



Appeal Decision

Site visit made on 6 December 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 March 2023

Appeal Ref: APP/P4605/W/22/3299861

25 Station Road, Kings Heath, Birmingham B14 7SS

- 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 Shabir Djakodine against the decision of Birmingham City Council.
 - The application Ref 2021/04952/PA, dated 14 April 2021, was refused by notice dated 30 March 2022.
 - The development proposed is the demolition of current building. Three-storey building to be erected, ground floor offices, first and second floor apartments.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's decision notice refers to guidance contained within the 'Places for Living (2001)', 'Places for All (2001)', and the '45 Degree Code (2006)' Supplementary Planning Documents (SPD's). I am aware though that since the determination of the application these SPD's have been replaced by the Birmingham Design Guide (adopted September 2022) (BDG). The Council highlighted the relevant sections of the BDG in their statement of case and the appellant has had opportunity to comment. I have determined the appeal accordingly.

Main Issues

3. The main issues are:
 - whether the development would provide acceptable living conditions for future occupiers, with particular regard to noise, outlook and light;
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of occupiers of 25 Station Road, with particular regard to loss of light and outlook.

Reasons

Living Conditions of Future Occupiers

4. The submitted floor plans show the internal layout of the proposed new building, with offices located at ground floor and 2no. one bed apartments at both first and second floor level. The first-floor apartment towards rear of the

building would also have a small external terrace area. The site is located within an area comprising a mix of uses. Although Station Road itself is predominately residential in character, the site is located in close proximity to an array of retail and commercial premises within Kings Heath District Centre. These include Early Bird Bakery and Loco Lounge Café and Bar which are situated a short distance to the east on High Street.

5. The planning application was accompanied by a Noise Survey (NS) undertaken by Blue Acoustics. The data was used to carry out a Pro-PG assessment, which is used to provide a consistent approach to noise assessments for new build residential developments that are exposed to airborne noise from transport sources, and a BS4142:2014 assessment which provides a method for determining the sound arising from an industrial or commercial site. Additional guidance on potentially acceptable noise levels for residential properties is also provided in BS8233:2014.
6. BS8233:2014 advises that for external areas such as gardens it is desirable that the external noise level does not exceed 50dB LAeq,T, with an upper guideline value of 55dB LAeq,T. Although BS8233:2014 does not provide guidance on maximum internal noise levels, the 1999 World Health Organisation (WHO) Guidelines advises that maximum noise levels in bedrooms at night should not regularly exceed 45dB L_{Amax}. Although the Pro-PG assessment concluded that the noise risk would be low, as the proposal includes residential properties, and given the proximity of nearby uses and noise sources, these guidelines will provide a good indication as to whether the living conditions of future occupiers would be adversely affected.
7. The NS identified that traffic noise appeared to be the dominant noise source at the appeal site, although it was also recognised that the ventilation and condenser units at both Loco Lounge and Early Bird Bakery were significant contributors to the noise climate. The NS went on to advise that *'plant noise is audible constantly through the day and is near constant through the night'*, and that the assessment levels of +17dB for daytime and +23dB for night time plant noise at the eastern and southern facades of the property are *'an indication of a significant adverse noise impact depending upon the context'*.
8. The appellant has sought to overcome this issue by the proposed erection of green acoustic fencing. This fencing would run around the perimeter of the external terrace at first floor level and would be of significant height, extending up to virtually the top of the second-floor rear facing windows. Although specification details of the proposed acoustic fencing are not provided, the NS states that the introduction of a solid perimeter fence or wall would reduce the noise ingress to external amenity areas to below the 50dB advised under BS8233:2014.
9. Whilst I find that the proposed acoustic fencing would likely keep noise levels in external amenity areas to an acceptable level, the NS does not clarify that the same would apply for internal noise levels. Instead, the NS states that for the BS8233:2014 criteria for internal noise levels to be met, a glazing and ventilation scheme would be required, and windows would need to be closed. Keeping windows closed to produce a suitable noise environment internally would, to my mind, create an oppressive living environment, and I fail to see how keeping windows closed at all times could promote a high standard of amenity. I also consider it highly unlikely that occupiers would keep their

windows closed at all times, particularly during periods of warm weather. Accordingly, I conclude that the proposed development would fail to provide acceptable living conditions for future occupants in relation to internal noise levels.

10. Furthermore, given the shallow nature of the external terrace area the proposed acoustic fencing would be situated a short distance from the bedroom and living room windows of the rear apartments at both first floor and second floor level. This lack of distance coupled with its substantial height would result in the fencing being an overbearing feature that would have a detrimental effect upon outlook from these rear facing windows.
11. Additionally, these windows are the only source of natural light for the apartments concerned. Given its proximity and height the amount of light reaching these apartments, and in particular the rear apartment at first floor level, would be noticeably reduced. Whilst I acknowledge that the acoustic fence would be a 'living fence' with planting designed to give a natural appearance similar to a hedge, this would not overcome the adverse impact that the fence would have in terms of outlook and loss of light.
12. I conclude that the proposed development would result in unacceptable living conditions for future occupiers, with particular regard to noise, outlook, and light. The development would therefore conflict with Policies PG3, TP24, and TP27 of the Birmingham Development Plan (adopted January 2017) (BDP), Policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document (adopted December 2021) (DPD), and guidance contained within the BDG. These policies, amongst other matters, seek to ensure that developments provide good quality and well-designed living environments, and do not result in unacceptable adverse impacts on the amenity of occupiers.
13. The Council has referred to Policy DM12 of the DPD in its decision notice, which relates to residential conversions and specialist accommodation. However, in respect of this main issue, as the proposal for the erection of a new building and does not relate to a residential conversion or specialist accommodation, the provisions of this policy are not applicable.

Character and Appearance

14. The appeal site comprises a rendered single storey building with a part flat and part metal pitched roof. The building which is set above the highway on Station Road extends deep into the site and encompasses much of the land. Station Road is predominately residential in character consisting largely of traditional brick built terraced dwellings with bay windows and dormers on their front facing roof elevations.
15. The appeal proposal seeks the demolition of the existing building and subsequent erection of a part three-storey, part single-storey brick built building. The front elevation of the proposed development would continue and largely mirror the existing residential terrace along the southern side of Station Road and would contribute positively the street scene.
16. Although the proposed building would front onto Station Road, its rear elevation would also be visible from Grange Road. As detailed in the main issue above, the proposal includes the erection of a green acoustic fence around the

external terrace to the rear of the property. The fence would be substantial in height, obscuring all the first-floor rear elevation and most of the second-floor rear elevation from view. Despite being a 'living fence' comprising of planting, by virtue of its overall scale, height, and elevated position at first floor level, the acoustic fence would appear as a visually dominant and incongruous feature that would cause harm to the character and appearance of the area.

17. I therefore conclude that the proposed development would cause harm to the character and appearance of the area. The development would therefore conflict with Policies PG3 and TP27 of the BDP. These policies seek, amongst other matters, to ensure that developments achieve a high design quality that corresponds to the local area context.
18. The Council also referred to Policies DM2, DM10 and DM12 of the DPD in its decision notice, which relate to the amenity of occupiers and neighbours, standard of accommodation, and residential conversions. However, in respect of this main issue regarding character and appearance, the provisions of these policies are not applicable.

Living Conditions of Neighbouring Occupiers

19. Policy DM10 of the DPD states, amongst other things, that developments will need to ensure adequate outlook and daylight to dwellings, in line with the approach of the '45 degree code'. This includes potential impacts on existing houses, where development should not cross the line from an angle of 45 degrees from the nearest window providing the main source of natural light to a 'habitable room' of dwellings that could be affected. City Note LW-4 of the BDG provides further guidance regarding the application of the 45 degree code.
20. In this case, the Council advises that the proposed development would breach the 45 degree code in respect of the second floor bedroom at 25 Station Road. The appellant acknowledges that there is an issue with the 45 degree code, however still considers that the proposal would not have a negative effect on outlook from the second floor bedroom window at No 25.
21. From the evidence available to me it is apparent that the proposed development would conflict with the 45 degree code in relation to the second floor bedroom window on the rear elevation of No 25. This would result in the amount of light reaching this room being reduced. This loss of light would be further exacerbated by the proposed acoustic fence which would extend up to second floor level and be in close proximity to the second floor bedroom window at No 25.
22. Although the existing outlook from the second-floor bedroom window is largely onto the rear of residential properties on Grange Road, these properties are located some distance away and do not have an adverse impact upon outlook. The proposed acoustic fence however would be positioned close to the bedroom window and be in clear view, and given its proximity and height would appear as an oppressive and dominant feature. This would detrimentally affect outlook from this bedroom window.
23. As a result, I conclude that the proposed development would cause an unacceptable level of harm to the living conditions of occupiers of 25 Station Road, with particular regard to light and outlook. It would therefore conflict with Policies PG3 and TP27 of the BDP, Policies DM2 and DM10 of the DPD, and

guidance contained within the BDG. These policies seek, amongst other matters, to ensure that developments secure high quality accommodation and do not result in unacceptable adverse impacts on the amenity of neighbours.

Planning Balance

24. The Council confirms that it cannot demonstrate a five-year supply of deliverable housing sites. Therefore, policies which are most important for determining the appeal are to be considered out of date. Consequently, paragraph 11d) of the Framework is engaged. Therefore, according to paragraph 11d) ii) of the Framework, consideration must be had as to whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
25. The proposal would make a very modest contribution of four one-bedroom apartments to the supply of residential units in the area. As set out above, I have found that the proposal would not provide satisfactory living conditions for future occupiers, would cause harm to the character and appearance of the area, and would result in an unacceptable level of harm to the living conditions of neighbouring occupiers, to which I give considerable weight. Overall, I find that the harm I have identified would significantly and demonstrably outweigh the benefits. Therefore, the Framework is not a material consideration that indicates a decision other than in accordance with the development plan.

Conclusion

26. The proposed development would conflict with the development plan as a whole and there are no other considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. The appeal is therefore dismissed.

David Jones

INSPECTOR