



Appeal Decision

Site visit made on 8 July 2025

by **R J Redford MTCP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30th July 2025

Appeal Ref: APP/P4605/W/25/3360238

Little Smarties Academy, 363 Rocky Lane, Perry Barr, Birmingham B42 1NG

- 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 Ms Ahmed of Little Smarties Nursery against the decision of Birmingham City Council.
 - The application Ref is 2024/05204/PA.
 - The development proposed is the erection of porch to frontage and first floor extension.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For clarity and brevity, the description of development has been taken from the Council's decision notice and the appeal application form.
3. It is recognised there is contention about the existing use and planning history of the appeal site. However, I have a duty to deal with the scheme before me, with consideration of the submitted plans, and not the regularisation of development beyond that.

Main Issues

4. The main issues are the effect of the proposed development on the character and appearance of the area with specific regard to trees, and the city's housing stock, and whether the proposal would provide adequate outdoor space.

Reasons

Character and appearance

5. The appeal site is a semi-detached property on the junction of Rocky Lane and Coleraine Road. This is a residential area where the streets are lined with mature trees, one of which is close to the appeal site and over hangs the single storey element of the appeal building. Due to the established nature of this area the majority of properties have had minor extensions and alterations, and the proposed extensions would be in keeping with this character. The proposal would be finished in materials that would match those already used on the appeal building and would be modest in terms of the building's overall size and bulk. Therefore, the proposal would not be harmful to character and appearance on the area in terms of its impact on the appeal site.

6. The proposal would, however, extend the appeal property at first floor level towards the lower part of the canopy of the nearby street tree. As important features which create a verdant break in an otherwise urban sprawl, street trees are important to the character and appearance of the area. As such any works which would significantly impact them could cause harm.
7. It is the Council's Tree Officer's view that the proposal would require significant pruning of this tree. The appellants disputes this with reference to an Arboricultural Impact Assessment (AIA), but this was not submitted as part of the appeal. Therefore, without any evidence to the contrary and taking a precautionary approach due to the tree's importance to the overall character and appearance of the area, it can only be concluded that the proposal would require significant works to the nearby tree and so harm the character and appearance of the area.
8. The AIA was not sought, as late submission would have unfairly disadvantaged interested parties who may have wanted to respond to its contents, so would not have met the Wheatcroft and Holborn principles.
9. The proposal would therefore fail to comply with Birmingham Development Plan 2017 (DP) Policies PG3 and TP7, and Development Management in Birmingham Development Plan Document (DPD) Policy DM4 insofar as they seek to protect street trees as important parts of an areas sense of place. It would also fail to align with the guidance relating to existing trees in the Birmingham Design Guide Supplementary Planning Document.

Housing stock

10. The use of the appeal site for a day nursery does not form part of the description of development. However, as the submitted plans show that the whole building is in use as a day nursery, were this appeal allowed it would constitute an acceptance of that use.
11. DP Policy TP35, amongst other things, seeks to prevent the loss of existing housing without good planning justification or an identified social need.
12. The appellant has shown that the appeal site has been delisted for Council Tax purposes and states that the nursery has been successfully operated from the site for 20 years. However, there is nothing before me to support the lawful use of the appeal site in planning terms, such as a lawful development certificate nor that the nursery could not have been successfully run whilst retaining the residential element of the original approval (planning permission reference 25272003).
13. Therefore, as no good planning justification has been submitted nor evidence that the nursery meets an identified social need, the proposal would fail to comply with DP Policy TP35.
14. The Council has referred to DP Policy TP30, which relates to the provision of new housing; DP Policy PG3, which relates to design quality and place making; and DPD Policy DM9 which relates to the location of early years provision. None of these are determinative in this issue.

External space

15. The Council has identified the appeal site to be outside of the DP's defined network of centres and the appeal site has a private enclosed rear garden. DPD Policy

DM9, amongst other things, requires the provision of sufficient useable outdoor play space for day nurseries proposed outside of the DP defined network of centres, although it is not specified as to what is considered sufficient.

16. The appellant has shown that Ofsted has considered the provisions of the day nursery, which would include the outdoor space, as 'good'. Also, that the Department of Education's requirements for early years educational do not specify specific amounts of outdoor space but rather that there is access to an outdoor play area or that outdoor activities are planned and taken on a daily basis¹. Therefore, with an appropriate use management plan, which could be conditioned, it is likely the proposal could comply with the outdoor play space element of DMP Policy DM9.

Other Matters

17. No harm has been identified in relation to the living conditions of neighbouring residents, highway safety and parking. However, this would constitute a lack of harm so cannot weigh for or against the proposal. This would also be the case in relation to the third main issue.

Conclusion

18. Whilst I have found for the appellant in relation to the third main issue. This would be a lack of harm and thus, by definition, is capable of weighing against the harm that I have found regarding the first and second main issues.
19. Consequently, the appeal scheme would conflict with the development plan when read as a whole and there are no sufficiently weighted material considerations, including the National Planning Policy Framework, which would indicate a decision otherwise. The appeal is, therefore, dismissed.

RJ Redford

INSPECTOR

¹ Paragraph 3.68 of the 'Early years foundation stage statutory framework, issued by the Department of Education, dated 11 October 2024' extract submitted as appendix 6 of the appellant's statement of case.