



Appeal Decision

Site visit made on 7 November 2023

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023.

Appeal Ref: APP/C4615/W/23/3321044

Land to the rear of 76 Thorns Road, Quarry Bank, Brierley Hill DY5 2JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr. Paul Cutler against the decision of Dudley Metropolitan Borough Council.
- The application Ref P22/1671, dated 10 November 2022, was refused by notice dated 10 February 2023.
- The application sought planning permission for the demolition of existing garage and erection of 2 No. dwellings without complying with a condition attached to planning permission Ref P15/1026, dated 22 September 2015.
- The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 084:001, 002b, 003c, 006a & 007b.
- The reasons given for the condition are: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garage and erection of 2 No. dwellings at land to the rear of 76 Thorns Road, Quarry Bank, Brierley Hill DY5 2JU in accordance with the terms of the application, Ref P22/1671, dated 10 November 2022 without compliance with condition number 2 previously imposed on planning permission Ref P15/1026, dated 22 September 2015, but subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 084:001A; 084:003f; 084:006e and 084:007g.
 - 2) The development shall be carried out in accordance with the details that were approved by the local planning authority under reference P15/1026/C1 of the types, colours and textures of the materials to be used on the external surfaces of the buildings hereby approved.
 - 3) The development shall be carried out in accordance with the details that were approved by the local planning authority under reference P15/1026/C2 of the proposed landscaping scheme. The agreed scheme shall be implemented in accordance with the approved details before the end of the first planting season following initial occupation of the development. Any new trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

- 4) The development shall not be occupied until the boundary treatment approved by the local planning authority under reference P15/1026/C1 had been erected.
- 5) The development shall be carried out in accordance with the details that were approved by the local planning authority under reference P15/1026/C1 of the proposed levels of the site (including finished floor levels).
- 6) The development shall not be occupied until the access into the site, together with parking and turning area within the site have been laid out in accordance with the details that were approved by the local planning authority under reference P15/1026/C1. This shall be retained and maintained and not be used for any other purpose during the life of the development.
- 7) The dwellings shall not be occupied until a parking management plan has been implemented to ensure that no parking spaces will be allocated to an individual property for the life of the development. The management plan will be retained and maintained for the life of the development.
- 8) The dwellings shall not be occupied until an external charging point has been provided adjacent to at least 2 parking spaces. The charging points should be supplied with an independent 32-amp radial circuit and must comply with BS7671. A standard 3 pin, 13-amp external socket will be required. The socket should comply with BS1363, and must be provided with a locking & weatherproof cover. The external charging points shall thereafter be retained and maintained for the life of the development.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order, with or without modification), no development permitted by Classes A, B or D of Part 1 of Schedule 2 of the Order, shall be carried out within the site of the dwellings hereby permitted (except as expressly approved by this grant of planning permission) without the prior approval in writing of the local planning authority.

Preliminary Matters

2. The application form did not include the full address. I have taken the main address included above from the appeal form, which is consistent with the Council's decision notice, and the post-code from the appellant's appeal statement.
3. Following submission of the appeal, the appellant submitted a revised copy of the site location plan with the following reference, 084:001A. The only difference was the inclusion of street names. As no party would be prejudiced, I have determined the appeal on the basis of the revised plan.

Background and Main Issue

4. The approved plans shows that there would be a pair of 2-bedroom semi-detached dwellings at the appeal site. I observed at the site visit that the development has commenced. The appellant seeks to revise the scheme by increasing the roof height and introducing dormer windows in the rear roof slopes to create an additional bedroom at each dwelling and have provided the following amended plans 084:001A; 084:003f; 084:006e and 084:007g.

5. The main issue is whether retention of condition 2 is necessary having regard to highway safety.

Reasons

6. The appeal site is located along a private access road which is off Acres Road. Although the number of bedrooms would increase at each dwelling from two to three, due to site constraints it is not possible to increase the number of parking spaces. Consequently, there would be 3 spaces to serve both houses. A condition attached to the original permission ensured that none of the three parking spaces would be allocated to an individual property. The same arrangement has been proposed and as a result, the proposed parking spaces would be communal and would be shared by the two properties.
7. Amongst other things, policy S17 of Dudley Borough Development Strategy adopted in March 2017 (DBDS) and policy TRAN2 of the Black Country Core Strategy adopted in February 2011 (BCCS) respectively set out that development proposals should have full regard to the Council's Parking Standards Supplementary Planning Document (PS SPD), ensure that proposals make adequate and safe provision for access and egress by vehicle users, cyclists, pedestrians and other road users and do not have significant transport implications.
8. The latest version of the PS SPD was adopted in September 2017 and sets out minimum car parking standards, which for 2 & 3 bed houses is 2 dedicated spaces. So, the minimum number of spaces required would be the same for both the existing approved scheme and the proposed scheme. There is currently a shortfall of one space to serve the approved scheme and the shortfall would not increase as a result of the proposed scheme.
9. Notwithstanding that the shortfall would be the same, I accept that an increase in bedrooms could result in a modest increase in demand for parking which may not be able to be accommodated on the appeal site. Although I note that during construction there has been construction traffic parked on the access road, given the width of the existing access road once the dwellings are completed, I find it highly unlikely that any displaced vehicles would park for any length of time on the access road itself.
10. As a result, given that any increase in the use of the access road itself would be modest, I do not consider that the proposal would cause unacceptable harm to highway safety, would cause inconvenience to other users, cause unacceptable traffic congestion or cause significant access difficulties for emergency and service vehicles on the actual access road.
11. Rather, any displaced vehicles would likely park on Acres Road located in close proximity to the appeal site. This road would provide convenient on street parking. The appellant has provided a photographic traffic survey which shows that at various times of the day there is very little parking pressure on this road. This supports my own observations at the time of my site visit. I appreciate that is just a snapshot at a certain time and I have taken account of the information provided by some local residents who indicate that there is significant parking pressure at certain times of the day, especially during school drop off and pick up.

12. However, in comparison to the approved scheme, the addition of one additional bedroom at each dwelling would generate only a modest increase in demand for parking at the appeal site and even if this would result in vehicles not being able to park in the three proposed spaces any overflow could be safely accommodated on Acres Road.
13. As a result, although like the approved scheme the proposal would not fully accord with the parking standards contained within the PS SPD, the proposal to increase the number of bedrooms would make adequate and safe provision for access and egress by vehicle users, cyclists, pedestrians and other road users and would not result in significant transport implications. The proposal would therefore comply with the objectives of policy S17 of DBDS and policy TRAN2 of the BCCS. Further, the proposal would also comply with the National Planning Policy Framework (the Framework) which sets out that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe, which do not apply in this case.
14. I therefore conclude that the proposal to not comply with existing condition 2, which requires that the development shall be undertaken in accordance with the approved plans: 084:001, 002b, 003c, 006a & 007b, would not have an unacceptable impact upon highway safety and as previously explained would not conflict with policy S17 of DBDS and policy TRAN2 of the BCCS or with the relevant policies of the Framework.
15. It follows from the above that the condition is not necessary to make the development acceptable having regard to highway safety.

Other Matters

16. The proposal would introduce rear facing dormer windows that would face towards the rear of 76 and 78 Thorns Road. However, due to the separation distances involved it would not result in harmful overlooking, an unacceptable loss of privacy or any other unacceptable impacts on the living conditions for the occupants of these properties. Further, any potential views towards other properties would be oblique and expected within a residential area and would not result in an unacceptable impact on the living conditions of any other residents living nearby.

Conditions

17. By allowing this appeal a new planning permission is created. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
18. As the development has already started it is unnecessary for me to attach the commencement of development condition. Although some conditions have been discharged, I have limited information before me about the status of the conditions imposed on the original planning permission. Accordingly, having sought comments from the main parties, I shall impose all those that I consider remain relevant taking account of the fact that the development has commenced and some of the original conditions were pre-commencement. If some conditions have in fact been discharged, that is a matter which can be addressed by the parties.

19. On that basis, a condition is needed to secure compliance with the approved plans, for the avoidance of doubt and in the interests of proper planning. When the list of possible conditions was circulated to the main parties for comment, plan number 084:002b was included. However, this was not on the list of plans that the appellant indicated that the Council had taken into account when making their decision, nor was it included in the Council's suggested condition which set out the approved plans in the event that I was minded to allow the appeal. Further, it does not show the proposed amendments to the scheme. As a result, it is not necessary to include reference to this plan. Conditions requiring the use of appropriate materials, the implementation of a landscaping scheme and provision of boundary treatment are necessary in the interests of the appearance of the scheme and the surrounding area. A condition controlling the site levels is required in the interests of the appearance of the proposal.
20. It is necessary to attach conditions requiring the provision of access, parking, turning facilities and a parking management plan in the interests of highway and pedestrian safety. A condition requiring the provision of electric vehicle charging points is reasonable and necessary on sustainability grounds. To protect the character and appearance of the area it is necessary to restrict permitted development rights. The condition in relation to the Coal Authority requirements has been discharged and therefore it is unnecessary to impose such a condition.

Conclusion

21. For the reasons given above I conclude that overall, the proposal would accord with the development plan and the Framework and therefore the appeal should be allowed.

S Rawle

INSPECTOR