



Appeal Decision

Site visit made on 13 November 2024

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th November 2024

Appeal Ref: APP/P4605/W/24/3341989

217 Bristol Road, Edgbaston, Birmingham B5 7UB

- 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 Sarindar Singh Mann against the decision of Birmingham City Council.
 - The application Ref is 2023/05714/PA.
 - The development proposed is 'Erection of New Dwelling on Land to the Rear of 217 Bristol Road'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024, the Government published a consultation draft of proposed reforms to the National Planning Policy Framework (the Framework). As the proposed changes do not affect the main issues of this appeal, I have not sought the views of the main parties in coming to my decision.

Main Issues

3. The main issues in this appeal are as follows:
 - The effect of the proposal on the setting of a Grade II Listed Building and the character and appearance of the Edgbaston Conservation Area (ECA); and
 - The effect of the proposal on ecology.

Reasons

Significance of Heritage Assets

4. The appeal site comprises a section of the existing rear garden of No.217 Bristol Road. The host property is part of the grade II listed¹ '215 and 217, Bristol Road B5', which is formed of a pair of semi-detached dwellings of mid-1800's origin. The listed building is predominantly of red brick construction with hipped slate roofs and features generous setbacks from the road with long rear gardens.
5. I have therefore had regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) which states that in considering whether to grant planning permission for development which affects a listed

¹ List Entry Number: 1220162

building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

6. From all that I have seen and read, including my observations on the site visit, the special interest and significance of the listed building is derived mainly from its historic and architectural interests. Historic interest is drawn from its age and association with the historic development of the area, which was evidently part of a larger estate which was gradually developed initially with large dwellings sitting in generous plots forming low density patterns of housing. Architectural interest is mainly derived from the simple yet imposing form of the buildings, surviving historic features, and use of traditional materials. There is further significance derived from the group value of adjacent listed buildings along the same road due to their shared history and contemporary development.
7. Pertinent to this appeal, the spaces to the rear of the listed building, which are garden areas to both buildings, provide an open and verdant setting with which the building is visually, physically, historically and functionally associated and within which the building can be most readily experienced. Evidently, the appeal site itself was a later addition to the rear garden in the early 20th century which is indicative of the economic development of the area and aspirations of homeowners. In these regards, the listed building's setting contributes to its significance considerably.
8. Due to the appeal site location within the ECA, I have also had regard to section 72(1) of the Act. This places a statutory duty on the decision maker to ensure special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
9. The ECA Character Appraisal identifies the area as predominantly suburban, with much of the layout of streets and roads formed by the urbanisation of the Calthorpe Estate and its strict development controls historically. There are a range of architectural styles prevalent, which are indicative of the development of the area over time. Pertinent to this appeal are the contributions of expansive green spaces, relatively verdant streetscapes and low-density housing in generous plots. In a more local sense, the houses along Bristol Road are of exceptional quality and their remaining plots demonstrate the affluent history and development of the area.
10. The appeal building and its adjoining neighbour are prominent in the area. Along with the other listed buildings in proximity, they are considerably positive contributors to the character and appearance, and therefore significance, of the ECA as a designated heritage asset.

Effects of the Proposal

11. The proposal seeks to erect a single-storey dwelling in the garden area towards the rear of the plot. The building would be of red brick construction with a roof formed of both pitched and hipped elements, while the remaining land around the building would serve as the garden with vehicular access taken from the access track adjacent.

12. I understand that the design is influenced by tennis pavilions in its general arrangement, materials and aesthetic composition. In this regard, there is a large sports pavilion adjacent with several structures of this general design. The Council did not take issue with some of these matters, although I understand that more generally the scale and siting are in dispute.
13. The proposed development would be of significant scale in terms of its area and result in the formal subdivision of the existing garden area of No.217. This would impact the building's immediate setting given its proximity. While I understand that the proposal has been refined from previous proposals, it would still notably erode and adversely undermine the integral undeveloped and spacious qualities of the site. This would harmfully disrupt the physical, visual, functional and historic associations between the listed building and the garden area.
14. While the appeal site may have been added to the garden area at a later date, its expansion was indicative of the development of the area as wealth spread through the city and in the local area more specifically. The expansion is therefore part of the historic interest, and while the host dwelling would retain its earlier plot, the harm through the formal subdivision is clear.
15. In all of these respects, the proposed development would detrimentally compromise the asset's immediate setting, fundamentally changing how the building is experienced. This would diminish the positive contribution that the setting makes to the listed building's significance and reduce the ability to appreciate that significance.
16. The appeal site would be accessed by the track leading from Bristol Road to several other properties. The front building line of the properties lining the road do indeed form a strong building line and public views of the appeal site are limited to those experienced on the access track. Be that as it may, views of this site would be evident to occupiers of these properties and users of the track. In any event, visibility is but one consideration of the impacts of a development proposal on the significance of a heritage asset and a lack of visibility does not equate to an absence of harm or a neutral impact.
17. Given the harm I have identified to the setting of the listed building, the detrimental effects of the sub-division of the rear garden on the setting and thus significance of the listed building, it logically follows that it also has a harmful effect on the character and appearance of the CA as a whole. This is particularly in light of the contribution of large plots and verdant spaces to the significance of the ECA. In this case, the loss of verdant space and historic plot form of the host property, which is a positive contributor to the character and appearance of the ECA, would be harmfully impacted due to the significant built form proposed. Moreover, the resultant plot would appear somewhat tight to its boundaries with a smaller garden area than other adjacent properties.
18. I understand that development within the Calthorpe Estate is still managed by a panel who must grant permission even after planning permission is granted for development to proceed. I am informed that permission would be granted in this case. I have nothing before me to indicate this, although it would have no bearing on my assessment regardless as I must form my own view as an Inspector.

19. My attention is drawn to other applications which were approved in the area. These include the restoration and extension of a Coach House to the rear of No.219 Bristol Road² and the change of use of a property to the rear of the access track at 217a Bristol Road³. I observed these on my site visit.
20. However, the change of use of No.217a to a children's residential home evidently involved very few external changes, while the restoration of the Coach House was an existing structure, albeit in need of repair. Neither are convincing examples which would convince me that the harm I have identified in this case is acceptable. In any event, I have assessed the proposal on its own merits.
21. There is existing development to the rear of No.219 at the end of the access track in the form of housing evidently constructed in the 1980s. I observed these on the site visit. However, this has been in situ for some time and while it is backland development, it does not convince me the proposal is acceptable on this basis alone. The Calthorpe Estate was developed over time, and the appellant's representatives have clearly gathered extensive knowledge of the history of the area. However, as the appellant's statement of case points out, careful management of the estate and controls related to retention of existing trees, walls, railings, gates and so on, all of which are intended to maintain the character of the Estate whilst at the same time allowing the Estate to add more built form and new development in a controlled way. I have identified important contributors to the significance of the listed building and the ECA, such as the historically large plots and verdant settings of buildings. The loss of part of this significance would be harmful for the reasons given above and while backland development has occurred, this has not always been positive.
22. Drawing the above together, I find that the proposed development would fail to preserve the setting of the Grade II Listed Building and would harm the character and appearance of the ECA.

Heritage Balance

23. Paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
24. I have found in this instance that the proposal would harm the significance of the setting of the host Grade II listed building and the ECA. I agree that the magnitude of harm would be less than substantial due to the nature and scope of the works, although this level of harm would apply to both assets in turn. Having found harm to both designated heritage assets, I must give this considerable importance and weight.
25. Paragraph 208 advises that in the case of less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
26. I am informed by both main parties that the Council cannot currently demonstrate a five-year supply of deliverable housing land. I see no reason to disagree on this matter, and I am therefore directed to paragraph 11(d) of the

² Application Reference: 2019/06027/PA

³ Application Reference: 2023/05867/PA

Framework. This advises that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed.

27. Footnote 7 is clear that this includes designated heritage assets. As such, the so-called tilted balance is not engaged. However, I acknowledge the benefit of an additional dwelling to the Council's supply, although invariably a single dwelling would make a limited contribution to this supply. This would also apply to any associated construction benefits.
28. Accordingly, the proposal would not preserve the setting of the listed building, or any features of special architectural or historic interest which it possesses, or the character and appearance of the ECA. The benefits as presented to me would not outweigh this harm. As such, it would not satisfy the requirements of sections 66(1) and 72(1) of the Act and the provisions within the Framework which seek to conserve and enhance the historic environment. The proposal would also be contrary to policies PG3 and TP12 of the Birmingham Plan 2031 (BP) (adopted January 2017), which seek, among other things, to ensure development proposals ascribe great weight to the conservation of the City's heritage assets whereby proposals will be determined in accordance with national policy.

Ecology

29. I note the Council refused the proposal in part due to the lack of ecological assessment provided at application stage, although the appellant advises part of the submitted arboricultural assessment also covers on site ecological impacts. Regardless, I have been provided with a Preliminary Ecological Assessment⁴ which advises that subject to several mitigation and best practice measures, the proposal would not harmfully impact upon protected species. The proposal also includes biodiversity enhancements and while several trees are proposed to be felled, overall impacts can be mitigated.
30. Based on the evidence before me, I see no reason to disagree and therefore the proposal could be implemented without harmfully impacting upon biodiversity and ecological networks. This would accord with policies PG3, TP2, TP7 and TP8 of the BP. These seek, among other things, to ensure proposals which are likely to affect any designated site or important habitat, species or geological feature must be supported by adequate information to ensure that the likely impact of the proposal can be fully assessed. The proposal would also accord with paragraph 180 of the Framework which advises proposal should contribute to minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.

Other Matters

31. The appellant has taken issue with the Council's handling of the application. While I appreciate this can be frustrating, it is not my role to mediate disputes of this manner. I have had regard to the merits of the case as presented to me

⁴ Wharton – Reference: 240422 PEA V1A Final Issue.

and as such, the breakdown in communication had no bearing on my consideration of the proposal.

Conclusion

32. I have found harm to the setting of the listed building and the character and appearance of the ECA. Therefore, there is less than substantial harm to the significance of both designated heritage assets in turn. A less than substantial degree of harm should not be confused with a less than substantial planning objection and this harm is worthy of considerable weight. Although I found no harm with regards to ecology, this is neutral in the planning balance and the benefits in total do not outweigh the harm.
33. Taken together, the harm and conflicts that I have identified are such that the proposed development should be considered as in conflict with the Act, the development plan and provisions of the Framework when taken as a whole. Material considerations do not indicate to me a decision should be made other than in accordance with the development plan. The appeal is therefore dismissed.

C McDonagh

INSPECTOR