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# Appeal Decision

Site visit made on 8 March 2022

**by K Stephens BSc (Hons) MTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> April 2022**

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**Appeal Ref: APP/P4605/W/21/3285643**

**100 Somerset Road, Edgbaston, Birmingham B15 2PP**

- 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 & Mrs Sohal against the decision of Birmingham City Council.
  - The application Ref 2021/02819/PA, dated 19 March 2021, was refused by notice dated 23 August 2021.
  - The development proposed is described as 'Demolition of existing dwelling and erection of new 2½ storey residential property with underground parking gym & cinema room.'
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Since determination of the application the Council has adopted its Development Management in Birmingham Development Plan Document (the 'DMinB Plan') on 7 December 2021. This replaces saved paragraphs 3.14, 3.14C and 8.39 – 8.43 of the 2005 Birmingham Unitary Development Plan cited in the Council's decision notice.
3. In November 2021 the Council adopted the Birmingham Parking Supplementary Planning Document (the 'Parking SPD'). This replaces the Car Parking Guidelines 2012 SPD cited in the Council's decision notice.
4. Following clarification, the Council has confirmed that Policy PG8 of the Birmingham Development Plan (the 'BDP'), cited in the fifth refusal reason, is a typographical error and should read Policy TP8.
5. Both parties have had the opportunity to comment on the above. I shall have no regard for the policies and SPDs that have been superseded.

## Main Issues

6. The Council's first and second reasons for refusal both relate to the design of the proposed dwelling and its effect on the character and appearance of the area, so I have combined them to avoid repetition.
7. The main issues are:-
  - i) The effect of the proposed dwelling on the character and appearance of the area;
  - ii) The effect of the proposed development on the living conditions of existing occupiers of 94 Somerset Road (No.94) and 102 Somerset Road

(No.102) with regard to light and outlook;

- iii) Whether sufficient information has been provided regarding the effect of the proposed development on existing trees;
- iv) Whether sufficient information has been provided regarding the effect of the proposed development on protected species, particularly bats and nesting birds, and
- v) Whether the provision of on-site parking would accord with local and national policies for delivering sustainable development.

## **Reasons**

### *Character and appearance*

8. The appeal site comprises a large two-storey detached inter-war period property in spacious grounds in a low-density, leafy and mature residential suburb. The property has hipped roofs, pitched-roof projecting gables, single storey elements and decorative detailing such as black and white timber framing and a timber balcony. The dwellings along this part of Somerset Road are a mix of designs, styles and ages. Houses to the left of the appeal site (when facing) are large and relatively plain 1960/70s dwellings. The appeal property and dwellings to the right (when facing) are older period dwellings with greater design variety. Properties line only one side of this part of Somerset Road and are set back from the road with front gardens and driveways on good sized plots. Whilst period properties predominate in this leafy suburb, the mixture of dwelling designs and styles positively contribute to the overall spacious character and appearance of the area and its sense of place in a mature suburb. I saw that the property would benefit from some general repairs and maintenance but this did not detract from the property's positive contribution to the character and appearance of the area.
9. The proposal would involve the demolition of the existing dwelling and in its place the erection of a new two-and-a-half-storey detached dwelling with accommodation over four floors, including a basement and accommodation in the roof. The basement would provide underground parking for at least 6 vehicles together with a gym and cinema room. The dwelling would continue to be accessed by the two access points off Somerset Road, and the trees and vegetation set in the centre of these two points would remain.
10. The eaves of the proposed dwelling would be similar to those of the neighbouring dwellings, but the plans show the ridge height would be higher and at odds with them, especially as there would be a large unbroken expanse of roof across the property, which is wider than its neighbours. The main footprint of the dwelling would be similar to the existing. However, the projecting bays at the front and rear, each between 4-5 metres deep, would result in a property with an overly deep plan-form front to back, almost twice as deep as the neighbouring properties. In addition, the tall unbroken roof line over this depth together with the dominant symmetrical form would create an unduly large, bulky and massive property that would be out of scale with its neighbouring properties.
11. At the front, the wide full-height pitched-roof projecting gables would project out considerably by about 4 metres and flank a central recessed entrance with

columns and a gable roof feature with apex glazing. These unsuccessfully compete with each other. The fenestration on the front elevation in particular is poorly proportioned, with the first floor windows in the projecting gables shown taller and wider than the ground floor windows. Furthermore, the horizontal array of windows in the recessed entrance bay are at odds with the vertical form of the apex glazing. This has a discordant effect to the overall design and detailing of this elevation and in the street scene, which is compounded by the symmetry.

12. The scale, massing, bulk, height and design would combine to create a dwelling that would loom large and be unduly dominant, unsympathetic and an incongruous addition to the street scene, despite the retention of some of the landscaping to the front, being set-back from the road and there being ample garden to the rear. This would significantly detract from, and harm, the character and appearance of the area. Accordingly it would be contrary to BDP Policies PG3 and TP7. Collectively these seek, amongst other things, to ensure that development responds to the local area context with a strong sense of place and high quality design. It would also be contrary to the Council's 'Places for Living' Supplementary Planning Guidance and 'Mature Suburbs' Supplementary Planning Document. These together provide general design guidance to ensure new development is high quality, respects local context and appears related to the area. Proposals that undermine the positive characteristics of a mature suburb will be resisted.
13. The appellant draws my attention to other examples of large dwellings and architecture in the area, particularly in Barlows Road and Westfield Road. However, none of the examples given have the same context and do not sit next to the same neighbouring properties as the appeal property, such that they are not directly comparable. In any event I must consider the appeal proposal on its own merits. I note the support given by Calthorpe Estate and another resident, but that does not diminish the harm I have identified. I have no reason to believe that the dwelling would not be built to a high standard and specification, but this would not mitigate against the overall inappropriate design and scale of the proposed dwelling.
14. I acknowledge the appellants' desire to update the property and make it more energy-efficient and use modern methods of construction. It may well be the case that a replacement dwelling would be more cost-effective than altering or extending the existing property. There is no objection to the principle of a replacement dwelling and the visual diversity of Somerset Road means there is scope for a dwelling to look different without harming the character or appearance of the area. However, it does not follow that any design is acceptable.

#### *Living conditions*

15. There is no dispute between the parties that parts of the rear of the proposed dwelling would breach the '45 degree code'. The issue therefore is whether the breach would cause unacceptable loss of light or outlook to occupiers of neighbouring properties at Nos.94 and 102.
16. The rear elevation of the existing dwelling already extends beyond the approximate building line of the rears of Nos.94 and 102. The appellants have submitted plan extracts showing the 45-degree angles. However, the dotted lines do not appear to fully correspond with the affected windows I saw on my

visit, particularly for No.102 who had a ground floor habitable room and an outdoor seating area close to the boundary.

17. I am satisfied that the single storey rear projections would not cause any significant reduction in light or outlook for neighbouring occupiers compared to the existing situation with boundary fencing along the shared boundaries.
18. However, there would be a taller bulkier structure overall in close proximity to the shared boundaries and neighbouring habitable rooms, compared to the existing dwelling with its less symmetrical design, single storey components and sloping roofs closer to the boundaries. There would be a change in outlook for existing occupiers and some reduction in light to rooms and areas closest. However, views of the proposed dwelling from neighbouring windows would be oblique. Furthermore, uninterrupted views over their own large gardens in other directions would remain.
19. To conclude, there would be some reduction in outlook but this would not be to an unacceptable degree as to be unduly overbearing, oppressive or enclosing. I am satisfied that light levels would remain adequate overall. Therefore there would not be unacceptable harm to the living conditions of the existing occupiers of Nos.94 and 102.
20. Accordingly, the proposal would not conflict with DMinB Policies DM2 and DM10 which seek collectively, amongst other things, to ensure that development does not result in unacceptable impacts on the amenity of neighbours and that there is adequate outlook and light in line with the 45 degree code. BDP Policy PG3 is a broad policy that relates to 'Place making' and the quality of design and is not directly relevant to the amenity of neighbouring occupiers.

### *Trees*

21. The application form states that there are no trees or hedges on the site. On my site visit I saw this was clearly not the case, as there were a number of mature trees in the front and rear garden as well as hedges around parts of the site boundary. The site is not within a Conservation Area and I have not been advised that any of the trees on the site or in adjacent gardens are protected by Tree Preservation Orders.
22. An Arboricultural Impact Assessment report was not submitted with the application. However, as part of their appeal the appellants have submitted a 'Tree Survey and Arboricultural Impact Assessment'<sup>1</sup> (the 'Tree Survey') and it is clear that some trees would be removed. The Council has not commented.
23. The Tree Survey identifies a group of coniferous trees in the front garden central to the plot adjacent to Somerset Road. These are a prominent street scene feature and would be retained. The development would not affect the tree planted in the pavement outside the property.
24. Two trees adjacent to the southeast corner (T5 and T6) and two trees in the front garden (T3 and T13), would be removed due to their poor health. Trees in the adjacent gardens, and others to be retained on site, would be protected during demolition and construction. This could be secured by condition and require the submission of an Arboricultural Method Statement detailing how the trees would be safeguarded.

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<sup>1</sup> By Westside Forestry Ltd dated September 2021

25. I am satisfied that sufficient information has been submitted regarding the arboricultural implications of the proposed development and that there would not be an unacceptable loss of trees. Accordingly, I find no conflict with BDP Policies PG3 and TP7 and DMinB Policy DM4. Collectively these seek, amongst other things, to ensure new development responds to site conditions and any loss of trees is justified as part of an Arboricultural Impact Assessment. Furthermore, where existing trees and hedgerows are to be retained, provision must be made for their protection during demolition and construction.

#### *Protected species*

26. The planning application was not supported by a Protected Species Survey and Assessment such that the Council could not assess the full impact of the proposed development, including the demolition of the existing property, on protected bats and nesting birds. The appellants have since submitted a Preliminary Ecological Assessment<sup>2</sup> (the 'Ecology Assessment') with their appeal. The Council has not commented.
27. No evidence was found in/on the building of nesting birds and there was no evidence of roosting bats. However, not all the roof voids were able to be inspected. The Ecology Assessment states that the property has a number of potential roosting features, such as cracks and fissures, and therefore advises that a further 3 nocturnal emergence/re-entry surveys need to be undertaken between May and September, including a single dawn survey. Should bats be found, then further surveys will be needed.
28. Bats are a 'European Protected Species' under the Conservation of Habitats and Species Regulations 2017. Paragraph 99 of Circular 06/2005 advises that "It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established *before* [emphasis added] the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances...".
29. The additional surveys required by the appellants' own Ecology Assessment do not appear to have been undertaken and none have been submitted to demonstrate full compliance with relevant statutory protections, that protected species would not be affected, or to demonstrate that appropriate mitigation or safeguarding measures can be put in place. As a result, there is insufficient information for me to be sure that bats would not be adversely affected by the proposed development. Conditions would not be appropriate to deal with this matter.
30. Accordingly, the proposal would be contrary to BDP Policy TP8 which seeks to protect important and protected natural assets, habitats and species. Development which affects them must be fully supported by adequate information to ensure the likely impact of the proposal can be fully assessed.

#### *Parking*

31. The plans show the proposal would create an underground parking area for six cars. I saw the site currently has a double garage and a driveway with two access/egress points on the Somerset Road that crosses in front of the house.

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<sup>2</sup> By Martin Ecology dated 9 September 2021

The appellant describes that the site currently has parking for 4 cars, and that the appellants' other cars are parked on Somerset Road. I saw there were double yellow lines along Somerset Road on the appeal side, but some unrestricted parking on the other side of the road.

32. The supporting text to BDP Policy TP44 explains that the growth in car ownership and use is leading to increased congestion, poor air quality, community severance and more road traffic accidents. The policy seeks, amongst other things, to manage travel demand through a range of measures, including parking, and that new development should support the delivery of a sustainable transport network.
33. Policy DM15 of the recently adopted DMinB seeks to ensure that development promotes sustainable travel, reduces congestion and makes efficient use of land. The supporting text explains that managing parking can play a crucial role and that a flexible approach is needed to prevent excessive car parking provision, alongside measures to promote sustainable transport choices and reduce the reliance on the private car for work and other journeys.
34. The recently adopted Parking SPD is a key tool for managing the demand for private car travel, although it cannot control car ownership per se, and sets out parking standards for different types of development across the city. For single dwellings in Zone A parking is limited to disabled parking only. For dwellings with 3 or more bedrooms in Zones B and C parking is limited to 1.5 spaces and 2 spaces per dwelling respectively. The provision of 6 car parking spaces for the new proposed dwelling clearly exceeds any of these standards.
35. I saw that the site is conveniently located about 200 metres away from a full range of local shops and services on Harborne High Street, which are also accessible on foot or by bicycle. I also saw there were bus stops along Somerset Road in close proximity to the appeal site, and the University of Birmingham train station is about 1 kilometre away. I concur with the appellants that the site is well served by sustainable transport options.
36. I appreciate the family is multi-generational, providing a form of sustainable living, and that the family may already have a high level of car ownership, including expensive cars. However, I do not find this compelling evidence to justify the level of parking provision for a new dwelling contrary to the development plan and the Council's recently adopted parking standards in a convenient and sustainable location.
37. I therefore find the provision of 6 parking spaces to be excessive for a residential dwelling in a location with a choice of transport choices and would not represent sustainable development. Accordingly, it would be contrary to BDP Policy TP44 and DMinB Policy DM15 and it would also be contrary to the Council's parking standards in its Parking SPD, whose aims have been outlined above.
38. The examples of dwellings elsewhere, including where underground or stacked parking may have been allowed, would appear to have been determined before the DMinB Plan and Parking SPD were adopted. Whilst consistency in decision-making is important, all decisions turn on their own particular circumstances based on the facts before the decision-maker at the time.

## **Conclusion**

39. I have found there would be no harm in relation to the modest loss of trees or to the living conditions of existing occupiers of 94 and 102 Somerset Road. However, these are neutral factors in my deliberations. I have found harm to the character and appearance of the area, that there is insufficient information to determine the presence or otherwise of a protected species, and the excessive provision of parking would not represent sustainable development.
40. The proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*K. Stephens*  
INSPECTOR