



Appeal Decision

Site visit made on 5 November 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2025

Appeal Ref: APP/P4605/W/24/3344222

67 Olton Croft, Birmingham B27 6PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Ms Corrina Watson of Greyfort Properties Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/06574/PA.
 - The development proposed is construction of 2no two-storey dwellings with garages and associated driveway access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved except for access and layout. Plans have been submitted with the appeal and I have had regard to them only insofar as they are relevant to the matters that are not reserved. Where indicative plans have been submitted, I have had regard to them but acknowledge that the plans may change at the reserved matters stage.
3. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. The main parties were asked for their comments on the updated Framework and where comments have been received, they have been taken into consideration in the determination of this appeal.

Main Issues

4. The main issues relevant to this appeal are:
 - the effect of the proposal upon the character and appearance of the area
 - the effect of the proposal upon the ecology and biodiversity of the site and its surroundings; and
 - the effect of the proposal upon the living conditions of the neighbouring occupiers with regard to noise and disturbance.

Reasons

Character and Appearance

5. The appeal site comprises an irregular shaped parcel of land to the rear of properties on Olton Croft which is a large residential cul-de-sac. The area is

predominantly residential, with some commercial development near to the entrance to Olton Croft. The dwellings along the road are typically semi-detached two storey properties that face the road and are set back behind front gardens and driveways. The consistent building line and regular pattern of development along the road contributes towards the street scenes local distinctiveness. From within Olton Croft, there are limited views of other development nearby and the street scene is relatively well enclosed. I saw no signs of similar backland development to that proposed in the immediate vicinity of the site.

6. The proposal would involve the construction of two, two storey semi-detached dwellings to the rear of 66 and 67 Olton Croft (No 66 and 67), although the scheme is made in outline and thus the scale and appearance of the houses could change. To the front of the dwellings would be space for parking vehicles alongside two garages and the gardens would be to the rear. The proposed houses would take their access between Nos 66 and 67 which would create a relatively long shared driveway when compared with other houses on Olton Croft.
7. The indicative plans show two semi-detached dwellings similar in scale and appearance as other houses on the road. This would show an architectural cohesion with the surrounding houses as per the guidance in the Birmingham Design Guide, 2022.
8. While there are glimpsed views of houses to the rear of development along Olton Croft, this is not necessarily the same as what is proposed. The development would clearly be closer to Olton Croft than these other dwellings, and the location of the driveway would be likely to provide some visual clue that the dwellings would be more closely related to Olton Croft than the other streets nearby.
9. Public views of the proposed houses would be limited from Olton Croft from between No 66 and 67 given its location to the rear of them as well as the layout of the development in the wider area. There would also be views of the scheme from nearby neighbouring properties as well as from the large residential block of flats to the rear of the site. Given the siting of the proposed houses to the rear of the dwellings on Olton Croft, they would not be seen in a side-by-side context with the surrounding dwellings. When taking into consideration the siting, location and potential scale of the development it would likely have a limited visual impact on the street scene.
10. However, the siting of two dwellings to the rear of development along Olton Croft, whilst taking access from it, would not be seen comfortably in context with the dwellings along the road. The siting, alongside the long driveway between houses would be at odds with the prevailing pattern of development. Whilst the scheme would be partly screened by the existing dwellings, the incongruous siting of houses in this location would be readily apparent and would harmfully erode the street scenes local distinctiveness. Whilst backland development can, in some circumstances, integrate with the existing built form, for the reasons given above, this proposal would fail to integrate well with the existing development on Olton Croft.
11. While houses appear to have been extended on Olton Croft these have maintained the pattern of development that has been established on Olton Croft and particularly the building line, unlike the scheme before me. The

additions to those dwellings were generally subservient in scale and appearance to those houses and the overall scale of the extended properties appears consistent with other dwellings nearby.

12. I have been referred to applications that have been approved for residential development by the Council on sites that could be considered to be backland development, similar to the appeal site¹. The site at Mayland Road is located in an area where there are several small cul-de-sacs nearby where development to the rear of other houses and accessed between them is not uncommon, unlike Olton Croft. The development at Garratts Green Lane was determined by the Council to not be visible from the road and thus the street scene, unlike the scheme before me.
13. With regard to the appeal that was allowed for six dwellings on Cole Valley Road², the bungalows to the rear were determined to be unobtrusive and would appear as no more than a minor element of the street scene. It was concluded that the street's existing character would be largely unchanged and unaffected, which for the reasons given above the proposed scheme would not. The character and appearance of these areas varies from the appeal site, and the site circumstances are specific to each case, and this has led me to come to a different conclusion on this matter.
14. Planning permission was granted for garages on the appeal site in the 1960's³. However, this was granted a significant time ago and based on the information before me the permission was not implemented. As such, permission would have to be sought for a similar development and given the changes to local and national planning policies permission may not be granted again. Furthermore, the scale of such development would likely be smaller than the scheme before me and thus may have a less harmful effect upon the character and appearance of the area, although this would be dependent on what was applied for.
15. For the reasons given above, the proposal would cause unacceptable harm to the character and appearance of the area. Therefore, it would conflict with Policies PG3 and TP27 of the Birmingham Development Plan (BDP), 2017, as well as Policy DM2 of the Development Management in Birmingham Development Plan Document (DPD), 2021, which seek, amongst other matters, to ensure high quality design that contributes to a sense of place and responds to local area context.

Ecology and Biodiversity

16. The Council's records indicate that there are a variety of protected/notable species within 1 kilometre (km) of the appeal site, including bats and slow worms.
17. Historic images have been provided which show that there were trees and other vegetation on the appeal site and based on the information before me the site has since been cleared of most of the trees and vegetation. The appellant does not dispute that this site clearance took place. Prior to this work taking place no ecological survey was undertaken for the appeal site and

¹ Application Reference: 2022/02650/PA and 2019/01878/PA

² Appeal Reference: APP/P4605/W/22/3309386

³ Application Reference: 32440001

as such there is no evidence whether protected species or habitats/features used by them were present on site before works took place.

18. The Council identify that the trees that were on site may have provided habitats or foraging opportunities for bats. Additionally, it identified that the site is located close to allotments and a railway corridor which are commonly associated with slow worms. Furthermore, the site may provide suitable refuge for slow worms and other reptiles within debris piles.
19. The Council has referred to The Conservation of Habitats and Species Regulations 2017 (as amended) and Regulation 9 of this states "*the competent authority must exercise their functions which are relevant to nature conservation...so as to secure compliance with the requirements of the Directives*". Accordingly, competent authorities must consider the Directives in making decisions relating to any of their planning functions. Bats and slow worms are protected species, and as the competent authority in this appeal, I cannot give approval without adequate evidence to be satisfied that the Regulations will not be breached and subsequently being able to establish if works may be licensed.
20. Whilst the landscape contractors that worked on the site may have knowledge on protected species and habitats, I have not been made aware that they are qualified ecologists. Furthermore, the landscape contractors state that "*it is the responsibility of the customer, client or their agent to make Westside Forestry Ltd aware of all protected species known to be present on or near the site which may or may not affect our work, prior to commencement.*" This states that the responsibility for identifying protected species lies with the customer, client or their agent rather than the contractors themselves. The appellant stated that as far as they were aware there were no protected species on the site. However, based on the information before me surveys undertaken by an appropriately qualified ecologist were not undertaken prior to said works to confirm this.
21. Therefore, in light of the strict protection afforded to bats and slow worms and because no survey information has been submitted, I am not satisfied that sufficient information has been provided to enable me to determine that there would not be a harmful effect on the ecology and biodiversity of the site and its surroundings. While the scheme is made in outline, without adequate evidence to be satisfied that the Regulations will not be breached, I am not satisfied that this matter could be suitably addressed via a condition.
22. The mandatory condition requiring biodiversity net gain of at least 10 percent will be imposed on permissions granted pursuant of a planning application made on or after 12 February 2024 or 2 April 2024 for small developments such as this. Given that the application was made before 2 April 2024, this mandatory requirement does not apply.
23. For the reasons given above, the proposal would not accord with Policy TP8 of the BDP. This states, amongst other matters, that development 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 impacts of the proposal can be fully assessed. Also, there is insufficient information before me to carry out my regulatory duty to consider whether protected species would be harmed by the development and if so, whether mitigation measures would be effective.

Living Conditions

24. The driveway for the proposed development would be situated between No 66 and 67 Olton Croft which are two-storey semi-detached dwellings. Either side of the proposed driveway are close boarded timber fences which also bound the rear gardens for each dwelling. The rear elevation of No 67 faces towards the site whereas the rear elevation of No 66 is angled partly away from it.
25. The proposed houses would be located to the rear of No 66 and 67 and turning areas would be provided within the site in front of the proposed garages.
26. The site is currently vacant land that is covered by vegetation and as far as I have been made aware cars and vehicles do not regularly access the site. As such, the existing situation means that there is limited noise and especially light disturbances from vehicles occurring towards the rear of the two properties.
27. When approaching the appeal site from Olton Croft the lights seen from vehicles would not necessarily be unusual given that the houses are located at the end of the cul-de-sac where vehicles are likely to undertake manoeuvres to turn around. However, when exiting the site there would be some light spill over the fencing either side of the houses. The fencing either side would generally block the light spill from the vehicles when appreciated from the ground floor rooms of both dwellings.
28. No 66 is angled away from the proposed driveway and the nearest windows would face away from oncoming vehicles. As such, the light from vehicles would not necessarily appear disruptive from within the first-floor rooms. However, there are several windows on the first floor of No 67 that face towards the site, as well as one in the flank elevation facing the proposed driveway. When vehicles exit the site, there would be light spill over the fencing which would be disruptive to those using the first-floor rooms of the house nearest to the proposed driveway. Given that the rear of this house is located away from Olton Croft such disruption would be uncommon, especially if this occurred in the evenings or early mornings when such light disturbance would be more keenly felt.
29. The houses are located where cars are likely to turn around at the end of the cul-de-sac and as such noise from vehicles making manoeuvres would not be unusual in this location. The noise from vehicles passing the two houses, as well as to the rear of them would be unusual and uncommon and would cause disruption, especially if this occurred in the evenings and early mornings when such disruption would be more keenly felt.
30. However, the scheme would be for two dwellings and as such, the number of vehicular trips to and from the site would be very limited and the disruption would occur for only a short duration and the disturbances from vehicles lights, would only affect parts of the houses. As such, whilst the disruption would be uncommon and would cause limited harm to the regular use of those rear and side rooms, the limited movements to and from the site as well as the fencing next to the proposed driveway, would ensure the scheme would not cause significant harm to the neighbouring occupiers living conditions.
31. Therefore, the proposal would not cause significant harm to the living conditions of the neighbouring occupiers. As a result, it would generally be in

accordance with Policy PG3 of the BDP and Policy DM2 of the DPD. These seek, amongst other matters, to ensure development responds to site conditions and does not result in unacceptable adverse impacts on the amenity of neighbours with regard to noise and disturbance.

32. The Council has referred to BDP Policy TP44 which relates to traffic and congestion management and is not determinative to this main issue.

Planning Balance

33. The proposed development would deliver two dwellings on a windfall site that is within a wider area where the principle of such development is encouraged by Policy TP28 of the BDP. This supports new residential development that is accessible to jobs, shops, and services by other modes of transport other than the car. The proposal would also develop under-utilised land, which is supported by paragraph 125 of the Framework. The scheme would contribute towards the housing mix of the area and the Framework acknowledges that small sites such as this can make an important contribution towards meeting the housing requirements for an area and can often be built-out relatively quickly.
34. The occupiers of the proposed development would contribute both economically and socially towards services and facilities in the local area. There would also be economic benefits to the area during construction. The scheme also proposes that the houses would have high levels of insulation and air tightness and would include solar panels which would be an environmental benefit of it.
35. The development of this site could lead to a more controlled management of it which could reduce anti-social behaviour that may occur on the site. This would be a limited social benefit of the scheme. Moreover, such matters could be addressed outside of the scope of this appeal.
36. Whilst the scale of the proposal is limited and the Council can demonstrate a 5-year housing land supply, in light of the site's location and the use of under-utilised land the benefits of the development attract modest weight in favour of it.
37. The proposal would harm the character and appearance of the area, and this would result in a conflict with policies in the development plan relating to this.
38. The Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. There is insufficient information before me to determine that significant harm to biodiversity cannot be avoided. This would lead to conflict with policies in the development plan that seek to protect protected species, and this is a matter that counts significantly against allowing the appeal.
39. Therefore, the proposal would conflict with the development plan as a whole and the benefits of the scheme must be weighed against the harms that would arise from the development. For the reasons given above, I attribute significant adverse weight to these harms and consequently, the identified benefits would not outweigh them.

Conclusion

40. The proposal conflicts with the development plan as a whole and the material considerations, including the Framework, do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR