



Appeal Decision

Site visit made on 11 January 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2022

Appeal Ref: APP/P1805/W/21/3280028

5 Worcester Road, Hagley, West Midlands, DY9 0LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sarb Bhogal (Sharr Homes Ltd) against Bromsgrove District Council.
 - The application Ref 21/21/00233/FUL, is dated 16 February 2021.
 - The development proposed is to demolish existing car showroom and construct 5no dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Sarb Bhogal (Sharr Homes Ltd) against Bromsgrove District Council. This application is subject of a separate decision.

Procedural Matters

3. There is a discrepancy with regards to the postcode provided on the submitted documents. On the application form the postcode provided for the site is 'DY9 0LT', whereas on all subsequent documents including both the appeal form and Council's decision notice the postcode is given as 'DY9 0LF'. It appears that the latter postcode is the correct one, and therefore for the benefit of this appeal I have used the postcode as provided on the appeal form and Council's decision notice.
4. The site benefits from outline planning permission (Ref 19/00833/S73) for the demolition of the existing garage and the subsequent erection of 5no dwellings. The appellant initially stated that the appeal proposal was submitted as a full application, before later stating that it was submitted as reserved matters. It is clear however that the application was made using the full planning application forms. I have therefore dealt with the appeal on that basis.
5. The appeal was made following the failure of the Council to give notice of their decision on the application within the statutory period. The Council have confirmed that were they to have issued a decision, they would have refused planning permission. I have been provided with what would have been their reasons for refusal as part of their Statement of Case, which the appellant has also commented upon.

Main Issues

6. The main issues are:

- the effect of the development on the living conditions of occupiers of neighbouring residential properties at 55A Milestone Drive and 7 Worcester Road, with particular regard to outlook, loss of light and whether the development would be overbearing; and
- whether the proposal would provide an appropriate mix of housing in terms of unit size

Reasons

Living conditions

7. The appeal site is located within a predominately residential area. The site contains a vacant car dealership and garage and extends into an area of open grassed land behind 7 and 9 Worcester Road. The proposal seeks to demolish and replace the vacant car dealership and garage with 2no 4 bed dwellings and erect 3no dwellings on the area of grassed land.
8. Plot 3 is proposed to be constructed immediately adjacent to the rear garden boundaries of No's 7 and 9. The dwelling itself would be two storey and extend virtually the full width of the rear garden of No 7. I noted during my site visit that No 7 has a particularly shallow rear garden, which includes the recently approved single storey rear extension. This extension includes glazed windows and doors on its rear elevation facing towards the appeal site. Consequently, the flank wall of plot 3 would be in very close proximity to the rear elevation of No 7.
9. I consider that given its proximity to the existing property, coupled with its height and massing, plot 3 would have a significantly detrimental effect on the living conditions of the occupiers of the neighbouring property. I find that the proposed dwelling would be visually dominant and oppressive when viewed from the rear habitable rooms of No 7, resulting in an overbearing impact that is exacerbated by the shallow garden.
10. Plot 5 is proposed to be a three bedroom bungalow constructed at the extreme north of the site, and immediately adjacent to the boundary with 55A Milestone Drive. No 55A is itself a bungalow orientated with its side elevation facing onto the appeal site.
11. Given the close proximity of the existing solid timber boundary fence to the side elevation of No 55A, the outlook from the windows on this elevation would largely be of the timber boundary fence with the houses on Worcester Road likely to also be partially visible in the background. Despite the proposed dormer bungalow at plot 5 being located less than 1 metre from the boundary with No 55A, I do not consider therefore that it would result in a significantly detrimental effect on outlook from the property.
12. Similarly, whilst I acknowledge that the development of plot 5 would likely result in some loss of light to the windows on the side elevation of 55A, given its siting and size I do not find that the development would have an overbearing effect or result in an undue loss of light to the neighbouring property.

13. I have identified that the development would result in harm being caused to the living conditions of occupiers of No 7 due to the overbearing impact of plot 3. Whilst I have found that the development would be acceptable in terms of its effects on the living conditions of occupiers of No 55A, this as a neutral outcome, insofar as it would not be harmful, and would not outweigh the other harm I have identified in respect of the living conditions of occupiers of No 7.
14. I conclude that the proposed development would cause a significant level of harm to the living conditions of the occupiers of 7 Worcester Road, with particular regard to the overbearing impact that it would have. It would therefore conflict with Policies BDP1 and BDP19 of the Bromsgrove District Plan 2011-2030 (adopted January 2017) (BDP) and the High Quality Design SPD (adopted June 2019). These policies and the SPD, amongst other things, seek to ensure that residential amenity is protected and that new residential developments are suitably sited taking into account neighbouring dwellings.

Housing mix

15. Policy BDP7 of the BDP requires that proposals for housing must take account of identified housing need in terms of the size and type of dwellings. Furthermore, it is stated that to ensure mixed and vibrant communities are created development proposals need to focus on delivering 2 and 3 bedroom properties. The Policy goes on to state that it is accepted that a wider mix of dwelling types may be required on larger schemes of 10 or more dwellings.
16. The appeal scheme proposes 4no four bed dwellings and 1no three bed dwelling, and as such a high percentage of the properties would be four bedroom. I note that whilst details of the design, external appearance, scale and landscaping were reserved matters, the extant outline planning permission (Ref 19/00833/S73) includes an approved plan which shows that the scheme would comprise of 3no three bed dwellings and 2no 4 bed dwellings. The housing mix on the appeal scheme which only includes 1no three bed dwelling is therefore significantly different to that of the extant outline permission.
17. The appellant contends that larger properties are required when taking into account the previous use of part of the site as a car dealership and garage, which may result in specialist demolition and/or remediation being required.
18. I acknowledge that such specialist demolition and/or site remediation works would likely add additional cost to the scheme. However, I have been provided with no evidence that shows that such specialist works are actually required, or if they were, that their cost would significantly affect the viability of the scheme to potentially justify a departure from the development plan.
19. I therefore conclude that the proposed development would fail to meet the identified need for smaller properties within the district. The development would therefore conflict with Policy BDP7 of the BDP which seeks to ensure mixed and vibrant communities are created by seeking the delivery of a sufficient number of 2 and 3 bedroom properties.

Other Matters

20. I note the appellant's concerns regarding the recently approved developments at No 7, in particular the single storey rear extension, which was approved after outline permission was granted at the appeal site. However, from the evidence it would appear that the single storey rear extension resulted from an

application for prior approval (Ref 19/01138/HHPRIO) made under Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). As the development accorded with the conditions and limitations stipulated under Part 1 Class A the extension was permitted development.

21. I also acknowledge the appellant's reference to the Court of Appeal judgment regarding there being no power to reserve matters of which the details have already been approved under an outline planning permission. I have had due regard to the existence of the extant outline planning permission, however the appeal before me is in relation to an application for full planning permission. Whilst the principle of a dwelling in the position of plot 3 has been established through the extant outline, I have found that the specific details of the plot 3 proposed under the appeal scheme would be harmful to the living conditions of the occupiers of No 7, and the overall housing mix.

Planning Balance

22. The Council accepts that it is unable to demonstrate a five year supply of housing land. Therefore, the most important policies for the determination of the application are out of date and I am taken to paragraph 11(d) (ii) of the National Planning Policy Framework (the Framework), which sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The proposal would provide economic and social benefits through the construction of the development and the additional contributions of the occupiers to the local community. The five new dwellings would also contribute to the supply of housing and the Council's shortfall. Given the scale of the benefits however, contributions would be modest. As such, I ascribe these benefits limited weight.
24. I have found that the development would cause significant harm to the living conditions of occupiers of No 7. I have also found that further harm would be caused by the proposals inappropriate housing mix and its failure to meet the identified need for smaller properties within the district. I ascribe substantial weight to both these harms as they would be long lasting and relate to the principle of the development. It would be contrary to the aims of the Framework which seek to ensure that developments provide a high standard of amenity for both existing and future occupiers, and that the identified housing need of the community is met.
25. With that in mind, the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not represent sustainable development for which the presumption in favour applies.

Conclusion

26. The proposal would conflict with the development plan and there are no material considerations, including the approach of the Framework, which would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

David Jones

INSPECTOR