
Appeal Decision

Site visit made on 13 August 2019

by W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/P4605/W/19/3230189

2 Gravelly Lane, Erdington, Birmingham B23 6UH

- 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 Steven Cooper against the decision of Birmingham City Council.
 - The application Ref 2019/01573/PA, dated 22 February 2019, was refused by notice dated 23 May 2019.
 - The development proposed is described as: 'Change of use of existing shop unit and residential unit into a 7no. bedroom HMO, with communal living and kitchen'.
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Decision

1. The appeal is allowed and planning permission is granted to change of use from shop unit and residential flat (Use Class A1 & C3) to 7 bed HMO (SuiGeneris) with communal living room and kitchen at 2 Gravelly Lane, Erdington, Birmingham B23 6UH in accordance with the terms of the application, Ref 2019/01573/PA dated 22 February 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. For clarity and precision, the description of the development in the banner heading above is taken from the application form. However, in my decision, I have taken the description of the development from the appeal form and the Council's decision notice since this more accurately describes the proposal.
3. During the course of the appeal, the appellant has provided a copy of a licence dated 3 September 2019, granted by the Council in relation to the appeal property for its use as a House in Multiple Occupation (HMO) under Section 64 of the Housing Act 2004 (the licence). The Council has been given the opportunity to comment on this document due to its relevance to the appeal and has therefore not been prejudiced in this instance.
4. Both parties have brought to my attention that the application has been submitted retrospectively. I have dealt with the appeal on this basis.

Main Issue

5. The main issue is whether the development provides a suitable living environment for residents, with particular regard to private amenity space.

Reasons

6. No 2 is a detached property in a mixed-use area with residential and commercial properties with local services present. The property is accessed

from Gravelly Lane, but due to its corner site location it also fronts Summer Road. Accommodation at the property is located over 3 floors, including the roof space and comprises a communal kitchen, communal living room, boiler room, bathroom and 2no. bedrooms (one with an en-suite) at ground floor. At first floor there is 4no. bedrooms, all with en-suite facilities, and a communal kitchen. On the second floor, a single bedroom with an en-suite is located in the roof space.

7. In the Officer Report it confirms that there is no evidence of any existing over intensification of Houses in Multiple Occupation (HMO) within the immediate vicinity of the site and that the site is not located within an 'Area of Restraint'. Additionally, the Officer Report identifies the host building as a 'relatively isolated building located on a busy classified road'. Consequently, the development would not result in any significant harmful effects on the living conditions of existing neighbouring occupiers. On the evidence before me, I have little reason to disagree with these observations.
8. I note that the proposed bedrooms would all exceed the required minimum floor area specified in the Specific Needs Residential Uses Supplementary Planning Guidance 1992 (SPG). It is common ground between the main parties that the scheme does not provide the normally required 16m² of space per resident as set out in the SPG and provides 28m² of shared amenity space instead within the existing 'courtyard' which would provide additional functional space to meet the needs of occupants of the HMO. I also find that other communal facilities within the property would be beneficial to the living conditions of its occupiers, such as the living room, kitchen and bathroom at ground floor and the kitchen on the first floor.
9. During my visit, I also observed a number of open spaces within walking distance in the local area, in particular Blaze Hill Recreation Park. In addition, the property is close to local services, facilities and sustainable modes of travel. In the absence of any evidence to the contrary, whilst I find that the property would not have the required amount of private amenity space specified in the SPG, I find that the scheme would accord with the general amenity aims of this the SPG, providing an acceptable standard of amenity for existing and future residents. Additionally, although not determinative, I consider that the licence that has been obtained by the appellant from the Council for the property to operate as an HMO to represent a material consideration that I attach significant weight.
10. I also observed during my visit that the outside area was being used to park a motor car and it was enclosed by wrought iron styled metal gates. This arrangement effectively prevents the area being used by residents as an amenity area. However, given the comments contained in the appellant's submission that the area can be enclosed from the public realm, I find that it should in this instance. Although, a large recreation ground is close to the site, I find that the 'courtyard' is an important facility for the residents of the property. Furthermore, I note on the submitted drawings that access has been maintained from the communal living room to the garage, which could in turn be utilised to access the outside area by all residents from an internal area within the property.
11. Given that no objections have been received from Transportation Development and that alternative modes of transport can be found in proximity to the site, I

find that, on balance, the loss of the ability to park a motor car in this area would not lead to any adverse issues with regards to highway safety or on street parking in the immediate vicinity of the site. Additionally, given the presence of the timber fencing on the adjacent rear boundaries of neighbouring properties on Summer Road, I am confident that there would be no harmful effects to the character and appearance of the appeal site or surrounding area through this approach.

12. I conclude that the development provides a suitable living environment for the occupiers of the HMO. The development would not, therefore, conflict with the amenity aims of Policies PG3 and TP27 of the Birmingham Development Plan 2017, saved UDP Policies 8.23, 8.24, 8.25 and 8.29, the SPG or the Framework.

Other Matters

13. A representation from 2 Ward Councillors has also expressed a range of concerns on the application including, but not limited to the following: highway safety; a lack of off-road parking and the number of existing HMO's in the surrounding area, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand these concerns, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.
14. The Ward Councillors also refer to a scheme at No 2 Hayes Grove, Erdington (2018/04340/PA) that was refused by the Council and subsequently dismissed at appeal. Although the appellant has provided the appeal reference (APP/P4605/W/18/3215431), relatively little detail has been provided regarding the particular planning backgrounds to this scheme and I do not know what evidence was before the Inspector at the time of his decision. Consequently, I cannot be sure that this is entirely representative of the circumstances in the appeal before me. In any event all appeals are judged on their own individual merits. Accordingly, that is how I have assessed this appeal scheme.

Conditions

15. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended the conditions as necessary.
16. For certainty, it is necessary that there is a condition requiring that the development is carried out in accordance with the approved plans and that the number of occupants residing in the HMO should not exceed seven persons.
17. Conditions are necessary for schemes to be submitted for sound / noise insulation and to enclose / provide convenient access to the outdoor amenity area, in the interest of the living conditions of residents at the HMO. Additionally, the submission of a scheme for the secure storage of cycles for residents of the HMO is necessary in the interest of their residential amenities and to promote sustainable modes of transport.

Conclusion

18. For the reasons given above, the appeal should be allowed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: HGO19-03-1.2A and HGO19-03-1.1A.
- 2) The property shall be limited to a maximum of seven residents at all times.
- 3) Details of a noise insulation scheme shall first be submitted to and agreed in writing by the Local Planning Authority within 3 months of the date of this decision, to ensure that all windows, any other glazed areas and external doors to habitable rooms provide a weighted sound reduction index ($R_w + C_{tr}$) of at least 38 dB. Any ventilation to habitable rooms shall be provided by means of acoustic vents achieving weighted element normalised level difference ($D_{n,e,w} + C_{tr}$) of at least 44 dB. The approved scheme shall thereafter be implemented within 1 month of approval and shall then be maintained and retained for the life of the development.
- 4) Details of the provision for the secure, and where appropriate, covered storage for cycles shall first be submitted to and agreed in writing by the Local Planning Authority within 3 months of the date of this decision. The approved scheme shall thereafter be implemented within 1 month of approval and shall then be maintained and retained for the life of the development.
- 5) A scheme to enclose the outdoor amenity space (courtyard) with internal access from the property shall first be submitted to and agreed in writing by the Local Planning Authority within 3 months of the date of this decision to ensure that residents have a usable, private and secure outdoor area to utilise within the property. The approved scheme shall thereafter be implemented within 1 month of approval and retained for the life of the development.