



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: 14th May 2024

Appeal Ref: APP/P4605/W/23/3329029

2278 Coventry Road, Sheldon, Birmingham B26 3JR

- 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 Mr Athik Ali against the decision of Birmingham City Council.
 - The application Ref is 2023/02967/PA.
 - The development proposed is the change of use of first floor and part ground floor from restaurant (Use Class E) to 1no. 1-bed apartment (Use Class C3) with associated external alterations to front, side and rear elevations.
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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.
3. Revised drawings have been submitted as part of this appeal, which include amendments to the amount of glazing proposed. The Procedural Guide for Planning Appeals¹ is clear that the appeal process should not be used to evolve a scheme and it is important that what is considered is essentially what was considered by the Council, and on which interested people's views were sought. Having regard to the principles established in *Holborn Studios Ltd*², to consider such a modification would be a substantive difference and procedurally could prejudice interested parties by depriving those who should have been consulted on the change the opportunity of such consultation. For this reason, I have determined the appeal using the plans that were considered by the Council and upon which the views of interested parties have been sought.
4. No description of development was included within the original planning application form. While a description of development is given within the appellant's Design and Access Statement and appeal statement, it refers to the partial change of use of the ground floor only. In the interests of accuracy and clarity, as the appeal scheme also includes the change of use of a first floor and

¹ Procedural Guide: Planning Appeals – England 2024

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWCH 2823 (Admin)

external alterations, I have used the description within the Council's decision notice in the banner heading above.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of future occupiers, with regard to privacy, outlook and light.

Reasons

6. No 2278 is a three storey building which fronts Coventry Road. The appeal relates to the single storey and two storey outriggers which are located to the rear of the frontage building (the appeal building).
7. The appeal scheme seeks to utilise the flat roof of the single storey element of the appeal building as an amenity space for future occupiers. A neighbouring flat has two windows within the rear elevation of the three storey element of No 2278, one at first floor and one at second floor. These windows are in close proximity of, and would face directly towards, the proposed amenity space. Only the first floor window has been annotated on the submitted plans.
8. The Birmingham Design Guide Healthy Living and Working Places City Manual September 2022 (BDG) requires, among other things, a 5 metre setback per storey where primary windows overlook private space. Having regard to this, a 10 metre setback is required between the windows serving the nearby flat and the amenity space.
9. The appeal proposal falls short of the setback required by the BDG. Therefore, as discussed with the Council at pre-application stage, the appellant proposes to erect a two metre high fence. Although this would prevent against any overlooking from the first floor window, it would not sufficiently mitigate against any overlooking from the second floor window. As such, there would be direct overlooking of the amenity space from the second floor window. This would be to the detriment of the living conditions of future occupiers, through lack of privacy.
10. The proposed residential unit is a long narrow, open plan space. While noting the internal layout has previously been altered, the plans indicate that a kitchen area would be located centrally, with a bedroom at one end and a living area at the other. There is one window proposed adjacent to the bedroom area, and a glazed door, with a fixed side window, next to the living area, providing access onto the associated amenity space.
11. As annotated on the plans, these openings are to be largely obscure glazed. The only section of clear glazing would be within the window adjacent to the bedroom area. However, future occupiers would have a restricted view out of this window, having regard to the angle and width of the proposed clear glazed section.
12. Therefore, while the obscure glazing seeks to overcome concerns previously raised by the Council, it would, nevertheless, provide a poor outlook, which would create an oppressive living environment for future occupiers.
13. The appellant highlights that the area of glazing within the appeal scheme is more than 10% of the floor area. However, in order to maximise levels of natural light to create comfortable, naturally lit environments, the BDG states

that proposals must seek to accommodate glazing into habitable rooms that is at least 20% the size of the rooms' floor area. As such, the appeal proposal falls below the threshold stipulated by the BDG. Therefore, the proposal would not achieve adequate levels of light, to the detriment of the living conditions of future occupiers.

14. For these reasons, the proposed development would have an unacceptable impact on the living conditions of future occupiers, with regard to privacy, outlook and light. This is contrary to Policies DM2 and DM10 of the Development Management in Birmingham Development Plan Document December 2021 and the guidance within the BDG. Collectively, these seek, among other things, to ensure development proposals do not result in unacceptable adverse impacts on the amenity of occupiers. It is also contrary to the Framework which seeks, among other things, to ensure a high standard of amenity for future users.
15. The Council have referred to Policies PG3 and TP27 of the Birmingham Development Plan Adopted January 2017 within their reason for refusal. As these policies do not refer to living conditions of future occupiers, in respect of privacy, outlook and light, they are not relevant to the main issue.

Other Matters

16. The proposal would make a modest contribution towards the housing supply and demand in the Borough. As such, it would support the Government's objective of significantly boosting the supply of homes, in an area close to the town centre and with good public transport links. The appellant advises that the appeal scheme seeks to provide adequate housing to the local community, incorporate various aspects of sustainable design and new technologies and utilise a local workforce. The appellant also highlights that level access can also be provided and the existing restaurant business would be retained. Given the scale of the proposed development, even cumulatively, these benefits attract limited weight.
17. The appellant has raised several concerns in relation to the processing of the planning application. However, in determining the appeal, I am required to have regard to the planning merits of the proposal. These are therefore matters between the appellant and the Council.

Conclusion

18. For the reasons given, the proposal conflicts with the development plan and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Consequently, I conclude the appeal should be dismissed.

S Pearce

INSPECTOR