



Appeal Decision

Site visit made on 26 February 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2025

Appeal Ref: APP/P4605/W/24/3352573

143-147 Weoley Castle Market Hall, Weoley Castle Road, Birmingham, B29 5QH

- 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 Jagmail Singh against the decision of Birmingham City Council.
 - The application Ref is 2024/00816/PA.
 - The development proposed is described as “*erection of new build two and three storey block of 7no. residential flats (Use Class C3) and associated works to rear of existing Market Hall.*”
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development stated in the application form references eight flats. However, it is clear from the submitted plans that the scheme seeks planning permission for seven flats. I have therefore used the description on the Council’s decision notice and appeal form in the banner heading and made my determination on that basis.
3. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties were provided with an opportunity to comment. I have had regard to the 2024 version of the Framework in my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the surrounding area; and
 - The living conditions of future occupiers, with particular regard to noise and odour.

Reasons

Character and appearance

5. The appeal site relates to a two-storey building and the associated land to the side and rear. The ground floor has been divided up into three separate retail units. The use of the first floor is unclear. The appeal site is located within the Weoley Castle Local Centre. Surrounding development comprises of a mix of uses including retail on ground floors and often residential uses on the first floors. Two storey buildings with 1930s style architecture characterise the area. The buildings are generally of

a relatively simple form and the layout is very ordered, with the buildings facing onto the street and aligning with the road. Whilst there are some small outbuildings to the rear of the buildings, these are subordinate in both use and scale. This creates a clear hierarchy in layout. The appeal site differs slightly in design from surrounding development, with a parapet style roof, however it reinforces the suburban character of the area. There is small outbuilding situated to the rear of the site.

6. The proposed development would result in the creation of a three-storey building to the side and rear of the site. The ridge and eaves of the proposal would be taller than the existing building to the front of the site, despite the proposal's subordinate positioning to the rear. This would undermine the hierarchy of layout which is evident within the area. The proposal would dominate the existing building and given the width of the access, it would be readily visible from the street scene. This would detract from the suburban character of the area and be harmful at odds with surrounding development.
7. The roof would comprise several elements, including an uneven ridgeline and a steep sliding slope over the staircase. This complexity would be at odds with surrounding development which comprises mainly of simpler pitched roofs. Hence, it would not be sympathetic to the character of the existing building. This would also be exacerbated by the proposed external materials including the white render which would contrast to the traditional red brick evident in the immediate surrounding area.
8. The appellant has advised that they would be open to the use of planning conditions to manage external materials and the positioning of windows and doors. However, the materials and positioning of doors and windows are clearly annotated on the submitted plans. Therefore, I am not persuaded that they could be amended via a condition. Notwithstanding this, it is not the purpose of an appeal to evolve a scheme and given the scale of the proposed development, I am not persuaded that such changes would make the proposal acceptable in design terms.
9. Overall, I conclude that the proposed development would have an unacceptably harmful impact on the character and appearance of the area and would conflict with policy PG3 of the Birmingham Development Plan 2031 (2017). This policy seeks to ensure high quality development that is in keeping with the character of surrounding areas. It would also conflict with Design Principles 11, 12 and 14 of the supplementary planning document, Birmingham Design Guide (SPD) (2022) in this regard.

Living conditions

10. The Council have raised concerns regarding the extract systems to the rear of the existing commercial buildings. They argue that without a noise and odour assessment, the impact to future occupiers is unknown.
11. Little substantive evidence has been provided to show that there are any extract systems to the rear of the existing commercial buildings on the site. Such systems would be inconsistent with the present uses of the retail units. Neither did I see any at my site visit. Accordingly, the Council fail to articulate why a noise and odour assessment relating to extraction systems would be justified in this case.

12. Whilst I did witness a number of what appeared to be air conditioning units within the vicinity these were not on the existing buildings, or the immediate neighbouring buildings which were occupied by a vacant unit, which I understand was last used as a bank, and a butcher.
13. The Council has also raised concerns regarding noise from proposed Air Source Heat Pumps (ASHPs). I note that whilst the submitted Design & Access Statement outlines how ASHPs would be used to promote energy efficiency, these are not shown on the submitted plans. In any instance, ASHP's are designed to be used in residential areas and should not result in an inherent noise issue.
14. It is therefore concluded that given the apparent lack of extraction units on the existing commercial units, and the unit's uses, the submission of a noise and odour assessment would not be necessary.
15. For the reasons outlined above, I therefore conclude that the proposal would not result in harm to the living conditions of future occupiers by way of noise or odour. I find no conflict with policy PG3 of the Birmingham Development Plan 2031 (2017) in this regard. The scheme is in accordance with policies DM2 and DM6 of the Development Management in Birmingham Development Plan Document (2021) on this basis. Collectively, these policies seek to ensure that new development ensures acceptable standards of amenity.
16. Policy GA1 of the Development Management in Birmingham Development Plan Document (2021) is also cited in refusal reason 2 of the Council's decision notice. This policy however relates to the delivery of growth within the city centre, whereas the site is stated to be within the Weoley Castle Local Centre. I therefore find no conflict with policy GA1.

Other Matters

17. The proposal would deliver a net gain of seven smaller housing units. Each of the units would provide an acceptable standard of accommodation using energy efficient measures. The scheme would make efficient use of brownfield land in an accessible location near to local facilities and public transport. There would also be temporary and ongoing economic benefits arising from the development. This would support the Government's aims of boosting the supply of homes, the more efficient use of land and improve the current shortfall in the Council's housing land supply. Overall, whilst these are important benefits, given the relatively modest scale of the development I attribute moderate positive weight to them.
18. The absence of harm in relation to neighbouring amenity and transportation impacts are not benefits that weigh in favour of the scheme, but rather are neutral factors.
19. I acknowledge the appellant's concerns over the Council's handling of the application. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Planning Balance and Conclusion

20. The evidence provided states the Council have a 4.38 year supply of deliverable housing sites. In these circumstances paragraph 11d) of the Framework is engaged. There is nothing before me to suggest that there are any policies in the

Framework that protect areas or assets of particular importance that provide a strong reason for refusing the development under paragraph 11d)(i).

21. Therefore, the balance in paragraph 11d(ii) applies such 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, having particular regard to specified key policies.
22. Amongst the key policies highlighted is paragraph 135 of the Framework. This states that planning decisions should ensure that developments add to the overall quality of the area, are visually attractive as a result of good architecture and layout and are sympathetic to local character and history. It will be seen from my finding in relation to the first main issue that the appeal proposal would fall short in these respects. Furthermore, the Framework states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning development process should achieve.
23. Accordingly, I find that the adverse impacts arising from the development would significantly and demonstrably outweigh the moderate weight attributed to the benefits. The presumption in favour of sustainable development does not apply in these circumstances.
24. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

S Burch

INSPECTOR