



Appeal Decision

Site visit made on 31 July 2024

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2024

Appeal Ref: APP/P4605/W/24/3336950

705 Coventry Road, South Yardley, Birmingham B10 0JL

- 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 Ishaq Hussain of Cosmo Property Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/05251/PA.
 - The development proposed is retention of 3 no. 1 bed flats (Use Class C3), single storey front and rear extensions and rear dormer, and proposed external alterations (revised application).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme has been implemented aside from the proposed external alterations to the front extension. I have determined the appeal on that basis.
3. A Written Ministerial Statement (WMS), 'Building the homes we need', and consultation on proposed changes to the National Planning Policy Framework, were published on 30 July 2024. I have sought the views of the main parties on these and had regard to any comments in the determination of this appeal.

Main Issues

4. The main issues are the effect of the front extension on the character and appearance of the site and surrounding area; and whether the proposal is acceptable having regard to its effect on housing mix.

Reasons

Character and appearance

5. The appeal building is part of a terrace where properties are grouped in pairs such that they have adjacent front doors and a degree of symmetry is evident. Although alterations have been made to window and door materials and fascias within this terrace, there remains a high degree of consistency in the scale and design of ground floor bay windows and their hipped roofs. Fanlights are also highly prevalent. Together, these features create a pleasing rhythm along the terrace and appear in keeping with the building's traditional form. Also, the bay windows display a noticeably greater area of glazing relative to brick work at ground floor level. This creates a sense of elegance.

6. The consistency of these traditional design features is a defining positive feature of the character and appearance of the site and its surroundings. Coventry Road is a main vehicular route. Consequently, although set back from the pavement, the terrace in which the appeal building is located is clearly visible and has some prominence in the street scene.
7. The proposed change to the fascia, pipework and meter boxes to grey would help these features to blend with the colour scheme on the rest of No 705. However, the front extension extends across the entire width of No 705. This has resulted in the loss of articulation and sense of depth that is evident on other frontages in the terrace where the bay windows are still present adjacent to their front doors. Moreover, the single profile roof extends across the entire width of No 705 extension. It therefore appears bulky and out of proportion with the more delicate hipped roof line of bay windows that is prevalent here. Also, even with the proposed enlargement of the front window, the extension would appear to display a much lower proportion of glazing in comparison to the majority of the other properties in the terrace where bay windows remain. This would appear at odds with the terrace's traditional building design.
8. Although the bay window at No 705 may have been in a poor state of repair, no substantive evidence is before me to indicate that it could not reasonably have been repaired or replaced with a similar bay. Also, no robust evidence is before to indicate that any improvement in living standards achieved by the proposed front extension could not instead be achieved with the bay window in place.
9. A similar form of front extension has taken place at No 719. However, that development does not justify allowing this scheme, which I consider would result in a harmful change to the appearance of the terrace. Whether or not enforcement action was appropriate in that case is not relevant to the determination of this appeal. I note also that there are variations in terrace building design in the wider area, including examples on Malmesbury Road and Aubrey Road. However, box bay windows form part of the character of those roads. Moreover, front extensions in those roads typically retain the window proportions of the original box bay window with fan lights above the front door. Consequently, those front extensions are less prominent in the street scene and typically retain a greater degree of consistency with traditional building detailing.
10. With regard to the front extension at No 734 for which permission was granted in 2002, I observed that a similar extension is in place at the adjacent property at No 734. As such, the design of No 734 does not completely remove the sense of symmetry between the two. Also, these front extensions do not extend across the full width of the building, thus retaining a sense of depth which is lost in the appeal scheme. Furthermore, windows on No 734 fill the width of the extension and its return to the main facade, and align with the position of the fanlight above the door. As such that extension is more in keeping with the traditional building design than the appeal scheme, and appears much less bulky and conspicuous in the street scene.
11. Although there is no Article 4 Direction and the site is not within a conservation area, there is a local distinctiveness here which in my view is important to protect appropriately. Therefore, I conclude that the front extension has a harmful effect on the character and appearance of the surrounding area and

would remain harmful with the alterations yet to be implemented. It therefore conflicts with Policy PG3 of the Birmingham Development Plan (January 2017) (BDP). This generally seeks to ensure developments achieve high quality design. In addition, it would conflict with criterion a. of Policy DM12 of the Development Management in Birmingham Development Plan Document (December 2017) (the DPD), which requires that such proposals avoid unacceptable harm to the character and appearance of their surroundings.

12. It would also conflict with paragraph 135 of the National Planning Policy Framework (Framework) which, amongst other matters seeks to ensure proposals are designed to be sympathetic to the character of their locality. In addition, the proposal would not be in compliance with the Birmingham Design Guide (September 2022) (Design Guide), including City Note LW-16 which seeks to ensure extensions are designed to complement the architectural style of the existing building. Furthermore, it would not comply with the National Design Guide (2021) in failing to achieve well designed development that responds to characteristics of the existing built form (paragraph 53).

Fallback position

13. The appellant submits that the front elevation of the appeal building could be altered under permitted development rights. First, that the bay window could be removed under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Second, that a porch could be constructed under Schedule 2, Part 1, Class D of the GPDO. I have had regard to various case law referenced by the appellant on the weight to be applied to fallback schemes in decision making¹.
14. However, such a scheme would achieve a smaller front extension, being less wide and lower in height than the appeal scheme. As such, even if it had a less sympathetic roofline than the appeal scheme, overall the permitted development porch would be a less substantial addition and would retain greater articulation of the building than the appeal scheme which extends across the whole width of No 705. Therefore, the effects of such a fallback scheme would be less harmful than the appeal scheme.
15. Consequently, even if I was to accept that such a fallback position existed, with a real prospect of implementation in the absence of a successful appeal and ascribed it significant weight, it would not alter my reasoning on this main issue. Furthermore, removal of the bay window in isolation, whilst interrupting the rhythm of the façade, would also be less prominent and therefore less harmful than the appeal scheme.

Housing mix

16. Policy DM12 of the DPD addresses proposals involving property subdivision into self-contained residential units. Criterion e. requires that such developments do not result in the loss of a use that is important for the achievement of Council objectives, strategies and policies. The supporting text to the policy welcomes a wide mix of housing that increases choice. It seeks to avoid an over-concentration of similar uses. It also advises that where there are particular shortages of large family homes, careful consideration will be required on the effect of flat conversions on that need.

¹ Mansell v Tonbridge and Malling Borough Council & Others [2017] EWCA Civ 1314; and Gambone v Secretary of State for Communities and Local Government [2014] EWH 952 (Admin)

17. The Council's Housing and Economic Development Needs Assessment (2022) (HEDNA) finds that there is a higher proportion of households in Birmingham with dependent children, relative to the regional and national average. In addition, it identifies that there is a substantial proportion of private renter households comprising couples or lone parents with dependent children in the Yardley sub area which covers the appeal site (40%) (paragraph 9.12). This indicates that there is a considerable need for family housing within Birmingham as well as in the sub-area in which the appeal site is located.
18. The HEDNA also finds that housing completions since 2011 have focussed on flats and apartments. However, it acknowledges that this is likely a reflection of the location of delivery with a large percentage having been in the city centre. No robust evidence is before me to indicate that housing completions for one bed accommodation has been high in the vicinity of the appeal site.
19. The appellant submits a Local Housing Mix Assessment (LHMA) prepared by Marrons. This aims to clarify the housing position specific to the locality of the appeal site with reference to a range of data including the number, size and type of properties for sale in the B10 area in June 2019 compared to June 2023. Also, changes in average and median asking prices for properties over that same period, and comparative data on private rental costs for one bedroom properties in 2015 and 2022.
20. The LHMA indicates that there has been a reduction in the number of 1 bed properties for sale in June 2023 relative to June 2019. It also shows that the greatest percentage increase in average and median property asking prices in the B10 area during that period was in 1 bed properties. Although other macro-economic factors will likely have been influential in determining the asking prices, it is an indicator of demand for one bed units.
21. Occupancy rating data within the LHMA indicates that overcrowding has increased more for the 16-24 group. Also, that combined with over occupancy in the 25-34 age group this accounts for a substantial proportion of the population increase in overcrowded properties, both in the Coventry Road Middle Super Output Area (MSOA) and in six combined MSOAs. Some of that age bracket in overcrowded accommodation are likely to require one bed properties, such as the appeal scheme. As such, I find that evidence within the LHMA supports the appellant's case that a small increase in one bed accommodation would be acceptable in this area.
22. The Council refers to an appeal decision for a 5 bed HMO in Sparkbrook that was dismissed. Nonetheless, in that instance the Inspector highlighted deficiencies in the appellant's evidence, including that the dwelling had not been marketed for a sufficient length of time having regard to policy specific to HMOs. Whereas no such requirements apply to conversions. In any event, this appeal submission includes evidence on the housing market conditions of relevance to the appeal site. Therefore, the Sparkbrook decision is not sufficiently comparable to alter my reasoning on this main issue.
23. The Council also refers to their Houses in Multiple Occupation SPD (April 2022) which highlights that where there are particular shortages of family housing in the vicinity of a development site, the Council will be sensitive to that need. Whilst the HEDNA indicates a need for family housing in the Yardley sub area and Birmingham more generally, I am satisfied that there is also a need for one bed properties in the locality.

24. Furthermore, the appeal building is in an area where terraced housing appears as the predominant house type. Like the appeal building, many of these on Coventry Road provide accommodation over three storeys. Although conversions may have taken place and are not included within the HEDNA data, no substantive evidence is before me to indicate that a high proportion of these have been converted to flats, akin to the appeal scheme. Therefore, much of the surrounding houses could reasonably provide homes for families.
25. Therefore, in the particular circumstances of this case, the replacement of this 4 bedroom property with three 1-bed flats does not amount to a harmful change to housing mix in the locality. Accordingly, the proposal is acceptable having regard to its effect on housing mix. It thus complies with criterion e. of Policy DM12 of the DPD. I also find no conflict with Policy TP30 of the BDP which generally seeks to ensure proposals deliver a range of dwellings to meet local needs. In retaining the property's residential use, it does not conflict with Policy TP35 of the BDP which, amongst other matters, seeks to prevent the loss of existing dwellings to other uses. Further, the appeal scheme accords with paragraph 60 of the Framework in supporting the delivery of a mix of housing types.

Other Matters and Planning Balance

26. The Council refers to an appeal decision for a 5 bed HMO in Sparkbrook that was dismissed. Nonetheless, in that instance the Inspector highlighted deficiencies in the appellant's evidence, including that the dwelling had not been marketed for a sufficient length of time for a conversion to an HMO. Whereas no such requirements apply to conversions to one bed flats. Therefore, the Sparkbrook decision is not sufficiently comparable and has not influenced my reasoning in respect of housing mix.
27. The appellant submits that the Council can only demonstrate a housing land supply of 4.24 years and this is not disputed. Paragraph 11 d) of the National Planning Policy Framework is therefore relevant. I have found the effect of the appeal scheme on housing mix to be acceptable with respect to Policies TP30 and TP35 of the BDP, and criterion e. of DPD Policy DM12. This is a neutral consideration.
28. Whereas, although the appellant has sought to amend the scheme to improve the building's appearance, the appeal scheme remains unacceptable having regard to DPD Policy DM12 criterion a. due to its harmful effect on the character and appearance of the site and surrounding area. As such, despite its compliance with criterion e. on housing mix, it conflicts with that Policy as a whole. I have also found conflict with Policy PG3 of the BDP. For this appeal, these policies are generally consistent with the relevant aims of the Framework. Therefore, the harm from the policy conflict carries significant weight.
29. The proposal achieves an incremental increase in housing supply. Whilst a small contribution, the net increase of two residential units is a modest benefit in the context of the Council's housing land supply shortage. Evidence indicates that occupation of the building as flats may mean lower car ownership, with a corresponding reduction in on-street parking by its occupants. However, in the absence of on-street parking restrictions in the locality this attracts limited weight.

30. I accept that housing affordability is worsening and likely to continue to do so in the locality and Birmingham more generally. Nevertheless, as the proposal is submitted as market rather than affordable housing, it does not meet the needs of those on the Council's Housing Register. Furthermore, there is no mechanism before me to control the affordability of the accommodation. Therefore, the affordability of the flats is not a benefit of the appeal scheme. Also, the impact of this increased supply of one bed flats on affordability is likely to be negligible.
31. No robust evidence is before me to indicate the property was difficult to let prior to its conversion, or that a small garden and absence of off-street parking would render the property inappropriate or unattractive for a family requiring four bedrooms. That the appeal scheme is acceptable in respect of matters such as living conditions of its occupants and of neighbours, refuse and recycling, and is in an accessible location, are neutral considerations. Nevertheless, given the enduring harm to character and appearance of the site and surroundings, the proposal is contrary to the development plan as a whole.
32. Limited, short-term economic benefits will have arisen through employment during the conversion works. The small net increase in housing units supports the Government objective of boosting the supply of homes and helps achieve their commitment to addressing the housing crisis as set out in the WMS. However, the support for new housing in the development plan and the Framework is not at the expense of ensuring that developments are appropriately designed and integrate suitably with their surroundings.
33. Accordingly, whilst I have found the contribution to housing supply to be a modest benefit alongside other modest benefits, the enduring harm to the character and appearance of the appeal building and surrounding area is of considerably greater significance. Consequently, the adverse impacts of the appeal scheme significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, the proposal does not represent sustainable development.
34. Dismissing this appeal may put at risk the occupation of the flats by their current residents. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life) as incorporated by the Human Rights Act 1998. However, these rights are not unfettered and can be interfered with by a public authority in accordance with law in a number of circumstances.
35. In this case, there is a legitimate and established planning policy aim to protect the character and appearance of the area. No case has been made that the personal circumstances of the existing occupants require them to remain in the flats. As such, I attach greater weight to the public interest. Dismissal of the appeal is proportionate and so it would not result in a violation of the residents' human rights.

Conclusion

36. The appeal scheme is contrary to the development plan and there are no material considerations, including the provisions of the Framework and WMS, that outweigh this finding. Therefore, for the reasons given, the appeal scheme is unacceptable, and the appeal should be dismissed.

Rachel Hall

INSPECTOR