



Appeal Decision

Site visit made on 3 October 2023

by Nichola Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 October 2023

Appeal Ref: APP/P4605/W/23/3321268

26-26a Hamstead Road, Birmingham B19 1DB

- 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 Hockley Car Spares against the decision of Birmingham City Council.
 - The application Ref 2022/08410/PA, dated 10 November 2022, was refused by notice dated 03 February 2023.
 - The development proposed is described on the application form as "retention of car repairs at the rear of the site".
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made against Birmingham City Council by the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted retrospectively and is described on the application form as being for the "retention of car repairs at the rear of the site". The term "retention" does not amount to an act of development for which planning permission can be granted. Consequently, I have treated the appeal on the basis that planning permission is sought for the "change of use to car repairs at the rear of the site."
4. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as the appellant was not present when I arrived at the appeal site during the pre-arranged period, and I was able to see all I needed to from public land.

Main Issues

5. The main issues are the effect of the development on:
 - the character and appearance of the area including the Lozells and Soho Hill Conservation Area and the setting of nearby grade II listed buildings 28a and 30-46 Hamstead Road;
 - the living conditions of the occupants of neighbouring properties to the south and west of the appeal site with particular regard to noise; and
 - highway and pedestrian safety.

Reasons

Character and appearance

6. The appeal property comprises 26-26a Hamstead Road which is located to the rear of the properties on Hamstead Road and previously formed amenity space. The appeal is located within the Lozells and Soho Hill Conservation Area (CA) the boundary of which covers the late Georgian, regency and Victorian properties in Hunters Road, Barker Street, Villa Street and the neighbouring streets. Whilst the CA includes some commercial buildings, the area is predominantly characterised by rows of 2 and 3 storey uniformly-designed terraces which are set back from the highway behind low level brick walls. The significance of the CA appears to relate to the architectural merit and group-value of the properties which reflects the historic settlement pattern. The appeal site differs from the other residential properties in the road as it has been severed from its host dwelling and forms a gap between buildings. Consequently, the site makes a neutral contribution to the CA.
7. The site is located close to Grade II Listed Buildings 28a and 30 to 46 Hamstead Road. I have been provided with the listing descriptions for these properties which sets out that they are 3 storey red brick town houses. These buildings appear to derive their significance from their architectural interest as a well-preserved example of a vernacular building of its type, and in the contribution the appearance of the buildings makes to the wider streetscape. The appeal site does not appear to have any historic connection to these properties and consequentially they do not derive their significance from any physical connection to the appeal site.
8. The appeal is for the change of use of the site to car repairs. However, it appears that a corrugated plastic car port, timber boundary enclosure and blockwork wall have been brought onto the site in conjunction with that use. There is no particular evidence that these structures would be there if it weren't for the change of use to car repairs. Therefore, it is reasonable to take account of these structures in the determination of this appeal, though it is not for me to make a judgement on whether they are lawful.
9. The appeal site is located on the opposite side of the road to No 28a Hamstead Road, is located around the corner from 30 to 46 Hamstead Road and does not appear to be part of the significance of these buildings. Whilst the appeal site is close to these listed buildings, given the presence of the road and other intervening development, the appeal proposal does not result in harm to their setting or significance.
10. The carport structure and timber boundary enclosure are reversible additions to the appeal site. Nonetheless, these structures, which have been brought onto the site in conjunction with the use of the site for car repairs, are highly visible within the street scene. The materials used in these structures, including corrugated plastic, timber and blockwork, appear jarring and unsympathetic in relation to the traditional materials found in the surrounding area. Furthermore, given their excessive scale and prominent siting, the boundary treatment and carport appear as bulky and incongruous features which dominate the street scene. Consequently, these structures are harmful to the character and appearance of the CA. Whilst I acknowledge the appellant's willingness to improve the design and appearance of the structures, no such details are before me to give substantial credence to.

11. In support of their case, the appellant states that the site is in a very deprived area of the city where many buildings and structures are built using simple construction methods. Even if it is the case that the site is in a deprived area, my attention has not been drawn to any other developments of similar scale and materials within the CA and due consideration must be given to the effect of the development on the character and appearance of the CA in any case.
12. As the appeal site is within a Conservation Area and is located close to 28a and 30 to 46 Hamstead Road, grade II listed buildings, I have therefore had special regard to Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which requires that decision makers pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Further, I have had regard to Section 66(1) of the same act which requires that, when considering planning proposals, decision makers should have special regard to the desirability of preserving listed buildings or their settings.
13. I have found that the proposal would not harm the setting or significance of nearby listed buildings. Nonetheless, the proposal, by virtue of its scale and the unsympathetic materials used, detracts from the character and appearance of the CA and fails to preserve its significance. In assessing the degree of harm caused, I have taken into account that the structures in question appear to be reversible. Nonetheless, in their current form these structures are harmful to the character and appearance of the CA. I find that the harm would be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the National Planning Policy Framework (the Framework) advises that this harm should be weighed against the public benefits of the proposal.
14. I acknowledge that the proposal utilises a brownfield site and would result in important economic benefits through employment generation and the continued operation of an existing business. I also acknowledge the appellant's case that there are no other car repair units close to the site and that this site is well-located in relation to public transport services and local amenities. These benefits to local residents and the contribution to the local economy weigh in favour of the appeal.
15. Nevertheless, heritage assets are an irreplaceable resource. Overall, I do not consider that collectively the public benefits are sufficient to outweigh the great weight that I must attach to the less than substantial harm caused to the CA. Conflict therefore arises with the historic environment protection policies in the Framework.
16. For the reasons set out above, I find conflict with Birmingham Development Plan (2017) (BDP) Policies PG3 and TP12 and Policy DP2 of the Birmingham Design Guide (2022). Collectively these policies seek to ensure that developments demonstrate high design quality and give great weight to the conservation of heritage assets and that where the site or surrounding character area contains heritage assets, these must be key considerations in the design response. I also find conflict with the Framework, which states that great weight should be given to the conservation of heritage assets.

Living conditions

17. The appeal site contains an open-sided carport, which occupies the southern half of the site and borders the site's southern boundary. Along the site's western boundary, the site is bordered by a high-level brick wall on top of which sits a timber fence. The appeal site is located in an area which comprises a mixture of commercial and residential uses. The site borders residential properties along its southern and western site boundaries and is located in very close proximity to the windows, openings and amenity space associated with these properties.
18. The application form indicates that the use of the site for car repairs has been operational since 03 February 2020. The submission states that the use operates between 10am and 6pm Monday to Saturday and employs 2 staff. It is stated that no heavy machinery is operated from the site. The submission does not include a noise survey.
19. The proposal comprises a small-scale operation and the level of activity is limited by the size of the premises. The evidence before me suggests that typically 2-3 vehicles are repaired a week. The scale of the business assists in limiting the extent of equipment being used at any one time and the number of cars requiring storage. I note that heavy machinery is not used and that hand tools are utilised for much of the work. Nonetheless, given the tight constraints of the site, much of the associated activity is carried out in very close proximity to the site boundaries shared with the neighbouring residential properties.
20. The development does not result in opportunities for overlooking of neighbouring properties. Nonetheless, and notwithstanding the lack of objection to the proposal from the Council's Environmental Pollution Control Team, given the very close proximity to these properties, any vehicle repairs undertaken at the site have the potential to cause noise and disturbance to the occupiers of neighbouring properties. Vehicle repair activity could result in noise from a number of sources including vehicle engines being turned on and tested; general noise associated with vehicle parts being dismantled and put back together; as well as noise from those undertaking the activity, from general conversations, radios being played etc. This would result in unacceptable disturbance for occupiers of these properties, which would harm their living conditions making these spaces less pleasant to use, particularly given their very close proximity to the appeal site.
21. Whilst there is some low level background from other sources in the locality, including some background traffic noise, that is not as intrusive because it is a more constant relatively low level of noise and very different in character to the noise from the activities the subject of this appeal.
22. I note that the use subject of this proposal has been operational for over 3 years and in that time it is stated that the occupiers of these properties have not raised objections or complaints to Environmental Pollution Control with regards to noise disturbance. I also acknowledge that a noise survey would provide details relating to the noise levels of the current operation, which may differ from future operations at the site in the same use. Nonetheless in the absence of a noise survey, I have nothing before me in terms of a formal assessment to convince me that the levels of noise generated by the use are not at a level which harms the living conditions of the occupiers of neighbouring properties.

23. No details have been provided of how the adverse impacts of the development are reduced or mitigated and no conditions to mitigate any impact have been suggested by the appellant. Nonetheless, it is difficult to consider how conditions would be effective in controlling a use that is inherently incompatible with the adjoining residential use.
24. In the absence of clear evidence to the contrary, I conclude that the development has a harmful effect on the living conditions of the occupants of neighbouring residential properties to the southern and western boundaries of the appeal site with particular reference to noise. Therefore, it is contrary to those aims of Policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document (2021) (DPD). These policies seek to ensure that new development does not result in unacceptable adverse impacts on the amenity of neighbours and that development should be designed, managed and operated to reduce exposure to noise and vibration, and state that applications for noise and/or vibration-generating development must, where relevant, be accompanied by an assessment of the potential impact of any noise and/or vibration generated by the development on the amenity of nearby residents. I also find conflict with Paragraph 130 of the Framework which states that developments should create places with a high standard of amenity for existing users.
25. Whilst referred to by the Council I find no conflict with BDP Policy PG3 in relation to this main issue. This policy relates to place making and design quality.

Highway safety

26. The appeal site is accessed from Charleville Road and is located close to the junction with Hamstead Road. A footpath lines both sides of Charleville Road. The site frontage is lined by high level boundary treatment which obscures visibility of the highway and footpath in both directions.
27. At the time of my mid-morning site visit there was a light flow of traffic in both directions along Charleville Road and, given the proximity to the junction, vehicles were travelling at relatively slow speeds. There was a steady flow of pedestrians using the footpath in both directions. I observed that there were cars parked in the street, including close to the appeal site entrance, but that the area to the front of the appeal site was free of parked vehicles. I observed that there were limited opportunities to park in the road. Nonetheless, where there were parked cars on the road, they did not appear to impede the free flow of traffic. Whilst this is a snapshot in time, there is nothing in the evidence before me to suggest that these observations are atypical of the area.
28. At my site visit I did not observe any unlawful or illegal parking, though I acknowledge that the Council and interested parties reference illegal parking to the front of the premises and that my observations represent a snapshot in time. Nonetheless, there is no compelling evidence before me that any illegal parking to the site frontage is associated with the operation of the appeal site.
29. The site layout accommodates up to 4 vehicles. The submission states that no more than 2-3 cars are being repaired within the site during the week and that this is by prior appointment only. Thus, the number of vehicular movements to the site is low and does not generate a significant number of vehicular movements on the surrounding highway network.

30. The appellant states that the proposal does not involve the parking of vehicles on the nearby highway. Whilst I acknowledge the appellant's desire to continue operating from the site, this may not always be the case and different operators may operate differently. Nonetheless, even if the development did result in vehicles parked in the road, there is no persuasive evidence of extreme parking pressure in the immediate locality, and I have not been presented with any evidence that such spill over parking would prevent the free flow of traffic on the adjoining highway network.
31. I note that vehicular movements onto and off the site are modest, and speeds are likely to be low as well. Nonetheless, the manoeuvring space within the appeal site is very restricted. Whilst the appellant has expressed a willingness to provide a tracking plan and transport statement, this detail does not form part of the appeal submission. In the absence of a tracking plan there is no evidence before me that the site would have the capacity to enable vehicles to enter and exit in a forward gear. This results in vehicles reversing from the site onto Charleville Road.
32. Those drivers reversing out of the site would have limited visibility along the highway or the pavement. Vehicles parked on the highway close to the site access would further reduce the visibility of drivers leaving the site as well as for drivers approaching along Charleville Road. Reversing from the site onto Charleville Road, even given the slow speeds of vehicles travelling, results in a situation where the driver's visibility would be limited, which would be hazardous to both pedestrians and other road users. Consequently, the proposal introduces an increase in potential for conflict between road users and pedestrians with the potential for knock on implications for highway safety. This leads to a significant increase in the likelihood of conflict between vehicles egressing the site and users of the footway and highway, causing unacceptable harm to highway safety.
33. Whilst I note the appellant's comments that the appeal site previously functioned as a car park, I have not been supplied with the details of the layout of this and thus it has not been demonstrated that the previous uses of site resulted in similar impacts upon pedestrian and highway safety. Consequently, I afford this limited weight.
34. I conclude that the development results in highways conditions harmful to the safety of highways users. Thus, the development is contrary to those aims of BDP Policies PG3 and TP44 and DPD Policy DM15. Collectively these policies seek to provide attractive environments that encourage people to move around by walking and cycling, promote the safe use of the existing transport network and ensure that proposals for parking and servicing avoid highway safety problems. There is also conflict with the Framework insofar as it seeks to ensure that development does not have unacceptable impacts on highway safety.

Other Matters

35. I note the appellant's comments that the refusal of planning permission would have a catastrophic impact on their livelihood. However, that does not mean that the adverse impacts of the development are of no importance. The personal circumstances of the appellant can also be expected to change over time, whereas the harm that I have found the development would cause to the character and appearance of the CA, highway safety and the living conditions

of the occupiers of neighbouring properties would persist for the lifetime of the development.

36. The appellant states that the site had been vacant for over 12 of years and, whilst it comprised part of the amenity space for 28 Hamstead Road, it was not used as such and attracted anti-social behaviour, which caused nuisance and disturbance to local residents. It is stated that the appellant incurred expenses cleaning up the site due to this anti-social behaviour and dumping. Nonetheless, I have not been presented with any compelling evidence that this reduction in anti-social behaviour is contingent upon the use of the site for car repairs. Therefore, I give limited weight to this in the determination of this appeal.
37. I note that the site would make adequate provision for access by fire appliances. Nonetheless, compliance with the relevant planning policies on this matter would be required in any case. Therefore, this matter does not weigh in favour of the proposal.
38. I note that the appellant is unsatisfied with the Council's handling of the application. However, this is not a matter for consideration in this appeal which focusses on the planning merits of the proposal.

Conclusion

39. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nichola Robinson

INSPECTOR