



Appeal Decision

Site visit made on 17 June 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/P4605/W/24/3341470

4 Coleshill Road, Hodge Hill, Birmingham B36 8AA

- 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 Imran Masood against the decision of Birmingham City Council.
 - The application Ref is 2023/02285/PA.
 - The development is retrospective planning application for the erection of first floor rear extension and, front forecourt fencing and seating area. Also, to support a change of use on the first floor from a flat into a restaurant seating area with children's play area.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development appears to have already taken place in accordance with the submitted plans. As such I have determined the appeal on that basis.
3. The Council confirmed that the lawful use of the ground floor is as a restaurant (Use Class E(c))¹. The first floor had been converted to a seating area, with an office. The Council confirmed that it did not object to this element of the development and that this change of use was acceptable in principle. Given that the site is located in a busy commercial area where such uses are common, I see no reason to disagree. As such, I have dealt with the other elements of the development before me.
4. The appellant was concerned that the Council did not consider the advertisements that were shown on the submitted plans. However, the display of advertisements is regulated by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The appeal before me relates to the application for planning permission made under the Town and Country Planning Act 1990 (as amended). As such, an application has to be made under the correct legislation to grant consent to display advertisement. Consequently, it was not within the Council's remit to grant consent for advertisement when it determined this planning application. Neither is it within mine in determining this appeal.

¹ The Town and Country Planning (Use Classes) Order 1987.

Main Issues

5. The main issues are the effect of the development on: a) the character and appearance of the area; and b) the living conditions of the occupiers of 6a Coleshill Road with regard to outlook, light and privacy.

Reasons

Character and appearance

6. The appeal property is a semi-detached building located at the end of a group of similarly designed properties. These buildings typically have commercial uses on the ground floor with associated advertisements above those shop fronts. Towards the front of these commercial uses is open space and in front of that is the pavement. How this open space is used varies between the buildings and these areas were generally free from permanent structures. As such, this area in front of the building was generally left open from built form.
7. Whilst the shop fronts vary in their outward appearance, the promenade of shops has a pleasant uniformity to its design, siting and layout which contributes positively to a spacious feel in the street scene. The commercial buildings opposite are similarly designed and this uniformity is replicated on both sides of the road.
8. The solid design of the enclosed timber seating area encloses the front of the restaurant and in effect appears as a front extension to the building. This interrupts the uniformity of the promenade and impinges on the area's spaciousness. As a result, the design and siting of this seating area detracts from the openness and prominence of the shop fronts in the area which harms the character and appearance of this group of buildings.
9. Whilst similar seating areas appear to have been built elsewhere, there is some doubt over the planning status of them. Furthermore, those sites were located in other locations with different site characteristics that were not necessarily comparable to the appeal site. Within the immediate group of buildings as well as those opposite, no other outdoor seating has been built. I have considered this case based on the scheme before me and the circumstances of this site's characteristics and for the reasons given above the design and siting of this seating area is harmful.
10. The first-floor rear extension has been erected above the existing ground floor rear addition. This extension does not extend the full width or depth of it with a lower roof than the main building. As such, the scale of the extension is subordinate to the host building.
11. The existing building is a grey painted brick built semi-detached property with a hipped tiled roof. The extension has a flat roof and has been clad in timber. The intention was to create a 'wood cabin' look but the design and particularly the materials used appears stark alongside the grey painted brick of the host building. The flat roof design of the extension further emphasises the discordant appearance of this extension with the host building. Whilst other buildings nearby may have flat roofs, the extension is located on a building with a hipped roof within a group of similarly designed buildings.
12. The appearance of the wood cabin style extension on the back of this brick-built building fails to replicate or positively respond to the design of the host

building and thus does not appear subordinate to it. As such, whilst the scale of the extension would be appropriate, its design, including the materials used, harms the character and appearance of the host building.

13. The first-floor extension is located to the rear of the building, however, because it is located at the end of a group of buildings next to an area of public space in front of the neighbouring gym, it is visible from the public domain. As such, the discordant appearance of this extension is appreciated from afar and detracts from the consistent appearance of the semi-detached buildings. This leads to harm to the character and appearance of the area.
14. Given my concerns with the design principles of the development, I am not satisfied that appropriately worded planning conditions to vary the materials and design of the scheme, amongst other matters, would overcome them.
15. Therefore, the development unacceptably harms the character and appearance of the building and the area and consequently conflicts with Policy PG3 of the Birmingham Development Plan, adopted 2017. This states, amongst other matters, that development will be expected to reinforce or create a positive sense of place and local distinctiveness, with design that responds to site conditions and the local area context. The scheme is also not in accordance with the Birmingham Design Guide insofar as it states that the design of proposals must be informed by a clear understanding of the surrounding area's character. Furthermore, it conflicts with the National Planning Policy Framework (the Framework) as well the National Design Guide insofar as they expect development to be visually attractive as a result of good architecture.

Living Conditions

16. There are two rooms to the rear of 6a Coleshill Road (No 6a), the closest of which to 4 Coleshill Road is a bedroom and the other is a bathroom. The windows for these rooms overlook the associated gardens and grounds of the buildings along Coleshill Road and these are bound by trees and hedges. The window to the bathroom has obscured glazing whilst the bedroom window is transparent. The gardens and grounds to the rear of the buildings along Coleshill Road are relatively long and as such the outlook to the rear is open and generally unenclosed by development to the rear of it.
17. The extension has been built set back from the shared boundary with No 6a and the height of the extension is also lower than the roof of the host building. Furthermore, it does not extend the full depth of the ground floor of the building, although the extension is still around 9.5 metres(m) deep.
18. There are three windows within the extension that face towards No 6a and the windows within its rear elevation. From these windows there is intervisibility between the first-floor rooms in each building and those within the rear extension can look into No 6a's bedroom.
19. These windows also partly overlook the rear amenity area, although given the set back of the extension and the existing ground floor addition to the rear of No 6a, much of this rear amenity area near the building remains private. The amenity area to the rear of No 6a is already partly overlooked by the rear windows within the other buildings along Coleshill Road, as is common with most neighbouring buildings. However, the side facing windows allows for more of this area to be overlooked.

20. There are also three windows that face towards the open space in front of the neighbouring gym. However, given that these windows overlook open space as well as a gym, those windows do not result in a harmful loss of privacy.
21. This extension is used as a children's play area and as such, if the windows that face towards the gym remained transparent whilst those that faced towards No 6a were obscurely glazed, this would preserve the privacy of the occupiers of No 6a whilst retaining an outlook from the extension. As such, in this instance, appropriately worded planning conditions would overcome my concerns with regard to the loss of privacy to the occupiers of No 6a.
22. Given the depth of the extension it impinges on a 45-degree line taken from the bedroom window within No 6a. This room has an open outlook to the rear that is not enclosed by development to the rear, other than the appeal building. As the extension has been built set back from the shared boundary as well as the modest height of it, the outlook from this room is not harmfully enclosed by the extension.
23. Furthermore, the openness to the rear and the orientation of the buildings ensures light reaches the bedroom window. The set back and limited height of the extension ensures the amount of light that reaches this room is not harmfully reduced.
24. The purpose of adhering to the 45-degree code as set out in the 45 Degree Code Supplementary Planning Guidance (45 Degree Code SPG) is to ensure development does not cause harm to neighbouring occupiers' light and outlook. However, the 45 Degree Code SPG also acknowledges that it should be applied with some flexibility, on a case-by-case basis, taking account of local context. In this local context, the development does not harmfully affect the neighbouring occupiers light or outlook despite not adhering to the 45-degree code.
25. Consequently, subject to appropriately worded planning conditions the development would not harm the living conditions of the occupiers of No 6a. As such, the development complies with Policy DM2 of the Development Management in Birmingham Development Plan Document, adopted 2021. This states that development will need to, amongst other matters, not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. The scheme generally accords with the Birmingham Design Guide insofar as it states that the 45-degree code will be assessed on a site-by-site basis. Furthermore, it would not conflict with paragraph 135f) of the Framework which states that development should create places with a high standard of amenity for existing and future users.

Other Matters

26. The development supports an existing business which provides employment and social benefits to the area. It is also noted that there is considerable support locally for the business to continue to provide the services the development allows.
27. The benefits of the outside seating area are recognised but the appellant themselves notes that this area is only used for a small period of the year. Furthermore, there are alternative means to prevent vehicles being parked in

front of the fire escape as well as prevent 'ram raid' scenarios' that would not be as harmful to the character and appearance of the area as that proposed.

28. The appellant has undertaken works to address matters related to noise and safety complaints received prior to submitting the application. Based on the information before me these matters were suitably addressed. As a result, no objections were raised by the statutory consultees to the application on these grounds and those matters did not form part of the reasons for the refusal.
29. Whilst the development, through the use of appropriately worded planning conditions, would not harm the living conditions of the occupiers of No 6a, the absence of harm weighs neither for nor against the development.
30. For the reasons given above the design and siting of the development harms the character and appearance of the area and conflicts with the development plan, and whilst the development supports economic growth, the benefits of the development do not outweigh the identified harm.
31. The change of use of the first-floor flat is not harmful, however the extension is connected via the first-floor area which includes stairs and doors built into the first floor to access it. As such, I am not satisfied that, that element of the development is clearly physically severable. Consequently, I have not issued a split decision in this instance.
32. I acknowledge the appellant's comments and concerns with the Council's handling of the planning application. However, in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

33. The development conflicts with the development plan when taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR