
Appeal Decision

Site visit made on 16 May 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 9 June 2017

Appeal Ref: APP/P4605/W/17/3167742
213 Worlds End Lane, Birmingham B32 2RX

- 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 Usmaan Hussain against the decision of Birmingham City Council.
 - The application Ref 2016/07290/PA, dated 25 August 2016, was refused by notice dated 23 December 2016.
 - The development proposed is described as "*conversion of roof space to create 4no additional apartments*".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans and accompanying details before me that the development comprises the erection of a second floor extension to create 4 no additional apartments. The Council dealt with it on this basis and so shall I.
3. The Council have brought to my attention that the Birmingham Development Plan (BDP) was adopted on the 10 January 2017. The BDP replaces the saved policies of the Birmingham Unitary Development Plan (UDP) but it does not replace policies contained within paragraphs 3.14 to 3.14D of the UDP. The appellant is aware of this and has had a chance to comment. It is incumbent on me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.

Main Issues

4. The main issues are the effect of the proposed development on:-
 - The character and appearance of the area; and
 - The living conditions of neighbouring occupiers with regard to privacy and outlook; and
 - The living conditions of future occupiers with regard to outlook, sunlight and daylight and internal space.

Reasons

Character and appearance

5. The appeal site comprises a 2-storey block of flats that fronts Worlds End Lane and its grounds and parking area. The building has an appearance typical of its
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age with brick and render elevations and hipped roofs. I observed at my site visit that the surrounding area comprises predominantly semi-detached dwellings that are 2-storeys in height with pitched roofs giving a consistency to the height and scale of the area's built form. These features clearly form a strong and defining characteristic of the streetscape and area. There are a few 3-storey flat roof buildings within the immediate vicinity, including the adjacent building, but they are not in keeping with the overriding character and appearance of the surrounding area.

6. The appeal proposal would replace the existing pitched roofs with an additional storey and a flat roof providing an additional 4 flats overall. The additional storey would appreciably increase the height, bulk and massing of the building and this would be accentuated by the width of its Worlds End Lane elevation. The combined effect of the proposed alterations would be to introduce a noticeably bulky building, the form and massing of which would appear conspicuously at odds with the more modest pattern of adjacent 2-storey pitched roof dwellings.
7. I note that the proposed building would be a similar height to the adjacent Royal British Legion (RBL) building which has a flat roof. However, that building is not as wide as the host building and it is of some age. Moreover, as stated above the conspicuous form of the RBL building is not repeated extensively in the immediate area. As such, I am not persuaded that this building should set the pattern for development in this part of Worlds End Lane.
8. I acknowledge that the building is not a designated listed building and it is not within a conservation area. The appellant has drawn my attention to a scheme that has been approved at 356 High Street, Birmingham. I do not have the full details of the scheme before me and so cannot be sure that it represents a direct parallel to the appeal proposal. Moreover, since the matters under consideration in this appeal are specific to the site and its immediate surroundings I give it little weight. In any case, I am required to determine the appeal on its own merits.
9. Consequently, I find that the additional height, bulk and massing of the additional storey would be unduly dominant in the street scene and therefore would be significantly harmful to the character and appearance of the area. It follows that the proposal would be contrary to Policy PG3 of the BDP and 3.14D of the UDP which, amongst other things, seek high quality design that responds to site conditions and the area context to reinforce local distinctiveness.
10. The proposal would also conflict with the guidance of the Council's adopted Places for Living Supplementary Planning Guidance (SPG) which seeks, amongst other things, for new developments to reinforce and evolve local characteristics that are considered positive. It follows that the proposal would also conflict with paragraph 3.14C of the UDP which states that development should have regard to the SPG.

Living conditions of neighbouring occupiers

11. The adjacent residential dwelling, 219 Worlds End Lane (No 219), is set forward of and at an angle to the appeal building. Due to the sloping topography which rises away from the Worlds End frontage No 219 is at an appreciably lower ground level to the appeal building. There is a public footpath between the 2 buildings but they are still within close proximity of each other.

12. The proposal would introduce habitable room windows in the front and side elevations to flat 13 and the side elevation of flat 10 of the additional storey. These windows would have views towards the rear elevation and garden of No 219. Whilst there are similar windows on the lower storeys of the appeal building the added height of the windows would exacerbate the degree of overlooking. Moreover, the separation distances would not meet the guidelines within the SPG. I consider that the degree of overlooking would materially reduce the privacy of the occupiers of No 219.
13. As stated above, the height, bulk and massing of the building would be appreciably increased. When combined with the lower ground level and the proximity of the proposal to the rear elevation and the garden of No 219 I consider that the proposal would be experienced by the occupiers of that dwelling as overbearing.
14. The dwellings to the rear of the appeal site, 14-16 Fleming Road (No 14-16), are at an angle to the appeal site and there is a substantial evergreen hedge on the boundary between them and the appeal site. I noted at my site visit that due to the topography No14-16 are at an appreciably higher ground level to that of the appeal building. The turfed amenity area between the appeal building and the boundary is at a similar ground level to No 14-16 with a retaining wall in close proximity to the appeal building.
15. I acknowledge that the windows in the rear elevation of the proposal would be in closer proximity to the site boundary than that recommended in the SPG. However, the existing hedge mitigates any overlooking and whilst it is not permanent I have no evidence to show that the situation will change in the near future. Furthermore, as the appeal building is at a lower level to No 14-16 it would be unlikely that the appellant would significantly reduce or remove the hedge. As a result, I do not consider that the proposal would harm the privacy of No 14-16.
16. Taking into account all of the above the proposal would harm the living conditions of the occupiers of No 219 with regard to outlook and privacy. This factor outweighs my findings regarding privacy in relation to the occupiers of No 14-16. As such the proposal would conflict with UDP Policies 3.14C and 3.14D which, amongst other things, require development to have regard to the SPG and to create a high quality living and built environment. The proposal would also not comply with the SPG, which seeks to safeguard the amenity of residents. The proposal would also conflict with paragraph 17 of the National Planning Policy Framework (the Framework) which requires a good standard of amenity for all existing occupants of land and buildings.

Living conditions of future occupiers

17. The living /kitchen room window to flat 12 would be in the side elevation of the building and would directly face the flank elevation of the RBL building. The flank elevation of the RBL building is of a substantial length and extends in line with the front elevation of the appeal property and practically to the rear boundary. Due to the close proximity of flat 12's window I consider that the RBL building would be experienced as overbearing and oppressive in relation to the outlook from the habitable room facing it. Moreover, the window in the side elevation would be the only window to that room.
18. This window to flat 12 would directly face windows in the flank elevation of the RBL building. The Council have stated that those windows serve offices and I have no reason to dispute this. The close proximity of the windows would not

meet the guidelines for separation distances in the SPG. I consider that the degree of overlooking would materially reduce the privacy of the future occupiers of flat 12.

19. The Council's Officer Report makes no distinction between sunlight and daylight and it does not include any technical evidence such as sunlight or daylight analysis in relation to this matter. Due to the orientation of the flat 12's living/kitchen window it would receive little direct sunlight therefore I will concentrate on the effect on daylight. The amount of daylight that would be received in this room would be significantly restricted given the position of the window relative to the RBL building, the substantial hedge on the rear boundary and the front section of the appeal building.
20. It has been put to me that the proposal does not meet the government's Nationally Described Space Standard (NDSS). However, the Written Ministerial Statement of 25 March 2015 makes it clear that such standards can only be applied where there is a relevant current local plan policy. In this case, there is no relevant current policy and consequently, this is not a matter which carries any significant weight against the proposal.
21. However, I note that flat 10 would significantly fall short of the gross internal floor area of 39 square metres recommended in the NDSS. Nevertheless, the appellant has stated that the internal layout could be rearranged to adjust the room sizes. I am satisfied that if I was minded to allow the appeal that a satisfactory internal layout could be secured by condition.
22. Nonetheless, my assessment of the appeal site and the development lead me to conclude that future occupiers of flat 12 would not have satisfactory living conditions with regard to outlook, privacy and daylight. As such, the proposal would conflict with UDP Policies 3.14C and 3.14D which, amongst other things, require development to have regard to the SPG and to create a high quality living and built environment. The proposal would also not comply with the SPG, which seeks to safeguard the amenity of residents. The proposal would also conflict with paragraph 17 of the Framework which requires a good standard of amenity for future occupants of land and buildings.

Other Matters

23. I acknowledge that there were no objections to the scheme from the technical consultees but a lack of objection is a neutral consideration that does not weigh for or against the proposal.
24. I note the appellant's concern regarding difficulties communicating with the Council. However, that is not a matter for my consideration in the context of this appeal decision.
25. In terms of the three dimensions to sustainability set out in paragraph 7 of the National Planning Policy Framework (Framework), the proposal would make a small contribution to the local economy including the provision of construction jobs, some additional local spend and New Homes Bonus and Council Tax receipts. I acknowledge that there would be accessibility benefits associated with the proposal. Specifically, the appeal site is within the built up area of Birmingham where there is a range of services, facilities and employment opportunities available. An additional 4 dwellings would be created which would have a modest social role by increasing the mix of housing and making a small contribution to the housing supply.

26. However, I have found that the development would have a significantly harmful effect on the character and appearance of the area and that it would harm the living conditions of the occupiers of No 219 and the future occupiers of Flat 12 and that harm outweighs my findings on the other main issues and the benefits associated with the scheme. As such there would be conflict with the environmental and social dimensions and it would not comprise sustainable development.
27. The harm that would be caused also leads me to conclude that the proposal would conflict with the development plan. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. In this case there are no material considerations of such weight as to warrant a decision other than in accordance with the development plan.

Conclusion

28. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR