



Appeal Decision

Site visit made on 14 February 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2024

Appeal Ref: APP/P4605/W/23/3331123

Land rear of 217 Nechells Park Road B7 5PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Al-Haidari Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/03653/PA.
 - The development proposed is described as "2no. retail units."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party's interests would be prejudiced by my taking this approach. Where I have referred to a specific paragraph of the Framework, the numbering used is that of the revised version.
3. The application has been submitted in outline form, with all matters reserved. I have dealt with the appeal on this basis and therefore treated drawing nos. 03 and 04 as indicative only, as they provide a potential layout and design for two retail units.

Main Issues

4. The main issues are:
 - whether the appeal site is in a suitable location for the proposed development, having regard to local and national planning policies,
 - the effect of the proposed development on the character and appearance of the area,
 - the effect of the proposed development on the living conditions of the occupiers of existing properties, with particular regard to noise and disturbance, and
 - the effect of the proposed development on highway safety.

Reasons

Whether the site is in a suitable location

5. The appeal site comprises the rear garden serving 217 Nechells Park Road, a

two storey end terrace, located on a corner plot. No 217 has a takeaway at ground floor with a residential flat at first floor. While there are other uses nearby, including a school, the area is predominately residential in character

6. The appeal scheme proposes to erect two retail units. Annex 2 of the Framework defines retail development as a main town centre use.
7. Policy TP21 of the Birmingham Development Plan Adopted January 2017 (BDP) aims to maintain and enhance the vitality and viability of defined centres, with these centres being the preferred locations for retail, office and leisure developments and for community facilities. Proposals for main town centre uses outside the boundaries of the centres identified will not be permitted unless they satisfy the requirements set out in national planning policy.
8. In principle, BDP Policy TP22 supports proposals for convenience retail provision within centres. It also reiterates the requirements of BDP Policy TP21, in respect of proposals that are not within a centre, and states they will be considered against the tests identified in national planning policy and other relevant planning policies set at local level.
9. Paragraph 91 of the Framework states that a sequential test should be applied for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.
10. The appeal site is not located within any of the defined centres, the boundaries of which are identified within the Council's Shopping and Local Centres Supplementary Planning Document 2012 (SPD). As the appeal scheme proposes a main town centre use outside of a defined centre, a sequential test is required. In the absence of such, and while noting the appeal site is an established commercial property and the proposed units are small in size, it cannot be clearly concluded that the proposal would not harmfully undermine the vitality and viability of the defined centres.
11. I conclude that the appeal site is not in a suitable location for the proposed development, having regard to local and national planning policies, contrary to BDP Policies TP21 and TP22, the SPD and the Framework, as set out above.

Character and appearance

12. The area surrounding the appeal site is characterised predominately by two storey, terraced properties and buildings. These have a fairly uniform layout, with modest front and relatively open rear gardens. Although the rear garden associated with No 217 is not as deep as others in the vicinity, it nevertheless retains an open character, which is further reinforced due to its corner plot location. The appeal site therefore contributes to the character and appearance of the area.
13. The appeal site is relatively small and includes almost all of the garden area serving No 217. Although outline with all matters reserved, the appeal scheme would introduce development, in the form of two retail units, at the site. While the proposal would create a more active street elevation, the loss of almost all the garden serving No 217 would erode the open nature of the site. This would be at odds with, and detrimental to, the prevailing character of the area.

14. While indicative, the submitted proposed plans show the footprint of the appeal scheme extending close to all boundaries of the appeal site. As such, regardless of the detailed design, almost all of the rear garden serving No 217 would be lost, resulting in an over-intensive and cramped form of development. As such, the indicative plans show the proposed scheme is likely to have an inherently harmful effect on the garden space and its sense of openness and therefore reinforce my findings in respect of this main issue.
15. Similar developments have been highlighted. While I do not have the details of the planning background for each, they are not directly comparable. One case comprises an extension to an existing building, whereas the appeal scheme proposes two independent retail units, detached from the main building. Another case is located within a different area and, as such, is viewed in a different context to the appeal scheme. In any case, I have dealt with the appeal on its own merits.
16. For these reasons, the proposed development would have an unacceptable impact upon the character and appearance of the area, contrary to BDP Policy PG3 and the guidance within the Birmingham Design Guide Principles Document September 2022 (BDG). Collectively, these seek, among other things, to ensure development reinforces or creates a positive sense of place and local distinctiveness. It is also contrary to the Framework which seeks, among other things, to ensure development is visually attractive and sympathetic to local character.

Living conditions

17. The appeal site is surrounded by predominately close knit, terraced residential properties and gardens. It is immediately adjacent to two residential properties, one on Crompton Road and one on Nechells Park Road, and the takeaway at No 217. It is also directly opposite other residential properties on Crompton Road. There are other uses nearby, including a school, a takeaway, and a retail shop. Having regard to the character of the area and nearby main roads, existing noise levels in the area are relatively low.
18. The appeal scheme proposes two retail units. While noting the size of the retail units and the proposed days and hours of opening, the development proposed would increase the number and frequency of visitors, customers, staff and deliveries, to the site. This increase in movements, close to neighbouring residential properties, would materially increase noise and disturbance to the detriment of the living conditions of the aforementioned neighbouring occupiers.
19. Moreover, the appeal scheme is located close to the takeaway at No 217. Due to this proximity, the development proposed would result in a cumulative increase in noise and disturbance in a concentrated area, close to residential properties and to the detriment of neighbouring occupiers' living conditions.
20. For these reasons, the proposed development would have a negative impact upon the occupiers of existing properties, with particular regard to noise and disturbance, contrary to Policy DM2 of the Development Management in Birmingham Development Plan Document December 2021 (DPD) and the guidance within the BDG. Together, these seek, among other things, to ensure development is appropriate to its location and not result in adverse impacts on the amenity of occupiers, including through noise. It would also be contrary to

the Framework, which seeks to create places with a high standard of amenity for existing users.

21. The Council have referred to BDP Policy PG3 within their reason for refusal, which relates to place making and local distinctiveness. This policy does not appear to be directly relevant, and I have not concluded against it for that reason.

Highway safety

22. The appeal site is located in a predominately residential area, where not all properties have access to off-street parking provision. During my site visit, I observed on-street parking along Nechells Park Road, Crompton Road and surrounding streets. There is a school located close to the appeal site and accessible from Crompton Road. While there are no parking restrictions to the front of the site, there are restrictions requiring no stopping Monday to Friday from 08.00 to 16.00 outside the school on Crompton Road.
23. Two retail units are proposed, which would attract visitors to the site, including staff, customers and deliveries. No off-street parking provision is proposed as part of the appeal scheme.
24. While it is alleged there is ample car parking within the highway, very limited substantive evidence to demonstrate this has been submitted. Whilst only a snapshot in time, during a quieter part of the day, the demand for on-street parking was visible during my site visit, and included vehicles parked partially on the pavements. The lack of off-street parking for some residential properties and proximity of the school and takeaway are all likely to contribute towards the demand for on-street parking in the area. Further evening demand would be likely to come from residents returning from work. Interested party comments also raise issues in respect of existing on-street parking pressure within the vicinity of the appeal site.
25. Limited evidence has been submitted to demonstrate that there is sufficient capacity to safely accommodate the additional demand for on-street parking that would result from the proposed development. In the absence of such evidence and having regard to the existing demand for on-street parking, the proposed development is likely to increase on-street parking in the vicinity of the appeal site. Moreover, any increase in vehicles partially parked on the pavement would reduce the pavement width for pedestrians and increase the potential for conflict between pedestrians and vehicles.
26. I conclude that the proposed development would have a harmful effect on highway safety, contrary to BDP Policy TP44 and DPD Policies DM14 and DM15. Collectively, these seek, among other things, to prevent or refuse development on transport grounds where the residual cumulative impacts of development are severe, ensure new development would not have an unacceptable adverse impact on highway safety and operational needs of the development are met in terms of parking provision. It also conflicts with the Framework which, among other things, states development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.
27. The Council have referred to BDP Policy PG3 within their reason for refusal, which relates to place making and local distinctiveness. As this policy does not refer to highway safety, it is not relevant to this main issue.

Other Matters

28. The proposed development would support two new retail businesses, which accords with the aims of the Framework in respect of supporting economic growth. Nevertheless, and even with the significant weight that the Framework places on the need to support economic growth and productivity, this does not outweigh the harm found in relation to the main issues.

Conclusion

29. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, the appeal should be dismissed.

S Pearce

INSPECTOR