



Appeal Decision

Site visit made on 18 April 2023

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 May 2023

Appeal Ref: APP/C4615/W/22/3311029

20 Winscar Croft, Dudley, West Midlands, DY3 2LG

- 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 Mrs Kimberley Austin against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1115, dated 22 August 2022, was refused by notice dated 20 October 2022.
 - The development proposed is described as "change of use of garden summer house to hair salon."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The change of use has commenced, as such I am considering the appeal in retrospect.

Main Issues

3. The main issues are a) whether the appeal site is a suitable location for the development, having regard to the spatial strategy; b) the effect of the development on highway safety; and c) the effect of the development on the living conditions of neighbouring occupiers.

Reasons

Location

4. Policy CEN2 of the Black Country Core Strategy (2011) (CS) provides the hierarchy of centres and defines Gornal Wood and Upper Gornal, the closest being approximately 650 metres from the appeal site. CS Policies CEN6 and CEN7 require that, where development is proposed outside a centre, it should be in an easily accessible location, demonstrate that provision could not be better met in a nearby centre and existing facilities would not be undermined. Additionally, CEN7 requires that a sequential test be undertaken for out of centre development.
5. The appellant's case is supported by various pieces of information, including proximity to similar uses and details of personal circumstances. The appellant readily acknowledges that a sequential assessment has not been undertaken and had one been formalised, it is highly likely that sites suitable for the use would have been identified in the nearest centre, indeed the appellant has noted nine existing hairdressers/barbers in the nearest centre. Whilst the

development would be easily accessible, no evidence has been submitted to demonstrate that the proposal would satisfy the other requirements of CS Policies CEN6 and CEN7.

6. I am satisfied that, based on the appellants evidence and my site visit, there appears to be sufficient provision of similar uses in nearby centres. Whilst I am mindful of the appellants personal and medical circumstances; I am not convinced that, based on the submitted evidence, that harm would not arise to existing similar uses in nearby centres. Paragraph 91 of the National Planning Policy Framework (the Framework) specifies that where an application fails to satisfy the sequential test it should be refused. In this instance, the effect on the vitality and viability of the nearest centre cannot be determined.
7. Consequently, in the absence of a sequential test, it cannot be demonstrated that there are no preferable sites available within the nearby centres that would protect the vitality and viability of Gornal Wood and Upper Gornal. Therefore, the development would conflict with CS policies CEN5, CEN6, and CEN7 which seek, amongst other things, to ensure that development is focussed in centres. It would also be contrary to paragraph 86 of the Framework that seeks to support the role town centres play in local communities.

Highway Safety

8. Winscar Croft is a residential cul-de-sac. Most properties have off-street parking, however there is also on-street parking. The appeal property is served by a single parking space to the front. No additional parking is proposed as part of the development.
9. At the time of my site visit no cars used the access to the cul-de-sac however the driveways within were well used and a number of cars were parked on the street and within a layby on the access road. I appreciate my site visit provided only a snapshot of highway conditions. Nevertheless, based on my observations, it would be reasonable to conclude that the levels of traffic would increase at peak hours when traffic is at its heaviest and on street parking would increase when people returned from work.
10. The development would result in activity that would be likely to lead to the comings and goings of customers on foot and by car. The appellant is presently operating the hairdressers and I understand that typically the hours of operation are three hours on Monday and Tuesday, four on Thursday and Friday and four on Saturday. Some 18 hours in total, with a maximum of one customer at the premises at any one time.
11. Winscar Croft is a quiet residential cul-de-sac which is subject to limited existing pedestrian and vehicular activity. During my site visit I observed low existing levels of activity in the close itself. The comings and goings associated with the development, would be in addition to the potential movement of vehicles in connection with the occupation of the property as a dwelling house. Further, the movements associated with the development would be likely to be consistent and sustained throughout the hours of operation. The increase in traffic movements to the site would therefore be readily discernible and, in this case, not insignificant.

12. The host dwelling is served by one off-street parking space to its front. A layby is located near to the appeal site along the access road into the cul-de-sac. The appellant proposes to park elsewhere when appointments have been made to allow clients to park on the existing drive. However, as the C3 use would be retained alongside the business use, the space, if the change of use were granted, would still be required to serve this family dwelling, and would necessitate additional parking elsewhere, thereby increasing on-street parking pressures. This increase in on road parking, whilst not in itself significant, would lead to additional obstacles within the highway, hindering the free flow of traffic which would accordingly (and detrimentally) affect the safe use of the highway.
13. This would be contrary to CS Policy TRAN2, and the guidance contained within the Parking Standards Supplementary Planning Document (2017) (SPD) which seek, amongst other things, to ensure that developments do not have significant transport implications and provide acceptable levels of accessibility. The development also conflicts with paragraph 111 of the Framework which seeks to ensure that development does not have an unacceptable impact on highway safety

Living Conditions

14. The appeal relates to an outbuilding situated within the rear garden. The position of the rear garden results in it adjoining a number of neighbouring boundaries, with the outbuilding itself, sited along the boundary with No.83 Lake Street. The outbuilding is domestic in its appearance, faces the rear of the host dwelling and is relatively small.
15. Given that the use could be restricted in terms of hours and days, its nature is not inherently noisy. Taking into account the number of customers being on a 1:1 basis, as well as the fact that they would be unlikely to loiter in the garden. Any conversations would be brief and of a low level frequency. I am therefore satisfied that the business operates and would do so, without having any undue impact on living conditions of the occupiers of neighbouring properties as a result of any noise or disturbance. Further, it would appear there were no objections raised by Environmental Safety and Health and I have no evidence that the Council has received any noise complaints.
16. The windows on the outbuilding face north onto the garden of the host property. The appellant's have a gravelled area between the development and the host dwelling, and a further outbuilding between it and the boundary with No 19 Winscar Croft. There is existing boundary fencing and a hedgerow to the rear of the development, between it and No 83 Lake Street.
17. It appears the use is only visible to a small number of neighbouring occupiers when looking from their upper floor windows into the appellant's garden. The close boarded fence that surrounds the site combined with the single storey nature of the development ensures that there is no overlooking into nearby gardens or properties. I also acknowledge that there has been support for the proposal from adjoining occupiers. As such, I do not consider that there is a greater opportunity for overlooking the neighbours than that which currently exists in the residential garden and the proposal does not result in a loss of privacy for neighbouring occupants.

18. The development does not therefore cause harm to the living conditions of neighbouring occupiers. As such, it complies with Policy D2 of the Dudley Borough Development Strategy (2017) (DS) which seeks, amongst other things, to ensure that the amenity of the occupiers of existing buildings are not subject to undue harm by virtue of noise and disturbance. The appeal scheme would also comply with paragraph 130 of the Framework that seeks high standards of amenity for existing and future users.

Conclusion

19. The location of the development is not suitable in the context of the spatial strategy and it would harm highway safety. I ascribe significant weight to these matters and the associated development plan conflict they bring. My findings in regard to the third main issue is a lack of harm which would not be sufficient to outweigh harm. It would be neutral. There are no relevant material considerations, including the approach of the Framework and worthy of sufficient weight, which would indicate a decision otherwise in accordance with the development plan. It is for this reason that the appeal should be dismissed.

Tamsin Law

INSPECTOR