



Appeal Decision

Site visit made on 31 August 2023

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 October 2023

Appeal Ref: APP/C4615/W/22/3310937

2, The Old Vicarage, Leys Road, Dudley, Brockmoor DY5 3UR

- 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 Ravi Dhillon against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/0593, dated 21 April 2022, was refused by notice dated 27 July 2022.
 - The development proposed is two storey extension to create 8 no care home units, landscaping to include creation of 8 new car parking spaces, cycle store and bin store.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address in the banner heading above from the application form. Whilst different to those used in the decision notice and appeal form it accurately reflects the appeal site location.

Main Issues

3. The main issues of the appeal are the effect of the proposed development on:
 - The character and appearance of the area, with particular regard to protected trees; and
 - The living conditions of future occupiers of plots 41 – 44, with particular regard to privacy, outlook and light.

Reasons

Character and appearance

4. The appeal site is a former vicarage sited close to the Grade II listed St Johns Church. Within the appeal site and the surrounding grounds of the Church, there are frequent large mature trees which continue from Leys Road around to School Lane and along the boundary of the appeal site. These, including the trees subject to a Tree Preservation Order at the appeal site, contribute to the verdant feel of the streetscene and surrounding area.
5. Trees identified as T1, T2 and T5 are largely glimpsed from Leys Road given the existing tree coverage. However, as a result of the surrounding land levels and size of the trees, they are highly prominent upon entering School Lane and from the rear and gardens of nearby properties on Leys Road. As such, while it has not been shown that these are ancient or veteran trees they, along with

the surrounding trees as a whole, make a substantial and positive contribution to the character and appearance of the area.

6. The appeal scheme would see the removal of a number of trees to facilitate the proposed extension to the building. The development would also see the removal of three protected trees, T1, T2 and T5 to allow an increase in the capacity of the carpark and provide for cycle and bin storage.
7. The Arboricultural Report¹ (AR) refers to major deadwood in the crown of T5. However, no details showing the position or extent of deadwood has been included. Moreover, whilst the AR identifies that the tree is in poor condition, it does still offer some, albeit low landscape qualities for at least a further 10-plus years. Furthermore, as the AR identifies, trees are dynamic living organisms, whose health and condition can be subject to rapid change, depending on a number of external and internal factors. As such, I cannot be sure that the condition of the tree could not be improved. Despite some deadwood within the crown, T5 is an important feature in a prominent position within the streetscene.
8. The AR advises that the removal of trees, T1, T2 and T5, from within the appeal site is necessary to facilitate the development. Nonetheless, I have not been presented with any substantive evidence which demonstrates the removal of any of these protected trees is necessary due to their condition or defects and their removal has not been justified.
9. Given the size, position and contribution of the trees to the visual amenity of the area, the proposed compensatory planting would not be sufficient to address the loss. On the basis of the evidence before me, the scheme would erode the aesthetically pleasing influence that the trees have on the area.
10. I am aware that the site has been the subject of a previous grant of planning permission² (previous permission) for a similar scheme, but this was not implemented, and permission has expired. It is also not material to the appeal, as there have been significant changes since the previous permission expired, as Tree Protection Orders are now in place on the appeal site. I note the appellant's comments that a precedent has been set. However, I do not know the full circumstances which led to the granting of the previous permission. In any event, each application is considered on its own merits, and I have found significant harm would result from the removal of these protected trees for the reasons set out above.
11. The proposed development would therefore fail to accord with Policy S22 of the Dudley Borough Development Strategy (DS). This requires, amongst other things, new development to provide information on the impact on, and replacement of trees. The proposed development also conflicts with the National Planning Policy Framework (the Framework) in so far as it requires decisions taken on development proposals to ensure existing trees are retained wherever possible.

Living Conditions

12. The appeal proposes the construction of a two-storey extension within the host building's rear garden. The extension would lie adjacent to the northern

¹ Arboricultural Impact Assessment: prepared by Higginson Associates dated July 2021.

² Council Ref: P18/0029

boundary at a higher level. At the time of my visit, the residential development³ (P20/1189) granted by the Council was under construction, with dwellings to occupy plots 41-44 well underway.

13. The proposed extension would be sited along the full length of the rear gardens of plots 42, 43, and 44 and partially across plot 41. It would, due to site level changes and its siting and scale, dominate outlook from plots 42, 43 and 44. As a result, there would be no relief from the development in the outlook from within the rear rooms of the properties or the garden areas facing the appeal building. The resulting outlook would be restricted and uninviting.
14. Notwithstanding my findings above, the proposed extension would only partially extend across the rear boundary of plot 41 such that it would still allow for an acceptable level of outlook for the occupiers of plot 41.
15. No detailed daylight or sunlight assessment was provided as part of the appeal. Taking account of the position of plots 41-44, the proposed extension will inevitably lead to a greater shading effect being experienced by occupiers from within some windows and parts of the outdoor amenity space that lies in closest proximity to the common boundary. In reaching this view, I have taken into account that existing trees are likely to give rise to some minor overshadowing. However, there is no compelling evidence to demonstrate that the increased overshadowing and the consequent reduction of daylight and sunlight would be at a level that would not adversely harm the living conditions of occupants of plots 41-44.
16. The extension would have ground-floor and first-floor windows facing north. These windows would directly face a number of plots on the adjacent development.
17. Based on the submitted drawings, the majority of the windows on the northern elevation would serve a hallway only. Although the level of intrusion into the rear of the under-construction dwellings is unlikely to be as significant as if the windows served habitable rooms, as a consequence of the position and elevation of these windows, there would nonetheless be an unacceptable level of visual intrusion into the private amenity space and potentially into the rear habitable rooms.
18. The perception of visual intrusion would also be significantly greater from rooms 4 and 8 as they would serve habitable rooms. Consequently, the living conditions of occupants of the dwellings under construction at plots 41-44 would be compromised to an unacceptable degree. Even if I were to accept the appellant's arguments that existing trees were to be retained, there would still be periods throughout the year when the trees are not in leaf, which would allow for full and open views towards plots 41-44. Given the proximity of the rear gardens and windows of plots 41-44, the use of a condition to require obscure glazing would not overcome the perception of being overlooked. This would be particularly apparent as the corridors are likely to be well used by residents and staff of the care home throughout the day and at night.
19. The appellant states that a shorter separation distance than set out in the New Housing Development Supplementary Planning Document (HDSPD) should be

³ Council Ref: P20/1189

considered. However, even if I were to accept the reduced distance, this would not overcome the detrimental harm I have identified.

20. I acknowledge the appellant's comments that the residential development under P20/1189 was granted consent by the Council whilst the previous permission was still extant. However, as I have stated above, I do not know the full circumstances which led to the application being approved. In any event, the consent for the previous scheme has expired. Furthermore, I have considered the appeal scheme on its own merits and found that it would result in detrimental harm to the future occupiers of the dwellings under construction for the reasons set out.
21. The proposed development would not harm outlook from plot 41. However, the proposed scheme would detrimentally harm outlook from plots 42, 43 and 44. The scheme would also have a significantly harmful effect on the living conditions of the future neighbouring occupiers at plots 41-44 with regard to privacy and light. The proposal would therefore be contrary to Policy L1 of the DS, which seeks to ensure, amongst other things, that new development does not adversely impact upon the amenity of occupants of existing nearby dwellings through loss of privacy, outlook or light. The proposal would also conflict with guidance in the HDSPD and the Framework which seeks a high standard of amenity for existing and future users.

Other Matters

22. Given the presence of the Grade II listed St Johns Church, I have had special regard to the desirability of preserving the building, its setting and any features of special architectural or historic interest which it possesses. Its significance can be attributed to its architectural style and historic religious associations. Given the separation distance between the proposed development and verdant boundary treatments and design of the extension, there would be no harm to the setting of this heritage asset.
23. In reaching my decision, I have had regard to the fact that there would be some benefits from the provision of 8 additional care units. There would also be some economic benefits associated with the construction of the extension. Given the scale of the proposed development, these contributions would be modest. As such, I ascribe these benefits limited weight.
24. A lack of harm on highway grounds is a neutral matter and weighs neither for nor against the proposal.

Conclusion

25. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
26. Therefore, I conclude the appeal should be dismissed.

A Hickey

INSPECTOR