

Wolverhampton City Council

OPEN INFORMATION ITEM

Committee / Panel	<u>PLANNING COMMITTEE</u>	Date 25 June 2013
Originating Service Group(s)	EDUCATION AND ENTERPRISE	
Contact Officer(s)/	STEPHEN ALEXANDER (Head of Planning)	
Telephone Number(s)	(01902) 555610	
Title/Subject Matter	PLANNING APPEALS	

1.0 Purpose of Report

- 1.1 To provide the Committee with an analysis of planning appeals in respect of decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.

2.0 Planning Appeals Analysis

- 2.1 The Appendix to this report sets out the details of new planning appeals, ongoing appeals and those which have been determined by the Planning Inspectorate in respect of the decisions of the Council to either refuse planning or advertisement consent or commence enforcement proceedings.
- 2.2 In relation to the most recent appeal decisions of the Planning Inspectorate i.e. those received since last meeting of the Committee, a copy of the Planning Inspector's decision letter, which fully explains the reasoning behind the decision, is attached to this report. If necessary, Officers will comment further on particular appeals and appeal decisions at the meeting of the Committee.

3.0 Financial Implications

- 3.1 Generally, in respect of planning appeals, this report has no specific financial implications for the Council. However, in certain instances, some appeals may involve the Council in special expenditure; this could relate to expenditure involving the appointment of consultants or Counsel to represent or appear on behalf of the Council at Public Inquiries or, exceptionally, if costs are awarded against the Council arising from an allowed planning/enforcement appeal. Such costs will be drawn to the attention of the Committee at the appropriate time.

**4.0 Equal Opportunities/
Environmental Implications**

- 4.1 None.

NEW APPEALS

Appeal Site / Ward / Appellant	Application No / Proposal
Land At 200 And Rear Of 192 To 198, Coleman Street, Wolverhampton Park Gray Ventures Ltd	12/00020/FUL Residential development comprising a two storey building containing six, 2 bedroom apartments

ONGOING APPEALS

	<u>Appeal Site / Ward</u>	<u>Appellant</u>
1.	1 Market Street Wolverhampton St Peters	Mr Joseph Yusef
2.	26 Halesworth Road Wolverhampton Oxley	Miss Sharon Wyatt
3.	87 Oxley Moor Road Wolverhampton Oxley	Mr Gambone
4.	2 Canterbury Road Wolverhampton Penn	Mr C Punter

APPEALS DETERMINED SINCE LAST MEETING

Appeal Site / Ward / Appellant	Application No / Proposal	Decision and Date of Decision
Autumn View, Grove Lane, Wolverhampton Tettenhall Wightwick Mr A Sharma	12/00579/RP Retrospective Application. Change of use to self-contained unit at first floor.	Appeal Allowed 10.05.2013
Land Adjacent To 6, Wrekin Drive, Merry Hill Merry Hill Mr Kevin Fearon	12/01197/FUL Construction of 3no. three-bed townhouses	Appeal Dismissed 14.05.2013
Lidl, Finchfield Hill, Wolverhampton Tettenhall Wightwick Miss Donna Commock	12/00959/FUL Demolition of dwelling number 42 Finchfield Hill to facilitate the construction of a single storey extension to the existing Lidl foodstore.	Appeal Allowed 17.05.2013
The Claregate Public House, 34 Codsall Road, Wolverhampton Tettenhall Regis Marstons Estates	12/00784/FUL Erection of retail store on part of car park at the Claregate Public House - removal of condition 19 requiring the installation of a pedestrian crossing	Appeal Allowed 04.06.2013 Partial costs awarded Amount to be confirmed
The Former Mitre Site , Church Road, Bradmore Graiseley Mr. Kevin Ryder	12/00549/VV Variation of Condition No. 14 (to exclude railings at front gardens) Planning permission reference No. 07/01147/FUL	Appeal Allowed 05.06.2013



Appeal Decision

Site visit made on 9 April 2013

by Nicholas Taylor BA (Hons) MRTPI

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

Decision date: 10 May 2013

Appeal Ref: APP/D4635/A/12/2189009

Autumn View, 4 Grove Lane, Wolverhampton WV6 8NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr A Sharma against the decision of Wolverhampton City Council.
 - The application Ref 12/00579/RP, dated 9 May 2012, was refused by notice dated 14 August 2012.
 - The development proposed is self contained unit.
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Decision

1. The appeal is allowed and planning permission is granted for a self-contained unit at Autumn View, 4 Grove Lane, Wolverhampton WV6 8NJ in accordance with the terms of the application, Ref 12/00579/RP, dated 9 May 2012, and the plans submitted with it, subject to the following condition:
 - 1) The self-contained unit hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Autumn View, 4 Grove Lane, Wolverhampton WV6 8NJ.

Preliminary Matters

2. Autumn View is a reasonably large, 5 bedroom, relatively modern detached house, occupying an elevated position on the steep hillside above Grove Lane. It is accessed via a private drive which leads to two other dwellings and has an undercroft parking area immediately adjacent to the drive. The level of the property immediately above that, which was previously a covered terrace with partially open arches to the front, has already been enclosed to create the unit of residential accommodation which is the subject of this appeal. The roof of the unit is, in turn, occupied by a broad terrace at the front of the main dwelling, which is set back into the slope. The main dwelling comprises a further two storeys on top of the undercroft and the residential unit.
3. The appeal unit comprises a long, narrow space with a single aspect over the driveway, through windows inserted in the arches. It comprises an entrance hall, living room, two small bedrooms, a kitchen, a shower room/WC and a further WC. The entrance door to the unit is to the side, off the external steps leading up to the terrace and the main dwelling. I consider that, in terms of its physical relationship with the main dwelling, the unit is capable of being occupied either as ancillary accommodation, by someone living as part of the family in the main dwelling, or as a separate dwelling.

4. At the time of my site visit, the unit was unoccupied. The Design and Access Statement, submitted with the application, stated that it was to be used by a family member and be ancillary to the main dwelling. In subsequent correspondence with the Council, the appellant's agent confirmed that, whilst the unit may be occupied by a family member, the appellant wished the application to be determined on the understanding that the accommodation is separate from the main dwelling and could be rented out at any point. However, in the grounds of appeal, the appellant states that he would be prepared to accept a suitable planning condition, restricting occupancy to a family member and retaining the unit as a 'granny annex' to the main property. Given the background and most recent statement from the appellant concerning the proposed use, I confirm, therefore, that I have dealt with the appeal on the basis that the development comprises a 'self-contained' unit of accommodation which is ancillary to the main dwelling.

Main Issues

5. The main issues in this case are:
- whether the development preserves or enhances the character or appearance of the Tettenhall Wood Conservation Area;
 - whether the development provides adequate external amenity space for its occupiers; and
 - whether there is adequate provision for car parking.

Reasons

Character and appearance

6. The appeal property is situated within the conservation area, near to its boundary. The conservation area comprises a mixture of mainly detached, Victorian and relatively modern dwellings in a suburban setting. As the *Tettenhall Wood Conservation Area Appraisal* describes, aside from the very varied architectural styles of the buildings, its character and appearance is mainly derived from the steeply sloping location, with many mature trees. The immediate surroundings of the appeal property reflect the eclectic character of the conservation area. The surrounding residential area, outside the conservation area boundary, is predominantly modern.
7. The windows, together with matching brickwork below, along most of the length of the appeal unit have been inserted into the previously arched openings and do not appear incongruous or to have made a very significant impact in relation to the overall design and appearance of the property. The windows to the kitchen and one of the bedrooms are concealed behind narrow openings in the brick retaining wall of the terrace above and are not visible externally. The side entrance door and a further window are not visually prominent.
8. I note residents' concerns about the cumulative effect over time of a number of alterations to the appeal property but any previous works are not matters before me in this appeal. Given that the footprint of the property is not increased and its external appearance only altered to a modest extent, the unit does not harm the quality of its appearance. Consequently, although the front

elevation can be seen from Grove Lane, the physical impact of the unit on the immediate locality is also limited.

9. Many of the dwellings in the conservation area appear to be large detached houses. Notwithstanding the limited impact of the physical alterations to the appeal property, I accept that, if the unit was to be used as a completely separate, self-contained dwelling, the additional intensity of use, pedestrian and vehicular traffic coming and going and additional domestic paraphernalia, could, potentially, have a material impact on the character of the area. However, with use restricted to that of a 'granny flat', ancillary to the main use of the dwelling, as now indicated by the appellant, there is limited evidence to indicate that such impacts would be likely to be harmful. Subject to that safeguard, which could be secured by an appropriate condition, I am satisfied that the character and appearance of the conservation area is preserved. It follows that there is no conflict with Policy ENV3 of the *Black Country Core Strategy* or Policies D4 and H6 of *Wolverhampton's Unitary Development Plan* (UDP), which, together, share the objective of requiring development to provide high quality design which responds to the context and identity of each place. Nor is there conflict with the common objective, to ensure that proposals take account of and do not harm the historic character and appearance of conservation areas, of UDP Policies HE1, HE3, HE4 and HE5, to which the Council has also referred in its appeal statement.

Private amenity space

10. The Council's SPG4: *Extensions to Houses*, requires that amenity space should be maintained to a standard to support the scale of the dwelling. The appellant states that the elevated terrace in front of the main dwelling could be used by occupants of the unit. The property also has a higher level garden to the rear, so that the main dwelling and the unit, taken together, have adequate overall amenity space. As the terrace provides access to the main dwelling and a number of its main windows face directly onto it, use of the unit as a completely separate dwelling could raise issues of practicality and privacy. However, that would be unlikely to be a problem if the use is ancillary. Therefore, subject to that safeguard, there is adequate private outdoor amenity space available to the occupants of the unit and there is no conflict in that respect with UDP Policies D4, which, among other things, provides that the spaciousness and character of existing gardens should be respected, and H6, which requires development to provide adequate garden space, or SPG4.

Parking

11. The appellant states that the property currently has 8 parking spaces. At my site visit, I observed that there are two garages, a number of spaces within the undercroft and one beside it. Access to one of the garages would be blocked when certain of the undercroft spaces are occupied. Some of the undercroft spaces are also of limited depth. Nevertheless, UDP Policy AM12 states that residential units require a maximum of 1.5 spaces, whilst the explanation to the policy states that the Council will be flexible in the application of parking standards. Consequently, I am satisfied that, even if the main dwelling and the unit were to be assessed as separate dwellings, the number of spaces within the site meets the Council's standard. I accept that parking outside the confines of the appeal property, on the shared drive, could block access to the neighbouring dwellings but there is no firm evidence that the ancillary use of the unit would be likely to make that more likely. Nor does the report of an

alleged act of arson in the past affect the adequacy of parking provision. Any conflict with the legal right of access over the drive would be a private matter and has no significant bearing on the planning merits of my decision. The ancillary use of the unit would be unlikely to lead to a significant increase in the number of vehicles on Grove lane. All in all, the development does not conflict with Policy AM12 or UDP Policy AM15, which concerns road safety and personal security.

Other Matters

12. I note the concerns that the development might lead to strain on the sewerage system but no strong evidence has been provided to substantiate them. The fact that the physical alterations to the property have been carried out before planning permission was sought does not have a significant bearing on my decision.

Condition

13. I have found that the development is acceptable as ancillary accommodation to the main dwelling. However, as the unit is physically capable of being occupied either for ancillary purposes or as a separate dwelling, it is necessary to impose a condition restricting its use. Both main parties have indicated that such a condition would be acceptable. As the physical development has taken place, no further conditions are necessary.

Conclusion

14. For the reasons set out above, the appeal is allowed, subject to a condition restricting the use of the unit to purposes ancillary to that of the main dwelling.

Nicholas Taylor

INSPECTOR



Appeal Decision

Site visit made on 9 April 2013

by Nicholas Taylor BA (Hons) MRTPI

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

Decision date: 14 May 2013

Appeal Ref: APP/D4635/A/12/2189759

**Land off Wrekin Drive, Merry Hill, Wolverhampton, West Midlands
WV3 7HZ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Kevin Fearon (Nehemiah U.C.H.A.) against the decision of Wolverhampton City Council.
 - The application Ref 12/01197/FUL, dated 4 October 2012, was refused by notice dated 26 November 2012.
 - The development proposed is construction of 3 No. three-bed town houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effect of the proposal on the living conditions of neighbouring occupiers and its effect on the character and appearance of the area.

Reasons

Living conditions

3. The proposed development would comprise a terrace of three, two storey houses, occupying an infill site which is currently a small car park, within a residential area. One of the blank gable ends of the proposed terrace would face the back gardens and rear elevations of several houses, which contain a number of windows to habitable rooms, in Alderton Drive. In particular, it would face across the full width of the plot of 23 Alderton Drive, at a distance to its rear elevation of 11.1 metres, and across most of the width of 21 Alderton Drive, at a distance of 12 metres.
4. The Council's *Supplementary Planning Guidance Number 3: Residential Development* (SPG), which, as the appellant accepts, has provided established guidance within the city for many years, and to which significant weight can be attributed, requires a 12 metre distance between blank walls and the windows of habitable rooms. The SPG also says that, where there is a difference in level, separation distances should be increased to compensate. The appeal scheme would be somewhat higher in level than the houses in Alderton Drive, visually accentuating the actual height of the gable. Consequently, the elevated and proximate position of the gable end of the proposed terrace would

- create an oppressively enclosed and overbearing effect, when viewed from the rear windows and modestly sized gardens of Nos. 21 and 23.
5. Section 8 of the SPG refers to the importance of designing the orientation of buildings in terms of sunlight and daylight. The effect of the proposal on daylight reaching the habitable rooms in Nos 21 and 23 would be unlikely to be unduly harmful. However, the orientation of the proposal would be likely to restrict sunlight reaching their rear gardens, which would adversely affect the occupiers enjoyment of them. There is also a strong likelihood that direct sunlight entering ground floor rear rooms would be restricted to a degree, particularly during winter mornings.
 6. Therefore, the proposal would materially harm the living conditions of neighbouring occupiers within 21 and 23 Alderton Drive, due to its overbearing effect and impact on sunlight reaching their homes. As such, there would be conflict with the SPG and with saved Policies D4, D7 and D8 of Wolverhampton's Unitary Development plan (UDP) which are most relevant to this issue and which, together, among other matters, seek to resist development which would have harmful effects on adjoining properties. The proposal would also conflict, in this respect, with the design objectives of Policies CSP4 and ENV3 of the Black Country Core Strategy (BCCS) and with paragraph 17 of the National Planning Policy Framework, which seeks to secure a good standard of amenity for existing occupants of land and buildings.

Character and appearance

7. In terms of floor and site area, the proposed dwellings would not, individually, be inconsistent with the general range of densities in the locality. But numerical density is only one aspect of the acceptability of new development and, as I have found in relation to the first main issue, the relationship of the terrace to the neighbouring houses in Alderton Drive would be unduly cramped.
8. Although the terrace would be set back from Wrekin Drive, at an angle to it, it would continue the building line of the adjacent, existing terrace Nos. 2 – 6. However, the proposed joint access and parking area to the front of the site would produce an uncharacteristically hard and cramped appearance in an area where dwellings generally have front gardens facing the street. I accept that the simple design of the proposed houses would not be inappropriate in the context. Moreover, whilst the access to the rear garden of the middle house, via the rear garden of the end house, would be less than ideal, it could be addressed by a relatively minor amendment.
9. Overall, therefore, the proposal would have a cramped layout and would represent overdevelopment of the site. Consequently, there would be conflict with the objectives of BCCS Policies CSP4 and ENV3, which seek high quality design and a bespoke approach to place-making. There would, in addition, be conflict with the design objectives of the SPG and UDP Policies D4, D5 and, in terms of scale and massing, D8.

Conclusion

10. For the reasons set out above, the appeal should be dismissed.

Nicholas Taylor

INSPECTOR



Appeal Decision

Hearing held on 17 April 2013

Site visit made on 17 April 2013

by Elaine Benson BA (Hons) Dip TP MRTPI

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

Decision date: 17 May 2013

Appeal Ref: APP/D4635/A/12/2189031

Lidl food store and No 42 Finchfield Hill, Wolverhampton, West Midlands WV3 9EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Donna Commock on behalf of Lidl UK against the decision of Wolverhampton City Council.
 - The application Ref 12/00959/FUL, dated 7 August 2012, was refused by notice dated 12 November 2012.
 - The development proposed is *demolition of 42 Finchfield Hill dwelling to facilitate the construction of a single storey extension to the existing Lidl food store.*
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Preliminary Matter

1. The appellant submitted 2 revised drawings which corrected some of the figures shown on earlier plans and brought them in line with other plans. The proposal was unchanged. The Council raised no objection to the substitute plans and I am satisfied that no other parties would be prejudiced by accepting them. Accordingly the revised drawings have been assessed as part of the appeal proposal. For the avoidance of doubt it was agreed at the Hearing to number them 925-122 Revision C and 925-123 Revision C.

Decision

2. The appeal is allowed and planning permission is granted for demolition of 42 Finchfield Hill dwelling to facilitate the construction of a single storey extension to the existing Lidl food store at Lidl food store and No 42 Finchfield Hill, Wolverhampton, West Midlands in accordance with the terms of the application Ref 12/00959/FUL, dated 7 August 2012, subject to the conditions on the attached Schedule.

Main Issues

3. The main issues are the effects of the loss of the locally listed 42 Finchfield Hill (No 42) and whether the design of the proposed extension to the Lidl food store would compensate for its loss.

Reasons

4. The Council states that No 42 is not of sufficient architectural or historic importance to justify a request for statutory listing. It was added to the Council's Local List following the refusal of a previous application for an extension to the food store.

5. The policies of the Black Country Core Strategy (BCCS) have recently been subjected to a *Compatibility Self-Assessment Checklist* to assess their degree of conformity with the National Planning Policy Framework (the Framework). It was concluded that the BCCS is in conformity with the Framework. The most convincing evidence in this appeal indicates that its Policy ENV2 which requires that particular attention is paid to the preservation and enhancement of heritage assets can be given full weight.
6. Locally listed buildings are not designated heritage assets. They have no statutory protection and local listing is not in itself a reason to withhold planning permission. The Framework indicates that in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. As No 42 would be lost as a result of the proposed development, it is necessary to assess its significance in order to reach a balanced judgement.
7. No 42 is an attractive house which contributes towards the historic local character, sense of place and visual interest of this part of Finchfield Hill. It has been altered, but the front elevation and plan form survive. The appellant's *Statement of Significance* assessed No 42 against the Council's selection criteria for local listing. The Council's response has also been taken into account in this decision.
8. The building dates from 1879 and is one of the few surviving buildings which made up the small mid-19th Century settlement of Finchfield. In this regard one of a number of the Council's criteria for local listing is satisfied. However, there are other buildings of a similar age in the locality, most of which stand in groups of similar, closely located buildings. None are statutorily listed or locally listed. These groups appear to me to be more effective reminders of the development of the settlement than No 42. Its significance in this regard is diminished by later development which visually and physically separates No 42 from these groups and from other buildings in the locality which have the prefix 'Fern' and which may have some, as yet unidentified, connection with No 42 which is also known as Fern Place.
9. The other buildings identified may well be proposed for local listing in the Tettenhall Neighbourhood Plan which is at a very early stage of preparation. Nonetheless, I concur with the appellant's conclusion in the *Statement of Significance* that No 42 has no special significance above other buildings of a similar age found in the locality in terms of heritage value. Furthermore, the evidence that the loss of No 42 would erode their group value to the detriment of the visual amenities and street scene of the area is unconvincing.
10. The Council also indicates that No 42 was added to the Local List because the local community considers it a landmark building due to its location at the junction of Finchfield Hill and Oak Hill. However, it stands some distance from this junction. No 42 is not visible in many of the views towards the site and does not terminate any significant views. The building is not on a corner site, is set back from the road and does not benefit from the landmark qualities of scale or architecture. For these reasons I am not convinced by the Council's evidence or from what I saw on site that No 42 is a landmark building. Having regard to its limited degree of compliance with the local listing assessment criteria and all the other matters heard in evidence, I conclude that No 142 is a heritage asset of limited significance.

11. Saved Policy HE20 of the Wolverhampton Unitary Development Plan (UDP) seeks to resist the total demolition of a locally listed building unless it is essential to the success of a scheme which would provide other, overriding, planning benefits. It requires that all reasonable alternatives to demolition have been investigated and proved not to be feasible. In the Framework this criterion relates only to designated heritage assets. There is therefore some inconsistency with the Framework and this reduces the weight that can be given to Policy HE20.
12. However, in recognising the value of heritage assets the Framework also requires that a positive strategy for the conservation and enjoyment of the historic environment is set out. The objectives of Policy HE20 would be consistent with this requirement. Furthermore, the overall objective of Policy HE20 is to preserve local distinctiveness and character which are other objectives of the Framework. Consequently I have given significant weight to Policy HE20 in this appeal. Notwithstanding this, it remains a requirement of the development plan to address these criteria in this appeal and they have in any event been addressed by both main parties.
13. An extension which linked No 42 to the food store could potentially preserve the existing character of this part of Finchfield. However, it has been demonstrated that the levels differences between the 2 elements and the limited size of No 42 would not meet the appellant's needs and preclude this approach. It has also been shown that the additional floorspace required could not be located elsewhere on the wider food store site and no neighbouring land is available for this purpose. The Council's suggestions that the building could be used for various types of office or staff accommodation are not compatible with the appellant's business model and do not appear to be entirely reasonable having regard to the physical relationship between the 2 buildings.
14. Taking all the evidence together, I am not convinced that the building makes an important contribution towards the historic local character, sense of place and the visual interest of this part of Finchfield. I am satisfied that all reasonable alternatives to demolition have been investigated and proved not to be feasible. Whether there are other, overriding, planning benefits is addressed below. For the reasons given the loss of No 42 would not conflict with Policy ENV2, Policy HE20 and saved UDP Policy HE1 which requires local list buildings to taken into account when addressing the preservation of local character and distinctiveness. The Council confirmed that the *Statement of Significance* satisfies this policy's requirement for an appropriate level of survey and recording to be undertaken where the building is to be lost.

Design of the proposed extension

15. As indicated by the reason for refusal, it is also necessary to consider the design of the proposed extension. The Council's general design policies are therefore material considerations in this appeal, alongside its heritage policies.
16. There is no dispute that the architectural design of the extension reflects that of the existing food store. The Council considers that it would continue the existing blank frontage which does not properly address the public realm. However, the food store is already there and the additional effect of the extension on the character and appearance of the surrounding area in this regard would be limited. The extension would be of a significantly smaller height and scale than the existing food store. The loss of the small gap in the

street scene between the food store and No 42 would not be significant in the street scene as the extension would be lower than No 42 and would not extend as far towards No 40 as the existing building. This would result in a more generous gap which in my view would make an acceptable transition between the two different forms of development.

17. Accordingly I conclude that the resulting development would comply with the design objectives of saved UDP Policies HE1, D4, D5, D6 and D9 which address the preservation of local character and distinctiveness, urban grain, public realm and townscape and appearance and which I consider are the policies most relevant to this main issue.

Other Matters

18. The development would provide 5 additional local jobs, thereby contributing to the community and the local economy. It would also increase the retail floorspace to allow for a better layout and stock shelving to provide increased stock levels to meet customers' requirements in what appears to be a food store that is well used by the local community. There is no dispute that the food store supports the vitality and viability of the Finchfield local centre and that there is no conflict with local or national retail impact policies. These factors amount to the overriding planning benefits required by Policy HE20.
19. The Council recently served the appellants with a Compulsory Purchase Notice with the intention of bringing No 42 back into residential use. It is also noted that the Council and local residents understood that the building would be returned to residential use following the completion of the store development. However, the Council confirmed that the loss of residential use was not one of its objections and a commercial use of the building could be acceptable. Its main priority was to secure its renovation and reuse. To this end the Council also made an Article 4 Direction to prevent the demolition of No 42 in the absence of a planning permission being in place. Whilst being material considerations, these factors do not outweigh the conclusions set out above.
20. Many of the objections made appear to relate to matters including the existence, design and operation of the food store. These are not before me in this appeal. There are no substantiated reasons to believe that the proposed extension would generate a significant increase in customer numbers, deliveries or general activity. Local residents' concerns about increased traffic generation resulting from the proposed development were not shared by the Council. Having considered the transportation evidence including the additional car parking provision proposed, survey results and all other evidence provided with the appeal, there are no sustainable reasons to disagree with the Council's conclusions in this regard.
21. The Council raised no objections to the proposal on amenity grounds despite the concerns of local residents. The appeal site was viewed from a back garden of The Terrace to the rear and from between the houses surrounding the appeal site. The difference in levels of the appeal site, the food store and the houses behind together with the distance of the proposed extension from the shared boundary, its overall height and scale and the proposed screen landscaping have been taken account. Whilst the extension would be visible from some rear views and would enlarge the already substantial food store, I agree with the Council that the extension would not be so close as to be

detrimental to the living conditions of neighbouring occupiers, including their outlook.

Conclusion

22. Balancing the matters set out above along with all other matters raised, I conclude that the job creation and other economic benefits of the development and the acceptability of the proposed design of the extension outweigh the heritage interest of the existing building and the need to safeguard it, notwithstanding its local listing. Accordingly the appeal should be allowed.

Conditions

23. For the avoidance of doubt and in the interest of proper planning the approved plans have been identified in a condition. To preserve the visual amenities of the locality conditions are required to ensure that matching materials are used, details of architectural elements are provided, appropriate landscaping is carried out and retained thereafter and to ensure that no external storage takes place.
24. Drainage details are necessary to ensure that adequate drainage provision is made having regard to site levels and the potential for flooding. In the interest of road safety I have imposed a condition requiring parking, loading, unloading and circulation provision to be made and thereafter retained. The amount and disposition of retail floorspace is controlled by a condition to justify the quantitative provision in respect of retail need, sequential test and impact. To protect residential and visual amenities conditions are imposed preventing the installation of external plant and machinery, controlling operating hours and the hours of construction. In some instances the wording of the suggested conditions has been amended to better reflect the appeal proposal or the advice within Circular 11/95 *The Use of Conditions in Planning Permissions*.

Elaine Benson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 925-101, 71240 01 Rev B, 925-120 Rev L, 925-121 Rev B, 925-122 Rev C, 925-123 Rev C, 925-124 Rev C, 925-126, 925-127, 925-128, 925-131, 935-132, 11-86-02 Rev H and 8516.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of the development, large scale drawings of the architectural elements (to include windows, doors, eaves, walls, panels, insets, roof, rainwater goods) to be used externally shall be submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved details.
- 5) The approved landscaping scheme shall be carried out in the first planting and seeding season following the first use of the extension hereby approved or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the areas of soft landscaping shall not be replaced by the provision of a hard surface, nor shall they be used for parking or storage.
- 6) No products, crates, materials, waste, refuse or any other items shall be stacked or stored outside any building on the site.
- 7) Prior to the commencement of the development, details of the disposal of surface water and foul sewage shall be submitted to and approved in writing by the local planning authority and the works shall only be carried out in accordance with those details so approved. Such water disposal shall whenever practical be carried out on site without the need for connection to any mains system.
- 8) The development hereby permitted shall not be used until the facilities for vehicle parking, loading and unloading and circulation, as shown on the drawing number 925-120 Rev L have been provided. Such facilities shall be maintained free from obstruction at all times thereafter.
- 9) The net floorspace sales area of the development shall not exceed 985 square metres, of this not more than 195 square metres shall be used for the sale of non-food goods. The unit shall not be sub-divided and no mezzanine floors shall be installed.

- 10) No external ventilation, chiller units, compressors, condenser motors and fixed plant shall be installed on the development hereby permitted.
- 11) Hours of opening and access for deliveries and collection of goods and refuse shall be limited to 0800 hrs to 2000 hrs Mondays to Saturdays and 1000 hrs to 1600 hrs Sundays and Bank Holiday Mondays.
- 12) During the construction phase of this development, operational hours and commercial vehicle movements to or from the site during construction are restricted to 0800 to 1800 hrs Mondays to Saturdays and at no time on Sundays or Bank and Public Holidays.

APPEARANCES

FOR THE APPELLANT:

Mr N Hardy MRTPI	Director GVA
Ms S Watt BA (Hons) PGDip Archaeol, DipEnvPol (Open), PGCert Architectural History (Oxon) MIfA	Director Asset Heritage
Mr J Lee	Property Director, Lidl UK
Ms D Commock	Asset Manager, Lidl UK

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Gregory	Section Leader, Wolverhampton City Council
Ms S Whitehouse BA (Hons), Dip TP MA (Arch Cons)	Historic Environment Officer, Wolverhampton City Council
Mr I Culley	Planning Policy Team Manager, Wolverhampton City Council
Mr R Long	Private Sector Housing Team, Wolverhampton City Council

INTERESTED PERSONS:

Mr C Randles	Community Council
Ms L Cox	Chair, Finchfield Estate Community Hub
Mrs Liz Millman	Chair, Finchfield Community Association
Mr T Cattell	Local Resident
Cllr Mrs W Thompson	Councillor for Tettenhall Wightwick Ward
Mr J Pipworth	Local Resident

DOCUMENTS

- 1 Email exchange November 2012 about refusal reason
- 2 Page 68 of Planning Committee Report
- 3 Pre application request 14 March 2006
- 4 Compatibility Self-Assessment Checklist (April 2012) received after, but referred to during, the Hearing



Appeal Decision

Hearing held on 17 April 2013

Site visit made on 17 April 2013

by Elaine Benson BA (Hons) Dip TP MRTPI

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

Decision date: 10 June 2013

Appeal Ref: APP/D4635/A/12/2189031

Lidl food store and No 42 Finchfield Hill, Wolverhampton, West Midlands WV3 9EN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Donna Commock on behalf of Lidl UK against the decision of Wolverhampton City Council.
 - The application Ref 12/00959/FUL, dated 7 August 2012, was refused by notice dated 12 November 2012.
 - The development proposed is *demolition of 42 Finchfield Hill dwelling to facilitate the construction of a single storey extension to the existing Lidl food store.*
-

This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes that issued on 17th May 2013.

Preliminary Matter

1. The appellant submitted 2 revised drawings which corrected some of the figures shown on earlier plans and brought them in line with other plans. The proposal was unchanged. The Council raised no objection to the substitute plans and I am satisfied that no other parties would be prejudiced by accepting them. Accordingly the revised drawings have been assessed as part of the appeal proposal. For the avoidance of doubt it was agreed at the Hearing to number them 925-122 Revision C and 925-123 Revision C.

Decision

2. The appeal is allowed and planning permission is granted for demolition of 42 Finchfield Hill dwelling to facilitate the construction of a single storey extension to the existing Lidl food store at Lidl food store and No 42 Finchfield Hill, Wolverhampton, West Midlands in accordance with the terms of the application Ref 12/00959/FUL, dated 7 August 2012, subject to the conditions on the attached Schedule.

Main Issues

3. The main issues are the effects of the loss of the locally listed 42 Finchfield Hill (No 42) and whether the design of the proposed extension to the Lidl food store would compensate for its loss.

Reasons

4. The Council states that No 42 is not of sufficient architectural or historic importance to justify a request for statutory listing. It was added to the Council's Local List following the refusal of a previous application for an extension to the food store.
5. The policies of the Black Country Core Strategy (BCCS) have recently been subjected to a *Compatibility Self-Assessment Checklist* to assess their degree of conformity with the National Planning Policy Framework (the Framework). It was concluded that the BCCS is in conformity with the Framework. The most convincing evidence in this appeal indicates that its Policy ENV2 which requires that particular attention is paid to the preservation and enhancement of heritage assets can be given full weight.
6. Locally listed buildings are not designated heritage assets. They have no statutory protection and local listing is not in itself a reason to withhold planning permission. The Framework indicates that in weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset. As No 42 would be lost as a result of the proposed development, it is necessary to assess its significance in order to reach a balanced judgement.
7. No 42 is an attractive house which contributes towards the historic local character, sense of place and visual interest of this part of Finchfield Hill. It has been altered, but the front elevation and plan form survive. The appellant's *Statement of Significance* assessed No 42 against the Council's selection criteria for local listing. The Council's response has also been taken into account in this decision.
8. The building dates from 1879 and is one of the few surviving buildings which made up the small mid-19th Century settlement of Finchfield. In this regard one of a number of the Council's criteria for local listing is satisfied. However, there are other buildings of a similar age in the locality, most of which stand in groups of similar, closely located buildings. None are statutorily listed or locally listed. These groups appear to me to be more effective reminders of the development of the settlement than No 42. Its significance in this regard is diminished by later development which visually and physically separates No 42 from these groups and from other buildings in the locality which have the prefix 'Fern' and which may have some, as yet unidentified, connection with No 42 which is also known as Fern Place.
9. The other buildings identified may well be proposed for local listing in the Tettenhall Neighbourhood Plan which is at a very early stage of preparation. Nonetheless, I concur with the appellant's conclusion in the *Statement of Significance* that No 42 has no special significance above other buildings of a similar age found in the locality in terms of heritage value. Furthermore, the evidence that the loss of No 42 would erode their group value to the detriment of the visual amenities and street scene of the area is unconvincing.
10. The Council also indicates that No 42 was added to the Local List because the local community considers it a landmark building due to its location at the junction of Finchfield Hill and Oak Hill. However, it stands some distance from this junction. No 42 is not visible in many of the views towards the site and

does not terminate any significant views. The building is not on a corner site, is set back from the road and does not benefit from the landmark qualities of scale or architecture. For these reasons I am not convinced by the Council's evidence or from what I saw on site that No 42 is a landmark building. Having regard to its limited degree of compliance with the local listing assessment criteria and all the other matters heard in evidence, I conclude that No 42 is a heritage asset of limited significance.

11. Saved Policy HE20 of the Wolverhampton Unitary Development Plan (UDP) seeks to resist the total demolition of a locally listed building unless it is essential to the success of a scheme which would provide other, overriding, planning benefits. It requires that all reasonable alternatives to demolition have been investigated and proved not to be feasible. In the Framework this criterion relates only to designated heritage assets. There is therefore some inconsistency with the Framework and this reduces the weight that can be given to Policy HE20.
12. However, in recognising the value of heritage assets the Framework also requires that a positive strategy for the conservation and enjoyment of the historic environment is set out. The objectives of Policy HE20 would be consistent with this requirement. Furthermore, the overall objective of Policy HE20 is to preserve local distinctiveness and character which are other objectives of the Framework. Consequently I have given significant weight to Policy HE20 in this appeal. Notwithstanding this, it remains a requirement of the development plan to address these criteria in this appeal and they have in any event been addressed by both main parties.
13. An extension which linked No 42 to the food store could potentially preserve the existing character of this part of Finchfield. However, it has been demonstrated that the levels differences between the 2 elements and the limited size of No 42 would not meet the appellant's needs and preclude this approach. It has also been shown that the additional floorspace required could not be located elsewhere on the wider food store site and no neighbouring land is available for this purpose. The Council's suggestions that the building could be used for various types of office or staff accommodation are not compatible with the appellant's business model and do not appear to be entirely reasonable having regard to the physical relationship between the 2 buildings.
14. Taking all the evidence together, I am not convinced that the building makes an important contribution towards the historic local character, sense of place and the visual interest of this part of Finchfield. I am satisfied that all reasonable alternatives to demolition have been investigated and proved not to be feasible. Whether there are other, overriding, planning benefits is addressed below. For the reasons given the loss of No 42 would not conflict with Policy ENV2, Policy HE20 and saved UDP Policy HE1 which requires local list buildings to taken into account when addressing the preservation of local character and distinctiveness. The Council confirmed that the *Statement of Significance* satisfies this policy's requirement for an appropriate level of survey and recording to be undertaken where the building is to be lost.

Design of the proposed extension

15. As indicated by the reason for refusal, it is also necessary to consider the design of the proposed extension. The Council's general design policies are therefore material considerations in this appeal, alongside its heritage policies.

16. There is no dispute that the architectural design of the extension reflects that of the existing food store. The Council considers that it would continue the existing blank frontage which does not properly address the public realm. However, the food store is already there and the additional effect of the extension on the character and appearance of the surrounding area in this regard would be limited. The extension would be of a significantly smaller height and scale than the existing food store. The loss of the small gap in the street scene between the food store and No 42 would not be significant in the street scene as the extension would be lower than No 42 and would not extend as far towards No 40 as the existing building. This would result in a more generous gap which in my view would make an acceptable transition between the two different forms of development.
17. Accordingly I conclude that the resulting development would comply with the design objectives of saved UDP Policies HE1, D4, D5, D6 and D9 which address the preservation of local character and distinctiveness, urban grain, public realm and townscape and appearance and which I consider are the policies most relevant to this main issue.

Other Matters

18. The development would provide 5 additional local jobs, thereby contributing to the community and the local economy. It would also increase the retail floorspace to allow for a better layout and stock shelving to provide increased stock levels to meet customers' requirements in what appears to be a food store that is well used by the local community. There is no dispute that the food store supports the vitality and viability of the Finchfield local centre and that there is no conflict with local or national retail impact policies. These factors amount to the overriding planning benefits required by Policy HE20.
19. The Council recently served the appellants with a Compulsory Purchase Notice with the intention of bringing No 42 back into residential use. It is also noted that the Council and local residents understood that the building would be returned to residential use following the completion of the store development. However, the Council confirmed that the loss of residential use was not one of its objections and a commercial use of the building could be acceptable. Its main priority was to secure its renovation and reuse. To this end the Council also made an Article 4 Direction to prevent the demolition of No 42 in the absence of a planning permission being in place. Whilst being material considerations, these factors do not outweigh the conclusions set out above.
20. Many of the objections made appear to relate to matters including the existence, design and operation of the food store. These are not before me in this appeal. There are no substantiated reasons to believe that the proposed extension would generate a significant increase in customer numbers, deliveries or general activity. Local residents' concerns about increased traffic generation resulting from the proposed development were not shared by the Council. Having considered the transportation evidence including the additional car parking provision proposed, survey results and all other evidence provided with the appeal, there are no sustainable reasons to disagree with the Council's conclusions in this regard.
21. The Council raised no objections to the proposal on amenity grounds despite the concerns of local residents. The appeal site was viewed from a back garden of The Terrace to the rear and from between the houses surrounding

the appeal site. The difference in levels of the appeal site, the food store and the houses behind together with the distance of the proposed extension from the shared boundary, its overall height and scale and the proposed screen landscaping have been taken account. Whilst the extension would be visible from some rear views and would enlarge the already substantial food store, I agree with the Council that the extension would not be so close as to be detrimental to the living conditions of neighbouring occupiers, including their outlook.

Conclusion

22. Balancing the matters set out above along with all other matters raised, I conclude that the job creation and other economic benefits of the development and the acceptability of the proposed design of the extension outweigh the heritage interest of the existing building and the need to safeguard it, notwithstanding its local listing. Accordingly the appeal should be allowed.

Conditions

23. For the avoidance of doubt and in the interest of proper planning the approved plans have been identified in a condition. To preserve the visual amenities of the locality conditions are required to ensure that matching materials are used, details of architectural elements are provided, appropriate landscaping is carried out and retained thereafter and to ensure that no external storage takes place.
24. Drainage details are necessary to ensure that adequate drainage provision is made having regard to site levels and the potential for flooding. In the interest of road safety I have imposed a condition requiring parking, loading, unloading and circulation provision to be made and thereafter retained. The amount and disposition of retail floorspace is controlled by a condition to justify the quantitative provision in respect of retail need, sequential test and impact. To protect residential and visual amenities conditions are imposed preventing the installation of external plant and machinery, controlling operating hours and the hours of construction. In some instances the wording of the suggested conditions has been amended to better reflect the appeal proposal or the advice within Circular 11/95 *The Use of Conditions in Planning Permissions*.

Elaine Benson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 925-101, 71240 01 Rev B, 925-120 Rev L, 925-121 Rev B, 925-122 Rev C, 925-123 Rev C, 925-124 Rev C, 925-126, 925-127, 925-128, 925-131, 935-132, 11-86-02 Rev H and 8516.
- 3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Prior to the commencement of the development, large scale drawings of the architectural elements (to include windows, doors, eaves, walls, panels, insets, roof, rainwater goods) to be used externally shall be submitted to and approved in writing by the local planning authority. The development shall be built in accordance with the approved details.
- 5) The approved landscaping scheme shall be carried out in the first planting and seeding season following the first use of the extension hereby approved or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the areas of soft landscaping shall not be replaced by the provision of a hard surface, nor shall they be used for parking or storage.
- 6) No products, crates, materials, waste, refuse or any other items shall be stacked or stored outside any building on the site.
- 7) Prior to the commencement of the development, details of the disposal of surface water and foul sewage shall be submitted to and approved in writing by the local planning authority and the works shall only be carried out in accordance with those details so approved. Such water disposal shall whenever practical be carried out on site without the need for connection to any mains system.
- 8) The development hereby permitted shall not be used until the facilities for vehicle parking, loading and unloading and circulation, as shown on the drawing number 925-120 Rev L have been provided. Such facilities shall be maintained free from obstruction at all times thereafter.
- 9) The net floorspace sales area of the development shall not exceed 985 square metres, of this not more than 195 square metres shall be used for the sale of non-food goods. The unit shall not be sub-divided and no mezzanine floors shall be installed.

- 10) No external ventilation, chiller units, compressors, condenser motors and fixed plant shall be installed on the development hereby permitted.
- 11) Hours of opening and access for deliveries and collection of goods and refuse shall be limited to 0800 hrs to 2000 hrs Mondays to Saturdays and 1000 hrs to 1600 hrs Sundays and Bank Holiday Mondays.
- 12) During the construction phase of this development, operational hours and commercial vehicle movements to or from the site during construction are restricted to 0800 to 1800 hrs Mondays to Saturdays and at no time on Sundays or Bank and Public Holidays.

APPEARANCES

FOR THE APPELLANT:

Mr N Hardy MRTPI	Director GVA
Ms S Watt BA (Hons) PGDip Archaeol, DipEnvPol (Open), PGCert Architectural History (Oxon) MIfA	Director Asset Heritage
Mr J Lee	Property Director, Lidl UK
Ms D Commock	Asset Manager, Lidl UK

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Gregory	Section Leader, Wolverhampton City Council
Ms S Whitehouse BA (Hons), Dip TP MA (Arch Cons)	Historic Environment Officer, Wolverhampton City Council
Mr I Culley	Planning Policy Team Manager, Wolverhampton City Council
Mr R Long	Private Sector Housing Team, Wolverhampton City Council

INTERESTED PERSONS:

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Ms L Cox	Chair, Finchfield Estate Community Hub
Mrs Liz Millman	Chair, Finchfield Community Association
Mr T Cattell	Local Resident
Cllr Mrs W Thompson	Councillor for Tettenhall Wightwick Ward
Mr J Pipworth	Local Resident

DOCUMENTS

- 1 Email exchange November 2012 about refusal reason
- 2 Page 68 of Planning Committee Report
- 3 Pre application request 14 March 2006
- 4 Compatibility Self-Assessment Checklist (April 2012) received after, but referred to during, the Hearing



Appeal Decision

Site visit made on 21 May 2013

by **J M Trask BSc(Hons) CEng MICE**

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

Decision date: 4 June 2013

Appeal Ref: APP/D4635/A/13/2189959

The Claregate, 34 Codsall Road, Wolverhampton WV6 9ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Marstons Estates against the decision of Wolverhampton City Council.
 - The application Ref 12/00784/FUL, dated 16 July 2012, was approved on 28 November 2012 and planning permission was granted subject to conditions.
 - The development permitted is the *erection of a retail store on part of the car park at the Claregate Public House.*
 - The condition in dispute is No 19 which states that: *Development shall not commence until details of a pedestrian crossing across Codsall Road have been submitted to and approved in writing by the local planning authority. Unless otherwise agreed in writing, the approved pedestrian crossing shall be provided prior to the first use of the development hereby permitted.*
 - The reason given for the condition is: *In the interests of road safety and visual amenity.*
-

Decision

1. The appeal is allowed and the planning permission Ref 12/00784/FUL for the erection of a retail store on part of the car park at the Claregate Public House at 34 Codsall Road, Wolverhampton WV6 9ED granted on 28 November 2012 by Wolverhampton City Council, is varied by deleting condition 19 and substituting for it the following condition:

19) The development shall not begin until details of a pedestrian crossing across Codsall Road have been submitted to and approved in writing by the local planning authority. The use of the permitted development shall not commence until the pedestrian crossing has been provided.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the condition in dispute is reasonable and necessary in the interests of highway safety.

Reasons

4. While Policy AM12 refers to parking and servicing provision, saved Policy AM15 of the Wolverhampton Unitary Development Plan (UDP) requires development proposals to contribute towards improving road safety. The National Planning

Policy Framework (the Framework) also requires the provision of safe and suitable access to be taken into account in decision making and aims for developments to be located to give priority to pedestrian and cycle movements and create safe layouts.

5. The appeal site is to the west of Codsall Road and planning permission has been granted for the construction of a retail store on the car park to the south of the public house. On the opposite side of the road is a well used public park with a popular playground for children. There is a pedestrian gate to the park almost opposite the appeal site and another gate further north. Codsall Road is busy and a recent survey has confirmed an 85th percentile speed of 34mph along this section of road and there are few pedestrian crossings in the area.
6. The appellant's transport specialist concludes there is no evidence of a need for a pedestrian crossing and this view is based on Council officer's reports. However, the survey of local households commissioned by Tettenhall District Community Council identified that local residents consider this stretch of road has the greatest need for a pedestrian crossing in the locality. The subsequent independent report advises that a pedestrian crossing (zebra or signals) near the northern end of the park would be beneficial. The report considers the difficulty and cost of implementation to be moderate but also suggests further surveys are carried out to fully understand pedestrian and traffic flows. On balance it seems to me that there is an existing demand for a crossing near the park.
7. The permitted store and associated advertisements would be clearly visible from the park and play area and would be particularly attractive to children and young teenagers who are likely to be unsupervised when using the park. The store would increase desire lines across Codsall Road and there would be an increased risk to highway users, particularly those crossing the road in this location.
8. I acknowledge the planning officers' recommendations, the lack of objection from the highway authority, that there have been no accidents recorded adjacent to the site and that more customers would arrive on foot from the east than the west and they would not need to cross the road. Accordingly, Council officers have advised that the development would not result in sufficient numbers of people crossing the road to justify a crossing. However, there is an existing demand, which would increase once the store was operational, and I have seen no documented evidence that the increased demand would be so insignificant that the cumulative effect would not be detrimental to highway safety. In my view the likely increase in the number of children crossing the road at this point, even if it were a small number, would represent an unacceptable hazard, detrimental to highway safety and contrary to the aims of UDP Policy AM15 and the Framework.
9. I have seen few details of the proposed location and type of crossing. Nevertheless, the appellant's transport specialist has advised there is only one potential site, immediately to the north of the public house and the Council has referred to a zebra crossing. There are a number of significant trees along the road verges on both sides of the road and it is likely that a tree would need to be removed to allow for satisfactory visibility. The Council has only carried out preliminary investigations but considers that, at a minimum, the provision of a crossing would require partial reconfiguration of the bus layby (contrary to the appellant's transport specialist's view) and the loss of at least one of the

substantial Beech trees. However, depending on the final location of the crossing, other trees may be lost although it is also possible that only less prominent trees would be affected. In any event, many trees would remain so there would be no overriding harm and I do not consider the proposed development would conflict with the objectives of the development plan in this respect, in particular saved Policy D9 of the UDP.

10. There is an existing demand for a pedestrian crossing and, in my view, the additional demand generated by the introduction of the store would result in a need for a crossing. I therefore consider a condition requiring the provision of a crossing before operation of the store commences to be necessary and reasonable in the interests of highway safety.
11. The condition requires the appellant to provide details of a pedestrian crossing. I have seen no specific requirements for the crossing but consider there is sufficient information for the appellant to discern a suitable location and type of crossing to be provided and put forward a reasonable scheme.
12. However, the condition also requires provision of the crossing and the appellant is not in control of the land at the location of the proposed crossing. This type of condition, where implementation is outside the appellant's control, has to be negatively worded otherwise it could side-step other requirements. Despite concerns in respect of the loss of a tree, there is support for the crossing by the Council and in the emerging Neighbourhood Plan, albeit this carries little weight at this time. I therefore consider there is a reasonable prospect that the highway authority would be able and willing to provide a crossing.
13. Accordingly, while I consider the condition to be reasonable in other respects, a more negative form of words is necessary. I shall vary the condition to take this into account.
14. I have had regard to all other matters raised but they are not sufficient to outweigh the considerations which have led me to my conclusion.
15. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting another.

J M Trask

INSPECTOR



Costs Decision

Site visit made on 21 May 2013

by J M Trask BSc(Hons) CEng MICE

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

Decision date: 4 June 2013

Costs application in relation to Appeal Ref: APP/D4635/A/13/2189959 The Claregate, 34 Codsall Road, Wolverhampton WV6 9ED

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Marstons Estates for a full award of costs against Wolverhampton City Council.
 - The appeal was against the grant subject to conditions of planning permission for the erection of a retail store on part of the car park at the Claregate Public House.
-

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Paragraph B15 of the Costs Circular advises that Councils are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted and Paragraph B16 expects evidence to be produced to provide a respectable basis for the authority's stance. Paragraph B29 also identifies imposing a condition that does not comply with the advice in Circular 11/95 as an example of a circumstance which may lead to an award of costs against a planning authority.
4. The appeal concerned a condition relating to the provision of a pedestrian crossing. In my Appeal Decision I have concluded a condition requiring the provision of a pedestrian crossing is necessary for planning purposes and is related to the proposed development. At the time the condition was imposed the Council's detailed requirements for the crossing were not known by the appellant. However, that did not prevent the appellant from proposing a scheme, as required by the condition, and was not significantly different in terms of precision to other similar conditions requiring the submission of details. However, the condition imposed by the Council required works on land outside the appellant's control and the wording was such that the condition was not clear. I therefore find that while the Council acted reasonably in terms of the necessity, relevance to planning and relevance to the development to be permitted, it acted unreasonably in terms of the enforceability and precision of the condition imposed.

5. I therefore find that unreasonable behaviour resulting in unnecessary expense has occurred but in respect of the detail, rather than the principle, of the condition only. I therefore conclude that a partial award of costs is warranted in this respect.

Costs Order

6. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wolverhampton City Council shall pay to Marstons Estates, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in association with the precision and enforceability of the condition.
7. The applicant is now invited to submit to Wolverhampton City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office is enclosed.

J M Trask

INSPECTOR



Appeal Decision

Site visit made on 14 May 2013

by Julie German BSc(Hons) BTP MRTPI

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

Decision date: 5 June 2013

Appeal Ref: APP/D4635/A/13/2192559

**The Mitre Public House, 109 Church Road, Bradmore, City of
Wolverhampton, West Midlands WV3 7EN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Kev Ryder against the decision of Wolverhampton City Council.
 - The application Ref 12/00549/VV, dated 10 May 2012, was refused by notice dated 2 August 2012.
 - The application sought planning permission for residential development comprising 9No. houses without complying with a condition attached to planning permission Ref 07/01147/FUL, dated 7 November 2007.
 - The condition in dispute is No 14 which states that: All approved boundary treatments shown on the approved drawings shall be implemented in accordance with approved details prior to the occupation of the respective dwellings hereby permitted.
 - The reason given for the condition is: In the interests of private and visual amenity.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development comprising 9No. houses at The Mitre Public House, 109 Church Road, Bradmore, City of Wolverhampton, West Midlands WV3 7EN in accordance with application Ref 12/00549/VV made on 10 May 2012 without compliance with condition No 14 previously imposed on planning permission Ref 07/01147/FUL dated 7 November 2007 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect.

Main Issue

2. I consider that the main issue is whether the disputed condition is reasonable and necessary in the interests of: the character and appearance of the development and the surrounding area; and the living conditions of occupiers of the development, with particular reference to privacy and security.

Reasons

3. Planning permission reference 07/01147/FUL authorised the erection of eight semi-detached houses and one detached house. The houses have been constructed. The development occupies a rectangular site with frontages on Church Road, Church Walk and St Philips Grove. The approved plans show railings, a little under a metre in height, forming the front boundary to each of the plots. The Council declined to remove the planning condition which requires boundary treatment in accordance with the approved plans (Condition No 14), making reference to security in addition to private amenity and local character.
4. I saw at my site visit that metal railings and gates have been erected at the two houses on St Philips Grove but that the development is otherwise without front boundary treatment.
5. The appeal site is located within a predominantly residential area, albeit that there is a social club on the opposite side of Church Road. I recognise that there are exceptions but it appeared to me that the prevailing form of front boundary treatment at the dwellings in Church Road and Church Walk comprises low walls and/or hedges, while the neighbouring development in St Philips Grove has an open plan layout. In this context, the approved railings would not reflect the character and appearance of the surrounding area. That said, surrounding development generally has a mature ambience, whereas the new development at The Mitre site is clearly modern. To my mind and eye, there is scope for a degree of difference in modern development from what has gone before, provided that it does not appear incongruous. I believe this to be particularly the case at developments such as that at the appeal site, where a cohesive and attractive design is evident. In my view, the approved railings would set off the development neatly, without appearing out of place in the context of the surrounding area.
6. Turning to consideration of the living conditions of occupiers of the development, I note that the lawn at No 103 Church Road, which is on the corner, shows a degree of wear, indicating that pedestrians have cut the corner across the private lawn. I understand fully the wish of householders to protect their property from trespass and I have noted representations from a number of householders about this and other antisocial activity. As the Council points out, the National Planning Policy Framework aims to ensure that planning decisions create safe environments where crime and fear of crime does not undermine quality of life.
7. On this basis, I have a measure of sympathy with the Council's endeavours to secure implementation of the planning permission in accordance with the disputed condition.
8. Nevertheless, planning conditions are required to meet the tests set out in Circular 11/95 *The Use of Conditions in Planning Permissions*. Conditions must be necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects. In considering whether a particular condition is necessary, the Circular states that authorities should ask themselves whether planning permission would have to be refused if that condition were not to be imposed. In my opinion, it is highly

unlikely that planning permission for the development would have been refused only on the basis of the absence of frontage boundary railings.

9. Firstly, the layout would reflect that at the end of St Philips Grove, as noted above. Secondly, according to my experience modern housing developments are often open plan, and in the case of the appeal site the lack of railings would not be materially harmful to the overall appearance of the development. Thirdly, the requirements of the disputed condition exceed what is necessary to address the matter of security. In the case of No 103, for example, a lesser approach, which might entail no more than the planting of a thorny shrub, would be likely to address the matter adequately. I note that the Council's Supplementary Planning Guidance 3 *Residential Development* makes mention of the use of hedges for separating front gardens from public spaces.
10. I appreciate that the front gardens are not long, but I do not see that the presence of the railings shown on the approved plans would increase privacy within the dwellings appreciably, due to their limited height and slender design.
11. I therefore conclude on the main issue that Condition 14 of planning permission reference 07/01147/FUL is neither reasonable nor necessary in the interests of the character and appearance of the development and the surrounding area, or to safeguard the privacy and security of occupiers of the development. It therefore fails the tests set out in Circular 11/95 and its removal would not materially conflict with the objectives of Policy CSP4 or Policy ENV3 of the Black Country Core Strategy which seek high quality design.
12. I have been informed that the railings were included in the purchase price of the properties but this is a legal matter, not a planning matter.
13. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Julie German

INSPECTOR