



Appeal Decision

Site visit made on 15 June 2009

by **Clive Sproule** BSc(Hons) MSc MEnvSc
MRTPI CEnv

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
26 August 2009

Appeal Ref: APP/R1845/A/09/2098959

44 Barnetts Lane, Kidderminster, Worcs. DY10 3HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Clive Fletcher, Clive Fletcher Developments against the decision of Wyre Forest District Council.
- The application Ref 08/0521/OUTL, dated 27 May 2008, was refused by notice dated 12 September 2008.
- The development proposed is an outline application for six new apartments.

Decision

1. I dismiss the appeal.

Procedural matter

2. The application was made in outline with layout, scale, appearance, access and landscaping to be determined at a later stage.

Main issues

3. These are the effect of the proposed development on: (a) highway safety; (b) the provision of accessible homes; (c) the character and appearance of the area; and (d) the living conditions of neighbours in relation to visual impact, overlooking, and daylight.

Reasons

Highway safety

4. Barnetts Lane is a narrow highway which runs between two larger roads that carry traffic into and out of the centre of Kidderminster. It provides access to the properties on Barnetts Lane and to the streets that have junctions with it. The closest of these to No.44 is Barnetts Grove and the proposal would be expected to re-site the access further from this junction. There is adequate land available within the appeal site to provide off-street parking and enable vehicles to turn. This is reflected within the Council officer report which highlights that the Highway Authority has no objection to the proposal subject to the imposition of certain conditions.
5. Although much of Barnetts Lane does not have a footway, a section begins opposite to No.45 and provides pedestrian access to Barnetts Close and Comberton Road beyond. Re-siting the entrance to No.44 would increase the distance that future occupiers of the apartments would be required to travel along the lane to access the footway. Nonetheless, representations indicate

that pedestrians use Barnetts Lane without a footway. It has not been demonstrated that this has caused a particularly high accident record in this location, or that any likely increase in vehicular and pedestrian flows associated with the proposed development would result in such a record. It is therefore my view that the proposed development would not be unacceptably harmful to highway safety and complies with Policies TR.9, TR.7 and D.9 of the *Wyre Forest District Adopted Local Plan – January 2004* (LP).

Accessibility

6. The Design and Access Statement (DAS) that accompanies this outline scheme notes that two disabled parking spaces would be provided close to the building and consideration would be given to the needs of the visually impaired. Circular 01/06 – *Guidance on Changes to the Development Control System* addresses the role of the DAS and is clear that it is not required to deal with the internal aspects of buildings. Nonetheless, in this instance the DAS indicates that the ground floor of the development would be accessible by wheelchair users. This would increase the number of such dwellings in this location from potentially one to three.
7. Circular 01/06 also states that local planning authorities should consider imposing a condition where additional information that builds on the original statement would be necessary at reserved matters stage. In this case the Council access officer consultation response on the application notes that the incorporation of Lifetime Homes standards into the scheme would enable the staircase to accept a stair lift that would make the development both accessible and sustainable. Given that this is an outline scheme with all matters reserved such detailed design requirements could be the subject of a condition.
8. LP Policies D.19 and D.1 seek developments to be flexible and accessible by all members of the local community. It has not been demonstrated that this development would fail to meet local planning policy objectives in respect of accessibility. I find therefore that in this respect the proposed development would comply with LP Policies D.19 and D.1.

Character and appearance

9. Barnetts Lane has characteristically large dwellings set in substantial plots with mature gardens. However, there is also a degree of variety in the street scene, due to the scale, type and in some instances smaller plot sizes of the dwellings around the junction with Comberton Road. Purpose-built apartment buildings are evident elsewhere in the locality.
10. Although I found Barnetts Lane to be a quiet highway, it has not been demonstrated that the additional traffic associated with the proposal would be sufficient to detract from the present character of the lane.
11. The existing dwelling at No.44 provides living accommodation on two floors above ground level. It is principally massed across the plot which provides extensive gardens to the rear and a large area for parking within the landscaped grounds to the front.
12. The DAS and indicative drawings that accompany the application describe a structure that would have a considerably larger footprint and massing than the

- existing dwelling at No.44. Nonetheless, it would be expected to leave similar separation distances to the property boundaries on either side of it. In addition, the plot is of sufficient size for such a development to retain significant areas of amenity space to the front and rear of the building.
13. The proposal would be a two storey residential structure like others in the vicinity of the appeal site. Whilst it would be larger than the buildings next to it, it does not follow that such a proposal would necessarily depart from the character and appearance of the area. The DAS indicates the apartment block would not be of a scale that would necessarily prevent detailed design proposals at reserved matters stage providing a building that would be sympathetic in style to those around it and the area in which it would stand.
 14. The Council officer report states that the building described within the application could be adequately accommodated within the plot. I consider that given the circumstances of the appeal site, it would be possible to retain characteristic areas of amenity space around the proposed development. Although trees within the appeal site are not the subject of a Tree Preservation Order, landscaping is a reserved matter that would address the vegetation and appearance of the grounds that the development would stand within.
 15. Reference has been made to building lines shown on property documents, but the potential relevance of these papers to this case has not been adequately explained. The application drawings indicate that the front building line of the apartment block could reflect those on either side of it, even if drawn back to provide additional protection to the root zone of the existing Sycamore identified as tree 1589.
 16. National policy in Planning Policy Statement 1 – *Delivering Sustainable Development* is clear that development should be appropriate for its context and this is reflected in LP policies D.3 and D.1. The proposal would intensify the residential use in this location. I therefore conclude that the outline proposal would not be unacceptably harmful to the character and appearance of the locality and in this respect complies with LP Policies D.3 and D.1.

Living conditions

17. Although previous residential activity on the appeal site may have been limited, No.44 is a large dwelling with a considerable area for vehicle parking at the front of the house. Future occupation of the existing dwelling could increase considerably the level of domestic activity at the property. The proposal would intensify the residential use of the appeal site, but this must be considered against the existing potential use of the land and the likely increase in activity associated with the apartment block. Within this context it has not been established that the proposal would result in an unacceptable increase in residential noise and disturbance.
18. The proposal would noticeably increase the depth of the built form on the appeal site in views from neighbouring windows and private amenity space. However, in common with the building that it would replace, it would be a two storey structure and the indicative drawings show a design that would concentrate the mass of the building towards the centre of the site.

19. Given the separation distances that it would be possible to achieve from neighbouring development and the potential positioning of the building on this site, I consider that it would be possible to ensure that the proposal would neither be unacceptably visually intrusive, nor cause a significant loss of daylight at neighbouring windows and amenity space. The presence of existing vegetation, boundary treatments and buildings around the appeal site adds weight to this.
20. As an outline proposal with all matters reserved, the size, number, location and function of windows in the proposed building are yet to be known. At present there are first floor windows at the rear of No.44 that have the potential to cause overlooking of neighbouring properties. The presence of first floor windows in the proposed development in combination with the intensification of the residential use would be expected to increase the level of overlooking of neighbouring amenity space. However, this is a suburban area where a degree of such overlooking is likely to occur.
21. The current potential for a loss of privacy to occur at ground floor level is reduced by vegetation and existing boundary treatments. Nonetheless, there are existing neighbouring windows that face toward the appeal site that could be overlooked by new fenestration. However, it has not been established that the apartments could not be designed in such a way as to prevent unacceptably increased levels of overlooking occurring. I therefore conclude that the outline proposal would not be unacceptably harmful to the living conditions of neighbours and in this respect complies with LP Policy D.1.

Other matters

22. Other local plan policies have been referred to within the representations that are before me. The proposed development is the replacement of the existing dwelling with an apartment building. It is therefore not a form of backland development where the existing dwelling would remain, nor would it involve the subdivision of an existing building or an extension of it. In addition, Barnetts Lane is surfaced and consequently not an unmade road. I therefore consider the policies referred to in my reasoning above to be more relevant to the main issues that pertain to this proposal.
23. LP Policy IMP.1 states that in appropriate circumstances the Council will seek planning obligations to secure sums of money to be paid in respect of certain impacts associated with proposed development. The policy is supported by a *Planning Obligations Supplementary Planning Document – Adopted February 2007* (SPD).
24. The SPD indicates that education and open space contributions would be required for outline proposals of 5 or more family sized dwellings. It also highlights that in such circumstances the Council will require a planning obligation to be entered into to secure an education contribution that would then be calculated at the reserved matters stage. In this case, the officer report notes the applicant's agreement to enter into a planning obligation in respect of contributions of £5,733.60 and £2,469.60 toward education and open space respectively.
25. The County Council's consultation response identifies the schools that would be affected by the proposal and the SPD highlights that open space contributions

address the increased pressures on recreational facilities that result from new residential development. The intensification of the residential use of the appeal site would be expected to place additional demands on both educational and open space facilities in the locality.

26. I therefore consider that a planning obligation in respect of educational and open space contributions is necessary to make the development proposed acceptable in planning terms. However, an obligation that addresses the requirements of LP Policy IMP1 and the SPD is not before me and I attribute significant weight to its absence.
27. Circular 11/95 – *The Use of Conditions in Planning Permissions* indicates that no payment of money or other consideration can be required when granting a planning permission. The Circular also highlights that such permission cannot be granted subject to a condition that the applicant enters into a planning obligation. Consequently, it is my view that this is not a matter that can be addressed by the imposition of a condition. I find that the absence of an executed planning obligation in respect of education and open space contributions outweighs the lack of harm in respect of the main issues identified above.

Conclusion

28. For the reasons given above and having considered all other matters raised, I conclude the appeal should be dismissed.

C Sproule

INSPECTOR