



Appeal Decision

Site visit made on 8 November 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal Ref: APP/C4615/W/22/3301776

1, Marlborough Drive, Oldswinford DY8 2LJ

- 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 Kevin Homer against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P21/1758, dated 17 September 2021, was refused by notice dated 10 January 2022.
 - The development proposed is a 2 Bed detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Appeal form refers to the appellants' name as Mr K Homes. However, it has been confirmed that the appellant is in fact 'Mr Kevin Homer, as indicated on the original application form. Accordingly, I have reflected this in my banner heading above.

Main Issue

3. The effect of the proposed development on the character and appearance of the area.

Reasons

4. Marlborough Drive and Swinford Road are a mix of semi-detached and detached dwellings, which have a largely consistent building line and are similar in appearance and finish. The properties are set behind a combination of front gardens and driveways, which are open with very few walls or fences. The corner junctions along the length of Swinford Road are generous, and predominately open with landscaped gardens and trees. The consistent appearance of the dwellings and the open and landscaped areas to the front of properties and at the corner junctions results in a pleasant character and appearance to the area.
5. The appeal site comprises the side garden area of 1 Marlborough Drive, which adjoins Swinford Road. The boundary with Swinford Road is landscaped with a hedge and three mature street trees. The side garden is wide, but due to the design of the footway, the application site is tapered to the front. The more generous side garden area along with the trees positively contributes to the open and green character and appearance of the area.

6. The proposal has looked to replicate the pattern of development on Marlborough Drive, by extending to the side of the line of semi-detached dwellings as well as proposing a similar depth, height and materials. However, the smaller plot size would be conspicuous by virtue of the narrow width of the dwelling and its extension beyond the existing building line along Swinford Road. Some space to the side would be retained, but the additional mass, two storey height and projection beyond the building line would diminish the space, which contributes to the openness along this section of Swinford Road.
7. The dwelling would also be visible from public vantage along Swinford Road and Marlborough Drive. The impact of the unsympathetic proposal on the street scene would be exacerbated by its prominence. Accordingly, in this context, the proposed development would appear contrived, at odds with the established pattern of development and damaging to the character and appearance of the area. I acknowledge that the building line along Swinford road is not strictly uniform, and the property at 1 Winchester Drive is closer to the road. However, in contrast to the proposed development, 1 Winchester Drive is single storey and maintains a more generous and open garden to its side.
8. The application was supported by an Arboricultural Impact Assessment (AIA). The AIA, which categorises trees based on guidance in British Standards¹, identifies that the affected trees on the pavement are Category B trees. The AIA states that the trees are Lime trees, and the proposal would be within the Root Protection Area (RPA) of Category B trees T1 and T2.² The AIA states that the trees should be resilient to the works being proposed, subject to compliance with the recommendations set out in the AIA. This includes protective measures being employed during construction, including a change to the foundation works to construct a suspended floor with mini piles if significant roots are found within the footprint of the dwelling. All work within the RPA's would be supervised by the project Arborist.
9. When determining RPA's, the guidance in the British Standards does require consideration of the morphology and disposition of the roots due to the presence of roads, footway and the topography of the land. In this instance, the tree roots would potentially be affected by the footway and road, as well as the lower level of the garden. This has not been referred to in the AIA, and it could potentially affect the shape of the RPA and the level of incursion from the proposed development. In view of this, the AIA does not provide sufficient detail, including the extent to which the RPAs would be affected, for me to be satisfied that the trees would not be harmed by the proposed development in the long term.
10. In addition, due to the proximity of the trees and their size, the trees would overhang part of the proposed roof, garden and parking area of the proposed development. Furthermore, their position south of the site, coupled with their size and maturity would mean that the trees would potentially result in a considerable amount of overshadowing of the property and garden. As such, due to the proximity, size and position, it is likely that there would be increasing pressure from future occupants to alter, cut back, prune or remove the adjacent trees.

¹

² 10% of T1 RPA and 1% of T2 RPA.

11. In view of the above, the ability of the trees to withstand a significant incursion into the RPA is questionable, and together with the pressure for them to be removed due to potential safety concerns, I am not satisfied that the proposal could be carried out without significant risk to their survival. Although the trees have pruning scars, as a group they have an amenity value that is significant at the junction between Swinford Road and Marlborough Drive. In this regard, the trees contribute positively, and the loss of any of them would be harmful to the verdant character and appearance of the area.
12. Accordingly, the proposed development would have an unacceptable impact on the character and appearance of the area. The proposed development would be contrary to Policies CSP4, ENV2, ENV3 and HOU2 of the Black Country Core Strategy 2011 (CS), Policies L1, S6 and S22 of the Dudley Borough Development Strategy 2017 (BDS) and the Council's New Housing Development Supplementary Planning Document 2013 (SPD). These policies, and guidance, seek high quality design, which should respect and be responsive to the context and character of the surrounding area. In addition, where trees are impacted by development, applicants are required to provide full details of the potential impact.
13. The Council also cite HOU1 of the CS in their reason for refusal. However, this is a strategic housing policy, which sets out the Council's strategic objectives to deliver housing over the plan period. I am of the view that the proposed development would not be contrary to this policy or its objectives.

Other Matters

14. The appellant has highlighted that an extension could be formed, with a similar level of impact on the character and appearance of the area³. I appreciate the approved extension is a plausible fall-back position. Although it extends to the side, it is not detached and does not extend as close to the side boundary as the proposal before me. As such, although an extension could be formed, in my view the fall-back position would not be as harmful to the character and appearance as the proposal now before me.

Conclusion

15. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

M. P. Howell

INSPECTOR

³ P21/0417- Two storey side extension to form granny flat at ground floor