



Appeal Decision

Site visit made on 12 September 2023

by L Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Appeal Ref: APP/P4605/D/23/3323997

39 Sandmere Road, Birmingham, West Midlands B14 4JA

- 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 Fazel Ali against the decision of Birmingham City Council.
 - The application Ref 2022/06060/PA, dated 1 August 2022, was refused by notice dated 26 April 2023.
 - The development proposed is retention of two-storey rear addition.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed reference to the previous approval for an extension from the description in the banner heading above as this is not in itself development. I noted at my site visit that an extension to the dwelling is partially complete. However, for the avoidance of doubt, I have determined the appeal based on the submitted plans.

Main Issues

3. The main issues are:
 - a) the effect of the proposed extension on the living conditions of the occupiers of No 41 Sandmere Road (No 41) with particular reference to outlook and light, and the occupiers of No 37 Sandmere Road (No 37) with particular reference to privacy; and
 - b) the effect of the proposed development on the character and appearance of the host property.

Reasons

Living conditions

4. Number 39 Sandmere Road is an end terrace of four properties. The surrounding area is predominantly residential and comprises terraces and semi-detached properties.
5. Policy DM10 of the Development Management in Birmingham Development Plan Document 2021 (DMB) highlights that development should not cross the line from an angle of 45 degrees from the nearest window providing the main source of light to a habitable room of a dwelling which could be affected. Although there is an element of flexibility that can be applied when using the 45 Degree Code, the policy states that exceptions to the Code must be robustly

demonstrated with appropriate evidence that adhering to the standards is not feasible due to physical constraints or financial viability. Any reductions in standards must show that residential amenity will not be significantly diminished. City Note LW4 of the Birmingham Design Guide Supplementary Planning Document 2022 (BDG) is clear that in general the Code will be applied consistently.

6. No 41 is not attached to the appeal property nor is it built up to the boundary, but the dwellings are close together. The projection of the first floor extension from the rear elevation would diminish the outlook from the rear windows of No 41 and reduce the amount of light available to it. I have been given no compelling reasons that adhering to the 45 Degree Code standards, which were met in the original approval¹, would not be feasible.
7. The dwellings have good garden space, and the proposal would be north of No 41. However, this does not alter my concern that the proposed extension would be of such a scale as to negatively impact the outlook from No 41 and harmfully reduce the amount of light that the property would receive.
8. I noted on my site visit that the rear extension has a splayed window on the first floor, which would directly overlook the rear garden of the adjoining property and would lead to a loss of privacy for the occupiers of No 37.
9. Additionally, the proposed rear extension would not provide an adequate separation distance to No 37. This would compound the loss of privacy. The proposed rear extension would breach the setback guidelines set out in the BDG which requires a 5m setback per storey for residential development where primary windows overlook existing private space. Due to the angle and splay of the proposed first floor window, there would only be a minimal gap between the proposed window and the side boundary of No 37, conflicting with this requirement.
10. The appellant has suggested that there would be no significant increase in overlooking compared to that which exists at present and which is completely normal for terraced properties. However, I noted from my site visit that the design and the angle of the splayed window is such that the garden of No 37 would be overlooked to a greater extent than would be found in a typical terraced property which would result in a harmful loss of privacy to No 37.
11. Whilst a condition could be included to require that obscured glazing is used on the splayed window, I do not consider that this would be an appropriate solution for a bedroom window, nor would it address the separation distances between the proposed extension and No 37. The appellant has also indicated a willingness to change the direction of the window. However, this is not the scheme before me and I have determined this appeal on its own merits.
12. I acknowledge that the neighbours have not raised an objection to the proposed development. However, the absence of objections does not change my conclusions on the appeal scheme. Further, I am mindful that any harm identified would be permanent and would impact future occupiers of the neighbouring properties.
13. I conclude that the proposal would harm the living conditions of No 41 with particular reference to outlook and light, and No 37 with particular reference to

¹ 2018/06409/PA

privacy. The proposal would be contrary to Policies PG3 and TP27 of the Birmingham Development Plan 2017 (BDP) and Policies DM2 and DM10 of the DMB, which seek to ensure that development demonstrates high design quality and does not result in unacceptable adverse impacts on the amenity of neighbours, including visual privacy and overlooking, sunlight, daylight and outlook, and that developments should be in line with the approach of the 45 Degree Code. Additionally, the proposed development would not be in accordance with the National Planning Policy Framework (the Framework) which seeks to ensure that development proposals create places with a good level of amenity for existing users.

Character and appearance

14. The proposed extension is at the rear of the property, and it would not have a negative visual impact when viewed from the street. However, whilst a number of properties in the locality have had rear extensions, these are generally in keeping with the conventional style and design of a terraced row, with windows facing directly on to their own individual back gardens. The proposed orientation of the splayed window is not typical in a terraced property, and it would lead to the addition of an uncharacteristic and incongruous feature on the host dwelling which would be at odds with the prevailing pattern of development and the original design of the terraced row. Consequently the rear extension would look harmfully out of place.
15. On the issue of the effect of the proposed development on the character and appearance of the host dwelling, I conclude that the proposal would be contrary to Policy PG3 of the BDP which highlights that all development will be expected to demonstrate high design quality. It would also be in conflict with guidance in the BDG city note LW16 which highlights that poor quality designs that negatively impact on the appearance of a property will not be supported, and that designers must consider the key characteristics and styles of the host building, using similar shapes, sizes and designs for windows. Additionally, the proposal would conflict with the Framework which seeks to ensure that developments are visually attractive as a result of good architecture and sympathetic to local character.

Other Matters

16. My attention has been drawn to a number of other rear extensions in the locality which the appellant argues do not comply with the separation standards set out in the BDG. However, I am not aware of the exact designs, circumstances or the policy background that led to these extensions being permitted. As the BDG was only adopted in 2022 some of these may have been determined under a different policy and guidance context. I have determined this appeal on its individual planning merits with regard to current development plan policies and I have found harm. The examples of other developments in the locality do not justify the harm that I have identified.
17. I appreciate that the principle of residential development is acceptable, and that the proposed materials would be sympathetic to the host building. However, compliance with the development plan in this respect is a neutral matter. The proposal would benefit from improved living space for the appellant and his family, but this is a private benefit.

18. The appellant has drawn my attention to the economic, social and environmental dimensions of planning set out in the Framework. However, as noted above, the appeal proposal would conflict with the Framework in respect of the main issues in this appeal. The development plan policies are consistent with the Framework and paragraph 11d is not engaged. For the reasons set out the proposal would conflict with the development in terms of its design and the impact on neighbouring properties. Whilst I acknowledge that there may be some limited economic and social benefits associated with the construction of the extension, the proposal would conflict with the Framework when read as a whole.
19. I note the appellant's frustration with the Council's approach. However, I have considered the appeal based on its merits and in accordance with the development plan for the area.

Conclusion

20. The proposal would conflict with the development plan when taken as a whole and there are no material considerations of sufficient weight which would indicate a decision should be taken other than in accordance with it.
21. For the reasons given above I conclude that the appeal should be dismissed.

L Hughes

INSPECTOR