
Appeal Decision

Site visit made on 23 May 2017

by Richard S Jones BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 June 2017

Appeal Ref: APP/P4605/W/16/3161594

11 Avenue Road, Erdington, Birmingham B23 6UY

- 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 Yong Jun Liu against the decision of Birmingham City Council.
 - The application Ref 2016/04864/PA, dated 5 June 2016, was refused by notice dated 15 August 2016.
 - The development proposed is described as a "retrospective application for a change of use from single dwelling house (C3), to HMO (C4) comprising 2 no. Flats and 3 no. bedsits."
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. The application forms state that the development proposed is a retrospective application for a change of use from single dwelling house (C3), to a house in multiple occupation (HMO) (C4), comprising two flats and three bedsits. This description appears to reflect the arrangement I observed at the time of my site visit, rather than that shown on the existing floor plans.
 3. The above description also differs from that given in the Council's decision notice which is a change of use from dwellinghouse (Use Class C3) to five flats (Use Class C4). The description given by the appellant on the appeal form is "change of use from a dwelling house – Use Class C3 to five flats." The proposed plans also show five self-contained flats rather than the existing arrangement which includes shared kitchen and lounge facilities which are common in a HMO situation. I have therefore determined the appeal on the basis of the description given by the appellant in the appeal form rather than the application form, as this more accurately reflects the proposed plans.
 4. Since the application was refused planning permission, the Council has adopted the Birmingham Development Plan 2017 (BDP). This has replaced the Unitary Development Plan 2005 (UDP) with the exception of its Saved Policies, which will remain until the adoption of the Council's proposed Development Management DPD. Consequently, a number of policies referred to in the Council's reasons for refusal have been replaced by those within the BDP. This is explained in the Council's statement and the appellant has had opportunity to comment. No party has therefore been prejudiced by this change in development plan policy.
-

Main Issues

5. The main issues are:

- the effect of the development on the supply of family housing within the City;
- whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to the provision of internal living space; and
- the effect of the development on the living conditions of the occupiers of No 12 Avenue Road with particular reference to privacy.

Reasons

Family-sized dwelling

6. The appeal relates to a two storey, semi-detached, former three bedroom family dwelling with frontage car parking and a good sized level garden to the rear. It has recently been converted into what appears to be a HMO.
7. Saved UDP Policy 8.27 states that favourable consideration will not normally be given to the sub-division of single dwellinghouses with 3 or less bedrooms into smaller dwelling units. BDP Policy TP35 states that best use will be made of the existing housing stock and that the Council will seek, amongst other matters, to prevent the loss to other uses (through conversion or redevelopment) of housing which is in good condition. It is stated that the loss of such residential accommodation will only be permitted if there are good planning justifications or an identified social need for the proposed use.
8. No evidence or justification has been provided to demonstrate why favourable consideration should be given to the sub-division of this former three bedroom house into five flats. Furthermore, the Council say that its Housing Department has assessed the proposal and commented that the conversion would take away a large family home when there is an overwhelming demand for this type of accommodation across the City. Whilst the appellant disputes this demand, I have no evidence to support a contrary position. Similarly, I have no evidence to support the appellant's assertion that most of the properties in the area are already let on the basis of a HMO. In any case, this in itself would not justify a further loss of a single family-sized home.
9. The development therefore results in the loss of a family dwelling and as such would not make best use of the existing dwelling stock. This is contrary to BDP Policies TP35 and PG3, Saved UDP Policies 8.26 and 8.27 and to the Places for Living and Places for all adopted Supplementary Planning Guidance (SPG). These seek, in addition to the above and amongst other matters, to make the best use of existing buildings and support the creation of sustainable neighbourhoods.
10. The Council's reason for refusal also makes reference to conflict with paragraph 51 of the National Planning Policy Framework (the Framework). However, this primarily relates to empty homes and applications for a change to residential use and as such has limited relevance to this main issue.

Living conditions

11. All of the flats would provide one bedroom accommodation. The proposed plans show a double bed in each for Flats 1, 2, 3 and 4. They should therefore be properly be considered as one bedroom, two person flats for which the nationally described space standards¹ applies a minimum gross internal floor area (GIA) of 50m². The GIA is defined as the total floor space measured between the internal faces of perimeter walls that enclose the dwelling. It does not include the access way to the flats. Accordingly, Flats 1-4 would fall significantly short of the 50m² standard. Similarly, Flat 5 would also fall significantly short of the nationally described space standard of 37m² for a one bedroom, one person flat. Even if the access areas were included in the GIA, Flats 1, 3 and 4 would still fall significantly below the aforementioned standards. Moreover, even if all were treated as single person flats, Flats 1, 3 and 4 would still fall below the minimum standards. I do not find any reason to treat this property as a 'special case' as suggested by the appellant and the proximity to Erdington Town Centre does not justify the shortcomings I have described.
12. The proposal would therefore provide cramped, oppressive and highly unsatisfactory accommodation which would be seriously harmful to the living conditions of future occupants. This would be contrary to BDP Policy PG3 and Saved UDP Policies 3.14c and 8.27, paragraph 17 of the Framework and the nationally described space standards. These require, amongst other things, that properties should be of sufficient size to permit the creation of individual dwelling units of a satisfactory size and layout and to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
13. In terms of the effect on the living conditions of the occupiers of No 12 Avenue Road, the ground floor flats would face out towards the timber boundary fence which would prevent unacceptable overlooking and loss of privacy. The only first floor window facing No 12 would be that serving the kitchen of Flat 3. This is presently obscure glazed and subject to its retention as such would not result in overlooking into No 12.
14. I therefore conclude that the proposal would not be harmful to the living conditions of the occupiers of No 12 Avenue Road and as such would not in this regard result in conflict with BDP Policy PG3, Saved UDP Policies 3.14C or paragraph 17 of the Framework. As the proposal does not seek to extend the existing building, I do not consider that Saved paragraphs 8.39-8.43 of the UDP, which relate to the 45 degree code for house extensions, to be relevant to the Council's first reason for refusal.

Conclusion

15. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

INSPECTOR

¹ Department for Communities and Local Government Technical housing standards – national described space standard March 2015.