



Appeal Decision

Site visit made on 20 November 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2024

Appeal Ref: APP/V4630/W/24/3340955

107 and 109 Lichfield Road, Bloxwich, Walsall WS3 3LU

- 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 Eric Russell against the decision of Walsall Metropolitan Borough Council.
 - The application Ref is 23/0248.
 - The development proposed is Residential Development.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal on the character and appearance of the area,
 - the effect on highway and pedestrian safety, with particular regard to the proposed visibility vehicular and pedestrian splays at the access, the use of the shared space roadway and the manoeuvring of refuse vehicles,
 - the effect of the proposed development on the living conditions of neighbouring occupiers with regard to privacy and noise and disturbance,
 - the effect of the proposal on the operation of the adjacent education facilities in the area,
 - the effect of the proposal on the living conditions of future occupiers with respect to land contamination, and
 - the effect of the proposed development on the integrity of the Cannock Chase Special Area of Conservation (SAC).

Reasons

Character and appearance

3. The appeal site consists of the rear gardens of the detached houses of 107 and 109 Lichfield Road (No's 107 and 109). Housing along Lichfield Road is arranged with a clear linear pattern, with a largely consistent front building line. The site is within a residential area predominantly consisting of housing with deep rear gardens, with limited gaps between houses. Although the garden of No 109 includes a garage block, the gardens of both plots retain a sense of openness that is also evident as a character of neighbouring gardens. The appeal site accords with the general pattern of local development in terms

of both plot size and form of development, and thus these make a positive contribution to the character and appearance of the area.

4. Policy CSP4 of the Black County Core Strategy [2011] (CS) relates to place making. This states that all development is required to demonstrate a clear understanding of the historic and local distinctiveness of the area. The Council's Designing Walsall SPD [undated] requires new development to be informed by the surrounding character and to respond in a positive way to it by reflecting local urban design characteristics such as street patterns, building scale, topography and culture.
5. The proposed development would place four new dwellings behind and parallel to the existing linear row of frontage housing in a backland location. Backland development is not necessarily harmful in principle, but such development should integrate well with its surroundings and add to the quality of an area influenced by its context and scale. In this case, the proposed development would place dwellings within two gardens that are deeper than neighbouring plots and which would replace the garage block. The proposed development would stand within an area otherwise largely free of built form. This would erode the current sense of spaciousness conveyed by the site and its neighbouring gardens.
6. Furthermore, the frontage of the proposed dwellings looks toward the rear garden boundaries and rear elevations of three dwellings over parking and manoeuvring areas. This would create a poor relationship with surrounding built form and would not create a strong sense of place. Consequently, the configuration of housing would be discordant with the existing and established pattern of development. Whilst the proposal would be largely hidden from the streetscene, it would nonetheless erode the established character of the area.
7. As such, the proposal would harm the character and appearance of the area. It would therefore conflict with saved policies GP2, ENV32 of the Walsall Unitary Development Plan [2005] (UDP), policies CSP4, ENV2, ENV3 and HOU2 of the CS, Policy HC2 of the Walsall Site Allocation Document [2019](SAD), policies DW3, DW4 and DW6 of the Designing Walsall SPD and the National Planning Policy Framework (The Framework) with regard to matters of character and appearance. These seek, among other matters, for development to demonstrate a clear understanding of local distinctiveness in providing a positive contribution to place making and to be sympathetic to local character.

Highway matters

8. Lichfield Road, adjacent to the appeal site, is a road largely residential in character. The road is subject to a 30mph speed restriction. The traffic light-controlled junction of Field Road/Selmans Hill is a short distance to the east of the proposed access, with the access and pedestrianised crossing serving Walsall Academy and Millfields Nursery School a short distance to the west.

Visibility splays

9. The proposed access would reuse the existing access serving No 109 which is adjacent to a footway that is 2 metres wide. The access is immediately adjacent to the side boundary of 111 Lichfield Road. This boundary consists of a stepped boundary wall that is higher than 0.6 metres adjacent to the footway, compromising horizontal visibility of motorists when exiting the

driveway. The submitted visibility splay drawing shows that a splay of 2 metres by 43 metres can be provided.

10. Lichfield Road has a 30mph speed restriction. It is a classified road (A4124) and part of the strategic highway network. Manual for Streets [2007](MfS) requires visibility splays, onto roads with such speed limits, to be 2.4 metres by 43 metres. The guidance explains that the 2.4 metre dimension is the typical distance between the driver's position and the front of the vehicle. This also explains that a minimum x-distance figure of 2 metres could be used in some very lightly trafficked and slow speed situations but recognises that this would result in vehicles protruding slightly into the running carriageway.
11. It is recognised that the proposed access seeks to adapt an existing access. However, proposals for new development should be found to be safe and accessible irrespective of any existing arrangements as sought by the Framework at paragraph 135(f). Whilst the proposed development would result in limited traffic movements, Lichfield Road appears to be a busy and relatively narrow classified route with footpaths that appear to be busy during peak times. I do not concur with the appellant's Transport Note¹ that an absence of accidents recorded at the access is evidence that it is currently operating in a safe manner. As such, a vehicular visibility splay, with an x-distance of 2.4 metres, would be required to provide adequate visibility and avoid causing conflict with traffic using the main road.
12. Furthermore, the proposal would be unlikely to accommodate a suitable pedestrian visibility splay due to the position of the boundary wall and plans have not been provided to show how this could be achieved. The absence of a suitable pedestrian visibility splay would reduce pedestrian safety, which is of particular concern based on the proximity of the adjacent education institutions.

Shared surface

13. MfS notes that Home Zones are designed with streets to be places for people, instead of just for motor traffic. It explains that these often include shared spaces, which although can create difficulties for disabled people, are encouraged by both planning and transport policies to create safe shared space. The effectiveness of a shared space and pedestrians use of it, it found, were often influenced by vehicle speeds.
14. The scheme proposes a Home Zone style shared access driveway of 5.5 metres wide, with no dedicated pedestrian refuge. The Highway Authority seek a dedicated pedestrian refuge of 1.5 metres. However, it recognises that this would result in a driveway width of only 4 metres that would prevent vehicles from safely passing each other. It is also noted that the driveway would be required to be inset by 0.45m each side to provide a space between the driveway and built form. Whether such a gap is essential is unclear, but this would admittedly provide a buffer, albeit small, from the side elevation and boundary wall of No 111. Nonetheless, as the width is shown to 5.5 metres wide, this shall inform my assessment of the driveway.
15. The requirement for a dedicated pedestrian route would conflict with the guidance of MfS, which actively supports the provision of Home Zones and

¹ Transport Note, by A Oates, 20/12/21

safe shared space. The Council identify that the Government has withdrawn its Shared Space Guidance, in response to concerns raised by visually impaired users of such spaces. However, this has not been replaced with alternative guidance and therefore the advice found in MfS is a material consideration of significant weight.

16. Vehicles using the driveway of the proposed scheme would be relatively slow moving, offering limited risk to the safety of pedestrians using the route. The MfS recognises that more vulnerable pedestrians, such as wheelchair users and young children, would be at risk of injury in Home Zones. However, I see no compelling reason why the proposed scheme would exacerbate such a risk. Furthermore, I find that the driveway would be of sufficient width to allow vehicles to pass with care, which would, in any event, be an infrequent occurrence. As such, the design of the driveway would be of sufficient width and design to prevent vehicles from waiting or reversing in the highway.

Arrangement for refuse vehicles

17. Future occupiers would need to drag their bins to Lichfield Road for roadside collection or a refuse truck would need to enter the site on collection days. MfS recommends that occupiers should only walk bins 30 metres and that refuse collection operatives should walk a maximum of 25 metres, as plot four is around 75 metres from the highway these distances would be exceeded. Furthermore, there is no refuse area proposed adjacent to the highway or at a mid-point, for bin storage on collection days. Also, there is limited space for bins to be placed in the driveway or footway on collection days. As such, it appears that a refuse vehicle would need to enter the site to make collections.
18. Tracking plans² have been provided that demonstrate that a 7 metre single axle vehicle, such as a refuse vehicle, could enter and leave the site in a forward gear. However, these tracking plans show some points that are extremely close to boundaries. Such manoeuvring on site would therefore require substantial care and the Council would be unlikely to expect its drivers to undertake such manoeuvres. This would mean that a refuse vehicle would need to reverse into the site, where such movements within the carriageway of Lichfield Road would be hazardous.

Summary of highway matters

19. Therefore, whilst the proposed Home Zone road would be of sufficient width to operate without causing harm to pedestrians, the limited pedestrian and vehicular visibility splays, and the operation of refuse vehicles accessing the site would harm highway and pedestrian safety.
20. The proposed scheme would therefore conflict with the Framework. This seeks development to be refused if it would have an unacceptable impact on highway safety and for the design of the development to function well over the lifetime of the development. The proposal would also conflict with CS policy TRAN2 and saved UDP policy GP2 with regard to highway matters. These seek, among other matters, for the proposal to provide an acceptable level of accessibility and safety and provide for an adequate access. The Council also refers to UDP policy T10 and SAD policy T4 in its reasons for refusal. However, UDP Policy T10 relates to Accessibility standards and SAD Policy T4 refers to

² Tracking plan: 2020-109 rev 1b

the categorisation of the highway network. As neither of these directly refer to highway safety, they weigh neither for nor against the merits of the proposal.

Living conditions

21. The proposed dwelling of plot 4 would be close to the rear garden of 105 Lichfield Road (No 105). Plot 4 consists of front facing windows that would serve habitable rooms. Due to the proximity of the proposed dwelling to the boundary overlooking would occur from both ground and first floor windows. A substantial level of overlooking would occur over the full area of the garden and towards the rear of the dwelling and its patio area causing a substantial loss of privacy to the neighbouring occupiers.
22. The proposed scheme would place parking areas, manoeuvring space and the roadway close to several neighbour's rear gardens. This would cause noise and disturbance that occupiers of 105-109 currently do not experience. However, due to the size of these rear gardens and the separation distance to the rear elevations of these dwellings the level of harm would be modest. The neighbouring dwelling of 111 Lichfield Road (No 111) has a door and landing window on its side elevation and stands close to the shared boundary and the proposed access road. Car movements alongside No 111 already occur through the use of the existing drive, albeit to a less intensive extent than proposed. Therefore, the noise and potential disturbance to occupiers of No 111 would be limited.
23. As such, overall, the anticipated noise impact of cars moving within the site would be modest, causing limited harm to adjacent residential occupiers from a noise and disturbance perspective. Nonetheless, the proposal would result in a significant extent of overlooking into the rear garden of No 105 that would substantially erode neighbour's living conditions. Consequently, the proposal would conflict with UDP saved policy GP2 and the Framework with respect to impact on neighbours. These seek, *inter alia*, for development to consider the effects of loss of privacy and to create a high standard of amenity for existing and future occupiers.

Effect on local education institutions.

24. The Council has expressed concern that the proposed development would affect the operation of the Walsall Academy and Millfields Nursery School. The Council's concerns, partly made in response to points made by Walsall Academy and interested parties, relate to overlooking and that the proposal could place restrictions on the operation of these institutions.
25. The proposed dwellings would have a separation distance of seven metres to the shared boundary with the school. It is noted that rear elevations would look towards the play area and learning areas of Millfield Nursery. Beyond the boundary several landscape areas would provide some screening that would limit intervisibility. Although safeguarding concerns are noted, the area of the school that would be overlooked does not appear to be especially sensitive or close to the dwellings. Moreover, the effect of overlooking would not be materially different to that observed from neighbouring existing housing. Also, the existing landscaping would limit overlooking, and this could be further enhanced by on site planting if the proposal was approved to further reduce overlooking. Furthermore, whilst the school's safeguarding concerns are noted, I find the proposal would not result in an incompatible relationship.

26. In terms of the impact on the day-to-day operation of the education facilities, the Council has not clearly explained how such an effect would manifest. The Framework states, at paragraph 193, that decisions should ensure that new development is integrated effectively with existing businesses, and these should not have unreasonable restrictions placed on them as a result of development permitted after they were established. In such circumstances it suggests that the applicant, as an agent of change, should provide suitable mitigation to prevent the business being adversely affected by the change.
27. However, in this case residential and educational uses are normally considered to be compatible activities causing limited disturbance to each other. Evening and weekend activities are generally rare occurrences and even if these occur, they are often reserved for early evening and daytime use only. Therefore, having had regard to the evidence submitted, I am unconvinced that the education institutions would be adversely affected by the proposal. As a result, the proposal would accord with paragraph 193 of the Framework.

Contamination issues

28. The site consists of two garden areas. The Council has not identified that the site is subject to previous uses that might indicate the land is contaminated. Furthermore, the Council's Environmental Protection officer has raised no objection subject to conditions including the need to a contamination survey. This matter could have been addressed through the imposition of a condition for details of contamination assessment and mitigation works, if necessary, if an approval were forthcoming.
29. As a result, the proposal would accord with UDP saved policies GP2 and ENV14 with respect to matters of contamination. These require, among other matters, for development to consider the susceptibility of pollution of any kind and for the Council to support the development of previously developed land wherever this is technically feasible.

Effect on the Cannock Chase SAC

30. The site is located within the zone of influence of the Cannock Chase SAC, which is a European Designated Site afforded protection under the Habitat and Species Regulations [2017]. This requires the competent Authority to be satisfied that a proposal would not lead to likely significant effects upon the protected site. Increased recreational activity from new housing development in the area is advised, by Natural England, to have an adverse effect on the SAC. Consequently, the proposal would need to be considered under an Appropriate Assessment (AA) to assess the likely effects of the proposed development on the integrity of the SAC.
31. The Council has joined the Cannock Chase SAC Partnership and has, under CS Policy EQ2, actioned the collection of payments to mitigate against impacts arising from new relevant development falling within the Zone of Influence of the SAC. This attracts a payment of £329.83 per dwelling.
32. Nonetheless, potential mitigation cannot be taken into account when determining whether an AA is required. It may be considered if an AA has been undertaken and determined that the development would harm the integrity of the SAC. The appellant has offered a contribution to the Council's scheme through the submission of a draft Unilateral Undertaking, but as this is

not signed or executable I cannot take it into account. In any event, as I am dismissing the appeal for other reasons it is not necessary for me to consider this matter further as it could not change the outcome of this appeal.

Other Matters

33. The Framework seeks to boost the supply of housing. The proposal would deliver four new houses, which would make a contribution towards the supply of housing in the area. The site is located within the urban area, enabling access to goods and services and sustainable travel means. It is also within walking distance of food stores and schools and would make efficient use of land. These benefits weigh in favour of the proposal.
34. The appellant has referred to a number of alternative schemes that have been approved by the Council in backland locations. An approved scheme at 98 Lichfield Road, currently under construction, is close to the appeal site. This consists of detached dwellings and is backland in nature. However, apart from these shared elements the approved scheme is starkly different in character and design to the proposed scheme. The approved development includes houses set within generous plots, which face into a central space, with main elevations being set away from boundaries and having a wide access driveway that allows space for extensive landscape screening to its sides. This does not therefore set a precedent in support of the proposed development.
35. Furthermore, an appeal decision at 7 Jesson Road is referred to in the appellant's Transport Note. This was for five dwellings accessed via a shared driveway. This note also refers to a scheme approved in Warrington for nine dwellings. However, the full details of these schemes are not before me and, in any event, the consideration of a scheme must be based on its own merits.

Planning balance and Conclusion

36. The Council cannot demonstrate that it has a 5-year Housing Land Supply (HLS), but it has not explained the extent of the shortfall. The Framework explains that where a Council cannot demonstrate a 5-year HLS the policies most important for determining the application are to be regarded as out of date. Paragraph 11(d) of the Framework states that where policies are out of date permission should be granted unless at ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
37. The Framework seeks to boost the housing supply and highlights the important contribution small sites can make and supports development which makes efficient use of previously developed land. The proposal would make better use of land in a sustainable location within Bloxwich and would contribute towards Walsall's housing supply. However, four additional houses would make little difference to the overall supply of housing, and I attribute only modest weight to this benefit.
38. There would also be some economic benefits during the construction phase when the development would provide jobs and opportunities for local companies and once occupied when future residents would support services in Bloxwich. However, given the relatively small scale of the proposal, these benefits would be limited.

39. In contrast, the proposal would result in substantial harm to the living conditions of existing occupiers, to the character and appearance of the area and to highway safety to which I apply significant weight. The Framework requires planning decisions to create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. I have concluded that the proposal would conflict with CS policy TRAN2 and UDP policy GP2 and the Framework in this respect. Also, the Framework seeks development to be sympathetic to local character and I have found conflict with UDP policies GP2 and ENV32, CS policy HOU2 and SAD policy HC2 in this regard. I give this conflict with the development plan significant weight.
40. Consequently, even with paragraph 11(d) of the Framework engaged and the attribution of the fullest weight to the Council's absence of a 5-year HLS, the adverse impacts of the development on the living conditions of existing users, the character and appearance of the area and highway safety would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the presumption in favour of sustainable development does not apply.
41. The proposed development would not accord with the development plan or national policy and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Ben Plenty

INSPECTOR