses. It follows that the current situation is one where none of the available accesses are suitable to provide access for the proposed development of five family dwellinghouses.
11. Whilst the Reason for Refusal No1 has not been supported by a planning policy, the relevant policies at the end of the Decision Notice states Policy SAD EOS 9 of the *Sandwell Site Allocations and Delivery Development Plan Document 2012* (DPD) and Policy ENV3 of the *Black Country Core Strategy 2011* which both seek that high quality design and placemaking is supported to provide a high quality public realm and an attractive, safe and permeable movement network which is based upon urban design principles. These policies are supported by the RDG which amongst others, provides guidance as to the design of shared private drives and accesses to family dwellinghouses.

Living conditions of future occupiers

12. The Appellant feels aggrieved by the Council for the reason for refusal No2 regarding noise, outlook and odour as in their opinion this constitutes 'layout' which would be a reserved matter. However, it is reasonable to assess the planning merits of a case in outline stage with regards to how the proposed use would be compatible with surrounding uses to determine if the principle is appropriate.
13. According to the Council, the service yard to the SC has no time restrictions so commercial vehicles can access the service yard 24 hours a day, 7 days a week. Whilst a transport report and noise report have been submitted, there is no information with regards to the type of commercial vehicle accessing the service yard, their frequency or timings.
14. I note comments with regards to the Sandringham Court development adjacent to the appeal site which was approved in 2003.⁴ The appellant argues that this approved application extends past the same service yard with no issues being raised during the application regarding amenity of future occupiers. However, the Sandringham Court development is an entirely flatted scheme with no family dwellinghouses present. The scheme also has its own separate access from Walsall Road, and does not share an access with the service road. I do not consider the Sandringham Court scheme is analogous to the appeal site and therefore give the approval of this scheme little weight in this decision.
15. It is clear to me that the Council treats flatted schemes differently to family dwellinghouses, where family dwellinghouses would be expected to have rear garden spaces and designs which would meet the criterion as specified in the RDG. I agree that internal spaces could be satisfactorily conditioned to ensure that they meet noise regulations, however these considerations would also include the enjoyment of the residents in their private amenity space which the noise report does not address.

⁴ Sandwell Council Planning Ref No: DC/03/40310

16. I am not convinced that the noise report tells the full story of potential impacts caused to the future occupiers of the proposed dwellinghouses. A total of two noise surveys were undertaken, one on a Thursday between 16:00-19:00 and another the following Thursday between 21:00-0:00 whilst a live music event was taking place at the adjacent Great Barr Conservative and Unionist Club. Whilst I acknowledge the Council's concerns that the reports are outdated and reflect a previous scheme, the report also does not appear to assess peak timings, and is predominantly focussed upon the members club adjacent to the property. The noise surveys were carried out on a Thursday which does not include logically busier times of Friday and Saturday nights. The survey also does not assess the use of the service yard which may include activity during the middle of the night where sound and disturbance is much more perceptible than during the day.
17. It is clear to me that the proposed dwellinghouses would be in close proximity to a commercial service yard which is utilised by commercial vehicles without any restrictions, as well as being adjacent to the Great Barr Conservative and Unionist Club which hosts live music. Whilst noise is a concern, there are also concerns from the Council with regards to the air quality as a result of this scheme and the exposure of future residents to pollution, and smells from the surrounding commercial area which have not been addressed by the appellant. Whilst I agree that concerns regarding outlook could be adequately resolved by condition and layout during reserved matters, the issues of exposure of future occupiers as a result of noise, pollution, and odour establish the principle of acceptability of the use of the development and are not matters which could be adequately resolved by conditions within the reserved matters stage.
18. Consequently, I consider that the proposed development would not provide acceptable living conditions for future occupiers as a result of exposure to noise, pollution and odours from the surrounding environment. The Council in its reason for refusal has not cited any policies that consider the impact of noise, or pollution. However, paragraph 170 of the National Planning Policy Framework (the Framework) does seek that new developments do not contribute to or are being put at unacceptable risk from unacceptable levels of air or noise pollution and the proposed development would fail to achieve this.

Loss of car parking spaces

19. According to the Transport Statement the Appeal site has 90 car parking spaces (81 useable) and the front car parking area has 72 car parking spaces. The survey results that were taken on Friday 14 July 2017 and Saturday 15 July 2017 showed that the highest amount of parking of the appeal site over either day was at 22% at 11:00 on Saturday, and that the highest amount of parking of the front car park was 56% on the Friday at 12:00. When both car parks were combined, the report showed that the highest levels of parking amounted to 79% of the full capacity of the car park on both days.
20. Based upon these surveys it is demonstrated that the car park to the front could reasonably cater for the displacement of car parking spaces as a result of the loss of the appeal site to residential development. I acknowledge the Council's concerns that the transport report is outdated and reflects a previous scheme which was refused planning permission for a larger number of dwellings. This does highlight some flaws within the submitted report. I appreciate that the parking conditions I experienced on my site visit was only a snapshot of the

parking at this particular time, however I have also considered the evidence submitted by both main parties and, in the light of this, I am satisfied that what I saw represents typical conditions as reflected in the submitted transport report.

21. The report shows that as a result of the level of use of the rear car park that it is likely that the displaced vehicles would be able to be accommodated in the front car park. As such, this would not lead to the displacement of vehicles onto the public highway and would be unlikely to be detrimental to the safety and convenience of users of the highway. Whilst the Reason for Refusal No3 has not been supported by a planning policy, the relevant policies at the end of the Decision Notice states Policy SAD EOS 9 of the DPD and Policy ENV3 of the CS which both seeks amongst others, that developments have a safe and permeable movement network which is based upon urban design principles.

Planning Balance and Conclusion

22. I note comments from the Appellant regarding the benefits of the development which includes that the site is within a sustainable location; has high connectivity to public transport; is on existing brownfield land; and would result in a decrease of vehicular movements from those which would have previously accessed the car park to the rear. Whilst these benefits favour the scheme they do not outweigh the harm I have identified.
23. For the reasons given above, the appeal is dismissed.

J Somers

INSPECTOR