



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: 3 November 2023

Appeal Ref: APP/P4605/W/23/3321355

**Garage Off Cartland Road, Rear of 50 Anderton Road, Sparkbrook
Birmingham B11 1NA**

- 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 Mrs Susan Smith against the decision of Birmingham City Council.
 - The application Ref 2023/00149/PA, dated 09 January 2023, was refused by notice dated 23 March 2023.
 - The development proposed is change of use of domestic garage to office.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address from the appeal form as this better reflects the location of the appeal site. This is reflected in the banner heading above.
3. Matters relating to a boundary dispute between the occupiers of 50 Anderton Road and the appeal property have been brought to my attention. This is not an issue for me to consider under a Section 78 planning appeal and is covered under legislation not within my remit. In the determination of the appeal, I can only have regard to the planning merits of the case.

Main Issues

4. The main issues are the effect of the proposal on:
 - the vitality and viability of local centres; and
 - the living conditions of the occupiers of 50 Anderton Road with particular regard to amenity space provision.

Reasons

Vitality and viability

5. The site comprises a domestic garage which is accessed off Cartland Road. Whilst there is a small cluster of commercial units at the junction of Anderton Road and Cartland Road, the site is located in a predominantly residential area. The proposal seeks consent for the change of use of the garage to an office. Annex 2 of the National Planning Policy Framework (The Framework) defines offices as a main town centre use.
6. Policy TP21 of the Birmingham Development Plan (2017) (BDP) aims to maintain and enhance the vitality and viability of local and district centres, with

these centres being the preferred locations for retail, office and leisure developments and for community facilities. Proposals for main town centre uses located outside of the district or local centres listed under BDP Policy TP21 will not be permitted unless they satisfy the requirements set out in national planning policy. The appeal site is not located within any of the identified district or local centres, the boundaries of which are contained within the Shopping and Local Centres Supplementary Planning Document (SPD) (2012).

7. Although an 'Impact Test'¹ is not required, as the proposal does not exceed 2,500m², Paragraphs 87 and 88 of the Framework require proposals for new main town centre uses outside of existing centres to undergo a 'Sequential Test'². They require that main town centre uses should be located in town centres, then in edge of centre locations and, only if suitable sites are not available in those locations, out of centre. The Framework advises that flexibility should be demonstrated on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
8. The Planning Practice Guidance (PPG)³ states that it is for the applicant to demonstrate compliance with the sequential test. Whilst I note that the proposed office is small in scale and that the PPG advises that the application of the test will need to be proportionate and appropriate for the given proposal, nonetheless neither local nor national policies introduce exceptions based on size or the quantum of development.
9. The proposal would utilise a redundant building and would be accessible by public transport. It would result in economic benefits through the creation of jobs on implementation of the use, which may benefit residents of the local area. Nonetheless, the appellant has not provided a sequential test. The purpose of the sequential test is to demonstrate that there are no alternative sites within a town centre or edge of centre location. Notwithstanding the previous use of No 50 Anderton Road as an office, and the presence of a small cluster of commercial units at the junction of Anderton Road and Cartland Road, in the absence of a sequential test, I cannot be fully satisfied that there are no other sequentially preferable sites within an existing centre. I am therefore not satisfied that a locational requirement for the use outside of a designated centre has been demonstrated. Paragraph 91 of the Framework recommends that the application should be refused on this basis.
10. The appellant considers that the site's unusual physical characteristics are different to the type of office accommodation available in the defined local centres of Birmingham City and furthermore that the small size of the proposed unit would not result in a significant adverse impact on the local centres in Birmingham. Whether or not that is the case, the incremental relocation of main town centre uses out of the defined centres could cumulatively have an adverse impact on their vitality and viability.
11. Additionally, the appellant states that the wording of BDP Policy TP21 refers to *preferred* locations for the specified uses and does not *prohibit* them from being located elsewhere (my emphasis). However, the wording of the policy

¹ Planning Practice Guidance reference IDs: 2b-014-20190722; and 2b-015-20190722

² Planning Practice Guidance reference IDs: 2b-009-20190722; 2b-011-20190722; 2b-012-20190722; and 2b-013-20190722

³ Paragraph: 011 Reference ID: 2b-011-20190722

makes clear that its intention is to ensure that the network of centres will be maintained and enhanced through the location of the specified uses and that proposals for these uses outside of the network of centres will not be permitted unless they satisfy the requirements set out in national policy. In this case the requirement of national policy relates to the need for a sequential test. Thus, in light of the lack of sequential test demonstrating that there are no sequentially-preferable sites within the network of centres, there is no justification to depart from the preferred hierarchy of centres set out in this policy.

12. In light of the above, the appeal site would not be an appropriate location for the proposed use and would contribute to cumulative negative effects on the vitality and viability of local centres in the city. It would therefore be contrary to those aims of BDP Policy TP21, which are described above. Whilst Paragraph 81 of the Framework places significant weight on the need to support economic growth and productivity, nonetheless I find conflict with Paragraphs 87, 88 and 91 of the Framework, which set out that town centre uses should be directed to specified locations and that local planning authorities should apply a sequential test to planning applications for these uses.
13. Whilst referenced by the Council, I find no conflict with the Shopping and Local Centres Supplementary Planning Document (2012) which does not contain specific policies relating to office development.

Living conditions

14. The appeal site borders a residential property, No. 50 Anderton Road, and originally comprised part of the curtilage of that property. Based on the evidence before me, following the erection of the garage subject of this appeal, No. 50 was left with a rear garden approximately 38.6m² in size.
15. City Note LW-13 of the Birmingham Design Guide (BDG) (2022) sets out that all residents should be able to access private outdoor amenity space of sufficient size and quality to serve the occupants of the dwelling. It goes on to state that as a minimum 52m² of private outdoor amenity space for 2-bedroom houses should be provided.
16. The appeal property has been sold off separately from No. 50, and there have been physical consequences of this change of ownership including the erection of a fence which have reduced the available amount of amenity space associated with No. 50. Nonetheless, no change of use of that land has taken place and it therefore remains in residential use. The proposed change of use would apply to the entirety of the appeal site, and therefore, regardless of the subdivision of the site and the existing position of the fence, would result in the permanent loss of residential land previously associated with No. 50.
17. As part of the appeal proposal, it is proposed to reposition a fence which has been installed between the appeal property and No. 50. The appellant states that this would increase the amenity space for that property from the existing 19.3m² to 29.8 m². However, there is no mechanism before me relating to the use of that space to ensure that this land would be made available to the occupants of No. 50 in perpetuity. Furthermore, it is wholly unclear why the repositioning of the boundary fence is contingent upon the grant of planning permission. I therefore attribute limited weight to this as a benefit of the proposal.

18. In light of the above, the change of use of the appeal site would result in a reduction in the amount of amenity space associated with No. 50 to approximately 19.3m². The shortfall in amenity space would be significant and the space available would consequently be too restricted to meet the needs of the occupiers of the dwelling.
19. Consequently, the proposal would result in unacceptable harm to the living conditions of the occupiers of No. 50. with regard to the provision of amenity space. As a result, it would conflict with the aims of BDP Policy PG3 and Policy DM2 of the Development Management in Birmingham Development Plan Document (2021). Collectively these policies seek to ensure that development will not result in unacceptable adverse impacts on the amenity of neighbours and that private external spaces are functional. I find conflict with the BDG which has similar aims and sets out minimum standards for external amenity space. 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.

Other Matters

20. The Council found that the proposal would be likely to meet with the relevant development plan policies in relation to car parking provision and the effect on the highway network. However, compliance with relevant national and local planning policies on these matters would be required in any case and therefore these matters do not weigh in favour of the proposal.

Conclusion

21. The proposal conflicts with the development plan and there are no other considerations which indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

Nichola Robinson

INSPECTOR