
Appeal Decision

Site visit made on 4 May 2021

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2021

Appeal Ref: APP/C4615/W/21/3267438
220 Spies Lane, Halesowen B62 9SW

- 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 Singh against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P20/1396, dated 14 September 2020, was refused by notice dated 11 December 2020.
 - The development proposed is described as demolition of existing chalet style bungalow and detached double garage, and proposed new build of 2 No. dormer bungalows, a flat-over-garages and 1 No. bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has submitted some information related to other 'backland' development applications the Council has approved. As I consider no one would be prejudiced if I accept the information at this stage, I have made my decision taking it into account.

Main Issues

3. The main issues are:
 - whether the principle of the proposal is acceptable, having regard to relevant local and national planning policies and guidance;
 - the effect of the proposal on the character or appearance of the area;
 - the effect of the proposal on the living conditions of occupiers of existing neighbouring properties;
 - whether the proposal would provide satisfactory living conditions for future occupiers, and
 - whether the proposal would have an unacceptable impact on highway safety.

Reasons

Principle

4. The site comprises the existing dwelling with access off Spies Lane. There is a hard-standing parking area at the front of the dwelling and a driveway to the

side, which extends and leads to a detached garage at the rear of the property. There is an area of land immediately to the rear of the dwelling which extends a little beyond the garage before reaching a line of concrete posts of the type that support timber fence panels. There does not seem to be any dispute between the parties that the area of land immediately to the rear of the dwelling and extending just beyond the garage is the rear garden of the host dwelling.

5. The appeal site extends beyond the concrete posts referred to and includes an area of land that is locked between, and to the rear of, the rear gardens of the host dwelling and several neighbouring properties on Spies Lane, Lockington Croft and Goodrest Avenue. I do not have detailed evidence of the historic use of this area of land. The Council consider it to be garden associated with the host dwelling and the appellant considers it to be a disused private allotment.
6. Policy L1 of the Dudley Borough Development Strategy 2017, (DBDS), supports housing development on previously developed land (PDL) "*...and on sites in sustainable locations close to public transport facilities and links...*", subject to meeting certain criteria. In summary, these criteria are: the design is appropriate in terms of form, siting, scale and mass and appropriate to the locality; the living conditions of occupiers of existing neighbouring properties not being harmed; the living conditions for future occupiers being satisfactory; an adequate access, parking and manoeuvring areas are provided and there would be no detrimental impact on highway safety.
7. There is no dispute between the parties regarding the proximity of the site to services, facilities and public transport links, and I am satisfied that the location of the site is within proximity of the facilities, services and public transport links required to meet the day-to-day needs of future occupiers.
8. The definition of PDL in the Framework excludes land such as residential gardens and allotments in built up areas. Therefore, given that the site is located within a built up area, regardless of whether the land to the rear of the garage is residential garden land or a combination of domestic garden and private allotment, it does not constitute PDL as defined in the National Planning Policy Framework (the Framework).
9. Taking account of the definition of PDL in the Framework, the Council's New Housing Development Supplementary Planning Document (Revised 2013), (NHDSPD), advises that the principle of new housing development on residential gardens is not now immediately accepted. That said, the NHDSPD acknowledges that proposals for new housing development on residential garden land also need to be considered within the context of making the most efficient use of land and the broad concept of sustainable development.
10. Hence, although the site does not constitute PDL, as noted, Policy L1 of the DBDS supports new housing development on sites in sustainable locations close to public transport links, subject to meeting certain criteria. Additionally, the NHDSPD does not rule out the principle of new housing development on domestic garden land, provided it is "*appropriate garden land development*." I have concluded that the site is in a suitable location. Therefore, if the proposal meets the criteria outlined in Policy L1 and is deemed to be "*appropriate garden land development*", as advised in the NHDSPD, then the proposal would be acceptable in principle.

Character and appearance

11. The site is located within a built-up residential area with a mix of property types and sizes, including detached, semi-detached, terraced dwellings and a few blocks of flats. The property designs vary, and a mixed palette of materials is used on the external elevations and roof slopes. The predominant pattern of development is of properties fronting a road with gardens/hard standing to the front and gardens to the rear. Plot sizes vary, though most have generous to modest sized areas of private outdoor space with the ratio of built form to garden area mainly being in favour of garden area. As noted by the appellant, there are a few examples of backland developments within the vicinity of the site, one of which is directly opposite the site, on Spies Close. Although I do not know which policies these developments were determined in relation to, given their existence close to the site, I consider the backland nature of the proposal in itself, in this instance, would not be out of keeping with or detrimental to the character or appearance of the area.
12. The proposal includes demolishing the existing dormer bungalow and erecting one bungalow, 2 No. dormer bungalows, a block of 3 No. garages with a flat above and associated works. I consider the form, scale, and mass of the proposed properties to be in keeping with the area. One of the dormer bungalows would replace the existing dormer bungalow, oriented the same way, and the other 3 No. residential units would be to the rear of the site. The plot sizes would vary, and in the case of plot B it would be an irregular shape. The Council has concluded that the irregular shape of plot B would result in the private outdoor space not adhering to the guidance in the NHDSPD. However, the overall rear garden area for plot B would be around 125 sqm, which is nearly double the minimum area recommended in the NHDSPD. I consider the sizes of plots A, B and D and the extent of private outdoor space that would be provided would be commensurate with the modest sized plots and garden areas of some of the properties within the area.
13. In the case of plot C, however, ie the proposed 2 bedroom flat above 3 No. garages, no private outdoor space would be provided. The guidance in the NHDSPD recommends a minimum area of 30 sqm for a flat. Due to the lack of outdoor space associated with plot C, I consider the proposal would erode the character of the area. For this reason, notwithstanding my conclusions regarding backland development and the proposed garden area associated with plot b, I conclude that the proposal does not accord with policies CSP4, HOU2, ENV2 and ENV3 of the Black Country Core Strategy 2011, (BCCS), L1 of the DBDS or design policies in the Framework. These policies collectively, and among other things, seek to ensure new development is of high-quality design and is sympathetic to, protects and promotes local distinctiveness and preserves (or enhances) local character.

Living conditions – existing occupiers

14. The ridge height of the proposed dormer bungalow on plot B would be around 6.2 m high; the front elevation of this property would be around 10 m from the centre of the rear gardens of Nos 37 and 39 Lockington Croft. Given this relationship, even with boundary treatment in place, I consider the proposed dormer bungalow on plot B would appear overbearing to existing occupiers of Nos 37 and 39 Lockington Croft when using their rear private outdoor space.

15. The ridge height of the proposed building on plot C would be around 7.4 m high. The building would be sited close to the garden boundaries of properties on Lockington Croft and Goodcrest Avenue. Although the appellant suggests that it will mainly be the roof of the building that would be visible from neighbouring rear gardens, the plans clearly show that the first floor of the building and its roof would rise substantially above the boundary fence. I consider the proposed building on plot C would appear overbearing to existing occupiers of the adjacent properties on Lockington Croft and Goodcrest Avenue when using their rear private outdoor space, which would not be offset by the presence of the existing 9-storey tower block within the vicinity of the site.
16. Plot B would have a dormer bungalow sited within it. The Council raised concerns about the privacy levels of occupiers of existing properties on Lockington Croft due to the proposed dormer windows that would face north easterly. However, the said dormer windows are proposed to have fixed frosted panels installed within them. As such, I consider the privacy levels of occupiers of existing properties on Lockington Croft would be retained.
17. As with the proposed property on plot B, the proposed dormer bungalow on plot A would also have fixed frosted glass in the dormer windows facing number 222 Spies Lane. As such, I consider that the proposal would not harm the privacy levels of existing occupiers of No. 222 Spies Lane.
18. The intensified use of the site would include additional traffic going to and from the rear of the site to serve 3 properties, which has the potential to result in noise disturbance to existing occupiers of adjacent properties. However, the proposal includes the use of a low noise asphalt surface on the driveway with traffic calming strips. Suitable boundary treatments could also be retained or erected, and vehicles would be moving slowly. Bearing these factors in mind, I conclude that the proposed development would not result in unacceptable noise disturbance to occupiers of existing neighbouring properties.
19. Notwithstanding my conclusions regarding privacy levels and noise disturbance, as I consider the proposed buildings on plots B and C would have an overbearing impact on the occupiers of neighbouring properties on Lockington Croft and Goodcrest Avenue whilst using their private rear outdoor space, I conclude that the proposal would have a detrimental effect on the occupiers of existing neighbouring properties. As such, the proposal does not accord with Policy L1 of the DBDS, sub paragraph 127 (f) in the Framework and guidance in the NHDSPD which, among other things, seek to protect the living conditions of occupiers of existing neighbouring properties.

Living conditions – future occupiers

20. Due to the lack of proposed private garden space for future occupiers of the flat on plot C, I consider the proposal would not provide satisfactory living conditions for future occupiers of the proposed flat regarding private outdoor space.
21. Additionally, although the proposed fixed frosted glass windows in the dormer bungalows on plots A and B would ensure privacy levels are retained for occupiers of existing neighbouring properties, as a consequence of this proposed arrangement, there would be no outlook for future occupiers from the upper floor bedrooms of the proposed bungalow on plot B, and no outlook from one of the upper floor bedroom windows of the proposed bungalow on plot A.

Furthermore, I consider the proposed side window on the 2nd upper floor bedroom window of the proposed bungalow on plot A would not provide a satisfactory outlook.

22. The Council has expressed concerns regarding the rear garden depth of plot B as it would not accord with some of the guidance in the NHDSPD. However, I have concluded above that the proposed garden area of plot B would be nearly double the minimum area recommended in the NHDSPD. As such, I consider that the proposal would provide a useable, satisfactory private outdoor garden area for future occupiers of plot B.
23. Notwithstanding my conclusion regarding the proposed private outdoor space to be associated with plot B, as the proposal would not provide any private outdoor space for future occupiers of the flat on plot C, and the proposal would not provide a satisfactory outlook from the upper floor bedroom windows for future occupiers of the proposed properties on plots A and B, I conclude that the proposal would not provide satisfactory living conditions for future occupiers of these properties. As such the proposal would not accord with Policy L1 of the DBDS, sub paragraph 127 (f) in the Framework and guidance in the NHDSPD which, among other things, seek to ensure new developments provide satisfactory living conditions for future occupiers.

Highway safety

24. The width of the access would be altered to 5.5 m and the driveway along the northern boundary of the site would be widened to 4.1 m and extended to serve the proposed properties to the rear of the site. I consider the widths of the access and driveway would be adequate to serve the proposed residential units. However, as noted, the proposal would intensify the use of the access; as the appellant does not have control of the land immediately north of the northern boundary of the site, and no mechanism has been proposed to ensure an appropriate pedestrian visibility splay could be provided and maintained at the footway, I consider the location of the access would threaten pedestrian safety.
25. On-site car parking would be provided for all the residential units. However, the layout would be such that for the dwelling on plot B the 2 associated car parking spaces, ie 2 No. of the proposed single garages, would be remote from the plot. Additionally, the 2 No. spaces proposed for the dwelling on plot D would be arranged in tandem. Car parking for the flat on plot C would be the 3rd garage. I consider it likely at times that for convenience, cars would not be parked in the garages and cars would not be parked in tandem. Additionally, cars may be parked on the driveway close to plot B. Because of any of these outcomes, the proposed driveway and turning areas would be obstructed, which could prevent emergency service vehicles accessing and/or turning within the site.
26. I consider the refuse/recycling bin collection area proposed towards the front of the site serving all the dwellings, along with the proposed individual refuse/recycling storage areas for each of the properties, would provide satisfactory refuse/recycling storage and collection arrangements to serve the proposed development.
27. Notwithstanding my conclusion regarding refuse/recycling storage and collection, I consider the site layout is not suitably designed in respect of

access, parking and turning areas. I therefore conclude that the proposal would have an unacceptable impact on highway safety. As such, the proposal does not accord with Policy TRAN2 of the BCCS, policies L1, S6 and S17 of the DBDS, paragraph 109 of the Framework or guidance in the Parking Standards Supplementary Planning Document. These policies and guidance require, among other things, new developments to provide adequate access, parking and turning areas with no detrimental effect on highway safety.

Planning Balance and Conclusion

28. I acknowledge the advice in the Framework regarding the important contribution small and medium sized sites can make to meeting the housing needs of an area. However, I note that sub paragraph 68 (c) of the Framework advises that great weight should be given to *suitable* windfall sites within existing settlements. I have found that the site is not suitable for the reasons outlined. Consequently, I attach limited weight to the site being a small windfall site.
29. Paragraph 59 of the Framework refers to the Government's objective of boosting the supply of homes. I accept that an additional 3 residential units (over and above the one that exists) would make a small contribution to meeting this objective and the housing needs of the area. However, as the contribution would be small, I attach limited weight to this factor.
30. I appreciate that the appellant wishes to find an alternative use for the site due to ill health, maintenance difficulties and security issues. I also accept that the proposal may deter anti-social behaviour to a small degree. However, I attach limited weight to each of these matters.
31. The appellant advises that the site is within a suitable location, that alterations to the access would provide an improvement to highway safety and that installing electric vehicle charging points would encourage the use of more environmentally friendly motor vehicles. However, these are matters that are required by local and national planning policies.
32. Bearing these factors in mind, and notwithstanding my conclusions regarding backland development, the garden area associated with plot B, privacy levels, noise disturbance and refuse/recycling arrangements, I consider that there are no other considerations that lead me to conclude other than in accordance with the development plan. Therefore, for the reasons outlined, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR