



Appeal Decision

Site visit made on 22 November 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2022

Appeal Ref: APP/P4605/W/22/3303516

1878 Pershore Road, Cotteridge, Birmingham B30 3AS

- 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 Dippa Rai of Rai Holdings UK Ltd, against the decision of Birmingham City Council.
 - The application Ref 2021/08532/PA, dated 28 September 2021, was refused by notice dated 25 January 2022.
 - The development proposed is erection of two storey rear extension to form 4 studio flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There have been various iterations of the proposal. I have considered this appeal on the most recent plans, which formed the basis of the Council refusal.

Main Issues

3. The main issues are the effect of the proposed development on:
 - The character and appearance of the host building and the surrounding area;
 - The living conditions of the occupants of existing flats in the building, with regard to outlook, light and privacy; and
 - The living conditions of the occupants of Beaumont Park with regard to privacy.

Reasons

Character and Appearance

4. The building on the site is part of a two and a half storey terrace with two rear wings and a large single storey rear extension. The rear wings have gabled ends and there are gabled dormer windows in the main rear roof slope. The building fronts onto the shopping street of Pershore Road with the rear section adjoining an area of land used for parking and a development of retirement flats known as Beaumont Park. The site contains a large shop unit at ground floor, with a modern frontage, and storage to the rear. There are 4 flats across the first and second floors.

5. The proposal would add an additional two storeys above the existing rear extension. This would result in two and three storey built form covering the vast majority of the footprint of the site, which would appear cramped within the confined site. The proposal would also be out of keeping with the surrounding context where other buildings in the terrace have not extended significantly beyond the rear wings, other than a few modest single storey additions.
6. The proposed development would have a mixture of hipped and flat roofs, with a stepped ridge, and a first floor amenity area with a parapet wall. The resulting mix of roof forms would appear contrived as well as out of keeping with the gabled roof form which is dominant in the existing building and the rest of the terrace. As such, the proposed extension would not integrate naturally with the appearance of the original building and its surroundings.
7. The proposal would be to the rear, so would not impact on the main streetscene. Despite this it would be visible from the parking area to the rear of the terrace and from some windows at Beaumont Park, so the impact on character and appearance would still be appreciated from outside of the site.
8. I conclude that the proposed development would cause significant harm to the character and appearance of the host building and the surrounding area. Consequently, the development would be contrary to Policy PG3 of the Birmingham Development Plan 2031 (adopted 2017) (BDP) and Policy DM2 of the Development Management in Birmingham Development Plan Document (adopted 2021) (DPD), which together, amongst other things, seek to ensure that development is of high quality design that responds well to site conditions and the local context. In addition to this development plan conflict, Paragraph 134 of the National Planning Policy Framework (the Framework) states that development that is not well designed should be refused.

Living Conditions – Outlook, Light and Privacy of Existing Flats

9. The proposal would result in a separation distance of around 9.4m between a rear facing dormer window in one of the existing second floor flats, and a blank elevation opposite it in the proposed extension. This is well below the recommended 12.5m minimum distance between windowed elevations and opposing 1 and 2 storey flank walls, as set out in the Supplementary Planning Guidance Places for Living (adopted 2001) (SPG).
10. The appellant claims that the affected window is a secondary window with the main source of light being from the front window. However, the plans appear to show this existing second floor flat as having the kitchen and bedroom subdivided by walls around the stairs. Notwithstanding this lack of clarity, even if the flat is currently undivided, the proposal would result in reduced levels of light, given the depth of the flat. Whatever the internal layout, the proposal would have a significantly detrimental impact on the outlook from the rear facing window of this existing second floor flat.
11. The proposal would necessitate moving the rear window in one of the first floor flats, but the proposed new window, although smaller, would provide an acceptable level of light and outlook.

12. Reference is made to the Building Research Establishment (BRE) document 'Site layout planning for daylight and sunlight: A good practice guide', as well as to the '45 degree code'. No formal assessment to show compliance, or otherwise, with either of these has been presented with this appeal. I have therefore made my assessment purely on the basis of the plans and an external site visit.
13. Access to the proposed new flats would be via a walkway. This walkway and the outside amenity space would be in close proximity to the windows of existing first floor flats. Shared access routes and outside space close to windows may not be uncommon in some flatted developments, especially where they have been designed and built as shared facilities from the outset. By contrast, this appeal relates to an extension to a building which already contains flats, so the existing situation must be taken into account.
14. In this case, the additional comings and goings associated with accessing the proposed new flats, along with use of the outside space, would result in people regularly being close to windows and able to look directly into existing flats, as well as new flats. This amounts to a significant reduction in the level of privacy enjoyed by occupants of the existing first floor flats. In seeking to mitigate this impact, occupants may well keep curtains or blinds closed, reducing light internal levels.
15. I accept that the amenity space could also be used by the occupants of the existing flats. This benefit would not outweigh the negative impact on their privacy, light and outlook.
16. Taking all of the above factors together, I conclude that the proposed development would cause unacceptable harm to the living conditions of the occupants of existing flats in the appeal building, with regard to outlook and privacy, and would result in a reduction in light levels. Consequently, the proposal would be contrary to Policy DM2 of the DPD and the guidance in the SPG, which, amongst other things, seek to ensure that development does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours.

Living Conditions – Privacy at Beaumont Park

17. Beaumont Park is a development of retirement flats, with communal amenity spaces, located adjacent to the rear of the site. The Council third reason for refusal relates to the impact of the proposal on the amenity space rather than the flats themselves.
18. A second floor window in the rear elevation of the proposal would face towards Beaumont Park and overlook an area of amenity space. The window would be offset from the boundary, reducing any overlooking. The amenity space is shared and already overlooked by several flats within Beaumont Park, so is not entirely private. In addition, the window would be small and secondary, so if the proposal was otherwise acceptable, a condition could be used to ensure the window would be fixed and obscure glazed.
19. I conclude that, subject to a suitable condition, the proposed development would not cause significant harm to the living conditions of the occupants of Beaumont Park with regard to privacy, so this element would comply with Policy DM2 of the DPD.

Planning Balance

20. It is common ground that the Council cannot demonstrate the deliverable supply of housing sites as required by the Framework. Therefore, in accordance with the provisions of paragraph 11d and footnote 8 of the Framework, policies which are most important for determining the application are considered to be out of date. The proposal does not impact on areas or assets of particular importance, so in accordance with paragraph 11dii, permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
21. The harms I have identified above are significant, multiple and would be long lasting, so I ascribe them substantial weight. The site is a sustainable location with good access to facilities and services, which is supported by the BDP and the Framework. However, this is an expectation of any good development so is a neutral element in the overall planning balance.
22. In terms of public benefits, the provision of new flats would make a contribution towards the supply of housing, in an area with an ongoing under supply. There would also be social and economic benefits arising from the construction period and future spend of occupants giving support to local services and facilities. Notwithstanding this, any construction benefits would be modest and short term and four small flats would make little difference to the overall supply of dwellings across the Council area. I can therefore give these benefits only moderate weight.
23. With the above in mind, and when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Consequently, the paragraph 11d presumption in favour of sustainable development does not apply. The appeal scheme would conflict with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan.

Other Matters

24. Unauthorised access and parking would be private civil matters outside of the scope of this planning appeal. Comment relating to these matters have not impacted on my reasoning under this appeal.

Conclusion

25. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

Helen Davies

INSPECTOR