



Appeal Decision

Site visit made on 18 June 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 August 2024

Appeal Ref: APP/P4605/W/23/3335118

Rear of 194 Albert Road, Handsworth, Birmingham B21 9JT

- 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 Raja Talafair c/o Phsara Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/05631/PA.
 - The development proposed is the erection of two storey building to create 2no. 2bed apartment (Use class C3) with associated parking.
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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 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended, except for paragraph numbering. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
3. During the appeal, I sought clarification in respect of room measurements. Annotated plans were provided to me. I have taken them into account in my decision.

Main Issues

4. The main issues are:
 - the effect of the proposal on the character and appearance of the area;
 - whether the development would provide acceptable living conditions for the occupiers of 194 Albert Road with particular regard to amenity space and; the occupiers of 15 Maple Close and 196-200 Albert Road with particular regard to privacy;
 - whether the development would provide adequate living conditions for future occupiers, with particular regard to light, outlook and internal space; and
 - the effect of the proposal on the housing need in the area.

Reasons

Character and appearance

5. The appeal site comprises an 'L' shaped parcel of land, located at the rear of several terraced properties on Albert Street. These generally have long rear gardens with either single storey garages or parking areas at the very rear of the gardens which extend down to Maple Close. The rear boundaries are all secured by metal palisade fencing.
6. The appeal site fronts the southern side of Maple Close. To the north, it faces the side elevation of 15 Maple Close (No 15), which forms the end of a row of modern two storey terraced properties on the opposite side of the road. These terraced properties are all set back from the road, behind areas of parking and have prominent porches to their front elevation. This cohesiveness in design and layout contributes positively to the area.
7. The proposal would introduce a two storey building, creating two apartments. The proposal takes some limited design cues from the properties on Maple Close, such as the front gable above the first-floor window and would be reflective of their scale and height. However, the siting of the front elevation close to the road, with little architectural detailing would appear at odds with the layout and prevailing character of the properties on Maple Close.
8. There are no other properties on the southern side of Maple Close. In this context, it would appear as an incongruous and prominent addition, contrasting starkly with the form of terraced properties seen in the surrounding area and against the modest, intermittent garage structures. The limited setback of the front elevation from the highway further increases the prominence of the appeal proposal.
9. The appeal site is located at the rear of Numbers 194 to 200 Albert Street (Nos 194 – 200) on a parcel of land that previously formed part of the rear garden to these properties. I observed on site that the appeal site has been separated and enclosed. There is no evidence before me to suggest that the owners of those rear gardens could not split off this land to create a separate plot of land as has been done. Nevertheless, this has substantially reduced the length of the rear gardens of several properties on Albert Street. This is out of character with the surrounding terraced properties and some harm arises from this. The introduction of a two-storey building here would result in an incongruous permanent structure, visually emphasising the change in plot size with significant harm arising from this.
10. The proposed street scene drawing shows a pair of semi-detached dwellings to the rear of 214 and 216 Albert Road (Nos 214-216). I observed no such dwellings on my site visit. The Officer report sets out that a previous permission¹ has since lapsed with none of the pre-commencement conditions associated with that permission discharged. An interested party has stated that work has commenced preparing the site, however, no substantive evidence of this has been provided. In any event, it is not a matter for me to determine the status of that particular scheme. In the absence of firm evidence, I afford the presence of the proposed dwellings at Nos 214-216 on the street scene plan little weight.

¹ Ref: 2018/09962/PA

11. While trees are located in the vicinity of the appeal site, the longevity of the trees cannot be assured. Furthermore, owing to their position they would be unlikely to conceal the development, particularly when not in leaf and when viewed from Maple Close. Therefore, the presence of these would not mitigate against the harm identified.
12. I conclude that the proposal, would significantly harm the character and appearance of the area. Accordingly, it would conflict with Policies PG3 and TP27 of the Birmingham Development Plan (2017) (BDP). These, amongst other matters, seek high design quality which contributes to a strong sense of place. It would also conflict with the Birmingham Design Guide Principles Document (2022) (BDG), which requires development to positively respond to its site and the overarching design aims of the Framework.
13. Policy DM2 of the Development Management in Birmingham Development Plan Document (2021) (DPD) relates to residential amenity and has not been determinative on this main issue.

Living conditions of neighbouring occupiers

14. The proposal would formally subdivide the gardens of Nos 194 to 200. The garden space remaining at No 194, would be substantially below the 70 sq. metre minimum size set out in the BDG and would not be commensurate to the size of a 3+ bedroom property. A garden of this size would not provide adequate space for a larger house, leaving little space for outdoor recreation and other outdoor household tasks. This would be detrimental to the living conditions of the occupants of this property.
15. The first-floor front lounge windows would be in close proximity to and with a direct view into the rear garden of No 15, falling marginally short of the minimum distance set out in the Birmingham Design Guide: Healthy Living and Working Places City Manual (BDG HLM) (2022). As the main living area, future occupants would likely spend a large amount of time in this room. This would give rise to frequent opportunities for overlooking of No 15's private garden space. This would be intrusive causing a harmful loss of privacy to these neighbours. The current occupants of No 15 have indicated support of the proposal. Irrespective of this, current and future occupants of No 15 should be able to enjoy privacy in their rear garden. This support of the scheme does not alter my view in respect of this issue.
16. My attention has been drawn to the relationship between the flank wall of No 9 Maple Close and the rear of 19 Maple Close. From the limited information before me and what I observed on site, No 19 has a direct outlook towards the rear gardens of Nos 1 to 9 Maple Close. Whilst this relationship could give rise to overlooking in a similar way to the appeal scheme, it does not justify allowing a scheme which would cause an unacceptable loss of privacy to neighbouring occupiers. There would be no overlooking into the rear amenity space of the terraced properties at Nos 196 - 200 from the windows in the rear elevation of the proposed building as it is intended that these would be obscurely glazed.
17. I conclude that the proposal would harm the living conditions of the occupants of No 194 in relation to reduced amenity space. It would therefore conflict with Policy PG3 of the BDP and Policy DM2 of the DPD in so far as private amenity space should be functional. The proposal would also harm the living conditions

of the occupants of No 15 through loss of privacy. As such, the proposal would conflict with Policy DM2 of the DPD insofar as it seeks to ensure development does not have an adverse impact on the amenity of neighbours, including overlooking. I have found no harm in respect of loss of privacy to Nos 196 – 200.

18. Policies PG3 and TP27 of the BDP has been cited on the decision notice in respect of this main issue. However, these relate to place making and sustainable neighbourhoods respectively. Therefore, they have not been determinative on this main issue.

Living conditions of future occupiers

19. The Technical Housing Standards – nationally described space standard (THS) sets out that in order to provide two bedspaces, a double or twin bedroom should have a floor area of at least 11.5 square metres and be at least 2.75 metres wide. The annotated plans demonstrate that both bedrooms would meet the minimum requirements and thus there would be no conflict with the THS.
20. The kitchen area within the open living space of the ground floor flat would be served by a high level window. There would only be a short gap between this window and the boundary fence enclosing the rear gardens of Nos 196 and 200. This window would be obscurely glazed and would provide no outlook. However, the open plan living area would benefit from a satisfactory outlook from the larger windows to the main elevation. In these circumstances, the absence of outlook from this rear facing window would be acceptable. Due to its high level position, the short distance to the boundary would not adversely impact on light to this window.
21. The windows in the front elevation of the proposed building would serve both bedrooms and an open plan living area in both flats. These would face the side elevation of No 15 and either side of that elevation, including its rear garden.
22. In order to protect light and outlook, the BDG HLM sets out a minimum requirement of 12.5m separation distance between elevations with habitable room windows and opposing 1 and 2 storey residential flank walls. The proposal would provide 10.9m between the windows and the flank wall to No 15. This would be below that minimum standard. As the windows have an outlook beyond the side elevation of No 15, I find that despite the proposal falling below the minimum standard, the outlook would be acceptable. However, as the front elevation is north facing and there are limited other light sources in the lounge, in the absence of any evidence to confirm otherwise, such as a light report, I am not persuaded that the levels of light would be acceptable given the shortfall in distance. This would result in gloomy living conditions for future occupiers and a reliance on electric lights.
23. I conclude that the proposal would not provide adequate living conditions in respect of light. Consequently, it conflicts with Policy DM2 of the DPD which, amongst other matters, seeks to ensure the amenity of future occupiers in respect of light. In so far as relevant to this main issue, it would also conflict with the BDG and BDG HLM, which seeks to ensure development protects residential amenity and the Framework, which has similar aims. Whilst the proposal would provide adequate living conditions for future occupants in respect of internal space and outlook, it does not alter my conclusion above.

24. Policies DM1 and DM12 of the DPD and Policies TP27 and PG3 of the BDP have been cited on the decision notice in respect of this main issue. However, these relate to air quality, residential conversions and specialist accommodation, the creation of sustainable neighbourhoods and place making and design respectively. As such, they have not been determinative on this main issue.

Housing need

25. The Council's Housing and Economic Development Needs Assessment (HEDNA)(2022) is the most up to date assessment of housing needs. Table 8.22 of the HEDNA identifies the suggested mix of properties split by broad tenure and identifies that the greatest need is for 2 and 3 bedroom properties. The proposal would provide two, two bedroom apartments and would contribute to this identified need.
26. The Council has identified that the Outer Central Sub area is likely to see greater demand for larger properties in the provision of 4+ bedroom homes. However, the appeal site is located outside of this area, as identified on the maps within the HEDNA, and thus this point is not pertinent to this appeal.
27. Accordingly, I conclude that the proposal would meet an identified housing need. It would therefore accord with Policy TP30 of the BDP, the Framework and the SPD all of which seek to ensure new housing meets local need.
28. Policy DM2 of the DPD relates to residential amenity and is not relevant to this main issue.

Other Matters

29. The appellant states that the proposal would result in less noise and vehicles than previous schemes². However, I have no detailed information before me on the schemes referred to.
30. Representations in support of the proposal also state that the proposal would be an efficient use of the land which would be a benefit in favour of the scheme.
31. The scheme would provide two-bedroom flats. I am told they would not be houses in multiple occupation of which there are several locally. I have no information about this.
32. West Midlands Police have no objections and the highways authority and Severn Trent have no objections, subject to conditions. No flooding would arise from the development and it would not overshadow other buildings. However, an absence of harm is a neutral matter in this planning balance, weighing neither for nor against the proposal.
33. There is no evidence that the scheme will deliver affordable housing nor any mechanism by which this would be secured. This carries no weight in favour of the scheme.
34. The development of the site could reduce littering and fly-tipping in this area and contribute to a safer environment. It could also increase natural surveillance in the area, although existing properties on Maple Close already provide a degree of natural surveillance. The scheme additionally proposes a

² Ref: 2019/04760/PA and 2022/05060/PA

low maintenance garden, bin collection points, secure cycle storage, off road parking for two vehicles and additional lighting for Maple Close. Together, these modest benefits carry limited weight.

Planning Balance and Conclusion

35. The proposal would meet an identified housing need and it would make a limited contribution to the local housing stock. There would also be economic benefits during the construction phase and longer term economic benefits with occupants spending in the local economy. Given the small scale of the development such benefits would be limited. In addition, the scheme would provide some environmental enhancements.
36. Weighing against this, I have found that the proposal would be significantly at odds with the character and appearance of the area. It would also harm the living conditions of occupiers at No 15 and No 194 and fail to provide satisfactory living conditions for future occupants. The benefits individually and cumulatively amount to no more than moderate weight and do not outweigh the significant conflict identified with the development plan as a whole.
37. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal is therefore dismissed.

T Bennett

INSPECTOR