The Planning Inspectorate

Appeal Decision

Site visit made on 4 June 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2019

Appeal Ref: APP/C4615/D/19/3219595
107A Greenfields Road, Kingswinford DY6 8EG

- 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 conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Ian Collins against the decision of Dudley Metropolitan Borough Council.
- The application Ref P18/1539, dated 21 October 2018, was refused by notice dated 14 December 2018.
- The application sought planning permission for the erection of a four-bedroom detached house and layout of, without complying with a condition attached to planning permission Ref P00/50789, dated 22 September 2000.
- The condition in dispute is No 7 which states that: Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (or any revoking and re-enacting that order), no development referred to in Part 1 Class A of Schedule 2 of that order shall be carried out.
- The reason given for the condition is: In order to maintain and preserve the visual amenities of the area.

Decision

1. The appeal is allowed, and planning permission granted for the erection of a four-bedroom detached house at 107A Greenfields Road, Kingswinford DY6 8EG in accordance with application Ref P18/1539 without compliance with condition 7 previously imposed on planning permission Ref P00/50789, granted on 22 September 2000, but still subject to the following conditions:

    1) The approved dwelling shall be subject to any ongoing gas protection measures agreed through the assessment of carbon dioxide and methane gas surveys undertaken to satisfy condition 3 of planning approval ref P00/50789. Any agreed measures shall be retained throughout the life of the development.

    2) The first-floor windows, installed on the north elevation, shall be retained with obscure glazing and top hinged throughout the life of the development.

Procedural Matters

2. A site visit was undertaken prior to the deadline for final comments. I have had regard to all comments submitted within the prescribed deadlines.

3. The appellant has referred to a claim for costs in his statement and has attached an invoice. The National Planning Practice Guidance requires a costs

application to made either by completing the appropriate form or explaining by letter how the applicant considers the Council has behaved unreasonable and its fiscal impact. However, despite being prompted the applicant has not set out the reasoning for any costs application. Consequently, I have not determined a claim of costs.

Main Issue

4. The main issue is whether condition 7 is reasonable and necessary having regard to local policies and the National Planning Policy Framework (The Framework).

Reasons

5. The appeal site contains a detached two-storey dwelling. The plot is wider but not deeper than the neighbouring gardens. The rear garden falls on a slight gradient down towards a recreation park beyond the rear boundary. Furthermore, the adjacent highway is on a gradual hill. Therefore, the site is lower than No 107 and higher than No 109. There is also a public footpath between the appeal site and No 107, which links to the park behind the site.

6. The condition was imposed as it was considered by the Council that an extension would result in a loss of outlook and light to occupiers of No 109, especially from the ground floor rear kitchen window. However, the full effect of condition 7 was to remove all permitted development (PD) rights including to enlarge or extend the dwelling, alter the roof, add a porch and erect outbuildings. This condition was not selective and is more onerous than would be required to protect the living conditions of No 109. Moreover, the limitations and conditions of PD rights are normally sufficient to protect the living conditions of neighbours.

7. Furthermore, the Framework advises that conditions should not be used to restrict PD rights unless there is clear justification to do so. Paragraph 55 requires conditions to be necessary and reasonable. Furthermore, the Guidance[1] states that conditions that restrict the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Whilst the approval in 2000 pre-dates the Framework, this appeal decision must reflect current policy and material considerations.

8. The dwelling projects further to the rear than its neighbours. This coupled with the gradient of the rear garden means that a PD extension could marginally affect the living conditions of the neighbours. However, the adjacent dwellings and habitable room windows are some distance from the side boundaries.

9. The dwelling of No 107 is higher than the appeal dwelling and separated by the public footpath. The kitchen window of No 109 is some distance from the shared boundary. Furthermore, the rear garden of the site widens, thus increasing the separation distance from the side boundary to the appeal dwelling. As a result, a PD rear extension would not have an especially significant effect on the living conditions of the neighbour to warrant the removal of PD rights. Consequently, condition 7 would not meet the high bar of exceptional circumstances set out in the Guidance. Therefore, the condition is neither necessary nor reasonable and thus fails to pass the tests in the Framework.

[1] Paragraph: 017 Reference ID: 21a-017-20140306

10. Accordingly, the proposed dwelling with its PD rights intact, would comply with policy ENV2 of the Black Country Core Strategy 2011, which includes the requirement for development to protect and promote the local distinctiveness of the Black Country. Also, the proposal would accord with policy L1 of the Dudley Borough Council Development Strategy 2017, which seeks amongst other things development that would not cause unacceptable harm to the amenities of occupiers of neighbouring dwellings.

Conclusion

11. The Council's guidance in regard to the '45-degree code' (note 12) and house extensions (note 17) include the objective to protect the living conditions of neighbouring occupiers. I have already found that a PD extension would not have a significant effect on neighbour's living conditions in this case.

12. Therefore, for the above reasons, and having taken all matters raised into account, the appeal is allowed. I will therefore grant a new permission without the disputed condition but retain those non-disputed conditions from the previous permission that appear to still be relevant. The Council has not suggested any conditions, but those relating to ground gas mitigation measures and obscure glazing remain germane to the decision. I have updated the wording of the conditions to reflect the current status of the development.

Ben Plenty

INSPECTOR