
Appeal Decision

Site visit made on 7 January 2020

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

Appeal Ref: APP/P4605/W/19/3240664

109 Salisbury Road, Moseley and Kings Heath, Birmingham, B13 8LA

- 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 F Ahmed against the decision of Birmingham City Council.
 - The application Ref 2019/03959/PA, dated 9 May 2019, was refused by notice dated 30 September 2019.
 - The development proposed is retrospective application for front boundary pillars and metal gate.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal procedure was changed following my site visit due to a requirement for the Council to display a press notice. On my site visit I viewed the site and surrounding area and I am satisfied that no further issues have been raised which would require an additional site visit to be undertaken.
3. On the site visit I noted that some works have been carried out at the appeal site, though these appear to differ from those shown on the submitted plans. In determining this appeal my decision has been considered on the basis of the plans submitted and on which the Council made its decision.

Main Issues

4. The main issue is whether the proposal would preserve or enhance the character and appearance of the Moseley Conservation Area (CA).

Reasons

5. The site comprises a detached dwelling which is set back substantially from its frontage within the Moseley CA. As identified in the Moseley CA Character Appraisal and Management Plan, Supplementary Planning Guidance, 2005, there is a wide variety of architectural styles in the CA, though residential properties were historically defined by low level stone walls with native hedging behind. The boundary treatments contribute significantly to the character and appearance of the CA by defining public and private space and informing use of specific materials and are a key part of its special interest and hence significance.
6. Whilst there is some variation in boundary treatments along Salisbury Road there is regularity in the street scene with frontages having an open and

- landscaped character. Boundary treatments are predominately low-level walls with hedges or landscaping behind with openings in the frontage to provide for vehicular access. The appeal site is reflective of this established character retaining a low-level stone wall with hedging behind and an open driveway.
7. The proposed boundary pillars, due to their height, design and materials would be imposing and dominant features in the street scene. Whilst the pillars may be lower than the existing hedge at the appeal site, or No 111 Salisbury Road, their visual impact would not be comparable. They would detract and be at odds with the soft landscaped character and informal appearance of the site and the prevailing character of the surrounding area.
 8. In addition, the proposed metal gate would not be characteristic of boundary treatments in the vicinity and, due to its height would also be an incongruous addition within the street scene, resulting in the site frontage having a formal and enclosed character. Although it is stated that the gate would only be closed when it is dark, this could not be adequately addressed by a condition as it would be too onerous for the Council to enforce.
 9. The appellant has drawn my attention to other sites on Salisbury Road where they consider the boundary treatment to be similar to that proposed as part of the appeal. I saw on my site visit that there are however distinct differences between those sites and the appeal site. Nos 40, 61 & 62 Salisbury Road are at a point where the road curves. There is no built development directly opposite Nos 40 & 62, those sites and the street at this point have a verdant landscaped character and the boundary treatment is not as visually prominent.
 10. The dwelling at No 61 is a substantial 3-storey property positioned at a higher ground level. There is a low-level stone wall to the front of this property and although the pillars are higher the boundary treatment responds to changing land levels and, in the context of the existing dwelling, they are not dominant features. The pillars at No 148 are a continuation of the higher boundary treatment which wraps around this corner site, though there is also a low-level stone wall and hedge to Salisbury Road.
 11. Therefore, whilst there are examples of pillars in the surrounding area these are not directly comparable in terms of siting and design to the appeal scheme, and, of the other sites identified, the majority retain an open driveway. In addition, I do not know the full circumstances of those sites and, in any event, each case must be considered on its own merits.
 12. The appellant's concerns in relation to security are acknowledged though there is little evidence before me to demonstrate that the installation of boundary pillars and a metal gate, as per the appeal scheme, would be the only way to achieve a safe environment.
 13. I note that Policies within the Birmingham Development Plan, 2017 (BDP) and the National Planning Policy Framework (the Framework) emphasise the need to create safe environments. However, they are also clear that developments must achieve a high-quality design and respond to local context and distinctiveness. Therefore, whilst I have had regard to the appellant's security related concerns and reasons for seeking the proposed boundary treatment, I do not consider this would be sufficient to outweigh the harm I have identified above.

14. The appeal scheme would be an incongruous addition, at odds with the established verdant, informal and open character of the street. It would therefore result in unacceptable harm to the character and appearance of the site and surrounding area.
15. The proposal would have a negative effect on the significance of the CA, the result would be "less than substantial" harm when considered in the context of the Framework. There would be no public benefits arising from the proposal that would outweigh the harm I have identified, and to which I have attached considerable importance and weight. That the Highways officer raised no concerns in relation to highway safety would have a neutral effect and does not, therefore, weigh in favour of the appeal.
16. Therefore, for the reasons stated the development would be contrary to BDP Policy TP12 which requires development to, amongst other things, be of a high-quality design having regard to local context and, protect and enhance the city's heritage assets. For the same reason the proposal would also fail to achieve the high-quality design requirements of the Framework.

Other Matters

17. I have considered the rights of the appellant under Article 1 of the First Protocol and Articles 5 and 8 of the Human Rights Act 1998. Article 1 of the first Protocol states that every person is entitled to the peaceful enjoyment of their home. Article 8 affords the right to respect for private and family life. Dismissal of the appeal would interfere under both Article 1 of the first Protocol and Article 8. However, these are qualified rights and any interference may be justified where it is in accordance with the law and is necessary in a democratic society, applying the principle of proportionality. I am satisfied that the legitimate planning policy aims to protect the character and appearance of the CA can only be adequately safeguarded by a refusal of permission.
18. I acknowledge that the consequence of dismissing the appeal would be that the appellant's options in securing their property would be restricted. However, the harm I have identified to the character and appearance of the CA is such that dismissal of the appeal would be a proportionate and necessary response that would not violate the appellant's rights under Article 1 of the first Protocol or Article 8. The protection of the public interest cannot be achieved by means that are less interfering of his rights.
19. With regards to Article 5 this states that everyone has the right to liberty and security of person though its focus is on protecting individuals' freedom from unreasonable detention as opposed to protecting personal safety. I therefore do not consider this argument to be well-founded because the dismissal of the appeal would not give rise to a violation of these rights. These other matters do not, therefore, lead me to a different conclusion.

Conclusion

20. For the reasons given above I conclude that the appeal should be dismissed.

A Denby

INSPECTOR