
Appeal Decision

Site visit made on 18 April 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 21 April 2017

Appeal Ref: APP/P4605/W/17/3166858

Land rear of 41-49 Deakin Road, Erdington, Birmingham B24 9AL

- 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 J Driscoll against the decision of Birmingham City Council.
 - The application Ref 2016/07603/PA, dated 6 September 2016, was refused by notice dated 8 November 2016.
 - The development proposed is a Proposed Bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for a Proposed Bungalow at Land rear of 41-49 Deakin Road, Erdington, Birmingham B24 9AL in accordance with the terms of the application, Ref 2016/07603/PA, dated 6 September 2016, subject to the conditions in the attached schedule.

Procedural Matter

2. Since the Council's decision to refuse planning permission in November 2016, The Birmingham Plan 2031 (BP) was adopted by the Council on 10 January 2017. I understand the BP replaces a number of policies within the Unitary Development Plan (UDP) which are cited in the reason for refusal. The Council confirm that UDP paragraphs 3.8, 3.10, 3.19 and 5.20 have been replaced, while UDP Policies 3.14 to 3.14D continue to the saved. Thus, I have considered this appeal on this basis.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site is behind 41 to 49 Deakin Road and their gardens which rise up steadily towards the appeal site. Two storey detached and semi-detached dwellings including terraced properties together with detached and semi-detached bungalows line Deakin Road. These create a varied street scene which includes the use of pitched and hipped roofs, street trees and off-street car parking, resulting in a mature suburban character.
 5. Two dis-used timber buildings are on the site next to a builder's yard and the rear gardens of dwellings on Rollason Road. An area of hardstanding extends from the vehicular access to the side of 39 and 41 Deakin Road to the buildings. The rest of the site is overgrown with scrub and there is a mound of
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rubble in the centre of the site. The appellant suggests that the buildings on the site have been used as meeting rooms by the Masonic Lodge. Whereas the Council suggest the site has previously been used as an allotment. However the Council's view is not supported by evidence even though the appellant's historic ordnance survey maps show the land next to the appeal site may have been used for allotments. Still, I am not persuaded that the site has been or is used as an allotment. Accordingly, I do not consider that the site falls into the definition of *open space* as set out in BP Policy TP9 and as such no conflict would arise with this policy as a result or indeed BP Policy TP28.

6. While the BP does not contain, in the policies which are before me, specific restrictions to resist inappropriate development of residential gardens¹, I do recognise BP Policy PG3 like the National Planning Policy Framework (the Framework) in paragraphs 17, 56, 57, 58 and 61 seek to achieve high quality design that contributes to a strong sense of place which promote or reinforce local distinctiveness.
7. From various vantage points on Deakin Road, the appeal site, including the two timber buildings are very much obscured by the existing dwellings that front the highway. Consequently, despite its elevated position, the site does not play a physical or functional role in the street pattern, building lines or views along Deakin Road that characterise the mature suburb.
8. The proposed dwelling would be single storey in height and be sited side on to the dwellings on Deakin Road and Rollason Road that back on to the appeal site. A considerable distance, beyond the separation distances in the Council's Places for Living Supplementary Planning Guidance (PflSPG), would be maintained to neighbouring dwellings. A mixture of mature landscaping, boundary treatments and different site levels would also provide screening.
9. Notwithstanding this and despite the scale and massing of the proposal, it would not play an active role in the street scene. In this regard some conflict would arise with the siting of the dwelling, in terms of saved UDP Policy 3.14D, the Council's *Mature Suburbs – guidelines to control residential intensification Supplementary Planning Document* (MSSPD), the Places for all Supplementary Planning Guidance (PfASPG) and the PflSPG.
10. However the existing site and the builder's yard do not either, even with the narrow physical connection which affords very restricted views of the site in-between Nos 39 and 41. Furthermore the Council have not expressed a view that this layout is harmful in terms of urban design and undermines the overall character of the area. Thus, they also form part of the character of the mature suburb. The proposal would not face the back of any nearby dwelling and it would not be built-in tandem with another dwelling. Given this, I do not consider that the proposal would significantly affect the existing pattern along Deakin Road, which would stay unchanged.
11. In terms of the definition between public and private space, I noted that the appeal site is already physically separated from the rear gardens of dwellings on Deakin Road by boundary treatments and the access to a utility building. This arrangement would remain and the proposed layout would result in front and rear gardens next to those linked to dwellings on Rollason Road. I therefore consider the backs of each plot would continue to be private and I

¹ Paragraph 53, National Planning Policy Framework

have no reason to consider the proposal would not result in a secure space given the scheme includes an access gate and the retention of mature conifer hedgerow along the south western boundary.

12. While the proposed dwelling would differ in form, design and proportions to a number of dwellings on Deakin Road and Rollason Road, in particular the two storey properties, paragraph 60 of the Framework explains that *planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles*.
13. Deakin Road especially does not contain one fixed style or finish. This reflects the staged form of development that occurred along here historically. Overall, I therefore consider that the proposal would make effective use of a vacant site and be a high quality design. It would not be an insensitive infill development that would adversely affect the character and appearance of the area, even if it does not play an active role in the Deakin Road street scene. I do not, as a result, consider the proposal represents *poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions* as directed by paragraph 64 of the Framework.
14. For these reasons, I conclude that the proposed development would, despite its siting, comply with BP Policies PG3, TP9, TP27 and TP28, saved UDP Policies 3.14 to 3.14D, the PflSPG, PfASPG, MSSPD and paragraphs 17, 56, 57, 58, 60 and 61 of the Framework. Collectively these seek, among other things, new development that is not on open space; is of a high design quality which creates a positive sense of place and local distinctiveness with design that responds to site conditions and the local character of an area, including its topography, street patterns, building lines, scale, massing and design.

Other Matters

15. Despite concerns about inconvenience and noise, I do not consider that a residential use in an established residential area will lead to a harmful effect on the living conditions of existing residents.
16. While the site has been subject of two pre-applications and one refused planning application, I concur with the Council that the appeal scheme resolves highway safety concerns. In any event I have determined this appeal on the basis of the current development plan and on its own planning merits.

Conclusion and Conditions

17. I have had regard to the conditions suggested by the Council in the event that I were minded to allow this appeal. A condition regarding the approved plans is necessary in the interests of certainty.
18. I have imposed a condition to secure a construction method statement due to the site's location and proximity of residential occupants. A condition to secure details of lighting is necessary, despite the approved plans, in the interests of residents living conditions near to the access. In the interests of the character and appearance, conditions are necessary to secure sample materials, details of hard surfacing and landscaping. I have joined the sample materials condition with the solar panel condition to avoid duplication.

19. Given the site's elevated position and location away from the highway, a condition is necessary to secure drainage details. I note the permitted development restrictions suggested by the Council, however such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances². The versions suggested by the Council are far ranging. Nevertheless I agree that it is right, due to the site's location and size to control future use of Class A and garages. I do not consider restrictions to Classes B and C are required in this instance due to the dwelling's design.
20. Conditions to secure details of the siting and design of the access and a landscape management plan are not necessary, given the access details before me along with the scale and residential use of the development.
21. For the reasons set out above, I conclude that the appeal should succeed.

Andrew McGlone

INSPECTOR

² Planning Practice Guidance, Paragraph: 017 Reference ID: 21a-017-20140306

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: NBF/140/Resubmission 1 'Bungalow – New Development'; 'Sections'; 'Site Plan'; 'Areas of New Carriageway, Footway to be Improved and Bin Store'; 'Street Lighting, Traffic Signs, Road Markings and Surface Finishes'; and NBF/140/1Topo-R1.

Pre-commencement

- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The method statement shall provide for details of the following:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) location of loading and unloading of plant and materials; and
 - iii) hours of demolition/construction/delivery

The development shall be implemented in accordance with the approved details.

- 4) No development shall take place until samples of the materials, including details of the solar panels to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 5) No development shall take place until details of the materials to be used for hard and paved surfacing have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
- 6) No development shall take place until full details of the proposed boundary treatment of the site have been submitted to and approved in writing by the Local Planning Authority. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented before occupation of the dwelling hereby permitted and shall be retained thereafter.
- 7) No development shall take place until such time as a scheme for drainage of the site has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details.
- 8) No development shall take place until full details of hard and/or soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours, means of enclosure, hard surfacing materials, minor artefacts and structures, proposed and existing functional services above and below ground, fully annotated planting plans, showing, where used, locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of

grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs. Other information shall include planting schedules, noting species, plant sizes and proposed numbers / densities and details of the proposed planting implementation programme. All hard and/or soft landscape works shall be implemented in accordance with the approved details. The works shall be implemented prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority and thereafter maintained. Any trees or shrubs which, within a period of two years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

Pre-first occupation

- 9) The development hereby approved shall not be occupied until a detailed lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The detailed lighting scheme shall include site annotated plans showing lighting positions for the external spaces, facades, building elevations and structures they illuminate, site plans showing horizontal and vertical overspill to include light trespass and source intensity, affecting surrounding residential premises and details of the lighting fittings including: colour, watts and periods of illumination. All lighting works shall be implemented in accordance with the approved details and shall be completed prior to the occupation of any part of the development and thereafter maintained.

Post-occupancy

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order amending, revoking and/or re-enacting that order, with or without modification), no enlargement, improvement or other alteration of a dwellinghouse or construction of a garage shall be carried out without further subsequent planning approval of the Local Planning Authority.