



Appeal Decision

Site visit made on 12 March 2025

by **Les Greenwood MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3 April 2025

Appeal Ref: APP/P4605/W/24/3355180

The Orchard, Land rear of 318-326 Brook Lane, Billesley, Birmingham B13 0TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mrs Naseem Kausar against Birmingham City Council.
 - The application Ref is 2024/04239/PA.
 - The development proposed is the erection of 2 detached (3 bedroom, double storey) self-build dwellings with associated landscaping and car parking to accommodate electric vehicles.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 detached (3 bedroom, double storey) self-build dwellings with associated landscaping and car parking to accommodate electric vehicles at The Orchard, Land rear of 318-326 Brook Lane, Billesley, Birmingham B13 0TH in accordance with the terms of the application, Ref 2024/04239/PA, subject to the 16 conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mrs Naseem Kausar against Birmingham City Council and this is the subject of a separate Decision.

Preliminary matters

3. The appeal application was made in outline, with all matters of detail reserved for later consideration. In light of this, I treat all of the supporting plans aside from the location plan as being indicative or illustrative only.
4. Although the appeal form refers to the appellant as 'Mrs Kausar Hussain' the appellant's agent confirms that the correct name is Mrs Naseem Kausar.
5. The appellant clarified, during the course of the application, that the intention is for the 2 proposed dwellings to be self-build. I have amended the description of proposed development to include this change, in line with the appeal form and the Council's statement.
6. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024, with minor updates on 7 February 2025, all during the course of this appeal. Both main parties have commented on the main changes. Neither side has had an opportunity to comment on the 7 February updates, but I see no need for this as these changes do not affect the main issue of this appeal.

Main Issue

7. The appeal was lodged against the failure of the Council to decide the application within the statutory period. The Council resolved to contest the appeal for one reason only, regarding biodiversity. Taking this and local comments into account, I consider the main issue to be the effect on local biodiversity.

Reasons

Biodiversity

8. This appeal follows on from several unsuccessful applications for dwellings on this site, including 2 that were dismissed on appeal¹. The sole key issue for the second of these appeals was also about biodiversity. This backland site, located to the rear of the frontage houses, has evidently been vacant for some time and has become overgrown with brambles and other coarse vegetation. There are a few trees, mainly around the perimeter of the site, and some evidence of fly tipping.
9. The site has no designation as a wildlife site of national or local importance. The submitted Preliminary Ecology Assessment (updated since the previous appeal) reports that the site was heavily overgrown and not all aspects could be evaluated. It says that no evidence was seen of any protected species currently on site, but there was suitable habitat for birds, reptiles and small mammals such as hedgehogs. Although the professional evidence on this matter is somewhat vague, there is little doubt that the site does have significant biodiversity value, especially in this urban context.
10. As the proposal is for self-build dwellings, the development would be exempt from the statutory Biodiversity Net Gain (BNG) requirements set out in the Environment Act 2021. Normal policy requirements do, nevertheless, apply. The Council is concerned that, in the absence of a legal agreement to secure a contribution towards off-site biodiversity improvements², the development would result in a net loss of biodiversity.
11. Policy TP8 of the Birmingham Plan 2031 Birmingham Development Plan (BDP) aims to protect biodiversity in general and seeks the enhancement of the natural environment. Paragraph 187 the Framework says that planning policies and decisions should contribute to and enhance the natural and local environment by, amongst other things, minimising impacts on and providing net gains for biodiversity. The Government's Planning Practice Guidance furthermore refers to the duty on all public authorities to further the purpose of conserving biodiversity. In light of these policies and guidance, the Council's requirement for a 1% biodiversity enhancement in this case appears reasonable.
12. This outline application reserves the matters of access, appearance, landscaping, layout, and scale for later determination. The application site is about 0.1 hectares, which is sufficient to easily accommodate 2 x 3 bedroom dwellings (of sizes to be determined), access, parking, gardens and landscaping. The landscaping could include tree and hedge planting and if necessary reserve space outside of the private gardens for biodiversity improvements. I note that the Council's Ecology Officer recognises there is scope for sufficient green infrastructure within the site to

¹ APP/P4605/W/22/3299527 and APP/P4605/W/23/3328540.

² Under Section 106 of the Town and Country Planning Act 1990 (as amended)

enable the scheme to demonstrate compliance with BDP and Framework policy requirements. She goes on to say that the legal agreement would be a 'fall back mechanism', in case the detailed proposals were unable to incorporate adequate green infrastructure on-site.

13. To my mind, there is a good prospect that the proposal can include adequate on-site biodiversity measures to secure the minor enhancement sought by the Council. This can be secured through a Grampian-style (negatively worded) condition. A legal agreement is therefore not necessary and fails to meet the tests set out in Framework paragraph 58 and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The condition would prevent development going ahead in the unlikely event that satisfactory biodiversity measures could not be put in place on the site, so that the position would be reasonably secured. Planting can also be required through a soft landscaping condition.
14. The Council refers to 2 other appeals³ for different sites in different local authority areas, where Inspectors have required biodiversity improvements. The circumstances in those cases, including biodiversity reporting and policy context, were much different. I have assessed this proposal on its own merits.
15. I conclude that, subject to appropriately worded conditions, the proposal would preserve and enhance local biodiversity. It therefore accords with policies TP8 and PG3 of the BDP, policy DM4 of the Birmingham Plan 2031 Development Management in Birmingham Development Plan Document, the Birmingham Design Guide Supplementary Planning Document and the Framework, which taken together aim to ensure that developments support the enhancement of Birmingham's natural environment.

Other matters

16. I have considered the other matters raised by local objectors. I note in particular that the site's access onto Brook Lane, via the private road Malton Grove, is of adequate width and alignment, with sufficient visibility for drivers and other road users to be reasonably safe. I agree with the Council's view that there is no highway safety issue here that would warrant a refusal, noting that the Inspector in the previous appeal also considered the proposal to be acceptable in regard to highway safety. Malton Grove already serves several houses and the additional traffic to 2 more should not cause undue noise or disturbance. The questions neighbours raise about rights of way on the private road are civil matters which are outside the scope of this decision.

Conditions

17. I impose the standard outline conditions regarding submission of reserved matters and commencement, plus a condition specifying the relevant plan to provide certainty. A few matters require approvals before development can commence, as they involve issues that can only be properly dealt with at the outset. These include details of tree protection and ecological enhancement (to protect and enhance trees and biodiversity) and land contamination (in the interest of public health). These conditions do not require the appellant's written approval as 'pre-commencement conditions' because this is an outline application⁴. Details of

³ APP/H1705/W/22/3300098 and APP/X0415/W/22/3295740

⁴ Section 100ZA of the Town and Country Planning Act 1990 (as amended)

site and floor levels (to protect local character and appearance and neighbours' living conditions) and drainage (also in the interest of public health) would need to be dealt with at an early stage, so that these are given adequate consideration before construction works begin.

18. Details of building materials, enclosures, hard landscaping and soft landscaping are needed to protect local character and appearance and, in relation to soft landscaping, to enhance biodiversity. Bicycle storage and electric vehicle charging facilities are needed in the interest of sustainable transport. Finally, a condition is needed to ensure that the new dwellings are self-build as proposed, due in particular to the BNG exemption this brings.
19. The Council's Ecology Officer recommends other conditions, including requests for further management plans, which are not put forward by the Council in its list of suggested conditions. These appear to me to be disproportionate in relation to this relatively small scale development.

Conclusion

20. I find that the proposal accords with the development plan, taken as a whole. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Les Greenwood

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (1:500 scale).
- 5) The development hereby permitted shall not commence until a site specific Arboricultural Method Statement and a Tree Protection Plan in accordance with British Standard 5837 'Trees in Relation to Design, Demolition and Construction - Recommendations' (2012 and any subsequent edition), have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken and maintained in accordance with the approved details.
- 6) The development hereby permitted shall not commence until an Ecological Enhancement and Management Strategy to increase the biodiversity value of the site by at least 1% (to be measured in accordance with Biodiversity Net Gain guidelines) and to maintain that increased value has been submitted to and

approved in writing by the Local Planning Authority. The development shall be implemented and thereafter managed in accordance with the approved details.

- 7) The development hereby permitted shall not commence until the following components of a site assessment and, if required, remediation scheme to deal with the risks associated with contamination of the site for the intended use have been submitted to and approved, in writing, by the Local Planning Authority:
 - 1) A preliminary risk assessment, which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site.
 - 2) A site investigation scheme, based on (1) to provide information for a detailed risk assessment of the risk to all receptors that may be affected, including those off site.
 - 3) If contamination is found present and assessed as an unacceptable risk to human health, safety and the environment an options appraisal and remediation strategy shall be submitted giving full details of the remediation measures required and how they are to be undertaken, timetable of works and site management procedures.
 - 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components shall require the written consent of the Local Planning Authority. The scheme shall be implemented as approved and must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 (and subsequent legislation) in relation to the approved use of the land after any required remediation.

- 8) Prior to occupation of any part of the development hereby permitted, a verification report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include a long-term monitoring and maintenance plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan, and for the reporting of this to the Local Planning Authority. All approved measures shall be fully implemented and maintained in accordance with the approval.
- 9) The development hereby permitted, except for site clearance, shall not begin until details of finished site and ground floor levels in relation to the existing site levels, adjoining land and buildings have been submitted to and approved in writing by the Local Planning Authority. The details shall include any proposed grading and mounding of land areas, cross sections through the site and relationship with the adjoining landform and buildings. The development shall be implemented in accordance with the approved details, which shall be maintained thereafter.

- 10) The development hereby permitted, except for site clearance, shall not begin until such time as a scheme for drainage of the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details, which shall be maintained thereafter.
- 11) Samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted shall be submitted to and approved in writing by the Local Planning Authority prior to their use. The development shall be implemented in accordance with the approved details and retained as such thereafter.
- 12) Details of all proposed boundary treatments shall be submitted to and approved in writing by the Local Planning Authority prior to installation. These details shall include plans showing the locations of existing, retained and proposed new boundary treatments and scaled drawings indicating the positions, height, design, materials, type and colour of proposed new boundary treatments. The approved details shall be implemented before occupation of the dwellings hereby permitted and shall be retained as such thereafter.
- 13) Details of hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the dwellings hereby permitted and these works shall be carried out as approved. These details shall include hard surfacing materials, minor artefacts and structures, proposed and existing functional services above and below ground and fully annotated planting plans to a scale of 1:100 or 1:200, showing locations of individually planted trees, areas of woodland, shrubs, hedges, bulbs, and areas of grass. Within ornamental planting areas, plans should be sufficiently detailed to show the locations of different single species groups in relation to one another, and the locations of any individual specimen shrubs.

Other information shall include planting schedules, noting species, plant sizes and proposed numbers / densities and details of the proposed planting implementation programme. All approved hard and soft landscape works shall be implemented in accordance with the approved details, prior to the occupation of the dwellings hereby permitted or in accordance with a programme agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 2 years from the completion of the development, die, are removed or become seriously diseased or damaged, shall be replaced in the next planting season with others of similar size and species.

- 14) Secure and covered storage for cycles, in accordance with details first submitted to and approved in writing by the Local Planning Authority, shall be provided prior to the first occupation of each of the dwellings hereby approved, and maintained thereafter.
- 15) An Electric Vehicle Charging Point shall be provided for each of the dwellings hereby approved, prior to its first occupation, and maintained thereafter.
- 16) Within 6 months of the completion of each of the dwellings hereby permitted documents shall be submitted to and approved in writing by the Local Planning Authority confirming that the dwelling meets the statutory definition of self-build. The documentation must include:

- A compliance certificate for the development issued under either regulation 17 (completion certificates) of the Building Regulations 2010 or section 51 of the Building Act 1984 (final certificates);
- Title deeds of the properties to which this exemption relates (freehold or leasehold);
- A copy of a utility bill or bank statement showing the applicants name and address of the property; and
- A Copy of one of the 3 following documents:
 - An approved claim from HM Revenue and Customs under 'VAT431NB: VAT refunds for DIY housebuilders';
 - Proof of a specialist Self Build or Custom Build Warranty for the dwelling; or
 - Proof of an approved Self Build or Custom Build Mortgage from a bank or building society for the dwelling.