



Appeal Decision

Site visit made on 28 January 2025

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th February 2025

Appeal Ref: APP/C4615/W/24/3347602

43 Sanders Close, Dudley DY2 8DP

- 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 Mohammed Javeed of Qas Properties Limited against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P23/1519.
 - The development proposed is erection of two storey dwelling (2 bedrooms), together with associated car parking and landscaping (including reconfiguration of rear garden areas)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submission has been accompanied by two additional documents which were not considered by the Council in reaching their decision. These documents include a Highways Appeal Statement and a BRE Daylight and Sunlight Technical Note. This represents the submission of new information that neither the Council nor interested parties may have had the opportunity to comment on. The Planning Inspectorate Appeals' Procedure Guide makes it clear in chapter 16 that the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the Council. I have not therefore considered this new information in this appeal as it would prejudice the Council and any interested parties.

Main Issues

3. The main issues are:
 - if the principle of the proposed development is acceptable and its effect on the character and appearance of the area;
 - whether the proposed development would provide acceptable living conditions for the future occupants of the proposal, with particular regard to the provision of private amenity space;
 - whether the proposal would provide an adequate number of car parking spaces and its effect on highway safety; and,
 - the effect of the proposal on the living conditions of the occupants of No. 43 Sanders Close, with particular regard to outlook and loss of light.

Reasons

The principle of the development and its character and appearance

4. The appeal site forms a part of the side garden area of 43 Sanders Close. No. 43 forms the end terrace of a row of four properties with a part brick part rendered appearance. Turning to the wider vicinity, Sanders Close contains other rows of terraces of a similar appearance which are organised in groups of four properties. There is a notable gap between the end terraces on Sanders Close and the side boundary of their plot. As such, the grouping of four terraces per row and the space between the row and the side boundary of the end terraces are strong characteristics of the area. The proposed development would adjoin the side wall of the host property and would extend rearwards beyond No. 43. The development would extend up to the side boundary, utilising splayed walls to follow the boundary of the site.
5. Policy HOU1 of the Black Country Core Strategy 2011 (CS) notes that at least 95% of new housing will be built on previously developed land (PDL). Discussion is held between the parties as to whether the site would be PDL. The National Planning Policy Framework (the Framework) notes that PDL is land that has been occupied by a permanent structure. The Framework however also notes that residential gardens are excluded from the definition of PDL. The proposal would be sited in an area where a garage structure has existed. Even though this structure had been removed at the time of my site visit, elements of the structure such as its foundation still remained. However, this footprint makes up just a small area of the proposed dwelling. Therefore, the proposal would appear to occupy a larger area of land which has been undeveloped and therefore, on balance, would be located on garden land, despite its limited recreational function.
6. Dudley Council Residential Design Guide Supplementary Planning Document 2023 (SPD) undertakes a discussion of new housing on garden land and states that such land is not classed as previously developed land and therefore, there is a general presumption against development upon it. Exception to this is made where a series of requirements can be satisfied and these are explored by the appellant. With regard to these requirements, the proposal would host a similar front elevation appearance to the other properties which form this row. However, the proposal would appear cramped within its plot due to its close relationship with the boundary. This cramped appearance would be emphasised by its splayed form which would remove the space between the boundary and the terraced row which is a strong characteristic of Sanders Close.
7. The proposal also contains a two-storey flat roof rearward projection. This aspect of the development would fail to relate to the simple character of the gabled roof features of the terraced row and would further highlight its cramped and alien appearance. Furthermore, the development would create a fifth property in this row of four terraces. This is not immediately harmful when viewed in this isolated row. However, in taking the wider vicinity into account, terraced rows of four are a consistent characteristic in Sanders Close. As such, the proposal would upset the rhythm of the terraced row with a building which would appear cramped and would not sit comfortably in the appeal site. The use of an appropriate palette of materials and the matching of a fenestration pattern would not alleviate this harm.

8. In further consideration of the requirements set out in the SPD, I note that all of the requirements listed must be met to allow new housing on garden land. As I do not find that it would meet criteria A and B of the guidance within the SPD which are concerned with character and appearance, I have not considered all of the other listed requirements further.
9. The appellant further considers that the proposal is infill development when considered against the SPD. The SPD notes that where a gap is narrow, development which would be out of character with the adjacent area will not be supported. The development would appear cramped and confined in its siting due to the absence of a gap between the building and the adjacent boundary. This would be out of character with the area, as a notable distance between the end property of a terraced row and the boundary is a common feature of the end terraces on Sanders Close.
10. To conclude, the proposed development would not be sited in an area of PDL and it would not satisfy the requirements listed for the construction of residential properties on garden land for it to be considered as an exception to the general presumption against development upon it. This is due to the harm which would be experienced to the character and appearance of the site and general street scene.
11. As such, the proposal would conflict with Policies ENV2, ENV3, HOU1, HOU2 and CSP4 of the CS. These policies seek for development proposals to protect the local distinctiveness of areas such as those found in mid-20th century suburban developments, ensure that high quality design is achieved and require proposals to respond to the local context. The proposal would also conflict with Policies S1, S6, S8 and L1 of the Dudley Development Strategy 2017 (DDS), which seeks for development to be of an appropriate form and to respond to the character and distinctiveness of the surrounding area. The proposal would also conflict with the guidance provided in the SPD.

Living conditions of future occupiers

12. The proposal would subdivide the existing garden which serves No. 43 to provide an area of private amenity space for the host property and the proposed development. The width of the garden to the proposed property would create a narrow but long area of private amenity space with a significant drop in height due to the fall in topography beyond the immediate area to the rear of the proposed dwelling.
13. The SPD notes that proposals for two-bedroom homes must provide a minimum area of 45m² or 65m². This is dependent on the width of the plot. As proposed, the evidence suggests that the plot width would be less than 4 metres and therefore, the proposal must provide a private amenity space of 45m². The appellant suggests that as the plot would be below the width of 4 metres, the standards discussed within the SPD do not apply. However, this guidance states that this width is applicable for plot sizes up to 4 metres and as such, the proposal, with a plot width under this size, would be required to meet this criterion.
14. I cannot ascertain the overall numerical size of this space from the plans before me. However, the Council note that the proposed garden area would fall below this required minimum standard. Nevertheless, the assessment of private amenity space is not just limited by a numerical calculation. Whilst a large depth would be provided for its future occupiers, its narrow width and significant drop in height

would not allow this space to be utilised for relaxation or to conveniently undertake recreational activities by future occupiers.

15. To conclude, the development would fail to provide an adequate private amenity space for its future occupiers. As such, the proposal conflicts with Policy HOU2 of the CS, Policy L1 of the DDS and the guidance found within the SPD. These policies and guidance seek for the development to minimise amenity impacts and to provide an appropriate level of amenity for future occupiers of a development.
16. This main issue formed part of a larger reason for refusal in the decision notice and cited policies which did not relate to this matter. As such, I have found that Policies ENV2, ENV3, HOU1 and CSP4 of the CS and Policies S1, S6 and S8 of the DDS are not directly applicable to this main issue.

Parking provision and highway safety

17. Policy TRAN2 of the CS notes that planning permission will not be granted for development proposals that are likely to have significant transport implications. This is unless they are accompanied by proposals to provide an acceptable level of accessibility and safety. The Parking Standards Supplementary Planning Document 2017 (PSSPD) notes that ensuring the right amount of parking provision is essential in the creation of new residential developments both in terms of good scheme layout and highway safety. As such, a proposal for a two-bedroom dwelling should provide two dedicated car parking spaces at a minimum.
18. Sanders Close is a long cul-de-sac with a narrow roadway. Along Sanders Close it is noted that several properties do host driveways, and some do not. 43 Sanders Close is one property which does host a driveway, and this provides one parking space in its existing configuration. The proposed development would provide one parking space, however, this would be located in a similar position to the existing space to No. 43. Therefore, there would be no net increase in the number of spaces provided.
19. Owing to this shortfall in parking spaces, it is highly likely that demand for on street car parking would increase. As the proposal is for a residential property, there would be a greater demand for car parking in inopportune locations close to the dwelling. The parking of two further vehicles would create access and movement issues on Sanders Close due to its limited width and the number of cars which are parked in the close because of certain properties which do not host driveways themselves. In taking a pragmatic and practical view, I do recognise that any future occupants could park on the streets surrounding Sanders Close which provided increased opportunities for car parking due to their larger widths. However, this is less likely to occur due to the distance of these streets from the appeal site. As such, this proposal would therefore erode highway safety as it would reduce safe and convenient access and movement.
20. To conclude, the proposed development does not provide the required number of car parking spaces and would result in the unsafe and inconvenient movement of vehicles. As such, the development would work against Policy TRAN2 of the CS and the guidance found within the PSSPD.

Living conditions of neighbouring occupiers

21. The proposal would be attached to the host property of 43 Sanders Close and extend beyond its rear elevation. No. 43 hosts two rear facing windows which would be close to the boundary between the two properties once erected. With regards to outlook, whilst the proposal would create a two-storey element which extends beyond the rear of No.43 along the boundary at a two-storey height, its protrusion would be limited in depth. As such, owing to this limited depth, this would not create an unacceptable outlook despite its close relationship with these rear windows.
22. The Council suggest that the proposal would reduce the light received by the windows which serve No. 43 and its rear private amenity space. The proposal would extend beyond No. 43 at a limited depth. Due to the orientation of the terraced row, the rooms which are served by the rear windows of No. 43 would experience limited direct light throughout the day. Therefore, it follows that due to the orientation and limited depth of the proposal beyond the rear wall of the neighbouring property would not cause harm with regard to the provision of daylight to No. 43 and its private amenity space.
23. To conclude, the proposal would not conflict with Policy L1 of the DDS or the guidance found within the SPD. Policy L1 and the guidance found within the SPD require development proposals to not cause unacceptable harm to the amenities of the occupiers of neighbouring dwellings.

Planning Balance and Conclusion

24. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 outlines that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework indicates that a decision should be taken in accordance with the development plan.
25. The proposal would provide an additional dwelling to the supply of housing. Economic benefits would also be realised during the construction period, and the future occupiers would provide economic benefits to the area once the development is complete through their use of local shops and services.
26. However, these benefits are modest, and they do not outweigh the potential harm in respect of the siting of the proposal, its effect on character and appearance, the living conditions of its future occupiers and the implications it would have to highway safety. The scheme would conflict with the Development Plan taken as a whole. There are no material considerations that indicated that the decision should be made other than in accordance with the Development Plan. Therefore, for the reasons given above the appeal should be dismissed.

J Smith

INSPECTOR