



Appeal Decision

Site visit made on 4 March 2025

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal Ref: APP/G4620/W/24/3349628

37 Pavilion Avenue, Sandwell, Smethwick B67 6LD

- 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 Dave Dulay of B D Properties (Midlands) Ltd against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref is DC/24/69245.
 - The development is described as 'conversion of outbuilding into 1 no. dwelling with associated garden'.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development has been described as the conversion of an outbuilding, as set out in the banner heading above. However, during my site visit I observed that no such outbuilding was present. Signs of earth excavation were evident in the lower garden, albeit due to vegetation growth, the extent of this was not clearly visible. It is not possible to convert an outbuilding that does not exist. Therefore, I do not consider that the description of development accurately captures the nature of the proposal. Consequently, I have determined the appeal on the basis of it being for the erection of a dwelling. The main parties have had the opportunity of making representations on this approach.

Main Issues

3. The main issues are:
 - i) the effect of the development upon the character and appearance of the area; and
 - ii) whether the access and car parking arrangements are suitable and safe for both the proposed and existing occupiers.

Reasons

Character and appearance

4. The appeal site comprises a two-storey semi-detached dwelling situated on Pavilion Avenue, located off The Oval in Smethwick. The character of the area is generally formed by two storey, semi-detached dwellings and rows of terraced dwellings that typically share a similar design style and are laid out in a highly uniformed manner. These dwellings respond to the highway with regular set back

distances and generous sized rear gardens. Properties on this part of Pavilion Avenue are arranged in rows that are laid perpendicular to one another and are orientated to face the central green.

5. The access from the highway is shared with 35 Pavilion Avenue. A dropped kerb provides vehicular access to a modest sized detached garage at the side of the appeal property. The frontage of the appeal property is laid with hardstanding. At the rear, it benefits from a generous sized garden that is larger than most, owing to its corner position. Land levels in the area fall from north to south and significantly so at the rear of the property, where the garden is split level with the larger, lower part accessible by steps. The Oval, to the south, sits lower still, with the appeal site sitting elevated in comparison.
6. A new dwelling within the rear garden of the appeal property would significantly depart from the highly ordered plot structure of the area, where dwellings tend to front the highway. Furthermore, the footprint of the building is substantially larger than other dwellings in the vicinity. This competes with and goes against the grain of the area. Due to its tandem positioning and its large footprint, the resulting building would be wholly incongruous with its surrounding context, harming the character and appearance of the area.
7. Whilst the property would unlikely be visible from Pavilion Avenue due to the topography, it would be seen from The Oval to the south where it would be possible to glimpse the site from the public realm between dwellings. Additionally, it would be highly visible to occupiers of neighbouring dwellings. This would appear visually incoherent to the uniformed plots that surround it. The effect of the development would be to significantly harm the character and appearance of the area.
8. The appeal proposal includes the removal of an existing, modest detached garage from the side of the property. Its removal is necessary to facilitate access to the proposed dwelling. Owing to its modest scale and height, its discrete siting to the side of the dwelling and its domestic appearance, this garage is not an unexpected feature in the street-scene, nor is it overly prominent. Thus, it has a neutral impact on the character and appearance of the area. As this garage neither contributes nor detracts from the character and appearance of the area, it follows that its removal would not be a matter upon which any weight could be afforded. Therefore, I do not find this element persuasive to my findings.
9. I have considered whether conditions imposed could mitigate the adverse effects of the development. However, given the fundamental harm from its tandem positioning upon the character and appearance of the area, conditions relating to design and/or materials would not make the development acceptable.
10. For the reasons set out above, I find that the development would have an unacceptable adverse effect on the character and appearance of the area. As such it conflicts with Policies CSP4, HOU2 and ENV3 of the Black Country Core Strategy (2011) (BCCS) and Policy SAD EOS 9 of the Sandwell Metropolitan Borough Council Site Allocations and Delivery Development Plan Document (2012) (SAD). Amongst other things, these seek to ensure development makes a positive contribution to place making with high quality design; require provision of a coherent interconnected network of places; take account of the characteristics and mix of uses in the area where the proposal is located; and that proposals for poor

design, that are inappropriate for their locality, that are clearly out of scale with or incompatible with their surroundings will be rejected. It would also fail to accord with the Council's Supplementary Planning Document: Revised Residential Design Guide (2014) (SPD), which guides that tandem development is generally unacceptable in this context for the reasons I have set out.

Access and parking

11. Guidance contained in the SPD sets out that one dedicated off-street parking space should be provided for a 1-to-2-bedroom property. As one space would be provided for the proposed dwelling, this would, in quantum terms, be satisfactory. However, the plans do not demonstrate an ability for a parked vehicle to turn and leave in a forward gear. From my observations on site, this would appear highly unlikely given the limited space, that land levels fall away sharply just beyond the proposed parking space and that no engineering works to level the site are shown on the drawings.
12. Consequently, cars would have to reverse out onto the highway. Owing to its configuration, the narrowness of the access point and with a vehicle having to pass close to existing boundary treatments and a possible parked car at the appeal property, this would be awkward and convoluted. Such manoeuvres, would likely be a regular occurrence and would cause additional conflict between users of the shared access, leaving pedestrians accessing No's 35 and 37 particularly vulnerable.
13. Limited evidence is before me regarding the quantum of parking required for the existing dwelling. I observed from my site visit that it is currently served by one off-street parking space. This level of parking would be maintained by the appeal proposal. As there would be no change in the quantum or quality of off-street parking provision, I find that parking provision for the host dwelling would be acceptable.
14. Notwithstanding my findings in respect of the parking for the host dwelling, parking provision for the proposed dwelling is unsatisfactory and the access would be inconvenient and unsafe. As such it would conflict with Policy ENV3 of the BCCS, which seeks to provide for safe and permeable movement networks.

Other Matters

15. Reference is made by the appellant to a lawful development certificate granted by the Council for a building of the same scale, design and location to this appeal. Evidence of its implementation has been provided in the form of a building regulations inspection report for footings being dug. The appellant has referred to case law¹ in support of the importance of the fallback position. However, importantly, in this case the certificate of lawfulness (nor the associated plans) is not before me in evidence. Therefore, I cannot be certain that there is a realistic fallback position and, if there is, how it compares to the proposed appeal building. In these circumstances I attribute a minor level of weight to this factor.
16. Although the building subject of the LDC may be the same scale, design and location as the proposed dwelling, there is no evidence as to what that building would be used for or, in the event I dismiss this appeal, that it would be

¹ Mansell v Tonbridge & Malling BC [2017] EWCA Civ 1314

constructed. Given the timeframe of when the LDC application was approved; when the excavation works took place for its footings; and, when the planning application the subject of this appeal was made, it is reasonable to conclude that the LDC was only made to support the case for the appeal proposal. This suggests that in the event I dismiss the appeal the building would not be constructed. As such, it has not been demonstrated that it is more than a theoretical possibility.

17. My attention is also drawn to other case law² and appeal decisions³ where, the appellant contends that the fallback positions have been held to be decisive. Limited information has been provided by the appellant on these cases. Nevertheless, as no fallback position that is more than theoretically possible has been demonstrated, this appeal differs substantially from those cases referred to.
18. In any event, raising the status of a subordinate outbuilding to an independent dwelling would impact upon the character and hierarchy of the settlement in a harmful manner. Creating a new planning unit would break away from the ordered and deliberately planned neighbourhood, introducing new levels of associated activity to the neighbourhood that currently would not be experienced. There would be other knock-on effects such as creating a new garden, including associated boundary treatments and the likely requirements for new outbuildings to serve both dwellings, all of which could be harmful to character. Therefore, based on the merits of the case, such a fallback position would not lead me to a different conclusion.
19. Set against the harm identified there would be social and economic benefits from the scheme, including boosting the supply of housing and making efficient use of land where future occupants would be within close reach of local facilities and public transport in Smethwick. Whilst these matters weigh in favour of the proposal, their extent would be modest given the scale of the development and they do not outweigh the significant harm I have identified to both the character and appearance of the area and in respect of the suitability of the access and parking.

Conclusion

20. For the above reasons, having had regard to the development plan as a whole, the Framework and all other matters raised, I conclude that the appeal should fail.

C Walker

INSPECTOR

² High Peak Borough Council v Secretary of State for the Environment [1981] JPL 366 and Spackman v Secretary of State for the Environment [1977] 1 All ER 257.

³ Of the 3 appeal decisions letters (DL) quoted in evidence (APP/Z1510/W/20/3248841, APP/L3245/W/20/3250311 and APP/Q4625/C/23/3317712) only the latter DL has been provided