



Appeal Decision

Site visit made on 22 August 2023

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/P4605/W/23/3318577

301-303 Numberdar Court, Alum Rock Road, Birmingham B8 3BJ

- 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 Azher Hussain against the decision of Birmingham City Council.
- The application Ref 2022/06967/PA, dated 8 September 2022, was refused by notice dated 7 March 2023.
- The development proposed is described as "the requirement for Ancillary Offices at First floor in connection with the Ground floor shop Area."

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposal upon the living conditions of the occupiers of Flat 5 301-303 Numberdar Court with regard to outlook, noise and natural light; and
 - the effect of the proposal upon the living conditions of the future occupiers of plots 10 and 11 of the neighbouring Leyland Social Club development with regard to privacy.

Reasons

Living conditions of Flat 5 301-303 Numberdar Court

3. Flat 5 is located within a busy commercial area above a shop and next to an office. There would be consistent low-level ambient noise from the shop and office as well as from the surrounding uses. Given this consistent low-level ambient noise from the surrounding uses, the relatively small number of additional movements to and from the proposed office and the rear outdoor space would create very limited additional noise disturbance. Furthermore, there is also no technical evidence before me that the proposed use would create a significant amount of noise disturbance. Normal office use would create a very limited amount of noise, especially as this would typically take place during office hours, when the flat would be less likely to be occupied.
4. The two windows within Flat 5 that face towards the neighbouring Leyland Social Club development are, based on the evidence before me, unauthorised windows that could be subject to enforcement action. The proposal would result in the loss of the two windows to the rear and the occupiers would be reliant on these unauthorised windows for natural light and outlook. Given that

these windows could be removed via enforcement action I find that the proposal could result in a dwelling that would have no authorised windows. This would result in a dwelling that would be completely enclosed which would have a very poor outlook and natural light.

5. If I were to allow the appeal and the windows in Flat 5 were permitted and had obscured glazing with limited openings, then the occupiers would not overlook the future occupants of the neighbouring dwellings. Furthermore, the neighbouring houses that are being built would not overshadow the flat given their limited height. These windows would allow natural light to percolate into the flat, although this would be limited given that they would be single aspect windows. As a result, during parts of the day direct sunlight would not reach the flat. The end of the kitchen living area would also get very limited natural light given the depth of the proposed room. Accordingly, these windows could provide a limited amount of natural light. However, the obscure glazed windows would effectively provide no outlook for the occupants of the flat. These would be the only windows that would serve the dwelling, and this very enclosed outlook would create an oppressive living environment for the occupiers.
6. Therefore, whilst the noise generated by the proposal would not be harmful. The combined effect of the poor outlook and the limited natural light that the flat would receive would have an unacceptable adverse impact on the occupiers of Flat 5. This would harm their living conditions and would consequently, conflict with Policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document adopted 2021 (DMB) and Policy PG3 of the Birmingham Plan 2031 Birmingham Development Plan adopted 2017 (BP) as well as the Birmingham Design Guide Supplementary Planning Document adopted 2022 (SPD). It also would not accord with the National Planning Policy Framework (the Framework). These seek to ensure developments do not result in unacceptable adverse impacts on the amenity of occupiers and neighbours with regard to sunlight, daylight and overshadowing, as well as aspect and outlook.

Living conditions of the future occupiers of plots 10 and 11 of the neighbouring Leyland Social Club development

7. The three windows on the flank wall of the proposed office extension would face towards the former Leyland Social Club where a major residential development is currently under construction. Several dwellings are being built close to the site and the proposed windows would directly overlook the rear gardens of those houses. Given the limited separation distances between the proposed windows and the authorised houses, those working in the office would be able to look directly into the gardens of those houses. This would create a poor living environment for the occupants with limited privacy.
8. However, it is proposed that the windows are obscure glazed with open hung windows that open from the bottom. An appropriately worded condition would ensure this could be enforced. This would ensure the proposed occupiers of the office would not overlook the future occupants of the former Leyland site. These alongside the proposed rooflights would allow ample levels of natural light to percolate into the office.
9. Therefore, the proposal would not harm the living conditions of the future occupiers of plots 10 and 11 of the neighbouring Leyland Social Club

development. Accordingly, the scheme would not conflict with Policy DM2 of the DMB as well as the SPD nor the Framework. These seek to ensure developments do not result in unacceptable adverse impacts on the amenity of occupiers and neighbours with regard to visual privacy and overlooking.

Other Matters

10. The council refers to issues regarding highway safety relating to the location of the cycle storage in the Statement of Case. However, this did not form one of the refusal reasons. Furthermore, regarding the alleged discrepancies between the plans, given that I am dismissing the proposal on substantive grounds, the alleged discrepancies would not affect my decision. As these matters could not affect the outcome of the appeal, I have not considered them further.
11. I have been referred to a 2017 application where planning permission was granted for a first-floor extension to the building. This has now lapsed and based on the information submitted this permission was not implemented. Furthermore, the adjacent site has changed use from commercial to residential and a new development plan has been adopted alongside an SPD which has provided more detail to ensure developments do not harm the amenities of existing and neighbouring uses. Accordingly, the site circumstances and policy position has substantively changed since that decision was made. As such, I attach limited weight to this earlier permission in making my decision.

Planning Balance

12. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan, unless material considerations indicate otherwise.
13. The scheme would conflict with policies in the development plan that seek to protect occupiers living conditions and these are consistent with paragraph 130f) of the Framework. The enclosed outlook and the failure to provide appropriate levels of natural light for the occupiers of Flat 5 would cause significant harm to their living conditions and I attach significant weight to this and the conflict with the development plan.
14. The proposal would provide a time limited economic benefit during construction as well as longer term economic and social benefits once the office space, located in an area with good transport links, was in use. This would support the economic, social and environmental aspects of sustainable development. However, this is tempered by the limited scale of the development, but nevertheless the other considerations of the scheme carry modest weight in favour of the proposal.
15. The proposed development would conflict with the development plan and the other material considerations would not indicate a decision should be made other than in accordance with it.

Conclusion

16. For the reasons given above, the appeal should be dismissed.

G Sibley

INSPECTOR