



Appeal Decision

Site visit made on 2 July 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/P4605/W/23/3335514

244 Washwood Heath Road, Birmingham B8 1RJ

- 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 Zaheer Barber against the decision of Birmingham City Council.
 - The application reference is 2023/04428/PA.
 - The development proposed is the retention of 3 flats on second floor, including changes to fenestration and associated works.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The Government published a revised version of the National Planning Policy Framework ("the Framework") on 19 December 2023, replacing the September 2023 version extant at the time the application was determined. The Council's appeal statement, and the appellant's final comments in response, were made in the light of the December 2023 version of the Framework. In July 2024 consultation began on further proposed amendments to the Framework, but as the changes do not have a significant bearing on the main issues in this appeal it has not been necessary for me to seek comments on them from the main parties. Where I have referred to specific paragraphs of the Framework, the numbering used is that of the December 2023 version.
3. The planning application was submitted in the name of "Mr Zaheer Barber", while the name on the appeal form was given as "Mr Zhaire Barber". The appellant's agent confirmed that this is the same person whose name had been misspelled on the appeal form. The appeal therefore proceeds in the name of Mr Zaheer Barber.
4. The development was originally described on the planning application form as the "retention of 1 additional flat". The description was revised while the planning application was being determined so that it more accurately reflected the scheme; I have used this amended wording more accurately in the banner heading above.
5. It was stated on the planning application form that the proposed development had been started but not completed. By the time of my site visit one year after the submission of the application that still appeared to be the case. Notwithstanding the use of the word "retention" in the description of the scheme, I have made my decision based on the submitted drawings rather than the works which I saw "as built" during my visit.

Main Issues

6. The main issues are the effect of the proposed development on the character and appearance of the area, and whether the scheme would provide acceptable living conditions for occupiers with regard to internal living space, outlook, and outdoor amenity space.

Reasons

Character and appearance

7. The appeal site is a two and half storey end terrace building at the corner of junction of Washwood Heath Road and Aston Church Road. Judging by its appearance it dates from the late Victorian period or thereabouts. The form of the building is broadly typical of the immediate surrounding area which has a mixed character; there are two commercial units on the ground floor. I saw that properties with shops and services on the ground floor and flats above are commonplace along Washwood Heath Road.
8. Approval has previously been granted for the use of the first floor as a two-bedroom flat¹, though the upper floors have subsequently been reconfigured to provide three flats; Flat 1 on the first floor, Flat 2 extending across parts of the first and second floors, and Flat 3 on the second floor. This reconfiguration forms part of the appeal scheme before me, along with associated changes to the fenestration and other external alterations which have not yet been carried out.
9. The development scheme involves lowering the ceiling on the first floor to provide adequate ceiling heights for the rooms above on the second (loft) floor. Externally, this would also require the existing first floor windows to be reduced in height. Small windows would be installed in new openings just below the eaves level to serve the second-floor rooms. I saw on my visit that work had been carried out to the first-floor windows, though the proportions of the windows *in situ* did not appear to match those shown in the submitted drawings as either “existing” or proposed”.
10. Principle 2 of the Council’s *Birmingham Design Guide* (“the BDG”), which was adopted as a Supplementary Planning Document in 2022, advises that design “must be informed by a clear understanding of the surrounding area’s character”. The 2021 *National Design Guide*² sets out ten characteristics of well-designed places; these include being influenced by existing built form in the local area.
11. Many of the buildings in the surrounding area have, as would be expected in a long-established inner suburb, been extensively altered over their lifetime. These alterations have been carried out with varying degrees of skill and sensitivity and, as the appellant has pointed out, in some respects this has resulted in an erosion of the Victorian character of the area. However, most upper floor windows on similar mixed-use buildings near the appeal site retain their original size and proportions, and it is to some extent one of the few remaining unifying characteristics in the area (albeit that many windows are now of modern materials such as uPVC). Where the size of upper floor windows has been reduced, such as at Nos 246 and 248 Washwood Heath Road

¹ LPA Ref: 2020/07293/PA

² Online at <https://www.gov.uk/government/publications/national-design-guide>

immediately to the east of the appeal property, the effect has been to unbalance those buildings' frontages, and to diminish the contribution the form and proportions of original window openings make to the retained sense of place and character in the locality.

12. Small windows serving the second-floor rooms can also be seen on No 246. Rather than reflecting or enhancing the character of the area, they have given that building an unusual and incongruous appearance. The development at No 246 was approved more than a decade ago³ and predates current local and national planning policy and guidance which place great emphasis on design quality. That building is not a defining feature of the neighbourhood, and in my view it should not be seen as setting a precedent for this appeal scheme.
13. The appeal site is at a prominent location, on a corner at a junction within what appeared to me to be a reasonably busy local centre. The proposed alterations to the building would not accord with local or national guidance in respect of good design, and the harm to the character and appearance which would arise from unsympathetic development would be widely seen as a result.
14. The proposal would conflict with Policy PG3 of the 2017 Birmingham Development Plan ("the BDP") which, among other things, seeks to ensure that new development demonstrates high design quality and contributes to a strong sense of place, responding to site conditions and the local context. The development would also conflict with the provisions of Chapter 12 of the Framework which seek to achieve well-designed places, in particular paragraphs 135 and 139 which state that development should be sympathetic to local character, and that development which is not well designed should be refused permission, especially where it fails to reflect local design policies and government guidance on design.

Living conditions

15. Flat 2 would have a kitchen/lounge on the floor floor and a bedroom on the second floor. The size of this flat is stated on the submitted drawings to have a total floor area of 47.9m², though by the Council's calculation it has a Gross Internal Area ("GIA") of around 45.3m². The reason for this discrepancy is not clear to me, though for reasons which I shall explain it does not have a significant bearing on my decision.
16. Policy DM10 of the 2021 Development Management in Birmingham DPD ("the DMB DPD") applies the Nationally Described Space Standard ("the NDSS")⁴. It requires a minimum floorspace of 58m² for a one-bedroom dwelling on two storeys, and the Council therefore considers that it falls short of the standard. The appellant, on the other hand, argues that Flat 2 would exceed the NDSS minimum floorspace requirement of 37m² for a one-bedroom dwelling providing only one bedspace. Given the additional space needed for stairs in a multi-storey dwelling, it is not unreasonable to expect that the minimum space requirement would be larger. The NDSS sets a standard for a one bedspace dwellings over one storey only, presumably because two-storey dwellings intended for a single occupant are, in my experience, few and far between.

³ LPA Ref: 2013/08755/PA

⁴ *Technical housing standards – nationally described space standard*, Department for Communities and Local Government 2015

17. In this case, I consider that the Council was correct to assess the flat with reference to the standard for a one bedroom, two-person dwelling over two storeys. The NDSS also sets minimum sizes for bedrooms; it requires a single bedroom to have a floor area of at least 7.5m², and a double or twin bedroom to have a floor area of at least 11.5m². The bedroom in Flat 2 is shown on the submitted drawings as having a floor area of 22.2m², so it would exceed the space standard floorspace requirement for a double bedroom by a considerable margin. It would be capable of accommodating two people and, regardless of the appellant's stated intention at this stage, would be likely to be used as such at some point in the future. The occupancy of that space or flat is not a matter which in my view could be controlled by a condition. In this light, Flat 2 would not provide the 58m² required by the NDSS and Policy DM10, regardless of whether it is the appellant's measurement of GIA or the Council's which is the more accurate.
18. The habitable rooms of the two flats on the top floor would all have some form of window or skylight. However, for the bedroom of Flat 2 and the lounge/kitchen of Flat 3 these would be the small new windows proposed to sit just below the eaves (as described in the character and appearance section above) which would be at a very low level within the rooms, or rooflights which would be well above head height. Both types of window would offer a very limited and unsatisfactory outlook for people occupying those rooms. The same low and high-level windows in the bedroom of Flat3 would be augmented by two additional windows at a more conventional, and useful, height on the end elevation. One of those, however, would be immediately alongside an existing extract flue serving the ground floor café (and quite close to the actual flue outlet), meaning that that window would be likely to provide a poor outlook from within the bedroom.
19. The proposed flats would provide no outdoor amenity space for residents, contrary to advice in City Note 13 of the BDG which states that 5m² of space should be provided for each one-bedroom flat. The appellant has pointed out that the flats within the appeal scheme would not be aimed at families with children. That in itself is not, however, a substantive justification for allowing no amenity space at all; the BDG applies different standards for houses and larger flats which, presumably, reflects their likely different occupancy.
20. Clearly in some cases a degree of flexibility in respect of amenity space may be justified by site-specific circumstances. I note that the Council approved the earlier use of the upper floor of the appeal property as a flat without private amenity space on the basis that the benefits of the bringing a [then] vacant site back into use would outweigh the harm arising from a lack of such space. There is nothing before me which demonstrates that benefits of similar weight would result from the intensification of use which the appeal scheme would lead to, particularly in view of its other shortcomings in respect of living conditions which I have found.
21. The appellant also referred me to a scheme elsewhere in the city where permission was granted for the subdivision of existing residential property on the upper two floors of a mixed-use building into three self-contained flats⁵. I note the Council officer in that case commented that a lack of private outdoor amenity space "is to be expected for flats in local centres". I have been

⁵ LPA Ref: 2022/05582/PA

provided with limited details of that scheme, but my reading of the officer report suggests that most or all of the space proposed for conversion was already lawfully in residential use, which is not the case here. It is also notable that the Council found that proposal acceptable in all other respects, which indicates reaching a different overall decision “on balance” may have been entirely justified.

22. Taking all of these points together, I conclude that the proposed development would not provide acceptable living conditions for future occupiers. It would therefore conflict with Policies PG3 and TP27 of the BDP which require new development to demonstrate high design quality and to contribute to making sustainable places. It would also conflict with Policy DM2 of the DMB DPD which seeks to ensure that all development does not result in unacceptable adverse impacts on the amenity of occupiers, including in respect of aspect and outlook and access to high quality and useable amenity space, and Policy DM10 of the DMB DPD which sets standards for residential development including by application of the NDSS.
23. For the same reasons, the development would not comply with the provisions of the Framework which seek to achieve well-designed places, in particular paragraph 135 which states that development should function well and provide a high standard of amenity for existing and future users.

Other Matters

24. The first reason for refusal on the decision notice issued by the Council, relating to matters of character and appearance, referred to a dormer window. The proposal does not include a dormer window, and this was therefore a mistake on the Council’s part. However, the Council’s concerns about the scheme were clear from both its officer report and appeal statement, and, other than in the reason for refusal, there is no other reference to a dormer window. I am satisfied that this is no more than a typographical or other editing error, and it has had no significant bearing on my ability to understand and assess both parties’ evidence in the appeal.

Planning Balance and Conclusion

25. There is no dispute between the main parties that the Council cannot demonstrate a five year supply of housing land, though the precise figure is not before me. In line with Footnote 8 of the Framework, I therefore consider that the most important policies for determining the appeal should be considered out of date, and the presumption in favour of sustainable development set out in Paragraph 11 d) of the Framework applies. As such, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. The proposed development would provide three new flats, a net gain of two dwellings over the current lawful position, on a site close to shops and services, and where it appears likely that development could be brought forward quickly. Given the very small scale of the scheme, this would represent a modest social and economic benefit which, in total, carries moderate weight in favour of the proposal.

27. I note that the Council had no “in principle” objections to the proposal, and was satisfied that it would be acceptable both in highway terms and in terms of its impact on the amenity of neighbouring occupiers. None of the evidence I have seen leads me to disagree on these points; I consider them to be neutral factors in the overall balance.
28. The proposed development would cause harm to the character and appearance of the local area, and it would not provide acceptable living conditions for future occupiers. I consider that its total deficiencies in these respects would be significant. As such, and as I have already described, there would be conflict with the provisions of Chapter 12 of the Framework which seek to achieve well-designed places. Overall, I consider that the harm from the development would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal would not amount to sustainable development in the terms set out in the Framework.
29. Section 38(6) of the Planning & Compulsory Purchase Act 1990 and the Framework state that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
30. The proposed development conflicts with the development plan, taken as a whole. There are no material considerations, including those of the Framework, that indicate the proposal should be determined other than in accordance with the development plan.
31. I therefore conclude that the appeal should be dismissed.

M Cryan

Inspector