



Appeal Decision

Site visit made on 18 April 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2023

Appeal Ref: APP/C4615/W/22/3313315

41 Cocksheds Lane, Halesowen B62 8LH

- 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 A Brookes against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/0461, dated 28 March 2022, was refused by notice dated 7 July 2022.
 - The development proposed is originally described as "Regularisation of external alterations to the premises in accordance with the proposed site layout plan and drawings (elevations)".
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Decision

1. The appeal is dismissed.

Preliminary Matters

Description

2. The description above is taken from the application form. The Council's description on the decision notice of "Change of use from retail to 3 no. self-contained flats (C3) with associated works" is more meaningful. Indeed, the appellant uses the Council's description on his appeal form. As the Council determined the appeal on this basis so have I, notwithstanding the description in the banner heading.

Amended plans

3. The appellant has submitted an additional plan drawing 1526-22 Rev L showing alternative arrangements for the amenity and parking spaces in an attempt to address the reasons for refusal. It shows the 2 parking spaces towards the rear of the site removed and the amenity spaces for each unit re-configured and 2 high level obscure windows installed in the side elevation (on my visit I saw 3 high level obscure glazed windows were installed). In addition, Unit 1 is shown as a 1-bedroom unit by naming a former proposed bedroom as a 'study' in order to reduce parking demand.
4. The Planning Inspectorate's Procedural Guide Planning Appeals England (the 'Procedural Guide') indicates that the appeal process should not be used to evolve a scheme, and that it is important that what is considered by the Inspector is essentially what was considered by the local planning authority and on which the views of interested persons were sought.
5. I consider that the proposed amendments are materially different to the scheme which was consulted on. Furthermore, the plan was not before the

Council when it determined the application. I have had regard to the Wheatcroft principles referred to in Annexe M of the Procedural Guide and consider that the proposed amendments are such that if I were to accept them, it could deprive those who should have been consulted on them, including the Highway Authority, the opportunity of such consultation.

6. For these reasons I have decided not to accept them. I have therefore determined the appeal on the basis of the submitted plans on which the Council made its decision, namely drawings 1526-20 Rev A and 1526-22 Rev I.

Background and proposal

7. The appeal site comprises a semi-detached 2-storey building that has been extended over time. There is no dispute between the parties that the premises was a retail use on the ground floor with a 3-bedroom residential unit occupying the remaining ground floor and first floor. There is a vehicular access off Cocksheds Lane leading to a hard surfaced area to the side of the property for some vehicle parking. A narrow driveway leads past the property to a long, detached single-width garage. To the side of the garage and rear of the property there is a grassed private amenity space that wraps around the rear extension and abuts the adjoining residential property 40 Cocksheds Lane (No.40), whose living room window overlooks the amenity space. The garden for No.40 is to the side of the property.
8. There have been a number of applications seeking various forms of residential use for the property. One planning application¹ sought to change the premises into 4 flats and convert the garage building into a dwelling but was withdrawn on the advice of the Council. A subsequent application² sought permission for 3 residential units, but was refused due to concerns of over-intensification and noise and disturbance.
9. Planning permission³ (the 'approved scheme') was eventually approved in December 2021 for conversion of the premises into two self-contained flats, one on the ground floor and one on the first floor. The garage would be demolished to provide 2 parking spaces for use by occupiers of the ground floor flat. A further 2 parking spaces would be provided to the side of the access for use by occupiers of the upper floor flat. The rear amenity space would be divided up to give each flat their own dedicated private space. A further private amenity space would be created and fenced off outside the living room window of No.40 and gifted to them to use.
10. The appeal proposal seeks to convert the premises into 3 residential units and demolish the garage. Two flats would be created on the ground floor (Unit 1 at the front of the property would be a 2-bed flat and Unit 2 at the rear would be a 1-bed flat). Unit 3 would be a 2-bed flat on the first floor. Parking space for 4 vehicles would be provided as well as bin and cycle storage. The rear amenity space would be divided up to give the three flats their own dedicated private space. Private amenity space would still be created and fenced off for No.40 to use.

¹ LPA Ref: P20/1266 - withdrawn

² LPA Ref: P21/0819 - refused

³ LPA Ref: P21/1706 - approved

Main Issues

11. The main issues in this appeal are:-

- Whether or not the proposed development would provide acceptable living conditions for future occupants of Unit 2 with regard to noise and disturbance,
- Whether or not the proposed development would provide acceptable living conditions for future occupants of Units 1 and 2 and existing occupants of No.40 with regard to privacy, and
- The effect of the proposed development on highway safety with regard to parking.

Reasons

Noise and disturbance

12. The Council has confirmed that the noise and disturbance to future occupants arises from the location of the parking spaces alongside the property (on the site of the demolished garage) in relation to the Bedroom of Unit 2, and not from the configuration of the private amenity areas.
13. The plans show there would be 4 parking spaces for use between the three Units based on bedroom numbers. Two car parking spaces would be provided in the space to the side of the access off Cocksheds Lane and are labelled to indicate they belong to Units 1 and 2. The other two car parking spaces would be accessed via the existing drive, passing in close proximity to the building and converted Unit 2, at a pinch point where the driveway narrows. The spaces would be aligned in tandem shown dedicated to Units 1 and 3, both two-bed units.
14. This would mean that the parking spaces located closest to Unit 2 and its only bedroom would be used by occupiers of the other flats and not by occupants of Unit 2. Hence occupants of Unit 2 would be subject to unrelated vehicular comings and goings. There would likely include associated noise and disturbance arising from vehicles being parked/manoeuvred at any time of the day and night, engine noise, doors being opened/closed, car radios/music and voices, all in very close proximity to the ground floor bedroom window.
15. This would expose occupants of Unit 2 and particularly its bedroom to unpredictable noise and disturbance in very close proximity to the only bedroom and its window, beyond what the occupants of Unit 2 could reasonably be expected to endure. This would lead to poor and unacceptable living conditions for the future occupants.
16. The previously approved scheme had a similar relationship between the same ground floor window and the 2 tandem parking spaces close to it. However, those plans show that the tandem parking would be allocated to the adjacent ground floor flat. As a result, the use of the two parking spaces beside the window would be related and linked to the occupants of that unit. Furthermore, the room in question was a kitchen, and not a bedroom as it is now shown. Hence the previous scheme was significantly different.

17. The proposal would harm the living conditions of future occupants of Unit 2. Accordingly, the proposal would be contrary to Policies D1 and D5 of the Dudley Borough Development Strategy (the DBDS), which collectively seek to protect occupiers of residential properties from undue harm as a result of development that causes noise and disturbance. The proposal would also be contrary to the general guidance in the Council's New Housing Development Supplementary Planning Document (the 'Housing SPD') to ensure the amenity of occupiers is not unacceptably affected.
18. The Council refers to Policy ENV2 of the Black Country Core Strategy (the BCCS). This is a broad-brush policy that seeks to protect and promote the special qualities, historic character, and local distinctiveness of the Black Country. This is not directly relevant to this main issue of safeguarding living conditions of occupiers from noise and disturbance.

Privacy

19. The Council has clarified that the second reason for refusal relates to the poor relationship between No.40 and the proposed Bedroom in Unit 1. There is an unusual existing relationship between the appeal property and the adjoining No.40 such that the privacy of No.40 is already compromised to some extent.
20. The previously approved scheme and the appeal proposal both propose gifting land to No.40 to create an enclosed private amenity space that would give the existing occupants greater privacy. The previously approved scheme showed the proposed side elevation windows would serve an open-plan dining/living area for the ground floor flat. The windows would overlook the amenity space gifted to No.40. However, the plans show these windows would be obscure glazed and fixed so they cannot open, in order to preserve mutual privacy.
21. In contrast the appeal proposal shows that the same windows would now serve a bedroom of Unit 1 and an open-plan kitchen/dining/living area for Unit 2, and would open and overlook the 'gifted' land. The appeal plans are not annotated to show the windows would be obscure glazed and fixed shut to address the overlooking issue. Hence, the mutual privacy of occupiers of No.40 and proposed Units 1 and 2 would be unacceptably compromised. The high-level obscure glazed windows I saw on my visit do not form part of the appeal proposal before me.
22. I could impose a condition, if I were minded to allow the appeal, requiring that these windows were fixed shut and obscure glazed. This would resolve the privacy issue for the open-plan kitchen/dining/living area in Unit 2 as the window in question is not the principal window opening to this room. However, to make the only window to a bedroom obscure glazed and non-opening would afford limited views and reduced light to a habitable room, creating an oppressive outlook for its occupants. Even though bedrooms may be primarily used when it is dark and for sleeping in, they are still habitable rooms that should be afforded adequate outlook. There would also be no means of natural ventilation to the bedroom. Hence, to condition that the only window to a habitable room to be obscure glazed and non-opening would result in poor living conditions for the future occupants of Unit 2 and would not make the development acceptable in this regard.
23. The provision of planting in front of these windows would not satisfactorily mitigate against loss of privacy, as the retention/maintenance of the planting

would be in the control of the adjacent neighbour. Hence the privacy of future occupants of Units 1 and 2 could not be controlled or guaranteed.

24. To conclude on this issue, the proposal would not afford mutual privacy to occupants of No.40 or future occupiers of Units 1 and 2. This would amount to poor living conditions. Accordingly, the proposal would be contrary to BCCS Policies HOU2 and CSP4, and DBDS Policies S1, D2 and L1. Collectively these seek to encourage well-designed places, high quality design and development that will not cause unacceptable harm to the amenities of occupiers, including privacy. This would accord with the National Planning Policy Framework (the Framework) that states development, should amongst other things, create well-designed places with a high standard of amenity for existing and future occupiers. It would also be contrary to guidance in the Council's Housing SPD that seeks to ensure privacy is unaffected.

Highway safety

25. The Council's Parking Standards Supplementary Planning Document (the 'Parking SPD') sets out minimum parking standards for different types of development to "ensure future redevelopments provide sufficient parking that will not result in on-street parking congestion to the detriment of the safe and efficient operation of the public highway".
26. Table 2 of the Parking SPD lists the minimum car parking standards for apartments through conversions, which are different to parking standards for new build apartments and houses. The Council's planning officer appears to have misdirected their calculations, stating there would be a need for 5 spaces with additional visitor spaces. Both the Highway Authority (the HA) and the appellant calculate the total parking of the 3 flats would be 3.4 spaces, based on 1.2 spaces per 2-bed converted apartment and 1 space for 1-bed converted apartment. The note to Table 2 makes it clear that the figures include an allowance for unallocated visitor car parking. The appellant has rounded the figure up and the plans show 4 parking spaces would be provided on site.
27. The HA raises concerns that the dimensions of the access appear to be narrow and potentially unusable. However, this is an existing situation as the property already has an existing access, driveway, garage and space for parking. Furthermore, the HA comments that vehicles in the tandem spaces, one behind each other, would have to reverse in excess of 20 metres to get to the road, contrary to the guidance in the national Manual for Streets. However, there is an extant planning permission for the existing access and driveway to be used as part of the conversion of the property into 2 flats, with the same parking layout so that vehicles from the 2 tandem spaces have to reverse down to the road. This is a material consideration. However, the approved scheme was for 2 apartments with the tandem parking shown dedicated to the ground floor flat.
28. From what I saw on my visit I concur with the HA that the overall parking configuration would be inconvenient, if not impractical, for so many users, notwithstanding the noise and disturbance issues already identified. The HA concludes that in effect there would only be 2 useable parking spaces, which falls short of the standards in the Parking SPD. This would likely mean future occupants would park on the street and exacerbate the existing pressures for on-street parking.

29. The area is predominantly residential with many family-sized dwellings, many with likely more than 1 car. The appellant has undertaken a Car Parking Survey to demonstrate that within a 200m distance of the access there was sufficient on-street parking available during the survey periods. I saw there were a good number of properties with driveways or parking on the front 'garden' with dropped kerbs. I also saw a number of properties with cars parked in the front garden without a dropped kerb who had mounted the kerb to do so. There were also cars parked on the street, including some that had mounted the pavement, suggesting to me this was to allow traffic to pass more easily in both directions.
30. There are no parking restrictions on Cocksheds Lane either side of the access or opposite the site such that vehicles could already park on the road in close proximity to the access, which could impede visibility from the existing access, as I saw to be the case on my visit. The site is also close to a traffic-light controlled junction that I saw was well trafficked with queuing cars close to the site entrance. The extant planning permission would utilise the existing situation.
31. I accept that the site is reasonably well located in relation to shops and facilities, including a large supermarket. In addition, local bus stops and a train station are within reasonable walking distance, and cycling parking would be provided for each unit. Therefore, that are genuine transport choices for public transport, walking and cycling to reduce reliance on the private car. Electric Vehicle Charging points would also be installed to encourage use of low carbon vehicles.
32. Drawing all the above points together, I am not satisfied that there is sufficient or suitably located and designed on-site parking. As a result, the proposal would amount to poor design and future occupants would likely park on the street, thus increasing pressure on existing on-street parking demand in a busy residential location and affect highway safety. Accordingly, the proposal would be contrary to BCCS Policies, HOU2, CSP4 and TRAN2 and DBDS Policies S1, S6, S17 and L1. Collectively these seek to ensure that development is appropriate in scale to the existing transport infrastructure and development provides adequate access, parking and provision for the manoeuvring of vehicles with no detrimental impact on highway safety and free flow of traffic.
33. BCCS Policy HOU1 deals with housing supply and growth figures and is not directly relevant to this main issue.

Conclusion

34. The proposal would conflict with the development plan when taken as a whole and this conflict is not outweighed by other material considerations as identified above. Therefore, for the reasons above the appeal should be dismissed.

K. Stephens
INSPECTOR