



Appeal Decision

Site visit made on 2 August 2023

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2023

Appeal Ref: APP/P4605/W/22/3305141

1107 Bristol Road South, Northfield, Birmingham B31 2QP

- 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 and Mrs Sarbjeet Singh Minhas against the decision of Birmingham City Council.
 - The application Ref 2022/00487/PA, dated 17 January 2022, was refused by notice dated 4 May 2022.
 - The development proposed is Change of use of ground floor retail (Use Class E) to 2no self-contained flat (Use Class C3) and external alterations to front, side and rear elevations.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of ground floor retail (Use Class E) to 2no self-contained flats (Use Class C3) and external alterations to front, side and rear elevations at 1107 Bristol Road South, Northfield, Birmingham B31 2QP in accordance with the terms of the application, Ref 2022/00487/PA, dated 17 January 2022, subject to the conditions contained in the attached schedule.

Preliminary Matters

2. Following the submission of the appeal, the Places for Living Supplementary Planning Guidance (2001) which is referred to in each of the Council's reasons for refusal, has been superseded by the Birmingham Design Guide Supplementary Planning Document (2022) (the SPD). This was evident in the submissions made by the Council and therefore the appellant has had an opportunity to make comments on any relevance of this to the outcome of the appeal. As such, neither main party is prejudiced by me taking the SPD into account in this decision.
3. An annotated sketch plan has been submitted within the appellant's statement, which illustrates potential alternative access arrangements for occupiers of proposed Flat 1 to the shared amenity space to the site's rear. The Procedural Guide for Planning Appeals makes clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested party's views were sought. Nevertheless, the Council and interested parties have had the opportunity to view and comment on the sketch plan through the appeal process. When also noting the minor nature of the annotations made, I am satisfied that no party with a potential interest in the outcome of the appeal is prejudiced by me accepting the submitted sketch plan for information purposes.

Main Issues

4. The main issues in the appeal are:

- The effect upon the character and appearance of the area; and
- Whether or not acceptable living conditions would be created for the occupiers of proposed Flat 2, having particular regard to privacy.

Reasons

Character and appearance

5. The appeal site is located off Bristol Road South which is a main route into and out of Birmingham. The area exhibits a spacious character with buildings typically set back generous distances from the highway. A variety of residential and commercial uses exist within the site's immediate environs. The appeal site comprises part of a mixed-use building that contains commercial units at ground floor level with flats above, and a neighbouring block of flats is situated immediately to the side.
6. The development proposes the change of use of the existing retail unit to two self-contained flats. The arrangement of the proposed flats would be one behind the other, with Flat 1 at the front of the building, making use of the appeal property's open frontage, and Flat 2 to the rear.
7. Due to this relationship, Flat 2 would have no active frontage and would effectively be hidden behind Flat 1 which would face Bristol Road South. The windows and an access point to Flat 2 would be to the side, and thus would neither relate to Bristol Road South or West Park Avenue.
8. However, whilst the Council has set out that there is no precedent for ground floor residential uses hidden from view, there is not a set rhythm to the manner in which development is formed and laid out in the immediate vicinity of the site. Indeed, the sizable block of flats that sits adjacent to the site would inevitably incorporate flatted units set back from the highway (including at ground floor) and a mix of residential and commercial uses are in existence close by, with accesses to upper floor flats often situated in rear locations. Moreover, Flat 2 and its access arrangements would have a discreet presence that would not cause material harm to the character or appearance of the area. Indeed, an active frontage to the appeal property (serving Flat 1) would be retained at ground floor level.
9. For the above reasons the proposed development would have an acceptable effect upon the character and appearance of the area. It would therefore comply with Policy PG3 of the Birmingham Development Plan (2017) (the BDP) which seeks to ensure that all new development demonstrates a high design quality, contributing to a strong sense of place. The proposal would also comply with Policy DM12 of the Development Management in Birmingham Development Plan Document (2021) (the DPD) which seeks to ensure that residential conversions would be supported where the accommodation would not lead to an adverse impact on character or appearance of the area.
10. Having regard to the SPD, this states that proposals seeking to increase the density of buildings are unlikely to be supported unless the proposal will not result in a negative impact on the surrounding character area. For the reasons

mentioned, the proposal acceptably accords with the guidance contained within the SPD.

11. The proposal would also comply with the National Design Guide, which requires development to be well-designed and to respond positively to the features of the site itself and the surrounding context beyond the site boundary and with the National Planning Policy Framework (the Framework), which requires developments to add to the overall quality of the area and to be sympathetic to their surroundings.

Living Conditions

12. The Council's evidence focuses on alleged harm to the living conditions of future occupiers of Flat 2 as a result of a lack of privacy. This is due to a pedestrian access to the rear of the development taking occupiers of Flat 1 directly past the windows of Flat 2 in order to access shared outdoor space to the rear.
13. As part of the submissions made for this appeal, the appellant has provided an annotated sketch plan that shows an alternative route to the shared garden space for occupiers of Flat 1 in conjunction with the provision of a secure gate. Although this plan is in a sketch form, it clearly shows that it would be possible to eliminate the need for occupiers of Flat 1 to pass down the side of the building past the windows of Flat 2 to access the shared garden space. Instead, the occupiers of Flat 1 could access the garden space through the internal layout of the building, which would be a more convenient and direct route. Accordingly, this provides a reasonable solution. The scheme would therefore be acceptable with regard to safeguarding the privacy of future occupiers of Flat 2. This is subject to final details being secured via condition.
14. For the above reasons, having particular regard to privacy, acceptable living conditions would be created for the occupiers of proposed Flat 2. The proposal therefore complies with Policies DM2 and DM10 of the DPD insofar as they seek to ensure that development does not result in unacceptable adverse impacts on amenity of occupiers and neighbours.
15. The proposal would comply with the SPD insofar as it states that the density of a proposal must not impact on the quality of residential amenity.
16. The proposal would also comply with paragraph 124 of the National Design Guide, which promotes quality of life for the occupants and users of buildings including privacy, and with paragraph 130 (f) of the Framework, which states that decisions should ensure that developments have a high standard of amenity for existing and future users.

Other Matters

17. The Council's officer report indicates that, with regard to other matters concerning living conditions, including access to private amenity space and to outlook, the proposed development would not provide ideal living conditions for future occupiers due to the constrained nature of the site. However, when factoring in previous decision-making at the site, it was found that any harm would not be to such a degree to warrant refusal of planning permission. Based on the information that is before me, and in recognition of the presumption in favour of sustainable development, I have no reason to take a

different stance to the Council. This is notwithstanding the now elapsed nature of permission 2019/07745/PA.

18. Moreover, the proposal accords with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conditions

19. The Council has suggested several conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have made amendments for consistency and clarity purposes and have omitted one related to an electric vehicle charging point.
20. In the interests of certainty, a condition specifying the approved plan is required. I have also imposed a condition requiring a plan to be submitted to the Council for approval, to address the boundary treatments and access arrangements to ensure that the proposal does not harm the character and appearance of the area, and to ensure that privacy of Flat 2 is safeguarded.
21. A condition is necessary for details of materials to be submitted to the Council for approval to maintain the character and appearance of the area.
22. I have not imposed a condition relating to an electric vehicle charging point as there is no dedicated parking space within the red line, therefore this would not be reasonable.
23. I have imposed a condition relating to the provision of cycle storage in the interests of providing sustainable travel options for future occupiers. I have also imposed a condition for the provision of refuse within the curtilage of the development in the interests of the character and appearance of the area and safeguarding the general amenities of the area.

Conclusion

24. For the reasons given, the appeal should be allowed.

N Duff

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be implemented in accordance with the following approved plan: 3950_001
3. Full details of the materials to be used for the external alterations hereby permitted shall, prior to their use/installation, be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
4. Notwithstanding the approved plan, full details of the proposed boundary treatments and access arrangements to the shared external space situated to the rear shall, prior to first occupation, be submitted to and approved in writing by the Local Planning Authority. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved scheme shall be implemented prior to the first occupation of the development hereby permitted and shall be retained thereafter.
5. Notwithstanding the approved plan, full details of cycle storage shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby permitted. The development shall, prior to first occupation, be implemented in accordance with the approved details and thereafter maintained.
6. Notwithstanding the approved plan, full details of facilities for the storage of refuse shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the development hereby permitted. The refuse facilities shall, prior to first occupation, be provided in accordance with the approved details and thereafter maintained.