
Appeal Decision

Site visit made on 20 September 2016

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 3 October 2016

Appeal Ref: APP/P4605/C/16/3148404

1a Clodeshall Road, Saltley, Birmingham B8 3SG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Gul Nasar Ahmed against an enforcement notice issued by Birmingham City Council.
- The notice was issued on 10 March 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling house in the approximate position marked in green on the attached plan and alterations to the roof of the workshop in the approximate position marked in blue on the attached plan.
- The requirement of the notice is to demolish the dwelling house in the approximate position marked in green on the attached plan and make good the wall to the rear of the workshop in the approximate position marked in blue on the attached plan and remove all the demolished and associated materials and rubble from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

1. The appellant contends that he has not constructed a new dwellinghouse but has built a non-residential building intended for use as offices and storage in conjunction with the adjacent mosque. It appears to me that the appellant's submissions in this regard are arguments properly brought under ground (b) that the matter alleged has not occurred. However, there is no ground (b) appeal.
 2. It is widely accepted that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day to day living. The building includes a fitted kitchen and two shower rooms and although not as yet occupied appears in all respects to comprise a three storey dwellinghouse. If the building was simply intended for office, storage and meeting space there would be no need for the self-evident domestic layout that I saw. In an appeal on legal grounds such as ground (b) the onus is on the appellant to make out his case. He has failed to do so.
 3. From the evidence submitted and my own observations on site, I am satisfied as a matter of fact and degree and on the balance of probability that, albeit not occupied, what has been erected is a dwellinghouse. The matters alleged have therefore occurred as a matter of fact and so even if an appeal on ground (b) had been made it would have failed.
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The Site and its Planning History

4. The appeal site is located between a mosque and the rear of a retail/hot food take-away premise with flats above to the north and the rear gardens of a number of residential properties to the south. The surrounding area is largely characterised by retail/commercial properties to the north and a mix of house types generally set in linear formation facing the road to the south. Residential properties in the immediate area are either located back of pavement or beyond short front gardens.
5. The appeal site comprises a single storey workshop building along the site frontage and the appeal dwellinghouse. The appeal dwellinghouse sits behind and is attached to the workshop building.
6. The appeal site has a planning history which includes a lapsed planning permission Ref: 2012/03926/PA granted on 24 August 2012 for; the demolition of existing workspace and erection of 1.no three storey dwelling house (2012 Permission).

Appeal on ground (a)

7. The main issues are the effect of the development on:
 - i) the character and appearance of the area; and
 - ii) the living conditions of future occupiers in terms of outlook and daylight and the provision of satisfactory garden space.

Character and appearance

8. Paragraphs 3.10 and 3.14D of the Birmingham Plan (2005) (Local Plan) state, amongst other things, that the Council will have particular regard towards the impact of a proposed development on the local character of an area, including topography, street patterns, building lines, boundary treatments, views, skylines, open spaces and landscape, scale and massing, and neighbouring uses. Although the Local Plan is of some age, these requirements are consistent with those in the National Planning Policy Framework (the Framework) in that they seek good design.
9. The appellant contends that what has been built causes no greater harm to the built form than the dwelling subject of the 2012 Permission. The 2012 Permission granted permission for the erection of a dwelling positioned at the front of the site whereas the appeal dwelling has been sited at the rear of the site behind the workshop. Thus, although of a similar design, given the predominant development pattern of residential properties which front the road, the appeal dwelling sited at the rear of the site behind the workshop, appears out of character with the street scene.
10. Having regard to the appellant's historic site photographs, the appellant has referred to the previous dilapidated building in the location where the new dwelling has been built and how that might have been extended. However, this building was not a dwellinghouse and would not have benefited from permitted development. In any event, the building has gone and does not present a fall back.
11. Notwithstanding new buildings which have been built in the area, a dwelling in this location readily apparent in views from the street and from neighbouring

properties appears as an incongruous form of development at odds with the established pattern of development in the area. Moreover, even if the building was used for storage, offices and meeting rooms it would still be visually unacceptable for the reasons given.

12. Therefore, I conclude that the proposal would have an adverse effect on the character and appearance of the area. The development is contrary to paragraphs 3.8, 3.10, 3.14C and 5.20 of the Local Plan, the Council's Supplementary Planning Guidance *Places for Living* (2001) (SPG) and the Framework which amongst other things, state that proposals which would have an adverse effect on the quality of the built environment will not normally be allowed.

Living conditions

13. The appellant contends that the appeal dwellinghouse provides additional storage space for the mosque and is not a dwellinghouse and therefore does not need to accord with the Council's recommended private amenity space and separation distance requirements. As indicated above I consider the building is a dwellinghouse. Thus, I have taken these factors into consideration in my determination.
14. The Council contends that the separation distance between the new dwelling and premises at the rear of the site does not meet the 12.5m separation distance between windowed elevation and opposing 1 and 2 storey flank walls as recommended in the Council's SPG. Thus, the development seriously compromises the living conditions of future occupiers as a result of loss of light and outlook.
15. The appeal dwelling has two rear ground floor windows. Due to its close proximity to the rear boundary the development results in a poor outlook and a significant loss of light to the rooms concerned that would make the property a less attractive one in which to live.
16. I have taken into account the appellant's suggestion to obscure glaze the windows to the side and rear of the building. I consider that such glazing would not overcome the identified harm. In relation to the rear windows, the use of obscure glazing would be even more oppressive than the existing restricted outlook.
17. The Council's SPG recommends a 70m² minimum garden size for family accommodation. The siting of the dwelling at the rear of the site has resulted in little provision of private amenity space. I consider the lack of adequate private amenity space for normal outdoor domestic activities is harmful to the living conditions of future occupiers of the dwelling.
18. I conclude that the development is harmful to the living conditions of future occupiers of the dwelling in terms of outlook, loss of light and the lack of adequate garden space. The proposal would conflict with Policies 3.10, 3.14C and 5.20 of the Local Plan and the Framework which seek to ensure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

19. I note that the appellant says that additional office space, storage and meeting space is required for the adjacent mosque. That maybe so but that does not justify the erection of a dwelling.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

21. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the planning application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR