



Appeal Decision

Site visit made on 3 July 2024

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/P4605/W/23/3334827

20 Tudor Hill, Sutton Coldfield, Birmingham B73 6BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Tim Shaw against the decision of Birmingham City Council.
 - The application reference is 2023/05626/PA.
 - The development proposed is the change of use of existing ancillary/incidental accommodation to a separate unit of accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of existing ancillary/incidental accommodation to a separate unit of accommodation at 20 Tudor Hill, Sutton Coldfield, Birmingham B73 6BH in accordance with the terms of the application, Ref 2023/05626/PA, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with drawing No TS/32 Rev C (Proposed Garage Rebuild, revision dated November 2023).
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, C and D of Part 1 of Schedule 2 to the Order shall be undertaken.
 - 3) Prior to the occupation of the development hereby permitted details of the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the building is occupied, and retained as approved thereafter.

Application for costs

2. An application for costs was made by Tim Shaw against Birmingham City Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant submitted revised plans with their appeal statement. These showed an additional doorway, with an open timber-framed porch with a pitched gable roof, replacing one of two sash windows originally proposed for the front elevation.

4. The Procedural Guide¹ advises that “if an applicant thinks that amending their application will overcome the LPA’s reasons for refusal, they should normally make a new planning application”, and that “it is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the LPA and by interested parties at the application stage”. I also note that the Council’s view that, as the amended plans were not available for assessment during the determination of the original application, they should not be accepted at this stage.
5. Notwithstanding that, in deciding whether to accept the amended plans I have had regard to the judgment of the High Court in *Holborn Studios*² (which refined the long-standing and well-understood “Wheatcroft Principle”³). In this case, the amendment proposed does not alter the fundamental nature of the scheme. Any interested parties have had the opportunity to comment on the revised plan during the course of the appeal. I am therefore satisfied that there would be no procedural unfairness arising from my determining the appeal based on the revised scheme, and I have proceeded on that basis.
6. The appeal site has a considerable planning history. Of particular relevance here is planning permission (LPA Ref: 2023/00734/PA – “the May 2023 permission”) for a scheme described as the “erection of a detached building to the side of the existing dwelling to provide ancillary living accommodation”. It is the building allowed by that permission which the appellant now wishes to use as independent self-contained accommodation⁴.
7. It was stated on the planning application form for this appeal scheme, in August 2023, that work on the proposed development had not started. By the time of my site visit in July 2024 not only was the building permitted in May 2023 at an advanced state of construction, but it incorporated an entrance door on the front elevation as shown on the amended drawings I have just described. I have therefore determined the appeal on the basis that the development for which permission is sought has already commenced.

Main Issues

8. The main issues are:

- The effect of the proposed development on the character and appearance of the area; and
- Whether it would provide acceptable living conditions for future occupiers of the proposed dwelling, and its effect on living conditions for occupiers of the existing house 20 Tudor Hill, with particular regard to access arrangements.

Reasons

Character and appearance

9. No 20 is a large three-storey late Victorian detached house, on the north-eastern side of Tudor Hill, in a residential area not far from Sutton Coldfield

¹ Procedural Guide: Planning appeals – England, online at <https://www.gov.uk/government/publications/planning-appeals-procedural-guide/procedural-guide-planning-appeals-england>

² *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin)

³ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

⁴ Although the phrase “erection of a detached building” appears in that description of development, the Council’s officer report suggests that the living accommodation permitted may have been a pre-existing garage/workshop building. I have not sought clarification on this matter as it is not central to my determination of the appeal.

town centre. The group of houses from 16-24 Tudor Hill (evens) are locally-listed; they are large redbrick buildings, similar in age and style with bay windows, gables, steeply-pitched tiled roofs and tall chimneys, set a good distance back from the highway in generous plots. The wider neighbourhood contains a variety of houses dating from the 1930s, '50s and 70s, and apartment developments dating from the 1990s onwards. Although there is therefore a considerable degree of diversity in housing types, the area is evidently a prosperous, desirable and well-maintained suburb. The appeal property and its neighbours make a very positive contribution to the character and appearance of the area.

10. A two-storey extension has recently been added to the north-western side of No 20; this is in keeping with the original style and design of the house, and has evidently replaced an earlier less sympathetic extension. Alongside this is the ancillary accommodation which, as I have described above, was already substantially complete at the time of my site visit. It is a single-storey redbrick building (though with accommodation on an upper floor within the roof space) with a pitched tiled roof with rooflights to the front and sides, and a gable to the rear with a Juliet balcony at first floor level.
11. I note the Council's concern that the appeal scheme would be incongruous and would not reinforce local distinctiveness or the pattern of development in the area. However, in style and materials the building is entirely in keeping with the main dwelling and its locally-listed neighbours. Notwithstanding its recent construction, its form gives it the appearance of a traditional outbuilding which might well be expected to be found in close proximity to a substantial Victorian house such as No 20.
12. The layout is essentially that previously approved for use as residential accommodation; only the front door and porch would signify its use as self-contained – rather than ancillary – living space, but these would be of a design in keeping with the character and appearance of the original house. The existing front garden of No 20 is sufficiently large that it would be able to accommodate the existing parking demand which would be likely to arise from the independent use of the building without the site appearing overwhelmed or overdeveloped, and there is sufficient space at the rear to provide a generous separate garden without leaving either the original dwelling or the new self-contained unit short-changed.
13. My attention was drawn to two examples of self-contained residential accommodation in "garage type buildings" nearby, which I was able to view from the street during my site visit. The conversions of a coach house at No 4A Tudor Hill and a "granny annexe" at No 8 Richmond Road appear, from their planning application numbers⁵, to have been carried out some considerable time ago, and I do not know what development plan policies were in place when they were permitted. Nevertheless, both demonstrate that it is possible to successfully and sympathetically adapt relatively modest outbuildings to provide self-contained accommodation. Based on all the evidence which has been put to me, I am satisfied that the same could be said of the appeal scheme.
14. I conclude that the proposed use change of use, and the alterations proposed to the building, would not cause material harm to the character or appearance

⁵ LPA references 72833000 and 2011/07730/PA respectively

of the area. The proposal would not therefore conflict with Policies PG3 and TP27 of the 2017 Birmingham Development Plan ("the BDP"), or with Policy DM2 of the 2021 Development Management in Birmingham DPD ("the DM DPD"). Together, and among other things, these policies seek to ensure that all new development demonstrates high design quality, contributes to a strong sense of place and is appropriate to its location, provides a choice of housing sizes and types, and is compatible with adjacent uses. The development would also comply with the provisions of Chapter 12 of the National Planning Policy Framework ("the Framework") which seek to achieve well-designed places which are visually attractive, sympathetic to local character, and maintain a strong sense of place.

15. The Council drew my attention to its 2022 *Birmingham Design Guide* Supplementary Planning Document ("the SPD") which seeks to encourage and support the delivery of good design in the city, though no conflict with any of its specific guidance was highlighted. I also find no conflict with the provisions of the SPD on this matter.

Living conditions

16. The May 2023 permission allowed the use of the appeal building as ancillary accommodation, with only a single entrance door opening from a narrow passageway between the outbuilding and the main dwelling. The appeal scheme was originally submitted retaining that arrangement; this would be likely lead to conflict between the occupiers of the two buildings, not least because of the additional presence of a side door to the main dwelling which could interfere with occupiers coming and going. While this may be acceptable where ancillary accommodation is being used by related members of the same family, it is clearly less appropriate for a self-contained dwelling. The reliance on a narrow passageway would also be likely to provide an inhospitable primary (indeed, only) means of access for a self-contained dwelling.
17. The amended drawings introduced a second doorway at the front of the building, leading directly from the front driveway. This would considerably improve the situation for the future occupier of the appeal building. Occupiers would still be dependent on the shared passageway for access to the rear garden, though in my experience such arrangements are not totally unheard of, and any conflict (and harm arising) would be likely to be limited and would not amount to causing significant harm.
18. I conclude that the proposed access arrangements would not result in there being unacceptable living conditions for future occupiers of the proposed dwelling, nor would they cause unacceptable harm to living conditions for occupiers of the existing house 20 Tudor Hill. In this respect the proposed development would therefore comply with Policies PG3, TP27 and TP37 of the BDP, and Policies DM2 and DM10 of the DM DPD. Together, and among other things, these policies seek to ensure that development creates safe residential environments, and does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours. There would also be no conflict with the provisions of Chapter 12 of the Framework which, among other things, seek development with a high standard of amenity for existing and future users.

Other Matters

19. Other than in respect of access, the Council considered that the proposed dwelling would provide a satisfactory living environment for future occupiers – rooms would be adequately sized, there would be a good outlook and natural light, and the rear garden would exceed the size guidelines set out in the SPD. It also considered that there would be adequate off-street parking for the original host dwelling and the proposed dwelling, and there would be no detrimental impact on highway safety. Nothing which has been put before me leads me to take a different view on any of these points.
20. I have briefly referred to the appeal site's substantial recent planning history, with numerous applications – some allowed, some refused – since 2011 for a variety of schemes to adapt, convert, rebuild or otherwise alter the appeal property. I note that there are two cases in which a new building providing self-contained residential accommodation was approved at the same end of No 20, in 2017 (LPA Ref: 2017/06119/PA) and 2019 (LPA Ref: 2019/06409/PA, allowed on appeal PINS Ref: APP/P4605/W/20/3244767). I have been provided with very limited information about these earlier schemes, and note also that the development plan has changed since they were permitted. They have not therefore "set a precedent" for this proposal, though I have found it to be acceptable on its own particular merits.

Planning Balance and Conclusion

21. The Council acknowledges that at the present time it is unable to demonstrate a five-year supply of deliverable housing land. The "tilted balance" described in Paragraph 11 d) of the Framework is therefore engaged. This indicates that 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.
22. The proposed development would contribute to the supply of housing in the area, although the provision of only a single additional dwelling means that this benefit would be limited. In the longer term, future occupiers would be likely to use and support shops, businesses and other services close by in Sutton Coldfield, although again the scale of such benefits would be modest. Nonetheless, while the total benefits arising from the development would be small, I have not found that the development would have adverse impacts when assessed against the policies in the Framework taken as a whole. The requirements of Paragraph 11 of the Framework therefore indicate that planning permission should be granted.
23. Furthermore, I have found that the proposal would be acceptable in relation to the character and appearance of the area, and in respect of living conditions, and have therefore concluded that there is no conflict with the development plan on these matters. This adds weight to my overall conclusion that the appeal should be allowed.

Conditions

24. I have considered the conditions suggested by the Council having regard to the tests in the Framework and the advice in the Planning Practice Guidance ("the PPG"). Where necessary I have made changes to the wording or ordering of conditions in the interests of clarity and effectiveness.

25. A condition defining the approved plans (1) is necessary in the interests of certainty, and to define the permission. As I have indicated above, this specifies the revised drawing submitted during the appeal.
26. Paragraph 54 of the Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The PPG advises that conditions restricting the future use of permitted development rights or changes of use “may not pass the test of reasonableness or necessity”.
27. In this case, I consider that it is necessary to remove certain permitted development rights in respect of extensions, roof alterations and other additions. This is not only necessary to ensure that an adequate area is retained for amenity space at the rear of the dwellings and to safeguard the amenities of the occupiers of the neighbouring buildings (though these are important considerations), but also to ensure that the appeal building retains the scale and form of a typical outbuilding, visually subordinate to No 20, so that it can continue to make a positive contribution to the character and appearance of the area. As such, a condition restricting the permitted development rights of the dwellings (2) would be in accordance with the Framework and the PPG.
28. I have imposed a further condition relating to the submission of details (and compliance with such approved details) in respect of boundary treatments within the site (3). This is necessary in the interests of clarity, as a fence separating off an area of rear garden for the appeal building from the retained garden of No 20 shown in the original drawings was omitted in the amended drawing submitted during the appeal, and to ensure that the character and appearance of the area is protected.

M Cryan

Inspector