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## Appeal Decision

Site visit made on 3 January 2020

**by R E Walker BA Hons DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 January 2020**

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**Appeal Ref: APP/P4605/W/19/3237937**

**126 Stoney Lane, Sparkbrook, Birmingham B12 8AQ**

- 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 Qazi Tabassam Ismail against the decision of Birmingham City Council.
  - The application Ref 2019/01277/PA, dated 13 February 2019, was refused by notice dated 26 April 2019.
  - The development proposed is the erection of single storey rear extension to accommodate 2 Class A1 retail shops.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - the effect of the proposal on the living conditions of the occupants of No 1 Beach Avenue with particular reference to outlook and the living conditions of the occupants of the first floor flat at No 126 Stoney Lane with particular reference to external amenity space; and
  - whether the site represents an appropriate location for the proposed development with regards to local and national planning policies;

### Reasons

#### *No 1 Beach Avenue*

3. No 1 Beach Avenue (No 1) is a 2-storey terrace property attached to the appeal site. The proposed extension would subsume the existing rear garden area bordering this neighbouring property.
4. I recognise that the proposal would be on a lower ground level to No 1, would be single storey with a flat roof and extend approximately 0.4m above the boundary fence. The garden to the rear of No 1 did appear to be in use as amenity space. Due to the length of its projection the proposal would, in my view, appear unduly oppressive from the rear garden and ground floor at No 1. This would create an oppressive outlook and undue sense of enclosure from this property and its garden.

5. I note that the appellant made changes to the scheme following the refusal of an earlier planning application with the view to finding a solution. That said, this does not alter or outweigh my view that there would be a harmful effect from the proposal before me, on the living conditions of the occupants of No 1 with particular reference to outlook.
6. The proposal would result in the loss of the existing rear garden space at No 126 Stoney Lane (No 126). However, the appellant has confirmed that the rear garden is not used in connection with the first floor flat and the space did appear unused during my site visit. Therefore, in practice there would not be a direct loss of external amenity space for the occupants of the first floor flat.
7. Whilst I recognise that the use of this space could change in the future, there is a public park near the appeal property on the opposite side of Stoney Lane. This would provide good access to external amenity space for the existing and future occupants of the flat. As such, I am satisfied that the proposal would not result in significant harm to the living conditions of the occupants of the first floor flat at No 126 with particular reference to external amenity space.
8. I therefore conclude on this main issue, that the proposal would result in a harmful effect on the living conditions of the occupants of No 1 with particular reference to outlook. On this matter the proposal would therefore conflict with the requirements of Policy PG3 of the BDP and Policy 3.14D of the UDP. These policies seek, amongst other things, good design having regard to neighbouring uses. The proposal would also conflict with the requirements of paragraph 127 of the National Planning Policy Framework (the Framework) which seeks, amongst other things, to ensure good standards of living conditions for existing occupants.

#### *Location*

9. The appeal site is a 2-storey building located on the corner of Stoney Lane and Beach Avenue, comprising an existing commercial unit at the ground floor and a 1-bedroom flat at first floor. There are a number of commercial units along Stoney Lane including a large number of retail units.
10. Paragraph 7.21 of the Birmingham Development Plan (BDP) adopted 2017 recognises that outside of defined centre's there are many shopping parades. However, Policy TP21 of the BDP says that proposals for new main town centre uses outside of the centre boundaries will not be permitted unless they satisfy the requirements set out in national planning policy.
11. Policy TP21 is supported by the Council's Shopping and Local Centres Supplementary Planning Document (SPD) 2012 which sets out a hierarchy of shopping centres and seeks to maintain the retail function of the centres. I recognise that the hierarchy used in the SPD differs in some respect from that in Policy TP21 and it is proposed to update the SPD to bring it in line with the BDP. Without clarification regarding the extent of changes and whether these may relate to the appeal proposal before me, I afford the SPD limited weight.
12. The Framework advocates a sequential, town centre first approach to applications for uses, allowing that, in some circumstances, such uses can be considered outside of town centre or edge of centre locations. This Sequential Test requires main town centre uses to be located within centres, then in edge

- of centre locations and only if suitable sites are not available should out of centre sites, such as the appeal site, be considered.
13. From the evidence before me the appeal site is located close to the Sparkhill and Sparkbrook Local Centres but is not within either centre. As such, even though this part of Stoney Lane contains existing retail units, there is no substantive evidence before me to demonstrate that it is located within a defined centre.
  14. I recognise that the appeal site would utilise unused and somewhat unkempt land in an accessible location along Stoney Lane, benefitting the local economy in providing additional retail space, choice and employment opportunities. However, I have no substantive information regarding the specific end users of the units and to this end, the proposal appears to be speculative development rather than aiming to meet a specific local need.
  15. Under current local planning policy, the proposal would be located outside of a defined centre and it has the potential to undermine the viability of neighbouring defined centres if there are similarly small units within them that are currently vacant. The appellant has not undertaken a Sequential Test and therefore there maybe sequentially preferable sites available. As such, I cannot be satisfied that the proposal would not harm the viability of neighbouring defined centres.
  16. The proposal would therefore conflict with the requirements of Policy TP21 of the BDP and the guidance within paragraph 86 of the Framework. Although diminished weight is afforded to the SPD the proposal would, nonetheless, undermine its objectives.
  17. The Council refer to Policy TP24 of the BDP and Policy 8.4 of the Birmingham Unitary Development Plan (UDP) 2005 in its reasons for refusal. However, both policies appear to refer to proposals within, rather than outside of a defined centre. As such, I do not consider these policies to be determinative in the appeal before me.

### **Other Matters**

18. Although not referred to in the reasons for refusal the Council have raised concerns that the proposal would increase demand for short stay and on-street parking. This would, in the Council's view, be to the detriment of highway and pedestrian safety. Most of the residential properties and retail units in this location appeared to have no dedicated off-street parking.
19. There is no substantive evidence before me as to whether there is a problem with the capacity of the existing on-street parking or carpark bordering Brunswick Road and Stoney Lane. At the time of the morning site visit there was some parking on the wide footway along Stoney Lane, but this was not obstructing traffic or pedestrian activity. Moreover, there was capacity for on street parking in the surrounding streets and in the carpark. I recognise this was a snapshot in time however, I have no substantive evidence that the increased parking demand from the proposal would result in an adverse effect on highway or pedestrian safety.
20. I have also had regard to third party representations made including ownership issues, the effect of the proposal on the character of the area and whether the proposals would result in a loss of privacy to nearby residents. However, as I

am dismissing the appeal on other grounds, I have not pursued these matters further.

### **Conclusion**

21. I have had regard to all other matters raised including the benefits of the proposal. However, the limited benefits I afford to these 2 small retail units do not outweigh the significant harm I have identified to the living conditions of the occupants of No 1 with particular reference to outlook. Moreover, the proposal would result in the introduction of a new town centre use on land outside of a defined centre and I have no substantive evidence to show that there are not sequentially preferable sites available. Therefore, I cannot be satisfied that the proposal would not harm the viability of neighbouring defined centres. As such, on balance, the proposal would not constitute sustainable development.
22. For these reasons, and having had regard to all matters raised, the appeal is dismissed.

*Robert Walker*

INSPECTOR