



Appeal Decision

Site visit made on 6 February 2024

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/C4615/W/23/3322789

Land adjacent Jackson Street, Lye, Stourbridge, West Midlands, DY9 8HE

- 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 Muhammad Ali against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P22/1463, dated 6 October 2022, was refused by notice dated 1 December 2022.
 - The development proposed is erection of a 3 storey 7 Bed HMO dwelling (house in multiple occupation) with soup kitchen on the ground floor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal documents include amended plans of the development proposed which revise the proposed layout. However, as the Council points out, the appeal process should not be used to evolve a scheme. Further, bearing in mind the findings of the high court in the case of *Holburn Studios Ltd*, to consider these changes without re-consultation would not be fair to the Council or to the other parties involved. I will therefore only consider the original plans as decided by the Council.
3. The government issued a revised version of the National Planning Policy Framework (the Framework) on the 19th December 2023. I have considered the changes in relation to the main issues in this appeal but find that the changes are minor and not material to the decision. The parties were therefore not invited to make submissions on the application of the amended Framework.

Main Issues

4. The main issues are:
 - Whether the proposal would prejudice the comprehensive delivery of the adjacent housing site;
 - Whether the occupants of the HMO would have good living conditions and the effects of the neighbouring garage on their living conditions.
 - The effect on the character and appearance of the area; and
 - The effect on highway safety.

Reasons

Background

5. The appeal site fronts Jackson Street which is a narrow lane leading from the High Street to the south and with vehicular traffic restricted to one direction to a point near the site. The site adjoins and would share an access with a commercial garage to the south. Other land to the north and east of the site is presently vacant and in part appears to have been subject to tipping with discarded materials and vehicles.
6. It is proposed to construct a building with three levels, the ground floor of which would be a soup kitchen with a dining space with 21 seating spaces indicated, while the two floors above would contain 7 bedroom/study rooms to make the HMO and for these there would be a kitchen/dining area on both floors. Each bedroom would have an ensuite shower, hand basin and toilet.
7. The appellant's Planning Statement says that the soup kitchen would provide a welcoming place for the homeless and those living in food poverty in Lye and the Dudley area and it would serve hot food and drinks to those who need it as well as access to first aid. It would be run by volunteers with no cost to guests and would operate for 16 hours per day.

Principle of development and neighbouring land

8. The Council says that the site forms part of a Mixed-Use Redevelopment Area which includes community uses, therefore the principle of the proposed development is compatible with this designation. However, the Council also says that the adjoining vacant land is an allocated housing site (Clinic Drive) which forms part of the Council's '5 year supply' and therefore has to be considered to be available and deliverable.
9. I am concerned that the appeal scheme should not be considered on an *ad hoc* basis independent from this neighbouring land as the layout of the site and close proximity of the building to the boundary of the site, together with the building's fenestration, is likely to have a bearing on the housing scheme. The submitted plans show a window to the middle bedroom on the flank wall of the first floor and two windows on the east facing elevation being close to the boundary of the site. For these habitable rooms to have a reasonable outlook such fenestration would require clear space beyond the boundaries of the site and this would be likely to prejudice what could take place on the neighbouring allocated housing site. Moreover, the cooking equipment for the soup kitchen is likely to require mechanical ventilation and this would have to be sited very close to the party boundary without knowing the effect of noise and odour on new residential environment.
10. The appellant suggests that the plans for the redevelopment of the neighbouring land have been around for the last 15 years and nothing has happened and I acknowledge that the Framework supports the reassessment and re-use of previously developed land. However, on the information submitted I find that there is a reasonable prospect of the land coming forward for new housing use in the short to medium term and that it would not be appropriate to consider the proposed scheme on an *ad hoc* basis as the form and layout of the development would be likely to prejudice the reasonable development of the allocated site.

Effect on living conditions

11. The Council refers to its HMO standards 2022 which although mainly for licencing purposes give an indication of the suitability of the proposed premises for HMO use. Within these standards there is a difference between units where all facilities (toilet/bathroom and cooking/dining) are contained in the room or are provided communally outside of the room. In the case of the proposal each bedroom /living unit would have its own toilet facilities but would have access to a kitchen/dining area on the same floor. Although the adopted Standards do not appear to relate to this type of unit directly it appears to me that as the total HMO use would have at least seven people and single person occupancy, each unit should have a minimum floor area of 8.5 m².
12. While the two HMO units on the upper floor meet this standard the five units shown on the first floor do not, with the smallest unit being 6.5². Overall, I find that the HMO accommodation put forward is materially short of the applicable standard.
13. In terms of the wider setting of the site I noted at the visit that the site lies very close to a commercial garage whose signage indicates that it carries out vehicle repairs and servicing. Noise and disturbance could be expected from such a use and one of the HMO units has its window facing towards and in close proximity to the garage but there is no assessment of the possible effects of noise impacts or any mitigation that may be required.
14. Finally, I note the Council's objection that the residential units would have nowhere to dry washing sustainably or to relax in the open air, but there is a small area of land at the rear of the site outside of the access to the garage which could provide some limited facilities, and this issue could be dealt with the submission of amended plans if all other parts of the development proved to be acceptable.
15. Overall on this issue I find that it has not been demonstrated that the proposed HMO units would be of an appropriate size to provide reasonable living conditions for the occupiers and the occupation of some of the units are likely to be affected by noise stemming from the adjoining commercial garage premises. The proposal therefore conflicts with Policies L1 and D2 of the Borough Development Strategy in terms of provision of an appropriate level of amenity for future occupiers and compatibility with surrounding uses.

Effect on character and appearance

16. The site lies close to the district centre of Lye and adjoins an area designated as a High Historic Townscape Value. Setting aside my concerns about the scale of the development proposed and its proximity to the boundaries of the site related to the first two main issues, I do not share the Council's concern about the visual impact of the proposed building and its setting on the fringe of the district centre. While the adjacent garage is a single storey building there are other buildings of similar height and bulk along Jackson Street. While the general architectural form of buildings in the area tends towards the use of red brick I saw many other buildings locally with rendered elevations. Therefore the overall form of the building proposed would not be materially out of place.
17. The Council raises concern about proposal to have a roller shutter to protect the folding front doors and to retain the galvanised entrance gates to the

garage and have a new galvanised pedestrian gate to the side. These details would mar the overall design of the scheme and reinforce the current 'run down' appearance at the moment rather than contribute to the enhancement of the area. However, I am satisfied that these architectural features proposed are not the only way to tackle the design issue and if all other aspects of the scheme were acceptable amended plans could be required and agreed for an alternative solution.

18. I conclude on this issue that while the general bulk and form of the building proposed is suitable for the setting of the site, revised details are necessary for specified aspects to meet the design requirements of policies ENV2 and ENV3 of the Core Strategy.

Effect on highway safety

19. Jackson Street is narrow, mostly one way with no pedestrian footway and the Council says that it is busy as it is used as a shortcut for vehicles leaving the High Street. The proposal makes no provision for parking on site and assumes that the soup kitchen users and the occupiers of the HMO units would be on foot or bicycle. I have concerns about the scale of pedestrian movement that the proposal would result in on a road with no pedestrian refuge. Moreover, the plan shows there would be a narrow space to the front of the building but the submitted plan shows this as an outdoor seating area directly off the carriageway.
20. The Council also raises concerns about the pedestrian access to the site being shared with the access to the commercial garage but while this arrangement could happen it appears more likely that the HMO residents would be encouraged to use the north side entrance gate and then proceed around the rear of the building.
21. On the evidence put to me I find that the location of the site or the design does not facilitate pedestrian safety and there is a conflict with Policy S17 as the proposal would not make adequate and safe provision for pedestrians.

Other Matters

22. The Designing Out Crime Officer from West Midlands Police does not support the proposal. Many of the concerns expressed relate to a lack of details about security and a management plan for the operation and the supervision of the soup kitchen and the HMO units and the possible effects on Police resources. Some of this concern could be met by additional information from the appellant.
23. Nevertheless, the Framework indicates in section 8 that planning decisions should aim to achieve buildings and places that are safe and accessible and that crime and disorder and the fear of these do not undermine community cohesion. In this case the proposed layout of the site does not provide safe and overseen access for the users of the HMO who would have to utilise the same vehicular access as the commercial garage or enter via the narrow side passageway to access the communal door at the rear of the building.
24. I find that the proposal has not been designed to create a safe and accessible environment.

Planning balance

25. On the main issues I have found that the layout of the development and its proximity to the boundaries of the site would be likely to prejudice the redevelopment of the adjoining and allocated housing site. The size of most of the HMO units would be below adopted standards and the layout and siting of the building adjacent to the commercial garage would not provide occupiers with an appropriate level of amenity. While I have found that the bulk and scale of the building proposed would be suitable for the site, some of the details proposed need revision to ensure the development contributes to the area in a positive way. Finally, I have found that the siting of the building off a narrow street with no footways would not be in the interests of pedestrian safety nor has the layout of the scheme been designed to have a safe and accessible entrance particularly for the users of the HMO units.
26. The proposal therefore conflicts with the relevant parts of the development plan that I have identified above.
27. These findings have to be balanced with other considerations. The appellant's aim of providing facilities for local residents who need them is laudable and it is clear to me that the area has suffered from being visually and physically 'run-down' and neglected and could benefit from redevelopment and social and economic investment. However, the proposed scheme does not look to solve problems in a comprehensive way and the details of the submission would have material adverse effects.
28. Overall I find that the other considerations relevant to the case do not outweigh the local harm and conflict with policy and this indicates that the appeal should not be allowed.

Conclusion

29. For the reasons give above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR