



Appeal Decision

Site Visit made on 21 September 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th October 2021

Appeal Ref: APP/C4615/W/21/3276446

Land adjacent to 16 Caroline Street, Caroline Street, Dudley, DY2 7DZ

- 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 Irfan Bilal against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P21/0362, dated 23 February 2021, was refused by notice dated 20 April 2021.
 - The development proposed is construction of detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the application form, removing elements that are not acts of development. Although different to that given on the decision notice, no confirmation that a change was agreed has been provided.
3. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. The parties have had the opportunity to comment on this as part of their appeal submissions. There have been no fundamental changes relevant to the main issues in this appeal.
4. The appellant provided a Survey Details for Trees as part of their appeal submissions. However, the accompanying plans and the biodiversity survey referred to in their appeal statement were not provided at the outset of the appeal.
5. Therefore, I cannot be satisfied that parties, including third parties, would have been aware of these or have had sufficient and fair opportunity to comment on them. In order to avoid prejudice to the interested parties I have assessed the scheme on the information that was provided at the start of the appeal and upon which notification took place.

Main Issues

6. The main issues of the appeal are:
 - The effect of the proposed development on the character and appearance of the area,
 - Whether the proposed development would provide appropriate living conditions for future occupiers, with particular regard to outdoor space,

- The effect of the proposed development on the living conditions of the occupiers of 15 and 16 Caroline Street, with particular regard to privacy, outlook, daylight/sunlight and privacy; and
- The effect of the proposed development on biodiversity.

Reasons

Character and Appearance

7. There are several mature trees on and adjacent to the appeal site. The location of the plot close to a junction means that these are relatively prominent in public views along nearby streets. Along with others in the surrounding streets, these trees help soften the appearance of the largely dense built form and contribute positively to the character and appearance of the area.
8. The tree to the front of the site would be removed and the dwelling would be partly within and close to the canopies of trees that overhang the site. A Survey Details for Trees has been submitted that refers to health and safety concerns over certain trees and that retention of some would not be possible with efforts to repair or reconstruct boundary walls.
9. However, there is no associated plan/drawing or Arboricultural Impact Assessment providing detailed analysis of the effect of the proposed development on trees or how any works to boundary features would be carried out. In the absence of such information, I am not satisfied that trees at and adjacent to the site could be appropriately protected, retained or that sufficient space remains for compensatory planting.
10. There is some variation in the size of plots in the area. Nevertheless, other than 16 Caroline Street (No 16), most properties have rear gardens of a far greater depth than the one proposed. The proposed dwelling would be located uncomfortably close to its side and rear boundaries. The scheme would appear cramped in comparison to the prevailing layout in this and nearby streets.
11. 15 Caroline Street (No 15) and No 16 are not orientated towards the road. However, these are untypical of the area. In contrast, the proposed dwelling would follow the predominantly linear form of development in this and the surrounding streets where properties front and face on to the street. The building line would also be similar to the predominant pattern where dwellings are set back behind a small front garden/parking area.
12. Although the rows of terrace properties have a similar scale and appearance, there is still some variation in the locality with dwellings differing in terms of type, design, age and materials. Therefore, the property itself would not appear unduly large or imposing on the streetscene nor would it appear discordant with the mixed context of the existing built form.
13. Notwithstanding this, the proposed development would unacceptably harm the character and appearance of the area. It would fail to accord with Policies CSP4, ENV2, ENV3 and HOU2 of the Core Strategy¹, Policies L1, S22 and S6 of the Development Strategy² and the SPD³. These, in part, require proposals to be influenced by, and take account of local context, character and

¹ Black Country Core Strategy

² Dudley Borough Development Strategy

³ New Housing Development Supplementary Planning Document

distinctiveness as well as providing information on the impact on, and replacement of trees.

14. The proposal would also be contrary to the Framework where it requires schemes to be sympathetic to local character and that existing trees are retained wherever possible.
15. Policy HOU1 of the Core Strategy relates to housing supply and distribution, rather than character and appearance. As such, it is not directly relevant to this main issue.

Living Conditions of Future Occupiers

16. There would be some garden space to three sides of the dwelling. Notwithstanding this, the dwelling would be in close proximity to its side and rear boundaries. Therefore, the position, layout and depth of the outdoor areas would limit the usability of these spaces. No evidence has been provided to demonstrate that the scheme would meet the area and length requirements of the SPD for this type of property. The outdoor space proposed would be inadequate for a dwelling of this size and far less than is reasonable.
17. That other properties may have similarly restricted outdoor space is not a good reason to allow this scheme. There are pockets of green space nearby that could be accessed by future occupiers of the dwelling. However, this, and that no concerns have been raised over internal space standards, outlook and light, do not sufficiently compensate for lack of on-site space.
18. As such, the proposed development would not provide appropriate living conditions for future occupiers with regard to outdoor space. The scheme would fail to accord with Policy L1 of the Development Strategy where it seeks to ensure an appropriate level of amenity is provided for future occupiers and the requirements of the SPD.

Living Conditions 15 and 16 Caroline Street

19. Some overlooking is expected and tolerable in residential areas. Currently mature trees along the boundary largely screen views into the outdoor space for No 15. Nevertheless, there is limited separation between the proposed dwelling and the boundary.
20. On the basis of the details before me, I cannot be certain that the trees could be retained, and the height of the first-floor windows would allow views over the wall. As such, there would be direct close-range views into the adjacent garden from these rear windows. This would result in significant overlooking and loss of privacy.
21. The separation between the proposed dwelling and No 16 would fall below the minimum distance set out in the SPD. I acknowledge that given the density of development instances nearby will already exist where these standards are not met. However, the unusual orientation of No 16 means that there are several windows facing the appeal site.
22. The ground floor window closest to the front of the site would align with the gable end of the proposed dwelling. Although the bay design and size of the window gives some relief in views from it, the proposed dwelling would be a

prominent feature from that window. This would result in an uninviting and restricted outlook.

23. Views from first floor windows would be mostly over the proposed property and the ground floor one at No 16 towards the rear of the site would have a direct outlook across the rear garden space. Consequently, an appropriate outlook would be retained.
24. The presence of the proposed dwelling would be likely to reduce daylight and sunlight reaching windows at No 16 that face the site. Nevertheless, the considerable difference in levels from No 16, and the gap between the properties, would ensure that sufficient daylight and natural light would still be able to reach the existing windows.
25. Despite this, the proposed development would unacceptably harm the living conditions of the occupiers of 15 Caroline Street with regard to privacy and 16 Caroline Street with regard to outlook. The appeal proposal would fail to accord with Policy L1 of the Development Strategy and the SPD where they aim to minimise and prevent unacceptable impacts on the amenity of neighbouring dwellings.

Biodiversity

26. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.
27. The scheme indicates that a mature tree would be removed, proposes works close to others and parts of the site were overgrown at the time of my visit. There are also wider areas of undeveloped land near to the site and the Council have indicated that there are records of badgers nearby.
28. Without any survey of the relevant features, it is simply not known whether protected species are present and, if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.
29. The absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, the proposal would be contrary to Policy ENV1 of the Core Strategy where it states that protected species should not be harmed, and that adequate information must be submitted where species or habitats may be affected.
30. It would also fail to accord with the Framework where it states 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.

Other Matters

31. I do not have full details of the circumstances relevant to the appeal at Easterton Croft. However, it was for flats rather than a separate property and where the site was said to be surrounded by open space. This is materially different to the scheme before me.

32. I acknowledge that the appellant has amended the schemes to attempt to overcome previous refusal reasons. However, I have found that unacceptable harm would arise from the proposal.
33. Being for a single dwelling, the contribution towards housing supply, along with economic and social benefits from the construction and occupation of the property would be small.

Conclusion

34. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
35. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR