



Appeal Decision

Site visit made on 2 September 2024

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Appeal Ref: APP/C4615/W/24/3340813

136 Lyde Green, Cradley B63 2PF

- 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 John Brookes against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/0992.
 - The development is demolition of existing garage and erection of 1No. dormer bungalow with associated works.
-

Decision

1. The appeal is allowed, and planning permission is granted for the demolition of existing garage and erection of 1No. dormer bungalow with associated works at 136 Lyde Green, Cradley B63 2PF in accordance with the terms of the application, Ref P23/0992 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Council changed the description of development from that stated on the application form. In the interests of clarity, I consider that the amended description accurately describes the appeal scheme and accordingly I have adopted an amended description in the heading above.
3. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (2023) (the Framework). The consultation and draft Framework do not constitute Government policy or guidance. However, they are capable of being material considerations in appeals. Notwithstanding this, in relation to this appeal the aims of both sets of policies are similar. No party would be prejudiced or caused any injustice by me proceeding with the appeal in light of the consultation.
4. Amended plans have been provided: GD2107/101B Proposed Site Plan & Floor Plan; GD2107/102A Proposed Elevations; GD2107/103A Street Scene; and GD2107/105A Block Plan with the appeal. The Council have been provided with this information and had the opportunity to comment. The submitted information does not involve a substantial difference or a fundamental change to the proposed development. On this basis there would be no prejudice or injustice by me proceeding with the appeal in light of submitted documents. I have considered the appeal on the basis of the amended plan provided.

Main Issues

5. The main issues in this appeal are the effect of the proposed development on
- (i) the character and appearance of the area;
 - (ii) the living conditions of future occupiers of the proposed development in terms of garden size,
 - (iii) the living conditions of the occupiers of Nos. 134 and 136 Lyde Green; and
 - (iv) highway safety.

Reasons

Character & Appearance

6. The appeal site is located within a predominantly residential area on the corner of Lyde Green and Wesley Avenue. The appeal site slopes down in level from the host property towards the rear of the existing garden. Properties vary in within the surrounding area, although they are predominantly two storey.
7. The proposed development involves the demolition of a large, detached garage to the rear of the host property, which has a direct road frontage. The proposed development appears similar in terms of footprint and position to that of a development previously allowed on appeal¹.
8. The previously approved bungalow comprised a hipped roof bungalow without accommodation within the roof. The proposed development comprises a dormer bungalow. The amended plans submitted with the appeal have reduced the scale of the proposed development. Notwithstanding this the scale of the proposal would be larger than that of the approved development. Nevertheless, the proposed development before me would be in keeping with the pattern of development in the area and would not be incongruous.
9. The Council have cited 'garden grabbing' in reason for refusal No. 1, the Dudley Council Residential Design Guide, Supplementary Planning Document (2023) (the SPD) confirms in the Glossary that Garden Grabbing is "*A term coined by the media to describe the activity of developers acquiring garden land and subsequently building several new homes on the plot.*"
10. The proposed development is for one dwelling and as there is an existing approval for a bungalow on the appeal site the point raised that the proposed development would form an unjustified and contrived form of garden grabbing appears to be a moot point.
11. I conclude that the proposed development would not harm the character and appearance of the area.
12. There is no conflict with Policies S1, S6, S8 and L1 of the Dudley Borough Development Strategy (2017) (the DS) and Policies ENV2, ENV3 HOU1, HOU2, and CSP4 of the Black Country Core Strategy (2011) (the Core Strategy) which seeks amongst other things to provide high quality housing in sustainable locations which responds to the locality context and character.

¹ Appeal Ref: APP/C4615/W/21/3278246

13. There is no conflict with the Framework which seeks amongst other things to ensure developments are of good design appropriate and sympathetic to their surroundings. There is also no conflict with the advice set out in the SPD.

Living Conditions for Future Occupiers

14. The SPD confirms that two and three bedroom homes with plot width of over 4 metres require a minimum area of 65sqm as private amenity/garden space for new housing development.
15. The proposed development comprises a two bedroom bungalow and proposes 60sqm of private amenity/garden space. The proposed development does not comply with the requirements of the SPD.
16. The previously approved development on the site comprised a one bedroom bungalow providing 60sqm of amenity space which exceeded the requirements of the SPD (45sqm).
17. Notwithstanding this, it is important to recognise that such guidance does not constitute a 'black and white' set of rules to be applied rigidly or exclusively when other material considerations indicate that an exception may be appropriate.
18. Whilst in conflict with the SPD the proposed amenity space would be functional and proportionate to the scale of the two bedroom dormer bungalow.
19. I therefore conclude that the proposed development would not be harmful to the living conditions of future occupiers of the proposed development in terms of garden size.
20. There is no conflict with Policies HOU1, HOU2 and CSP4 of the Core Strategy which amongst other things seeks to ensure the accommodation is suitable for the intended occupiers.
21. There is no conflict with the Framework which seeks to ensure developments have high standards of amenity for existing and future users.

Living Conditions of Neighbours

22. The SPD confirm that the minimum distance between habitable room windows of one property and two storey flank walls of another should be 14 metres. The Appellant confirms that the previous approved single storey bungalow would provide 13m separation distance from the rear elevations of Nos. 134 and 136 Lyde Green.
23. The amended plans demonstrate that 14m separation distance would be achieved. Notwithstanding this I recognise that the proposed development whilst higher than the previously approved development would not have a two-storey flank wall and does not have windows facing the rear elevations of Nos. 134 and 136 Lyde Green. Due to the slope of the site from the rear elevations of Nos. 134 and 136 the proposed development would also be located at a lower level.
24. I conclude that the proposed development would not be harmful to the living conditions of the occupiers of Nos. 134 and 136 Lyde Green.

25. There is no conflict with Policies HOU1, HOU2 and CSP4 of the Core Strategy and Policies S1, S6 and L1 of the DS which amongst other things seeks to ensure developments do not cause unacceptable harm to the amenities of the occupiers of neighbouring dwellings.
26. There is also no conflict with the Framework which seeks to ensure developments have high standards of amenity for neighbouring properties.

Highway Safety

27. The Parking Standards, Supplementary Planning Document (2017) (the Parking Standards SPD) specifies minimum parking standards for new residential developments. A minimum of 2 parking spaces to serve a two bedroomed property is required by the Parking Standards SPD.
28. The amended plans demonstrates that 2 parking spaces would be provided within the curtilage of the proposed development.
29. My attention has been drawn by the Council to the previous appeal decision where the Inspector confirmed that the likely frequency of vehicle movements to and from the access associated with a one bed dwelling would also be low. I agree.
30. During my site visit I observed that highway movements in the area were not significant, I have not been provided with substantive evidence to convince me that the trips associated with the two bedroom bungalow would have an unacceptable impact on highway safety, or that the residual cumulative impacts on the road network would be severe.
31. I conclude that the proposed development would not harm highway safety.
32. There is no conflict with Policy TRAN2 of the Core Strategy and Policies L1, S6 and S17 of the DS which seeks amongst other things to protect highway safety.

Conclusion and Conditions

33. For the above reasons I conclude that this appeal should be allowed.
34. I have imposed a standard condition relating to the commencement of development and a condition specifying the relevant plans as this provides certainty. In order to safeguard the character and appearance of the area I have imposed conditions concerning materials, hard landscaping and boundary treatments.
35. I have imposed a condition requiring the submission of a construction method statement in order to help minimise the negative effects of construction phase on neighbouring occupiers. For similar reasons, a condition limiting construction working hours is also necessary.
36. The Parking Standards SPD sets out that an external charging point shall be provided adjacent to at least 1 parking space for each dwelling. As such a condition requiring the implementation of a charging point is reasonable and necessary.
37. I have attached a condition requiring details of the accesses and parking areas in the interest of highway safety.

38. The Council suggest a condition relating to minimising local air quality, similar to the previously allowed appeal I have not been provided with substantive evidence to demonstrate that specific control relating to gas boilers is necessary or reasonable in this area or for this development.
39. The Council suggest conditions restricting permitted development rights be imposed should the proposed development be allowed. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights should only be used in exceptional circumstances. The Council have not provided clear justification and as such the suggested conditions removing permitted development rights are not considered reasonable or necessary.

C Pipe

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: GD2107/101B Proposed Site Plan & Floor Plan; GD2107/102A Proposed Elevations; GD2107/103A Street Scene; GD2107/104 Location Plan and GD2107/105A Block Plan
3. No development above damp proof course level shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. The development hereby approved shall not be occupied until details of the hard landscape works have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained as such.
5. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority detailing measures for the control of dust and emissions arising from the demolition and construction of the development. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
6. No development above damp proof course level shall commence until details of the accesses into the site, together with parking areas [including details of widths, levels, gradients, cross sections and drainage] have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the accesses into the site, together with parking areas within the site have been laid out in accordance with the approved details. These areas shall thereafter be retained and not be used for any other purpose for the life of the development.
7. Prior to the occupation of the development hereby approved, details of all boundary enclosures shall be submitted to and approved in writing by the local planning authority. The approved details shall be carried out within 3 months following their approval and thereafter maintained.
8. No development above damp proof course level shall commence until details of the electric vehicle charging point to be provided for the dwelling in accordance with the Council's standards (Parking Standards SPD), has been submitted to and approved in writing by the local planning authority. Prior to first occupation the electric vehicle charging points shall be provided in accordance with the approved details and shall be maintained for the life of the development.
9. Construction works shall not take place outside the hours of 07:00 to 18:00 hours Mondays to Fridays and 08:00 hours to 17:00 hours on Saturdays nor at any time on Sundays or Public Holidays.