



Appeal Decision

Site visit made on 5 July 2021

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2021

Appeal Ref: APP/P4605/W/21/3266388

46 Broad Road, Birmingham B27 7XB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by L. Healy Limited against the decision of Birmingham City Council.
 - The application Ref 2019/05295/PA, dated 24 June 2019, was refused by notice dated 4 September 2020.
 - The development proposed is a mix of 1 and 2 bedroom apartments (up to 30 units) - Re-submission of 2018/03052/PA.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application the subject of this appeal was submitted in outline form with all matters reserved for future consideration. The layout plan PAL06 is for indicative purposes only. I have considered the appeal on the same basis.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area with particular regard to density;
 - Whether or not the proposal would provide appropriate living conditions for future residents with particular regard to outlook and light;
 - The effect of the proposal on the living conditions of the occupiers of surrounding residential properties with particular regard to privacy;
 - The effect of the proposal on ecology;
 - Whether or not the proposal includes appropriate drainage facilities;
 - Whether or not the proposal provides an appropriate level of affordable housing; and
 - Whether or not the proposal provides an appropriate level of public open space.

Reasons

Character and appearance

4. The appeal site is within a predominantly residential area characterised mainly by rows of terraced houses. To the south is a large recreation ground lined by mature trees. The trees, recreation ground and garden planting contribute positively to the area, injecting a verdant feel to the primarily built form.
5. The appeal site is a long linear area of land occupied by some buildings and is hard surfaced, being formerly used as a builder's yard. It is enclosed by a mixture of concrete panels and brick walls with access from Broad Street. Consequently, its unused appearance and surface storage contributes little to the character and appearance of the area.
6. There is no dispute between the parties that the appeal site would be suitable for residential use. Many of the Council's comments relate to the layout of the proposal which would be reserved for consideration in the future by the Council in the first instance. I appreciate that the appeal is for up to 30 dwellings, and therefore less could be proposed in the future. However, in order for a well-designed scheme that integrates effectively with its context I need to be satisfied, given the description of the development and the size and shape of the appeal site, that 30 dwellings can be satisfactorily accommodated and promote high quality design. The indicative layout shows 30 dwellings in a linear arrangement of ten blocks. The appellant confirms therefore it would be reasonable to assume they would be provided over three floors. While the layout is only indicative, it is the only evidence before me of how 30 dwellings could be achieved on the appeal site.
7. While the indicative layout of the dwellings would replicate the linear nature of the existing terraces, the presumed three storey blocks would be at odds with the established predominant two storey nature of the surrounding terraces and would be particularly visibly obtrusive on the edge of the recreation ground. As well, the resultant plots bear little resemblance to the established pattern in the local area of long narrow plots. However, given its shape it is difficult to see how these could be replicated on this appeal site and make an efficient use of land. The proposed development would have a density of about 120 dwellings per hectare. Policy TP30 of the Birmingham Development Plan 2017 (BDP) states that new housing should be provided at a target density responding to the site, its context and the housing need with densities of *at least* 50 dwellings per hectare in areas well served by public transport (my emphasis).
8. The appeal proposal is well in excess of that figure, but the wording of the policy does not preclude such density as long as it responds to the site and its context where, according to the Council, density is between only 30-35 dwellings per hectare. Furthermore, the Council highlights a number of concerns with the layout which may indicate a density too high for the specific site. I share these concerns.
9. The very limited private garden space available to the rear of the blocks, together with a paucity of area available for landscaping would create a harsh townscape with little opportunity to provide natural or designed landscapes to reflect the local context.

