
Appeal Decision

Site visit made on 12 June 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 4th July 2017

Appeal Ref: APP/G4620/W/17/3170743

3 Brunswick Terrace, Wednesbury WS10 9DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr J Haliburton against the decision of Sandwell Metropolitan Borough Council.
 - The application Ref DC/16/59629, dated 28 June 2016, was approved on 18 October 2016 and planning permission was granted subject to conditions.
 - The development permitted is the conversion of dwelling to 2 houses.
 - The condition in dispute is No 11 which states that:
11. Each dwelling house authorised by this permission shall be limited to Class 3a (Dwelling houses) only, as described in the application submission/approved plans, and shall not be used for any purpose under Class C4 (Houses in Multiple Occupation).
 - The reason given for the condition is:
To define the permission and prevent the over intensified use of the site in the interests of safeguarding the amenities of adjoining dwellings and in the interests of the safety and convenience of users of the highway.
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Decision

1. The appeal is allowed and the planning permission Ref DC/16/59629 for the conversion of dwelling to 2 houses at 3 Brunswick Terrace, Wednesbury WS10 9DA granted on 18 October 2016 by Sandwell Metropolitan Borough Council, is varied, by deleting condition No 11.

Background and Main Issues

2. The condition in dispute removes permitted development rights for the approved dwellings in respect of the change of use of the dwellings to houses in multiple occupation for up to six occupants each.
3. The reason given for imposing the disputed condition is in the interests of safeguarding the amenities of adjoining dwellings and in the interests of highway safety and convenience. In addition, the Committee Report also comments that a house in multiple occupation (HMO) would be out of keeping with the area.
4. Therefore, I find that the main issues are whether the disputed condition is reasonable and necessary in the interests of protecting the character and appearance of the area; safeguarding the living conditions of the occupants of neighbouring residential properties; and highway safety.

Reasons

Character and Appearance

5. Brunswick Terrace is located directly off the busy A461 and is a short walk from a range of shops and services. The street is characterised by an eclectic mix of properties that vary considerably in size and design, ranging from a single-storey bungalow to a substantial two/three-storey apartment building.
6. The Council state that the use of the appeal building as a HMO would be out of keeping with the area, although there is no evidence before me of any objective analysis as to why it would be. I note that the comments in the Committee Report were in reference to the entire building rather than the two approved dwellings. Nevertheless, as there are minimal external alterations it is reasonable to conclude that the concerns would remain the same, although I acknowledge that the Council referred to the use of the building for 13no occupants rather than the maximum of 12no occupants that the removal of the disputed condition could allow.
7. There is no evidence before me of how the existing properties on Brunswick Terrace are occupied. However, the observations I made during my site visit were that they were predominantly single family dwellings, with the exception of the large apartment building at the head of the road.
8. I note that planning permission¹ was recently granted for a total of three dwellings on the site. Therefore, the Council has already accepted that the intensification of the residential use of this site is acceptable. There is no evidence that there is a proliferation of HMO's on the road or within the area.
9. Given that there is a variety of properties on the road and there is already a substantial apartment building nearby, I do not consider that two HMO's, each with up to 6no occupants, would significantly harm the character and appearance of the area.

Living Conditions

10. The appeal property is within proximity of residential properties. One of the Council's reasons for the disputed condition is that it safeguards the amenity of adjoining dwellings. However, there is no objective analysis of how the proposal would harm the living conditions of the occupants of neighbouring dwellings. Therefore, I have based my assessment of this main issue on the observations I made during my site visit.
11. The use of the two approved dwellings as HMO's would increase the number of people occupying the overall site, to a maximum of 12no people. The dwellings have already been granted permission on the basis of them being a three bedroom and a four bedroom property. Furthermore, the recently approved permission for three dwellings would also increase the number of occupants on the site. Whilst these approved dwellings would be occupied as single family homes, they would nevertheless increase the level of comings and goings on the road. Nevertheless, the HMO's would likely be occupied by individuals and therefore the number of movements would generally be more as they would not be travelling in groups, i.e. unlike a single family would.

¹ LPS Ref DC/13/56335 and DC/14/56782

12. This increase in comings and goings would likely generate noise and disturbance through car doors/front doors closing, car engines starting and people conversing. However, given that each of the dwellings could only accommodate up to 6no occupants, I do not consider that these effects would be significantly greater than if the dwellings were occupied as already approved.
13. I have had regard to the appellant's argument that there is a perception of anti-social behaviour associated with HMO's. There is no evidence before me of any incidents of anti-social behaviour in the locality that is a direct result of HMO's. Anti-social behaviour does not seem to me to be an inevitable consequence of HMO's as opposed to the single occupation of dwellings, but rather a question of individual behaviour and appropriate management.
14. I find therefore that the use of the approved dwellings as HMO's for up to 6No occupants each would not significantly harm the living conditions of the occupants of neighbouring dwellings.

Highway Safety

15. Each of the approved dwellings would have sufficient on-site parking provision for two cars. The appellant argues that HMO tenants generally have low car ownership rates, approximately one car per six occupants. The Council have not disputed this. The site is also within reasonable walking distance of shops, services, facilities and employment opportunities in Wednesbury. Therefore the reliance on private transport by the tenants would be limited.
16. Therefore I do not consider that the use of the two approved dwellings as HMO's for up to 6no occupants each would result in any significant harm to highway safety.

Conclusion

17. The Planning Practice Guidance states that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances². Based on the evidence before me and my own observations on site, I am not satisfied that exceptional circumstances have been demonstrated to justify the removal of permitted rights as set out in the disputed condition.
18. For the reasons given above, I conclude that the appeal should succeed. I will vary the planning permission by deleting condition 11.

Alexander Walker

INSPECTOR

² Paragraph: 017 Reference ID: 21a-017-20140306