

Appeal Decision

Site visit made on 21 August 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 September 2020

Appeal Ref: APP/K3415/W/20/3253183

22B Grange Lane, Lichfield WS13 7EE

- 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 L McArdle against the decision of Lichfield District Council.
 - The application Ref 19/01572/FUL, dated 6 November 2019, was refused by notice dated 16 March 2020.
 - The development proposed is the alterations and extensions to existing dwelling and construction of new dwelling within curtilage.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr L McArdle against Lichfield District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description of the development and site address in the application form and Council's decision notice differ. I have used that given on the Council's decision notice in the heading above which more accurately describes the proposal and its address.
4. A Bat Emergence Survey (BES) was submitted as part of the appeal. There are no changes sought to the scheme and it remains essentially what was considered by the Council. Moreover, the Council and third parties have had the opportunity to comment on this document as part of the appeal process. As such, even though it relates to one of the Council's reasons for refusal, no party has been prejudiced by its submission at this stage.
5. Although the Council's first reason for refusal relates solely to outlook, it is clear from the Planning Officer's report and the submissions of the main parties that the Council also has concerns relating to the external amenity space within the development. This has subsequently informed the following main issues. As the main parties have addressed this matter as part of the appeal submissions, no party has been prejudiced in the appeal process.

Main Issues

6. The main issues are the effect of the proposal on:
 - the character and appearance of the surrounding area;

- the living conditions of the future occupants of the proposed development with particular reference to outlook and external amenity space; and
- bats as a protected species.

Reasons

Character and appearance

7. The host building at the appeal site is a detached house linked to the neighbouring dwelling with a single storey garage. It is orientated with its gable fronting the road and ridgeline running away, in contrast with the majority of other properties in the area which have gables to the side. The surrounding area comprises of predominantly 2-storey residential properties.
8. The proposed dwelling would be positioned in an elongated plot shape and, in my view, the length of the 2-storey building would overwhelm and dominate the plot. This massing of the resulting built form would be clearly visible in the street scene due to the spacing between the neighbouring building at No 24a Grange Lane (No 24a).
9. I recognise that the design draws from some of the architectural features of the host and neighbouring dwelling. However, due to the massing and length of the built form within its plot shape, the proposal would fail to harmonise with the pattern of housing and appear as an incongruous addition to the street scene. In this respect, the resulting built form would appear as an over-intensification of the site.
10. I have come to this conclusion noting the spacing between buildings, the change in levels to No 24a, steps in building lines and acknowledging that the area of the resulting plots would be similar to others in the street. However, this does not alter or outweigh my findings in regard to the massing and length of the proposed dwelling within its plot.
11. I therefore find that the proposed development would result in harm to the character and appearance of the surrounding area. The proposal would therefore conflict with the requirements of Policies CP3 and BE1 of the Lichfield District Local Plan Strategy 2008 - 2029 (adopted 2015) (LPS). These stipulate, amongst other things, that new development, should carefully respect the character of the surrounding area and development in terms of layout, size, scale, architectural design and public views. The proposal would also conflict with the guidance within the Council's Sustainable Design Supplementary Planning Document (2015, updated 2019) (SDSPD) which amongst other things seeks to encourage good design.
12. The identified policies of the LPS are consistent with the requirements of paragraph 127 of the National Planning Policy Framework (the Framework) which, amongst other things, promotes good design.

Living conditions

13. The Council have referred to guidance within the SDSPD under the subheading for overlooking. Nonetheless, I recognise that windows within the altered existing dwelling would face toward the blank wall of the proposed dwelling at a close distance giving a poor outlook from these windows. However, these are

- secondary windows, with each of the rooms being served by large windows either to the front or rear. As such, even considering the depth and size of the rooms, the lack of outlook from these side windows would not result in unacceptable living conditions for the future occupants of the existing property.
14. With regards to the external amenity space, I have been referred to the SDSPD and in particular its advice relating to the length of gardens, which it states should be at least 10m. There is no dispute between the parties that the proposed development would not comply with this figure.
 15. I note that many other existing properties do not have a garden length that meets this requirement. Moreover, the gardens would not be enclosed by buildings or trees and the total area of the garden for both the existing and proposed properties would have in excess of 65m² complying with the relevant guidance within the SDSPD.
 16. The altered existing property would have a garden shape and area which would provide a functional external amenity space, albeit with a length less than 10m. However, the length of the rear garden space for the proposed dwelling, combined with its shape, would limit its function as useable external amenity space. As a family sized dwelling, in my view, even allowing for flexibility in the Council's standards, this would result in unacceptable living conditions for future occupants of the proposed dwelling.
 17. As such, although I have found that the proposal would result in an acceptable outlook from within the development, I consider that the proposed dwelling would have unacceptable living conditions with particular reference to its external amenity space. The proposal would therefore conflict with the requirements of Policies BE1 and CP3 of the LPS which, amongst other things, broadly seek quality design that protects the amenity of residents and improves the quality of life. The proposal would also conflict with the requirements of the SDSPD in this regard. The Council have also referred to Policy CP1 of the LPS. However, this relates to the spatial strategy for the District and I do not consider it to be determinative on this matter.
 18. The proposal would also conflict with the requirements of paragraph 127 of the Framework which seeks, amongst other things, to ensure good standards of living conditions for occupants.

Protected species

19. The Conservation of Habitats and Species Regulations 2017 (the Regulations) transposed into UK law, the European Union Directive 92/43/EEC (the Habitats Directive). The Habitats Regulations include a strict system of protection for European sites and European Protected Species. Amongst other things, they place a duty on decision-makers to have regard to the requirements of the Habitats Directive in the exercise of their functions. In addition to the relevant provisions of the Wildlife and Countryside Act 1981, this role is also supported by the Framework.
20. The Framework says that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. This is reinforced in Policies NR3 and BE1 of the LPS as well as guidance contained within the Council's Biodiversity and Development Supplementary Planning

Document (SPD) which stipulates, amongst other things, that development will only be permitted where it protects, enhances, restores and implements appropriate conservation management of the biodiversity and/or geodiversity value of the land and buildings.

21. The submitted BES found that although Common and Soprano pipistrelle bats were recorded foraging and commuting across the site, there was no evidence of bats using the building. Moreover, the BES proposes a new bat roosting opportunity by installing a brick-built bat box providing on site enhancement.
22. As such, based on the evidence before me, the proposal would not lead to harm to bats as a protected species. It therefore complies with the requirements of Policies NR3 and BE1 of the LPS, the SPD and the Framework in this regard.

Other Matters

23. I note the appellants' references to various paragraphs of the Framework and in particular the presumption in favour of sustainable development. I recognise that the appeal property is in a sustainable location and that the proposed development would be of benefit to the local housing supply in delivering a windfall site and would make an effective use of land. However local and national planning policy would expect housing to be located sustainably and that is not a matter that attracts substantial weight over and above what would normally be expected. Moreover, a net gain of a single dwelling would only have a limited impact in the context of the overall housing supply, and I attach limited weight to the benefit in that regard.
24. I have also had regard to representations made by interested parties. However, as I am dismissing the appeal on other grounds, I have not pursued these matters further.

Conclusion

25. The proposal would not result in an unacceptable outlook for future occupants of the development and would not lead to harm to bats as a protected species. However, it would result in unacceptable living conditions for the future occupants of the proposed dwelling with particular reference to external amenity space.
26. Good design is a key aspect of sustainable development and the desirability of new development making a positive contribution to local character and distinctiveness. However, the proposed dwelling would have a harmful effect on the character and appearance of the area. As such, the proposed development would not represent sustainable development as sought by the Framework.
27. I have taken account of all the other matters raised including the benefits of the proposed development. However, none changes the balance of these findings and the harm I have identified. For the above reasons the appeal is dismissed.

Robert Walker

INSPECTOR