



Appeal Decision

Site visit made on 19 November 2019 by John Gunn DipTP Dip DBE MRTPI

Decision by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/C4615/D/19/3236752

8 Lutley Avenue, Halesowen, West Midlands B63 4HU

- 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 Mrs Kim Moseley against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P19/0894, dated 20 June 2019, was refused by notice dated 01 August 2019.
 - The development proposed is removal of garage and erection of two storey side extension, single storey rear extension, front bay and porch.
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Decision

1. The appeal is allowed and planning permission is granted for removal of garage and erection of two storey side extension, single storey rear extension, front bay and porch at 8 Lutley Avenue, Halesowen, West Midlands B63 4HU in accordance with the terms of application P19/0894, dated 20 June 2019 and the following conditions:

1. The development hereby permitted shall begin not later than three years from the date of this decision.

2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

3. The development hereby permitted shall be carried out in accordance with the location plan and following drawings:

Existing floor plans	dwg no: 01
Existing elevations	dwg no: 02
Proposed ground floor	dwg no: 03 revision A
Proposed first floor	dwg no: 04 revision A
Proposed elevations	dwg no: 05
Proposed site plan	dwg no: 06 revision A

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matter

3. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has not changed but, nevertheless, a different wording has been entered. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application form.
4. The Council has referred to Policy ENV2 of the Black Country Core Strategy (2011) (CS) in their reason for refusal. This Policy relates to Historic Character and Local Distinctiveness and is not pertinent to matters relating to living conditions. Consequently, I will not refer to it in my reasoning.
5. Likewise, Policy S6 of Dudley Borough Development Strategy (2017) is referred to in the reason for refusal. This Policy is primarily concerned with establishing overarching design principles for new development in the Borough and does not concern itself with living conditions. Consequently, I do not consider it is relevant to this appeal.
6. The Council has referred to paragraph 38 of the NPPF in reason 2 of their decision. This requires Local Planning Authorities to approach decisions in a positive and creative way, seeking to approve applications for sustainable development where possible. Failure to reach an agreeable outcome following negotiations does not, in itself, represent a reason for refusal and I will consider the appeal accordingly.

Main Issue

7. The main issue is the effect of the proposed development upon the living conditions of the occupiers of 7 Lutley Avenue, having particular regard to outlook, overshadowing and loss of light.

Reasons for the Recommendation

8. The appeal site lies in a short cul-de-sac characterised by a mixture of detached and semi-detached houses. Individual dwellings have medium sized front gardens, providing off street parking facilities, enclosed by low walls, fences or hedges. The staggered building line, small changes in levels between properties, and the use of both hipped and gabled roofs, defines the character to the area.
9. The appeal site sits in an elevated position relative to 7 Lutley Avenue. A garage serving No 7 directly abuts the appeal site with a small patio and shed lying to its rear. The nearest window on the rear elevation of No 7 serves a kitchen and is located over 3m away from the boundary with the host property. The view from this, and other windows on the rear elevation of No 7, would be

primarily down the occupier's rear garden, with only oblique views of the proposed single storey rear extension. Given the separation distance and the oblique angle between the kitchen window and the rear extension, the impact on the occupier's outlook would be very limited. From my site visit I was able to confirm that the 2 first floor windows in the gable wall of No 7 served a landing and a bathroom and consequently any impact on the occupier's outlook from these windows would be limited.

10. Whilst acknowledging that some overshadowing will occur, from the two storey side and single storey extension, this will vary during the day. No evidence has been provided by the Council to demonstrate the extent of any overshadowing that would arise. Based on my observations it appeared that any overshadowing would primarily affect those parts of the curtilage of No 7 currently occupied by the garage, the shed and a small part of the patio. As a result, any overshadowing would be limited and the impact on the neighbours living conditions would not be significant.
11. The appellant and the Council disagree on the status of the Planning Guidance Note No. 12 – 45 Degree Code (PGN12) and Planning Guidance Note No.17 – House Extension Design Guide (PGN17). Whilst Supplementary Planning Guidance produced prior to 2004 does not have the same statutory basis as Supplementary Planning Documents, they are nevertheless capable of being a material planning consideration. I consider that the guidance is consistent with Policy L1 of the Dudley Borough Development Strategy (2017) (DS) in seeking to protect occupiers of neighbouring properties from unacceptable harm and have considered the appeal on this basis.
12. Both parties agree that the proposals would technically comply with the 45 Degree Code in PGN12. However, the Council are concerned that the appeal proposals would still have a significant impact on the light entering the kitchen to No 7 because of the increased height of the appeal property relative to its neighbour. From my site visit I was able to see the position of the kitchen window relative to the proposed extension and the height of the existing fence that lies on the boundary between the properties noting that the extension would not protrude significantly above the fence. Consequently, any reduction in light entering the kitchen would be limited.
13. In light of my findings, I find that the proposal would not materially harm the outlook from No 7, significantly increase overshadowing to the curtilage of No 7 or reduce light levels within its kitchen. Therefore, the development would not materially harm the living conditions of occupiers of No 7. Accordingly, there is no conflict with Policy L1 of the DS, or guidance in PGN 12 and 17, which seek to establish good relationships between buildings with acceptable standards of amenity.

Conditions

14. The Council has suggested several conditions it would wish to see imposed in the event that the appeal was allowed. I have considered these against the guidance set out in the Framework and the Planning Practice Guidance.
15. A condition requiring the development to be commenced within 3 years of the date of this decision is appropriate and would be in accordance with Section 91

of the Town and Country Planning Act 1990. To ensure that the development is undertaken as approved a condition referring to the approved plans is necessary. The plans and application form are not specific as to the materials that are being proposed therefore a condition requiring materials to match the existing property is necessary to protect the character and appearance of the area.

Conclusion

16. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed subject to the conditions set out above.

J Gunn

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal should be allowed with the recommended conditions.

J Whitfield

INSPECTOR