
Appeal Decision

Site visit made on 14 July 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th July 2021

Appeal Ref: APP/P4605/W/20/3262036

Land adjacent to 57 Billesley Lane, Moseley, Birmingham B13 9QT

- 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 Apec Blue Limited against the decision of Birmingham City Council.
 - The application Ref 2020/02611/PA, dated 20 March 2020, was refused by notice dated 3 July 2020.
 - The development proposed is the erection of one detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The site address in the banner heading above is taken from the Council's refusal notice. Unlike the planning application form site address, it includes the words '*land adjacent*'. I consider that this is a more precise site address given that the evidence indicates that in physical and land ownership terms the site is not associated with No 57 Billesley Lane.
3. The Council's refusal notice includes several reasons for refusal, one of which relates to the effect of the development on boundary trees. As part of the appeal, the appellant has submitted an Arboricultural Impact Assessment, Tree Impact Plan, Tree Protection Plan and Tree Constraints plan prepared by Apex Environmental. The Council has commented that this additional information '*successfully addresses the concerns raised*'. Taking into account this information, I am also satisfied that the proposal would not cause harm to surrounding trees.

Main Issues

4. In the context of the above, the main issues are therefore (i) the effect of the development on the character and appearance of the area including whether or not it would preserve or enhance the character or appearance of the St Agnes Conservation Area (CA); (ii) the effect of the proposal on the living conditions of the occupiers of the proposed dwelling in respect of outlook and (iii) the effect of the development on the living conditions of the occupiers of No 125 Oxford Road in respect of privacy.

Reasons

Effect on character and appearance including the CA

5. The CA as a whole is almost entirely characterised by Arts and Crafts style houses built in the Edwardian period of 1900-1910. Most of the houses in the CA are set in large gardens and are generally set well back from the plot frontages adding positively and distinctively to an overall sense of spaciousness. In many areas, including parts of Oxford Road and Billesley Lane, there is a relative order and regularity to the mainly long and rectangular shaped gardens. Larger houses in the CA often have sweeping drives and double entrance gates. Front gardens are characterised by large mature trees, evergreen shrubberies and dense planting and the numerous street trees add to the overall verdant character and appearance of the area and to the overall significance of the CA.
6. The appeal site falls within Billesley Lane and the evidence indicates that it was historically part of the long rear gardens of Nos 127 and 129 Oxford Road. While the appeal site has been separated from these gardens by fencing, it nonetheless continues to be appreciated as an area of important undeveloped open space particularly when seen from the crossroads of Oxford Road and Billesley Lane. From this area, the site positively contributes to the sense of openness around each of the four corner plot dwellings at this road junction. To the passer-by, this more open pattern of development is seen in contrast with the pattern of development in Oxford Road where many of the properties are semi-detached and plot widths are narrower. Indeed, in Billesley Lane many of the dwellings are detached and plot widths are wider and in relative terms there is a greater emphasis on openness and spaciousness. In this regard, the appeal site adds positively and distinctively to the overall significance of the CA when considered as a whole.
7. I have taken into account the historical maps submitted by the appellant and comments made about the provision of some infill development over time and the development of '*awkward plots of land*'. I acknowledge that the CA has evolved and changed over time and that there has been some infill. This is a matter that I have taken into account in reaching my views above about the positive contribution that the appeal site makes to the significance of the CA.
8. The proposed dwelling would include architectural details that would suitably match the adjacent dwellings on Billesley Lane. In this respect, I am satisfied that the dwelling would not look out of place in the CA. However, good design relates to more than matters of architectural detailing. In this case, the proposed dwelling would be positioned forward of the building line of Nos 51-57 Billesley Lane and so would unacceptably detract from the uniformity afforded by the pattern and position of development in this part of the CA.
9. I acknowledge that the dwelling on the opposite side of the road (No 58 Billesley Lane) is forward of the building line. I do not know the exact circumstances which led to this dwelling being erected, but the evidence indicates that this building is a later addition to the street-scene. This property represents a significant departure from the predominant pattern of development in this part of the CA, which includes strong building lines and houses that are set well back from the road. Its existence does not therefore justify the erection of the dwelling on the appeal site.

10. While the overall size of the proposed residential plot would be acceptable in living conditions terms, it would nonetheless be irregular in shape. To this extent, harm would be caused in so far that it would fail to reflect the predominantly long and rectangular shaped gardens that are prevalent in the CA. Furthermore, the dwelling would unacceptably erode the greater sense of openness that is appreciated around each of the corner properties when viewed from the crossroads of Oxford Road and Billesley Lane.
11. In addition to the above, the proposal would include a dwelling which unlike the vast majority of the other properties in this part of the CA would be positioned tight up to its proposed rear boundary. To this extent, the dwelling would appear the cramped within this part of the proposed plot, thereby failing to reflect the sense of spaciousness afforded to the settings of most of the other dwellings in the CA.
12. I acknowledge that in respect of the latter consideration this harmful effect would essentially be appreciated by the occupiers of existing surrounding dwellings and not from the public domain. However, the character of the CA derives from the buildings, layout and surrounding spaces as a whole, regardless of whether particular elements are open to public view. Its significance does not therefore rely only on the elements that can readily be seen.
13. In the context of paragraph 196 of the National Planning Policy Framework (the Framework) the aforementioned collective harm that would be caused to the CA would be less than substantial. Nevertheless, I give considerable importance and weight to that harm and to the presumption that preservation is desirable.
14. The provision of a dwelling on the site would add to the supply of housing in the area and there would be associated social and economic benefits. However, there is no evidence that the local planning authority cannot demonstrate a deliverable five-year supply of housing sites or that the Housing Delivery Test has not been met. In any event, the contribution to the supply of housing, and any associated social or economic impacts from the provision of only one dwelling, would be limited. I therefore find that there are no identified public benefits which would outweigh the less than substantial harm caused to the CA.
15. For the above reasons, I conclude that the proposed development would cause significant harm to the character and appearance of the area and that it would fail to preserve the character and appearance of the CA. Consequently, it would not accord with the design, character, appearance and conservation requirements of Policies PG3, TP12 and TP27 of the Birmingham Development Plan 2017 (BDP), saved paragraph 3.14D of the Birmingham Unitary Development Plan 2005 (UDP), the Moseley SPD 2014, the Places for Living SPG 2001 (SPG), the Mature Suburbs SPD 2008, and the Framework.

Living conditions - outlook

16. The bedrooms in the roof space of the proposed dwelling would include rooflights which would be positioned in such a manner that the occupiers of these rooms would be afforded a very poor level of outlook. I acknowledge the point made by the appellant that there are no prescriptive policies relating to outlook matters. However, in my judgement some level of outlook would be

needed for these bedrooms. In reaching this finding, I am cognisant that increasingly more people are working from home and hence bedrooms are being used for a number of different activities and for longer periods of time.

17. As part of the appeal, the appellant has submitted an amended plan which shows the rooflights being moved further down the roof slope, thereby ensuring that outlook would be acceptable. I am satisfied that such a change is minor and hence no prejudice would be caused to any interested party if I were to determine the appeal in respect of this amended plan.
18. However, my acceptance of the amended plan for the purposes of determining this appeal would have the effect of leading to other harmful impacts. Indeed, such rooflights would be positioned in close proximity to the rear garden of No 125 Oxford Road with a consequent material loss of privacy for existing and future residents of this dwelling. The evidence is that such a proposal would fail to accord with the SPG which requires a '*5m per storey set back where new development with main windows overlooking existing private space is proposed*'.
19. For the above reasons, I therefore conclude that the proposal would cause harm to the living conditions of the proposed dwelling in respect of outlook and that the amended proposal would cause harm to the occupiers of No 125 Oxford Road in respect of privacy. Consequently, the proposal would not accord with the living conditions requirements of saved paragraph 3.14C of the UDP, the SPG and paragraph 127(f) of the Framework. The Council has made reference to policies PG3 and TP27 of the BDP, but these policies are not directly relevant to this living conditions main issue.

Living conditions - privacy

20. The first-floor rear windows of the proposed dwelling would be relatively close to the side boundary of the rear garden of No 125 Oxford Road. There is dispute between the main parties about the actual separation distances between the proposed first floor rear windows of the appeal dwelling and the side garden of No 125 Oxford Road. However, there is no dispute between the main parties that at least one separation distance fails to meet the SPG requirement of a 5m per storey set back.
21. In this case, there is no reasonable justification for making an exception to the SPG separation distance requirement. The garden area associated with No 125 Oxford Road is relatively large, but a high proportion of it would be impacted by overlooking from the appeal property. I conclude that in this regard the proposal would cause unacceptable harm to the private enjoyment of the rear garden of No 125 Oxford Road and hence that it would fail to accord with the living conditions requirements of saved paragraph 3.14C of the UDP, the SPG and paragraph 127(f) of the Framework. The Council has made reference to policies PG3 and TP27 of the BDP, but these policies are not directly relevant to this living conditions main issue.
22. Reference has been made by the appellant to an appeal decision at 123 School Road, Moseley¹ where it would seem that the requirements of the SPG were set aside. I am not aware of the full circumstances relating to this development proposal (e.g. no plans have been submitted in evidence) and, in any event, I

¹ APP/P4605/W/17/3185269

have determined this appeal on its individual planning merits exercising my own planning judgement. Furthermore, and unlike the aforementioned appeal development, the impacted garden at No 127 Oxford Road does not have '*tall conifer trees*' on its boundary.

Conclusion

23. For the reasons given above, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR