
Appeal Decision

Site visit made on 23 July 2019

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 27 August 2019

Appeal Ref: APP/P4605/W/19/3228708

68 Oak Tree Lane, Selly Oak, Birmingham B29 6HY

- 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 M Akbar against the decision of Birmingham City Council.
 - The application Ref 2018/09320/PA, dated 14 November 2018, was refused by notice dated 9 January 2019.
 - The development is described as a retrospective application for change of use from small HMO (Use Class C4), to large HMO (Sui Generis).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal property as described above is currently being used as a large HMO (House in Multiple Occupation) which is acknowledged by both parties. I have therefore determined the appeal on the basis that the development has already occurred.
3. This aside, I have made no determination on whether the use of the appeal property as a HMO was lawful development prior to the Article 4 Direction being adopted in 2014. An appeal under section 78 of the Town and Country Planning Act 1990 (the Act) is not the appropriate mechanism to reach such a determination. The appellant may apply under section 191 or 192 of the Act should they seek a determination on this matter. My decision on this section 78 appeal in no way affects the issuing of a determination under sections 191 or 192.

Main Issue

4. The main issue is the effect of the development on the character of the surrounding area with specific regard to the housing mix within Selly Oak.

Reasons

5. The appeal property is a semi-detached dwelling which is currently being used as a HMO for nine people. Oak Tree Lane is strongly defined by a contiguous pattern of semi-detached dwellings, predominantly two storeys in height, with small front courtyard areas. The appeal property is located in close proximity to a number of local facilities and the Selly Oak local centre, and beyond that the University of Birmingham and Queen Elizabeth Hospital.

6. An Article 4 Direction applies over the appeal property and the wider area of Selly Oak, Edgbaston and Harborne. This Direction is supported by a planning policy document¹, which in specific terms seeks to remove permitted development rights that allow the conversion of a residential dwelling (Use Class C3) into a HMO of up to six individuals (Use Class C4) without planning permission. More broadly however, the policy document seeks to control the proliferation of HMO development within these suburbs, to ensure that an appropriate mix of housing types, uses, and residents exist to support balanced communities and sustainable neighbourhoods.
7. The applicability of this policy document is a point of contention between the parties, based on whether the appeal property was lawfully a Class C4 HMO prior to the adoption of the Article 4 Direction or not. Due to the uncertainty around the historical use of the property I have chosen not to rely upon this policy in my determination, and instead given consideration to the broader objectives the policy seeks, and the current characteristics associated with HMO development within the Selly Oak area. The Wider Selly Oak Supplementary Planning Document (2015) similarly describes the effect HMO development has had on the character of the area.
8. The Council's policy describes the "high concentrations in parts of Selly Oak ward [as] hav[ing] led to a significant loss of amenity for residents" and subsequently aims not only to manage the growth of new HMOs but also "avoiding over-concentrations occurring". The Council's planning officer report describes the level of concentration within immediate vicinity of, and including, the appeal property as comprising of 46.8% HMO development based on Council data. My observations onsite verified this to a certain extent, noting numerous letting agency signs for multiple occupancies on other properties along Oak Tree Lane.
9. I am therefore satisfied that the appeal property and this portion of Selly Oak represent a high concentration of HMO development. Accordingly, the appeal development for a nine person HMO represents a further "over-concentration" of what is already a HMO intensive area, whether the change of use is later determined to be from a C3 residential dwelling or C4 HMO. Policies PG3 and TP27 of the Birmingham Development Plan (2017) seek to ensure that development contributes towards strong, balanced communities and sustainable neighbourhoods by providing a mix of housing types, uses and residents. It is considered that the development further contributes towards the imbalance of HMO development in the area and therefore exacerbates the harm this has upon the character of Selly Oak, and subsequently living conditions of existing residents. The significance of this harm is further set out within saved Policies 8.24 and 8.25 which details the circumstances which a HMO development would be acceptable.
10. The appellant has submitted a number of appeal decisions for similar development in support of this case. The full circumstances and supporting documentation have not been provided and I can therefore assign little weight to these cases and their similarity to the appeal property context. A further appeal decision was submitted to demonstrate that weight can be assigned under a section 78 appeal to the lawfulness of existing development. I have determined this appeal based on the effect the large HMO will have on the

¹ Planning Policy Document: Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne Wards (2014)

character and housing mix within the Selly Oak area, and not relied on whether the existing use of the appeal property is a Class C3 residential dwelling or Class C4 HMO. The appellant has isolated part of the Council's concerns to the material effect the proposal will have on the living conditions of neighbouring properties. I have considered this issue more broadly under the character reasoning, based on the cumulative harm that an "over-concentration" of HMO development will have on the community and neighbourhood as a whole. A lack of complaints from neighbouring occupiers is not a substantive ground to overcome the harm identified.

11. Accordingly, the development exacerbates an existing over concentration of HMOs consequently harming the character of the surrounding area. The proposal therefore conflicts with Policies PG3 and TP27 of the Birmingham Development Plan (2017), saved Policies 8.24 and 8.25 of the Birmingham Unitary Development Plan (2005), and The Wider Selly Oak Supplementary Planning Document (2015). These policies and supporting documents collectively seek, amongst other things, to ensure that development supports the creation of positive and sustainable places with a strong sense of local identity through a balanced offering of housing sizes, types and tenures. Moreover, it would fail to accord with the National Planning Policy Framework's objective of creating mixed and balanced communities.

Conclusion

12. For the reasons given above the appeal is dismissed.

J Gibson

INSPECTOR