



Appeal Decision

Inquiry Held on 11-13 October 2021, 18-19 October 2021 and 22 October 2021
Site visits made on 2 September 2021 and 25 October 2021

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/P4605/W/21/3275570

Land bounded by Chapel Lane, Harborne Lane and Bristol Road (former Sainsbury's supermarket site), Birmingham

- 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 HPH Selly Oak Property Limited against the decision of Birmingham City Council.
 - The application Ref 2020/01795/PA, dated 28 February 2020, was refused by notice dated 4 February 2021.
 - The development proposed is site clearance and demolition of existing supermarket buildings and erection of a development comprising purpose built student accommodation and student communal facilities (Sui Generis) ground floor commercial and community floorspace to Bristol Road (Use Classes B1/A1/A2/A3/D1/D2), and associated works including new hard and soft landscaping, internal site vehicular circulation route and parking with access from Chapel Lane roundabout.
-

Decision

The appeal is dismissed.

Preliminary Matters

1. During the course of the Inquiry, the appellant submitted a Unilateral Undertaking (UU) under s106 of the Town and Country Planning Act 1990. The UU makes provision for a financial contribution to the Council to enable the monitoring of student car parking in the nearby streets. I return to this later on in my decision.
2. The Selly Oak Community Development Trust (the Trust) was granted Rule 6 status and raised a number of issues in addition to those raised by the Council. I have taken them into account in framing the main issues.

Main Issues

3. Having heard all of the evidence, the main issues are:
 - The effect of the proposal on the character and appearance of the area
 - The effects on neighbouring occupiers with regard to light, sunlight, outlook and car parking
 - The effects on the wider community with particular regard to student need and community balance

Reasons

Planning policy and background

4. The Council and appellant agree that the Birmingham Development Plan (2017) (BDP) is up-to-date and that policies PG3, TP33 and GA9 are the most important policies in the determination of the appeal. I have no reason to take an alternative view.
5. The first sentence of policy PG3 requires all new development to demonstrate high design quality, contributing to a sense of place and sets out seven criteria that development should meet in order to achieve that objective. Dispute remains over the first criterion which, amongst other things, requires design to 'respond' to site conditions and the local area context. The appellant recognises that it would be difficult to envisage a scheme that conflicted with this criterion, being in accordance with the policy as a whole¹. I agree with that proposition.
6. Policy TP33 is specific to the development of student accommodation and is positively worded wherein proposals for off-site campus provision will be considered favourably where they would meet five criteria. These include similar design objectives as policy PG3. It seems clear to me on a straightforward reading of the policy, that a scheme failing to achieve those design objectives would conflict with the policy as a whole.
7. The interpretation of policy GA9 remains a significant area of dispute between the parties. The supporting text to policy GA9 distinguishes between the Queen Elizabeth Hospital, the University of Birmingham, Selly Oak District Centre and adjoining residential areas. This is replicated within the policy itself. Firstly, it seeks to promote major regeneration and investment in the Selly Oak and Edgbaston areas and that this will include an economic, research and health role focussed around a number of places including the University of Birmingham. Secondly, it sets out a series of requirements for the regeneration of 'the centre'. It emphatically identifies the appeal site (known as The Triangle site) as one of a number of large sites available for development to support that growth, setting out that it will be suitable for small scale retail, offices, other town centre uses and residential.
8. In my view, the policy is spatially seeking different things for the University, which is some distance away from the site, and the district centre within which the site sits. I cannot see how the policy can be constructed so as to merge these two to provide support for a scheme that would not accord with the forms of development identified for the Triangle site.
9. I have considered whether the term 'residential' in the policy includes purpose-built student accommodation (PBSA) given that it does not refer to it in such terms. The Council accepts that the policy does not preclude PBSA². The Council also counts PBSA beds towards its overall housing target. Furthermore, paragraph 62 of the National Planning Policy Framework (the Framework) refers to the type and tenure of housing needed for different groups in the context of meeting housing needs. This includes students.
10. However, policies TP27 and TP31 respectively, amongst other things, require residential development to provide a mix of type and tenure of housing and

¹ Mr Jones in cross examination

² Mr Fulford in cross examination

affordable housing. The proposal would meet neither of those requirements, yet they are two key housing policies. I recognise that a scheme does not have to accord with every development plan policy in order to be regarded as in accordance with the development plan as a whole. Nevertheless, it is necessary to look a little further within the BDP.

11. Policy TP21 identifies Selly Oak as a District Growth Point wherein there are requirements for the level of comparison retail and office floorspace. The policy's overall objective is to maintain and enhance the vitality and viability of the centres. In addition, it distinguishes between 'residential' and other uses including education. Although residential development is supported where it would accord with policy TP24, the supporting text to the policy is clear that a District Growth Point is identified as a focus for retail growth and office development.
12. Policy TP24 sets out that residential uses should be on upper floors where it provides good quality, well designed living environments. The supporting text to this policy sets out that that other uses (also listed in the policy itself) are to sit alongside A1 retail units. My reading of these two policies together, is that they do not include PBSA and where residential uses are to take place, they should do so in combination with retail and office space. Therefore, even if I am wrong in my interpretation of what constitutes a residential use for the purposes of policy GA9, the proposal conflicts with policies TP21 and TP24. I consider these two policies to be relevant to my determination of the appeal and thus they are also 'most important'.
13. The Wider Selly Oak Supplementary Planning Document (2015) (the SPD) refers specifically to The Triangle site and includes residential development within a number of other suitable uses. It departs from the requirements of policy TP24 in that it supports hotel/student/residential accommodation on other frontages as well as on upper floors. I see no conflict between the appeal proposal and this aspect of the SPD.
14. However, the SPD also sets out a suite of design principles which include a suggestion that the sloping nature of the site could provide an opportunity for undercroft parking and seeks to provide safe pedestrian/cycling routes to and through the site to improve linkages to other areas. The proposal would not provide undercroft parking, but this is not an absolute requirement of the SPD. It merely says 'could' rather than 'should' or 'must'. Consequently, the scheme does not conflict with that SPD principle. On the other hand, it does conflict with the principle of providing routes through as there is no provision for wider public access into or through the site.
15. Although the SPD was adopted prior to the current development plan, none of the parties consider it to be out-of-date and I have no reason to take an alternative view. The SPD is specific to the site and the first of its design principles requires that development fronting Bristol Road should reflect the scale and mass of the existing built form. It does not pull in a different direction to BDP policy PG3, which contains a broader requirement to respond to the site and the wider area context. Consequently, I see no obvious tension between the SPD and the BDP. The SPD therefore carries very significant weight.
16. The Draft Birmingham Design Guide (2020) (the Draft Design Guide) provides a definition of a tall building. Outside the city centre, a building is considered

tall if it would result in a recognisable change to, or impact on, the character and/or skyline of the surrounding area. There can be no doubt that on this basis, the proposed building would be 'tall'. Given its draft form, the Design Guide is still subject to change. Nevertheless, I consider it can be given some, albeit limited, weight.

17. There have recently been other permissions for large development nearby. Notably, these are another PBSA scheme known as the 'Unite building' and development of the Birmingham Health Innovation Centre (BHIC) has begun on a site immediately to the north of Battery Retail Park. In addition to the new Queen Elizabeth Hospital, the area within and around Selly Oak is clearly undergoing transformational change as envisaged by the BDP.

Character and appearance

18. The appeal site is a currently vacant triangular piece of land although the former supermarket building remains. It is bounded on two sides by major arterial routes into/out of the city and on the third by Chapel Lane. The Battery Retail Park is located immediately to the north beyond Chapel Lane.
19. The site is located at a transitional point between the Battery Park retail site and residential areas to the south. The retail site comprises low-rise buildings that have a horizontal emphasis. Parts of the scheme would be lower fronting Bristol Road in attempt to be more akin to the scale of existing buildings there. However, I consider that they cannot be viewed in isolation of the other elements of the scheme, which when taken as a whole would result in a development of considerably greater scale, mass and height than anything surrounding it.
20. The proposed development is intended to appear as a series of individual built forms each with a slightly different character and roofline. However, whilst the rooflines would vary between them, the overall appearance and regimented fenestration would be consistent across all the buildings and the only device to provide any sense of individuality would be the change of brick colour, although these would have an overall pleasing red palette. Whilst some views would be possible between buildings in views from Harborne Lane and Chapel Lane, they would only occur when looking directly between the buildings. Moreover, in one of these views, the space between buildings would be visually occupied by the Unite building. Consequently, in most views from around the local area, the proposed building would predominantly be experienced as one overall very large mass.
21. The Unite building is now part of the local townscape. However, that does not mean it sets a precedent for further tall buildings in Selly Oak. Moreover, its overall scale and massing are nothing like that of the appeal proposal, which is a very significantly larger scheme. The Unite building is also located firmly within the context of the retail area and thus away from the residential areas. In comparison, the proposed scheme would include a 12-storey tower on the corner of Harborne Lane and Chapel Lane. It would sit above an existing retaining wall of around 4.5 metres in height and thus, at this point, the building would be perceived as being significantly taller than its 12-storeys.
22. Both the Unite building and the BHIC scheme occupy sites away from the residential area. The BHIC scheme sits on predominantly lower ground and does not comprise a building of the height proposed in this appeal.

Nevertheless, these developments have significantly changed and will further change the townscape. Whilst that does not necessarily justify a scheme that would be at odds with its surroundings, it is a clear indication of the direction of travel in bringing about transformational change in this area as envisaged within policy GA9. However, the building would result in a recognisable change to the skyline and is therefore to be considered as tall although that in itself is not a bar to it going ahead.

23. The Council and appellant have each provided me with a Townscape and Visual Impact Assessment (TVIA). Both have assessed the effects of the proposal from a number of viewpoints around the local area.
24. There are a number of high-profile townscape features that appear repeatedly in views from around Selly Oak. These are the Chamberlain Tower (locally known as 'Old Joe'); St Mary's Church Spire; The old Queen Elizabeth Hospital clock tower; and the new Queen Elizabeth Hospital. I was able to spend a considerable amount of time walking around the area and observing where these features could be seen from. From the majority of viewpoints highlighted in the respective TVIAs, at least one and, on many occasions, two or three could be seen in the same view. They are difficult to miss and easy to appreciate.
25. Whilst I do not consider any of the views to be 'designed', to my mind that does not diminish the very important contribution these significant buildings make to the local area and the way it is 'read' by both drivers and pedestrians. They are seen widely in the same context as the more immediate surroundings of the appeal site and cannot readily be visually divorced from that more localised townscape or the way it is understood. The appellant accepted that these are significant local townscape features but argued that they are not key contributors to the townscape's character³. For the reasons just given, I do not find that to be a tenable proposition.
26. The proposed building would intervene to block a substantial number of these important vistas. I noted that from a number of locations, it would also fill a substantial amount of what is currently clear sky. For drivers, views of these features will be somewhat incidental when travelling around and through the area. However, given the proximity of the retail park to very large areas of residential development, there is likely to be a significant volume of pedestrian traffic. Indeed, I observed this to be the case during my site visits and there would be more noticeable change for people on foot. Overall, it was evident that the building would be an omnipresent and overly imposing feature in a significant number of views within the area.
27. Having said all of that, there is nothing in place to protect views towards Old Joe etc., It is also very difficult to envisage a scheme coming forward on the site, representing 'transformational change' that would not result in blocking views of key townscape features in some way, to some degree.
28. The proposal would result in a development of significantly greater density than its surroundings and indeed the historical density of the site. In today's reality, this is inevitable, taking into account the pursuit of ensuring land – particularly 'brownfield' land, is developed efficiently by making the best use of it.

³ Ms Ede in cross examination

However, the density of the proposal would be around ten times that of surrounding residential areas.

29. Taking these factors into account in combination with the mostly low-rise character of both the retail park and the residential areas, the proposal would result in a building so strident that would step over the wrong side of the line in terms of its appropriateness for the location. It would therefore result in an unacceptable level of change to the townscape.
30. Selly Oak Park has Green Flag status and is therefore of high quality. It is the only substantial area of green space that contains a number of recreational facilities in the area. From what I observed, it is clearly very well used by the local community and it is reasonable to conclude that it is a community asset of high value. There is agreement between the Council and appellant that the park is 'urban in character'. Given its surroundings and the journey through urban/suburban areas to get to the park, I agree.
31. I noted that areas of significant development can clearly be seen currently. This includes the Queen Elizabeth Hospital and the Unite building. It will also include the BHIC development. However, unlike the appeal proposal, they occupy sites that are afforded greater screening by the park's boundary vegetation and the trees within it, particularly during periods when trees are in leaf. In contrast, the proposed building would be far more noticeable year-round as the park boundary along Gibbins Road has a much more open aspect than its others. Existing buildings in views from the park towards the site are not comparatively higher than the top of the treeline further along Gibbins Road to the south-west.
32. Whilst the sense of the park's urban location is inescapable, the proposed building would appear as one very large built mass towering over everything in front of it. It would not have a direct profound and unacceptable effect on the way the park is currently experienced but is a further indicator of a development at odds with its surroundings.
33. The provision of greenspaces between the proposed buildings would result in an overall perceptible improvement to the local public realm immediately around the site. There would also be a new area of open space for wider public use on the corner of Bristol Road and Harborne Lane. However, the proposal as a whole would not sit comfortably within the townscape.
34. To conclude on this main issue, the proposal would fail to accord with BDP policies PG3, TP33 and GA9. It would also conflict with the SPD and the Design Guide.

Effects on neighbouring occupiers

Light and sunlight

35. The Trust considers that the development would result in harmful effects to residents of Rebecca Drive, to the west of the site. However, the evidence on this matter is clear. The detailed analysis undertaken by the appellant demonstrates that there would be negligible, if any effects on any residential property in terms of light or sunlight. No convincing case has been put forward to indicate that the appellant's evidence is not robust. Consequently, I do not find that the proposal would result in harm by reducing the amount of light or sunlight to neighbouring occupiers.

Outlook

36. Cherry Oak School is located in nearby Frederick Road and the rear boundary of its grounds is close to Harborne Lane. There would be clear views of the tallest element of the proposal from the school's grounds along with some of the other buildings forming the scheme. The school caters for those with special educational needs, and it was put to me that, as a consequence, the change in view from the school grounds would be severe enough to harm pupils' wellbeing and their sense of belonging in the community.
37. In particular, it was argued that there would be a harmful sense of being overlooked even though the design provides for 'pleating' to effectively turn the windows away from the school site. The School's Headteacher has also pointed out⁴ that the proposal would create a feeling of being isolated for the pupils. There can be no doubt that the outlook for the school's pupils would change dramatically and a large built mass would be omnipresent, where before there was nothing on such a scale. However, I do not have any clear and compelling evidence to demonstrate that this would result in a harmful effect on those attending the school. Therefore, whilst I have some sympathy with the views of the Trust and the school's Headteacher, I do not find a convincing reason for dismissing the appeal on these particular grounds as advanced.
38. For residents of Rebecca Drive, the outlook from those properties facing towards the site would change dramatically. Whilst the physical separation between them and the site would accord with the Council's standards, the sense of a very large suite of buildings in close proximity would remain. I accept that in striving for transformational change on the site, the outlook for Rebecca Drive's residents will inevitably alter. However, that does not mean it should result in a development that would have such significant and unacceptable effects on their outlook. The proposal would therefore conflict with BDP policy TP33.

Parking

39. I am satisfied that parking would be satisfactorily managed through a combination of a planning condition and the monitoring provided for in the UU. There is potential, indeed a likelihood that taxis bringing students home from trips to the city centre late at night. However, traffic at those times is likely to be very light and I see no reason to conclude that there would be any unacceptable effects on traffic flow resulting from the proposal. Similarly, there may be a need for delivery vehicles to stop somewhere in order to drop off takeaways or internet orders. However, there is no clear evidence that this would take place frequently or that there would be large numbers of deliveries at the same time. There would be no harm to driver or pedestrian safety arising from the proposal.

⁴ Through a written representation during the appeal process

Effects on the wider community

Student need

40. The evidence shows that national demand for student places at University has increased significantly in recent years. Birmingham University is a 'high tariff' institution meaning its required grades are amongst the highest in the UK. Given that there was a 14% increase in acceptances to high tariff institutions, compared with very substantially lower figures for others. There is every likelihood that Birmingham University will continue to grow.
41. The Trust argues that there is no need for additional PBSA. Indeed, the evidence shows that there is currently accommodation for all students⁵. However, that does not mean there will be sufficient accommodation to meet student needs given the projected student growth up to 2025/26. I acknowledge that some students will prefer to be housed with their friends in houses of multiple occupation (HMOs), but that is unlikely to happen in their first year as they begin to make new acquaintances. It seems more likely that those going to University for the first time will want the security of PBSA and greater certainty around the quality of accommodation and pastoral care it provides.
42. It is also reasonable to conclude that a lack of PBSA will result in a greater demand for alternatives, which would be likely to include HMOs even though that would not be a first choice. Conversely, I can only see a reduction in HMO take up if there is a better option even though it may be more expensive. Furthermore, the HMO 'pool' is not solely available to the student population so does not necessarily provide a direct alternative to PBSA. There is no clear evidence that the proposed additional 1187 bed spaces will result in there being a large number of empty HMOs or that the scheme will destabilise the local housing market.
43. The Trust has calculated there to be a total of 1198 bed spaces created locally since 2015. I acknowledge that there has been no noticeable reduction in the number of applications to convert properties to HMOs, even taking into account this recent increase in PBSA accommodation. Nevertheless, there is insufficient evidence to conclude that such applications are directly linked to the student population. Moreover, The Trust has calculated the number of approved HMO applications (also including those where applications were not necessary) dating back to 2011. Consequently, it is difficult to find any obvious correlation in the sets of figures because of the two different periods over which they have been calculated.
44. For the above reasons, I am satisfied that there is a need for student accommodation on the scale proposed.

Community balance

45. The evidence tells me that the student population in Selly Oak currently accounts for around 36% of residents. The appeal scheme would result in an increase to around 44%. I heard evidence that some residents would be inclined to move away from the area but there is no clear compelling evidence to support the assertion that there would be an exodus of people on anything other than a very small scale.

⁵ Core Document 4.2

46. There are a range of local businesses of varying size in Selly Oak. Should the proposal go ahead, some may veer towards providing more for the student population than other existing residents. However, there are a number of major chains in the retail park. They currently serve very large residential areas. I find it difficult to envisage a scenario where these outlets changed their businesses models simply on the basis of there being an additional 1187 students living in the local area. Indeed, I was able to visit a number of the outlets on the retail park and saw no evidence of a shifting retail offer towards the student population. Any shift in the local retail offer in smaller shops would not be so profound as to have an overall detrimental effect on the local community.
47. I also heard about incidences of anti-social behaviour associated with residents in Exempt Housing and it was put to me that a reduction in HMO take-up will lead to more housing of this type as landlords seize the opportunity to make a good investment return. However, whilst I sympathise with anyone who suffers from anti-social behaviour, there is nothing to say that should a property currently converted to an HMO come onto the market, it would not be an attractive proposition to provide family housing.
48. To conclude on all of this, I see no compelling reasons to believe that the community will suffer as a result of the proposal. Consequently, there is no conflict with this aspect of BDP policy GA9.

Planning Obligation

49. The appellant has provided a signed UU, which provides for a contribution towards monitoring car parking. It is designed to work in tandem with a planning condition requiring the provision of a student management plan. The intention is to prevent students from bringing cars to the area and parking them in the surrounding streets as the development is intended to be car-free. However, as I am dismissing the appeal for other substantive reasons, I do not consider this matter further.

Planning Balance Including Other Considerations

50. I have found the proposal to be in conflict with a number of BDP policies and I give substantial weight to each of those conflicts. I recognise that the proposal would represent transformational change, which carries weight in its favour given the Council's vision, but this in itself is insufficient to outweigh the identified conflicts with policies PG3, TP33, GA9, TP21 and TP24 (each taken as a whole). I give limited weight to the minor conflict with the SPD and limited weight to the conflict with the Draft Design Guide.
51. There are a number of other considerations to be taken into account in the overall planning balance. I have found there to be a need for the proposal in terms of student need, which attracts substantial weight in assisting the growth of the University and further enhancing the City of Birmingham's international reputation as a place to live, work and study.
52. The proposal would create a new, active frontage to Bristol Road. This would be a considerable improvement over the current situation through greatly improving the public realm along this major road. I acknowledge the desirability of providing a high-quality development on a vacant and ugly site. However, I do not consider the proposal to be of a form that would sit

comfortably in its surroundings so in this respect that attracts only limited weight. It would make efficient use of brownfield land, provide net biodiversity gains and enhance urban greening. Each of these factors individually attract significant weight.

53. It was put to me that should the appeal be dismissed, the site would remain vacant for a long time. However, there is no empirical evidence to substantiate this. Even if that did transpire, given the high-profile location and strategic importance of the site, along with policy support for transformational change, it is difficult to envisage it remaining vacant through lack of commercial interest. I give only limited weight to this strand of the appellant's case.
54. To sum up, overall, the positive aspects of the proposal do not clearly and decisively outweigh the identified harms. The proposal would not accord with the development plan as a whole and I see no reason to take a decision other than in accordance with it.

Conclusion

55. For the above reasons, the appeal does not succeed.

H Baugh-Jones

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Paul G Tucker of Queens Counsel assisted by
Piers Riley-Smith

Kings Chambers. Instructed by
Suzanne Dodd, Birmingham
City Council

He called

Andrew Fulford MRTPI

Principal Planning Officer,
Birmingham City Council

Nigel Wakefield

Managing Director, Node Urban
Design Ltd

FOR THE APPELLANT:

Zack Simons of Counsel

Landmark Chambers.
Instructed by Simon Ricketts
and Nikita Sellers, Town Legal
LLP

He called

Professor Paul Monaghan
BSc DipArch DLitt ARB RIBA

Co-founder, Alford Hall
Monaghan Morris

Joanna Ede MA DipLA CMLI

Director, Townscape, Head of
Landscape and VIA, Turley

Michael Florance

Cundall Johnston and Partners
LLP

David Feeney

Partner, Cushman and
Wakefield

Robert Croft MSc

Partner, GIA Chartered
Surveyors

Matthew Jones
BSc(Hons) DipTP MRTPI

Senior Director, Turley

FOR THE SELLY OAK COMMUNITY DEVELOPMENT TRUST:

Anne Haigh

Secretary and Treasurer

She called

Dr Andrew Schofield

Local resident

Barry Toon

Chair, Selly Oak Community Development Trust

Councillor Fred Grindrod

Councillor for Bournville and Cotteridge Ward

INTERESTED PARTIES:

Nick Fenton

Local resident

Taghi Miri

Local resident

Peter Fisher

Local resident

Jackie Woollam

Local resident and Selly Oak Community Trust Board member

Steve Evans

Local resident

Claire Evans

Local resident

Patrick Feniessy

Local resident

Amanda Martin

Local resident

Simon Stafford

Local resident and member of Frederick Road Residents Association

Paul Timmins

Local resident

Annette Lawson

Local resident

Richard Batley

Selly Oak Property Owners Association

A Allybocus

Local resident

Roxy Gale

Local resident

Vu Ha

Local resident

Danielle John

Local resident

Helen Murie

Local resident

Mr and Mrs Barry

Local residents

Ms Chris Barham

Local resident

INQUIRY DOCUMENTS

- ID1 Appeal Decision ref. APP/N5090/W/21/3271077
- ID2 Appellant's Opening Statement
- ID3 Local Planning Authority's Opening Statement
- ID4 Rule 6 Party's Opening Statement
- ID5 Interested party parking photographs
- ID6 Mr Wakefield amended viewpoints
- ID7 Mr Feeney's written response to questions on student need
- ID8 Birmingham Development Management Plan
- ID9 Document on thresholds produced by Camden Council
- ID10 Agreed planning conditions
- ID11 Unilateral Undertaking
- ID12 BRE Guidance extract
- ID13 Article 4 Direction
- ID14 NUS Accommodation Cost Survey
- ID15 Higher Education Covid-19 Operational Guidance
- ID16 University of Birmingham Intranet extract
- ID17 Agreed planning conditions (revised)
- ID18 Community Infrastructure Levy Compliance Statement
- ID19 Local Planning Authority's Closing Submissions
- ID20 Rule 6 Party's Closing Submissions
- ID21 Appellant's Closing Submissions