



Appeal Decision

Site Visit made on 2 December 2020

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2020

Appeal Ref: APP/C4615/W/20/3249218

29 Wolverhampton Road, Kingswinford, DY6 7HY

- 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 CJZ Design Ltd against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P19/1736, dated 6 December 2019, was refused by notice dated 31 January 2020.
 - The development proposed is the erection of 2 detached bungalows.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 detached bungalows at 29 Wolverhampton Road, Kingswinford, DY6 7HY in accordance with the terms of the application, Ref P19/1736, dated 6 December 2019, subject to the conditions set out in a schedule to this decision letter.

Preliminary Matters

2. A development of two detached dwellings has previously been approved on the site under extant planning permission ref P19/0559. The appeal scheme seeks to provide an alternative means of access to the site, this being the main difference between the schemes.
3. At the time of my site inspection the site had been extended to the side of the initial length of the proposed access. The resultant triangular area of land lies outside the site boundary defined on the submitted plans. For the avoidance of doubt and in the interests of fairness, I have considered the development as shown on the plans before the Council. This also includes a revised plan submitted during the course of the planning application showing an alternative location for parking to serve No29 and I have had regard to this plan in my determination of this appeal.

Main Issues

4. It is common ground between the main parties that the only matter in dispute is the effects of the alternative means of access to the proposed development. On the evidence before me, I find there is little reason to reach a different conclusion to the main parties. Accordingly, I have dealt with the appeal on this basis and the main issues are the effect of the proposed access on:
 - The character and appearance of the locality
 - Highway safety, and

- The living conditions of occupiers of 29 Wolverhampton Road with particular regard to noise and disturbance arising from the use of the proposed access.

Reasons

Character and appearance

5. Wolverhampton Road (A491) is a wide tree-lined road with pavements set between grass verges either side of the road. Development in the area is predominantly two-storey detached and semi-detached dwellings set behind modest front gardens with generous private gardens to the rear.
6. In the vicinity of the site the pattern of linear rows of development fronting on to the main road is interrupted by several areas of development extending behind frontage buildings and examples of units set back from the predominant building line. This has introduced various forms of access including a formal cul-de-sac roadway at Ambergate Drive, an informal gravelled access to development to the rear of Dawley Court immediately south of the site, and, shared driveways at 12-18 Wolverhampton Road.
7. The area and width of the plot of No29 is uncharacteristically large in comparison to the originally constructed development either side of the road. However, it narrows towards the road frontage where the proposal would utilise the existing driveway to the side of No29 and run adjacent to a partly constructed side extension.
8. To the site frontage a limited widening of the vehicle crossing resulting in the loss of a short length of the frontage wall and a small area of grass within the roadside verge would be required to facilitate an improved access. A narrow strip of land which the plans identify as accommodating small trees and bushes to the side of the proposed access had already been cleared at the time of my site inspection. In addition, a turning/passing facility would be formed in the front garden area of No29.
9. In this regard, the scale of the works and presence of mature vegetation within the neighbouring plot would substantially retain the existing frontage character. The wide driveway and increase in hard surfacing to form the turning/passing area would be similar in appearance to the majority of property frontages in the locality which provide hard surfacing for vehicle parking. Accordingly, there would be little discernible change to the character of the site frontage in the context of the locality.
10. The continuation of the driveway would require greater land-take than the previous scheme, thereby reducing the plot sizes of the proposed bungalows and the existing dwelling. However, the overall density of development would be similar and would provide plots commensurate with the scale of the dwellings and examples of other infill development in the locality.
11. Views of the driveway beyond the existing dwelling would be limited by the angled boundary and position of No29. Whilst this arrangement would contrast to the more formal roadway serving Ambergate Drive it would not be dissimilar to the gravelled single width driveway serving the terrace of four houses and garage blocks to the rear of Dawley Court. Although the roadway and adjacent 'courtyard' development would remain independent, the main views of the development would be in conjunction with the open setting of the latter buildings more than the regimented pattern of development north of the site.

In that context it would assimilate with the layout of development in the locality.

12. For the above reasons, I find that the proposed layout and access road, taking account of the particular circumstances of the site and adjacent backland development, would not cause harm to the local character and appearance of development. It would therefore be consistent with the requirements of Policies ENV2, ENV3 HOU1 and CSP4 of the Black Country Core Strategy (2011) (CS) and Policies S1, S6 and L1 of the Dudley Borough Development Strategy (2017) (DS) as they seek to secure development that protects and promotes local distinctiveness, character and quality of the locality.

Highway safety

13. The development would increase the use of the driveway and elevate the potential for opposing vehicles to meet close to the access point. However, the initial length of the driveway would be about 4.2m wide and taken with the ability to utilise the hardstand to the frontage of No29, would allow domestic vehicles to pass. This would minimise the potential requirement for inward-bound vehicles to wait within the main carriageway with an attendant concern for road safety through vehicle collision or risk to pavement users.
14. Although the driveway would reduce in width alongside No29, vehicular traffic within the site would be at a low level and benefit from good inter-visibility between the access and driveways. This would ensure that manoeuvring of vehicles about the site that could cause risk would be very limited.
15. Moreover, this arrangement would not be dissimilar to that of the extant permission which would require access via the single width opening adjacent to Dawley Court. However, that arrangement would have a greater propensity for increased frequency of opposing vehicle conflict on account of the number of residential units served by it.
16. Taken with the policy compliant level of parking shown for the proposed units and the revised plan showing parking capability to the rear of No29 that would facilitate use of the forecourt for vehicle passing, I find that the alternative means of access would cause no greater risk to highway safety than the arrangement approved for the extant scheme.
17. The provision of parking contained to the rear of No29 would be distinct from the predominant forecourt or side driveway parking of the locality. However, this would not be dissimilar to the arrangement at Dawley Court and would be an option open to the occupiers regardless of the outcome of this appeal. Furthermore, given the close proximity to the extended dwelling and position in views from main rearward-facing windows, there is little evidence to indicate why such an arrangement would not be practical.
18. For those reasons, the proposal would align with policies ENV2, ENV3, HOU1, HOU2, CSP4 and TRAN2 of the CS, and Policies S1, S6, S17 and L1 of the DS as they seek to secure sustainable development which provides acceptable levels of accessibility, safety and parking.

Living conditions

19. Given that it would serve only two new dwellings, the additional use of the driveway adjacent to No29 would be limited. The noise, and attendant potential

for disturbance associated its use would therefore also be at a very low level. The noise generation and disturbance would not be dissimilar to that experienced elsewhere in the vicinity through the use of the neighbouring forecourts/front gardens for the manoeuvring and parking of vehicles.

20. Noting that the approved garage to the side of No29 would provide a buffer to main living accommodation, any effects by way of noise or light spillage from vehicle headlights is unlikely to be other than fleeting. The use of part of the forecourt as a passing place may give rise to some additional disturbance, however, on the anticipated low level of use by occupiers of the new development and proposed bound surfacing, I do not consider that this would be so significant to warrant a refusal of planning permission.
21. For the above reasons, I find that the proposal would maintain a suitable standard of living conditions for occupiers of No29 and would thereby comply with Policies HOU1, HOU2, CSP4 of the CS and Policies S1 and L1 of the DS as they seek to minimise effects on living conditions and support wellbeing

Other Matters

22. An ecological survey of the site identified that badgers were active on the site in 2019. Badgers and their setts are protected under the Protection of Badgers Act 1992 (the Act). Paragraph 175 of the National Planning policy Framework (the Framework) states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
23. The appellant's ecologist identified that the works would result in unavoidable disturbance to a local population of badgers and interfere with an active badger sett. However, the report concluded that the anticipated impacts on badgers from development works, including those that would require a licence from Natural England, could be sufficiently mitigated and managed to avoid any harmful effects to a species protected by law.
24. Since the time of the initial report the appellant has undertaken further survey work and prepared a document for a licence from Natural England. However, it is unclear from the evidence before me as to whether that application proceeded or not. The document is dated from September 2019 and identifies that survey work indicated that the use of the site is fluid with the abandonment of old burrows and excavation of new ones, albeit that activity is considered to be at a level typical of a supplementary sett.
25. Some variation to the proposed mitigation and compensation measures found in the initial report was proposed. At the time of my site visit works to prepare the site had taken place but it is unclear as to the status of any avoidance, mitigation or compensation measures necessary. However, I find that the survey effort and suite of avoidance and mitigation measures proposed demonstrated that the development was capable of being implemented without conflict with the Act and consistent with Natural England's Standing Advice. Nevertheless, given the reported fluidity of activity in regard to new burrows and the potentially outdated timescale of the mitigation measures, I consider it would be necessary to carry out further survey work to inform a final mitigation and compensation plan and the timescale for implementation within the constraint of the licence window. This is consistent with the approach of the Council in respect of the extant permission.

26. Subject to a requirement to update and implement the necessary mitigation measures, I find the proposal would be consistent with the requirement of Policy ENV1 of the CS and the Framework.

Conditions

27. The appellant and Council have suggested conditions which I have considered alongside the advice in the Framework and Planning Practice Guidance. The majority replicate those of the extant permission and I find them to be reasonable and necessary in the circumstances of this case. However, some have been updated or edited for precision and clarity; I have re-ordered these and numbered them accordingly.
28. In addition to the standard time limits for implementation, I have imposed a condition specifying the relevant drawings as this provides certainty.
29. To protect ecological interests on the site an updated badger survey and mitigation/compensation scheme is necessary alongside a requirement to implement measures to conserve other protected species and their habitats on the site. The condition in relation to badgers is of necessity a pre-commencement one to ensure the conservation of a species protected by law.
30. To provide suitable access arrangements and adequate usable parking and turning areas to serve the existing and proposed development, and, in the interests of highway safety in the vicinity of the site, detail of the construction of those areas is reasonable and necessary.
31. A condition requiring a construction management plan for the site is necessary in the interests of local living conditions and highway safety. This condition is of necessity a pre-commencement one to maintain local amenity for the duration of the construction phase of the development.
32. To protect the character and appearance of the locality, conditions requiring details of the external materials of the buildings, site landscaping and means of enclosure are necessary.
33. To promote low carbon forms of transport and improved air quality, electric vehicle charging provision is reasonable and necessary. To minimise impact on air quality in the locality an emissions limit on gas boilers is also reasonable and necessary.
34. A condition restricting permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 is varied to limit its scope to that in relation to development rights that could result in excessive loss of privacy for neighbouring occupiers. I do not consider that in this case that there is a clear justification for restricting national permitted development rights in relation to porches or outbuildings.

Conclusion

35. For the reasons above, I conclude that the appeal should succeed.

R Hitchcock

INSPECTOR

Schedule of Conditions to planning permission P19/1736

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1227-100A Location Plan; 1227_002B Site Layout Plan Plot Set Out; 1227-003 Drainage Plan Hard Landscape Level Data; 1227-004 Landscape Scheme; 1227-005 Landscape Scheme Coloured; 1114-006 Plot 1 Working Plans and Elevations; 1114-007 Plot 1 Working Plans Section and Elevations; 1114-08 Plot 2 Working Plans and Elevations; 1114-09 Plot 2 Working Plans Section and Elevations; 1114-010 Garage Block Working Plans and Elevations.
- 3) No development shall take place until:
 - an updated survey for badgers on the site has been undertaken to establish the current status of setts and burrows within it; and
 - the findings of the survey and any subsequent necessary avoidance and/or mitigation and/or compensation measures (including their future management) have been submitted to and approved in writing by the Local Planning Authority.

Thereafter the development shall be completed in accordance with the agreed measures.

- 4) The development hereby approved shall be completed in accordance with the nature conservation protection, avoidance and mitigation measures which are specified in Chapters 6 and 7 of the submitted Ecology and Protected Species Assessment by Camlad Ecology Ltd dated April 2019 for protected species and their habitats, other than badgers. The nature conservation enhancement and mitigation works shall thereafter be retained and maintained in accordance with the recommendations of the nature conservation report assessment for the duration of the development.
- 5) No above ground development shall commence until details of the access into the site, together with parking and turning areas [including details of lines, widths, levels, gradients, cross sections, drainage and lighting] have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the access into the site, together with the parking and turning areas within the site have been laid out in accordance with the approved details. These areas shall thereafter be retained and not used for any other purpose for the lifetime of the development.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - The parking of vehicles of site operatives and visitors;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;

- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - Wheel washing facilities;
 - Measures to control the emission of noise, dust and dirt during construction; and,
 - A scheme for recycling/disposing of waste resulting from demolition and construction works.
- 7) No above ground development shall take place 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.
- 8) No dwelling shall be occupied until details of the electric vehicle charging points to be provided for the dwellings in accordance with the Council's standard (Parking Standards SPD), have been submitted to and approved in writing by the local planning authority. The electric vehicle charging points shall be provided in accordance with the approved details before first occupation and shall be maintained for the life of the development.
- 9) 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.
- 10) No above ground development shall begin until details of the types, sizes and locations of the boundary treatments around the site and between the proposed plots has been submitted to and approved in writing by the local planning authority. The boundary treatments shall be carried out in complete accordance with the approved details prior to the occupation of the dwellings hereby approved and shall thereafter retained for the lifetime of the development.
- 11) No above ground development shall take place (excluding demolition, site clearance and initial ground works) until full details of the soft landscaping scheme for the site have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented in accordance with the approved details before the end of the first planting season following first occupation of the development. Any trees or shrubs planted in pursuance of this permission including any planting in replacement for which is removed, uprooted, severely damaged, destroyed or dies within a period of five years from the date of planting shall be replaced by trees or shrubs of the same size and species and in the same place.
- 12) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no development referred to in Schedule 2, Part 1, Classes A, B and C of that Order shall be carried out without the express grant of planning permission.

End of schedule