



Appeal Decision

Site visit made on 3 May 2022 by G Sibley MPLAN MRTPI

Decision by R Sabu BA(Hons) MA BArch PgDip ARB RIBA

an Inspector appointed by the Secretary of State

Decision date: 7 October 2022

Appeal Ref: APP/P4605/D/22/3294472

170 Albert Road, Stechford and Yardley North, Birmingham B33 8UE

- 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 Akhtar Ayaz against the decision of Birmingham City Council.
 - The application Ref 2022/00124/PA, dated 9 December 2021, was refused by notice dated 7 March 2022.
 - The development proposed is described as, 'rear extension (with side return). The proposal is to widen the living space as it is currently too narrow and to optimise the spatial layout'.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issues

3. The main issues are:
 - the effect of the proposal on the living conditions of the occupiers of No 168 Albert Road (No 168) with regard to outlook and light;
 - the effect of the proposal on the character and appearance of the host dwelling; and
 - whether the personal circumstances of the appellant would outweigh any harm in respect of the proposed development.

Reasons for the Recommendation

Living conditions

4. No 170 Albert Road (No 170) is a semi-detached property with a part two-storey, part single storey rear outrigger and No 168 is a similarly designed dwelling without the single storey outrigger. The two properties are physically connected and share an alleyway between the dwellings. There is a window in the rear wall of No 168 as well as a window on the flank wall of the rear outrigger that faces No 170. The proposal would infill the gap between the outrigger and the shared boundary.

5. The Council's guidance "The 45° Code" (March 2006) seeks to ensure that single storey rear extensions are designed so as to not breach a line drawn at 45 degrees from the mid-point of the nearest ground floor window to a habitable room, in the interests of the outlook and daylight of the neighbouring occupiers. The Council considers that the proposed single storey extension is in breach of this 45-degree line in respect of the nearest habitable room at No 168 and the appellant does not dispute this. From the evidence before me I see no reason to disagree.
6. While I note the age of the guidance document, its objectives are in accordance with the National Planning Policy Framework 2021 (the Framework) which seeks, among other things, a high standard of amenity for existing and future users. I therefore attach significant weight to the conflict with this guidance.
7. No 168 has a bedroom window in the rear elevation at ground floor level and a kitchen window in the outrigger facing towards No 170. The outriggers of Nos 168 and 170 restrict the outlook from these windows to some degree and limit daylight and sunlight reaching them.
8. The extension would be much taller than the existing shared boundary wall and project a significant distance into the rear garden. Therefore, the proposal would further enclose the outlook from both the bedroom window and the kitchen window, despite proposing a flat roof. Therefore, the proposal would create a harmful sense of enclosure and oppressive living conditions for the occupiers of No 168.
9. The top of the flank wall of the proposed extension would be a similar height as the kitchen window and would be built very close to it. Since this window would face the proposed extension, this would lead to a detrimental loss of daylight that could reach this room compared to the amount the room currently receives, and this would create an unpleasant and unusable space for the occupiers of No 168.
10. When viewed from the rear bedroom window the proposal would extend towards the shared boundary. Given that the window is orientated perpendicular to the shared fence, the proposal would only lead to a limited loss of daylight and sunlight compared to the level of light the bedroom currently receives. Consequently, this would not result in a harmful loss of daylight or sunlight to this particular room.
11. Whilst the existing two-storey outrigger and single storey rear extension may already breach the 45-degree code, this would not justify an extension that would worsen the living conditions of the neighbouring occupants.
12. Consequently, the proposal would harm the living conditions of the occupiers of No 168 with regard to both outlook and light. Therefore, it would conflict with Policies DM2 and DM10 of the Development Management in Birmingham Development Plan Document December 2021 (DMB) and Policy PG3 of the Birmingham Development Plan Adopted January 2017 (BDP) as well as the Places for Living Supplementary Planning Guidance March 2001 (SPG) and the Extending your Home Supplementary Planning Document March 2007 (SPD). These policies and supporting documents/guidance seek as a whole to ensure development will not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. Moreover, the proposal would not accord with paragraph 130 f) of the Framework insofar as it states that developments should create places with a high standard of amenity for existing and future users.

Character and appearance

13. The dwellings on Albert Road are predominately traditional terrace properties with long rear gardens and a run of similar dwellings lie to the rear of these houses. No 170 has a two-storey rear outrigger, and a single storey extension with a pitched roof that extends out beyond this element. The surrounding houses are similar in form and style. Therefore, despite the variety of materials and finishes, the area to the rear of the terrace has a pleasant, traditional and spacious character.
14. The proposed extension would be built between the existing rear additions and the boundary with No 168 and would extend beyond the existing single storey extension and wrap around it.
15. The combined rear extensions would be the same width as the house itself and would extend significantly beyond the rear wall of the main dwelling. Whilst this would be a single storey extension with a flat roof, given the significant depth of the combined extensions to the rear, the proposal would not appear as a subordinate addition. Therefore, the proposal would appear overly large compared with the host building and would unacceptably diminish the spacious character of the area. The use of similar materials in the construction of the extension would relate well with the house but this would not overcome this harm.
16. Furthermore, while I note the evidence regarding uniformity and floor levels, given the significant depth of the proposed flat roof, it would appear incongruous alongside the pitched roof over the existing rear extension and the gable roof of the house itself.
17. The proposal would be mostly screened by the existing outrigger to the occupiers of the houses to the south of No 170 and would be screened from most public viewpoints. However, the proposed extension and the resultant harm to the character of the area would be visible to the occupants of the other houses around the site.
18. Consequently, the proposal would harm the character and appearance of the host dwelling. Therefore, it would conflict with BDP Policy PG3 as well as the SPD. This policy and supporting document seek to ensure that extensions are in keeping with the style, character and appearance of the home as well as ensuring design responds to site conditions and local area context. Moreover, the proposal would not accord with the general design policies of the Framework.
19. The Council has quoted DMB Policy DM2 in the refusal reason, but this policy is concerned with amenity and is not directly relevant to this main issue.

Personal circumstances

20. I note the evidence regarding the personal circumstances of the occupiers of the property. These include the mobility and wellbeing of the occupiers, requirement for additional space, provision of a ramp and the adaptability of the living area on the ground floor of the building.
21. I have had due regard to the Human Rights Act 1998 (HRA) and the Public Sector Equality Duty (PSED) under the Equality Act 2010. Disability is a relevant protected characteristic to which the PSED applies. Article 8 of the HRA requires

that decisions ensure respect for private and family life, their home and their correspondence. In reaching my decision, I have had regard to these interests.

22. However, there is little substantiated medical evidence before me nor any consideration of alternative proposals that would avoid or mitigate the harm to the living conditions of neighbouring occupiers and the character and appearance of the area. Therefore, there has not been a demonstration that dismissing the appeal would result in an interference of the rights of the occupiers. In addition, while the proposal would result in some benefit to the personal circumstances of the occupiers, given the lack of detailed evidence in this respect, I can only attribute limited weight to this matter in favour of the proposal.
23. Given the considerable harm to the living conditions of neighbouring occupiers and character and appearance of the area that would result from the proposal, I afford the conflict with the relevant policies in the development plan and Framework significant weight.
24. Consequently, the limited weight attributed to the personal circumstances of the appellant do not outweigh the significant weight attached to the harm to the living conditions of neighbouring occupiers and the character and appearance of the area that would result from the proposal.

Other Matter

25. I note the evidence regarding permitted development. However, other than a diagrammatic layout, there is little detailed information before me in this respect. In any event, given the significant depth and width of the proposal, it would be likely to result in a greater degree of harm to the living conditions of neighbouring occupiers and the character and appearance of the area than the layout suggested by the Appellant. As such, this matter has not altered my overall decision.

Conclusion and Recommendation

26. I have had regard to the appellant's personal circumstances and the impact on them of my recommendation. However, for the reasons given above, the material considerations in this case do not outweigh the harm the proposal would cause to the living conditions of the neighbouring occupants as well as the character and appearance of the dwelling, and therefore do not justify granting planning permission for development that conflicts with the development plan as a whole. Therefore, having had regard to all other matters raised, I recommend that the appeal should be dismissed.

G Sibley

APPEAL PLANNING

Inspector's Decision

27. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

R Sabu

INSPECTOR