



Appeal Decision

Site visit made on 15 November 2022

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9TH December 2022

Appeal Ref: APP/P4605/W/22/3290621

458 College Road, Kingstanding, Birmingham B44 0HL

- 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 Trojan Stoot Developments Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/08661/PA, dated 5 October 2021, was refused by notice dated 6 December 2021.
 - The development proposed is Change of use of ground floor from retail (Use Class E(a)) to retail (Use Class E(a)), food and drink (Use Class E(b)), financial and professional services (Use Class E(c)(i) and E(c)(ii)). Change of use of first floor from retail (Use Class E(a)) to 1 no. flat (Use Class C3) and erection of single storey rear extension, installation of external staircase and associated elevational changes.
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Decision

1. The appeal is allowed and planning permission is granted for Change of use of ground floor from retail (Use Class E(a)) to retail (Use Class E(a)), food and drink (Use Class E(b)), financial and professional services (Use Class E(c)(i) and E(c)(ii)). Change of use of first floor from retail (Use Class E(a)) to 1 no. flat (Use Class C3) and erection of single storey rear extension, installation of external staircase and associated elevational changes, at 458 College Road, Kingstanding, Birmingham B44 0HL, in accordance with the terms of the application, Ref 2021/08661/PA dated 5 October 2021, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the application was determined, the Council adopted¹ the Development Management in Birmingham Development Plan Document (the 'DMB'). This replaces the saved paragraphs in the Birmingham Unitary Development Plan 2005 (the UDP). During determination of the appeal the Council has also adopted the Birmingham Design Guide² as a new Supplementary Planning Document (the Design Guide). It sets out a number of Design Principles and is accompanied by City Notes found within five City Manuals. The Design Guide replaces the previous 'Places for All' SPD. The Council has set out new policies and Design Guide elements it considers are relevant and the appellant has been given the opportunity to comment.

¹ Adopted 7 December 2021

² Adopted September 2022

Main Issue

3. It is clear from the Decision Notice and submitted evidence that the change of use of the ground and first floors and the erection of the single storey rear extension is not of concern to the Council. The Council's concern lies with the external staircase that would provide access to the proposed first floor residential flat. Having regard to the evidence before me and what I saw on site I see no reason to disagree. I have therefore confined my assessment to the proposed external staircase and framed the main issue accordingly.
4. The main issue is therefore the effect of the proposed external staircase on the character and appearance of the property and the surrounding area.

Reasons

5. The appeal site comprises a two-storey vacant property at the end of a parade of shops/commercial premises with flats above, in a mixed residential/commercial area. The parade is on the busy College Road with 4 lanes of traffic close to a busy crossroad junction.
6. Adjacent to the site is the recently built College Road Medical Centre with its striking contemporary design. It is set back a substantial distance from both College Road and the parade with a car park to the front, which is accessed via an access road off College Road. The set-back position of the Medical Centre means the side elevation of the appeal property and its boundary fencing are visible from parts of College Road and the car park.
7. The proposed first floor flat would be accessed via a steel staircase that would be erected externally on the side elevation. At the top of the staircase there would be a small landing to allow someone to stand and enter/leave the door to the flat. The lower half of the staircase would be concealed from public view behind the existing timber boundary fencing. Only the top half of the staircase and the landing would be visible.
8. The staircase would be of a steel construction, with slim vertical railings that would enable the brick elevation of the property to be seen through it. As a result, the staircase would be a lightweight structure that would not be an unduly prominent addition to the building. I saw that the mini supermarket on the other side of the Medical Centre has black railings leading to upper floor access, which stand out against the cream/white rendered elevation. Therefore the proposed staircase would not be an incongruous addition in the wider street scene. Whilst an internal staircase would be a design option, it is not before me to consider.
9. The Medical Centre is set back from College Road behind the car park creating a disrupted building line. As a result, the appeal property and the proposed staircase would not be read together as part of a joint elevation with the Medical Centre. The small scale nature of the staircase and its lightweight design and construction would therefore not significantly detract from the property, the setting or appearance of the Medical Centre or the wider street scene. The trees that have been planted in the Medical Centre car park already offer some screening from the west that would increase as the trees mature over time.
10. Approaching the Medical Centre from the east, the staircase would not be seen until one is level with the property. Nonetheless, views of the staircase from

the front elevation and street directly in front of the property would be limited as the staircase would occupy the narrow fenced passageway alongside the property. From the opposite side of College Road, the intervening separation distance over 4 lanes of traffic with a grassed central reservation planted with trees, would mean the proposed staircase would not be very visible.

11. The property is currently vacant, shuttered up and in a poor state of repair. The proposal would help bring the property back into good order, with active uses on both the ground and upper floor. This would serve to improve the facilities in the parade, the overall character and appearance of the area and the setting of the Medical Centre and this part of College Road.
12. In conclusion, the proposed staircase would not significantly harm the character and appearance of the property, the setting of the adjacent Medical Centre or the surrounding area. Accordingly it would not be in conflict with Policy PG3 of the Birmingham Development Plan, which seeks to ensure that development responds to site conditions and local area context. It would also not conflict with the Design Guide Principles DP1, DP2, DP3, DP10, DP15 and City Notes SS-1 and ID1. These collectively seek to ensure development responds to the character of the area, integrates with existing development and helps create sustainable neighbourhoods and activate residential uses.
13. Following the adoption of the DMB, the Council now says that Policy DM2 should be taken into consideration. This relates to amenity and ensuring development does not result in adverse impacts on the amenity of occupiers and neighbours. The Council has not raised this as a reason for refusal and it is therefore not directly relevant to the appeal.
14. Furthermore, Design Guide City Note LW-1 relates to privacy distances and amounts of outdoor amenity space and LW15 relates primarily to the impact non-residential uses can have on residential amenity. The Council has not raised such concerns and hence these Design Guide sections are not directly relevant to the main issue.

Other Matters

15. I am led to understand the property already benefits from a retail use. In such cases, another retail use can operate from the premises without the need for planning permission, such that competition with other local shops and businesses is not a relevant planning matter. There is also some local concern about increased parking. However, the Highways Authority has no objection to the proposed uses. Having regard to the evidence before me and what I saw on my site visit I see no reason to disagree.

Conditions

16. I have considered the 7 conditions put forward by the Council against the advice and tests in the Framework and Planning Practice Guidance (the PPG). Following the advice in the PPG I have also listed the conditions in the order that they need to be satisfied.
17. I have imposed the standard condition which limits the lifespan of the planning permission (condition 1) and I have specified the approved plans for the avoidance of doubt and in the interests of proper planning (condition 2).

18. The conditions to ensure that windows and doors of the proposed flat are suitably sound insulated and ventilated (condition 4) and that there is adequate noise insulation between the commercial and residential uses (condition 3), are necessary to protect the living conditions of future occupiers. A restriction on operating hours for the ground floor commercial uses will be necessary in the interests of safeguarding the amenities of future residents living above (condition 5). The appellant is in agreement with all of these conditions.
19. The Council's Regulatory Services has recommended 2 contamination conditions. However, there is no substantial evidence to explain the nature of any contamination or justify the imposition of such conditions. Consequently, I consider the conditions are unreasonable and unnecessary.

Conclusion

20. For the reasons given I conclude that the appeal should succeed.

K Stephens
INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
- 2) The development hereby approved shall be implemented in accordance with the details submitted with the application and shown on drawing numbers 473-01 Location Plan, 473-02A Site Plan and 473-04A Proposed Plans Sections and Elevations.
- 3) No development shall take place until a scheme of noise insulation between the commercial and residential premises has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details prior to the first occupation of the building and thereafter maintained.
- 4) Prior to the occupation of the first floor flat, a scheme of noise insulation shall be submitted to and agreed in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details to ensure that all windows, any other glazed areas and external doors to habitable rooms, provide a weighted sound reduction index ($R_w + C_{tr}$) of at least 35dB. Any ventilation on an elevation to habitable rooms shall be provided by means of acoustic vents achieving weighted element normalised level difference ($D_{ne,w} + C_{tr}$) of at least 41dB.
- 5) The commercial uses hereby approved shall only take place between the hours of 08:00 to 20:00 Monday to Saturday and 09:00 to 18:00 on Sunday.

End of conditions