



Appeal Decision

Site visit made on 30 August 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2023

Appeal Ref: APP/C4615/W/23/3321131

Land adjacent to Oak Court, Dudley Road, Brierley Hill, Dudley

- 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 Miss Emma Thompson of Empire Property Concepts Ltd against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P20/1815, dated 23 November 2020, was refused by notice dated 28 October 2022.
 - The development proposed is student residential accommodation and associated development.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Miss Emma Thompson of Empire Property Concepts Ltd against Dudley Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have taken the site address from the appeal form. It simply and accurately describes the site's location and I have borne this in mind when making my decision.
4. The application is in outline with all matters reserved for future consideration. I have determined the appeal on this basis.
5. Illustrative plans accompany the application and I have paid regard to this information in so far as assessing the principle of development in land use terms.
6. Following determination of the planning application by the Council, the appellant has prepared a Preliminary Ecological Appraisal (PEA) and Tree Survey (TS). I have paid regard to both documents in consideration of the appeal and having regard to the Holborn Studios judgement¹ I am satisfied that no interested parties have been prejudiced by my approach.

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

Main Issues

7. The main issues are:

- The effect of the proposed development upon the character and appearance of the area;
- The effect of the proposed development upon the living conditions of nearby occupiers with regard to light and outlook;
- The effect upon trees and wildlife; and
- The effect upon the safe and efficient operation of the local highway network.

Reasons

Character and appearance

8. The appeal site comprises a disused surface car park located on the edge of Brierley Hill town centre. The site neighbours a five-storey residential building with a railway cutting extending along its southern boundary. The immediate context of Dudley Road is disparate with pockets of suburban housing siting in close proximity to commercial and industrial premises occupying large floorplates. Buildings locally by and large are more modest in height compared to Oak Court and the proposed development.
9. The appellant indicates that the development is to be provided on behalf of the Resonance Music Institute a partner of Solent University located on the Waterfront Business Park which is a short distance to the south. The business park extends over a sizable area and is formed of a number of buildings with large floorplates and varying scales ranging in height from two to seven storeys.
10. Although the Waterfront Business Park forms a backdrop to the appeal site, it is evident that the site and the proposed development would be seen in both contexts.
11. The indicative details show a seven-storey building extending along the road frontage and occupying a large area of the appeal site. Based on the indicative layout and scale it would be a conspicuous feature within the street scene. However, taking into account the vastly differing scale and form of buildings nearby I find that the proposed development would not be out of kilter with development in the area.
12. Whilst the building would be prominent in views along Dudley Road, I am satisfied that a feasible design response exists so as to ensure that the development would integrate into the street and that would represent an appropriate response to the pattern and scale of buildings which lie closer to the site and the large scale of built form present to the south of the railway.
13. Consequently, I conclude that the proposed development would not unduly affect the character and appearance of the area. It would accord with Policies ENV2, ENV3, HOU2 and CSP4 of the Black Country Core Strategy (2011) (BCCS) and Policies S1, S6, S8 and L1 of the Dudley Borough Development Strategy (2011) (DBDS) which, amongst other things, require high quality design proposals with spaces and buildings influenced by their context;

developments to protect and promote the special qualities and local distinctiveness of the Black Country and development to be of an appropriate form, siting, scale and mass.

14. It would also accord with the New Housing Development Supplementary Planning Document (SPD) in so far as it requires new housing development to promote a design led approach that respects local character and distinctiveness.
15. I note the Council have referred to BCCS Policy HOU1 and Policy 44 of the Brierley Hill Area Action Plan (AAP) in the first reason for refusal, however, I find that with specific regard to this matter I have given them negligible weight in coming to my decision.

Living conditions of existing occupiers of Oak Court

16. Having regard to its indicative position within the site and the location of habitable room windows in Oak Court I am satisfied that there would be reasonable separation between the proposed development and the existing built form.
17. The layout as shown would not project significantly beyond the road elevation of Oak Court and the proposal would not be significantly taller, which would ensure no unacceptable overlooking, overshadowing or loss of light for occupiers of this property.
18. In any event the site is located within a dense urban area and close relationships between properties are not uncommon. Moreover, the proposal could be designed in a way which would respect the living conditions of the existing occupiers of Oak Court, at reserved matters stage.
19. As such, I conclude that the proposed development would not adversely affect the living conditions of the occupiers of Oak Court with regard to light and outlook. It would accord with BCCS Policy HOU2; DBDS Policies S1 and L1; the SPD and AAP which, amongst other things, require developments not to cause unacceptable harm to the amenities of occupiers of neighbouring dwellings including arising from loss of privacy, outlook and sunlight.
20. The Council have referred to conflict with the 45 Degree Code policy, however, based on the limited information before me I am not satisfied that it is of material significance in consideration of this matter. Therefore, I have given it negligible weight in coming to my decision.

Impact on trees and wildlife

21. I acknowledge that the site lies within a Wildlife Corridor. However, the site comprises hard surfacing and poor quality grass containing a small number of trees. Based on the findings of the PEA there is nothing to indicate that the site is a habitat to any species of note or that it positively contributes to the Wildlife Corridor.
22. The appellant's TS concludes that the trees on site are largely non-native species, in poor condition and do not support any protected species. As such, one can conclude that the site is of very little ecological value.
23. Whilst the trees would be removed, I am satisfied that their loss would not unduly affect the visual amenity of the area on account of their poor condition

and limited spread. Moreover, as the trees are not protected, they could be felled at any point in time.

24. In any event detailed soft landscaping incorporating native and wildlife friendly planting could be secured at reserved matters stage to complement the Wildlife Corridor.
25. As such, I am satisfied that the proposed development would not unduly affect the Wildlife Corridor. It would accord with BCCS Policy ENV1; DBDS Policies S19 and S22; AAP Policy 62 and the Nature Conservation Supplementary Planning Document (2016) which, amongst other things, seek to safeguard nature conservation and Dudley's Green Network and for proposals to have regard to trees and Wildlife Corridors.

The safe and efficient operation of the local highway network

26. The Council express concerns that the 'car free' nature of the proposed development would be inadequate leading to parking pressures on nearby roads. I have not been made aware that the Council has formal car parking requirements for student accommodation developments. Therefore, the extent to which the proposed development would generate parking demand is a matter of planning judgement, based upon the merits of the case.
27. Dudley Road is a busy classified road leading in and out of Brierley Hill town centre and is subject to Traffic Restriction Orders (TRO). Wallows Road, opposite the site serves residential as well as industrial premises. The road is largely unrestricted but includes traffic calming measures along it.
28. At the time of my site visit I noted that a small number of spaces were available along Wallows Road. Nonetheless, the reduced road width due to the presence of parked cars and the traffic calming measures made it difficult for vehicles to pass, particularly large vehicles associated with nearby industrial premises, leading to vehicles blocking the road, albeit for short periods of time. Whilst this is a snapshot in time, it is evident that Wallows Road is heavily trafficked throughout the day.
29. I have considered the appellant's Parking Stress Survey covering two nights, using a recognised methodology. The survey over both nights, indicates that parking spaces are available along Wallows Road and Fen Pool Avenue. I note that parking in Fen Pool Avenue is unrestricted, but it is unlikely that this road would be attractive for residents due to its industrial nature. Whilst I note the findings of the survey, in my judgement demand for vehicle parking, including visitors is likely to increase on the surrounding highway, due to the maximum number of individual units proposed, which would likely lead to parking stress on the surrounding roads.
30. As such, in the absence of on-site resident parking and the increased likelihood of vehicles seeking to park and manoeuvre along the public highway, in an area which is highly trafficked and where there is a reasonable demand for on street parking, would, in my judgement, have a significant adverse effect on the safe and efficient operation of the highway network.
31. In coming to this view, I have paid regard to the modal split figures advanced by the appellant. However, as the student survey was undertaken when the site was not fully occupied, I am not satisfied that this figure represents an accurate representation of car ownership. Whilst the appellant has provided

examples of car ownership at a number of other universities this data is now several years old, and I am not satisfied that it is an up-to-date representation of car ownership levels or that the universities are comparable in terms of size or location.

32. The appellant has suggested that the existing TRO could be extended along Wallows Road. However, there is no mechanism before me to secure this extension. Even if a planning obligation was before me, there is no certainty that it would meet the test of reasonableness as this is a matter that is beyond the control of the appellant. There is no substantive evidence to suggest that the TRO would be amended by the highway authority or an indication of the timescale for such an amendment. These factors could delay or undermine delivery of the appeal scheme.
33. The appellant submits that restrictions on car use could be inserted into individual tenancy agreements and a Site Management Plan could be implemented to monitor and manage car use. Restrictions on tenancies would not suffice for planning purposes as they do not bind or run with the land subject of the application. This would also be the case in respect of a planning obligation seeking to secure the development as car free. Furthermore, I am not satisfied that a condition prohibiting students keeping cars would be reasonable or enforceable.
34. I acknowledge that the site is well connected to the Resonance Music Institute located within short walking distance. It is also well connected to local services and facilities and public transport links, in the form of bus stops linking the site to Dudley and Birmingham, as well as Merry Hill shopping centre. Therefore, future occupiers would have a choice of transport options rather than a reliance on a private vehicle. The adoption of a Travel Plan would further emphasise the availability of non-car modes of transport. As such, the proposal to some extent would reduce the need for students to have a car.
35. I have also paid regard to the low number of recorded incidents in the area of the site, the potential introduction of a car parking permit scheme at the main campus and that the management team may well attempt to direct students to appropriate accommodation. However, these factors do not overcome my concerns in relation to this matter.
36. I acknowledge the presence of car free developments across the country. However, every appeal must be considered on its own merits, as I have done. The examples referred to by the appellant do not lead me to reach a different conclusion on the matter.
37. I conclude that the proposed development would adversely affect the safe and efficient operation of the local highway network. Consequently, it would be contrary to BCCS Policy TRAN2 and DBDS Policy S17 which, amongst other things, seek to resist development proposals that would have significant transport implications and require developments to be appropriate in scale to the existing transportation infrastructure of the immediate area and transport corridor or include measures to overcome any deficiencies.

Other Matters

38. I acknowledge that the proposed development would involve the re-use of brownfield land and may well free up residential properties for family use.

However, these matters would not overcome the harm that I have identified in respect of the impact upon the safe and efficient operation of the highway network.

39. The Council's decision notice does not allege harm in respect of the living conditions for future occupiers, even though the Officer's report refers to harm, on account of the quantum of external amenity space.
40. The Council submit there would be conflict with the SPD and a significant shortfall in the amount of amenity space when considered against the requirements for residential flats. The proposed development is for student accommodation and whilst it would be amiss not to fully consider their needs, it is apparent that university students have different amenity requirements when taking into account the times of year when courses start and end and exams take place. There is nothing to suggest that the proposal would not include appropriate internal recreation facilities, at reserved matter stage. In addition, future occupiers would have the option of visiting local parks and green spaces including the Buckpool and Fens Pool Local Nature Reserve located within short walking distance from the site.

Conclusion

41. For the reasons set out above the appeal does not succeed.

B Thandi

INSPECTOR