

PLANNING APPLICATION NUMBER:P06/0274

Type of approval sought	Full Planning Permission
Ward	St. Thomas's
Applicant	Mr D Gough
Location:	THE FIR TREE FORMER PH, 6, ST JOHNS ROAD, KATES HILL, DUDLEY, WEST MIDLANDS, DY2 7JJ
Proposal	DEMOLITION OF EXISTING PUBLIC HOUSE AND ERECTION OF 7 NO 1 BED APARTMENTS WITH NEW ACCESS AND CAR PARKING AT REAR OF SITE
Recommendation Summary:	APPROVE SUBJECT TO CONDITIONS

SITE AND SURROUNDINGS

1. This site was formally occupied by the Fire Tree Public House. It has now been demolished and development is already taking place. The application is therefore retrospective.
2. The site is situated within an established area of terraced properties. here is a ground floor A1 shop with residential flat above adjacent to the site at no 5 St Johns Road. There are bungalows on the opposite side of St Johns Road.
3. The site is 'L' shaped, wrapping around the rear of nos 7,8 and 9 St. Johns Road. The rear of the site appears to have been a grassed garden area. This has now been removed as construction progresses and is currently used to store materials.

PROPOSAL

4. The proposal involves the retrospective removal of the public house and the construction of a new building. Development is currently taking place on the site. The

site owner has been informed that he does not have planning permission for the construction works but has continued to build at his own risk.

5. The new development would have an almost identical footprint and have a similar appearance to the public house and extensions which were granted permission on 3rd December 1994 (P04/2137) under a scheme to extend and convert the building into 5no apartments. It would be two-storey with four (rather than the previously approved two) velux windows in the front roof space. Two dormer windows have been introduced at the rear. As previously approved, an archway will provide rear access to the site for car parking. The ridgeline will be set slightly down from the two adjacent houses. The building will have the same building line at the front as previously approved. It will run flush with no 5 St Johns Road and project forward in line with an existing porch extension at no 7 St Johns Road. Changes to the internal layout will increase the number of apartments from 5no to 7no. The two-storey element of the building would accommodate five, one bedroom flats (one ground floor, two first floor and two in the roof space).
6. At the rear of the two-storey building would be an elongated single storey wing which would accommodate two further one bedroom flats. This would be constructed on the site of former out buildings associated with the public house. It would project 17.9m from the rear of the two-storey element, rather than 17.6m as previously approved. The previous approval appears to have mirrored the varying roof pattern of the original outbuildings albeit at a lower level. The highest point of the previous approval was 4.4m. The new scheme alters the design of the roof to two stepped mono-pitches. These range in height from 4.6m adjacent to the two-storey element (slightly lower than the height of previous outbuildings) to 4.7m at a distance of 9m from the rear of the two-storey element.
7. The land at the rear provides 9 no car parking spaces (one more than the previous scheme) one of which is for disabled parking. Two separate areas of amenity space are indicated on either side of the parking area.

HISTORY

8. The relevant site history is as follows:

<i>APPLICATION No.</i>	<i>PROPOSAL</i>	<i>DECISION</i>	<i>DATE</i>
<i>P04/0794</i>	<i>Conversion of Fir Tree PH to a 4 bedroom dwelling and erection of 2 no 2 bedroom semi-detached bungalows</i>	<i>Withdrawn</i>	<i>01/09/04</i>
<i>P04/2137</i>	<i>Conversion and extension to Fir Tree PH to create five, one bedroom apartments with new access</i>	<i>Approved</i>	<i>03/12/04</i>
<i>P05/2332</i>	<i>Demolition of existing PH and erection of five, one bedroom apartments with new access</i>	<i>Withdrawn</i>	<i>08/02/06</i>

9. In addition there has been previous enforcement involvement with this site. In October of last year the work commenced on site at which time officers investigated and found that the originally approved application (P04/2137) was not being implemented in accordance with that approval. The rear for this is that the public house had been demolished.
10. Work continued on site despite advice from officers to cease. Consideration has been given to the instigation of formal enforcement action for the works which are being undertaken, however it was considered that as this application had been submitted, that the instigation of such action would be unreasonable.
11. When considering the pursuit of formal enforcement action the Council must abide by the Government's advice contained in Planning Policy Guidance: Enforcing Planning Control (PPG18) which explains that 'the decisive issue for the Local Planning Authority should be whether the breach of control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest..'. PPG18 goes on to say:

'..enforcement action should always be commensurate with the breach of planning control to which it relates (for example, it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site)...'

12. When a breach has been established, officers must also consider whether enforcement action is appropriate by considering whether action would be reasonable, expedient and proportionate. These principles are established in the *Planning Policy Guidance Note 18: Enforcing Planning Control*; *Circular No.10/97: Enforcing Planning Control*; and *Enforcing Planning Control: Good Practice Guide for Local Planning Authorities (1997)*. Each of these documents are published by the ODPM.

13. In this instance, at the time of the investigation it was considered that it was not appropriate to instigate formal enforcement action as those tests had not been satisfied.

PUBLIC CONSULTATION

14. Two letters of objection have been received to the application which make the following points:
- . no 7, adjacent to the building, has changed from an end of terrace to a terraced property;
 - . a wall has been built obscuring a side gable window at no 7;
 - . the front of the building will partially block light from the front bedroom window of no 7;
 - . the increase in the number of apartments will increase the number of vehicles using the new access, this will increase the potential hazard for children who could formerly play safely on the pavement;
 - . the wall as built, is a lot higher and longer than previously approved, this blocks light and view and feels like a prison.

OTHER CONSULTATION

15. Environmental Protection – conditions required to be placed on any approval.
16. West Midlands Fire Service – satisfactory

17. Traffic and Road Safety – The applicant has shown an area for 10 parking spaces, this is slightly above the maximum but is acceptable.

The proposed access onto the footway cannot maintain the 2.4 metre by 3.4m pedestrian visibility splay required upon exit from the driveways, as the vehicle is leaving the driveway and emerges onto the footway or verge. This visibility splay should be continued to the site boundaries. Pedestrian visibility splays should be kept clear of landscaping and structures over 600 millimetres in height from carriageway level. The parking bays that are adjacent an amenity space should be widened to 3 m to allow ease of access. At least one bay should be clearly marked for disabled use and should be a minimum of 3.2 m and preferably 3.6m and should be located close to the dwellings. In conclusion, there are some issues with the application as submitted but we do not have a major objection. The issue with the pedestrian visibility splay can be offset against the requirements in the planning conditions.

RELEVANT PLANNING POLICY

18. Adopted Dudley Borough Unitary Development Plan:

Policy DD1 – Urban Design

Policy DD4 – Development in Residential Areas

Policy DD6 – Access and Transport Infrastructure

Policy DD7 – Planning Obligations

Policy AM14 – Parking

Policy H1 - New Housing Development

Policy H3 – Housing Assessment Criteria

Policy H6 – Housing Density

Policy UR9 – Contaminated Land

Planning Guidance Note No 3 New Housing Development

Planning Guidance Note no 12 – The 45 Degree Code

ASSESSMENT

19. The site is located within an established residential area. It has no specific designation within the Dudley Unitary Development Plan.
20. The site density of the development is 100 dwellings per hectare. This is above the guidelines set out in Planning Policy Guidance Note 3 – Housing and Draft Planning Policy Statement 3 - Housing. However, the site is located within an existing area of tightly packed housing and the density is therefore not felt to be out of keeping with the character of the area.
21. The footprint of the building is almost identical to the previous application which was approved (P04/2137). The building projects forward one metre in front of the original building line of the adjacent building, no 7 St Johns Road. A porch extension to the front of this property is in line with the new building however, the first floor bedroom window would be adversely affected by the new construction as it would not conform with the 45% code. Unfortunately, this application indicates the wall in the same location as that previously approved in the earlier application (P04/2137) which was granted planning approval on 3rd December 2004. The agent has been asked whether his client is prepared to set the first floor above the archway back by 1.0m, however he has confirmed that his client is unwilling to do so. Given the previous recent approval, however, it would be unreasonable to recommend the refusal of the application on this basis.
22. The elevations of the building are again very similar to those previously approved. However, four rather than two velux windows are now indicated in the front elevation and two dormer windows and one velux window are now intended for the rear

elevation of the two-storey element of the building. This will enable two rather than one flat to be positioned in the roof space. This is visually acceptable as the velux windows on the front elevation will have little impact on the street scene. The rear dormer windows will not affect the street scene and are unlikely to adversely affect residential amenity any more than bedroom windows at first floor level. Four, rather than three windows are indicated at first floor level and the rear of the vehicular entrance would have a horizontal rather than arched top. All of these changes are considered to be acceptable as they are in accordance with Policies DD1 and DD4 of the adopted Dudley Unitary Development Plan.

23. The rear single-storey element of the building has a completely different arrangement of door and window openings to accommodate two self contained flats. These would face a high boundary wall belonging to no 7 St Johns Road and would therefore not create a lack of privacy to this property.
24. The potential impact upon the amenities of residents at no 5 St Johns Road also requires consideration. The single storey rear extension would be 0.3m longer than previously approved (P04/2137) and the roofline has changed in appearance and increased in height. Directly adjacent to the rear two-storey element the roof has increased from 3.8m to 4.6m. This is however lower than the original outbuildings at this point which were 4.9m high. The second flat, set at a distance of 9.0m from the rear of the two-storey building measures 4.7m at its highest point. The ridge of the roof to this flat is built 0.5m higher than the former outbuilding on the site and 0.9m higher than the original approval. However, the adjacent dwelling, no 5 St Johns Road has a large number of outbuildings which run the length of the rear curtilage on both sides (some well maintained and some dilapidated) and the middle section is used for the parking of cars. As a result, unlike a conventional garden, where there would be an open view of the rear wall of the new building, it can only be viewed at ground floor level when standing half-way down the parking area, and looking across to the side of it. On balance, given the 9.0m distance of this part of the development from the rear of the two-storey element of no 5 St Johns Road and the fact that the property does not have any rear amenity space, it is considered that the extension will not cause any demonstrable harm to amenity. It is therefore considered to be in

accordance with Policies DD1 and DD4 of the adopted Dudley Unitary Development Plan.

25. Vehicular access to the site remains unchanged. There are no major reservations from the Head of Traffic and Road Safety as outlined in paragraph 17 provided that conditions are attached to any approval. Amended plans have been submitted which address some of the concerns raised with regard to the provision of a disabled parking space and the widening of some of the other parking spaces. This has reduced the number of parking spaces to 9no. This remains acceptable and in accordance with Policies DD6 and AM14 of the adopted Dudley Unitary Development Plan.
26. The occupant of no 7 St John's Road has indicated by letter that a side gable window has been obstructed by the new side wall of the property. This wall had been constructed at the time of the site visit. The agent however has verbally indicated that there was not a window in this gable. Obviously, there is a difference in opinion and it is now difficult to confirm whether or not this window exists. However, the previous approval P05/2137 gave permission for a wall adjacent to the gable of no 7 St John's Road and no mention was made of the existence of a window in the officer site notes or the report to Committee.
27. In accordance with Policy DD7 of the adopted Dudley Borough Unitary Development Plan the Council will require the applicants to enter into a planning obligation in order to fund off-site works to nearby public open space.

CONCLUSION

28. The application indicates a scheme which has an almost identical footprint to the approved scheme. With the exception of two dormer windows inserted at the rear, the elevations of the two-storey element of the building remain very similar. The single storey wing has been amended in height, length and appearance. On balance, however, it is considered that the impact upon the amenities of the occupants of no 5 St Johns Road will be minimal as a result of the existence of extensive outbuildings.

The application is therefore considered to be acceptable in accordance with Policies DD1, DD4, DD6 and AM14 of the adopted Dudley Unitary Development Plan and National Planning Policy.

RECOMMENDATION

29. It is recommended that the application is approved subject to:
- a) The applicant entering into a Section 106 Legal Agreement for a contribution to off-site recreational public open space enhancement.
 - b) The following conditions, with delegated powers to the Director of the Urban Environment to make amendments to these as necessary.
 - c) In the event that the Section 106 agreement has not been completed within two months of the resolution to grant approval, the application will be refused if appropriate.

Reason for Approval

30. The decision to grant planning permission has been taken with regard to the policies and proposals in the adopted Dudley Unitary Development Plan and to all other material considerations.

Conditions and/or reasons:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. None of the dwellings shall be occupied until works for the disposal of foul and surface water drainage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved by the Local Planning Authority.
3. Prior to the occupation of the first dwelling, a detailed scheme showing visibility splays, means of access and parking areas shall be approved in writing by the Local Planning Authority. The agreed scheme shall then be implemented prior to

the first occupation of the building and shall not be used thereafter for any other purpose for the life of the development.

4. No windows shall open out over the Highway for the life of the development.
5. Prior to the occupation of the first dwelling the details of the entrance gates shall be submitted, approved in writing by the local planning authority and implemented. The approved scheme shall be retained for the life of the development.
6. The development hereby permitted shall not be occupied until a landscape scheme for the site has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the first dwelling on the site and retained for the life of the development.
7. Development shall not begin until details of the type, texture and colour of materials to be used in the external elevations have been submitted to and approved by the local planning authority.
8. Prior to the occupation of the first dwelling a scheme incorporating gas precautionary measures shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall then be implemented prior to the first occupation of the building. Such a scheme shall include provisions for validation monitoring and be retained throughout the lifetime of the development.
9. A contaminated land remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall then be implemented prior to the first occupation of the building. Such a scheme shall include provisions for validation monitoring & sampling and be retained throughout the lifetime of the development.
10. The development hereby permitted shall be built in accordance with the approved plan nos DG.2732/04, DG.2851/04.B and DG.2575/05.D unless otherwise agreed in writing by the Local Planning Authority.