
Appeal Decision

Site visit made on 11 August 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2020

Appeal Ref: APP/C4615/W/20/3252442

Land Adjacent to 1 Victoria Avenue, Halesowen B62 9BL

- 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 Mr Clive Harper against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P19/1671, dated 26 November 2019, was refused by notice dated 28 February 2020.
 - The development proposed is the erection of a single storey office building (B1) and the erection of 2m high fencing.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey office building (B1) and the erection of 2m high fencing at land adjacent to 1 Victoria Avenue, Halesowen B62 9BL in accordance with the terms of the application, Ref P19/1671, dated 26 November 2019, and the plans submitted with it, subject to conditions in the attached Schedule.

Procedural Matter

2. The description of development has been taken from the appeal forms and the decision notice, which provide a more precise and comprehensive description that includes reference to components of the proposal which are missing from the application forms. The appeal has been dealt with accordingly.

Main Issues

3. The main issues are the effect of the proposal on the:
 - (a) character and appearance of the area;
 - (b) living conditions of existing neighbouring occupiers at 1 Victoria Avenue, in relation to outlook, privacy and light; and
 - (c) access and highway safety of the area.

Reasons

Character and Appearance

4. The site is located on land adjacent to 1 Victoria Avenue and is currently in commercial use for the purposes of producing memorial stones. It occupies a corner position at the junction of Victoria Avenue and Halesowen Road. The site is located opposite Quinton Cemetery to the north, a car dealership a short distance to the east and residential development to the south and west.

5. Consequently, the immediate vicinity of the site comprises a mix of uses and is not only residential in character. This is reinforced by the existing commercial use of the site, which includes prominent signage and goods on display. The location of the existing commercial use, opposite Quinton Cemetery, also appears to be logical and melds with this wider context, whilst being well related and convenient for prospective customers.
6. 1 Victoria Avenue includes a ground floor office associated with the existing commercial use but in all other respects resembles a residential dwelling, which appears to be its predominant use. It is detached and of brick construction with timber detailing and a tiled roof that uses a mix of hipped and gable components. Neighbouring dwellings to the west exhibit similar construction, whereas neighbouring dwellings to the south are constructed using a greater proportion of render. There are substantial boundary treatments delineating the site (hedgerows in particular), which for the most part segregate and differentiate the area used for displaying signage and goods and the garden areas of the dwelling.
7. The proposal would introduce a single storey office building, which would be sited in approximately the same position as existing signage and adjacent to a substantial hedgerow. Because the site is self evidently in commercial use, the imposition of an office building would not change its character. Furthermore, the receiving environment of the immediate area comprises a mix of uses and therefore even if the site wasn't already commercial in character, the proposal would not necessarily be incongruous with the prevailing context.
8. The boundary treatments put forward under the proposal would reinforce the demarcation that the existing hedgerow already imposes between the commercial and residential uses. Consequently, the office building would sit apart from the residential dwelling and would primarily be read in the context of the existing commercial use.
9. Even without this level of demarcation, the single storey nature of the proposal and floor plan dimensions are clearly subservient to the adjacent dwelling, whilst the materials used in its construction would also be similar, and it could therefore read as an ancillary outbuilding. The Council argues against the form of the fence in that it would take the place of existing soft landscaping. However, the loss of planting would be minimal and given the substantial level of hedgerow remaining at the site I cannot conclude that such an approach would be harmful.
10. The limited scale of the new building, in conjunction with existing and proposed boundary treatments would mitigate its prominence within the corner plot. Hedgerows in particular would remove the proposal from the context of the building line along Halesowen Road. Consequently, even if it is technically in front of the building line, this would not be evident on the ground.
11. In any event, I consider the existing commercial use is already prominent in the street scene, by means of the open frontage, large signage and proliferation of goods on display. The new building would be sited in a similar position as the existing signage, and although larger in scale, would not otherwise affect the prominence of the site.

12. Overall, the proposal would not be an incongruous feature within the streetscape and would preserve the character and appearance of the area. It would accord with Policy ENV3 of the Black Country Core Strategy 2011 (BCCS), Policies L1, S6, and S8 of the Dudley Borough Development Strategy 2017 (DBDS) and PGN 17 of the House Extension Design Guide. Among other things, these seek to ensure that development is appropriately designed.

Living Conditions

13. The existing hedgerow and other boundary treatments already encroach the outlook of neighbouring occupiers, relative to the proposed fencing, and it is not clear that the proposal would exacerbate the existing relationship or amount to harmful overbearing or loss of light. Similarly, the office building itself is of single storey construction and would be predominantly screened by the existing hedgerow. Only a relatively small proportion of its ridgeline would extend above it, and this would be tapered due to the roof design. Consequently, it would not be detrimental compared to the existing situation, where the 45 degree standard may have already been breached by the existing hedgerow. Furthermore, it is not beyond reason that the hedgerow could continue to grow in height, leading to the full screening of the new office building in any event. In conjunction with these observations, directly in front of the ground floor bay window, which is the focus of the Council's contentions, is a garden area of appreciable size. The outlook onto this garden area would be fully preserved and would not be encroached by the proposal. The living conditions, including the degree of outlook and amount of light currently enjoyed by existing occupiers would therefore remain intact.
14. The reasons for refusal included a reference to privacy, but no submissions have been made by the Council in this regard in order to substantiate their concerns. In the absence of such evidence, I am unable to make a finding on any potential harm and therefore cannot reasonably conclude that the proposal would create conflict in this regard.
15. Overall, the proposal would not erode the outlook, privacy or amount of light enjoyed by existing neighbouring occupiers or generate harmful effects on living conditions therein. It would therefore accord with Policy L1 of the DBDS and the New Housing Development SPD 2013.

Access and Highway Safety

16. The existing commercial use appears to benefit from a driveway and although the Council contends that this does not meet the standards to support tandem parking, there is no evidence to suggest that there is insufficient parking provision at the site or that the existing use has suffered from access issues to the detriment of highway safety. The appellant has confirmed that the existing office on the ground floor at 1 Victoria Avenue would cease. However, it is acknowledged that this has not been secured using an appropriate planning mechanism and was not part of the red line boundary under the original application or subsequently under this appeal. Even if it did not cease, the new building is of sufficiently small a scale that it would seem unlikely to generate substantially more parking demand or traffic movements. Furthermore, it would seem likely that parking demand and traffic movements would be more closely related with the comings and goings of potential customers, something the erection of a new office building would have little effect on. Cumulative effects of both offices would therefore be limited.

17. Even if the driveway could not support additional parking and the proposal gave rise to limited amounts of additional parking demand, it has not been demonstrated that this could not be accommodated on the street. During my site visit it was apparent that on street parking was readily available. There is no evidence to suggest there are particular constraints in this regard, or that indiscriminate parking along the street has generated highway safety issues in the past.
18. For example, under the current operation, if the proprietor of the commercial use parks on the existing driveway, and if the Council's contention that no other cars are able to park on the driveway is true, then it is reasonable to presume that any other employees (if there are any), customers or visitors, would be required to park on the street. Again, if this has been occurring (in the absence of evidence to contrary) it appears to have been occurring without generating harmful access or highway safety issues.
19. The Parking Standards SPD 2017 states, developments that suggest likely on-street parking which would create or exacerbate issues of highway safety will not be supported. However, as I have reasoned previously such effects are unlikely. Therefore, I note that the SPD also states, local factors may allow deviation from these optimum levels, such as on-street parking levels.
20. Consequently, I find it appropriate to rely on the existing parking provision at the site in conjunction with on street parking nearby in satisfying any parking demand. Regarding the site's position close to a junction, and the Council's concerns about on street parking in this context, I would expect that any highway user pays sufficient attention to the Highway Code insofar as it relates to parking on the street and away from junctions. Therefore, I see no reason why users of the site would not park further down the street and away from the junction in order to maintain highway safety.
21. Overall, the proposal would not generate harmful effects on access and highway safety and would accord with the provisions of the Parking Standards SPD 2017, together with Policy TRAN2 of the BCCS and Policy S17 of the DBDS. Among other things, these seek to manage the transport impacts of new development.

Conditions

22. The Council suggested 6 conditions, and these have been considered in relation to the National Planning Policy Framework and Planning Practice Guidance. 2 of the suggested conditions were omitted, and 4 conditions were ultimately attached. All conditions attached are deemed necessary to make the development acceptable.
23. The standard conditions setting out the time limit for implementation and securing compliance with the approved plans are necessary to provide certainty. Conditions requiring the control of materials and associated features of the building are necessary to ensure the development's appearance remains in keeping with the character and appearance of the area. The site is within an air quality management area and therefore a condition requiring compliance with gas boiler emission standards is necessary to protect air quality.

24. Conditions limiting the use of the building and removing permitted development rights were not reasonable because the commercial use of the site has been found to be acceptable. It has not been demonstrated that subsequent small scale changes afforded under permitted development rights, or a change in operator of the site, would generate harm that would need to be otherwise controlled and are therefore not reasonable conditions.

Conclusion

25. For the reasons given, the appeal is allowed, and planning permission is granted, subject to conditions in the attached Schedule.

Liam Page

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:500 Location Plan, 205/01B Proposed Elevations, 205- 02 Existing and Proposed Layout Plan.
- 3) No above ground development shall commence until a schedule of the types, colours and textures of the materials to be used on the external surfaces of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in complete accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.
- 4) In order to minimise the impact of the development on local air quality, any gas boilers provided within the development must meet a dry NOx emission concentration rate of <40mg/kWh.

End of Schedule