10. There is limited substantive evidence before me to suggest that the parking provision would be inadequate, particularly given the accessible location of the appeal site. However, the National Design Guide 2019 (NDG) states that well-designed parking is attractive, well landscaped and sensitively integrated into the built form so that it does not dominate the development or the street scene. It incorporates green infrastructure, including trees, to soften the visual impact of cars, help improve air quality and contribute to biodiversity. In addition, in a well-designed place all modes of transport are positively designed into the built form. The provision of 30 dwellings as shown on the indicative layout demonstrates that there would not be sufficient space to provide a quality pedestrian environment and ensure that the parking and servicing arrangements proposed achieves effective integration or allows the provision of green infrastructure. In my view this indicates that the density would be too high and would not respond well to its context. This would be to the detriment of design quality and consequently the character and appearance of the area. As a result, while the indicative layout may be an efficient use of land which would improve its appearance, it would do so by compromising the quality of the environment.
11. The appellant refers to development at 15 Broad Road, where planning permission was granted by the Council (2017/10477/PA) for nine apartments. The site is 0.6 hectares creating a density of 150 dwellings per hectare well in excess of that proposed on the appeal site. In addition, there is no external garden space for occupiers of that scheme as the Council's application report confirms that a decision was made to secure appropriate levels of off-street car parking provision and the site is close to the recreation ground.
12. However, this is a smaller scheme than that before me now and was determined prior to the publication of the NDG which promotes high quality design. I saw on my site visit that the dominance of the car parking to the front of that site and lack of meaningful landscaping, compared unfavourably to green frontages elsewhere on Broad Road and reinforced my concerns regarding the density of the proposed scheme.
13. For the reasons above, I conclude that the proposal would be harmful to the character and appearance of the area with particular regard to density. For that reason, it would be in conflict with policies PG3, TP27 and TP30 of the BDP, saved policies 3.14A-D of the Birmingham Unitary Development Plan 2005, Places for Living and Places for All Supplementary Planning Guidance 2001, the National Design Guide 2019 and the National Planning Policy Framework (the Framework). Together these require that development is of a high design quality and density which responds to and is considered within its context.
14. The Council also refer to Policies TP28 and TP44 of the BDP in its reason for refusal. Policy TP28 is regarding the location of new housing and my attention has not been drawn to the specific criteria the Council considers is relevant. Policy TP44 is regarding highway safety and accessible development. The evidence regarding any harm to highway safety is limited and not conclusive, and I have confined my assessment to the effect on character and appearance. Neither policy has therefore been determinative.

Living conditions

15. Based on the indicative layout the apartments at ground floor would have limited outside space. Two bedroom apartments could very easily be occupied

- by families with children who would require some play space. Having somewhere private to sit outdoors, hang washing, meet friends etc would, in any case, be an important facility for residential accommodation which would not easily be achieved in the indicative layout providing a poor standard of provision for future occupiers.
16. The proposal is adjacent to a large recreation area. However, this would not provide any level of private outdoor space for future residents. Although the development at 15 Broad Street has no private outdoor space, the NDG published after that planning permission was granted states that amenity spaces should have a reasonable degree of privacy.
 17. Along the southern boundary of the appeal site, are a number of mature trees which are sited within the adjacent recreation ground owned by the Council but overhang the appeal site in some cases by a significant amount. In addition, there are a number of trees in the rear gardens of properties on Westfield Road whose canopies also extend into the site. The appellant's Arboricultural Survey Report (ASR) rates the trees as high (T16), moderate (T10, T5, T2 and T11) or low quality (T3, G4, T9, T12, T14 and T15) and arboricultural value. From my observations on site I am of the view that while some are smaller than others, together they contribute positively to the character and appearance of the area reflecting its verdant quality.
 18. The proposed houses in the indicative layout would be positioned within the Root Protection Areas (RPAs) of a number of the trees. This could be mitigated by the use of specialist foundation systems. In addition, the use of a no dig surface would mitigate any harm caused to trees through the positioning of the access road in the RPAs along the northern boundary.
 19. However, I saw on site that, due to their orientation, the rear elevations of most blocks would be in shade from the trees on the boundary for much of the time. This is confirmed on the appellant's Tree Constraints Plan. Most of the trees have been assessed as having over 20 years remaining contribution and therefore capable of further growth. The majority of the trees would be sited to the south and south east of the proposed blocks. It is likely, therefore, given the trees' proximity to them that some shading would occur both of the already limited garden area and the blocks. As it is likely that areas of glazing would be on the elevations facing the recreation ground it is probable that when the trees are in full leaf such shading would be severe and materially harmful to the outlook and light enjoyed by future occupiers.
 20. The future occupiers would be aware of the proximity of the trees when purchasing the properties. However, it is not unreasonable to assume that dissatisfaction with shade, falling leaves and debris could well grow with experience. If the development were to be allowed therefore, there would be a significant risk of that leading to pressure for substantial reduction or complete felling of some of the trees which could be difficult for a reasonable Council to resist. As a consequence, the site would become more urbanized and the green back drop to the immediate area would be lost which would be severely harmful to the character and appearance of the area.
 21. The Council in its statement refers to main bedroom windows overlooking existing private garden space. While there are no elevational details the indicative layout shows bedroom windows to the elevation facing properties on Westfield Road which would have the potential to overlook the rear gardens of

