



Appeal Decision

Site visit made on 27 February 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/P4605/W/23/3323656

2 Waldrons Moor, Birmingham B14 6RS

- 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 Ksaad Ali against the decision of Birmingham City Council.
 - The application Ref is 2022/09622/PA.
 - The development proposed is full planning permission for the erection of one dwelling as infill development at the site of 2 Waldrons Moor.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was made care of Urbana Town Planning, but the appeal is made in the name of Mr Ksaad Ali who has been confirmed as the appellant as set out in the banner heading.
3. Since the Council issued its decision the National Planning Policy Framework (the Framework) was updated in December 2023. The parties were given the opportunity to comment on the revised Framework and these comments have been taken into consideration in the determination of this appeal.

Main Issues

4. The main issues are:
 - the effect of the proposed development upon the character and appearance of the area
 - the effect of the proposal upon the living conditions of the occupiers of 1 and 3 Dawberry Road with regard to outlook, privacy and light; and
 - whether the proposed development would provide appropriate living conditions for existing and future occupiers of 2 Waldrons Moor with regard to internal space and private amenity space.

Reasons

Character and Appearance

5. The dwelling would be located between the rear elevation of 2 Waldrons Moor (No 2) and the boundary of 4 Waldrons Moor (No 4) and is bound by tall trees and hedges along the roadside.

6. Within the wider area, there are detached dwellings but within the Waldrons Moor street scene which the house would be most closely related to, semi-detached and terrace properties are more common. These houses are typically rendered with hipped roofs and dark coloured tiles although there is some variety in the detailed design of the houses themselves. However, the dwellings are generally similar in scale, with regard to height, depth and width.
7. The main elevation of these houses typically addresses the road, and the dwellings are generally set back from the roadside behind driveways and gardens with varying boundary treatments. There is a consistent building line in the area as well as a repetitive rhythm and symmetrical form to development given the consistent scale, siting, and gaps between the semi-detached and terraced houses.
8. The semi-detached pairs and groups of terrace dwellings are similar in appearance and the consistency within those pairs and groups makes a positive contribution to the character and appearance of the area. Whilst there is a mix of semi-detached and terrace properties the associated plots are similar in size. Given the gaps between buildings, the flank walls and gable ends of the houses are visible and there is consistency of scale and depth of houses and associated plots in the area.
9. Despite the extensions and additions that have taken place over time there is consistency in terms of materials, scale, and roof form of the houses in the street scene. This, together with the repetitive rhythm and symmetrical pattern of development, positively contributes towards the character and appearance of the area.
10. 5 Waldrons Moor (No 5) is located on the opposite side of the road and has a wider frontage than is typical in the street scene with a narrow wall that faces Waldrons Moor. Whilst elements of this house including the materials used are compatible with other houses in the area, the form and gable roof of this dwelling is not. Also, this single dwelling is located at the end of a group of buildings towards the end of the road with its garden located next to the road. Overall, No 5 is not consistent with the symmetrical form of development in the area but given its particular siting and relationship with the street it makes a positive contribution to the street scene.
11. The proposed house would be rendered and have a dark tiled roof; however, the roof would be gable ended. Whilst this roof design works for a linked end terrace house such as No 5 it would appear as a discordant element of the street scene within a gap between two houses with hipped roofs.
12. The proposal would generally follow the established building line, however, the width of the house alongside its shallow depth and the varied gaps either side would allow views of the gable ends in both directions. This would highlight the inconsistent scale and depth of the house as well as the plot and this would erode the established repetitive rhythm of built form locally.
13. The gap between No 2 and 4 is larger than those between houses in the area but because it is located to the rear of No 2 it appears as a large garden that wraps around the house which is not unusual around houses next to junctions in the area. The proposed house would be built very close to the rear elevation of No 2 and would appear to be within No 2's rear garden. The loss of this garden space to the rear and the close siting of the house would also detract

from the appearance of No 2 and the two properties would appear squeezed into the available space, with little regard to how the development would relate to the built environment. This would fail to reflect the typical form of plots in the street or respond to the local area context.

14. Whilst the site may be underused and neglected, the infilling of this gap with the proposed dwelling would not be consistent with the existing pattern of development. This alongside the discordant detailed design and siting of the house would break up the rhythm of the street scene and appear inconsistent with the symmetrical built form.
15. Whilst several properties along Waldrons Moor have been extended, including Nos 4, 9, 10 and 41, these were generally limited additions that maintained the repetitive rhythm and symmetrical form of development in the street scene. As such, even when viewed collectively, the extended dwellings maintained the overall character and appearance of the street scene. For similar reasons the alterations made to the front boundary treatments were also not harmful. The Council granting planning permission for extensions and alterations near to the site would not justify a detached dwelling and the associated harm that would arise from it. I have therefore assessed the appeal on its own merits based on the evidence before me and my own observations.
16. Given my concerns with some of the fundamental design principles of the scheme, I am not satisfied that planning conditions, including those related to materials and landscaping could mitigate the harm.
17. For the reasons given above, the proposed development would harm the character and appearance of the area. Consequently, it would be contrary to Policy PG3 of the Birmingham Development Plan (BDP). This expects development, amongst other matters, to demonstrate high design quality and to respond to a strong sense of place. It would also not accord with the guidance within the Birmingham Design Guide Supplementary Planning Document (Birmingham Design Guide) which states that it is important for proposals to align with an established street pattern and contribute to the character of the surrounding area. Nor would it accord with the National Design Guide and the Framework insofar as they expect development to be visually attractive as a result of good architecture, layout and appropriate and effective landscaping.

Living Conditions

18. City Note LW3 of the Birmingham Design Guide identifies the distances that should be maintained between new development and existing buildings to ensure it would not appear overbearing or result in a harmful loss of privacy or light to the surrounding occupiers. The Council state that the distance between the proposal and the surrounding dwellings would not accord with the Birmingham Design Guide and the appellant does not dispute the Council's figures.
19. However, the Birmingham Design Guide is guidance, and it states that the weight to be given to these standards may be influenced by the location of the development, and the scale of surrounding properties. All exceptions to these distances will be considered on a case-by-case scenario.

1 Dawberry Road

20. The proposed dwelling would be sited to the rear of No 2 and the rear elevation of the proposal would be a short distance from the rear garden for 1 Dawberry Road (No 1). Given that it would be a two-storey dwelling and would be almost as wide as the depth of this garden itself it would extend to a considerable height above almost the full length of the fence along the shared boundary. Whilst the dense pattern of development in the area means that houses are visible from the rear of most dwellings, the dwelling due to its scale and siting would appear oppressive and overbearing to users of the rear garden serving No 1 and when viewed from first floor windows in this property.
21. Some intervisibility between the rear of houses is common in the area given the dense pattern of development. However, the proposed first-floor rooms would be located very close to the rear garden of No 1 and the occupants of the proposed house would overlook the garden and the rear of the house. Given the relatively limited size of the garden which narrows towards the rear, this harmful loss of privacy would be keenly felt. The scheme would result in very little of the garden remaining private, including the area closest to the rear of No 1 where the occupiers would be likely to spend a significant amount of time.
22. Whilst there are trees within No 1's garden these cannot be relied upon in perpetuity to screen the garden and provide privacy for the occupiers as they are not within the appellant's ownership.
23. Given the orientation of the two houses and the scale of the proposed dwelling, it would not harmfully overshadow the garden or the rear of No 1 with much of this area likely to continue to receive light throughout most of the day.

3 Dawberry Road

24. The distance between the proposed dwelling and the rear of 3 Dawberry Road (No 3) would mean that there would be some intervisibility between the first-floor rooms of the houses. However, given the siting of the two houses, this intervisibility would be at an obtuse angle which would ensure the rear first-floor rooms of both houses would not be harmfully overlooked. However, from the proposed first-floor bedroom windows the occupiers would be able to overlook much of the rear garden given the limited distance between the dwellings. The occupiers would also overlook the rear patio area at No 3 which is an area the occupiers are likely to spend significant periods of time using and as such, the harmful loss of privacy would be more keenly felt.
25. The proposed house would be built to the rear of No 3's garden which is currently only enclosed by the boundary fence and No 4. However, the gap between the proposed house and No 4 would be substantially sized and this would ensure the outlook would not be completely enclosed by built form, providing a sense of relief. This would ensure the proposed house would not create a harmful sense of enclosure when viewed from the rear of No 3.
26. For similar reasons as identified above regarding No 1 and given the increased distance between the proposed dwelling and No 3, it would not harmfully overshadow the garden or the rear of No 3.

27. Whilst planning permission was granted at No 4 for two storey side and single storey front, side and rear extensions¹, the overall scale of these extensions were much smaller than the proposed house and thus less imposing and overbearing.
28. It is acknowledged that due to the dense pattern of development there is already some overlooking and intervisibility between the rear of houses in the area and this may be the case from No 4. However, the Council note that the first-floor window within the two-storey extension served a bathroom and had obscure glass. In comparison, the proposed house would result in first floor windows located very close to neighbouring gardens which would, for the reasons given above, be harmful to the neighbouring occupiers living conditions.
29. Given my concerns with the fundamental design of the scheme and the multiple impacts on living conditions, I am not satisfied that conditions including those related to the use of obscure glass windows would overcome my concerns.
30. For the reasons given above, the proposed development would harm the living conditions of the occupiers of 1 and 3 Dawberry Road. Consequently, the proposal would be contrary to Policies PG3 and TP27 of the BDP as well as Policies DM2 and DM10 of the Development Management in Birmingham Development Plan Document (DMB). These seek, amongst other matters, to ensure development would be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers. It would also not accord with the Birmingham Design Guide which states that new development must ensure that it does not unacceptably impact on amenity, natural light, and privacy. Nor would it accord with the Framework which seeks to ensure development creates places with a high standard of amenity for existing and future users.

Living conditions for existing and future occupiers of 2 Waldrons Moor

31. The internal layout of No 2 is proposed to be redesigned, although the ground floor would remain effectively the same. The rooms on the first floor would be rearranged with the bathroom moved to the back of the house and the first-floor window on the rear elevation infilled.
32. The garden for the proposed house would be sited directly to the rear of No 2 and the proposed boundary fence would be built very close to the rear ground floor rooms of No 2. These include a living room and a kitchen. The height and siting of the proposed fence needed to provide privacy between the two gardens would result in the outlook from these rooms being enclosed with the outlook taken up almost entirely by the fence. Whilst the scheme would result in a relatively shallow dwelling, the scale and siting of the two-storey dwelling perpendicular to the rear of No 2 would contribute towards the enclosure of the outlook from the rear of the house.
33. The kitchen within No 2 would be dual aspect with a window and glazed door on the flank elevation alongside the rear window. This would ensure the outlook from that room would not be completely enclosed by the dwelling

¹ Application Ref: 2018/06094/PA

located to the rear. For similar reasons light would still reach this room throughout most of the day.

34. However, the living room would have a single window facing towards the proposed fence and house and this would be the only outlook from that room. The very narrow strip of land between the rear of the house and this fence would provide very little relief to the occupiers and the fence would appear oppressive from this room. The proposed house would also be located a short distance from this window and would enclose the outlook along one side of the window, with No 4 also enclosing the outlook to the rear, although this harm would be limited given the separation distance between No 2 and 4. Given the orientation of No 2 and the proposed dwelling the amount of light that would reach this room would be harmfully reduced throughout most of the day. Given that this room would likely be used on a regular basis by the occupiers the close siting and scale of the proposed development would result in a significant degree and sense of enclosure from this room.
35. The proposed internal changes to No 2 would ensure that the bedrooms within the first floor of the building would receive light throughout most of the day and the occupiers would not be overlooked whilst using those rooms. This would also ensure that the occupiers of No 2 would not overlook the rear garden of the proposed house. Whilst the first-floor bedroom to the rear would have a window on the flank wall of the house, given the distance between it and the houses opposite, the outlook from this room would not feel enclosed.
36. The proposal would result in most of the rear garden at No 2 being given over to the proposed dwelling. As such, the occupiers would be reliant on the front garden as their main outdoor space. Currently, this area is bound by low level metal fencing and shrubs that provide limited screening from the pavement.
37. This outdoor space would provide a modest garden for a property of this size and would provide space for socialising, gardening, hanging out washing and other typical garden uses. The space to the side of the house could be used for parking although vehicles could be parked on the road, given the availability of on street parking locally as identified by the Parking Survey within the Transport Statement.
38. It is proposed that this garden would be bound by hedges to provide some privacy but the close relationship between this garden and the pavement next to it would result in the overlooking of this area from people passing the site, including from the vehicular access to the dwelling. These hedges would also take time to grow to a modest height before they would partly screen the garden. Overall, the proposal would create a garden area that would be overlooked with limited privacy.
39. Whilst the garden space for No 5 is also located next to the pavement and bound by trees and hedges that garden is much larger than that proposed with a greater distance between much of the garden and the road. This provides a larger area of the garden that remains private compared to that proposed.
40. For the reasons given above, the proposed development would not provide appropriate internal space or private amenity space for the occupiers of 2 Waldrons Moor, and this would harm their living conditions. Consequently, the proposal would be contrary to Policies PG3 and TP27 of the BDP as well as Policies DM2 and DM10 of the DMB. These seek, amongst other matters, to

ensure development would be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers. It would also not accord with the Birmingham Design Guide which states that new development must ensure that it does not unacceptably impact on amenity, natural light, and privacy. Nor would it accord with the Framework which seeks to ensure development creates places with a high standard of amenity for existing and future users.

Other Considerations

41. The Framework identifies an objective to significantly boost the supply of housing, stating that small and medium sized sites can make an important contribution. The proposed development would deliver a single dwelling on a windfall site that is well located to services and facilities including public transport alternatives where residential development would generally be supported in principle in accordance with Policies TP27 and TP28 of the BDP. Whilst the proposal would only deliver a single dwelling, this would still make a modest contribution to housing delivery. Consequently, I attribute modest weight to this in favour of the development.
42. The occupiers of the proposed dwelling would contribute both economically and socially towards services and facilities in the local area. There would also be economic benefits to the area during construction. Given the limited scale of the proposal these benefits attract limited weight in favour of the proposal.
43. The proposal would clean up this unkept site, however, this benefit could be achieved outside of the scope of this appeal. The proposed hedge planting would also provide an environmental benefit although this would be limited given the limited amount proposed. This would attract limited weight in favour of the scheme.
44. In general, and subject to control by appropriate planning conditions the proposal could be made acceptable with regard to highway safety, amongst other matters not in dispute. However, these would be neutral matters in the balance.

Planning Balance

45. The proposed development would harm the character and appearance of the area as well as the living conditions of the occupiers of 1 and 3 Dawberry Road as well as 2 Waldrons Moor. As a result, the proposal would conflict with the aforementioned policies in the development plan for the reasons given above.
46. BDP Policy PG3 is consistent with paragraph 135b) the Framework insofar as it seeks to ensure developments are attractive as a result of good architecture, layout and appropriate and effective landscaping. Policies PG3 and TP27 of the BDP as well as Policies DM2 and DM10 of the DMB are consistent with paragraph 135f) of the Framework which seeks to ensure development creates places with a high standard of amenity for existing and future users.
47. Consequently, I attribute significant weight to the identified harm and the conflict with the development plan as a whole.
48. The Council state that it can only demonstrate a 4.24-years supply of deliverable housing sites. This is a moderate shortfall in housing land supply. In these circumstances footnote 8 of the Framework establishes that the policies

which are most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

49. The Framework states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. It also gives significant weight to development which reflects local design policies. The Framework also seeks to ensure development creates places with a high standard of amenity for existing and future users. For the reasons given above the proposal would conflict with these policies in the Framework.
50. Consequently, the adverse impacts of the proposal's design and scale on the character and appearance of the area as well as the living conditions of the neighbouring occupiers would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

51. 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. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR