



Appeal Decision

Site Visit made on 23 February 2021

by Mr Samuel Watson BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2021

Appeal Ref: APP/P4605/W/20/3264026

102 Hunton Road, Birmingham, B23 6AH

- 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 Ms Jody Lloyd against the decision of Birmingham City Council.
 - The application Ref 2019/07460/PA, dated 30 August 2019, was refused by notice dated 6 November 2020.
 - The development proposed is described as: 3 x 2 bedroom, partially subterranean dwellings to brownfield site on the corner where Hunton Road meets Fentham Road. The land use proposed is subsequently residential. Proposed parking - 2 x onsite spaces with the remainder making use of road side parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has included revised drawings as part of this appeal. I have considered the revised drawings under the principles established by the Courts in *Wheatcroft*¹. The Council has not commented on the revised drawings and to consider them would deprive those who should have been consulted on the change, the opportunity of such consultation. I have therefore determined the appeal on the basis of the drawings considered by the Council.
3. While it has been raised that a number of small buildings had previously populated the site, I have not been given any substantive details of the circumstances under which they were erected or their appearance. In any event the site has largely been cleared, and as of my visit only some ruined walls remained behind Nos 102 and 104 Hunton Road. I must consider the site as it is before me and as such the previous buildings do not affect my determination of the appeal with regard to the matters raised above.

Main Issues

4. The main issues in this case are:
 - the effect of the proposal on the character and appearance of the site and surrounding area, and
 - The quality of the provision of living conditions for future occupiers, and the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to light, outlook, privacy and ventilation.

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

Reasons

Character and Appearance

5. The appeal site is set behind Nos 102 and 104 Hunton Road at the junction with Fentham Road. Although the site fronts on to Fentham Road, access is provided via Hunton Road. By way of the slope on Fentham Road the appeal site is raised by a significant amount above the road, resulting in the site being a prominent feature when approaching the site in either direction.
6. The proposed dwellings would extend up to the back of the pavement and as such significantly breach the strong building line either side of the site, forming an intrusive feature within the street scene. The buildings beyond No 95 Fentham Road do not strictly follow the building line characteristic around the appeal site, and so whilst the garage at No 95 Fentham Road is also against the back of the pavement, it forms the end of the building line and so is not detrimental to its legibility. Therefore, while I am mindful of it, it does not affect my determination of the appeal.
7. Above the retaining wall at the back of the pavement are tall metal railings which form the boundary between the site and Fentham Road. The railings are utilitarian in appearance and do not add positively to the street scene. As such I find that its removal as part of the proposal would be beneficial. However, its replacement with closeboard timber fencing would be harmful due to the elevated position and form of the fence, which would be intrusive in views along the road adding to the breach of the building line.
8. The appeal site is read as part of the traditional residential character on its side of the road, rather than in relation to the larger buildings and warehouses opposite the site. I therefore find that the mixture of contemporary and industrial design cues and materials proposed would be incongruous with the character of the street scene. Of particular note is the prominent side wall facing Fentham Road which includes large arched, mock-windows that are not sympathetic to the ground floor fenestration of the surrounding dwellings. Furthermore, they do not relate well with the rectangular windows above them and ultimately while adding some interest to the wall, are a discordant feature. As a result, and given its prominent positioning, the side elevation would be jarring within public views. The incongruous nature of the building is further exacerbated by the use of the 'north-light' roof style that is more commonly associated with industrial buildings. This would be prominently visible within public views as well as from the backs of surrounding properties where it would harm the appreciation of the traditional character and appearance of the surrounding area.
9. In conclusion I find that the dwellings, as a result of their incongruous design and prominent siting, harm the character and appearance of the site and surrounding area contrary to Policies PG3 and TP27 of the Birmingham Plan 2031: Birmingham Development Plan (BDP) and saved Paragraph 3.14C-D of the Birmingham Plan: Birmingham Unitary Development Plan (BUDP) which seek, amongst other things, high quality design which respects the sense of place. It also conflicts with the guidance on good design contained within the Places for Living supplementary planning guidance (PfL) and Mature Suburbs – *guidelines to control residential intensification* supplementary planning document (MS). The development also conflicts with Paragraph 127 of the National Planning Policy Framework (the Framework) and the guidance of the

National Design Guide (NDG) which seek to ensure development is sympathetic to the local character and relates positively to public spaces.

Living conditions

10. Given the height and position of the proposed fence between the appeal site and No 70 Fentham Road, I find that it would prevent overlooking between the site and the ground floor of No 70. However, I noted a clear glazed window on the first floor which would look directly into the garden serving the proposed property furthest from Fentham Road. While I do not know what room this window serves, it is clear glazed and above the height of the fence and, due to its close proximity to it, would result in a loss of privacy for future occupiers using the garden. Moreover, the fence would be in an elevated position above the ground floor of No 70 resulting in an overbearing impact on the side windows serving the ground floor. While I am mindful of existing fencing along the side boundary of No 70, this is further from the affected windows and would therefore have a lesser impact, as such it does not justify the harmful development.
11. The rear and side elevations of Nos 100, 102 and 104 Hunton Road have a number of first floor windows, including clear glazed windows which would also overlook the appeal site and, in particular, would be close to the two innermost dwellings. As such I find that the future occupiers of the proposed dwellings would not be afforded a suitable level of privacy as the living rooms would be overlooked by these neighbouring properties.
12. As a result of their siting and orientation perpendicular to the road, the outlook from the front and back of the two innermost proposed properties would be directly on to the rear of Nos 102 and 104 Hunton Road, and the side of No 70 Fentham Road. These buildings, given their height and close proximity would be imposing in views and result in the outlook feeling enclosed, harming the living conditions of future occupiers. Outlook from the basement rooms of all three properties would also be poor given that they would be served only by rooflights.
13. While some flexibility may be acceptable in the application of the numerical standards set out within Appendix A of the Pfl, the distances between the proposed and existing properties are significantly closer than the guidance seeks. I find the constraints of the site and the appellant's desire to use the site for residential development do not outweigh the resultant harm identified above. Furthermore, while the Pfl is of some age, the relevant sections are still Framework compliant and so it is not out-of-date, and I give it full weight in my consideration of the appeal.
14. The basement bedrooms and offices, served only by rooflights, would have very low levels of natural light reaching them and there are no direct natural light sources for the bathrooms, ensuites or halls. The large areas of glazing on the ground floor would help ensure good levels of lighting upstairs, but would be of no meaningful benefit to the basement. I find the basement would be an unpleasant and gloomy space where occupiers would have to rely on artificial lighting.
15. Although it is intended for the basement rooms to be used less regularly during the day this cannot be ensured, and as there is a home office in the basement it is likely that at least this room could be regularly used during the day.

Moreover, while I find the organisation of furniture within the basement likely to make best use of the available light, this does not outweigh the overall poor light and outlook.

16. Given the lack of clearly openable windows, or other forms of ventilation, within the basement rooms I find it likely that the ventilation of these rooms would be more difficult and that the rooms would be somewhat less pleasant as a result. However, I find this to not be a significant issue on its own, but that the cumulative impact of this and the poor levels of natural light in the basement would exacerbate the poor quality of accommodation provided.
17. In light of the above I consider that there would be poor outlook from, and light and ventilation to, the proposed dwellings and that they would be unacceptably overlooked, providing a poor level of accommodation for future occupiers. The outlook from No 70 Fentham Road would also be adversely affected, harming the living conditions of the occupiers. I therefore find the proposal to conflict with Policies PG3 and TP27 of the BDP and saved Paragraph 3.14C-D of the BUDP which seek, amongst other things, high design quality developments which are safe and pleasant. It also conflicts with the guidance on living conditions, including privacy and light, contained within the Pfl. The development also conflicts with Paragraph 127 of the Framework and Paragraph 123 of the NDG which seek development to provide a high standard of amenity for existing and future users. While I was mindful of the MS, I was not directed to any specific conflict with the document.

Other Matters

18. It has been raised by the appellant that a fence could be erected under permitted development rights. However, no substantive evidence has been submitted to demonstrate this and it is not within the remit of this appeal to consider whether permitted development rights would apply. I therefore find there to be no more than a theoretical possibility of the proposed boundary treatments being erected under permitted development.
19. At the time of my visit the appeal site was in a poor condition, the appellant has raised that it has previously been affected by fly-tipping. While development would likely prevent future fly-tipping which would likely be beneficial to the appearance of the surrounding area and living conditions of neighbours, it has not been demonstrated that the development is necessary in order to achieve this.

Planning Balance and Conclusion

20. There is no dispute that the Council is unable to demonstrate a five year housing land supply. In considering the potential benefits of the proposal, I note that the new dwellings would make use of a brown-field site without significant environmental constraints, in an accessible location which would contribute to the Council's five year housing land supply as required by the Framework. I note also that the new dwellings would contribute towards an identified need for two-bedroom properties and may reduce the pressure of development within the Green Belt. I afford these benefits moderate weight.
21. In addition, the construction of the dwellings would derive some economic benefits, but this would only be for a limited time. Furthermore, given the small scale of the development, the contribution to the local economy from the

spending power of future occupants is unlikely to be significant. I therefore give these benefits limited weight.

22. The proposed development would cause harm to the character and appearance of the area and would provide unsatisfactory living conditions for future residents as well as harming those of neighbouring occupiers. These impacts are contrary to both local and national planning policy to which I give considerable weight.
23. Taking everything into account, I consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As a result, the application of paragraph 11d of the Framework does not indicate that permission should be granted, and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.
24. In reaching this decision I have been mindful of the findings raised by the appellant from the judgement in *R v Rochdale Metropolitan Borough Council ex Parte Milne (2000)* regarding the weighing up of those policies that a proposal conflicts and complies with. However, the proposal would be contrary to the Development Plan as a whole.
25. For the reasons given above I conclude that the appeal should be dismissed.

Mr Samuel Watson

INSPECTOR