



Appeal Decision

Site visit made on 01 June 2022

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2022

Appeal Ref: APP/P4605/D/22/3297283

16 The Russells, Moseley, Birmingham B13 8RT

- 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 Mohammed Akbar against the decision of Birmingham City Council
 - The application Ref 2021/01209/PA, dated 10 February 2021, was refused by notice dated 02 February 2022.
 - The development proposed is 'Retrospective planning application for erection of a single storey rear extension and installation of dormer window to rear'.
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Decision

1. The appeal is allowed and planning permission is granted for a 'retrospective planning application for erection of a single storey rear extension and installation of dormer window to rear' at 16 The Russells, Moseley, Birmingham B13 8RT in accordance with the terms of the application, Ref 2021/01209/PA, dated 10 February 2021.

Preliminary Matters

2. The description of development on the application form was amended following submission of the application. The new description better reflects the development proposed. As such, I have referred to the amended description for the purposes of this appeal.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the appeal site and its surroundings; and,
 - The effect of the proposal on the living conditions of occupiers of neighbouring properties, particularly no.18 The Russells.

Reasons

Character of the area

4. The appeal site is a detached house within The Russells, which is a residential cul-de-sac within the Moseley area of Birmingham. The site lies outside of the Moseley Conservation Area. Dwellings with The Russells are varied in design, although the dwellings commonly fill the width of their plot, creating the

appearance of a tight grain. Despite the tight grain, the dwellings within The Russells are substantial in scale and they benefit from front gardens, which, combined with established landscaping and its being bounded to the rear by the sylvan Cannon Hill Park, creates an attractive street scene. Several of the dwellings have been extended and various forms of extension are visible within the street scene. Most notably, a prominently situated dwelling at the end of the road is extended to the front, rear and side as well as above the roof slope with an additional flat roofed storey in a modern style. The appeal site is situated at the end of the cul-de-sac and it is screened by the orientation of a dwelling in front of it, which greatly reduces its prominence in the street scene.

5. The works for the appeal scheme appeared complete at the time of my visit and I was therefore able to view the development in situ. These are a single storey rear extension and a dormer window to the rear roof slope.
6. Given the siting of the appeal site at the end of the cul-de-sac, the dormer is not widely visible from within the street scene, but as the host dwelling is sited slightly forward of the adjacent dwelling, no. 18, it is possible to glimpse the side elevation of the dormer from the very end of the street. The box style dormer appears proportionate in scale to the dwelling as a whole and it respects the proportions of the existing roof slope. It is not out of keeping with the host dwelling and is not an incongruous feature within the street scene given the built context of The Russells.
7. The rear extension is not visible from the street scene, or even particularly from within the front of the site itself, due to the width of the dwellings and tight arrangement. The host dwelling was a large, spacious dwelling with a very generous sized plot; as such it had capacity for extension and it is not dominated by the scale, design or siting of the extension and dormer.
8. For these reasons, the appeal scheme accords with Policy PG3 of the Birmingham Development Plan (BDP), adopted in 2017, policy DM2 of the Development Management in Birmingham Development Plan Document (DPD), adopted in 2021, guidance within related Supplementary Planning Documents, and The Framework. These seek, amongst other things, development of a high-quality design which responds to the local context.

Living conditions

9. The host dwelling is situated forward of the neighbouring dwelling, no. 18, and as such, the rear walls of the properties are not aligned. The full depth of the rear extension therefore does not project as far beyond the rear wall of the neighbouring dwelling, which is extended to the rear in any case. There is, however, a notable difference in ground level between the appeal site and no. 18. The appeal site is at the higher point. As such, there is some sensitivity in the relationship between the sites in respect of rear extension. However, the limited depth and limited height of the extension, combined with the flat roof and gap with the no.18 prevents any sense of overbearing of no.18, especially given the existing arrangement with boundary fences.
10. Similarly, whilst there are windows in the flank elevation of the rear extension, these face directly towards the existing boundary fencing and provide little opportunity for additional overlooking resulting in loss of privacy for no. 18. Indeed, the rear extension at no.18 is a conservatory, which is set away from

the boundary, and it has a similar side-facing arrangement. As such, any overlooking would be mutual and existing.

11. The rear gardens of both properties are very deep and are bounded by Cannon Hill Park, providing them with an extensive open outlook, which is unaffected by the appeal proposal due to its siting behind an existing boundary fence.
12. The Council considers that since the rear extension breaches a 45 degree line from the centre of the nearest window on the rear of no. 18, that it must result in significant loss of light into that property and an overbearing effect. The 45 degree line is referred to in the Council's Supplementary Planning Guidance relating to house extensions. Whilst a 45 degree line can provide a helpful guidance, the individual circumstances of the buildings and their arrangement should be taken into account. Due to the orientation of the respective properties and the existing spatial arrangement, the appeal scheme is unlikely to result in any significant overshadowing of no. 18; indeed there was no evidence of any overshadowing during my visit. Moreover, no.18 benefits from the very open outlook and sense of space, affording it plenty of light and avoiding any undue sense of enclosure.
13. For these reasons, the appeal scheme does not result in an unacceptable adverse impact on the living conditions of occupiers of neighbouring properties, and therefore it complies with policies PG2 and TP27 of the BDP and policy DM2 of the DPD, and the Framework. These policies seek, amongst other things, development which respect the amenity of neighbouring occupiers.

Other Considerations

14. There were extensive third-party comments in respect of the scheme being retrospective. A previous similar scheme was refused planning permission, whilst a scheme which had approximately 2 metres less depth had been approved. As such, the third parties suggested that the actions of the Appellant in moving forward with the appeal scheme was a deliberate ploy to subvert the planning process and previous decisions of the Council. Whilst it is regrettable that the appeal scheme is retrospective, the submission of a planning application and, if necessary, subsequent appeal is a route to regularise a breach of planning control. The retrospective nature of the appeal has meant that I have been able to assess the scheme in situ.
15. The extant planning permission for a rear extension at the site is a relevant consideration to the appeal, however, since the scheme would be smaller in scale than the appeal scheme the previously approved scheme would not constitute a comparable 'fallback position' to justify the appeal scheme. Nonetheless, I have found that the appeal scheme is acceptable in its own right and thus the previous approval is not necessary to justify it.
16. Third parties have also raised concerns around a potential boundary issue or land-grab in relation to the adjacent park, however, this is a private matter not governed by planning control.

Conditions

17. The Council have requested a total of three conditions; that the development should commence within three years, that the materials used in the construction shall match those used in the existing building and that the development is carried out in accordance with the approved plans. However, I

consider these conditions to be unnecessary since the development has already taken place in accordance with the plans and the external facing materials do match those in the host dwelling.

Conclusions

18. For the reasons given above, the appeal scheme complies with the relevant policies of the development plan, and no material considerations indicate that the scheme should be determined other than in accordance with the plan. The appeal is accordingly allowed.

Kim Langford Tejrar

INSPECTOR