



Appeal Decision

Site visit made on 13 November 2024

by C Rafferty LLB(Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/P4605/W/24/3346718

323a Ladypool Road, Birmingham B12 8LB

- 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 Navid Arif against the decision of Birmingham City Council.
 - The application Ref is 2024/00450/PA.
 - The development proposed is Retention of 2no. shipping containers for use as cafe with preparation area for food and 1no. open terrace and 1no. covered terrace at first floor.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the decision notice, which more accurately represents the proposal, including that it is currently in place.
3. The appellant has submitted updated drawings with the appeal, detailing amendments to the external appearance of the scheme. The Council is content that these are similar to those submitted with the application, with few alterations. As such, I have determined the appeal on the updated plans and am satisfied no party shall have their interests prejudiced by this. Where there are discrepancies between the plans and the development on site, I have made my decision based on the plans, as I am obliged to do.

Main Issues

4. The main issues are the effect of the proposed development on: the character and appearance of the area including with regard to a non-designated heritage asset; highway safety and parking provision; and the living conditions of residents of No. 86 and 87-90 Brighton Road with regard to light and outlook.

Reasons

Character and appearance, Non-designated heritage asset

5. The appeal site is a parcel of land on Ladypool Road, close to the junction with Brighton Road and adjacent to No. 86 Brighton Road. Development along this immediate section of Ladypool Road is mixed, comprising residential and commercial units of varying designs. Nevertheless, there remains a commonality in the materials used, primarily brick, providing a permanence to the appearance of development on the street.
6. The proposal relates to two shipping containers at the site, in use as a café with a terrace on the first floor. It is located adjacent to the footpath in a

similar manner to No. 86 Brighton Road, reflecting the building line of this adjacent development which is then continued by the boundary wall of neighbouring apartment blocks, such that it assimilates in this regard.

7. As shown by the updated plans, slate would be used in the upper floor projection and much of the structure would be finished in an off-white render. Nevertheless, I observed the structure to retain an overall temporary appearance. While the shipping containers have been somewhat masked and previous metal sheeting removed, the proposal still lacks the permanence of surrounding structures. Despite its colouring assimilating with No. 86 Brighton Road, overall the external materials appear out of place in the context of the surrounding buildings and prevalence of brick. Wooden elements of the structure are evident across both floors and, in the absence of detail, I cannot be certain of the uppermost roof material, which appears to be corrugated.
8. In addition, the proposal incorporates a terrace at first floor. Despite nearby protruding roofs, such terraces are not a common or defining feature of the immediate surrounds, such that it reads as visually jarring at this section of Ladypool Road. While the site may previously have been a beer garden, the elevated position of the terrace distinguishes it from this and adds prominence. Although the appellant refers to other terraces on Ladypool Road, limited information is provided, and I did not observe any of similar prominence to the proposal on my visit. This terrace serves to further highlight the proposal as an incongruous addition at the site.
9. The main parties agree that No. 86 Brighton Road, formerly The Brighton public house, is a non-designated heritage asset (NDHA). The Framework is clear that the effect of an application on the significance of a NDHA should be taken into account and that a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the asset. It has been suggested that the NDHA derives its significance from its historic and architectural interest and, based on my observations, I have no reason to disagree. While it is clear that alterations have been made, overall its historic nature remains evident due to its overarching traditional appearance.
10. The site is in the setting of the NDHA, defined as the surroundings in which a heritage asset is experienced. Submitted information shows that prior to the erection of the proposal the site was a beer garden associated with the pub, free from vertical built form and bounded by a wall and gate along Ladypool Road. While the main parties disagree as to the significance of the wall and gate, in the context of the tightly knit surrounding development the space to the rear of No. 86 would have contributed positively to the setting of the NDHA, separating it from neighbouring built form, increasing its prominence and providing an understanding of its historic curtilage.
11. The development of this space with the proposal, an overall incongruous feature with a temporary appearance, detracts from and visually competes with the NDHA. Despite its similar colouring, the materials of the proposal are at odds with the traditional appearance of the NDHA, and its placement dilutes the understanding of its historic context and curtilage. As such, the proposal has diminished the positive contribution the site currently makes to the setting of No. 86 Brighton Road, and thereby its significance. Given the significance of the NDHA as a result of its architectural style and historic interest, the overall scale of harm caused by the proposal in this regard would not be justified.

12. For the reasons given, the proposal would result in significant adverse harm to the character and appearance of the area, including with regard to a non-designated heritage asset. As such, it would fail to comply with Policies PG3 and TP12 of the Birmingham Development Plan 2017 (the BDP), the Birmingham Design Guide Principles Document 2022 (the SPD), the National Design Guide, and the Framework insofar as they seek to ensure high quality design that responds to local area context, including heritage assets.

Highway safety, Parking provision

13. The proposal does not provide any off-street parking. As per the Birmingham Parking SPD, the appeal site is in Parking Zone C. The main parties disagree as to the parking provision that is required by the proposal. While the Council refers to 7 off street spaces for customers and 1 off street space for staff, the appellant refers to a total of 5 off street spaces. The SPD is clear that in Zone C, parking standards are not a minimum or maximum and there is flexibility to increase or reduce parking provision depending on factors such as location and public transport accessibility.
14. The Birmingham Parking SPD outlines that Parking Zone C as having medium to low public transport accessibility, and the Council refers to the appeal site as being in an unsustainable location away from bus stops. However, I noted the Stoney Lane bus stop to be within reasonable walking distance of the site, and submitted evidence suggests that this provides a regular service. In addition, the appeal site is in a location which features a high concentration of residential development nearby, such that for residents of these dwellings it is easily accessible on foot.
15. I note the former use of the appeal site as a beer garden associated with the public house, and the appellant's assertion that the proposal largely provides for after-meal coffee and desserts for customers of other restaurants, with many patrons who do not drive. Nevertheless, it remains that the proposal is a standalone use with the potential to generate vehicular trips in its own right.
16. The immediate western section of Ladypool Road has double yellow lines. Short stay parking bays are on the eastern side in the vicinity of the site, which are subject to one hour parking restrictions between 08h00 and 18h00 from Monday to Saturday. While my visit represents a snapshot in time, I observed these spaces to be heavily parked at the time of my visit. As such, it is unlikely that even the lower figure of 5 parked vehicles resulting from the proposal could be fully accommodated within these short stay bays.
17. The appellant has submitted a Transport Note with the appeal, which refers to various public car parks within the vicinity of the site. However, even if I were to find that these were within a reasonable walking distance of the site, I have limited information before me such as operating hours or current usage of these car parks to evidence that they could accommodate even the lower figure of 5 parked vehicles resulting from the proposal.
18. Even noting my findings on accessibility via public transport and on foot, in addition to the other uses in the area without dedicated car parking, I cannot be certain on the information before me that the proposal would result in a level of vehicular trips that could be accommodated within existing on-street and public car parking. As such, there remains the possibility that the proposal

would lead to illegal or obstructive parking due to a lack of alternatives, resulting in undue highway and pedestrian safety concerns.

19. For the reasons given, I cannot be certain that the proposal would not result in harm to highway safety due to parking provision. As such, it would fail to comply with Policies PG3, TP39, and TP44 of the BDP, Policies DM14 and DM15 of the DPD, the SPD, the Birmingham Parking SPD, the National Design Guide and the Framework insofar as they seek to ensure that the operational needs of development are met by parking, and that development creates safe walking environments, ensures effective, efficient and safe use of the transport network, and ensures no unacceptable impact on highway safety. While Policy TP28 of the BDP was also cited, this relates to housing.

Living Conditions

No. 86 Brighton Road

20. The upper level of the proposal is located 10.5m from the first floor rear elevation of No. 86 Brighton Road, which is in residential use at this level. Submitted evidence shows a habitable room window facing the site, serving a communal kitchen/ lounge. This window is small in size, with larger ones also serving the room on the eastern elevation.
21. The proposal has inevitably altered the outlook from this facing window. However, it is some distance from the window, and the outlook provided by those on the eastern elevation remains unchanged. As such, the room would not feel unduly enclosed due to the presence of the proposal and, even noting the size of the associated habitable room, the overall outlook for residents would not have been altered to a degree that would unduly impede their enjoyment and use of the room, or impact their amenity.
22. With regard to light, the appellant has submitted a Sunlight and Daylight Report with the appeal, which the Council has had the opportunity to comment on. This concludes that the proposal performs well against BRE recommendations. In the absence of substantive technical evidence to the contrary, I attach significant weight to the findings of this report. The distance between the proposal and the habitable room at No. 86, in addition to the presence of other windows serving the room, would ensure that the room would not feel unduly gloomy or overshadowed to an extent that would significantly impact the living conditions of residents.
23. The Council refers to a minimum separation distance of 12.5m between windowed elevations and opposing two-storey flank walls as set out within the SPD. However, while this is a material consideration, it is guidance rather than policy. For the reasons given above I am satisfied that the specifics of this case are such that the proposal does not unduly impact the living conditions of residents of No. 86 Brighton Road with regard to light and outlook.

Nos. 87-90 Brighton Road

24. The rear elevation of the upper floor of the proposal is visible from the amenity space serving Nos. 87-90, located to the west. The appellant's Sunlight and Daylight Report finds that there would be no detrimental impact in terms of a reduction of natural light reaching this space. As such, the proposal has not resulted in a level of overshadowing of this space that would restrict the time

during the day when this receives light to an extent that would restrict residents' enjoyment of the space.

25. However, I observed that the proposal has introduced a significant element of upper level built form along much of the eastern boundary of the amenity space. Even acknowledging the size of this space, this element of the proposal reads as a prominent feature that serves to unduly enclose it. Combined with surrounding development, the stark, block-like feature of unbroken built form appears imposing and overbearing from this location. As such, even if I were to agree that this would represent a reduction in noise reaching the amenity space from the road and the former beer garden use of the site, it remains that this presence of overbearing built form would impact the enjoyment of the rear amenity space by residents of Nos. 87-90 Brighton Road.
26. For the reasons given, the proposal would result in significant adverse harm to the living conditions of residents of Nos. 87-90 Brighton Road with particular regard to outlook. As such, it would fail to comply with Policy PG3 of the BDP, Policy DM2 of the Development Management in Birmingham Development Plan Document 2021 (the DPD), the SPD, and the Framework insofar as they seek to ensure private external spaces are functional and that development does not result in unacceptable adverse impacts on the amenity of neighbours, including with regard to aspect and outlook.

Other Matters

27. The proposal provides a new commercial opportunity in an area with a Local Centre designation, at a site that it is suggested was previously neglected, underused, and prone to crime and anti-social behaviour. As such, there are clear economic and social benefits associated with the proposal. However, this would not outweigh the harm I have found above.

Conclusion

28. For the reasons given, the proposal would not accord with the development plan when taken as a whole. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR