
Appeal Decision

Site visit made on 24 May 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2022

Appeal Ref: APP/P4605/W/21/3288050

1 The Avenue, Acocks Green, Birmingham B27 6NG

- 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 Corbett against the decision of Birmingham City Council.
 - The application Ref 2021/03640/PA, dated 21 April 2021, was refused by notice dated 12 July 2021.
 - The development proposed is described as 'proposed rear extension at 1st floor to provide 1 bedroom flat'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was submitted, the Council adopted The Birmingham Plan 2031 - Development Management in Birmingham Development Plan Document (DPD) on 7 December 2021. This has replaced The Birmingham Unitary Development Plan cited in the Council's decision notice. This was referred to in the Council's statement of case and I am therefore satisfied that the appellant has had the opportunity to comment on this. I have proceeded to determine the appeal on this basis.
3. The Council refers to plan inaccuracies with particular regard to windows that are not shown on the elevation drawings. On my site visit I observed that an additional window was shown on the existing gable elevation where none currently exists and in some instances the window designs did not correlate with those portrayed. I also noted that windows shown on the proposed first floor plan were not shown on the side elevations. However, I am satisfied that I have sufficient evidence before me to assess the proposal.

Main Issues

4. The main issues are:
 - i) the effect of the proposal on the living conditions of the occupiers of the existing flats and 3 The Avenue, having particular regard to outlook and light;
 - ii) whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to internal living space and external amenity space; and
 - iii) whether the proposal would provide suitable parking arrangements and the effect on the local highway network; and

iv) the effect of the proposal on the character and appearance of the host property and the surrounding area.

Reasons

Living conditions – existing occupiers

5. The appeal site comprises of a semi detached property, containing 5 flats. It is set a short distance behind the pavement and has a modest sized rear garden.
6. The proposal would increase the height of the existing single storey extension to two storey and project a significant distance from the principal rear wall of the building.
7. Policy DM10 of the DPD seeks to ensure that adequate outlook and daylight to dwellings is provided, in line with the approach of the '45 degree code'. This includes potential impacts on existing houses. Details regarding the application of the code are set out in the 45 Degree Code (March 2006).
8. The existing rear facing windows of flats 2 and 4 would lie in close proximity to the proposal. Those immediately adjacent to the proposal are obscure glazed and are likely to be non-habitable, consequently they can be discounted for the purposes of the 45 degree code. However, there are also clear windows that are likely to serve habitable rooms to flats 2 and 4 that would be in very close proximity to it. The proposal would be in breach of the 45 degree code with regards to these windows. The outlook from these rooms would be restricted to a greater degree than currently exists and the amount of sunlight/daylight entering the rooms would be significantly reduced. Consequently, the existing flats would be less pleasant places to spend time in, and accordingly there would be harm to the living conditions of the occupiers through an unacceptable loss of outlook and light.
9. The windows serving habitable rooms at No 3 are a modest distance from the proposal. Therefore, whilst noting that the proposal would be in technical breach of the 45 degree code, with respect to these windows, any infringement would be small. Furthermore, given the orientation of the respective properties the impact on direct sunlight reaching into the rooms would be limited.
10. The appellant asserts that it is not easy to apply the 45 degree code to terraced houses, and there are other extensions of a similar nature that do not comply with it. Whilst acknowledging that that might be the case it does not provide a reason for creating unacceptable living conditions arising from new development.
11. I have also taken into account reference in the Council's Officer report to the potential loss of privacy arising from the provision of windows at first floor level in the side elevation facing No 3. These windows would be of limited size and would serve a bathroom and a landing. The appellant has indicated that a condition could be imposed requiring these windows to be of a fixed opening obscure glazed design. In this regard I find that the approach suggested would address any privacy concerns.
12. I have found that, subject to a condition as set out above, the proposal would not harm the living conditions of the occupiers of No 3 with regards to outlook, light or privacy. That said, the proposal would have an adverse and harmful effect of the proposal on the living conditions of the occupiers of the existing

flats with respect to outlook and light. Consequently, the proposal would be contrary to Policy PG3 of the Birmingham Plan 2031 - Birmingham Development Plan (BDP), Policy DM10 of the DPD, the 45 degree code and the Places for Living Supplementary Planning Guidance (SPG). These policies and guidance, amongst other matters, seek to prevent significant adverse impacts on the amenities of neighbouring occupiers. It would also not accord with the National Planning Policy Framework (the Framework), which amongst other matters, supports developments that promote health and well-being, with a high standard of amenity for existing and future users.

Living conditions – future occupiers

13. Policy DM2 of the DPD requires that, with limited exceptions, all residential development should meet the minimum Nationally Described Space Standards (NDSS).
14. The Planning Statements set out the proposal is for a 1 bed 2 person flat. The drawings also indicate a double bed. The NDSS requirement for a two-person flat is for a minimum of 50 square metres (sqm). The proposal would provide a flat of approximately 37 sqm. Furthermore, the bedroom would measure approximately 9 sqm which would fall below the minimum size of 11.5 sqm for a double bedroom as set out in the NDSS.
15. When judged against the adopted standard, the proposal would fall significantly below the minimum size for a 2 person flat. Furthermore, it has not been demonstrated how the space would accommodate furniture. However, it seems to me that with personal items and furniture in place, occupiers would have limited space for day-to-day activities, such as hanging clothes out to dry, ironing or generally moving around within their home. This would lead to a cramped and unsatisfactory living environment.
16. The appellant asserts that it would not be possible to control how many people living in a dwelling. Whilst acknowledging that that might be the case, I am required to assess the appeal on the basis of the evidence before me.
17. The SPG sets out a minimum requirement of 30 sqm of garden space per unit for flats providing communal amenity space. The appeal site has a modest sized rear garden which is shared between all the units within the building. This falls well below the SPG requirement. The shortfall would increase in the event that an additional flat was provided. That said, a large area of public open space at Westley Vale Millennium Green is accessible within a short walking distance of the appeal site and would provide additional opportunities to enjoy leisure and recreational activity. Overall, I find that the garden would meet typical everyday needs, with room for the occupiers to sit out and hang washing, with the nearby park augmenting this provision. Consequently, in this respect I consider that adequate outdoor amenity space would be available for future occupiers.
18. Whilst adequate outdoor amenity space would be available for future residents the proposal would not provide adequate living conditions with regard to internal space. Therefore, in this respect, the proposal would be contrary to Policy PG3 of the BDP, Policy DM2 of the DPD, the SPG, and the NDSS which, amongst other matters, seek homes that are highly functional, meeting occupiers' typical day to day needs at a given level of occupation. It would also conflict with paragraph 130 of the Framework as referred to above.

Parking and the effect on the highway network

19. The Avenue is a long straight and narrow road. Off street parking that does exist is limited and comprises some forecourt parking, private car parks, and a small number of garages. The appeal site has an open forecourt, but any parking thereon is restricted by its size. Parking restrictions are in force close to the junction of The Avenue with Yardley Road.
20. I observed during my daytime visit vehicles were parked on both sides of the road, often on the pavement. This provided a single track down the centre of the road, resulting in drivers having to give way to motorists travelling in the opposite direction. However, my visit represents only a snapshot in time and traffic conditions are likely to be different at other times of the day
21. I acknowledge that the proposal would involve the provision of one additional unit of accommodation in a highly sustainable location. Furthermore, I recognise that future occupiers may not have access to a vehicle. In the event that future occupiers did have access to a vehicle there would be greater competition for the on-street parking space that is available. This in turn would lead to an increased risk to drivers and pedestrians who seek to navigate the constricted roadscape.
22. Whilst I find that the cumulative impact of one additional dwelling unit would not be severe there would still be an unacceptable impact on highway safety. I therefore conclude that the proposal would not provide suitable parking arrangements and as a result there would be an adverse effect on the local highway network. Consequently, the development would be contrary to Policy PG3 and TP44 of the BDP and the Car Parking Supplementary Planning Document which seeks, amongst other matters, to achieve a balance between the need to place reasonable restrictions on parking supply to discourage car usage, whilst ensuring that this does not result in an overspill of parking activity on the highway. It would also not accord with the paragraph 111 of the Framework which, amongst other matters, seeks to prevent developments if there would be an unacceptable impact on highway safety.

Character and Appearance

23. The appeal site is located within a residential area, comprising a mix of 2 and 2 ½ storey detached and semi-detached dwellings. A modern 3 storey purpose-built block of flats lies opposite the site.
24. The host property, and its immediate neighbours, have Victorian origins, albeit I observed on my site visit that it and a large number of other properties in the locality had been altered, with the addition of modern uPVC windows. Whilst I acknowledge that the majority of the windows had a vertical emphasis, and incorporated horizontal and vertical glazing bars, other designs were evident. Moreover, the windows would be to the rear of the property and not widely visible from the public realm. Therefore, in this regard I find that the new windows proposed would not be out of character with either the host property or the area.
25. I have also taken into account reference in the Council's Officer report to the scale and mass of the proposal. In this regard I find that the resultant development would be of a similar mass and scale to the two storey outrigger, and consequently would not appear at odds with its immediate surroundings.

26. As such, the proposal would not harm the character and appearance of the area. Consequently, it would not be contrary to Policy PG3 of BDP which, amongst other matters, seeks developments that demonstrate high design quality that contribute to a strong sense of place. It would also accord with paragraph 130 of the Framework and the National Design Guidelines which, amongst other matters, support developments that add to the overall quality of the area.

Conclusion

27. I have found no conflict with the development plan with regards to the impact of the proposal on the character and appearance of the area. However, this is a neutral matter and does not outweigh the harm that I have found with regard to the living conditions of existing and future occupiers, and highway safety.

28. There are no other relevant material considerations worthy of sufficient weight that indicate the application should be determined other than in accordance with the development plan as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

John Gunn

INSPECTOR