



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: 09 November 2021

Appeal Ref: APP/C4615/W/21/3277726

Amenity Space Opposite 1-8, Cameo Drive, Amblecote, DY8 4AU

- 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 Liberty against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P21/0483, dated 2 March 2021, was refused by notice dated 30 April 2021.
 - The development proposed is the erection of four dwellings on the land opposite 1-8 Cameo Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. There have been no fundamental changes to national planning policy relevant to the main issues of this appeal.
3. As part of their appeal submissions the appellant has submitted amended plans that make changes to housing type, the size of external space, access position and plot layouts. It has been suggested that Plot 4 could be moved or removed from the scheme. A noise assessment was also provided as part of the appeal, although the layout shown within it does not match that determined by the Council or submitted as part of the appeal.
4. These were not before the Council at the time of their decision. Therefore, I cannot be satisfied that interested parties who commented on the planning application have had sufficient and fair opportunity to comment on the changes and additional information. I have therefore considered the appeal on the basis of the plans and details before the Council when making their decision in order to avoid prejudice to the interested parties.

Main Issues

5. 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 satisfactory living conditions for future occupiers, with particular regard to outlook, privacy, noise and disturbance,

- Whether the proposed development would prejudice the operation of nearby business premises,
- The effect of the proposed development on biodiversity
- The effect of the proposed development on highway safety; and
- Whether the site would be an appropriate location for the proposed development, with particular regard to open space provision and the local development strategy.

Reasons

Character and Appearance

6. Although the site was part of an area of open space when the nearby housing was initially developed, it is now part of a Housing Proposal Site (HPS). No compelling evidence has been presented to indicate development of the site is prohibited. I have not been made aware of any Tree Preservation Orders on the mature trees and other vegetation at and adjacent to the site and the information before me suggests that some are relatively recent.
7. Nevertheless, these features currently contribute positively to the character and appearance of the area creating a verdant feel to this side of Cameo Drive and helping to screen the industrial premises behind. I saw that there was some litter on the site at the time of my visit. However, this did not significantly detract from the appearance of the site.
8. It is suggested that most trees and hedges would remain and that a landscaping condition could be imposed. Notwithstanding this, no survey providing detailed information of the position, size and proximity of landscape features to the proposed works has been provided. In the absence of any detailed evidence, it is unclear which, if any, trees could be retained and protected. Neither is it clear that sufficient space would remain for appropriate compensatory planting or usable garden areas given the position of buildings, hard surfaces and boundary treatments. The potential extensive loss of landscape features would significantly detract from the existing sylvan appearance of the site.
9. That the proposed properties do not follow a uniform building line would not appear discordant given there is some variation at the properties opposite the site. Nonetheless, although Plot 4 would have a larger garden area to the side, the dwelling would be uncomfortably close to its rear boundary. This would be at odds with the prevailing pattern in Cameo Drive of linear frontage plots with their main garden space to the rear and would appear cramped in comparison.
10. Other than beyond the dwelling at Plot 4, the appeal scheme would have a relatively continuous stretch of hard surfacing in front of the dwellings with only a limited amount of space remaining for landscaping. This would exceed the 50% of the plot width that the Parking Standards SPD states should ideally be provided.
11. Nonetheless, frontage parking is found opposite the site and is typical of the surrounding streets. The amount of hardstanding to landscaped areas varies with some nearby streets having very little landscaping in their frontages. This includes some dwellings that the appeal site would be seen with. As such, in

this regard the scheme would not appear at odds with the character and appearance of the area.

12. Although not replicating the properties opposite, the scale, appearance and materials of the proposed dwellings would draw on aspects of those nearby. Consequently, the appearance of the properties themselves would not be incongruous with the nearby built form.
13. Boundary treatments adjacent to the pavement are generally low level. However, at corner locations, including close to the appeal site, taller hard features are present. The enclosure of the side garden of Plot 4 would therefore not appear incongruous. A condition requiring details of the materials and position of the means of enclosure could be imposed were the appeal to be allowed, which could include some landscaping to soften the frontage.
14. Notwithstanding this, the proposed development would unacceptably harm the character and appearance of the area. It would be contrary to Policies CSP4, HOU2, ENV2, ENV3 and ENV6 of the Core Strategy¹, Policies S2, S6, S8, S19, S22 and L1 of the Development Strategy², the SPD³ and the National Design Guide. These, in part, require proposals to be influenced by, and take account of local context, character and distinctiveness as well as providing information on the impact on, and replacement of trees.
15. 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.
16. While the scheme would breach the Parking Standards SPD where it states frontage parking ideally should not exceed 50% of the plot width, this has not been determinative.
17. Policies D2, D5, L8 and S29 of the Development Strategy are also included in the refusal reasons. However, as they do not directly relate to character and appearance, they weigh neither for nor against the scheme with regard to this main issue.

Living Conditions

18. The outlook from the rear rooms of all the proposed dwellings would be towards their boundary treatments and the industrial buildings beyond. Nonetheless, there would be far less separation at Plot 4 as it would be set further back from the road and have a more limited rear garden depth. Although it would have a larger garden area to the side, the close proximity of the proposed lounge and kitchen windows to the rear boundary treatment means that the outlook for future occupants of the proposed dwelling would be restricted and uninviting. This would provide less than satisfactory living conditions for any future occupiers.
19. There are a small number of properties along King William Street that would have a comparably limited separation from the industrial units. Future occupiers would be aware of the adjacent uses and no compelling case has been put to me that there have been noise complaints from residents regarding

¹ Black Country Core Strategy

² Dudley Borough Development Strategy

³ New Housing Development Supplementary Planning Document

existing uses. Acoustic fencing is proposed and further details of this could be subject to conditions were the appeal to be allowed.

20. Even so, in the absence of an appropriately detailed assessment of noise arising from nearby businesses, I cannot be sure what levels of noise would be experienced by future occupiers. Moreover, there is no detailed evidence relating to the effect of the acoustic fencing. As a result, I cannot be sure that appropriate living conditions could be provided with regard to noise and disturbance.
21. Boundary treatments and any retained landscape features could enclose the side garden of Plot 4 and ensure sufficient privacy for this outdoor space was retained.
22. There is a wall of considerable height and a road between the industrial use and Piper Place. Parking areas provide a buffer from those at Evolution making these materially different to the proposed scheme.
23. As such, the proposed development would not provide appropriate living conditions for future occupiers with regard to outlook, noise and disturbance. It would fail to accord with Policies HOU2 of the Core Strategy, Policy L1, D2 and D5 of the Development Strategy and the SPD. These seek to ensure an appropriate level of amenity is provided for future occupiers. In addition, it would be contrary to the Framework where it seeks to achieve a high standard of amenity for existing and future users.
24. Policies CSP4, ENV3, ENV2 of the Core Strategy, and Policies S6 and L8 of the Development Strategy weigh neither for nor against the appeal scheme in relation to this matter.

Operation of Nearby Business Premises

25. Future occupiers would be aware of the presence of the commercial and industrial units adjacent to the site, and they may not be retained in the long term given they fall within the HPS. There are existing dwellings near to these commercial premises.
26. Nonetheless, on the evidence presented I cannot rule out that there would be unacceptable noise experienced by the occupiers of the proposed units. Furthermore, there is no guarantee if or when the businesses would cease operating. The close proximity of the site to them would be likely to give rise to complaints from future occupiers regarding noise and disturbance and potentially pollution. This could lead to the existing business operations being curtailed or altered to accommodate the new use.
27. The proposed development would be likely to have an unacceptably harmful effect on the operation of nearby business premises. The scheme would fail to accord with Policies L8, D2 and D5 of the Development Strategy. These seek to protect the viability and integrity of industrial uses and avoid incompatible uses. Policy L1 of the Development Strategy is not applicable to this main issue.
28. The scheme would also be contrary to the Framework where it aims to prevent existing development from being put at unacceptable risk from noise pollution and that existing businesses and facilities should not have unreasonable

restrictions placed on them as a result of development permitted after they were established.

Biodiversity

29. 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.
30. The site is in close proximity to industrial and residential uses and there were no obvious track marks at the time of my visit. However, there is no survey or detailed investigation before me with regard to the biodiversity at the site, which the appellant describes as overgrown scrubland and contains a number of landscape features.
31. Without any survey of the relevant features, it is simply not known whether protected species or other 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.
32. The absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, the proposed development would be contrary to Policies S21 and S22 of the Development Strategy where they seek to safeguard and enhance habitats and features and require details of impacts on them to be provided.
33. 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.

Highway Safety

34. The access to Plot 4 would be close to an existing road hump. I saw that there are access points for properties elsewhere on Cameo Drive and nearby streets that have a comparable arrangement. There has been no clear evidence put forward that this currently causes highway safety issues or that there have been efforts to seek the removal of humps. Therefore, I see no reason why the access at Plot 4 would lead to this.
35. Off road parking is provided for each of the dwellings in accordance with the Parking Standards. This would prevent any issues relating to additional on street parking pressures.
36. As such, the proposed development would not unacceptably harm highway safety. It would accord with Policy TRAN2 of the Core Strategy, Policy S17 of the Development Strategy and the Parking Standards SPD. These seek to ensure that proposals provide adequate and safe access while preventing those that would be likely to have significant transport implications.
37. Moreover, it would comply with the Framework where it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Development Strategy

38. The site is located within the HPS and a Regeneration Corridor where the main focus is said to be housing growth. This indicates that development of the site is likely. Although the housing density for this HPS may be below that of the nearby area, no firm evidence has been put to me showing that the appeal site is to be fully or partly protected, retained or replaced as part of the redevelopment of this designation.
39. Similarly, my attention has not been drawn to any stipulation that the removal of the industrial uses on the allocated site is required prior to residential development taking place or that the whole of the HPS needs to be developed as one scheme.
40. Policy HOU1 of the Core Strategy sets out the development strategy with regard to housing growth. It states that at least 95% of new housing will be built on previously developed land. No definition of previously developed land has been put before me from the development plan. Even if I were to consider the site as greenfield land, Policy HOU1 of the Core Strategy and the Framework do not preclude housing development on such sites. No clear case has been made that the appeal scheme would prevent the specified development plan target being reached.
41. While not large or with any play equipment, the appeal site currently provides some informal space and is said to be Amenity Greenspace. However, the site was not included in the Council's last Open Space Review due to its size. Regardless of its appearance or feel, the evidence provided does not indicate that Amenity Greenspace at Piper Place or Collis Street has restricted access and could not be utilised by nearby residents, including future ones at the appeal site. In addition, there is a large area of open space/park at Collis Street, including play equipment which is within walking distance of the site along a route with lighting, pavements, and natural surveillance.
42. Therefore, while other suggested sites⁴ in the Green Impact Assessment are further from the site and less likely to be utilised, there would be suitable alternative open space provision near the site.
43. The appeal site would be an appropriate location for the development with regard to open space provision and the local development strategy. The scheme would accord with Policies S2, S19 and S29 of the Development Strategy as well as ENV2 and ENV6 of the Core Strategy where they seek to protect areas of value, including the Green Network and open space and ensure open space is accessible. It would also accord with Policy HOU1 of the Core Strategy where it seeks to provide housing capacity in allocations and the level of provision on previously developed land.
44. While applicable to other main issues, Policies ENV3 of the Core Strategy and S6, S8, L1, L8, D2 and D5 of the Development Strategy weigh neither for nor against the scheme in relation to this matter.

Other Matters

45. No compelling case has been made that the Council are unable to demonstrate a 5-year supply of housing land and that the presumption in favour of

⁴ Blake Hall Play Park, Lakeside and Kent Play Park

sustainable development set out in paragraph 11)d)ii. of the Framework applies.

46. Nonetheless, this is not an upper limit and the proposal would align with the aims of the Framework to significantly boost the supply of homes and that small-scale developments can make an important contribution to meeting the housing requirement. There would be economic and social benefits from the build and occupation of the dwellings as well as from tax revenues and support for nearby services and facilities.
47. Given the scale of the scheme the benefits from these, energy efficiency benefits and from the re-use of previously developed land, if I were to agree the site is such, would be small.
48. A lack of refusal reasons relating to living conditions of the occupiers of existing properties and that the scheme would meet space standards are neutral factors. While I saw some litter at the site, this was not substantial. Limited information has been put before me regarding fly tipping and anti-social behaviour at the site. These, and the future maintenance of the area are matters that attract limited weight.
49. The proposal though would lead to significant harm with regard to character and appearance, living conditions of future occupiers, future operations of nearby businesses and biodiversity. The relevant development plan policies for these issues identified above are generally consistent with the Framework and I give the conflict with them substantial weight.
50. Even if there was a substantial shortfall in housing supply, on the basis of the evidence before me, the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits that would arise from the proposal.
51. I appreciate that the appellant has amended the scheme from previous refusals to attempt to overcome concerns and that there have been changes to local and national policy since then. However, I have found unacceptable harm would arise from the appeal scheme.

Conclusion

52. While it would accord with some policies, 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.
53. For the above reasons, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR