



Appeal Decision

Site visit made on 1 July 2019

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/P4605/W/19/3222566

87 Bracebridge Street, Birmingham, B6 4PJ

- 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 Greencyc Ltd against the decision of Birmingham City Council.
 - The application Ref 2018/06657/PA, dated 9 August 2018, was refused by notice dated 31 December 2018
 - The development proposed is described as change of use from B1 (offices) to 13 no. 1 bed affordable housing flats (c3 residential).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The change of use has taken place, in part, and therefore I am considering this appeal retrospectively. At the site visit, access could not be gained to the basement flats, and so I am considering the layout of those flats on the basis of the plans submitted and my observations from outside. The submitted plans show 12 self contained flats, not the 13 described on the application form, and this accords with my observations. The individual number of each flat shown on the plan differs from the actual flat number on its door. In my decision I have referenced the number of the flat shown on the plans.
3. Evidence in the form of a letter submitted with the appeal indicates that the property is in use as a supported facility for vulnerable adults and that care and supervision is provided. This letter post dates the Council's decision and the Council report does not make any reference to it being used as such a facility. Other evidence submitted by the appellant refers to the development as a hostel. However, I have considered the development on the basis of the use applied for as clearly set out on the application form, that is C3 residential flats.

Main Issues

4. The main issues are:
 - a) the effect of the development on the living conditions of its occupants with particular regard to internal living space; outlook; and the provision of outdoor amenity space;
 - b) whether the site is an appropriate location for the development with particular regard to environmental conditions of the area; and,
 - c) whether the loss of industrial space is justified

Reasons

Living conditions

5. The development is located within an industrial estate close to Birmingham City Centre. The appeal property is a flat roofed former commercial building which is comprised of two storeys above a basement. It lies at the rear of a warehouse and fronts on to Aston Brook Street. On either side there are commercial premises.
6. The building has been converted into 12 self contained flats. There are two flats in the basement, five on the ground floor and five on the first floor. The building is accessed off Aston Brook Street through a passageway which leads to an entrance door at ground floor level. The basement sits partly higher than street level, such that the basement window on Aston Brook street are at set at around street level.
7. The flats vary in sizes, but are all small. They vary from 12 sqm to 14 sqm of internal floorspace. They comprise a bedroom/sitting area, an ensuite bathroom, and some kitchen facilities including a sink. Although the description of development refers to one bed roomed flats, in effect these are studio flats as there is no separation between sleeping and living accommodation spaces.
8. Birmingham City Council has not adopted the *Technical housing standards – nationally described space standard* (the NDSS). However, the NDSS indicates that for one bed roomed flats there should be a minimum of 37 sqm of gross internal floor area and storage. There is no standard set out for studio flats. I do though attach significant weight to the NDSS as a guide.
9. The flats are very small and less than half the minimum space standard for a one bed roomed flat set out in the NDSS. From my observations, the flats were extremely cramped with little room for storage, cooking and preparing food and for sitting. The space required for opening the door of the flat, severely constrains the usability of the internal floor space. In the three flats I saw, the occupants had possessions spread on the floor and the space was dominated by the bed. From the evidence provided and from my observations, the internal living space provided is not sufficient to meet the needs of its occupants and is significantly harmful to their living conditions.
10. I did not see inside all of the flats and neither of the two basement flats. Nevertheless, having regard to the submitted plans especially the near identical layout of the ground and first floors, my conclusions on the development as a whole in regard to internal living space remains.
11. The windows on Flat 7 and Flat 6 shown on the plans directly face the solid brick wall of the neighbouring industrial unit. The distance is around 1m. This severely affects the outlook from those flats and I consider that the living conditions of the occupants of those flats is significantly harmed. The flats in the basement have windows which look out on to the street. However the windows are at pavement level, and I consider that this means that the outlook from those flats is very poor and there would be harm to the living conditions of the occupants with regard to privacy as people on the street would be able to look directly down into the flats. Harm to privacy could be mitigated through the use of obscured glazing but this would not assist with improving outlook as

these are the only windows in those flats. I therefore do not consider this to be an acceptable form of mitigation.

12. The development does not make any provision for outdoor amenity space which is contrary to the requirements of the Council's adopted *Places for Living Supplementary Planning Document (the SPD)*. I consider that existence of Phillips Street park which is around a nine minute walk away, does not provide sufficient justification for having no on site external amenity space, especially given the cramped internal conditions I have found.
13. For the reasons above, I consider that the development is harmful to the living conditions of its occupants having regard to internal living space, outdoor amenity space, privacy and outlook, and is contrary to Policy PG3 of the *Birmingham Development Plan 2017 (the BDP)* which seeks to promote good place making, Policy TP27 of the BDP which promotes sustainable neighbourhoods, and saved Policies 8.26 and 8.27 of the *Birmingham Unitary Development Plan*, which apply requirements to the conversion of properties to flats.

Environmental Conditions

14. The appeal property is within an industrial/commercial area and is surrounded by such uses. The appellant's noise assessment and its later update are disputed by the Council.
15. From my site visit, I observed the loading of a commercial vehicle adjacent to the property and directly outside the windows of some of the flats. Indeed there is a loading bay to the warehouse which is within the red line of the appeal site. Notwithstanding the noise assessment, from my observations, I consider that there would be noise and disturbance generated from the general industrial activity surrounding the appeal property which would have the potential to cause harm to the living conditions of the occupants of the flats.
16. I also consider that the presence of the flats could unreasonably constrain the ability of nearby businesses to expand and develop since it places a noise sensitive receptor within an established industrial estate. In reaching this view I have taken into account the comments of a nearby business expressing concerns about its ability to expand.
17. For the reasons above, I consider that the appeal property is not in a suitable location for its use and the development would be contrary to Policy PG3 and Policy TP27 of the BDP. It is also contrary to Policy TP28 of the BDP which requires that, amongst other things, new residential development would not conflict with policies protecting Core Employment Areas which Policies TP17, TP19 and TP20 taken together seek to do.

Loss of industrial space

18. The parties dispute the history and former use of the building. The appellant contends that it was used as offices, whilst the Council considers that it was in B2 industrial use. In either case, the development reduces the amount of such accommodation for employment use.
19. Policy TP20 of the BDP seeks to protect employment land in the city from other uses and sets out two exceptions where such land could be lost. One is where it is a non-conforming use and the second is where it is no longer attractive for

employment development having been subject to marketing and other appropriate tests. Policy TP19 of the BDP seeks to protect the Core Employment Areas of the City and retain them in employment use. It states that applications outside of defined employment uses will not be supported unless an exceptional justification exists.

20. I have no evidence before me that the appeal property has been subject to a marketing exercise required by Policy TP20 or that it is no longer attractive for employment use. I accept though that the building would be a very small proportion of the employment space in the City. The appellant argues that the development should be treated as an exceptional case since it provides affordable housing. However, I have concluded that the development provides accommodation which by virtue of its size and other considerations, does not provide adequate living space. Furthermore, I have not been presented with any mechanism to ensure that the flats are affordable housing or would remain so in the future in accordance with the provisions of the National Planning Policy Framework (the Framework). The appellant's evidence submitted with the appeal that the property is being used as a care facility does not alter my conclusions on the loss of employment space.
21. For the reasons set out above, I conclude that the development would lead to an unacceptable and unjustified loss of employment space which would be contrary to Policies TP19 and TP20 of the BDP.

Other matters

22. I have had regard to the comments of West Midlands Police who at the application stage considered that the location of the basement windows could lead to problems of anti-social behaviour, although I have no evidence that there are records of crime incidents at the location. Details of cctv camera locations have also been provided by the appellant and a condition could be imposed, if the appeal were to be allowed, requiring their retention.
23. The appeal property is within Flood Zone 2. Policy TP28 of the BDP indicates that new residential development should be located outside flood zones 2 and 3a unless effective mitigation measures can be demonstrated, and outside 3b. The Council's concern relates to water ingress into the basement flats. If I were allowing the appeal, I consider that a condition could be imposed to require details of flood risk mitigation measures such as window design and detail, and evacuation plans, to be submitted, approved and implemented.
24. The appellant contends that the Council should revoke a hazardous substance consent on a nearby property which it argues is preventing the development being considered through a prior approval process. However, I have considered this appeal on the basis of the application made and take the view that there is not a genuine fall-back position.

Conclusion

For the reasons given above I conclude that the appeal should be dismissed.

Mike Worden

INSPECTOR