
Appeal Decision

Site visit made on 24 November 2020

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th December 2020

Appeal Ref: APP/R1845/W/20/3257948

20 Sutton Park Road, Kidderminster, DY11 6LD.

- 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 Prestbury Ltd. against the decision of Wyre Forest District Council.
 - The application Ref. 19/0816/FUL, dated 17 December 2019, was refused by notice dated 20 May 2020.
 - The development proposed is the erection of 3 No. detached houses and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 No. detached houses and associated works, at 20 Sutton Park Road, Kidderminster, DY11 6LD in accordance with the terms of the application, Ref.19/0816/FUL, dated 17 December 2019 and the plans submitted with it, as amended, subject to the conditions set out in the attached Schedule.

Preliminary matter

2. The appellant has submitted some revised plans of the access to the site and the siting of the proposed dwellings. Having regard to the principles set out in the case of *Wheatcroft* these changes are minor in nature, mainly dealing with technical points, and do not alter the substance of the proposal. I will therefore have regard to them.

Main Issues

3. The main issues are:
 - Whether the Council can demonstrate an adequate supply of new housing sites;
 - the effect of the proposal on the living conditions and amenity of the occupiers of neighbouring properties;
 - The effect on highway safety; and
 - Whether the proposed scheme makes reasonable provision for the storage and disposal of waste.

Reasons

Background

4. The appeal site comprises an existing detached dwelling and its garden which lie in a backland position to the rear of semi-detached houses fronting Sutton Park Road in a suburban part of Kidderminster. The existing access from this road rises steeply to the appeal site and, in part, the driveway runs underneath the canopy of mature trees. The area around the appeal site is formed by the gardens of neighbouring houses and the ones to the rear (south) face Summer Road.
5. It is proposed to erect three detached houses on the garden (in total) either side of the existing house. The decision notice refers specifically to the house proposed on Plot 1 which is to the west of the existing house.

Housing land supply and principle of development

6. In terms of housing land supply, the appellant submits that the Council has not met its housing commitments as the Housing Topic Paper (June 2020) indicates that 'there has been a shortfall of 319 dwellings against a 276 dpa requirement in the 4 years since 2016/7. This is the equivalent of 64 dwellings per year'. However, the Council advise that the current requirement is 248 dpa (dwellings per annum) and this is reflected in the Housing Delivery Test results for 2018 and 2019 which establish that the Council has delivered appropriately.
7. Having regard to the guidance in paragraphs 74 and 75 and footnote 7 of the National Planning Policy Framework (the Framework), I am satisfied that the Council is meeting its present housing requirements and that the higher requirement mentioned to meet the identified need is a matter for the examination of the Emerging Local Plan. On that basis, paragraph 11(d) of the Framework is not engaged in this case.
8. Although some policies in the Core Strategy are recognised to be 'out of date', the site lies in a sustainable location in the large settlement of Kidderminster where the principle of new development is generally acceptable subject to site specific issues. Although the site is a house and garden and not 'previously developed land' I agree with the Council that it is suitable in principle as a 'windfall' site. Therefore, Site Allocations and Policies Local Plan (SAL) Policy SAL.CC1 on highway safety is the most relevant policy for the determination of the appeal.

Effect on living conditions

9. The Council's main concern is in respect of the relationship of the proposed house on Plot 1 to neighbouring properties to the front (Sutton Park Road) and rear of the site (Summer Road) with the objection that there would be overlooking resulting in a loss of privacy and amenity for the occupiers of these properties. In addition to this issue, as set out in the first reason for refusal, the Council adds in its representations that the scale of the building proposed on Plot 1 would have an oppressive and imposing effect on those neighbouring residents.
10. Plot 1 lies on the most elevated part of the site to the west of the existing house. The land slopes away steeply to the north of the plot and rises moderately to the south and this general relationship is reasonably shown in

the cross-section on the additional drawing 3856-06D. There is also established vegetation on the northern, western and southern boundaries of this plot. Further, at my visit, as well as looking at the general relationship at ground level, I looked out of the existing first floor windows of the existing (vacant) property.

11. Dealing with the relationship with the Sutton Park Road properties first, the site plan shows that the footprint of the house and the parking space are outside of the spread of the existing vegetation along the boundary. I acknowledge the Council's concern that the trees and shrubs cannot be relied on in the long term but it is not unreasonable to have regard to their presence at the moment, and that further planting can be conditioned and retained so that it becomes established. In this context the cross-section shows that views from the first floor window of the new house on Plot 1 would be towards the upper part of the roof of No.19 Sutton Park Road and above and not to habitable rooms or the garden. This was also my observation from the first floor window of the existing house.
12. In terms of whether the proposed bulk of building would be too dominant, when standing in Sutton Park Road it appeared to me that the rear aspect of these properties was mainly towards the bank of rising land with the vegetation appearing above this. Given the set back from the site boundary and the gap to the existing house on the site, I find that these properties on the main road frontage would not be dominated by the scale or position of the additional building work and there is no clear justification for only a single storey property on Plot 1.
13. Turning to the relationship with the properties to the south in Summer Road, the site plans shows that there would be a distance of about 10.4m from windows in the new house to the site boundary. The window in the gable would be closer but the corresponding part of the site extends further. This distance is generally regarded as providing an acceptable relationship between windows measured 'rear to rear' and in this case there is a change in levels and existing boundary vegetation which contain the site and helps avoid material overlooking. Bearing in mind the location of the site is in a suburban area which is highly developed, this distance is an acceptable one for a two storey property and would not result in overlooking or have a dominating effect. The area to the west of Plot 1 is a rear access way to other parking facilities.
14. Overall, having regard to the different ground levels and the existing and potential landscaping, I am satisfied that the proposed two storey house on Plot 1 would not cause a harmful level of overlooking of neighbouring properties or dominate their aspect. The living conditions of the occupiers of these properties would be reasonably maintained. I therefore find no conflict with the guidance in paragraph 127(f) of the Framework.

Effect on highway safety

15. The Council's objection to the scheme, on the advice of the highway authority, relates to the gradient of the private access drive, the mainly single width carriageway and the lack of forward visibility around the bend towards the top of the drive.
16. The gradient of the existing drive ranges from 1:6 to 1:16 over its length of about 72m whereas local policy in the Streetscape Design Guidance Guide

(adopted by Worcestershire County Council in Spring 2020) recommends a maximum gradient of 1:20 for the first 10 metres for side roads and Manual for Streets advises a maximum gradient of 1:12. Moreover, for mobility reasons the maximum slope recommended for wheelchair users is 1:12. The highway authority stresses that under the Public Sector Equality Duty there is an obligation to ensure that persons with protected characteristics are not disadvantaged and in this case the proposed gradient of the driveway for the new dwellings would greatly exceed recognised standards.

17. The proposal is to regrade the access driveway so that the first 10m is at a gradient of 1:11, close to the potential maximum of 1:12, and thereafter at an average gradient of 1:7.5. This alteration would be in conjunction with the widening of the access drive to 4.1m for the first 25m and thereafter make it 3.5m wide, together with the introduction of a passing bay partway up the initial access approach.
18. From the evidence presented and my observations at the site visit, the existing access to the dwelling does not meet present day standards because of its steepness, narrow width and a lack of forward visibility. These factors would be likely to restrict the people who could reasonably occupy the property. Such limitations should normally restrict further development on a site served off the same access. However, in this case the proposal includes work to improve the width of the access and introduce a passing place and this would help alleviate the present conflict of a vehicle exiting the access being faced with a vehicle entering the private driveway from the highway at the same time. I also noted at the visit that Sutton Park Road is relatively straight at this point and there is good visibility in both directions at the junction.
19. I conclude on this issue that while the proposal would involve improvements to the existing access/private driveway which would improve highway safety, it would still be substandard, particularly for people with a mobility disability, and the private drive would be subject to the additional traffic generation resulting from three additional properties. There would be limited conflict with Policy SAL.CC1.

Waste disposal

20. Under this issue the Council's concern relates to the distance between the new properties and the highway and the gradient of the driveway as the means of having household waste collected. The Council refers to the Streetscape Design Guide which indicates that refuse collection points should be provided within 25 metres of the highway.
21. The amended plans of the driveway show the formation a new bin storage point located 25m from the highway which would meet the above guidance. Clearly the occupiers of the proposed houses would have to walk some distance to place bins there for collection, together with the inherent gradient in the driveway, but this would be a private rather than a public factor.

Other matters

22. Some neighbours at application stage raised objection about the development proposed resulting in the loss of present long distance views, but the protection of such private views over other land is beyond the scope of the planning system exercised in the public interest and I have considered above the local

amenity of the occupiers of neighbouring housing. Others expressed concern about the future maintenance of trees and shrubs but this is generally a private matter for the landowners/occupiers.

Planning balance

23. At the start of the planning balance I have borne in mind the requirements of the Public Sector Equality Duty. On the main issues I have found that the proposed house on Plot 1 would not have a harmful effect on the amenity or living conditions of the occupiers of adjacent properties. On highway aspects there would be both benefits and disadvantages associated with the proposal. The existing access to the dwelling does not meet current standards particularly for its gradient, but the proposal would improve the access by making it less steep at the entrance, by widening the driveway and by creating a passing place near the entrance. These alterations would be a benefit to highway safety. Nevertheless, the resulting overall gradient of the access would not accord with current guidelines and it would be steep to use by pedestrians, cyclists and people with a mobility disability, and in wintry conditions. As such I find that there would be limited conflict with the relevant SAL Policy but not paragraph 109 of the Framework.
24. These factors have to be balanced with the benefits of the development. The proposal would result in three additional residential units and the Framework seeks to significantly boost the supply of housing. There would also be accord with section 11 of the Framework which seeks to make effective use of land particularly where the prevailing character of an area is maintained.
25. I have considered the appeal decisions brought to my attention by the main parties but none appear to involve similar circumstances to the appeal proposal which I have assessed on its individual merits, the present development plan and current national guidance.
26. When the Framework is read as a whole, I find that the balance of considerations supports the proposal which constitutes 'sustainable development'. Moreover, this accord and the net benefits that arise from the other considerations outweighs the limited conflict with the development plan and this indicates that the appeal should be allowed.

Conditions

27. The Council recommends that 18 conditions be imposed on any permission which I will consider under the same numbering. Some of these conditions are worded as 'pre-commencement conditions' which the appellant objects to as they would hold up acceptable development. I have considered the conditions under the tests set out in paragraph 55 of the Framework and revised them where necessary and appropriate to relate to above ground works.
28. In addition to the statutory condition on the commencement of development, I agree that further details are necessary to ensure an acceptable form of development, in respect of external materials, floor levels, boundary treatment and biodiversity and I will impose conditions 2, 3, 4, and 5. For similar reasons to aid biodiversity I will impose conditions 6, 7, and 8. A planting scheme is also necessary in addition to the condition requiring the retention of the existing vegetation on the boundaries of the site as well as new planting and I will impose conditions 9 and 16, revised accordingly.

29. In order to improve highway safety and promote sustainable transport, I will impose conditions 10, 12, 13, 14 and 15 although I will amend condition 12 to ensure that the access/driveway improvements are completed before the rest of the development is started.
30. Condition 11 on the removal of specific 'permitted development rights' is necessary and justified in this case as further fenestration or extensions may have an imposing effect on the occupiers of neighbouring properties but I will amend it to relate to the development permitted. I will impose condition 17 regarding the provision of surface water drainage as this is needed to avoid flooding.
31. Finally, I will impose condition 18 to specify the plans that are approved in the interests of clarity and to ensure that the proposed houses fit in with their surroundings.

David Murray

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) No construction shall take place above ground level until details of types and colours of all external materials, including hard surfacing have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 3) No construction shall take place above ground level until details of finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 4) No construction shall take place above ground level until details of the boundary treatment have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) No construction shall take place above ground level until details of at least 3 bird nesting boxes and 3 bat boxes/bricks/tubes have been submitted to and approved in writing by the Local Planning Authority. The bird/bat boxes shall be installed in accordance with the approved details and thereafter maintained.
- 6) No site clearance works (including removal of vegetation, demolition of buildings (garage/outbuilding) or groundworks) shall be carried out without the presence of a suitably qualified Ecological Clerk of Works, and no development including construction work shall be undertaken until it has been agreed with the Ecological Clerk of Works, and a Letter of Compliance has been submitted to and approved in writing by the Local Planning Authority.
- 7) The development hereby permitted shall be implemented in accordance with the scheme of mitigation measures as set out in the 'Ecological Walk-Over Survey', (prepared by Betts Ecology and Estates, dated October 2019, reference S:6843/J001244), submitted with the application.
- 8) No development (including preparatory ground works) shall be carried out until further bat surveys have been carried out in accordance with the recommendations outlined in the Daytime Bat Assessment (prepared by Betts Ecology and Estates, dated February 2020) submitted with the application, and a report of findings submitted to and approved in writing by the Local Planning Authority. The report will include appropriate measures to safeguard the protected bat species. Such measures shall be carried out in accordance with a programme to be incorporated in the report and agreed in writing by the Local Planning Authority.
- 9) No construction shall take place above ground level until a scheme showing retention of the existing boundary hedges/shrubs and full details of all proposed planting, and the proposed times of planting, have been approved in writing by the Local Planning Authority. The proposed planting scheme shall include wildlife friendly nectar-rich/native seed/fruit bearing plant species. All planting shall be carried out prior to the occupation of any part of the development or in accordance with the

timetable agreed with the Local Planning Authority. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season thereafter.

- 10) The development hereby approved shall only be carried out with low level lighting bollards along the proposed access road and driveways unless agreed in writing by the Local Planning Authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of the dwellings approved, including the insertion of new windows or alterations to the roof, as set out in Schedule 2, Part 1, Classes A, B and C shall be carried out without further subsequent planning approval of the Local Planning Authority.
- 12) No other construction work shall be undertaken on site until the widened access including width and gradient adjustments on the driveway, passing bay and turning and facility shown on Drawing No. 3856-04G have been properly consolidated, surfaced and drained with details to be submitted in writing to and approved by the Local Planning Authority. These areas shall thereafter be retained and maintained for their specific purposes along with the parking spaces for each dwelling.
- 13) Prior to occupation, the 12m forward visibility splay at the top of the driveway shown on Drawing No. 205345/SK/02 (Appendix C, Vectos Technical Note) shall be properly provided with no obstruction above 600mm above ground level. This splay shall thereafter be maintained free of obstruction.
- 14) The development hereby permitted shall not be occupied until sheltered, secure and accessible cycle parking the new dwellings to comply with the Council's adopted Streetscape Design Guide has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority. Thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 15) The development hereby approved shall not be occupied until each dwelling has been fitted with infrastructure to support low emission vehicles. For the applicant's benefit the current specification is 7kW and thereafter such a power point shall always be kept available and maintained for the use of electric vehicles.
- 16) The protection of any existing tree to be retained in accordance with the approved plans and particulars (as outlined in the submitted BS5837 Arboricultural Report and tree protection plan, prepared by Marlow Consulting Limited, dated 22 January 2020) shall be achieved as follows:
 - a) no equipment, machinery or materials shall be brought onto the site for the purposes of the development until fencing has been erected in accordance with plans and particulars as referenced above which shall have been previously submitted to and approved by the Local Planning Authority in writing;

- b) if that fencing is broken or removed during the course of carrying out the development it shall be immediately repaired or replaced to the satisfaction of the Local Planning Authority;
 - c) the fencing shall be maintained in position to the satisfaction of the Local Planning Authority until all equipment, machinery and surplus materials have been moved from the site;
 - d) within any area fenced in accordance with this condition nothing shall be stored placed or disposed of above or below the ground, the ground level shall not be altered, no excavations shall be made, no mixing or use of other contamination materials or substances shall take place, nor shall any fires be lit without the prior written consent of the authority; and
 - e) no equipment, machinery or structure shall be attached to or supported by a retained tree.
 - f) These measures shall apply for the duration of the construction phase and until all equipment; machinery and surplus materials have been removed from the site.
- 17) Surface water from the development shall discharge to infiltration drainage designed to cope with a 1 in 100 year event plus 30% allowance for climate change. If it emerges that infiltration drainage is not possible on this site, an alternative method of surface water disposal should be submitted for approval. There shall be no increase in runoff from the site compared to the pre-development situation up to the 1 in 100 year event plus 30% allowance for climate change. The drainage shall be implemented prior to the first use of the development and thereafter maintained.
- 18) The development hereby approved shall be carried out in accordance with the following plans/drawings: - Location Plan 1:1250, - 3856- 01B - 3856-02B - 3856-03B - 3856-04G - 3856-05C - 3856-06D - 3856-902 - 205345/SK/02 (Appendix C, Vectos Technical Note) - BS5837 Arboricultural Report and tree protection plan, prepared by Marlow Consulting Limited, dated 22 January 2020.