those properties. The guidance within the Places for Living Supplementary Planning Guidance (PLSPG) states that 5m per storey set back should be provided where new development with main windows overlooking existing private space is proposed. The Council suggests that the indicative layout would provide separation distances of between 7.5-12.6m significantly below the 15m required if the blocks were three stories. This is not disputed by the appellant. The SPG states careful design rather than a blanket application of numerical standards can often address concerns such as privacy and amenity. However, in this case it has not been demonstrated how 30 dwellings could be achieved without having a material harmful impact on the privacy of the private rear gardens of surrounding residents.

22. For the reasons above, I conclude that the proposal would not provide appropriate living conditions for future residents and would be harmful to the living conditions of existing residents with particular regard to outlook, light and privacy. It would therefore be contrary to Policies PG3 and TP27 of the BDP, saved Policies 3.14C-D of the UDP, the PLSPG and the Framework which together require that development should be of a high quality design and have a high standard of amenity for existing and future users.

Ecology

23. The appellant submitted a Daytime Bat Assessment dated May 2019 (DBA) to accompany the planning application and the appeal. The DBA found that two of the three buildings on the site have a low potential for bat roosting opportunities. As such, the DBA states that one dusk emergence survey is required to determine the roost characteristics. This has not been carried out. Even though low, the potential is still there for bats to be present and without the appropriate surveys it cannot be determined if they are on the appeal site, what impact the proposed scheme would have and whether any mitigation would be appropriate.
24. All species of bats are protected under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) and the Wildlife and Countryside Act 1981. They are therefore subject to a high degree of legal protection. Consequently, it is imperative that the presence of bats is established at an early stage to ensure that they are properly protected throughout the development process.
25. I appreciate the appellant's comments regarding the length of time taken to deal with the planning application. However, even if the DBA had been up to date, the required dusk emergence survey has not been completed.
26. For the reasons above, I conclude that it has not been satisfactorily demonstrated that the proposal would not have a harmful effect on ecology with particular regard to bats. Therefore, it would be contrary to Policy TP8 of the BDP and the Framework. These require that development proposals which are likely to affect any important habitat or species must be supported by adequate information to ensure that the likely impact of the proposal can be fully assessed and to protect and enhance biodiversity.
27. The Council also refers to Policies TP7 and PG3 of the BDP within its reason for refusal. Policy TP7 relates to green infrastructure. Although the Council makes a passing reference to surrounding trees and vegetation outside of the appeal site, the consequent harm is not elaborated on within its appeal statement.

28. The relevant parts of Policy PG3 regarding Place Making have not been drawn to my attention and therefore it has not been determinative on this ecological matter.

Drainage

29. The appeal proposal is considered to be a major development as it is above 10 units. Policy TP6 of the BDP states that a Sustainable Drainage Assessment and Operation and Maintenance Plan will be required for all major developments to allow the local planning authority and the Lead Local Flood Authority (LLFA) an opportunity to assess the proposed use in terms of surface water and foul water drainage within the site and its impacts upon neighbouring land uses.
30. The LLFA has objected to the proposal as no assessment has been received and the appellant considers this could be appropriately dealt with by way of a condition on any permission.
31. There is nothing within Policy TP6 to specify when the assessment needs to be considered. This is a proposal in outline form with all matters reserved for future consideration. I have been provided with no meaningful reason, specific to this site, as to why a drainage strategy could not be formed in parallel with detailed plans for the appeal site. I therefore consider that the imposition of a condition would be an appropriate way forward should the proposal be otherwise acceptable. I note that Severn Trent Water has no objections on that basis.
32. For the reasons above, I conclude that there would be no conflict with policies TP2 and TP6 of the BDP, Sustainable Management of Urban Rivers and Floodplains Supplementary Planning Document and the Framework. Together these require that development manages flood risk and promotes sustainable drainage systems.

Affordable housing/public open space

33. Policy TP47 of the BDP states that development will be expected to provide or contribute towards the provision of measures to directly mitigate its impact and make it acceptable in planning terms.
34. Policy TP31 of the BDP requires that on developments above 15 dwellings there would be 35% affordable housing in most circumstances fully integrated in the site. The policy also provides for an assessment for viability if considered necessary. Policy TP9 of the BDP requires that on developments of over 20 dwellings public open space is provided on site at a rate of 2ha per 1000 population. Therefore, I am satisfied that the requested affordable housing and public open space would meet the statutory tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the requirements of paragraph 56 of the Framework.
35. Indeed, the appellant does not dispute these requirements, but points to a lack of meaningful dialogue with the Council in order to progress the submitted Heads of Terms. As a consequence, no S106 agreement has been provided to secure the provision of the affordable housing or open space, or a financial contribution in lieu of such provision. Furthermore, no viability assessment has been received. I have given some consideration as to whether these matters could be the subject of a condition and have had regard to the advice in the

Planning Practice Guidance on this¹. It confirms that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency. It goes on to state that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. I am not convinced that this development is complex or strategically important or that its delivery would otherwise be at serious risk.

36. Therefore, for the reasons above, I conclude that the proposal would not provide an appropriate level of affordable housing or public open space. It would therefore be in conflict with Policies TP9, TP31 and TP47 of the BDP. Paragraphs 8.51-8.54 of the UDP, the Affordable Housing Supplementary Planning Guidance 2001, Public Open Space in New Residential Development Supplementary Planning Document 2007 and the Framework which all seek to ensure new development provides an appropriate level of infrastructure and affordable housing.

Planning balance and conclusion

37. The proposal would deliver up to 30 houses in a relatively accessible location. The appellant has presented no meaningful challenge to the Council's alleged 6.6 year housing land supply. However, this is not a cap on development and 30 houses would contribute towards the Government's objective of significantly boosting the supply of homes as required by the Framework. I therefore give appreciable weight to the provision of market housing in this accessible location at this time.
38. The proposal would remove an unsuitable use within a residential area and make use of previously developed land which the Framework states should be given substantial weight.
39. There would be economic benefits through the creation of construction jobs and the increased local spend within the economy. I give these modest weight based on the scale of the development.
40. There is no doubt that there would be benefits of this proposal, and in that respect, it would broadly accord with some policies of the development plan. However, the harm to the character and appearance of the area, ecology, living conditions and lack of affordable housing and public open space brings it into fundamental conflict with Policies PG3, TP8, TP9, TP27, TP30, TP31, and TP47 of the BDP and Policies 3.14A-D and 8.51-8.54 of the UDP and therefore the development plan as a whole. As a result, in the overall planning balance, although significant, the benefits of the proposal are not sufficient in this case to outweigh the harm I have identified and the conflict with the development plan.

¹ PPG ID: 21a-010-20140306

41. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude, on balance, that the appeal should be dismissed.

Zoe Raygen

INSPECTOR