



Appeal Decision

Site visit made on 18 April 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/P4605/W/22/3308104

No.31 and land rear of Nos. 11-35 Cole Valley Road, Hall Green, Birmingham B28 0DD

- 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 Zahid Ahmed of Allmid Ltd against the decision of Birmingham City Council.
 - The application Ref 2021/09130/PA, dated 22 October 2021, was refused by notice dated 22 July 2022.
 - The development proposed is described as "Demolition of No.31 Cole Valley Road to create vehicle and pedestrian access to land at rear of 11-35 Cole Valley Road, and erection of 10 dwellings (6 x 3-bed 4-person houses, 1 x 3-bed 5-person dormer bungalow, and 3 x 4-bed 6-person houses) with associated access road and parking areas."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council has confirmed that since the application was determined the Birmingham Design Guide Supplementary Planning Document (the 'Design Guide') has been adopted¹. It includes a number of Design Principles and is accompanied by City Notes contained within a series of Manuals. As a result, the Design Guide replaces the previous Places for All, Mature Suburbs, the 45 Degree Code, and the Places for Living design guides.
3. On request, the Council has specified that the relevant sections of the Design Guide is the Healthy Living and Working Places City Manual and its City Notes LW-1 to LW-15. The appellant has had the opportunity to comment.

Main Issues

4. The Council refused the application for 6 reasons. However, in the interests of brevity I shall combine 1 and 4. Therefore, the main issues in this appeal are:
 - The effect of the proposed development on the character and appearance of the area,
 - The effect of Plot 6 on the living conditions of occupiers of existing neighbouring properties with regard to privacy, overshadowing and outlook,

¹ Adopted September 2022

- The effect of Plots 1 and 5 on the living conditions of occupiers of existing neighbouring properties with regard to overshadowing, privacy and outlook,
- Whether the proposal amounts to a poor setting and unsafe environment, and
- Whether the proposal provides adequate parking.

Reasons

Character and appearance

5. The appeal site comprises overgrown land and unused rear gardens to a number of residential properties that front Cole Valley Road. The site extends up to the vegetated railway cutting. To the south, the site is bounded by the rears of commercial premises and shops on Highfield Road.
6. The site is located within a mature, leafy residential suburb of predominantly semi-detached and detached inter-war dwellings, displaying some variances in design and style. The prevailing pattern of development is that of a strong street frontage with properties generally fronting the road, albeit set back from it, with front gardens and driveways providing off-road parking provision, and good sized long linear rear gardens. Due to the topography, the properties on the appeal side of the road are about 1.5 - 2 metres higher than the road such that many driveways slope up from the road with varying degrees of hard landscaping to create parking.
7. The proposal would involve demolishing No.31, one half of the pair of semis with No.33, to create space for a new access road between the sides of the host property and No.29 Cole Valley Road. The access would extend along the side of the houses and gardens, where it would then widen and 10 dwellings would be erected in a cul-de-sac formation largely parallel to Cole Valley Road with new houses backing onto the gardens of properties along Cole Valley Road. The existing dwellings would still retain good sized linear gardens.
8. The 'backland' nature of the site would mean that none of the proposed dwellings would front Cole Valley Road or have a street frontage or have any direct access off it. This would put a substantial amount of built development on land behind properties on Cole Valley Road, effectively creating another row of houses. This would be at odds with the prevailing pattern of development. Whilst public views would be limited, this does not mean the development is not capable of causing harm and occupants of neighbouring properties would see the new development.
9. I saw a number of gaps in the existing street frontage, but these were largely the result of driveways and garages between properties, and whilst they might vary in size and length they were not unduly conspicuous in the street scene. In contrast, the proposed new access would be much wider than most other gaps in the street as it would be the width of a semi-detached dwelling plus its driveway.
10. The appellant also refers me to a number of other gaps along Cole Valley Road. Most are on the opposite side of the road where the properties are lower than the level of the road and present a different visual street scene relationship. Some examples were green open spaces with public access to the River Cole

and linear walks along it. In my view these are not typical examples of gaps and do not set a precedent for the proposed backland development of 10 dwellings and its access.

11. Furthermore, the new access road, with a 1.2m wide raised footway within the shared surface, would need to slope up to account for the differences in ground levels between Cole Valley Road and the appeal site. The submitted plans show a new brick retaining wall would be erected, some 1200mm tall above the higher ground level. As the new road would extend along the side of the dwellings either side, this would expose more of the side elevations of these properties, accentuating the height of retaining walls that would be needed and visible from the street. I saw that some driveways and front gardens had varying degrees of hard surfacing and various retaining walls, but none were as extensive or as tall as the proposed access would be. Whilst the proposed access may not be as steep as some existing driveways, its width, length, extent of engineering and hard surfacing would be a significant and visual intrusion to the street scene.
12. The proposal would make more efficient use of land, which I am informed is subject to some anti-social behaviour, although there is little substantive evidence, including from the Police, that the site is a significant problem to the local community and that developing it for housing in the manner proposed is the only way to alleviate this. The resulting increase in density may bring the proposal in line with more modern developments, but the context is a mature residential suburb, not a modern housing development. Even if the proposal has been amended since being previously refused and during determination, I am only concerned with the proposal which is before me.
13. The appellant draws my attention to a number of backland developments in the wider area. This demonstrates that the Council has allowed some backland development on a number of sites over the years for various reasons. Most maintain a street frontage or the sites were previously in different uses within a different street context. Whilst other developments are capable of being a material consideration, each case needs to be considered on the specifics of the proposal and its particular site context. As such, I find none are directly comparable to the appeal before me and do not set a precedent. The Brook Lane appeal² that I determined is not comparable in scale or context. In any event, I must consider the appeal proposal on its own merits.
14. Overall, the proposal would fail to respond to the local context and would not integrate well with its surroundings, notwithstanding the Council has not raised any issue with the actual designs of the dwellings themselves. Hence, the proposal would have an adverse impact on the street scene and character and appearance of the area. Accordingly, it would be contrary to Birmingham Development Plan (the BDP) Policies PG3 and TP27. These seek to ensure, amongst other things, that new development responds to the site conditions and local area context. It would also be contrary to the National Planning Policy Framework's (the Framework) aim of promoting good design by ensuring development adds to the overall quality of the area and is sympathetic to local character.

² APP/P4605/W/22/3299527 dated 15 November 2022

Living conditions and Plot 6

15. The dwelling proposed for Plot 6 would be a 2-storey detached dwelling positioned side-on, and in very close proximity, to the rear garden boundaries of 17 and 19 Cole Valley Road (Nos.17 & 19). To protect residential amenity Design Guide City Note LW-3 has a number of standards.
16. There should be a 12.5m minimum distance between elevations with habitable room windows and opposing 1 and 2 storey residential flank walls, with an additional 3m separation for every flank wall over 2 storeys. The rear elevations and habitable room windows of Nos.17 & 19 would be over 20m away from the flank side wall of Plot 6. Even allowing for the additional separation due to the ground level difference, the relationship would exceed the Council's standard.
17. Moreover, the site layout plan shows that Plot 6 would be a house-type D with a single, narrow, first floor window serving a bathroom on the flank elevation. However, a bathroom is not a habitable room. Therefore Plot 6 would meet and exceed the Council's minimum standards to ensure there would be no overlooking of existing occupiers of Nos.17 & 19. As is common for bathroom windows, a condition could be imposed to require the window to be obscure glazed, should I be minded to allow the appeal.
18. With regards overshadowing, taking account of the path of the sun across the site the proposed dwelling on Plot 6 would cause some early morning overshadowing of the bottom of the gardens of Nos. 17 & 19, where there are some outbuildings. However, the gardens are over 20m in length such that the rear elevation and any patio areas immediately outside the existing properties would not be affected. As the sun moves round during the afternoon there would not be any overshadowing of the gardens from Plot 6. I am satisfied that Plot 6 would not cause any significant adverse effect on the living conditions of existing occupiers with regards overshadowing.
19. A loss of outlook in this case would occur where development would have an overbearing effect that would result in an unduly oppressive living environment for existing residents. The 2-storey gable flank wall of Plot 6 would be sited only about 1.5 metres away from the rear garden boundaries of Nos.17 & 19. This very close proximity, coupled with the elevated position of Plot 6 would present a significant length of built development in excess of two-storeys along the garden boundary. This would have an unneighbourly and unduly overbearing effect that would create an unsatisfactory outlook for occupiers of Nos.17 & 19 and hence harm their living conditions.
20. Hence the dwelling proposed for Plot 6 would harm the living conditions of existing occupiers with regard to outlook and be contrary to BDP Policies PG3 and TP27 and Development Management in Birmingham Plan (DMBP) Policies DM2 and DM10. Collectively these seek to promote high quality design, and ensure it is appropriate for its location and does not result in unacceptable adverse impact on the amenity of neighbours. It would also be contrary to the Framework's pursuit of good design that seeks to ensure high standards of amenity for existing users.

21. However, the dwelling proposed for Plot 6 would not harm the living conditions of occupiers of Nos.17 & 19 with regards overshadowing or overlooking and hence would accord with the above policies.

Living conditions and Plots 1 and 5

22. City Note LW-3 of the Design Guide requires a 5m setback per storey where habitable rooms for residential development overlook existing private space. The standard applies independently of the minimum spatial separation requirements, which are not in question.
23. The dwellings proposed on Plots 1 and 5 would be 2-storeys with habitable bedroom windows looking towards the rear gardens of existing properties Nos.25 and 35 Cole Valley Road (Nos.25 & 35). This would generate a requirement for the proposed dwellings to be set back at least 10m from the existing rear garden boundaries of these properties.
24. The appellant has submitted a plan with garden lengths shown annotated. The separation distance between the rear elevation of Plot 1 and the plot boundary with No.35 is shown as a little over 11 metres. The rear elevation of Plot 5 is shown as 10m from the plot boundary with No.35. Numerically these distances would meet the 10m standard required by City Note LW-3.
25. However, the Design Guide advises that the minimum standards may be influenced by location. The separation does not take account of the ground level differences that would put Plots 1 and 5 and their bedrooms at an elevated position. This would increase the potential for overlooking of the existing rear gardens of Nos. 25 and 35 and adversely affect the privacy of its existing occupiers. The Council does not refer to Plots 2, 3 and 4 in its refusal reason although these appear to be on a similar alignment.
26. With regards overshadowing, Plots 1 and 5 would be at approximately 10-11m away from the rear garden boundaries of Nos.25 and 35. This would be sufficient distance so as not to cause any overshadowing.
27. With regards outlook, and unlike with Plot 6, the proposed dwellings are set some 10m away from the boundaries with the gardens of the existing dwellings. With the length of the existing gardens, this separation relationship would ensure that Plots 1 and 5 would not be overbearing and hence would not adversely affect the outlook for occupiers of Nos. 25 and 35.
28. In conclusion, the proposed dwellings for Plots 1 and 5 would cause overlooking of adjacent rear gardens and hence harm the living conditions of occupiers of Nos.25 and 35. This would be contrary to BDP Policies PG3 and TP27 and DMBP Policies DM2 and DM10 whose aims are already outlined above. However, there would be no harm to living conditions of these existing occupiers from overshadowing or outlook.

Whether a safe environment

29. The Framework seeks to ensure that development creates places that are safe and where crime and disorder and fear of crime do not undermine the quality of life or community cohesion. The driveway from Cole Valley Road into the site would be approximately 70m long. Whilst the route is straight for most of its length it would pass between the retaining walls and blank walls of two properties, the side boundaries of the long gardens of the existing properties

on either side, and the garden boundaries and flank walls of Plots 2 and 3. This is a substantial distance for pedestrians to walk along a shared surface with vehicles, with no lighting and with very limited natural surveillance.

30. The Police suggest the installation of bollard lighting to increase safety and reduce the fear of crime. The installation of such lighting could be conditioned, but I am not satisfied that it could be adequately located within the shared pedestrian/vehicular access without compromising the functionality of the access. The insertion of windows in the side elevations of the proposed dwellings on Plots 2 and 3 would help increase surveillance but this would only address the last section of the access route and not address the darkest and most enclosed part. Providing gates would not be conducive to community cohesion.
31. Overall, the layout and configuration of the site necessitating a long access road as described would amount to a poor-quality setting and environment that would reduce safety and increase the fear of crime for future occupiers and their visitors. Accordingly, the proposal would be contrary to BDP Policies PG3 and TP27, and DMBP Policy DM2. Together these seek, amongst other things, to create a positive sense of place and safe environments that design out crime and provide attractive environments for people to move around.

Parking provision

32. For Zone C, the standards in the Council's Car Parking in Birmingham Supplementary Planning Documents (the Parking SPD) would require 20 spaces for the dwellings, plus a further unallocated parking space for visitors. The proposal shows 2 parking spaces per dwelling, most of which would be provided directly outside each dwelling, apart from Plots 1 and 10 which would have their parking nearby at the ends of the cul-de-sac. The 2 parking spaces for Plot 2 would be alongside the access drive from Cole Valley Road. No 'unallocated' parking for visitors would be provided.
33. There are parking restrictions on Cole Valley Road with yellow lines, although there is a layby for parking a number of cars near the junction with Highfield Road. In light of my findings above on safety, it is unlikely that visitors would want to park on Cole Valley Road and negotiate the long driveway. This would put pressure on the limited parking within the constrained site.
34. The appellant has submitted a revised layout showing indicatively the provision of one visitor space on the landscaping buffer along the site's eastern boundary with the railway line. Whilst this would reduce some of the site's landscaping, I am satisfied that the provision of one additional parking space could be achieved without significantly affecting the landscaping of the site. Were I minded to allow the appeal, this could be conditioned to make the proposal acceptable to accord with the Council's parking standards and accord with BDP Policies PG3, T27 and TP30 and DMBP policies DM2, DM10, DM14 and DM15. Collectively they seek, amongst other things, to ensure that new development can meet its operational needs and would not adversely impact on highway safety.

Planning Balance and Conclusion

35. The Council does not have a 5-year supply of housing land. Therefore, policies which are most important for determining the application are to be considered

out-of-date and the 'tilted balance' set out within paragraph 11d) of the Framework is engaged. This is a material consideration that weighs against the proposal.

36. The proposal would bring forward a net increase of 9 dwellings which would contribute to the local housing supply to which I give significant weight. There would be some modest associated economic and social benefits from jobs during construction and local spend. The site would also see more efficient use of land that is apparently underused, and I give this moderate weight. The site is within walking distance of local shops on Highfield Road. There are also bus stops and Yardley railway station close by that would offer future residents genuine alternatives to the car in accordance with the aims of the Framework. This counts in favour of the proposal.
37. However, the proposed development would not provide appropriate living conditions for existing occupiers of some neighbouring properties with regards to privacy and outlook, which would degrade their living conditions. There would also be a long-lasting harm to the character and appearance of the area and the proposal would create an unsafe and poorly designed environment, in terms of the access. Hence the proposed development would undermine the Framework's delivery of good quality homes and safe and well-designed places. I find this weighs considerably against the sustainability aims of the Framework.
38. Therefore, the adverse impacts of granting permission for 9 dwellings would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The absence of harm to some living conditions from some plots and provision of adequate parking carry neutral weight in my consideration.
39. In conclusion, the proposal would be contrary to the development plan as a whole and this conflict is not outweighed by other material considerations, including the provisions of the Framework and paragraph 11 in particular. Therefore, the appeal should be dismissed.

K. Stephens
INSPECTOR