



Appeal Decision

Site visit made on 20 October 2025

by **P D Sedgwick BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 November 2025

Appeal Ref: APP/C4615/W/25/3369812

85 Nimmings Road, Dudley, Halesowen B62 9JG

- 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 M Mechmenamin (M&M Developments Ltd) against the decision of Dudley Metropolitan Borough Council.
 - The application Ref is P24/1322.
 - The development proposed is described as 'Erection of 8 No. Bedsits and parking arrangements'.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant's statement of case (SoC) refers to an updated Transport Note and an updated Biodiversity Net Gain (BNG) baseline calculation report, but the reports were not submitted with it. These are technical documents and did not result in any amendments to the proposal. They provide the context for comments in the SoC, intended to specifically address the council's objections regarding highway and pedestrian safety and biodiversity and I considered it would be helpful to seek comments from the council on them. The council has responded to the updated Transport Note, but not to the revised BNG calculations.

Main Issues

3. The main issues are the effect of the proposed development upon:
 - the character of the surrounding area;
 - the living conditions of occupiers of the property, with particular regard to internal living space and external amenity space;
 - car parking, highway and pedestrian safety; and
 - whether the proposed development makes adequate provision for Biodiversity Net Gain (BNG).

Reasons

Character of the area

4. The appeal site relates to a plot between the end of a row of terraced houses and a social club with a detached dwelling behind it. The site formerly contained a

detached house and garden, but the house has been demolished and the garden cleared.

5. The council consider the design of the building, in terms of its appearance, would be acceptable, but that it would be overdevelopment of the plot describing it as 'garden grabbing'. I accept that the most recent use of the site is residential and that gardens in built up areas are excluded from the National Planning Policy Framework (2024) (the Framework) definition of previously developed land. However, the proposal is to redevelop the site, rather than add a house to the garden of an existing one, and as such does not fit with the examples of garden development given in the council's Residential Design Guide Supplementary Planning Document (2023) (RDG) which relate to infill, back land and tandem development. Nevertheless, it is important to consider whether the proposed layout is in keeping with the character of the area, in terms of the extent of built form and its relationship with existing building lines and garden sizes, but also whether it provides sufficient amenity space and suitable access and parking.
6. Most houses close to the appeal site are terraced and sit back behind the pavement with relatively shallow front gardens with low brick front walls, although some are deep enough for off street parking, including the neighbouring house, number 84. The proposed building would sit slightly forward of No 84 but would broadly conform with front building lines. Several houses near to the appeal site have ground floor extensions. The rear elevation of the proposed building would be approximately in line with them, including No 84, albeit the proposal scheme would be 2 storeys. Therefore, the proposed building would not appear out of character with neighbouring houses in terms of its design and its position within the plot, and in relation to the building lines of other houses.
7. However, the density of the proposed development, at 77 dwellings per hectare (dph), would substantially exceed the established density of 48 dph locally. To conform with the council's parking guidelines for 8 flats, the proposed development would include 10 car park spaces and a turning area. That would take up more than half the space at the rear of the property, which in neighbouring properties comprises rear gardens, and thus be out of keeping with the pattern of development nearby. Moreover, to accommodate the parking area, the remaining area available for communal garden space falls significantly short of the council's requirements, as described below. Also, the communal entrance into the property is directly onto the vehicular access with no space to separate pedestrian and vehicle activity, raising safety concerns. In light of the above, I agree with the council that the proposal would be overdevelopment of the plot.
8. The proposed development would therefore conflict with the Framework, the National Design Guide (2021), Policies ENV2, ENV3 HOU1, HOU2, and CSP4 of the Black Country Core Strategy (2011) (CS); Policies S1, S8 and L1 of the Dudley Borough Development Strategy (2017) (DBDS), and the RDG which seek high quality design of an appropriate density that responds to the context and character of the local area.

Living conditions

9. The RDG requires all new residential development to meet the Department of Communities and Local Government's Technical Housing Standards—nationally described space standards (2015) which require a minimum floorspace of 39 sqm

for a 1bed/1 person dwelling with a bath, and an additional 1 sqm for storage. The proposed plans indicate that Flats 1, 2 5 and 6 would fall short of the minimum requirement with a floorspace of 38 sqm instead of the required 40sqm. Nonetheless, I accept the appellant's argument that, if the baths shown on the plans were replaced with a shower tray, they would meet the national minimum floorspace standards. I do not, therefore, consider that this issue alone would justify withholding planning permission.

10. The RDG requires a minimum of 30 sqm of amenity space per flat which should, amongst other things, provide a degree of privacy. A 220 sqm communal garden is proposed at the rear of the parking area. This falls significantly short of the 240 sqm requirement for 8 flats. The appellant has referred to an additional 75 sqm of patio at the immediate rear of the proposed building, acknowledging that it would have limited privacy. However, given that the lounge and bedroom for flat 3, and the bedroom for flat 4, would face directly onto the patio, its communal use would lead to an unacceptable loss of privacy and as such it should not, in my view, count towards the overall provision of communal amenity space.
11. I accept that there are public open spaces within a reasonable walking distance of the appeal site. However, that does not obviate the need to provide adequate amenity space for potential residents, particularly as the site would be capable of doing so with a more appropriate housing density commensurate with the surrounding area.
12. Overall, I conclude on this main issue that the proposed development conflicts with the Framework, Policies HOU1, HOU2 and CSP4 of the CS, Policies S1 and L1 of the DBDS, and the RDG which require high quality development that provides an appropriate level of amenity for future occupiers.

Car parking and highway and pedestrian safety

13. The council's highways consultant is satisfied that the revised Transport Note addressed concerns relating to deliveries, refuse collection, fire tender access and regarding the replacement boundary treatment for the hedge on the southern boundary of the appeal site, but not regarding pedestrian and disabled access being shared with vehicular traffic.
14. Their original comments accepted that visibility at the access met Manual for Streets 2 (MfS2) requirements when measured to the nearside edge of the vehicle track but noted that it would not meet it if measured from the kerb line. This appeared to be an observation rather than an objection and, as the appellant has highlighted, MfS2 states that using the edge of the vehicle track provides a more accurate means of assessing visibility. Also, I noted during my visit that there were clear lines of sight towards oncoming traffic in both directions, despite a wall and telegraph pole slightly restricting visibility when looking left to leave the site. Therefore, I consider visibility at the junction where the access joins the main road would be acceptable, enabling vehicles to safely enter and exit the site.
15. The council's Parking Standards Supplementary Planning Document (2017) (PSSPD) advises that there should be safe pedestrian routes between car parks and the main entrances to buildings. Vehicular access to the proposed development would run along the side of the building where the main entrance to it would be located. There would be no pedestrian footpath linking it to the parking area or Nimmings Road. Consequently, residents and visitors would need to pass

along the vehicular access to reach the entrance to the building, thereby creating the potential for conflict between pedestrians and cars entering and leaving the site.

16. I acknowledge that vehicles would be travelling at a slow speed and over a short distance. However, as noted by the council's highways consultant, residents leaving the property would step out directly into the access road at a point where the building projects forward of the entrance, limiting views towards cars entering the site. That would threaten pedestrian safety to an unacceptable degree, despite a rumble strip proposed close to the building entrance to slow traffic down. Also, whilst MfS advises that shared access can be suitable for short lengths and where traffic is low or parking is designated, that is subject to making suitable provision for disabled people. I am not satisfied that the careful design of the rumble strip, so as not to impede disabled access, would overcome the safety concerns arising from the conflict with vehicular traffic.
17. The PSSPD advises that rear courtyard parking is likely to be unacceptable, because of security concerns and the inconvenience to owners, and should only be considered where there are no other appropriate alternatives and should provide parking for no more than 6 dwellings.
18. The proposed development would provide 10 car parking spaces. Although there are no parking restrictions close to the appeal site, Nimmings Road is relatively narrow and most cars park partly on the pavement. That can obstruct pedestrians, particularly those with pushchairs or requiring mobility assistance. Roadside parking for 8 flats would not therefore be an appropriate alternative.
19. Given the dangers of parking on a narrow road, I would expect residents to park in the proposed designated spaces rather than on the street. Windows on the ground floor of flats 1 and 4 face the access, and for the latter face the rear parking area, as do windows for flats 3, 7 and 8. Therefore, despite the proposal exceeding the number of spaces for rear courtyard parking set out in the PPSD, I do not consider that it would lead to increased crime or result in an increase in on street parking which the guidance seeks to avoid.
20. Overall, I conclude on this main issue that the proposal conflicts with the Framework, Policies ENV3, HOU2, CSP4 and TRAN2 of the CS, Policies S1, S6, S17 and L1 of the DBDS and the RDG which require development to be of a high quality that provides safe access for vehicles and pedestrians.

BNG

21. Both parties accept that the proposed development would be required to deliver a BNG of at least 10% under Schedule 7A of the Town and Country Planning Act 1990 (as amended).
22. The original Statutory Biodiversity Metric Calculation (SBMC) submitted with the application was based on the cleared site. However, the site contained trees, shrubs and hedgerows prior to being cleared. The appellant has completed an updated SBMC to take account of vegetation on the site prior to it being cleared, updating calculations for the site's pre-development biodiversity value. The council has not commented on the revised calculation.
23. Planning practice guidance on BNG advises that it would generally be inappropriate, when determining a planning application for a development subject

to biodiversity net gain, to refuse an application on the grounds that the biodiversity gain objective will not be met.

24. The revised SBMC has provided details of on-site habitat creation, the value of which would be significantly less than the 10% BNG required. Based on the information provided, it would be necessary for mitigation through offsite biodiversity gains or statutory biodiversity credits. However, that would be a matter for consideration in a Biodiversity Gain Plan secured by a pre-commencement planning condition.
25. Therefore, whilst meeting the BNG requirement would be challenging, I am satisfied the appellant's documents meet the basic requirements of the relevant legislation.

Planning Balance

26. The council cannot currently demonstrate a five-year supply of deliverable housing sites as required by the Framework. Consequently, paragraph 11(d) of the Framework is engaged. It requires that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. The proposal provides benefits in terms of employment during construction and providing additional units of accommodation in a sustainable location which weigh in its favour. However, the identified harm arising from the proposed development's effect on the character of the area, the living conditions of occupants and the safety of pedestrians would significantly and demonstrably outweigh the benefits, when assessed against the policies in the framework taken as a whole. Thus, the proposal would not be sustainable development for which the Framework indicates a presumption in favour.

Other matters

28. Representations raised concerns over access to the neighbouring house and nesting opportunities for swifts. However, as I am dismissing the appeal for the proposal's effect on the character of the area, living conditions and pedestrian safety, I have not pursued these matters further.

Conclusion

29. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

P D Sedgwick

INSPECTOR