



Appeal Decision

Site visit made on 17 July 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 August 2019

Appeal Ref: APP/P4605/W/18/3210635

326 Alcester Road, Birmingham B13 8LJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Chelsea Pool against Birmingham City Council.
 - The application Ref 2017/09269/PA, is dated 26 October 2017.
 - The development proposed is described as: 'Erection of house'.
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Decision

1. The appeal is dismissed and planning permission for the erection of a house is refused.

Procedural Matters

2. Since the submission of the appeal the Government has published its Housing Delivery Test (HDT) results alongside the publication of an updated revised National Planning Policy Framework (the Framework) in February 2019. This makes minor revisions including an additional footnote to Paragraph 11. I have had regard to the 2019 Framework when reaching my decision.
3. The appeal is against the failure to give notice within the prescribed period of a decision on an application for planning permission. Following the lodging of the appeal, the Council considered the application and indicated in its Statement that they would have refused the application.
4. For clarity, I have taken the address of the appeal site from the application form, as at the time of my site visit no construction had started on earlier approved applications for residential development that would form No's 328 and 330 Alcester Road. I have therefore determined this appeal on the basis of the plans submitted having regard to the fact that no development has commenced on the plots between the appeal site and No. 326.
5. Although access to the appeal site was achieved through a gap in the front boundary fence with the appellant, the site was overgrown, which limited visibility. However, I was able to observe such features as the slope and consequently I am satisfied that I was able to view sufficient features. I have dealt with the appeal on this basis.

Main Issue

6. As outlined in the Council's Statement, the reasons for refusing planning permission would have been regarding the effect of the development on the

land stability of the appeal site and surrounding area. I have formulated my main issue on this basis.

7. Accordingly, the main issue is the effect of the proposed development on land stability on the site and surrounding land.

Reasons

8. The appeal proposal is for the erection of a single dwelling that would follow on from previously approved applications to extend the row of terraced dwellings. The proposal would also involve the relocation of the existing sub-station. I note that no Development Plan Policies have been cited by either party. I therefore have regard to the general provisions of the Framework on this matter, as appropriate.
9. After the submission of the appeal the appellant submitted a slope appraisal¹ (the report), both main parties have been afforded the opportunity to comment on this document due to its relevance. I note that the Council raises concerns with some of the findings contained in the report. Additionally, the appellant has made reference towards advice contained within the Planning Practice Guidance (PPG), in particular the important role of the planning system in considering land stability², and to other regimes³ that the planning system works alongside, including Building Control, amongst others.
10. Paragraph 178 of the Framework requires decisions to ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation). Additionally, adequate site investigation information, prepared by a competent person, is available to inform these assessments. I have little doubt that the report has been prepared by a suitably qualified person. Furthermore, Paragraph 179 of the Framework, confirms where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and / or landowner.
11. The walkover survey and inspection for the report did not identify any obvious slope features consistent with mass movement or slope failures and based on historical mapping it would appear there has been no significant change in the site geography or topography since the cessation of exaction at the turn of the century. However, I note that although a visual inspection of the full site from an elevated position at the slope crest was possible the presence of extensive vegetation cover along with the slope angle did prevent access and hence detailed inspection of some areas.
12. Although it is suggested that the slope in its current form is stable, the report also suggests an extensive ground investigation including both cable percussion and rotary boreholes at both slope crest and base along with mid-slope to determine the current ground conditions along with the exact composition of the slope to allow the development of a suitably robust slope stability

¹ Report No: M692 Slope Appraisal for Land at Alcester Rd, undertaken by Dunelm Geotechnical and Environmental dated 24 April 2019

² Paragraph: 001 Reference ID: 45-001-20190722

³ Paragraph: 002 Reference ID: 45-002-20140306

foundation and retaining solution. Therefore, although further investigations are recommended there is little detail of how this would be achieved or what level of mitigation would be required. Whilst not a determinative factor in the decision, I note the misgivings in the report with reference to a proposed 4 storey property and a different site location in drawing M692/02 to the 3 storey appeal scheme before me. Nevertheless, I find that overall, it has not yet been clearly or adequately demonstrated that there is no risk to the safety of people and property associated with land stability.

13. Given the level of certainty required by the Framework and the PPG, I consider that it would be premature in this instance to attempt to mitigate the risks associated with land stability by attaching a condition that further investigations are carried out and any possible treatment is carried out before the commencement of development. This is because these conditions have not yet been adequately identified. Therefore, I conclude that there is a risk to the proposed development from land stability and the proposal is contrary to the environmental aims of the Framework.

Other Matters

14. Neither party has suggested that the Council does not have a deliverable 5-year housing land supply and I note that the Council has met the HDT. Nevertheless, I acknowledge that the proposed development would make some positive contribution to the Council's supply of housing sites and that it would bring some social and economic benefits to the area through the provision of a new house and during the construction phase of the development. However, I find these benefits to be relatively limited and not sufficient to outweigh or alter the harm identified in respect of my conclusion on the main issue. I have considered this proposal on its own planning merits and concluded that the scheme is not acceptable for the reasons set out above.
15. Whilst no mechanism has been provided to prevent the proposed development becoming a detached dwelling in its own right, this appeal is being dismissed for another reason, and therefore, it has not been necessary for me to pursue this matter any further.
16. I am aware of the appellant's frustrations at the manner in which the planning application has been dealt with. However, this has no bearing on the determination of the current appeal which is being determined on its own merits.

Planning Balance and Conclusion

17. Although there may be some limited economic and social benefits from the proposal, I have found that there is risk to the proposed development from land stability, which relates to the environmental dimension of sustainability. Therefore, the proposal would not represent sustainable development and it would not meet the requirements of the Framework when read as a whole.
18. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR