

Appeal Decision

Site visit made on 8 February 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2022

Appeal Ref: APP/G4620/W/21/3279044

Former Public Car Park, Crocketts Lane, Smethwick

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr H Aujla, HBAA Developments Ltd. against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/21/65247, dated 10 February 2021, was refused by notice dated 19 May 2021.
 - The application sought planning permission for 4 no. dwellings with associated parking (plots 1 & 2, 6 bed, plot 3, 5 bed, plot 4, 4 bed) without complying with a condition attached to planning permission Ref DC/17/61260, dated 23 January 2018.
 - The condition in dispute is No. 1 which states that: "The development must conform with the terms of and the plans accompanying the application for permission and must remain in conformity with such terms and plans, save as may be otherwise required by (any of) the following condition(s), or approved amendment(s)".
 - The reason given for the condition is: "To ensure that any development undertaken under this permission shall not be otherwise than in accordance with the terms of the application, on the basis of which permission is being granted, except in so far as other conditions may so require".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note the email of 24 November 2021 confirming the appeal is being presented on the instructions of the applicant Mr H Aujla.
3. The address given on the appeal form relates to Plot 3, 26 Regent Street Smethwick B66 3BA. However, as the permission referenced DC/17/61260 and disputed condition 1 related to the original site, I have given the address above as stated on the planning application.
4. Condition No. 1 of planning permission DC/17/61260 does not contain details of the approved plans. However, I note the Council makes reference to the plans and drawings approved in the paragraph preceding the conditions, and list them separately elsewhere in the decision document. As such notwithstanding the proposal to which this appeal relates, condition 1 as it stands accords with the requirements for conditions set out in the national Planning Policy Framework (the Framework).

Main Issue

5. The main issue is the effect of the revised boundary wall design for plot 3 on highway safety.

Reasons

6. Plot 3 is occupied by a detached house that sits at the corner of Regent Street and Crocketts Lane. The property's ground floor level is set above the surrounding roads. Off street parking, accessed from Regent Street, is provided at the frontage of the property with a small area of garden provided adjacent to the Regents Street and Crocketts Lane junction.
7. I noted on my site visit that the boundary wall, as erected, supports the land to the side of the appeal property. On the Regent Street frontage, and for a short distance along Crocketts Lane the boundary wall comprised a low wall with piers. Further along Crocketts Lane a solid wall of an increased height, compared to the plans supporting the original application, had been erected, beyond which there was a high wall/fence that enclosed the rear garden of the property.
8. During my daytime site visit I was able to observe that Crocketts Lane is a busy road consistent with it being a convenient route between the A457 and the A4030 avoiding the junction by the station. Although Regent Street was a quieter road, I did notice that it appeared to be used as a cut through between Crocketts Lane and the A4030. Visibility from Regent Street onto Crocketts Lane in a southerly direction was good.
9. However, given the curved alignment of Crocketts Lane, combined with a limited footpath width, visibility to the north was restricted. The pedestrian crossing, which lies approximately 10 metres north of the junction, is a feature that focuses pedestrian activity and increases the need for driver concentration.
10. I saw during my visit that there were significant gaps within the traffic flow on Crocketts Lane that enabled drivers to emerge cautiously from Regent Street onto Crocketts Lane without unacceptable impacts on highway safety. However, it is likely that vehicular and pedestrian activity would be greater at peak times and gaps in the traffic would be reduced leading to more limited opportunity to egress Regent Street with a consequential increase in risk as drivers seek to join Crocketts Lane.
11. I acknowledge that these observations can only provide a snapshot of traffic conditions at a particular time of day, however, I have no evidence to suggest that they are not representative of typical traffic conditions.
12. The design of the current boundary wall on the frontages to plot 3 has a significant impact on drivers visibility looking in a northerly direction along Crocketts Lane, as they emerge from Regent Street. In this regard I find that a wall restricted to a height not exceeding 900mm, as suggested by the Highway Authority on the original application, would have enabled drivers to better see vehicles approaching the junction from some distance along Crocketts Lane.
13. The 'as built' design increases the height of the main element of the wall and has piers at closer centres than originally permitted. Moreover, it includes higher solid elements along part of the side elevation of the host property, that

were not shown on the original scheme. The combined effect of these features results in a significant reduction in visibility. Consequently, the proposed development, which on the evidence before me is aligned with the as built scheme I saw, results in an unacceptable increase in risk to the safety of road users.

14. In light of the above, I conclude that the amendments proposed to the boundary wall design would conflict with paragraph 109, in that it results in an unacceptable impact on highway safety.

Other Matters

15. I note the comments submitted by interested parties who have personal experience of using the junction and accessing local facilities and services. Whilst acknowledging that the information provided is largely anecdotal, the comments have assisted me in understanding environment within which the proposal is set.
16. I have taken into account evidence presented by the appellant with regards to the provision of an attenuation tank required to control the rate of water discharge to the existing public sewer. Whilst understanding the need to secure a technical solution with regards to this matter it does not fully explain the need to increase the height of the wall, which is still above the adjacent garden level, or introduce additional piers. In any event the need to provide adequate drainage facilities does not justify the acceptance of development that results in an unacceptable impact on highway safety.
17. The appellant has referred to a meeting that was convened on site with an indication that the increase in height did not impair visibility at the junction. However, in the absence of further details about who was involved, and what was discussed, I cannot conclude other than as set out above.
18. The appellant has also referred to the need to protect the occupants from falling from the inside of the dwellings space/land. Whilst I acknowledge the need to provide a safe living environment for the occupiers, I am not satisfied that the solution presented is the only means of achieving this outcome.

Conclusion

19. For the reasons given above I conclude that the appeal should be dismissed.

John Gunn

INSPECTOR