



Appeal Decision

Site visit made on 5 June 2024

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/C4615/W/24/3336236

Oaklands Nursing Home, Wartell Bank, Kingswinford, Dudley DY6 7QJ

- 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 Dharam Sahni against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/1346.
 - The development proposed is a first floor extension to provide one bedroom, and internal layout alterations to provide fire escape stairs.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor extension to provide one bedroom, and internal layout alterations to provide fire escape stairs at Oaklands Nursing Home, Kingswinford, Dudley DY6 7QJ in accordance with the terms of the application, Ref P23/1346, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following drawings: Location plan, Proposed floor plans 2633.3.1100.P2, Proposed elevations 2633.3.1200.P2 and Proposed roof plan 2633.3.1101.P2.
 - 3) The external materials of the extension hereby permitted shall match those used in the existing building.

Main Issue

2. The main issue in this case is its effect on the living conditions of residents at 55B Wartell Bank.

Reasons

3. The appeal property is a large nursing home on the west side of Wartell Bank. It comprises a deep plot, and the building itself runs along the northern side, being separated from the boundary by just a narrow passage. Immediately beyond that boundary is a property fronting onto Wartell Bank and, behind that next to the north-west corner of the appeal site, is No 55B. This is a modern 2-storey dwelling, and, near to the boundary with the nursing home, it has a rear-facing patio window at ground floor level, which opens onto a patio that runs the full width of that house, and appears to be well used. Currently, on this northern side, the nursing home projects a little past the rear of No 55B at 2-storey level, with a further single storey element beyond.

4. The proposal is to add a first floor onto part of that single storey element. This would not follow the lines of the existing external walls at ground floor level. Rather, it would project for a short distance along the north- elevation, and then run in an angled manner across the corner to the western side of the building. It would have a flat roof and the Council said that when the extension and what is there now were taken together, the 2-storey element of the resultant building's northern elevation would protrude 3.5m past the rear facing wall of No 55B. The neighbour seems to hold a different view, stating that from their patio window all one would see to the south would be a circa 6.2m wall, as measured from the rear of their dwelling to the extent of the proposed extension. To my mind though while the neighbour's figure may reflect the overall projection when measured on the side of the proposal distant from the boundary, looking at its northern side the Council's figure appears to reflect more closely what is shown on the submitted plans.
5. The reason for refusal does not cite a conflict with any specific development plan policies or guidance. However, Policy L2 in the *Dudley Borough Development Strategy* concerns development at supported accommodation, and states consideration will be given to whether it delivers an adequate level of overall amenity for the surrounding area. The Council's *Planning Guidance Note No 10* (PGN10) then adds that when considering extensions to care facilities the effect of the proposal on adjoining properties will be a material factor for consideration. Although I have little to show the status of PGN10, such a position, and indeed the approach in Policy L2, align with that found in the *National Planning Policy Framework* (the Framework) in this regard.
6. To inform its assessment about the effect of the development on No 55B, the Council has referred to what is termed a 45° code. I was told this states that new 2-storey extensions should not breach a 45° line taken from a quarter point across ground floor windows to habitable rooms on neighbouring houses. However, whilst this code may be commonly used by the Council in instances such as this, I have not been told it is found in adopted policy in the development plan, or that it comprises part of a supplementary planning document or it is, in any other sense, a formally adopted local guideline. Consequently, whilst it might be a useful guide, the weight I can afford it as a formal tool of local policy is limited. In any event, despite the emphasis placed upon it, the Council has acknowledged there is now mathematical compliance with that code, although this does not appear to be a view shared by the neighbour.
7. Notwithstanding this alleged compliance though, the Council's concern appears to be that the proposal's bulk and projection mean it would significantly overshadow the primary area of amenity space to the rear of No 55B, namely the patio area directly outside the patio window, and result in an overbearing impact to the detriment of the neighbouring occupier. Despite this, the only explanation it has given me concerning the application of the code is how an extension is judged relative to neighbouring windows, and so presumably how its effects on the light and outlook enjoyed in the rooms served by those windows are assessed. Consequently, its applicability to the concerns it raises in relation to the outside area seems limited. This is because not only would the patio have a different relationship to the extension than the nearest ground floor window at No 55B, but also it is used in a different manner and extends across the rear of the dwelling.

8. Whilst the proposal may cast some additional shadow at times on the patio, the garden itself is of a fair size, while the effect on sunlight would be confined to when the angle and orientation of the sun were within a certain limited range. Furthermore, from much of the garden a sizeable amount of the proposal would be seen in the foreground of the existing elements of the building beyond. Consequently, I consider the scheme would not be a significant incursion into this neighbouring garden, and the impact it may have on the enjoyment and value of either the rear garden of No 55B in general, or the patio area by the patio window in particular, would not be unreasonable. Furthermore, the openness of the garden and the proposal's set back from the boundary mean this addition would not have an undue effect on daylight or outlook experienced in that area, while its scale means it would not be unacceptably dominant.
9. Given the apparently differing views about the extent of the proposal's projection, and whether or not it would comply with the 45° code, and mindful too it has not been confirmed that this code is a formalised tool in the Council's policy and guidance, I have assessed the development's impact on the windows to No 55B on its merits. When looking from the patio window this extension would be to one side, separated by a substantial boundary wall and the passageway at the nursing home. As a result, it would not encroach into the outlook that much of the room offers over the garden towards the open land beyond. From where it could be seen, there is already an awareness of the existing built form of the nursing home, and so the proposal's effect on openness and dominance would be slight. Furthermore, given the size of the window and the aspect it offers, I consider any effect on daylight, sunlight or outlook enjoyed in that room would not be appreciable. As a result, even if the extension as shown was in conflict with the 45° code and even if it had been demonstrated that the code was a locally adopted guideline, to my mind it would not have offered a basis to dismiss the scheme.
10. The development would be more visible from the bedroom window above, but as the 2 would be at comparable levels (albeit the proposal rising higher), any effect on overshadowing or outlook would not be significant. From the other rear-facing rooms the proposal could only be seen at highly oblique angles and so its effects would be still less pronounced.
11. The addition would extend further westwards on its southern side than on its northern one. However, its splayed nature would greatly conceal it from the neighbour's rooms and increase its distance from the boundary, so meaning the portion with its longer projection would not adversely affect the living conditions at No 55B.
12. In assessing this matter I am aware of the neighbour's references to paragraphs in the Framework. As stated above, it has not been demonstrated that the 45° code is in fact local guidance, but even if it is the Council acknowledges there would be a mathematical compliance. Concerning the matter of design, no design code has been brought to my attention beyond the general advice in PGN10. This is an area of diverse and varied built form, with the sizeable nursing home already being of a scale that contrasts with the housing around. As a result, this small addition constructed of matching materials, even if viewed in relative isolation from the rear of No 55B, would not be a form of development that was inconsistent with the existing prevailing character of this area or eroded any distinctiveness it currently displays. On the

evidence before me, it therefore cannot be said it does not comply with local guidelines.

13. Moreover, in a built-up area such as this it is highly likely that any new development could be perceived as having some impact on the properties around. As a result, any decision has to balance the rights of the developer against those of their neighbours. For the reasons given above I have explained my judgement and stated why I consider the impact in this case would not be unacceptable or unreasonable.
14. Finally, I do not question the benefits of the garden of No 55B for issues around mental health, but on the evidence before me these issues would not be compromised unacceptably by the development, as I have found that the proposal would not result in the neighbouring property being unduly affected. Therefore, I consider those residents would not suffer unacceptable harm to their living conditions. The scheme would not be contrary to development plan policy while the Council has accepted that it would not conflict with the 45° code. As a result, I am satisfied that a grant of planning permission would not unacceptably interfere with the rights of those residents to a private and family life and home, and so it is proportionate in the circumstances to allow the appeal.
15. Other concerns were also raised about the level of parking provision and outdoor amenity space at the site, but I have insufficient evidence to show any harm arising because of this one extra room would justify dismissing the appeal. Resolving any right to light lies outside of the planning system.
16. With regard to conditions, in the interests of the appearance of the locality the materials need to match those on the nursing home, and for the avoidance of doubt the development should be commenced within 3 years and be built in accordance with the approved plans.

Conclusion

17. Accordingly, I conclude the development would not unreasonably affect the living conditions of the residents at No 55B, and so in this regard would not conflict with Policy L2 in the *Dudley Borough Development Strategy*, PGN10 or the Framework. In the absence of any reasons to justify a decision otherwise than in accordance with the development plan, the appeal should therefore be allowed

JP Sargent

INSPECTOR