



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: 28 December 2023.

Appeal Ref: APP/C4615/W/23/3323304

39 Churchfield Street, Dudley DY2 8QR

- 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 Danielle Hunt against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1323, dated 6 September 2022, was refused by notice dated 11 April 2023.
 - The development proposed is the conversion of existing building to 3 x residential flats, atrium extension and new 3 storey block of flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect on the character and appearance of the host building, a locally listed building and the area;
 - whether the proposed development would provide satisfactory living conditions for future occupants of the proposed dwellings with particular reference to outdoor open space;
 - the effect of the proposal on the living conditions of the occupants of 37 Churchfield Street with particular regard to overlooking; and
 - the effect of the proposal on highway safety.

Reasons

Character and Appearance

3. There has been a previous appeal decision for this property¹. The Inspector identified that the appeal site lies in an area with a mix of terraced housing, detached dwellings, light industry and workshops and informal open space, which is reflected in the area's designation as one of High Historic Townscape Value (AHHTV). He goes on to highlight that this diverse character is apparent within Churchfield Street itself with a dense and varied mix of terraced dwellings, small industrial workshops and enclaves of green space. He found that collectively this dense and diverse mix generates a strong sense of working industrial character expressive of the town as a whole. Following my site visit I agree with this assessment of the area's character and appearance.

¹ APP/C4615/W/19/3221149

4. The Council's Dudley Town Centre Urban Historic Landscape Characterisation, 2015 (the UHLC), highlights that the appeal property has been locally listed in recognition of its contribution to illustrating the area's industrial past as well as the architectural interest of its polychromatic brickwork. Taking account of the UHLC and my observations on the site visit, again I agree with the previous Inspector who observes that the datestone (1866) set within the pediment on the front elevation offers convincing evidence of a mid C19 date of construction and that the front elevation, with its loosely neo-classical pediment, pilasters and matrix of sub-pilasters and string courses, give it real presence in the street.
5. Recognising that the appeal property has been vacant for a number of years and is showing signs of distress through water ingress, vandalism and neglect, the previous Inspector found that the imposing front elevation and its plain but bold form make the appeal property a strong and distinctive presence in the street. Again, I agree with the previous Inspector's assessment, and it follows that the appeal property, even in its current state, which has been vacant and neglected for about a further four years, makes a significant contribution to the character and appearance of the area. Its significance as a non-designated heritage asset derives from its architectural and historic interest.
6. The appeal proposal would result in the conversion and extension of the appeal property to create six flats. In accordance with the UHLC, the proposed development would enhance the character and appearance of the area and would secure a new use that would sustain the building's contribution to the area.
7. However, turning to the proposed extension, although the architectural design, detailing and materials would be compatible with the host building, the ridge of the roof would only be set down by a limited amount from the ridge of the main building. Taken together with the extension's length, which would be greater than the length of the host building, the proposal would result in an extension of excessive scale.
8. Further, as the extension would not appear proportionate or subservient to the host building, its bulky design, which would be visible in views both from Churchfield Street and from the public footpath that passes to the side between the appeal site and 41 Churchfield Street, would overwhelm the host building and undermine its significance. Consequently, the proposed extension would dominate the existing building and appear as an obtrusive and discordant feature in the streetscene.
9. I therefore conclude that the proposal would have an adverse impact on the character and appearance of the host building, which is a locally listed building and the area. Consequently, the proposed development would conflict with Policies CSP4 and ENV2 of the Black Country Core Strategy adopted February 2011 (BCCS) and Policies S8, S11 and S12 of the Dudley Borough Development Strategy adopted March 2017 (DBDS), which among other things seek to ensure that developments adopt a high quality of design that make a positive contribution to place making, that aim to protect and promote historic character and local distinctiveness, avoid development that involves inappropriate extensions to locally listed buildings and seeks to ensure that new development within an AHHTV consolidate or enhance the existing positive characteristics of the locality.

10. In addition, the proposal would be at odds with the National Planning Policy Framework (the Framework) which seeks to protect and enhance the built and historic environment and ensure development is sympathetic to local character.

Living Conditions – Future occupants of the proposed development

11. In the previous appeal scheme, no collective open amenity space was proposed as part of the development. In this case, just over 65 sq.m of outdoor space is proposed. This falls significantly short of the minimum standard for flats with communal gardens or amenity areas set out in the Council's New Housing Development Supplementary Planning Document revised 2013 (NHD SPD), which advises that 30sqm of such space per flat should be provided.
12. The appeal site is within walking distance of parks and gardens, outdoor sports areas and amenity green space. I accept these spaces would meet some of the open space and recreational needs of future occupants, they are not close enough to provide a space where future occupants would be able to sit, relax and enjoy the outdoors in proximity to their dwelling. Consequently, the lack of adequate outdoor open space on the appeal site would harm the living conditions of the future occupants of the proposed development.
13. The appellant points out that an opportunity has been lost by the Council to achieve access and enhance the adjacent public open space as planning permission has now been granted for a significant number of dwellings on that land. As pointed out by the previous Inspector, at the time of his site visit this land was not conducive to casual recreation and the situation has not changed. Further, I do not have the full details of this scheme, however even if I were persuaded that this could be or could have been used by future occupants, it still would not provide open space on the appeal site itself and its existence does not justify harmful development at the appeal site.
14. For the foregoing reasons, the proposed development would unacceptably harm the living conditions of future occupants of the proposed dwellings due to the inadequate provision of outdoor open space. It therefore conflicts with Policy HOU2 of the BCCS and Policy L1 of the DBDS which among other things seek to ensure development minimises amenity impacts and provides an appropriate level of amenity for future occupiers.
15. The proposal would also conflict with the guidance contained in the NHD SPD which seeks to ensure that all flats have access to an appropriate level of outdoor amenity area. Further, in relation to this issue, the proposal would not accord with the Framework, which seeks to ensure that developments create places with a high standard of amenity.

Living Conditions -Occupants of No 37 Churchfield Street

16. Similar to the scheme subject of the previous appeal, the principal outlook of all main habitable areas on the upper floors of the proposed development would be towards the south. Many of these, would face towards the rear garden area of 37 Churchfield Street (No 37). However, the proposal before me is materially different from the previous scheme. For example, the previous scheme would have had four storeys. Further, the previous Inspector noted that the windows in that scheme would be some 10 metres from the boundary of No 37, whereas here the distance is about 12 metres.

17. Although views would be possible towards the garden area of No 37, given the separation distance and bearing in mind that the proposed number of windows facing No 37 has decreased, as has the height of the proposed extension, the proposed development would not result in an overbearing perception of overlooking. Consequently, it would not cause unacceptable harm to the living conditions of the occupants of this neighbouring property.
18. I therefore conclude that the proposal would not cause material harm to the living conditions of the occupants of 37 Churchfield Street due to overlooking. Accordingly, the proposal would comply with Policies S1 and L1 of the DBDS, which among other things seek to ensure development is appropriately designed and safeguard the amenity of adjacent occupiers.
19. The proposal would accord with the guidance contained within the NHD SPD which seeks to ensure that proposed developments do not result in an unreasonable degree of overlooking. Further, in relation to this issue, the proposal accords with the Framework which seeks to ensure that developments create places with a high standard of amenity.
20. In the relevant reasons for refusal the Council cites Policies S6 and S8 of DBDS and ENV2 of the BCCS. However, these deal with urban design, local character and distinctiveness and historic character and local distinctiveness respectively and are not directly relevant to this main issue.

Highway Safety

21. The proposed development would provide seven echelon parking spaces within the appeal site to serve the six flats. While the number of proposed spaces is sufficient to serve the proposal, due to the angle of the parking spaces and their relationship with Churchfield Street, it is more likely than not that vehicles using parking spaces PB6 and PB7 would need to reverse across the footway and onto Churchfield Street in order to enter or exit the appeal site. Due to reduced visibility this arrangement would result in unacceptable safety implications for both pedestrians and vehicles that use Churchfield Road and would also have a detrimental impact on the free flow of traffic.
22. Notwithstanding that the appeal site is accessible to community infrastructure, it would not be appropriate to amend the proposed parking layout at the appeal stage or attempt to ameliorate the harm by the imposition of a condition.
23. I therefore conclude that the proposed development would be harmful to highway safety and would conflict with Policies L1 and S17 of the DBDS and Policy TRAN2 of the BCCS which among other things seeks to ensure that developments make adequate provision for access, parking and manoeuvring of vehicles, with no impact on highway safety and the free flow of traffic.
24. The proposal would also conflict with the guidance contained within the Parking Standards Supplementary Planning Document adopted in September 2017 and the NHD SPD which among other things seek to ensure that developments provide sufficient parking that will not have a detrimental impact on the safe and efficient operation of the public highway. Further, in relation to this issue, the Framework highlights that development proposal should be refused on highway grounds if there would be an unacceptable impact on highway safety.

Other Matters

25. The appellant highlights that despite significant engagement with the Council, including in relation to on-site parking there did not appear to be a tone of collaboration and are concerned that the Council had pre-determined to reject the proposal. While I can appreciate why the appellant is disappointed that their engagement with the Council did not result in a scheme that could be approved at application stage, I am required to determine this appeal on its own individual merits and any concerns that the appellant has about their interactions with the Council does not alter my view on the main issues or justify harmful development at the appeal site.

Planning Balance

26. The appellant sets out that the Council does not have a demonstrable 5-year housing land supply and also its development plan being more than five years old is out of date.
27. Although as I understand it, the Council has withdrawn from the joint preparation of a review of the BCCS, they have provided a copy of their latest Strategic Housing Land Availability Assessment (SHLAA) up to 31 March 2022 which shows a 5.95-year supply (using the discounted housing figures). It also advises that the emerging SHLAA demonstrates a 6.14-year supply (discounted). The appellant says that it would be unfair for me to take account of the emerging figures at this stage in the process.
28. However, even if I were to accept that the Council's policies, which are most important for determining the application are out of date under the terms of the very recently updated Framework, which would trigger paragraph 11d), I am not persuaded that this would justify allowing the appeal.
29. The provision of six additional dwellings would have social and economic benefits stimulating work and trade during construction and future occupants would moderately support local services and the vitality of the community.
30. I also accept that the proposal would result in the provision of six residential units which would contribute to housing supply in a suitable location. However, the contribution from these extra homes, although welcome would only attract moderate weight.
31. I also fully accept that the appeal site is a challenge to develop and securing the beneficial re-use of the existing locally listed building would have significant benefits. I have also taken account of the fact that planning permission has very recently been granted for the conversion of the host building into three 1-bedroom flats and the appellant highlights that due to the possible cost of complying with the contamination conditions the extension is necessary in order to make redevelopment viable.
32. However, for the reasons set out above the proposed development would have an adverse impact on the character and appearance of the host building, which is a locally listed building and the area, it would unacceptably harm the living conditions of future occupants of the proposed dwellings due to the inadequate provision of outdoor open space and would be harmful to highway safety.
33. Although I have also found that the proposal would not cause material harm to the living conditions of the occupants of 37 Churchfield Street due to

overlooking, this lack of harm is a neutral factor in the consideration of this appeal. On the other hand, the identified harms attract significant weight and significantly and demonstrably outweigh any benefits of the scheme, when assessed against the policies in the Framework taken as a whole.

Conclusion

34. For the reasons given above, I conclude that the proposed development would conflict with the development plan and the Framework taken as a whole and there are no material considerations which indicate that the decision should be made otherwise than in accordance with the development plan. Therefore, the appeal is dismissed.

S Rawle

INSPECTOR