



Appeal Decision

Site visit made on 18 October 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/P4605/W/22/3297028

84 Wentworth Road, Harborne, Birmingham B17 9SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Amjad Ellahi against the decision of Birmingham City Council.
- The application Ref 2021/02587/PA, dated 22 March 2021, was approved on 25 November 2021 and planning permission was granted subject to conditions.
- The development permitted is for part demolition of existing single storey rear extension and erection of single storey side and rear extensions, single storey front and porch extensions and single storey detached outbuilding to rear.
- Condition 3 in dispute states: *Samples of the materials to be used in the construction of the external surfaces of the extension(s)/building(s)/dwelling(s)/development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to their use. The development shall be implemented in accordance with approved details.*
- The reason given for condition 3 is: *In order to secure the satisfactory development and of the application site in accordance with Policy PG3 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*
- Condition 6 in dispute states: *Within 1 metre of the furthest extent of the canopy of any tree or group of trees to be retained the site or adjoining land there shall be: no concrete mixing, storage of oil, cement, bitumen or chemicals, no trenches or pipe runs for services or drains and no alteration of surfaces or ground levels. These measures shall apply for the duration of the construction phase and until all equipment, machinery and surplus materials have been removed from the site.*
- The reason for condition 6: *In order to secure the satisfactory development and of the application site in accordance with Policies PG3 and TP7 of the Birmingham Development Plan 2017 and the National Planning Policy Framework.*

Decision

1. The appeal is dismissed insofar as it relates to Condition 3.
2. The appeal is allowed insofar as it relates to Condition 6 and planning permission Ref 2021/02587/PA for part demolition of existing single storey rear extension and erection of single storey side and rear extensions, single storey front and porch extensions and single storey detached outbuilding to rear, at 84 Wentworth Road, Harborne, Birmingham B17 9SY, by Birmingham City Council, is varied by deleting Condition 6 and substituting it with the following condition:

Condition 6. Within 1 metre of the furthest extent of the canopy of any tree or group of trees to be retained on site or adjoining land there shall be no concrete mixing, or storage of oil, cement, bitumen or chemicals. These measures shall apply for the duration of the construction of the development

and until all equipment, machinery and surplus materials have been removed from the site.

Preliminary Matters

3. Copies of the approved plans for the above development were submitted at my request, to help me better understand the implications of varying or removing the said conditions.
4. The parties were invited to comment on my suggested revision of Condition 6. I have taken the responses into account in my deliberations.

Background and Main Issues

5. A number of planning permissions have been granted for various extensions at the property. I saw that a two-storey side extension (hereafter referred to as the 'annexe building') has been built and the rear extension is partly built. I understand that the previous permissions had conditions requiring external materials to match the existing property.
6. As part of the latest planning permission, whose conditions are the subject of this appeal, the partly built rear extension would be demolished and a new single storey rear extension built. The approved development would also see a single storey mono-pitched roof extension added onto the front of the annexe building to enlarge the garage. A dual pitched porch would also be added over the front door of the main house.
7. The appellant is keen for materials to match the dwelling, but wants the flexibility to change his mind, for example if there is a good deal or issues with product availability, without having to go back to the Council and encounter any time delays that may occur as a result. He therefore requests that the materials Condition 3 is varied so that samples do not need to be submitted to the Council for its approval, but instead that materials need only "match those in the existing building" as was the case on previous permissions.
8. There is a mature tree growing fairly centrally in the back garden and other smaller trees. The Council's Tree Officer raised no objection to the proposed extensions and outbuilding subject to the tree protection Condition 6 that was imposed. The appellant needs to get drainage and water to the outbuilding as it is intended as a swimming/therapy room and the ground would need to be excavated out due to ground level differences. He considers the conditions and the extent of the tree protection zones will restrict the construction of the outbuilding at the bottom of the garden. The appellant therefore wants tree protection Condition 6 removed.
9. In light of the above, the main issues are:
 - Whether Condition 3 is necessary and reasonable for the character and appearance of the property and the area, having regard to the setting of the nearby Moor Pool Conservation Area, and
 - Whether Condition 6 is necessary and reasonable with regard to the amenity of the area.

Reasons

Condition 3 – samples of materials

10. The appeal property is a semi-detached dwelling in a predominately residential area with houses of different styles, designs and ages, although many are period properties. The site is located close to the Moor Pool Conservation Area (the CA), which predominantly extends to the north of Wentworth Road, apart from four properties that front Wentworth Road opposite the appeal property. I saw that the significance of the CA is principally derived from its architectural interest based on the design unity of the houses as part of a planned residential estate, with most properties being partly rendered. The four properties on Wentworth Road within the CA share a similar design. The remainder of properties along Wentworth Road, including the appeal property, are not in the CA. Nonetheless, the design, style and detailing of the appeal property, and it being part of a pair of semis, positively contributes to the design variety of Wentworth Road and hence to the character and appearance of the area.
11. On my visit I saw that the annexe building has been built with bricks and mortar that do not match the existing front of the house. In addition, the main house has two brick types - a darker coloured brick around the base of the bay window and a lighter brick on the rest of the elevation. The annexe building has therefore introduced a third brick to the front elevation and this has reduced the visual harmony of the property.
12. The appellant acknowledges that the annexe building is of an inappropriate brick and wants to rectify this by building the approved extension to the front of the annexe in bricks to match the main house. To vary the condition as the appellant suggests - that materials just "match the existing building" - would create ambiguity as to which bricks should be matched to which. This could potentially mean that the front annexe extension does not successfully match either the annexe or the main dwelling and would further exacerbate the existing mis-match of materials.
13. I also saw that the bricks used in the partially built rear extension, which will be demolished, do not match the main house or the rear of the annexe. This illustrates to me the difficulty of trying to match bricks on the property. It may well be that previous applications imposed a condition requiring only "materials to match", but it was evident from my visit that has not been successful to date.
14. I saw that there was variety of brick types and facing materials used on properties along Wentworth Road and this adds to the overall character and appearance of the area. However, too many brick types on one property and on a single elevation would detract from the appearance of the property and the area.
15. Due to the variety of brickwork on the property and the visual prominence of the extensions on the front elevation facing the street, which is opposite the CA, it is clear to me that careful brick selection would be required to ensure, in particular, that the front annexe extension and the front porch match the front of the house and each other as best they can.

16. The submission of brick samples for each extension is therefore reasonable and necessary to allow them to be properly assessed in context to ensure the most appropriate choice is made by the Council, so as not to further harm the character and appearance of the property and the area. Choosing bricks based on their availability, or price or convenience is not a reliable or acceptable approach, despite any best intentions the appellant might have.
17. Condition 3 as worded therefore serves a necessary purpose that meets the statutory tests¹ and accords with Policy PG3 of the Birmingham Development Plan (the BDP) that seeks, amongst other things, to ensure development creates a positive sense of place and responds to site conditions and local area context. Without it, there would be harm to the character and appearance of the area and the setting of the nearby CA. Therefore, I do not agree to the appellant's request to vary it.
18. The appellant refers me to a number of planning permissions for extensions where conditions only required materials to match the existing property. I saw that the rear extension at No.90 is not visible from the road such that the need to match materials at the front does not apply. The side extension at No.92 has been built and rendered to match the adjoining semi-detached property. Also Nos.90 and 92 are not located opposite the CA, unlike the appeal property and therefore their impact on the CA is less. Whilst consistency in decision-making is important, each development has to be assessed on its own merits and its particular circumstances and context. In this instance the appellant's examples differ from the appeal proposal and have a different location and context such that they are not directly comparable.
19. The Council's concern is primarily about the bricks and from my observations on site I have no reason to take a different view. The appellant, however, also refers to windows. It is for the Council to determine whether windows fall within the scope of the condition.

Condition 6 – tree protection

20. The appellant has been advised by the Council to submit a Section 73² application to seek a grant of permission for the development without compliance with conditions to which the previous permission was granted. This would have allowed the Council and its Tree Officer to formally re-consider the condition in question. The Council advises it would have, in all likeness, agreed to vary the condition. However, the appellant has not submitted such an application, and has instead chosen to lodge an appeal.
21. The mature tree in the middle of the rear garden, nor any others, are individually protected by reason of a Tree Protection Order. As the trees are not within a Conservation Area, notice to the Council is not required for works to the trees. Nonetheless the trees are an attractive feature of the rear garden, that contribute to the overall verdant nature of the area along with other neighbouring trees, some of which are protected. Indeed, the appellant acknowledges their amenity value, stating that one of the reasons he purchased the property was because of the mature tree and the lush greenery

¹ Set out in the paragraph 56 of the National Planning Policy Framework and replicated in the Planning Practice Guidance

² Section 73 of the Town and Country Planning Act 1990

of the garden, and wants to retain it and will undertake best endeavours to protect the trees on site.

22. The wording of the existing condition is an instruction not to do certain things beneath the tree canopies and within 1m of the edge of the tree canopies. It does not require the appellant to submit any details to the Council. However it would prevent the appellant from digging trenches, laying pipes, services or drains or altering ground levels within the zone, that could well impinge on construction of the outbuilding at the bottom of the garden, as the protection zones of the trees would overlap with each other.
23. I sought the views of the parties in relation to re-wording condition 6 to create two conditions. One would ensure that the space under the tree canopies is kept free of concrete mixing and storage of certain chemicals/unsuitable materials that could damage the trees. The second would require the submission of details of the location trenches, pipes or alterations to ground levels to give the Council the opportunity to monitor works.
24. In response, the appellant confirmed he is happy to have a condition to ensure no chemicals/unsuitable items are stored beneath any tree canopies, but does not want to be encumbered with additional restrictions and so was not agreeable to the second condition. The Council was somewhat ambiguous in its reply, stating that splitting the condition into two parts would not be suitable yet confirmed it is unlikely to require details regarding the location of services, pipes, drainage or level changes for the outbuilding.
25. As the trees in the garden and on adjoining properties have amenity value, and which the appellant wishes to protect and retain, I consider some tree protections measures are reasonable and necessary to accord with BDP Policies PG3 and TP7, which collectively value the contribution trees make to amenity and the environment and of creating attractive places and respecting local site conditions.
26. I shall therefore modify Condition 6 to retain the part preventing the storage of unsuitable chemicals and materials beneath any tree canopies, but remove that part of the condition relating to trenches and alterations of surface/ground levels. For clarity, this means I will delete the original Condition 6 in its entirety and replace it with the new modified version of Condition 6.

Conclusion

27. For the reasons given above I conclude that the appeal is dismissed insofar as it relates to Condition 3, and the appeal is allowed in part insofar as it relates to Condition 6.

K. Stephens
INSPECTOR