



Appeal Decision

Site visit made on 20 April 2023

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2023

Appeal Ref: APP/P4605/W/22/3313617

Land adjacent 39 Fastmoor Oval, Kitts Green, Birmingham B33 0NR

- 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 Siddiqui on behalf of Zahrah Property Ltd against the decision of Birmingham City Council.
 - The application Ref 2022/06415/PA, dated 14 August 2022, was refused by notice dated 12 October 2022.
 - The development proposed is construction of 1 two storey 3 bedroom semi-detached house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the evidence before me it appears that the appeal site forms part of a public right of way established in January 1978 under reference 3118. A map of the route was provided in the Council's evidence. In the absence of substantive evidence to the contrary I have determined the appeal on that basis.
3. The Council acknowledges that it is presently unable to demonstrate a five year supply of deliverable housing sites in line with paragraph 74 of the National Planning Policy Framework (the Framework). I will return to that subsequently, however on that basis, and in the absence of relevant protected areas or assets defined in the Framework footnote 7 here, there is no dispute that Framework paragraph 11. d) ii) is engaged.

Main Issues

4. The main issues are the effect of the proposed development on: the character and appearance of the surrounding area; the living conditions of existing neighbouring occupants with respect to crime and fear of crime; and the usability of the public right of way.

Reasons

Character and Appearance

5. The appeal site is located in a relatively high density residential area. Houses that front on to Fastmoor Oval (the Road) are positioned to a consistent building line behind modest front drives. Gaps between houses are generally small which adds to the high density feel. The appeal site comprises a gap in the built form, separating No 39 from No 41 Fastmoor Oval.

6. Houses behind the appeal site, on Greenway Walk, front on to three sides of a modest grassed area that is connected to the Road by a footpath. Consequently, the appeal site appears as a continuation of the grassed area in Greenway Walk and has a greening effect on the street scene. This is particularly welcome as the Road is without street trees and there is a predominance of hardstanding.
7. From Greenway Walk there is a pleasing sense of symmetry in the width of the gap between No 39 and 41 which is aligned with the width of the opposite houses at No 42 and 44 Fastmoor Oval. Accordingly the appeal site contributes to a pleasant sense of openness and spaciousness that is a positive feature of the character and appearance of the area.
8. The proposed dwelling would be detached but of a similar design to the terraced housing to either side. However, the proposed development would result in a notable reduction in the gap between No 39 and 41 Fastmoor Oval. This would result in a considerably more enclosed feel from within Greenway Walk. It would also result in the loss of the pleasant sense of openness that the appeal site provides when viewed from the Road. Notwithstanding that a much smaller gap would remain, the significant reduction in this gap would be detrimental to the character of the surrounding area as experienced from the Road as well as from communal space on Greenway Walk.
9. Therefore, despite the proposed use of sympathetic materials, and whether or not the area could be said to comprise a Radburn layout, the proposal would unacceptably harm the character and appearance of the surrounding area. The harm would arise from the loss of the sense of openness, notwithstanding that the site is in private ownership.
10. Accordingly the proposal would be contrary to Policy PG3 of the Birmingham Development Plan (January 2017) (BDP). This seeks to ensure developments achieve high quality design, including with respect to outdoor spaces and green infrastructure. The proposal would also conflict with Policy TP27 of the BDP. The policy confirms that it applies to small infill sites, such as this one, and requires developments to achieve high quality design. Policy TP28 of the BDP relating to the location of new housing does not address this main issue.
11. Moreover, although relating to private land, the proposal would conflict with part 6 of Policy DM14 of the Development Management in Birmingham Development Plan Document (December 2021) (DMB). This supports new vehicle accesses, including driveways, where it would not adversely affect the street scene or result in the loss of important landscape features. It would also conflict with Policy DM2 of the DMB which seeks to ensure proposals are suitable for their location with consideration to amenity space. Policy DM10 of the DMB deals with standards for residential amenity which is not relevant here. The proposal would be contrary to the Birmingham Design Guide (2022), including paragraph 1.6 of GI.2 which seeks to ensure proposals respect existing character areas, including retaining the existing balance of hard and soft landscape.
12. It would also conflict with paragraph 130 of the Framework which sets out that development should add to the quality of an area, be sympathetic to local character, and maintain a strong sense of place. In addition, the proposal would conflict with paragraphs 41 and 43 of the National Design Guide. These

advise that developments should respond well to, and integrate with their surrounding context.

Living conditions with respect to crime and fear of crime

13. The increased sense of enclosure of the houses on Greenway Walk would result in a reduction in natural surveillance of the green to the rear of the appeal site and houses on Greenway Walk. However, as a gap would remain between No 39 and the proposed dwelling, houses on Greenway Walk would not be entirely hidden from view. Moreover, given their inward facing design, houses on Greenway Walk provide a degree of natural surveillance for each other. There would also be potential for a degree of surveillance of the space from first floor rear facing windows in the proposed dwelling.
14. Consequently, although harmful to the character and appearance of the area, evidence that the proposal would result in an increase in crime, or fear of crime, resulting in harm to the living conditions of existing neighbouring occupants, is not sufficiently persuasive.
15. Accordingly, the proposal would comply with Policy TP39 of the BDP which supports safe and pleasant walking routes. In addition, the proposal would accord with the requirement in Policy PG3 of the BDP for proposals to achieve safe places and design out crime. However, for the reasons given above it would conflict with that policy as a whole. Similarly, the proposal would be in an accessible location in accordance with Policy TP27 and TP28 of the BDP. However, in light of my reasoning with respect to the first main issue, the proposal would conflict with Policy TP27 as a whole.
16. Also, in relation to this main issue the proposal would comply with Policy DM2 criterion f. of the DMB which requires consideration of impacts on crime and fear of crime. Nevertheless, in light of the harm to character and appearance the proposal would conflict with the policy as a whole, which generally seeks to ensure developments are appropriately located. The proposal would accord with paragraph 130.f) of the Framework, which seeks to ensure proposals do not result in crime and fear of crime undermining quality of life. However, as above, it would conflict with paragraph 130 as a whole.

Public Right of Way

17. The Council considers that the proposal would harm the setting of the existing public right of way by removing the sense of openness along the side that borders the appeal site. Although it would be enclosed along one side, the Council acknowledges that the existing path would remain a similar width and length. Moreover, in my experience it is not unusual for footpaths in residential areas to be bound on one side by the side of an adjacent house. The footpath would remain separated from the boundary of No 39 by the existing grassed strip. This would retain sufficient openness to avoid the footpath becoming unacceptably enclosed or secluded.
18. Furthermore, the proposed development would only impact a short stretch of the public right of way. Local residents would still be able to make use of the route to access properties on Greenway Walk and as a through route. In addition, it would not be so changed so as to make use of that route undesirable for a range of users, including those in wheelchairs or with pushchairs.

19. Consequently, and notwithstanding the harm I have identified with respect to the effect of the proposal on the character and openness of its surroundings, the proposed development would not unacceptably harm the usability of the public right of way. As such, it would accord with Policy TP39 of the BDP which generally supports the provision of safe and pleasant walking routes. In addition, it would accord with paragraph 92.b) of the Framework which supports proposals that are safe and accessible by suitable pedestrian routes.

Other Matters and Planning Balance

20. The proposal is said to be located on private land. However, in the absence of the appeal scheme, it appears reasonably likely that the land would remain open. No robust evidence is before me to indicate otherwise.
21. Paragraph 11. d) ii) of the Framework states that where policies most important for determining the application are out-of-date, permission should be granted unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole.
22. In the context of the development plan I have found the proposed development would be contrary to policies PG3 and TP27 of the BDP as a whole, and policies DM2 and DM14 of the DMB. For this appeal, I have found these policies to be generally consistent with the relevant aims of the Framework and I attach substantial weight to them. I have found significant harm to arise in the context of these policies. Although I have found no harm in terms of Policy TP28 of the BDP on the location of new housing and Policy TP39 of the BDP on walking routes, the proposal would not accord with the development plan when considered as a whole.
23. The Framework seeks to significantly boost the supply of homes. However the development plan and the Framework must be considered as a whole. The Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development through the delivery of the mutually dependent economic, social and environmental objectives. In that context, the proposal would achieve an incremental increase in housing supply, comprising one unit, in an area with an acknowledged lack of future provision, on a previously developed site in an accessible location. There would be economic advantages of construction and occupation of this dwelling. An absence of harm in respect of matters such as highway safety is a neutral consideration.
24. Nevertheless, the benefits arising from one new home would inevitably be limited. Moreover, neither the support for new housing in the development plan nor the Framework is at the expense of ensuring that all development is appropriately designed and integrates suitably with its surroundings. Therefore, even if the site is shown not part of an adopted public right of way, the harm to the character and appearance of the area would be significant, and the scheme's benefits modest. As such, the adverse impacts of granting consent would significantly and demonstrably outweigh any benefits. Consequently other material considerations in favour of the proposal do not justify taking a decision contrary to the development plan.

Conclusion

25. For the above reasons, and having taken all other relevant matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR