


Planning Committee

4 November 2020

Subject:	Decisions of the Planning Inspectorate
Director:	Interim Director – Regeneration and Growth Tammy Stokes
Contribution towards Vision 2030:	
Contact Officer(s):	<p>John Baker Service Manager - Development Planning and Building Consultancy John_baker@sandwell.gov.uk</p> <p>Alison Bishop Development Planning Manager Alison_bishop@sandwell.gov.uk</p>

DECISION RECOMMENDATIONS

That Planning Committee:	<p style="text-align: center;">Notes the decisions of the Planning Inspectorate as detailed in the attached appendices.</p>
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1 **PURPOSE OF THE REPORT**

This report is submitted to inform the Committee of the outcomes of appeals that have been made to the Planning Inspectorate by applicants who were unhappy with the Committee’s decision on their application.

2 **IMPLICATIONS FOR SANDWELL’S VISION 2030**

The planning process contributes to the following ambitions of the Vision 2030 –

Ambition 7 – We now have many new homes to meet a full range of housing needs in attractive neighbourhoods and close to key transport routes.

Ambition 8 - Our distinctive towns and neighbourhoods are successful centres of community life, leisure and entertainment where people increasingly choose to bring up their families.

Ambition 10 - Sandwell now has a national reputation for getting things done, where all local partners are focused on what really matters in people's lives and communities.

3 BACKGROUND AND MAIN CONSIDERATIONS

- 3.1 Applicants who disagree with the local authority's decision on their planning application may submit an appeal to the Planning Inspectorate. An appeal may also be made where the local authority has failed to determine the application within the statutory timeframe.
- 3.2 Appeals must be submitted within six months of the date of the local authority's decision notice.
- 3.3 Decisions on the following appeals are reported, with further detailed set out in the attached decision notices:-

Application Ref No.	Site Address	Inspectorate Decision
DC/19/63496	Land Adj 38 Clay Lane Oldbury B69 4SY	Dismissed
DC/19/63768	30 - 32 High Street Smethwick B66 1DT	Dismissed

4 STRATEGIC RESOURCE IMPLICATIONS

- 4.1 There are no direct implications in terms of the Council's strategic resources.
- 4.2 If the Planning Inspectorate overturns the Committee's decision and grants consent, the Council may be required to pay the costs of such an appeal, for which there is no designated budget.

5 LEGAL AND GOVERNANCE CONSIDERATIONS

- 5.1 The Planning Committee has delegated powers to determine planning applications within current Council policy.
- 5.2 Section 78 of the Town and Country Planning Act 1990 gives applicants a right to appeal when they disagree with the local authority's decision on their application, or where the local authority has failed to determine the application within the statutory timeframe.

Tammy Stokes

Interim Director – Regeneration and Growth



Appeal Decision

Site visits made on 16 & 22 September 2020

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2020

Appeal Ref: APP/G4620/W/20/3252808

Land adjacent to 38 Clay Lane, Oldbury B69 4SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Sukh Paul against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/19/63496, dated 30 August 2019, was refused by notice dated 31 January 2020.
 - The development proposed is 3 new detached 4-bed houses.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the scheme on the character and appearance of the area; its impact on the living conditions of future residents, and the effect of the mine workings on site.

Reasons

Character and appearance

3. This vacant site sits in a residential area made up of properties of a variety of ages and styles. However, despite this variation most dwellings are 2 storeys high and, while some may have gables or small 'pike' features projecting above the eaves line, there are few dormer windows or similar on the roofs. The effect of this means the streetscape is not dominated by larger properties.
4. Each of these 3 dwellings would have a sizeable dormer window on its front elevation. Given the scale, bulk and prominence of these features and their relative proximity to each other, they would be discordant elements in this context that would unacceptably dominate and overwhelm the street scene. As such, although they would be no higher than No 30 and whilst taking account of the building opposite, the proposed houses would cause significant harm to the character and appearance of the area.
5. Many frontages nearby are given over to parking, while the parking provision intended here would be broken by the stepped arrangement. Therefore, that aspect of the proposal would not be harmful.
6. Accordingly I conclude that, because of the front dormer windows, the development would detract unacceptably from the character and appearance of the area, in conflict with Policy ENV3 in the *Black Country Core Strategy* and Policy EOS9 in the *Site Allocations and Delivery Development Plan Document*, which, together, seek high quality design in the Borough.

Living conditions

7. The 3 rear gardens would all fall below the minimum guidelines of being 10.5m in length or 70sqm in area that are found in the Council's *Revised Residential Design Guide Supplementary Planning Document* (the SPD). Moreover, their usability and quality would be further limited by them being split-level. Whilst these dimensions are only guidelines, they nonetheless seem suitable in a residential area of this type to serve these 4-bedroomed dwellings. As such, I see no justification for smaller gardens being adequate. Therefore, what is proposed would fail to fulfil the outdoor recreational needs reasonably expected with houses of this size.
8. Whilst parks and other public open space are nearby, their role in providing outdoor recreation would not be the same as a suitably sized rear garden because they would not be as accessible or as private. Consequently, their presence does not allay the shortfall identified.
9. Accordingly, I conclude the development would result in unsatisfactory living conditions for future residents, and so would be contrary to the SPD and paragraph 122 of the *National Planning Policy Framework* (the Framework)

The effect of mine workings

10. On the site there may be up to 3 mine entries, but the location of only one is known. In the interests of safety, it is agreed that the matter needs to be addressed under the planning system, and the appellant's Ground Investigation report acknowledged they should be located and suitably treated. The appellant proposes this be done by a condition, similar to one imposed on a previous (but now expired) permission, that sought to address the matter before development commenced.
11. However, for a condition to be reasonable, I have to be confident that compliance could be achieved and it would not stand in the way of the development proceeding. In this instance, I have no details of the locations of 2 of the mine entries, their extent, their state or what is needed to secure them. Consequently, there is no certainty there could be compliance with the condition and the development could proceed.
12. Accordingly, I conclude it has not been shown the development could be safely implemented given the possible presence of mine entries on the site, and this further weighs against the scheme.

Other matters.

13. The appellant says he is seeking to make an effective use of land. However, having regard to paragraph 122 of the Framework, the appropriate density of development has to take into account the desirability of maintaining the area's character and the need for well-designed, healthy places among other things. In this case any benefits from maximising the use of the site do not outweigh the harm I have identified.

Conclusions

14. I therefore conclude the appeal should be dismissed.

JP Sargent

INSPECTOR



Appeal Decision

Site visit made on 1st September 2020

by **J Williamson BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: **APP/G4620/Z/20/3249460** **30-32 High Street, Smethwick B66 1DT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Wali Rahimy against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/19/63768, dated 28 November 2020, was refused by notice dated 23 January 2020.
 - The development is described as: Replacement of the old cloth canopy with metal canopy, to be used for selling fruit and veg in everyday use; without this canopy we will not be able to do our business because of rain, sun and wind. The old canopy was not fit for purpose, only a metal canopy will work for us.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The canopy has already been installed and I have made my decision on this basis.

Main Issue

3. The main issue is whether the development preserves or enhances the character or appearance of the Smethwick High Street Conservation Area (CA).

Reasons

4. The site forms part of a traditional terrace of three-storey properties located within the CA. The terrace has retail/service facilities at ground floor level and what appears to be residential accommodation on the upper 2 floors. The properties have retained much of their historical, architectural detail on the frontage of the upper 2 floors, though many of the shop fronts are not of traditional design or materials, which I consider has a negative effect on the CA. Overall, the site and the terrace of which it forms a part make a positive contribution to the street-scene and the character and appearance of the CA. Furthermore, these buildings, along with other traditional buildings along the High Street, make an important contribution to the significance of the CA.
5. A statutory duty requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA. Additionally, the National Planning Policy Framework (the Framework) advises that great weight

- should be given to the conservation of heritage assets when considering the impact of development on the significance of a designated heritage asset.
6. The canopy is a solid, corrugated structure with a shallow pitch, enclosed at both sides with cladding. It has a fascia board along the front edge with upvc guttering attached. The structure extends the full width of the site and is around 2 m deep. It is supported by 3 poles, extending upwards from the canopy's front edge to around the centre of the first floor, fixed either side and between the first-floor windows. The size and bright green colour of the support poles make them very prominent attachments to the building, emphasising the presence of the canopy they support. The design, materials and support poles of the canopy substantially disrupt and harm the architectural quality of the building's frontage and the frontage of the terrace.
 7. I therefore conclude that the development does not preserve or enhance the character or appearance of the CA. Consequently, it does not accord with policies ENV2 and ENV3 of the Black Country Core Strategy-2011, policies SAD HE2, SAD HE6 and SAD EOS9 of the Site Allocations and Delivery Development Plan Document-2012 (Development Plan Document), or heritage policies in the Framework. These policies seek, collectively, to preserve or enhance the character or appearance of heritage assets, respect the characteristics and architectural styles of historic buildings and achieve high quality design. Additionally, the development does not accord with Policy SAD DM10 of the Development Plan Document, which requires canopies on shop fronts to be retractable.
 8. The development is relatively small-scale and as such the harm that would be caused to the CA would be less than substantial. In accordance with paragraph 196 of the Framework, less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposal.
 9. The appellant asserts that the previous cloth canopy was not fit for purpose, was easily damaged and a potential danger to the public. It is also contended that the canopy is required to protect fruit and veg displayed on the pavement outside the building from the weather and to shelter customers, without which, it is claimed, the appellant would not be able to carry out their business. I consider these factors to be minor social and economic benefits to which I attach moderate weight. However, they do not outweigh the harm to the character and appearance of the CA I have identified.
 10. The appellant considers the decision of the local planning authority is contrary to other Council aims and objectives of supporting small businesses. The appellant has also drawn my attention to similar canopies along High Street, which I observed, and contends that there are others in various parts of Sandwell. I have not been provided with all the details relating to any of the other cases referred to and consequently cannot be sure that any are directly comparable with the appeal site. However, given the presence of an almost identical structure on one of the other buildings in the terrace that the appeal site forms part of, I acknowledge that the Council's actions appear inconsistent to the appellant. That said, I do not know if other canopies on High Street that are similar to the appeal site have been granted planning permission or not. Even if they have, the presence of what I consider to be insensitive alterations does not justify permitting further erosion of traditional features which

positively contribute to the character and appearance of the CA. Consequently, I conclude that these additional considerations, neither individually nor collectively, outweigh the substantive harm to the CA I have found.

Other Matters

11. The appellant is dissatisfied with the way the Council handled the application. Such a matter is outside the scope of the appeal, but one the appellant could pursue through the Council's complaints procedure.

Conclusion

12. For the reasons outlined above, I conclude that the appeal is dismissed.

J Williamson

INSPECTOR