
Appeal Decision

Site visit made on 19 July 2022

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/P4605/W/22/3292538

Builders Yard, Tresham Road, Kingstanding, Birmingham B44 9UB

- 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 Stephen Mountford of Mountford Builders, against the decision of Birmingham City Council.
 - The application Ref 2021/07846/PA, dated 7 September 2021, was refused by notice dated 13 December 2021.
 - The development proposed is described as the “construction of a single dwelling”.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council’s first reason for refusal refers to Policy DM3 of the Development Management in Birmingham Development Plan Document (DPD) which relates to land contamination, hazardous substances, and instability. However, on my reading, the reason for refusal appears to be concerned with design and its acceptability. Given the matters raised by Policy DM3 of the DPD are not a matter of contention for the Council, I do not see that, by definition, the appeal scheme would conflict with it. This policy is not therefore relevant to the main issues.

Main Issues

3. The main issues are the effect of the proposed development on (a) the living conditions of both the future occupiers of the proposed dwelling and of the occupiers of No. 5 Tresham Road; and (b) the character and appearance of the area.

Reasons

Living Conditions

4. The appeal site is located adjacent to a children’s day nursery, with the nursery’s outdoor play area bordering the shared boundary. Multiple windows within the side elevation of the nursery directly overlook the appeal site, and at the time of my site visit, these windows were open and the noise from within the nursery was audible from within the appeal site. Policy DM2 of the DPD states that noise pollution will be considered in assessing whether a development would result in unacceptable impacts on the living conditions of occupiers.

5. The Council's Environmental Pollution Control team raised concern regarding the proximity of the proposed dwelling to the children's play area attached to the nursery and recommended a noise assessment be submitted to suggest potential mitigation. There is therefore clear justification for a noise assessment to be submitted to ensure the development is acceptable in planning terms. The appellant has not submitted a noise assessment and therefore I am unable to ascertain whether the noise associated with the adjacent children's day nursery could be adequately mitigated against to ensure that the living conditions of the future occupiers of the proposed dwelling would not be harmed.
6. No 5 Tresham Road is located adjacent to the appeal site, separated by an access track. It has been extended to the side and rear with piecemeal single storey extensions, one of which contains a kitchen. The kitchen has one window that is obscure glazed, with two panes being side hung and opening. The window abuts the access track and would directly face the side gable of the proposed dwelling. Appendix A of the Places for Living Supplementary Planning Guidance (SPG) provides numerical standards that developments should meet in terms of separation distances. Both parties note that the separation distance between the kitchen window and the proposed dwelling would be below the numerical standard stated within the SPG. However, the supporting text states that these standards are a "useful starting point", provide "a rough rule of thumb", and "careful design rather than a blanket application of numerical standards can often address concerns such as privacy and amenity".
7. The proposed dwelling would be sited to the east of the No 5's kitchen window and would be two-storeys in height and in close proximity. It can therefore be assumed that there would be some loss of light to this window from the siting of the proposed dwelling. However, from the information before me, the kitchen appears to be a small room that would be used as a functional kitchen rather than a social space, particularly due to its lack of outlook, with larger rooms available for socialising elsewhere within the property. Therefore, the proposed development's effect on the loss of light to No 5's kitchen would not be so severe as to be significantly diminished.
8. I do not find harm to the living conditions of the occupiers of No 5 Tresham Road from a loss of light, for the reasons detailed above. However, I cannot conclude that the future occupiers of the proposed dwelling would not be adversely harmed by noise arising from the adjacent children's day nursery, particularly the outdoor play area, or that such noise pollution could be adequately mitigated against. In this respect, the appeal proposal would fail to comply with Policy DM2 of the DPD which seeks to protect occupiers of properties from noise pollution.

Character and Appearance

9. This section of Tresham Road, between the junction of the B4138 and Atlantic Road, comprises three pairs of semi-detached properties on the same side as the appeal site and one pair of semi-detached properties opposite. However, the character of Tresham Road is not limited to these semi-detached properties. In addition, the road's junction with the B4138 is occupied by a two-storey terrace to each side that wraps around both corners onto Tresham Road. Commercial units mainly occupy the ground floor of these terraces. A two-storey extension has been erected to the end of one terrace that is used as

living accommodation. The appeal site comprises a storage area for a building contractor that is surrounded by a boundary fence/concrete panels that screen the site from the street scene. Access tracks, leading to the garages and rear entrances of the two terraces fronting onto the B4138 are adjacent to No 5 and 6 Tresham Road, and the rear and side gardens of the properties located on the corners of Tresham Road and Atlantic Road extend along Tresham Road. The character of the street scene is therefore mixed and there is no uniformity in the buildings' designs, other than being two-storeys in height with a hipped roof.

10. The proposed dwelling would be sited a similar distance from the pavement as No 5 Tresham Road, maintaining a similar building line. It would abut the access track to the side in a similar way to No 5, and it would comprise a two-storey dwelling constructed of materials that would be comparable to the existing buildings. Whilst it would be detached, due to the mixed character of the road, it would not result in an uncharacteristic feature that departs from the existing appearance of the street scene. Furthermore, the gaps between the existing buildings vary, with some having been infilled with extensions, some separated by access tracks, and some separated by the gardens of those properties fronting onto Atlantic Road. Therefore, I do not agree with the Council that there is a consistent size and spatial distribution between the existing two-storey semi-detached dwellings. The siting of the proposed dwelling behind the back edge of the pavement and adjacent to No 5, would ensure that it would be viewed in the context of the existing buildings and would not appear isolated.
11. I therefore do not find harm to the character or appearance of the surrounding area. The appeal scheme would comply with, in respect of the second main issue, Policy PG3 of the Birmingham Development Plan Planning for Sustainable Growth, Policy PG3 of the DPD, the SPG and the Places for All Supplementary Planning Document, which amongst other things, require developments to respond to site conditions and the local area context.

Other Matters

12. The Council has outlined there are discrepancies with the submitted drawings. On my reading, I note that the red line depicting the appeal site differs on the Site Location Plan and the Block Plan, both of which also differ to the site area shown on the Proposed Ground Floor Plan. I also note that the proposed dwelling has not been depicted on the Block Plan. However, these matters have not prevented me from forming a view on the main issues.
13. I am mindful that the Council failed to ask the appellant to submit amended plans or a noise assessment prior to the determination of the planning application. However, this is an administrative matter which the appellant should take up directly with the Council.

Conclusion

14. I have found for the appellant regarding the second main issue and in respect of the effect of the proposed development on the living conditions of the occupiers of No 5 Tresham Road. However, a lack of harm in these aspects, would not be sufficient to outweigh my findings and subsequent conflict with the development plan in respect of the effect of the proposed development on future occupiers from potential noise pollution. Whilst the development would

provide a new dwelling and would generate some economic benefits during the construction phase, that does not alter my view that the appeal should be dismissed.

A Berry

INSPECTOR