



Appeal Decision

Site visit made on 9 January 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/V4630/W/23/3327532

Land adj 12 Herberts Park Road, Walsall WS10 8QH

- 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 M Rafiq against the decision of Walsall Metropolitan Borough Council.
 - The application Ref 21/0771, dated 18 May 2021, was refused by notice dated 1 March 2023.
 - The development proposed is erection of new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20 December 2023, together with a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS. Having considered the parties' respective cases and the nature of the revisions, in light of the principles of natural justice, in this instance I have not considered it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

3. The main issues are the effect of the proposed development on:
 - a) the living conditions of future occupiers with regard to internal space; and
 - b) the character and appearance of the area; and
 - c) highway safety; and
 - d) trees at and around the site; and
 - e) the living conditions of the occupiers of No 12 Herberts Park Road (No 12) and No 13 Herberts Park Road (No 13) with regard to loss of privacy.

Reasons

Living conditions of future occupiers

4. The proposed new dwelling is for a two-storey detached dwelling, and would not meet the Department for Communities and Local Government Technical

Housing Standards – Nationally Described Space Standard (NDSS) in terms of overall internal space and bedroom size. The standards are not specifically referenced in the Council's planning policy documents, and as such should be treated as guidance in assessing the requirements for the gross internal floor area of new dwellings, along with floor areas for key parts of the home.

5. The proposed development has been measured overall as being some 60m², and internally the overall gross floor area would be even lower. This falls short of the NDSS minimum requirement of 70m² for a two-bedroom two-storey dwelling.
6. The NDSS highlight that dwellings which have more than one bedroom should have one double bedroom with an area of 11.5m², and that single bedrooms should have a minimum floor area of 7.5m². In contrast, the proposed dwelling would not have a double bedroom. The two proposed bedrooms would measure approximately 7.3m² and 6.7m², both of which would fall short of the recommended standard, even for a single bedroom.
7. Although the larger of the proposed bedrooms would include an ensuite, unlike built in storage the NDSS does not indicate that ensuites can be included in the internal floor space measurements of the proposed bedroom. As such the proposed ensuite would not contribute towards the proposed bedroom meeting the suggested requirements.
8. The NDSS highlights that the gross internal areas are organised by storey height to take account of the extra circulation space needed for stairs to upper floors. The appellant has suggested that the proposed dwelling has been designed with minimal circulation areas, and would meet the gross internal areas standards for a single storey dwelling. However, the proposal is for a two-storey dwelling with circulation space necessary for stairs, and I have determined the appeal on this basis.
9. I do not have the accurate floor area measurements of nearby properties, but in any case I am determining the merits of this proposal, and I consider the shortfall of the gross internal floor area of the proposed dwelling and proposed bedrooms to be significant compared to the recommended requirements.
10. Consequently, I conclude that the proposed development would not provide adequate living conditions for future occupiers with regard to internal space. The proposal would therefore not accord with Saved Policy ENV32 of the Walsall Unitary Development Plan (2005) (UDP) which seeks to ensure that all developments are well designed, Policy HOU2 of the Black Country Core Strategy (2011) CS which states the need for development to minimise amenity impacts, and Policy HC2 of the Walsall Site Allocations Document (2019) (SAD) which seeks to ensure that developments achieve satisfactory residential environments. The proposed development would not conform with guidance contained within the Designing Walsall SPD (2013) (SPD) which states that the design of buildings must make a positive contribution to the quality of life of their occupants. The proposal would also not conform with guidance contained within the Framework which seeks to ensure that developments provide a high standard of amenity for future and existing users. The Council's reason for refusal in relation to this main issue refers to Saved Policy GP2 of the UDP but as the policy relates to protecting the environment it is not relevant to my consideration of this main issue.

The character and appearance of the area

11. The appeal site is situated in a fairly built up suburban area. The area is largely residential, but opposite the appeal site is a large school and playing fields. The appeal site is currently fenced off from the street with metal fencing, and is unkempt and in an overgrown condition.
12. The surrounding houses are largely terraced or semi-detached, with a mix of rendered and brick elevations. The properties mainly have small front gardens behind low brick walls, although some properties have converted their front gardens to hard standing for off road parking and removed their boundary walls.
13. Although many of the properties have made alterations to their frontages, with some adding porches, for example, the overall character of the area is one of harmonious house types, scale and plot size and layout. The established building line with properties set back from the footpath adds to the cohesive pattern of development.
14. In contrast, the appeal plot is shorter and wider than other plots within the vicinity. The property would be for a detached dwelling and would have no rear garden, both of which are untypical for the area. Furthermore, the proposal would be set closer to the footpath than the surrounding properties, disrupting the regular rhythm of development.
15. The appeal site is situated at the head of a curve in the road. As the proposed dwelling would be set further forward than neighbouring properties, this prominent position would add to the proposal appearing incongruous and overly conspicuous in the street scene.
16. I recognise that in its current unkempt condition the appeal site detracts somewhat from the visual appearance of the area, and that littering and problems associated with a vacant site may be exacerbated if the site remains undeveloped. However, it has not been demonstrated that the proposal is the only means of improving the site, and so I give limited weight to this matter.
17. I conclude that the proposed development would harm the character and appearance of the area. The proposal would therefore conflict with Saved Policies GP2 and ENV32 of the UDP which seek to ensure that developments have an acceptable visual appearance and relationship with the character of the surrounding area, and Policies ENV3, CSP4 and HOU2 of the CS which together seek to ensure that development is of a high design quality and takes into account the character of the area. It would also conflict with Policy HC2 of the SAD which states that development should take account of its context and surroundings. It would not be in accordance with guidance contained within the SPD which expects new development to be informed and respond positively to the surrounding character, and the Framework, which states that development should be sympathetic to local character.

Highway Safety

18. The proposed development would provide two off road parking spaces, which would be appropriate for the size of the proposed dwelling. However, the Council's highway department have raised concerns regarding visibility and the orientation of the proposed parking spaces.

19. There is a speed bump to the front of the appeal site. I understand that the highway's department had initial concerns regarding possible conflict with the speed bump. To avoid such conflict, the parking spaces would therefore be located at the eastern side of the appeal site, rather than immediately adjacent to the proposed dwelling, and would be off square to the public highway. One of the spaces would be adjacent to the neighbouring boundary fence.
20. The highway's department have concerns that this would result in poor pedestrian and vehicle inter-visibility, and visibility along the street for emerging drivers. I share these concerns.
21. It has not been demonstrated that adequate pedestrian visibility splays clear of all structures exceeding 600mm in height can be achieved. As currently located, I am not persuaded that such a visibility splay could be adequately secured. It would appear that the visibility splay, certainly for the parking space closest to No 12, would extend across No 12's frontage, and the boundary fencing at this point could impede visibility of vehicles and pedestrians. Due to the limited depth of the plot which would limit vehicular manoeuvres, it is probable that vehicles would have to either enter or exit the parking spaces in reverse gear, which could exacerbate visibility issues. The position of the appeal site on a bend and opposite a school, where there is likely to be increased footfall and vehicular movements at certain times of the day, adds to my concerns regarding potential highway safety issues.
22. I note that other properties have similar arrangements for frontage parking. However, I have no details as to the visibility splays that these properties were able to achieve. Furthermore, as the appeal site is on a bend in the road, the parking arrangements of neighbouring properties along straighter stretches of road are not directly comparable and do not persuade me that the proposed parking layout is acceptable.
23. In the absence of sufficient information I conclude that the proposed development would be detrimental to highway safety. The proposal would conflict with Saved Policies GP2, T13 and ENV32 of the UDP which seek to ensure that developments have adequate access and parking facilities, that vehicular and pedestrian circulation patterns are considered, and that there is no adverse effect on highway safety. It would also conflict with Policy TRAN2 of the CS which seeks to ensure that development provides an acceptable level of accessibility and safety. It would also conflict with the Framework which highlights the need for safe and suitable access to sites for all users.

Trees

24. The Council have raised concerns that there is insufficient evidence to demonstrate that the proposal would not lead to a loss or harm to trees on and around the appeal site. Furthermore, concerns have been raised that were the development to go ahead, any future occupiers may seek the removal of established trees to improve their outlook. The trees are not covered by a Tree Preservation Order, but do have some visual amenity value.
25. An arboricultural survey has not been undertaken to determine the quality of the trees and little information has been provided regarding trees which may be retained or removed, or how any affected trees would be protected during construction. Without such information, it is unclear whether the retention of trees would be possible, and the full impact of the proposed development on

the existing trees is unknown. I have considered whether such matters could be addressed via a condition, but the details submitted pursuant to such a condition could potentially result in the development being unimplementable, which would be unreasonable, and/or in harm which was not identified as part of the planning balance.

26. I conclude that insufficient information has been provided to ascertain the effect of the proposed development on existing trees. It would therefore conflict with Saved Policy ENV18 of the UDP which seeks to ensure the protection of existing trees and minimise their loss. It would also conflict with Policy ENV1 of the CS which seeks to safeguard nature conservation. It would conflict with guidance contained within the Conserving Walsall's Natural Environment Supplementary Planning Document 2013 which seeks to ensure that development contributes positively to Walsall's natural environment and does not detract from or erode it. It would also conflict with the Framework which stresses that existing trees are retained wherever possible.

Living conditions of neighbouring occupiers

27. The proposed dwelling would be located close to the appeal site's side and rear boundaries. The rear elevation of the proposal would be located approximately 1.1m from the boundary with the rear garden of No 12. The boundary to the rear garden of No 13 would be approximately 7m from the rear elevation of the proposed dwelling. The first floor rear bedroom window of the proposal would therefore overlook the outdoor amenity space of No 12 and No 13.
28. However, the appeal site is located in a suburban built up area made up of fairly tight knit residential properties. Whilst there would be an element of overlooking from the proposed dwelling's rear bedroom window, intervisibility between properties and neighbouring gardens in this locality is the norm. The gardens of Nos 12 and 13 are already overlooked to some extent by existing neighbouring dwellings. Additionally, the angle of the proposed development in relation to the neighbouring gardens would minimise the amount of garden space that would be directly overlooked.
29. I consider that the proposed development would not harm the living conditions of the occupiers of No 12 and No 13 by leading to a significant loss of privacy. Consequently, the proposed development would comply with Saved Policies GP2 and ENV32 of the UDP which seek to ensure that developments do not result in overlooking and loss of privacy and take account of their surroundings, and Policy HOU2 of the CS which states the need for development to minimise amenity impacts. It would also accord with Policy HC2 of the SAD which encourages developments to provide a satisfactory residential environment. It would accord with guidance contained within the SPD which seeks to ensure that developments are well designed and provide good living environments. It would comply with the Framework which seeks to ensure that developments provide a high standard of amenity for future and existing users.

Planning Balance

30. The council cannot demonstrate a 5 year supply of deliverable housing land. In this scenario, Paragraph 11 d) ii) of the Framework indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

31. I have identified conflict with Saved Policies T13, GP2, ENV18 and ENV32 of the UDP, with Policies, HOU2, CSP4, TRAN2, ENV1 and ENV3 of the CS, and with Policy HC2 of the SAD. Each is consistent with the Framework in so far as it promotes that planning decisions create places which promote health and well-being, with a high standard of amenity for existing and future users; promotes good design that is sympathetic to the character of the area; promotes safe and suitable access; and protects trees. As such, I apportion significant weight to these identified policy conflicts and to the associated harm that would be caused to the living conditions of future occupiers with relation to internal space; the character and appearance of the area; potential highway safety; and the potential effect on trees.
32. Turning to the scheme's benefits, the Government is seeking to significantly boost the supply of housing. The Framework encourages and supports the effective and efficient use of land and recognises that small sites can make an important contribution to the council's housing supply. Although the proposed development is for just one house, this would contribute positively to the council's housing land supply, providing a much-needed affordable dwelling suitable for first time buyers in the context of a housing supply shortfall.
33. Indeed, the proposed development would provide social benefits in terms of a new house in a sustainable and accessible location where the principle of new residential development is supported. Furthermore, the development would generate economic activity during the construction of the house and provide a home to residents who would contribute to the local economy. The development would bring vacant land into use, and would be near facilities and public transport links which may encourage future occupants to use sustainable modes of transport, thus minimising effects upon the environment. There would therefore be economic, social and environmental benefits to the scheme. As the proposal is for only one dwelling, I give these benefits moderate weight.
34. In my judgement, the adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development outlined at Framework paragraph 11 does not, therefore, apply.

Conclusion

35. I have found that the proposal would provide adequate living conditions for the occupiers of No 12 and No 13 with regard to privacy. However, I conclude that the proposal would not provide adequate living conditions for future occupiers with regard to internal space, would harm the character and appearance of the area and cannot demonstrate that there would be no harm to highway safety or trees in and around the site. These harms are the overriding consideration in this case.
36. The proposal conflicts with the development plan when taken as a whole. There are no material considerations, including the Framework, which would indicate a decision other than in accordance with the development plan. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR