
Appeal Decisions

Site visit made on 19 February 2018

by Thomas Shields MA DipURP MRTPI

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

Decision date: 14 March 2018

Appeal A: APP/P4605/C/17/3179574

114 Teignmouth Road, Birmingham, B29 7AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
 - The appeal is made by Mrs Mussarat Hussain against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 13 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the property to a large house in multiple occupation (*sui generis*).
 - The requirements of the notice are: Cease the use of the property as a large house in multiple occupation (*sui generis*).
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.
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Appeal B: APP/P4605/C/17/3179575

114 Teignmouth Road, Birmingham, B29 7AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Mussarat Hussain against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 13 June 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of single storey side and single storey rear extensions in the approximate position marked in green on the attached plan and the construction of a roof enlargement to the rear roof slope and rear wing of the premises in the approximate position marked in blue on the attached plan.
 - The requirements of the notice are:
Either:
 1. Demolish the single storey side and single storey rear extensions, restore the premises to its condition before the breach took place and remove all demolished materials from the premises, and
 2. Demolish the roof enlargement, restore the roof to its condition before the breach took place and remove all demolished materials from the premises.
Or
 3. Undertake remedial works to the single storey side and single storey rear extensions and the roof enlargement so as to make them strictly comply with the development approved pursuant to planning approval 2014/04792/PA and the conditions attached thereto, and remove the demolished materials from the premises.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Act.
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Decisions

Appeal A

1. It is directed that the notice be varied in Section 5 by deleting "2 months" and substituting instead "4 months".
2. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. It is directed that the notice be varied in section 5 by deleting "2 months" and substituting instead "7 months".
4. Subject to the variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal site and background

5. No. 114 Teignmouth Road is a traditional mid-terrace dwelling with a 2 storey rear outrigger and single storey addition, and is located within a street and surrounding area characterised mainly by similar terrace properties.

Appeal A - ground (a)

Main Issue

6. This is the effect of the use of the property as a large HMO on the character of the area and amenities of local residents.

Reasons

7. Due to the already high level of existing HMOs in the Bournbrook area, which includes the appeal site, the area was purposely omitted from the Council's Article 4 Direction area which removes 'permitted development' rights to change from use as a C3 dwellinghouse to a use as a small HMO (C4). Thus the Council's express planning permission is not required for such a change of use. Moreover, following the issue of an enforcement notice and by virtue of Section 57(4) of the Act, the appellant could return the use of the property to its last lawful use as a small HMO (not more than six residents).
8. For the Bournbrook area the Council's SPD¹ advises that the occupancy of properties by more than 6 residents (large HMO/sui generis) is likely to result in material harm to the living conditions of nearby residents, as well as undermining wider planning objectives of achieving sustainable and balanced communities. It further advises that the existence of a number of large HMO's in this area is likely to cause unacceptable erosion of the character of the residential environment, together with an associated increase in problems of public and private amenity. I agree with the Council that whether adverse impacts on the surrounding area, (identified as *likely* impacts in the SPD) would actually result is a matter of fact and degree.

¹ The Wider Selly Oak Supplementary Planning Document (2015)

9. Having regard to the existing high concentration of HMOs in Bournbrook, its omission from the Article 4 area, and together with its location close to the hospital and university, it is unsurprising that the prevailing residential environment of the area is characterised largely by the occupation and use of terraced houses as HMOs. This was apparent from my visit to the appeal site and the wider area. Indeed there is no dispute that properties are occupied as HMOs on either side of No. 114; at Nos. 108-112 and Nos. 116-120.
10. Taking account of all the above factors, my own observations, and given that the property could lawfully operate as a small HMO, I consider that the use of the property as a large HMO for up to eight residents results in no significant erosion of the residential character of the area. That is distinct however from the visual effects of the physical alterations to the property which have facilitated the use, to which I return later.
11. The Council also refers to complaints it has received of a significantly higher level of activity associated with the property resulting in harm to the amenity of local residents resulting from noise and disturbance from comings and goings, internal noise from occupiers, and noise and disturbance with regard to parking. It is also argued, including by a third party², that the use, in combination with other HMO's in the area, is likely to add further cumulative strain to local amenity and local services.
12. However, no substantive evidence of any residents' complaints, or of any resulting officer investigation and any subsequent findings, has been submitted in support of the Council's case. Given the marginal increase in the number of resident occupiers as a large HMO, and on the balance of the evidence before me, I conclude in these circumstances that there would be no significant harm to the amenity of nearby residential occupiers, either directly or cumulatively.
13. Thus the use of the property as a large HMO would not materially conflict with the requirements of Policy TP27 of the Birmingham Development Plan (2017) (BDP) or saved paragraphs 8.23-8.25 of the Birmingham Unitary Development Plan (2005) (UDP). Additionally, it would not conflict with the guidance contained within Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne Wards Planning Policy Document (2014), or the Council's SPD.
14. However, that is not the end of the matter. In Appeal B I have dismissed the appeal against the enforcement notice for the reasons set out in respect of issue (i) with regard to the effect on the character and appearance of the area. Since the extensions to the building have facilitated the change of use to a large HMO, the harmful effect of those on the character and appearance of the area are also relevant to this appeal.
15. Further; compliance with that notice, as varied, requires the removal of the extensions subject of the appeal or, alternatively, alterations to the existing development so that it complies with the approved drawings attached to planning permission Ref: 2014/04792/PA.
16. Consequently, following compliance with the notice subject of Appeal B by either of those requirements, it is evident from the submitted drawings and from my own observations that the internal space available for occupiers would

² Selly Oak Branch Labour Party

then be substantially reduced and insufficient in terms of providing an adequate level of habitable accommodation and facilities for more than six residents. Thus occupation of the resulting building by more than six residents would result in significant harm to their living conditions.

17. For all the above reasons I conclude that this appeal on ground (a) must also fail.

Appeal A - ground (g)

18. The appellant argues that the time period for compliance is unreasonably short and that existing students should be allowed to remain in situ until the end of their academic year and their existing tenancy agreement (to 30 June 2018).
19. I consider that is reasonable in order for notice to be served on the existing occupiers and for any alternative accommodation to be found. I will therefore allow a period of 4 months for compliance with the notice.
20. The appeal therefore succeeds on ground (g) to this limited extent and I have varied the notice accordingly.

Appeal B - ground (a)

Main Issues

21. Having regard to the Council's reasons for issuing the enforcement notice, and all other information before me, I consider the main issues in this appeal are:
- (i) the effect of the extensions on the character and appearance of the area;
 - (ii) whether adequate private amenity space remains available for occupiers of the property; and
 - (iii) the effect of the ground floor extensions on the living conditions of occupiers of 116 Teignmouth Road with particular regard to outlook and light.

Reasons

(i) Effect of the extensions on the character and appearance of the area

22. No. 114 appears to have originally been constructed as a two storey terrace dwellinghouse with a part two-storey and part single storey wing at the rear. That is typical and reflective of housing from this era in the surrounding streets. The space to the side of the original wing has been partially filled in at ground floor level and a single storey extension has been added across most of the width and length of the property to the rear. In addition, a rear flat roof enlargement extends across the full width of the main roof and projects out onto the outrigger.
23. A *fall-back* position for the appellant is the same as the alternative requirement in Section 5.3 of the notice; that remedial works be undertaken in order to make the development comply with the scheme permitted by conditional planning permission Ref: 2014/04792/PA. That permitted a full width rear dormer to the main roof (with no projection over the outrigger) and a shorter length of single storey side infill and rear extension.

24. Turning to the flat roof enlargement first, I consider that the element which projects out over the outrigger is of an inappropriate box like form, unduly bulky and prominent, and uncharacteristic of the traditional form of the host dwelling. Additionally, it results in the whole roof enlargement appearing excessively dominant in scale. All of these factors combine together such that the whole structure appears starkly at odds with, and results in serious harm to, the traditional form, composition and character and appearance of the host building.
 25. The single storey extension has a shallow pitched roof with a hipped gable end, and other than having a longer section of infill to the side, it is the same width as the extension approved under planning permission Ref: 2014/04792/PA. However, it projects substantially further towards the rear boundary than that approved. As built, it appears excessively long and clearly disproportionate in the context of the footprint and traditional form and character of the host dwelling. It also thereby results in significant harm to the property's character and appearance.
 26. From public vantage points I acknowledge that the single storey extension is not visible and there is limited visibility of the roof extension. However, No. 114 is located within a dense residential area in close proximity to other residential properties and gardens. As such, the adverse impacts I have described are readily observed from those neighbouring properties in conflict with paragraph 57 of the National Planning Policy Framework which refers to the importance of planning for high quality design for all development, including individual buildings, and public and private spaces.
 27. While I also note the presence of other extensions in the area, and the grant of planning permission by the Council in respect of others, referred to by the appellant, they do not to my mind provide support for allowing development which I have found to be poorly designed and which would lead to further deterioration in the character and appearance of the area.
 28. In considering both extensions individually and together, I conclude overall that they result in an unacceptable level of harm to the character and appearance of the host dwelling and the surrounding area. The development thereby conflicts with the requirements of BDP Policy PG3 and saved UDP Paragraphs 3.14C-D which, taken together, seek to secure amongst other objectives a high design quality which responds to site conditions and context.
- (ii) Whether adequate private amenity space remains available for occupiers*
29. The Council does not refer to any specific numerical space standards. While the remaining external space is relatively small, I observed that it was enclosed to afford privacy and was of sufficient size to be able to provide space for the normal domestic activities of the house occupiers.
 30. I do not therefore find harm or any material conflict with the Council's policies in this regard.
- (iii) Effect of the ground floor extension on the living conditions of occupiers of 116 Teignmouth Road with particular regard to outlook and light*
31. In making a comparative analysis of the effect of the single storey extension on the occupiers of No. 116 in respect of outlook and light, the appellant refers to the rear extension granted planning permission (Ref: 2015/04343/PA) by the

Council at No. 116. However, for the sake of clarity, I would point out that I have taken account of the effects of the appeal development in the context of the development at the rear of No. 116 as it existed at the time of my visit to the appeal site.

32. I agree with the appellant that the *fall-back* position referred to previously results in a degree of loss of light and outlook to windows at No. 116 and that the appeal extension in terms of height, depth and width does not exacerbate that loss. Hence I conclude that the extension subject of the appeal does not result in any significant harm to the occupiers of No. 116 with regard to loss of light and outlook, and hence there would be no material conflict with the Council's policies.

Conclusion

33. I have found that no significant harm results from the appeal development in respect of issues (ii) and (iii) above. However, those findings in support of the allowing the appeal are substantially outweighed by the significant harm that results in respect of issue (i) with regard to the effect of the development on the character and appearance of the area.
34. I have considered whether the imposition of planning conditions would adequately mitigate the harm I have identified, but conclude that there are none that would do so.
35. The appeal on ground (a) therefore fails.

Appeal B - ground (g)

36. Given that substantial remedial works are required by either of the alternative requirements at Section 5 of the notice, I consider that a period of 3 months, rather than 2 months, would be more reasonable in order to complete the works in full.
37. Additionally, the works should take place after an appropriate notice period has been given to existing occupiers and vacation of rooms has taken place. Given that I have allowed a period of 4 months for compliance with the notice in Appeal A, the works could then be completed within the following 3 months.
38. I will therefore allow a period of 7 months for compliance with the notice.
39. The appeal on ground (g) therefore succeeds to this extent and I have varied the notice accordingly.

Thomas Shields

INSPECTOR