



Appeal Decision

Site visit made on 28 August 2024

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th September 2024

Appeal Ref: APP/P4605/W/24/3338145

Land adjacent 22 Oaklands Avenue, Birmingham B17 9TU

- 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 Vlad Stojanovic against the decision of Birmingham City Council.
 - The application Ref is 2023/04916/PA.
 - The development proposed is 'erection of an off grid eco friendly dormer bungalow'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - the effect of the proposed development on the character and appearance of its surroundings;
 - the effect of the proposed development on the living conditions of neighbours of the appeal site, with particular reference to privacy, noise and disturbance, sunlight, and outlook; and
 - whether the proposed development would provide acceptable living conditions for future occupants of the appeal scheme, with regard to access to private outside space.

Reasons

Character and appearance

3. The appeal site is located in a relatively high density area of Birmingham. On Oaklands Avenue (the Road), houses are positioned behind modest front drives that extend across the width of each house. Due to variations in the pavement width and the curved form of the turning head at each end of the Road, not all houses are completely perpendicular to the Road and there is variation in the distance of houses from the Road edge. Nevertheless, there is a strong building line. Also, except where screened by ad hoc vegetation, houses are highly visible from the Road.
4. A terrace of two storey houses at Nos 6 to 14, and a single detached dormer bungalow at No 4, are exceptions to the general consistency of house design. However, these follow the consistent building line and front on to the Road. Consequently, they do not jar with the pleasing simplicity of layout and pattern of development that are defining positive features of the surroundings.

5. I am not persuaded that the length of the driveway would make the proposal so isolated as to give rise to an increased risk of antisocial behaviour. Nonetheless, the proposal would be set much further back from the Road than either of the adjacent houses at No 22 and 24, interrupting the consistent building line. Moreover, combined with its position facing on to the side of No 22, the proposed dwelling would not fully address the Road, with part of its front elevation being hidden from view. This would be in stark conflict with the simplicity of layout that is prevalent here.
6. The proposal would replace the existing row of garages that are in a poor state of repair with a new purpose built house. However, the garages are low rise and appear subservient to adjacent houses. Whereas, the proposal would appear as a new independent dwelling and, for the reasons given, noticeably out of keeping with the character of the Road.
7. The appellant highlights an example of another development where houses have been constructed to the rear of No 20, Court Oak Road, without road frontage. However, the houses in that development are much less visible from the road than the appeal scheme. Therefore, contrary to the appeal scheme before me, they are not obviously at odds with the surrounding pattern of development and street scene. As such, the appearance of that development is not comparable and does not alter my reasoning. In respect of the dormer bungalow at No 4, whilst an individual development it appears to adhere to the consistent building line. Whereas the building line of the appeal scheme would not.
8. Therefore, I conclude that the proposal would unacceptably harm the character and appearance of the surrounding area. Consequently, it would conflict with Policy PG3 of the Birmingham Development Plan (January 2017) (BDP) which generally seeks to achieve high quality design with reference to the characteristics of the locality. Similarly, it would conflict with paragraph 135 of the National Planning Policy Framework (Framework). Amongst other matters, this seeks to ensure developments are sympathetic to the characteristics of their surroundings.
9. Also, it would not conform to the approach in Design Principle 3 and City Note SS-2 of the Birmingham Design Guide SPD (September 2022) (Design Guide). These generally support development that positively engages with the street.

Living conditions for neighbours

10. The proposed dwelling would face on to the side boundary of No 22 and given the confines of the plot, would extend close to that boundary. Consequently, even if the dormer window would be obscure glazed, the proposal would create the impression of overlooking of the rear garden at No 22, at close range, harming their living conditions with respect to privacy. Existing vegetation within the garden of No 22 currently limits visibility into that garden to a certain extent, albeit the screening would be less in winter months when some of that vegetation would be without leaves. Moreover, in the event that occupants of No 22 wish to remove boundary vegetation, the sense of overlooking from the proposal would be even more pronounced.
11. The proposed parking space to the side of the dwelling would be immediately adjacent to the boundary with No 24. This would bring vehicle noise and emissions alongside their rear garden. Nevertheless, use of the existing

garages could reasonably result in vehicles coming and going from the site on a similarly regular basis. As such, no substantive evidence is before me to indicate that the proposal would result in a harmful increase in noise and disturbance relative to the existing garages.

12. It is common for rear gardens to back on to one another. The Design Guide (City Note LW-3) refers to a separation distance of 21m between building faces for 2 storey dwellings. Whereas, the separation distance to the nearest dwelling to the rear is shown as circa 16.39m. However, the appeal scheme would be single storey and without windows on its rear roof slope, which could be secured by condition. Also, although the proposed ridge height would be approaching 6m, the proposed eaves height at the boundary with Nos 11 and 15 Yew Croft Avenue would be much lower, at circa 2.5m. Furthermore, the pitched roof would slope away from their boundary which would limit its dominance in views from those houses and their gardens. As such, I am satisfied that the proposal would be acceptable with respect to outlook, for the occupants' of Nos 11 and 15.
13. There would be some potential for the proposal to increase shading at the bottom of the gardens of Nos 11 and 15. Nevertheless, as their gardens are south facing and the proposal is single storey, the extent of shading is unlikely to be so great as to be harmful to the occupants' living conditions. Furthermore, I am satisfied that the proposal would not lead to excessive shading of other neighbouring gardens on the Road.
14. Therefore, the proposal would not harm neighbours' living conditions with respect to noise and disturbance, outlook, or sunlight. Nonetheless, it would be harmful to the living conditions of the occupants of No 22 with respect to privacy.
15. Consequently, it would not achieve high quality design, in conflict with Policy PG3 of the BDP. It would also conflict with Policy DM2 of the Development Management in Birmingham Development Plan Document (December 2017) (the DPD). This seeks to avoid unacceptable harm to neighbours, including in respect of privacy. Policy TP27 of the BDP is not of particular relevance to this main issue, in seeking to deliver sustainable neighbourhoods.
16. It would also conflict with paragraph 135.f) of the Framework. This seeks to ensure developments achieve a high standard of amenity for existing and future users. Although no substantive evidence of conflict with City Note LW-4 is before me, the proposal would be contrary to guidance in City Note LW-3 of the Design Guide which generally seeks to protect residential amenity.

Living conditions for future occupants

17. The proposed dwelling would be provided with very limited garden space. A small triangular area of lawn at front of the house would be positioned adjacent to the drive and vehicle manoeuvring space. Combined with its small size and triangular shape it would not be an attractive place for future residents to enjoy their outside space. Similarly, the proposed patio area to the side of the house would be roughly triangular shaped and positioned between the side wall of the house and a tall brick wall on the site boundary. Thus, whether or not the total amount of outside space would come close to the 52 sqm requirement in the Design Guide, it would not deliver an inviting outside space for future occupants.

18. Consequently, even if future occupants of the proposal were elderly residents, or young professionals not seeking a large garden, the restricted size and shape of the proposed outside space would feel oppressively small, particularly, in an area where houses are generally afforded reasonable sized private gardens.
19. Therefore, the proposal would not provide acceptable living conditions for its future occupants, with particular regard to access to private outside space. As such, it would conflict with Policy PG3 of the BDP. This includes a requirement for private outside spaces to be attractive and functional. It would also conflict with the requirement in the Framework for proposals to achieve high standards of amenity of future users. Similarly, it would not comply with guidance in Design Principle 15 and City Note LW-13 of the Council's Design Guide, both of which expect homes to provide sufficient outdoor space for future occupants.

Planning Balance

20. The Council submits that it cannot demonstrate a five year supply of housing, with a housing land supply of 4.24 years. Paragraph 11.d) of the Framework is therefore relevant. The provision of one dwelling in an accessible location would contribute to the Council's housing land supply shortfall to a limited extent. The Framework supports the development of windfall sites and of under-utilised land. Great weight should be given to the benefits of using suitable sites within existing settlements for homes and substantial weight to the value of using suitable brownfield land for that purpose. Delivery of a bungalow would increase the housing mix in this area and would be wheelchair accessible. This attracts modest weight.
21. I have also taken into account the energy efficiency and eco-friendly measures proposed, and that the proposal would be likely to reduce anti-social use of the site, including at nighttime. These also attract modest weight. The proposal would provide a limited amount of short-term employment through the construction of the development and some further modest benefits would result from the additional support to the vitality of the local community from the future occupiers of the house. These considerations therefore weigh in favour of the proposal. An absence of harm in respect of matters such as highway safety and provision of sufficient internal living space are neutral considerations.
22. No robust evidence is before me to indicate that use of the existing garages would result in vehicles converging at the site at the same time of day/night such that it would result in vehicles waiting to enter or leave the site. Similarly, even if fully rented out, it does not appear likely that their use would be so frequent as to cause undue disturbance to neighbours. Moreover, as retention of the garages would be less harmful than the appeal scheme in relation to its impact on character and appearance, privacy, and harm to future occupants, that potential fallback position does not justify allowing the proposal.
23. Whereas, the proposal would result in considerable harm to the character and appearance of the area and the living conditions of the occupants of No 22 with respect to privacy. Furthermore, the amount of private outside space for future occupants of the proposal would be inadequate. Although there is support for new housing in this location the benefits in terms of the Council's overall housing land supply position would be limited. In addition, 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.

24. 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 area, the living conditions of neighbours and the provision of inadequate outside space, 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. Although there was some local support for the proposal, for the reasons given this is not sufficient to justify allowing the appeal.

Conclusion

25. The proposed dwelling would be contrary to the development plan as a whole and there are no material considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the proposal is unacceptable and the appeal should not succeed.

Rachel Hall

INSPECTOR