



Appeal Decision

Site visit made on 14 June 2022

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2022

Appeal Ref: APP/P4605/W/22/3290551

Land adjacent 39 Fastmoor Oval, Kitt's Green, Birmingham B33 0NR

- 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 Zahrah Property Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/06998/PA, dated 4 August 2021, was refused by notice dated 7 October 2021.
 - The development proposed is construction of 2 two storey 3 bedroom semi-detached houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Development Management in Birmingham Development Plan Document (DPD) was adopted following the Council's decision on this proposal. The DPD replaces policies of the Birmingham Unitary Development Plan (UPD). The Council has identified policies of the DPD that it considers to be relevant to this proposal, and the appellant has had an opportunity to comment. I have determined the appeal with regard to the adopted development plan.
3. My attention has been drawn to a plan that was not submitted as part of the planning application. The drawing is limited to the proposed ground and first floor plans. The layout is the same as that which formed the basis of the planning application. However, the measurement of bedrooms 2 and 3 of both proposed dwellings differ, but I see nothing which makes me doubt that this amendment rectifies a previous error. I have considered this plan under the principles established by the Courts in *Wheatcroft*.¹ and find given the circumstances outlined that to consider the plan as part of this appeal would not deprive anyone the right to be consulted in this case.
4. The Design and Access Statement shows the evolution of the proposal from one dwelling to that of two. For avoidance of doubt this decision is limited to the proposed development described above.

Main Issues

5. There are three main issues. These are the effect of the proposal on a) the character and appearance of the area; b) pedestrian access with specific regard to safety and convenience; and c) whether the proposal would provide

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]

satisfactory living conditions for future occupants of the proposed dwellings, with specific regard to bedroom and private garden space.

Reasons

Character and Appearance

6. The appeal site is a small open space between dwellings lining this section of the road. It appears an original feature that is integral to the layout of Greenway Walk and contributes to a pleasant sense of openness along with the central green. It also allows for a visual connection with the wider street scene.
7. Whilst there is a large open space at the edge of the estate, development surrounding the site is tight grained. The appeal site therefore appears an exception in the area, and its existing undeveloped space provides contrast with the built form. In this regard it is a distinct feature that contributes in a positive way to the appearance of the area.
8. The proposed dwellings would match the existing building line and grain of development. Their mass, form and appearance would be similar to that of surrounding dwellings. Materials would also match neighbouring properties.
9. However, the proposal would infill the existing space. In doing so, it would alter the layout of Greenway Walk to a square like configuration. Properties in the Walk would be substantially enclosed, and they would lose the existing visual link to the surrounding street. Moreover, the existing sense of openness and space would be considerably eroded. In turn, the fundamental change to the existing layout of development and resultant loss of a distinct positive feature would harm the character and appearance of the area. It would therefore be contrary to Policies PG3 and TP27 of the Birmingham Development Plan (Development Plan) and Policy DM2 of the DPD, which collectively require, amongst other matters, that all new development will be expected to demonstrate high design quality contributing to a strong sense of place, and appropriate to its location.
10. It would also be inconsistent with design policies of the National Planning Policy Framework (the Framework) and guidance set out in the National Design Guidance, Places for Living Supplementary Planning Guidance (SPG) and the Places for All SPG in so far as it would fail to exploit and strengthen the characteristics that make an estate special.

Pedestrian Access

11. The Council contends that the pathway has been a Public Right of Way (PROW) for many decades. It is not uncommon for PROWs to cross private land and any dispute regarding the legality of a PROW is a matter that is outside the scope of this appeal. This aside, at the time of the site visit I saw an established and well-maintained pathway, laid in tarmac and with street signs denoting Greenway Walk. There appeared nothing to restrict pedestrian access across it, and I see nothing before me to suggest the pathway would alter unless I were to allow this appeal.
12. This wide pathway provides a pleasant and relatively open through route for pedestrians accessing the open space at the edge of the estate. More importantly it is a direct and, with the exception of low metal bars fronting the verges, relatively unimpeded pedestrian access from the front of dwellings on

Greenway Walk to the highway. This is significant in so much as I observed that Nos 2 – 8 have no direct rear access to the highway, and Nos 1 – 9 can only be accessed at the rear via an extremely narrow unmade alleyway.

13. The other paths to the south of Greenway Walk either narrow near the front of the dwellings or are wide but with an angle. They provide significantly less direct and convenient pedestrian access than that at the appeal site for these reasons, particularly for individuals with disabilities, parents with prams or those making deliveries needing to access properties in Greenway Walk.
14. The proposal would retain a direct pedestrian route to property fronts on Greenway Walk. However, the width of the path would be less than half of the existing pathway, and this would make it significantly less accessible for wheelchair users and people with prams. The narrow width would also restrict the scope for large items to be conveyed through this route and this would make it extremely difficult to deliver such items to properties on Greenway Walk that do not have rear access. The proposed footpath would be considerably less convenient and accessible than the existing path for these reasons.
15. The resultant narrow alley with high fences would give pedestrians a greater sense of enclosure than the existing path and consequently it would be substantially less pleasant to use. However, it would be flanked by houses and gardens in this well-lit area, and this combined with its relatively short length would ensure that pedestrians would feel safe when using it.
16. Although I have not found harm in respect to safety, the proposal would have a detrimental effect on the pedestrian access with regard convenience. It would in this manner conflict with Policies PG3 and TP39 of the Development Plan and Policies DM2 and DM14 of the DPD, which collectively promote the provision of safe and pleasant walking environments throughout Birmingham, and amongst other matters, require that development must ensure that safe, convenient and appropriate access arrangements are in place for all users.
17. It would also be inconsistent with the policies of the Framework which seek opportunities for walking and requires policies that provide for attractive and well-designed walking and cycling networks, and guidance of the Places for Living SPG and the Places for All SPG which advises that places should be linked up by short direct public routes overlooked by frontages.

Living Conditions

18. The Technical Housing Standards – Nationally Described Space Standards requirements in respect to one bedspace is noted. However, the proposed dwellings would be 3 bedrooms with 4 persons bed spaces. Both dwellings would have a gross internal floor area which exceeds that required by these Standards. Moreover, the original drawings show that the single bedrooms at both properties could comfortably accommodate a single bed as well as some storage space. In any event, the revised drawing shows the Standards in respect to one bedspace would be met, and nothing before me leads me to doubt this. The dwellings would therefore provide adequate internal space to ensure satisfactory living conditions for future occupants.
19. The small private garden spaces would be proportionate to the size of the proposed small dwellings and would be of a similar size to rear gardens at the

neighbouring properties. The garden space at the eastern plot would satisfy the size advised in the SPG. Although part of this would be a narrow strip to the side of the dwelling most of the space would be to the rear. As such, the space would be of a size and shape which could accommodate a seating area, play equipment, washing line etc. and still have space for other family outdoor activities. The garden space at the western plot would be slightly smaller and just short of that advised in guidance. But its proposed regular shape and size, which would not be dissimilar to that at the eastern plot, would also be capable of accommodating these activities.

20. The proposal would therefore provide satisfactory living conditions for future occupants of the proposed dwellings, with regard adequate bedroom and private garden space. It would be consistent with Policies PG3 and TP27 of the Development Plan and Policies DM2 and DM10 of the DPD which collectively require, amongst other matters, that all residential development will be required to meet the minimum Nationally Described Space Standards and must provide sufficient private useable outdoor amenity space appropriate to the scale, function and character of the development.
21. It would also be consistent with policies of the Framework which seek a high standard of amenity for existing and future users, and guidance in the Places for Living SPG on this matter.

Other Matters

22. The Council is unable to demonstrate a 5 year supply of land for housing and Paragraph 11 of the Framework is therefore triggered. In this case, the most important policies are deemed to be out of date, and I am led to granting a planning permission unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
23. The proposal would result in two modest family dwellings which would contribute to the Government's objective of significantly boosting the supply of homes and would make a positive albeit small contribution to the housing supply and mix in the area. There would also be a financial benefit with regards Community Infrastructure Levy charges, but this would be small given the scale of the development.
24. The appeal site is well related to a range of services and the Framework provides support for development on windfall sites and for using suitable sites within existing settlements. Whilst its policies promote an effective use of land in meeting the need for homes, this is while safeguarding and improving the environment. With regards the efficient use of land, the Framework policies require account is taken of the desirability of maintaining an area's prevailing character. The Framework also states that good design is a key aspect of sustainable development and as outlined above I have identified harm in respect to this matter. The appeal site in this case would not be suitable for this reason.
25. Although I have not found harm in respect to future occupants living conditions and there would not be harm to the living conditions of neighbours, this should be expected in all development and are neutral factors. The harms I have found to the character and appearance of the area and pedestrian access, would lead to conflict with policies of the Framework to which I subscribe

substantial weight. With this and the above in mind, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against policies of the Framework when taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.

26. I note the appellant's comments regarding preapplication advice. However, the Council is not obligated by this advice and its reasons for refusing planning permission have been substantiated by policy.
27. Reference has been made to policies of the development plan concerning matters that are not in dispute. I have not been provided with a copy of Secured by Design, so this has not been a determinative matter. Regardless, I have found that this proposal would conflict with the development plan when read as a whole for the reasons outlined above.

Conclusion

28. The appeal scheme would conflict with the development plan. Material considerations, including the Framework, indicate the proposal should be determined in accordance with it. For this reason, the appeal is dismissed.

A J Sutton

INSPECTOR