



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: 28th December 2022.

Appeal Ref: APP/P4605/W/22/3299527

Land to rear of 318-326 Brook Lane, Billesley, Birmingham B13 0TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Atif Hussain (of Haliya Ltd) against the decision of Birmingham City Council.
 - The application Ref 2021/10227/PA, dated 1 December 2021, was refused by notice dated 16 March 2022.
 - The development proposed is outline application for the erection of 3 dwellings with all matters reserved except for access and layout.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The applicant is Mr Atif Hussain (of Haliya Ltd) but the appeal was lodged by Mrs Hussain. However the right of appeal is given only to the original applicant, as confirmed by section 78 of the Town and Country Planning Act 1990 (as amended). Therefore, the appeal will proceed only in the name of Mr Atif Hussain (of Haliya Ltd).
3. The application was submitted in outline with all matters reserved, for a terrace of 4 dwellings based on passive Haus principles incorporating a number of renewable energy measures. However, during determination of the application the proposal was amended to 3 dwellings to include access and layout. Therefore to reflect the agreed change I have taken the description of development from the Council's decision notice, and which the appellant uses on the appeal form. The Council determined the application on this basis and so shall I.
4. The submitted plans that show the means of access to and within the site, and the layout of buildings and spaces including how they are situated and orientated in relation to each other and to buildings and spaces outside the development, therefore form part of the outline application. Appearance, scale and landscaping are 'reserved matters' for subsequent approval by the Council. Any plans for these I shall treat as illustrative.
5. The appellant originally described the address of the site as The Orchard, Malton Grove. However I have used the address from the Council's decision notice, which the appellant uses on his appeal form.

6. During determination of the appeal, the Council adopted the Birmingham Design Guide¹ as a new Supplementary Planning Document (the 'Design Guide'). It includes a number of Design Principles and is accompanied by City Notes contained within a series of City Manuals. The Design Guide replaces the previous 'Places for Living' SPD. The parties have been given the opportunity to comment.

Main Issues

7. The main issues in this appeal are:
- The effect of the proposed development on the character and appearance of the area,
 - The effect of the proposal on pedestrian and vehicle safety with regard to the access and parking,
 - The effect of the proposal on the living conditions of existing occupants of neighbouring properties with particular regard to outlook,
 - The effect of the proposal on the living conditions of existing occupants of neighbouring properties with particular regard to privacy, and
 - Whether the proposal amounts to a poor setting and unsafe environment.

Reasons

Character and appearance

8. The appeal site comprises an irregular shaped parcel of overgrown land to the rear of properties and gardens on Brook Lane, Menin Road and Jutland Road. The site would be accessed off Malton Grove, a small residential cul-de-sac of 8 dwellings off Brook Lane. The area is predominantly residential, characterised by roads of similarly designed terraced and semi-detached dwellings facing the road, with long linear back gardens. This regular pattern of development helps give the area its local distinctiveness. Malton Grove cul-de-sac is somewhat of an anomaly to this prevailing pattern, with its two blocks of terraced housing arranged in a T-shape and associated blocks of garages.
9. The proposal would involve the erection of 3 different shaped and sized houses on a staggered building line across the site, comprising a pair of semi-detached dwellings (plots 1 and 2) and a larger detached house (plot 3). In front of each dwelling are shown space for 2 parking spaces. At the narrowest western part of the site three visitor parking spaces are shown. Being a backland parcel of land, none of the dwellings would have direct vehicular or pedestrian access off Brook Lane.
10. Public views of the proposed dwellings would be limited from the surrounding streets, as the site is tucked behind other properties, but residents of neighbouring properties would still see the dwellings. The dwellings would not be read in a side-by-side context with surrounding dwellings and 'appearance' is a reserved matter, so that a contemporary design could work if appropriately designed, scaled and detailed. Nonetheless, character and appearance is not just about what something looks like. Furthermore, even if public views would be limited this does not mean development is not capable of causing harm.

¹ Adopted September 2022

11. The appellant has produced a layout he considers reflects the unorthodox shape and location of the site. The footprints of the proposed dwellings are significantly larger than the surrounding properties, and as a result would likely have greater massing than surrounding properties. The plot sizes and rear gardens are much shorter and squatter than the prevailing pattern and configuration of long thin gardens that surround the site on all sides.
12. The remaining site would be given over to a communal driveway and 9 parking spaces focused on the centre of the site and would leave limited space for cars to manoeuvre. The resulting quantum of development would result in a contrived layout that amounts to overdevelopment and the proposal would be at odds with the prevailing character and appearance of the surrounding area and would cause unacceptable harm to it. Accordingly, the development would be contrary to Policy PG3 of the Birmingham Development Plan² (the BDP), which seeks to ensure high quality design that contributes to a sense of place and responds to the local area context.
13. The Council refers to Policy DM2 of the Development Management in Birmingham DPD³ (the DMB). This policy deals with the impact of the development on the amenity of occupiers and neighbours and hence is not relevant to this main issue.

Parking and access

14. The Highway Authority has objected due to the impact on the use of the existing garages and the narrow access that will impede vehicle manoeuvrability and circulation. There is no objection to the amount of proposed parking per dwelling and shared visitor parking within the site, or concern that future occupiers would park in Malton Grove where parking is already limited.
15. I saw that the cul-de-sac approach to the site provides access and parking spaces for existing residents of Malton Grove, including to the blocks of garages. At the second bend, just after the first block of garages, the road narrows even more to a pinch point, with no scope to widen it without demolishing the garages or the end property. It then opens into a confined space in front of the second block of garages at the end of the cul-de-sac. The actual entrance to the site comprises a narrow gap between this far block of garages and an adjacent hedge that forms part of the garden boundary to 318 Brook Lane.
16. The existing turning area in front of the blocks of garages is limited, particularly in front of the block of garages at the end of the cul-de-sac beside the site entrance. The proposal would make this space an integral part of the main access thorough-fare to the proposed site. With the increased number of vehicles and vehicle movements, anyone driving in or out of any of these garages would block or impede access to the site entrance. Due to the nature and configuration of Malton Grove, with no direct inter-visibility between the site entrance and the junction with Brook Lane, there would also be an increased likelihood of vehicles meeting each other along Malton Grove. Consequently, drivers would have to manoeuvre out of each other's way and

² Adopted January 2017

³ Adopted December 2021

- most likely have to reverse, including onto Brook Lane, which I saw was a busy road, with the associated highway safety risks this would cause.
17. During my visit I saw a number of cars parked along the first section of Malton Grove, restricting it to single width. I saw a number of residents have also created their own hardstanding for parking spaces at the front of their properties, creating additional vehicle manoeuvring patterns. I understand there is a covenant on properties on Malton Grove preventing residents from parking outside the garage blocks. That may be the case, but it needs to be enforced to be effective. During my visit, albeit a snap-shot in time, I saw a number of cars parked outside garages. Parked cars are also shown on some of the appellant's own photographs of the site taken at a different time. Nonetheless, people would need to pull up in front of the garage to open the garage door. While doing this, access through Malton Grove to and from the site would be impeded.
 18. Furthermore, Malton Grove does not have a pavement. As a result the safety of pedestrians, and any children playing in the cul-de-sac, would be compromised by the additional traffic and usage of Malton Grove by existing and future residents including delivery and service vehicles. Directing children to play outside proposed Plots 2 and 3, in a shared driveway, would not be an acceptable solution and unlikely to be encouraged by future occupiers.
 19. The appellant's vehicle tracking plan for 4x4 vehicles and a small-tipper lorry shows vehicles needing to drive close to the left hand side of Malton Grove on entry to negotiate the first bend. This is where I saw a number of parked cars. The tracking plan indicates to me that negotiating the bend would be potentially difficult if cars were parked or other vehicles were using Malton Grove. The turning area within the site would be very constrained and the tracking shows vehicles turning tight up against parked cars. If more cars were parked or residents parked inconsiderately then manoeuvrability and turning for delivery and refuse vehicles would be compromised.
 20. The Fire Service has expressed concerns that the 'pinch point' by the garages and the narrowness and angle of the site entrance would impede access for their vehicles. The appellant advises he has since spoken to the Fire Services about installing a fire hydrant within the site boundary, so that emergency vehicles would not need to be driven past the first bend on Malton Grove. Whilst it may help overcome one aspect of the access arrangement, it does not address the fundamental unsuitability of the use of Malton Grove as the only means of access to the site.
 21. I am not satisfied that the proposal would have suitable access provision and there would be no harm to vehicular and pedestrian safety. Accordingly, the proposal would conflict with BDP Policies PG3 and TP44, and DMB Policies DM14 and DM15. Collectively these seek, amongst other things, to ensure that development does not have an adverse impact on highway safety and the efficient access by emergency and service vehicles and that new access points do not reduce pedestrian and highway safety.

Living conditions of existing residents with regards outlook

22. The Council identifies that the affected properties are 60 Jutland Road and Nos.320 and 322 Brook Lane. The side or flank elevations of the proposed

dwelling on Plots 1 and 3 would be located in very close proximity to the rear garden boundaries of 60 Jutland Road and Brook Lane respectively.

23. The recently adopted Design Guide city manual "Healthy Living and Working Places" sets out various standards for protecting residential amenity. City Note LW-3 (Residential privacy and overlooking) states that the distance between elevations with habitable rooms and opposing 1 and 2 storey residential flank walls should be a minimum of 12.5 metres, with an additional 3 metres added for every flank wall storey over 2.
24. The submitted evidence shows the rear garden of No.60 is over 24 metres long and the rear gardens of the aforementioned Brook Lane properties are between 32-34 metres. Therefore, in both scenarios the separation distances would exceed the Council's minimum distances, including being more than double the minimum requirement for 2 storeys. I am satisfied that over these distances, the proposed development would not result in an unduly unneighbourly or overbearing environment for occupiers of these existing properties as to create an unacceptable outlook.
25. In conclusion, there would be no harm to the living conditions of occupiers of 60 Jutland Road and Nos.320 and 322 Brook Lane with regard to outlook. Accordingly, the proposal would not conflict with BDP Policy PG3 and DMB Policy DM2. Collectively these seek, amongst other things, to ensure development responds to site conditions does not result in unacceptable adverse impacts on the amenity of neighbours with regard to outlook. It would also accord with the relevant parts of the Birmingham Design Guide.
26. DMB Policy TP27 is a broad policy about making sustainable neighbourhoods, including reduced car usage, access to local facilities, climate-proofing and long-term management of buildings and spaces. As it does not relate to the amenity of neighbouring occupiers it is not directly relevant to this main issue.
27. Whilst the proposal is in outline and appearance is a 'reserved matter' it would be possible to design the dwellings on Plots 1 and 3 to have no windows on the flank/side walls to ensure no overlooking and loss of privacy to these rear gardens. This could be conditioned if I was minded to allow the appeal.

Living conditions of existing residents with regards privacy

28. The Council identifies Nos.18, 20 and 24 Menin Road as the affected properties whose rear gardens abut the rear gardens of the three proposed dwellings.
29. As appearance is a reserved matter, it is not yet known where windows would be. However, it would not be unreasonable to assume that for such deep floorplans the proposed dwellings would have some first floor windows in the rear elevations serving habitable rooms, such as bedrooms. The proposed dwellings would have short back gardens. Therefore the development has the potential to put habitable rooms in close proximity to the plot boundaries, thus enabling future occupiers to overlook existing private rear gardens and reduce levels of privacy for these neighbouring occupiers.
30. Design Guide City Note LW-3 has a similar separation standard to the previous Places for Living SPD. It states a "5m setback per (residential equivalent (3m)) storey where primary windows (habitable rooms for residential development from main areas of activity and shared circulation space for non-residents)

overlooking existing private spaces is proposed.” This standard operates independently of the minimum spatial separation requirement.

31. From my reading of LW-3 the “residential equivalent 3m” would seem to suggest that the setback is reduced to 3 metres for residential properties, something that was not included in the previous SPD. Two-storey residential development would therefore require the proposed dwellings to be setback at least 6 metres from the rear garden boundaries in this case.
32. There is some dispute between the parties as to the separation distances involved. The Council refers to the distances from Plot 1, 2 and 3 to the rear boundaries being about 6.9 metres, 6.1-7.5 metres and 7.8 metres respectively. The appellant has submitted a plan with annotated dimensions. These show the rear garden of Plot 1 would be just over 7 metres long and the garden of Plot 2 would be about 10m. The garden for Plot 3, at its shortest, would be somewhere in between. Based on the 3 metre setback, these distances would be within the acceptable standards set out in City Note LW-3.
33. If the 5 metres was applied to two-storeys, some would fail to meet the design guide standard, unless there was careful consideration of window placement or the dwellings were restricted to 2 storeys, which could be conditioned if I was minded to allow the appeal.
34. Based on two-storey development and the evidence before me, I conclude on balance there would be no harm to the living conditions of occupiers of neighbouring properties with regards to privacy. Accordingly, the proposal would not conflict with BDP Policy PG3 and DMB Policy DM2 whose aims have been outlined above. For the reasons already outlined, DMB Policy TP27 is not directly relevant to this main issue.
35. The separation distance from face-to-face habitable windows with the above-mentioned properties on Menin Road would be over 35 metres, according to the appellant’s submitted annotated plans. This would exceed the 21 metre and 27.5 metre separation distances for 2 and 3 storey properties respectively, as set out in Design Guide City Note LW-3. Hence there would be no adverse impact on privacy to the above mentioned properties.

Setting and safety

36. The site is currently secured and gated and entered at a pinch point between the garage blocks and existing boundary hedgerow. The legibility of the approach to the site from Brook Lane through Malton Grove is compromised by the layout and not seeing the site entrance or dwellings from Brook Lane due to the various bends. The proposed development would not alter this.
37. I saw that some of the garages were in a poor state of repair, and the orientation of properties in Malton Grove means there is limited natural surveillance of the top end of the cul-de-sac. I did not see any street lights and in the dark some areas would be less inviting. The Police have indicated that the lighting in the vicinity of the site would need to be improved and ‘Secure by Design’ can be made a condition.
38. Nonetheless, the proposal would see an overgrown and vacant site brought into a residential use, compatible in principle with the surrounding residential uses, and associated and improved surveillance and safety. Overall there would be

some improvement to surveillance of Malton Grove, the garages and to general safety in the area.

39. Whilst I have no reason to doubt the build quality of the proposed dwellings, overall the site's location at the end of a small and compact cul-de-sac, the poor access arrangements and constrained site, together with harm to the character and appearance of the area, all would result in a poor quality setting and environment for existing and future occupiers. Accordingly the proposal would be contrary to BDP Policies PG3 and TP27, and DMB Policy DM2. These seek, amongst other things, to create high design quality development with a positive sense of place.

Planning Balance

40. The Council cannot currently demonstrate a five year supply of deliverable housing sites. In such circumstances, in line with Paragraph 11d) of the National Planning Policy Framework (the Framework), policies which are most important for determining the application should be considered out-of-date and permission should be granted unless, i) the application of policies in the Framework that protect areas or assets provide a clear reason for refusing, or ii) 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.
41. The development of this infill windfall site would bring about some modest economic and social benefits arising from the construction of 3 dwellings and its longer term contribution to the local area. The development would see the efficient use of land within an urban area in a sustainable location close to shops and schools that would help boost the supply of homes. I have no reason to doubt the dwellings would not be built out quickly. There would also be some environmental benefits from the appellant's intention to reduce carbon emissions, install electric vehicle charging points and maximise solar gain.
42. The appellant refers to his endeavour to provide a residential scheme for three properties or residential apartments for the elderly and is willing to support the Council's affordable housing needs and can use housing associations to maintain and manage the entire development. However, the description of the development is for 3 dwellings with no mention of retirement or affordable housing. Furthermore, no planning obligation or other means of securing such specialist accommodation has been submitted. Laudable as the appellant's flexibility might be, these efforts do not form part of the application and therefore I give them no weight.
43. I appreciate that the Framework sets out a presumption in favour of sustainable development, but even where the tilted balance is engaged the benefits of additional housing do not necessarily outweigh all other concerns or justify allowing harmful development. The balancing exercise remains a matter of planning judgement.
44. Taking all these matters into account, the public benefits, whether taken alone or cumulatively, of three dwellings would be significantly and demonstrably outweighed by the harm that would be caused to the character and appearance of the area, harm to pedestrian and vehicular safety and an overall poor quality of layout. The absence of harm to the living conditions of neighbouring

occupiers carries neutral weight in my consideration of the proposal.

Other Matters

45. Internal layouts may well exceed the nationally described space standards⁴ and respond to live/work needs, but no floor plans have been provided. In any event, the internal layout of the proposed dwellings do not form part of the matters being considered at outline stage.
46. The appellant refers to a number of examples of other small housing schemes. I have limited details of these and therefore cannot draw any meaningful comparisons between sites in different parts of Birmingham or different towns. Whilst there are different character areas across the city, development needs to respond to the particular area and context in which it is to be situated. Whilst consistency in decision-making is important, all decisions turn on their own particular circumstances based on the facts before each decision-maker at the time. In any event I must consider the appeal proposal on its own merits.
47. I acknowledge the appellant's comments and concerns with the Council's pre-application advice service and its handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

48. The proposed development would not accord with the development plan as a whole and there are no material considerations which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

K Stephens

INSPECTOR

⁴ Technical housing standards – nationally described space standards. Published March 2015 by the Department for Communities and Local Government.