



Appeal Decision

Site visit made on 30 November 2021

by R Walmsley BSc, MSc, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/P4605/W/21/3281144

154 Common Lane, Sheldon, Birmingham B26 3DN

- 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 Adam Daly, A Daly & Son Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/01721/PA, dated 26 February 2021, was refused by notice dated 9 July 2021.
 - The development proposed is proposed demolition of existing metal clad and framed building and the erection of 2 No. bungalows (semi-detached).
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Decision

1. The appeal is dismissed.

Main Issues

2. These are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to outlook;
 - iii) the effect of the proposal on highway safety, and;
 - iv) the effect of the proposal on local biodiversity.

Reasons

Character and appearance

3. The appeal site is within an urban block that is dominated by frontage properties that have front gardens that comfortably accommodate car parking and soft landscaping. Most properties also have long rear gardens. This creates a uniform pattern of development which gives the area a sense of space, particularly along Common Lane where there is a dominance of bungalows.
4. The bungalows proposed and the property at No 154 Common Lane would be on plots that are small, relative to the size of the buildings. The development, therefore, would appear unduly cramped and incongruous compared to the more spacious arrangement of surrounding houses. The development may comply with space standards but the cramped nature of the development relates to the relationship between the size of building and plot and the

relationship of this to the urban pattern of the surrounding area. Compared with other residential properties in the area, the proposed development would appear cramped and conspicuous.

5. The development would also introduce residential development behind an existing line of houses which runs contrary to the prevailing pattern of development in the area. I recognise that there is an existing building on the site, behind frontage properties. However, this building is an outbuilding, in commercial use, and within the grounds of No 154. It does not compare, therefore, with the bungalows proposed which will operate independently of No 154 and will not be ancillary in form or layout. Consequently, the development cannot be compared favourably with the existing outbuilding to be considered a replacement.
6. The two sites referred to me by the appellant (application 2017/00612/PA and 2019/03465/PA) are not within an urban block that is dominated by frontage properties, like the appeal site. For 2017/00612/PA the Council noted that the area surrounding the application site comprised a variety of street patterns which the development concerned would replicate. The same cannot be said for the appeal proposal. And with regards to 2019/03465/PA I see that a new frontage was created by the housing proposed, which is not the same for the appeal proposal. The two sites referred to me, therefore, do not set a precedent in favour of the appeal.
7. And so, for the reasons given, the development would appear cramped and incongruous, out of keeping with the existing pattern of development and harmful to the character and appearance of the area. As such, the development would be contrary to policies PG3, TP27 and TP30 of the Birmingham Development Plan (2017), saved paragraphs 3.14C-D of the Birmingham Unitary Development Plan (2005) and Places for Living SPG (2001) and Places for All SPG (2001) which, amongst other things, seek development that reinforces or creates a positive sense of place and responds to local context.

Living conditions

8. The Council's 45 Degree Code Supplementary Planning Guidance (SPG 2006) advises that building work should not cross a 45-degree line taken from the nearest front or rear window of the house that may be affected by the development proposed. The house concerned would be No 150 Common Lane. At the rear of this property is a ground floor window that overlooks the rear garden. The development proposed would cross the imaginary line drawn from this window at an angle of 45 degrees and therefore would have a harmful effect on the outlook from No 150.
9. The SPG 2006 advises that as well as applying the 45-degree line, the impact on outlook and light should be assessed on its merits, taking into account the size of the development and the distance between it and the neighbouring property.
10. The development would be set further away from No 150 than the existing outbuilding, thereby opening up views for the occupiers of this neighbouring property. However, the development would be closer to the shared boundary than the existing outbuilding and being a bungalow with windows facing No 150, the development would create a sense of overlooking that is not currently

present. I recognise that because the windows to the bungalow would be at ground floor level and behind a fence, there would not be a loss of privacy. Nonetheless, there would be a perceived sense of overlooking which would be harmful to the neighbouring occupier's enjoyment of their property.

11. I note that the occupier of No 150 raises no objection. I must, however, make this decision on the merits of the proposal, bearing in mind that other people will likely live at No 150 in the future.
12. The bungalow nearest the boundary with No 150 would not directly overlook a property to the front. The distance between the second bungalow and No 154 would be less than 21 metres but as the SPG advises, single storey development is not so critical in terms of overlooking from upper storeys and will be judged on its own merits. There would be a reasonable distance between the windows of the second bungalow and the rear windows of No 154. Together with the boundary treatments and parked cars between the two, any overlooking would not be harmful to privacy.
13. This does not, however, compensate for the harm identified to the living conditions at No 150 Common Lane. And so, the development would be harmful to the living conditions of neighbouring occupiers with regard to outlook and therefore would be contrary to policies PG3 and TP27 of the Birmingham Development Plan (2017), saved paragraph 3.14D of the Birmingham Unitary Development Plan (2005) and the SPG 2006 which, amongst other things, seek development of a high design quality that causes no harm to outlook.

Highway safety

14. In the absence of a swept-path analysis to demonstrate otherwise, I consider the space within the site to be insufficient for delivery vehicles to turn around within the site comfortably and safely. These vehicles would need to reverse out of the site and onto Common Lane which is a busy throughfare. This would be hazardous to pedestrians using the footpath and cause a slowing down of and therefore a conflict with traffic moving along Common Lane.
15. The appellant suggests that there would be a minimum of five metres for a vehicle accessing the parking space nearest to the eastern boundary of the site. Five metres would be inadequate and looking at the site plan, with the boundary treatments in place, I cannot see how more space could be afforded to moving vehicles. Access in and out of this space would, therefore, be difficult and would create conflicting vehicle movements.
16. There is no evidence before me to show how refuse collection would be carried out. In light of my findings, I doubt that there would be sufficient space for refuse vehicles to enter and turn around within the site without obstruction. This would exacerbate the conflict found between vehicles and pedestrians and users of Common Lane.
17. Consequently, I conclude that the proposed development would provide inadequate space within the site for the turning of vehicles and inadequate servicing facilities which would lead to a detrimental impact on highway safety. As a result, the development would be contrary to Policies PG3 and TP44 of the Birmingham Development Plan (2017) and the relevant section of the National Planning Policy Framework (2021) which, amongst other matters, seek to

ensure that development is of a high design quality and has no adverse impact on the local highway network or on highway safety and the safety of all its users.

Biodiversity

18. The appellant does not dispute the Council's view that the existing outbuilding has the potential to provide roosting and nesting habitats for bats and birds respectively. With no specific or substantive evidence to suggest otherwise, and having seen the building, I take the same view. Similarly, parties do not dispute the likely impact of the development on protected species.
19. The appellant suggests that this could be covered by a planning condition, should permission be granted. Paragraph 99 of Circular 06/2005 states that "it is essential that the presence or otherwise of a protected species, and the extent to which they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision." It is not appropriate, therefore, to rely on a planning condition to assess the impact of the development in this regard. As such, without mitigation measures in place, the development would be harmful to the local population of protected species.
20. I find, therefore, that the development would have a harmful effect on protected species and as such the proposal would be contrary to policy TP8 of the Birmingham Development Plan (2017) and saved paragraph 3.38 of the Birmingham Unitary Development Plan (2005) which seek to protect and enhance biodiversity and allow development with the appropriate mitigation.

Other matter

21. The development may help tidy up what is currently a derelict site and replace a redundant building. The bungalows would also provide additional housing within a convenient and accessible location. However, these benefits are limited given the modest size of the site and the number of houses proposed and therefore they would not outweigh the harm found to the character and appearance of the area, living conditions, highway safety and biodiversity.

Conclusion

22. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. For the above reasons, the appeal is dismissed.

R Walmsley

INSPECTOR