



Appeal Decision

Site visit made on 10 April 2024

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2024

Appeal Ref: APP/C4615/W/23/3330174

22 Melbourne Road, Halesowen, Dudley B63 3NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Hayden Grossman of Ferrybridge Capital Ltd 12021904 against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/0887.
 - The development proposed is erection of new block of flats containing 1 two bedroom flat, 2 one bedroom flats and 2 studio flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (Framework) was published on 19 December 2023. References to the Framework in this decision are to the new paragraph numbers.
3. A tree on the southern boundary of the appeal site is subject to a Tree Preservation Order (the TPO tree) that was imposed after the Council made its decision on the development subject of this appeal. The presence of the TPO was highlighted in the Council's appeal statement, on which the appellant was given the opportunity to comment.
4. The Council's reason for refusal concerned the impact of the proposal on the character and appearance of the surrounding area. However, a number of other concerns were identified in the Council's officer report and appeal statement. The appellant's evidence addressed those additional concerns in their appeal statement. In addition, during the course of the appeal the appellant's agent was advised that these would be treated as main issues in the appeal and was given the opportunity to provide further comments to be taken into account in this decision.

Main Issues

5. Therefore, the main issues are:
 - the effect of the proposal on the character and appearance of the surrounding area, with particular regard to trees;
 - the effect of the proposal on the living conditions of the occupants of Nos 18, 20 and 22 Melbourne Road, with particular regard to privacy and outlook;

- whether the proposal would provide adequate living conditions for its future occupants, with particular regard to access to private outside space;
- whether it has been demonstrated that the proposal is acceptable with respect to its impact on ecology; and
- whether it has been demonstrated that the proposal would be acceptable with respect to highway safety, having regard to access and parking provision.

Reasons

Character and Appearance

6. The immediate vicinity of the appeal site is residential in character. Set behind properties on Furnace Lane and Melbourne Road, and without any substantial built form, the existing appeal site has a neutral effect on the character and appearance of the surrounding area. Whilst there is variation in housing design in the locality, there is a predominance of traditional red brick houses positioned close to the road edge. There are also a small number of three storey apartment blocks. These are also positioned close to the road edge and therefore conform to the general pattern of development here. This visibility of houses from the public realm, and their consequent legibility from the roads on which they are located is a defining positive feature of the character and appearance of the area.
7. Trees and hedges are prevalent in the area surrounding the appeal site. This creates a mature, verdant character. Given the height of the TPO tree, it is visible from part of Furnace Lane, as well as from Whittingham Road in the vicinity of the entrance to Halesowen College. As such, it makes a positive contribution to the character of the surrounding area.
8. Although the appeal site is elevated relative to the wider topography, I am not persuaded that the proposal would be particularly prominent in longer views. This is due to the presence of 22 Melbourne Road which is of a broadly comparable height and form to the proposal and positioned on ground of a level that is not significantly different to that of the appeal site.
9. The location of the proposal set back from Furnace Lane and Melbourne Road would limit its visibility from public roads. Nonetheless, it would not be entirely hidden as it would be apparent in views between houses on Furnace Lane. In these views, the location of the proposal set back from the road would appear at odds with the prevailing pattern of development. This would be compounded by the narrowness of the access from Furnace Lane and the proposal's three storey height which, positioned behind two storey houses on Furnace Lane, would give a cramped appearance.
10. In addition, the proposal would be sited in close proximity to the TPO tree. No tree survey or arboricultural impact assessment is before me. Therefore, given the proximity of the proposed development and its access to that tree, I cannot be sufficiently certain that the proposal could be implemented without unacceptable harm to the longevity of the tree. Moreover, its loss would detract from the verdant character of the area.
11. Therefore, although the use of red brick would be consistent with building materials in the locality, the location and scale of the proposal would not

achieve good design and would harm the character and appearance of the surrounding area. As such, it would conflict with Policies ENV2, ENV3, HOU2, and CSP4 of the Black Country Core Strategy (February 2011) (Core Strategy), and Policies S6, S8 and L1 of the Dudley Borough Development Strategy (March 2017) (Development Strategy). These generally seek to ensure proposals achieve good design, having regard to the character of their surroundings.

12. Policy S1 of the Development Strategy reiterates the Framework's presumption in favour of sustainable development. I return to this in the conclusion below. Policy HOU1 of the Core Strategy relates to housing delivery more generally and is not relevant to this main issue. Similarly, Policy TRAN2 of the Core Strategy deals with transport implications, and Policy S17 of the Development Strategy addresses matters such as access arrangements. These are not relevant to this main issue.
13. The proposal would also conflict with paragraph 135 of the Framework which, amongst other matters, requires that proposals are sympathetic to local character. Also, it would not be supported by the Residential Design Guide Supplementary Planning Document (May 2023) (Design SPD) which advises against backland development that is contrary to the surrounding pattern of development (page 27/28). The Parking Standards Supplementary Planning Document (September 2017) (Parking SPD) is not relevant to this main issue.

Ecology

14. As reasoned above, given the proximity of the proposed building and its access and parking space to the TPO tree, it is necessary to understand the potential impacts of the proposal on that tree. However, in the absence of any tree survey or arboricultural impact assessment, I cannot be sufficiently certain that the proposal could be accommodated without undue harm to that tree, with associated loss of biodiversity. Moreover, no ecological appraisal is provided. Given this degree of uncertainty and the potential for unacceptable impacts on that tree to hinder implementation of the proposal as submitted, it would not be appropriate to defer consideration of this issue to be addressed via a planning condition.
15. Therefore, I cannot conclude otherwise than that it has not been demonstrated that the proposal is acceptable with respect to its impact on ecology. As such, I cannot find compliance with Policy S22 of the Development Strategy which requires details of impacts on existing trees to be provided, including consideration of replacement planting. Also I cannot find compliance with Policy ENV1 of the Core Strategy which seeks to ensure proposals contribute positively to the natural environment and biodiversity.

Living conditions of neighbouring occupants

16. 22 Melbourne Road is three storey accommodation with large habitable room windows facing on to the appeal site. The proposal has been designed to minimise the number and size of windows facing towards No 22. Nevertheless, on the elevation facing No 22 it is proposed to include a window from the proposed lounge/kitchen/dining room at first and second floor level. These would enable views from the proposal into habitable rooms at No 22 at reasonably close range. Furthermore, obscure glazing of those windows would unacceptably restrict the outlook from habitable rooms in the appeal scheme.

It also appears that the proposed balconies on the southern elevation of the appeal scheme would provide clear views into habitable rooms at No 22.

17. In addition, bedroom and living room windows are proposed on the northern elevation. At first and second floor level these would allow overlooking of rear gardens of Nos 18 and 20 Melbourne Road at relatively close range. Given the size and layout of these gardens there would be little opportunity for occupants of those houses to enjoy their outside space without the feeling of being overlooked. Furthermore, the three storey proposal would be positioned so close as to appear oppressive from habitable room windows facing on to the appeal site in No 22 and from outside space for occupants of Nos 18, 20 and 22.
18. Therefore, whilst no substantive evidence is before me to indicate that the proposal would result in a harmful loss of light to neighbouring occupants, it would unacceptably harm the living conditions of the occupants of Nos 18, 20 and 22 with respect to privacy and outlook. Consequently, it would not constitute high quality design in conflict with Policies ENV3 and HOU2 of the Core Strategy. It would also be contrary to Policy L1 of the Development Strategy which, inter alia, seeks to avoid harm to neighbouring occupants.
19. It would also conflict with paragraph 135 of the Framework which, amongst other matters, seeks to ensure proposals achieve a high standard of amenity for existing and future users. It would similarly be contrary to the guidance in the Design SPD, for such proposals to avoid harm to neighbours (page 27).

Living conditions for future occupants of the proposal

20. The proposed ground floor apartment would have access to an outside courtyard space. However this would be a relatively narrow space along the northern side of the building, facing on to a 1.8m brick wall. Therefore the quality and quantity of outside space would be unduly compromised for occupants of that apartment. The proposed first floor and second floor apartments would each have access to a modest balcony on the southern elevation. This falls well below the 30 sqm of private or communal space for each flat as envisaged in the SPD.
21. I see no reason to doubt that the proposal would provide sufficient internal space within each apartment. However, in the particular circumstances of this case where residents in the locality generally appear to have access to more spacious private or communal garden space, the appeal scheme would not provide adequate living conditions for future occupants of the proposal with regard to access to private outside space. As such, it would conflict with the requirement in Policy L1 of the Development Strategy for proposals to provide a suitable level of amenity for its future occupants. For similar reasons it would not comply with the approach in the Design SPD in respect of amenity (page 27).

Highway safety

22. It is proposed that the development would be car free. However, a deliveries parking space is shown. Therefore, it is likely that vehicles would enter the site on a regular basis to make deliveries. The proposal makes use of an existing vehicular access, however the proposal would occupy part of the parking area to the rear of No 22. As a result, it appears that any vehicles entering the

appeal site would no longer have sufficient manoeuvring space to be able to turn and exit on to Furnace Lane in a forward gear.

23. The appeal site is located close to the brow of a hill, and a slight bend on Furnace Lane. This would considerably limit visibility of the access from vehicles approaching the appeal site from either direction on Furnace Lane. It would also limit visibility for vehicles exiting the appeal site. Therefore, there would be a risk to highway safety from vehicles reversing out of the appeal site on to Furnace Lane (or reversing in).
24. No mechanism is before me to indicate how the proposal would be secured as a car free development. In the absence of dedicated parking provision, it appears reasonably likely that the proposal would result in increased on street parking in the locality, causing unacceptable harm to the free flow of traffic. No robust evidence has been provided to the contrary. Although only a snapshot in time, during my mid morning, weekday site visit I observed that on street parking in the vicinity of the appeal site was at a premium.
25. Concluding on this matter, it has not been demonstrated that the proposal would have an acceptable effect on highway safety, having regard to access and parking provision. Accordingly, I find conflict with Policy L1 of the Development Strategy which requires that housing developments include suitable parking provision without harm to highway safety and free flow of traffic.
26. It would also be contrary to Policy S17 of the Development Strategy which includes a requirement for proposals to provide suitable and safe site access. Further, the proposal would not be supported by Policy TRAN2 of the Core Strategy which advises against granting planning permission where proposals are likely to result in significant transport issues unless proposals achieve a suitable level of accessibility and safety for all transport modes.
27. Similarly, the proposal would not accord with paragraphs 114 and 115 of the Framework which seek to ensure that proposals provide safe and suitable access, and conversely, avoid unacceptable impacts on highway safety. The proposal would also fall below the parking standards envisaged in the Parking SPD.

Other Matters

28. The proposal would provide five apartments which would contribute to the supply of housing in the borough. It could also be constructed to high environmental standards, which would form a public benefit in environmental terms. Furthermore, the construction of the proposal would provide short term benefits to the local and wider economy; and the occupants would be likely to stimulate consumer spending, boost local labour supply and help to support local services, which would all constitute benefits in social and economic terms.

Conclusion

29. However, given the harms and policy conflict identified above, the proposal would conflict with Policy S1 of the Development Strategy in respect of the presumption in favour of sustainable development. Moreover, the proposal would conflict with the development plan as a whole and there are no material considerations worthy of sufficient weight to indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

Rachel Hall

INSPECTOR