



Appeal Decision

Site visit made on 21 July 2020 by G Sibley MPLAN MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/D4635/W/20/3249486

19 Chester Street, Wolverhampton WV6 0PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by DIS Assets Ltd against the decision of The City of Wolverhampton Council.
 - The application Ref: 19/00932/FUL, dated 8 August 2019, was approved on 27 January 2020 and planning permission was granted subject to conditions.
 - The development permitted is erection of a new dwelling adjoining no.19 Chester Street to form a 2-bed terraced house with a conservatory, and demolition of former workshop.
 - The conditions in dispute are No.7 and No.8.
 - Condition No.7 states that: 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, replacing and re-enacting of that Order with or without modification) there shall be no extension of any building forming part of the development hereby permitted, without prior planning permission being obtained.'
 - Condition No.8 states that: 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, replacing and re-enacting of that Order with or without modification) there shall be no roof extension or roof alterations of any building forming part of the development hereby permitted, without prior planning permission being obtained.'
 - The reason given for condition No.7 is: 'in order to safeguard the amenity of the area by enabling the local authority to consider individually whether planning permission should be granted for extensions. Relevant UDP policies D8, D9, H6.'
 - The reason given for condition No.8 is: 'in order to safeguard the amenity of the area by enabling the local authority to consider individually whether planning permission should be granted for extensions. Relevant UDP policies D8, D9, H6.'
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Decision

1. The appeal is dismissed.

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.

Main Issue

- Whether conditions 7 and 8 are reasonable and necessary with regard to the living conditions of neighbouring occupiers and the character and appearance of the area.

Reasons for the Recommendation

Living conditions

3. The Planning Practice Guidance (PPG) notes that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
4. Paragraph 55 of the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The appellant considers that condition No.7 and No.8 are not necessary or reasonable in all other respects.
5. The proposed dwelling would extend the full width of the site and because the site is relatively deep, the house would have a long garden. The dwelling would have a rear 'dog-leg' extension which would be around the same size as the adjacent rear extension at No.19. From the information before me No.19 is a House in Multiple Occupation (HMO). On the opposite side of the site is a row of terrace dwellings and the rear 'dog-leg' element of the proposed building would extend along the rear wall of the garden for No.4.
6. No.19 and the proposed dwelling would have similarly sized single storey rear extensions and between the two single storey elements of those buildings would be a courtyard. It would be possible to extend the property within this courtyard area under Class A of the GPDO. If an extension was constructed within this courtyard on one property and not the other the extension would have an overbearing impact upon the occupants, given the narrow space between the single storey rear elements of the two dwellings. The appellant currently owns both properties and they note that they would not undertake development that would harm the living conditions of their tenants. Nevertheless, the PD rights remain with the property rather than the owner and it cannot be guaranteed that the two properties would always remain within the same ownership.
7. The dog-leg section of the proposed dwelling would be located adjacent to the rear wall of the garden for No.4 and an increase to the height or design of that roof could have an overbearing impact and result in a loss of privacy to the occupiers of No.4, dependant on what was constructed.
8. With regard to adding an addition to the roof on the two-storey element of the proposed building, if a dormer window was constructed, the design of the roof of the dwelling would limit overlooking of the garden area for No.4. The rear garden of the proposed dwelling would be sufficiently long enough to ensure the occupiers would not overlook the gardens of the dwellings to the rear, if a dormer window was constructed.
9. Consequently, given the close proximity and relationship to the neighbouring dwellings, I consider that the exceptional circumstances envisaged by the PPG are applicable to this case and that it is necessary to restrict permitted development rights to protect the living conditions of the neighbouring occupants. The conditions are also reasonable insofar as they do not place unjustifiable and disproportionate burdens on the appellant, and they are not

so unduly restrictive that they would nullify the benefit of the permission, insofar as it would be possible for the appellant to apply for planning permission to extend the property in the future.

10. Therefore, the conditions are reasonable and necessary in the interest of protecting the living conditions of the neighbouring occupiers and the removal of the conditions would be contrary to in accordance with Policy H6 of the Wolverhampton Unitary Development Plan 2001 – 2011 (adopted 2006) (UDP) which seeks to ensure development protects the amenity of neighbouring residents.

Character and appearance

11. Given the constrained site, there would be limited opportunities to extend the property. Whilst some changes could be made to the roof that could have a detrimental effect upon the character and appearance of the host dwelling and the street scene, these changes would be relatively minor and would not cause significant harm to lead to the exceptional circumstances necessary to warrant the removal of the permitted development rights of the proposed dwelling. Given the size of the garden it would be possible to extend the dwelling without overdeveloping the site to such an extent where it would harm the character or appearance of the street scene. Any extension would only be permitted to develop up to half the area of land around the original house which would control the overdevelopment of the site.
12. Therefore, the condition is not reasonable or necessary in the interest of protecting the character and appearance of the dwelling or the street scene. Consequently, the removal of the conditions would not be contrary to Policy D8 and D9 which looks to ensure development makes a positive contribution to the locality.

Other Matters

13. The appellant notes that the surrounding dwellings all retain their PD rights, but they have not provided any evidence in support of this. In any event, the proposal before me relates to a recently permitted scheme and it was reasonable for the Council to consider whether it was necessary to remove permitted development rights to make the development acceptable in planning terms, having regard to the proposed relationship with neighbouring properties and the surrounding area. Consequently, regardless of whether other properties in the vicinity benefit from permitted development rights, I have considered the proposal on its individual merits.

Conclusion and Recommendation

14. In the interests of the protecting the living conditions of the neighbouring occupiers there is exceptional justification for the removal of some permitted development rights. Therefore, the condition is reasonable and necessary, and its removal would be contrary to Policy H6 of the UDP as well as the relevant sections of the Framework and the PPG, which seeks to protect the amenity of neighbouring residents.
15. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be dismissed.

Chris Preston

INSPECTOR