



Appeal Decision

Site visit made on 22 October 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/P4605/C/19/3228700

46 Rookery Road, Selly Oak, Birmingham B29 7DQ

- 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 Mr Akeel Kaser against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice was issued on 16 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission (i) the material change of use of the Premises from a single dwellinghouse (Use Class C3) to 10 self-contained flats; and (ii) the erection of a two storey side extension, ground and lower ground floor rear extension in the approximate position marked in green on the attached plan.
 - The requirements of the notice are: (i) permanently cease the use of the Premises as 10 self-contained flats and return the use to a single dwellinghouse as defined by Class C3 of the Town and Country Planning Use Classes Order 1987; (ii) demolish the two storey side extension, ground and lower ground floor rear extension and restore the Premises to its condition prior to the breach of planning control taking place; and (iii) remove all building materials and rubble from the Premises arising from compliance with requirement (ii) above.
 - The period for compliance with the requirements is 3 months after this enforcement notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. It is directed that the enforcement notice is varied by:
 - Deleting step (i) under section 5 and replacing that with "Permanently cease the use of the Premises as self-contained flats.
 - Under section 6, replacing "3 months" with "9 months".
2. Subject to these variations the appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, insofar as it relates only to the erection of a two storey side extension, ground and lower ground floor rear extension in the approximate position marked in green on the plan attached to the enforcement notice at 46 Rookery Road, Selly Oak, Birmingham B29 7DQ.
3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the material change of use of the Premises from a single dwellinghouse (Use Class C3) to 10 self-contained flats at 46 Rookery Road, Selly Oak, Birmingham B29 7DQ and planning permission is refused in respect

of that part of the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a)

4. The main issues are the effects of the development on:

- the character and appearance of the area;
- the living conditions of the occupiers of 48 Rookery Road with regard to outlook and light, those of the adjoining occupiers in terms of noise and disturbance, and the existing occupiers of the property with regard to the standard of internal space provided.

Character and Appearance

5. The backs of the surrounding houses in the row have an eclectic mix of extensions that include large roof dormers. The appeal dormer, although large, does not look out of place amongst these others. There are also a variety of rear projections. Most notably planning permission was granted at No 42 two doors away for a three-tier stepped extension not too dissimilar from the general arrangement at the appeal house. No 42s extension also projects out to a roughly similar line as the appeal extension. I acknowledge that the appeal extension as a whole is large in relation to the simple form and size of the original property. However, in the context of the prevailing built form, from which I have discounted the unauthorised extensions either side at Nos 44 and 48, it has not harmed the character and appearance of the area.
6. Consequently, the extensions comply with the design aims of policy PG3 from the Birmingham Development Plan (BDP), saved paragraphs 3.14C-D from the Birmingham Unitary Development Plan (UDP), the Council's Extending Your Home SPD and the National Planning Policy Framework (NPPF) insofar as they relate to development responding to site conditions, the local area context and being in character with and respecting its built environment surroundings.

Living conditions of the occupiers of No 48 – outlook and light

7. The current rear extension to No 48 is unauthorised and subject to an extant enforcement notice requiring its removal. In the absence of knowing where the ground floor windows to the original rear wall of next door are, and what rooms they serve, it is difficult to apply exactly the 45-degree Code. However, the Council has used the midpoint of the rear wall of next door and both sides accept that the 45-degree line from there is breached by the extension at the rear of the appeal property. However, the Code is only one of the factors taken into account by the Council when determining planning applications. The Code also recognises that there are some circumstances which need to be considered. These include if the ground level is different between properties. This may improve or worsen the effect of new building work on a neighbour's light and outlook and an appropriate allowance must therefore be made.
8. In this case No 46 is situated to the north of No 48. Also, given the steep drop in levels from the backs of the houses, the flank wall to the extension at the appeal property is stepped down significantly such that the lowest half is probably mostly below the window level to the ground floor rear windows of next door. Therefore, despite its overall projection, the flank wall to the extension is not a long continuous line on the same level. With these factors in

mind, also considering the travel of the sun from east to west and the stepped sloped roofs to the extension, it is unlikely that it would unduly affect sunlight and general light reaching No 48s windows, or that it would appear as a dominating feature unacceptably affecting the outlook from the windows. The strict application of the 45-degree line, without legitimately taking account of other factors, does not show as claimed by the Council that this causes a substantial loss of light and outlook to the occupiers of No 48.

9. Therefore, the appeal development complies with the design and place making aims of policy PG3 from the BDP and saved paragraph 3.14C from the UDP. Despite a technical breach of the 45-degree line, the scheme also does not conflict with the amenity protection aims of paragraphs 8.39-8.43 from the UDP, the 45-degree Code, the Extending Your Home SPD and the NPPF.

Living conditions of adjoining occupiers – noise and disturbance

10. Despite concerns raised by the Council about the loss of family houses in the area, and the potential cumulative effects of increased numbers of properties being converted into flats or Houses in Multiple Occupation (HMOs), it is acknowledged that the appeal property is in a network of terraced streets which are predominantly already in use as student accommodation HMOs. The area of Bournbrook in Selly Oak is close to the University of Birmingham and the Queen Elizabeth hospital. This closeness means that the properties in Rookery Road and those in many of the surrounding streets have proved popular with students and key workers. The Council also accepts that over the years, the proportion of properties in Selly Oak occupied as HMOs has grown to the extent that, in some areas, they far outnumber the proportion of family homes. The appellant states that within the Bournbrook area up-to 80% of the properties are Houses in Multiple Occupation (HMOs). This percentage includes some properties which have been converted to, or were erected to include, studio flats. The appellant has also pointed out that Nos. 34, 36, 40, 42, 48 and 50 Rookery Road, close to the appeal site, are licenced HMOs.
11. A high concentration and imbalance of such uses can have negative effects such as on the character and amenity of an area, which are recognised in the UDP and the Wider Selly Oak Supplementary Planning Document (SPD). However, there is no evidence that the appeal scheme would materially add to any such negative effects or be critical in tipping the balance towards an unhealthy over concentration of such accommodation. It seems that the type of residential accommodation in the area has already fundamentally shifted from family houses to properties with higher numbers of persons living in them. Moreover, there is no evidence showing that existing increased comings and goings associated with the appeal flats, in an area already characterised by such movements, have unacceptably affected the living conditions of neighbours with regard to noise and disturbance compared to the use of the property as a single-family house.
12. Therefore, notwithstanding the claims made by the Council, I find that the appeal scheme accords with the place making, sustainable neighbourhoods and amenity protections aims of policies PG3 and TP27 from the BDP, saved policies 8.26 and 8.27 from the UDP, the Places for Living SPG, the Wider Selly Oak SPD and the NPPF.

Living conditions of the existing occupiers of the property – internal space

13. The Council has not drawn my attention to any local internal space standards within a development plan policy that it applies to schemes such as this. The Council has though referred to the Nationally Described Space Standards (NDSS). However, the Written Ministerial Statement from 2015 that introduced the NDSS is clear that decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy.
14. From my own inspection the two lower ground floor flats are the largest. They are roomy, and they have windows and roof lights which give a pleasant well-lit atmosphere. They provide a suitable self-contained living environment. The 6 rooms over the next two floors up (ground and first) are much smaller and compact with living/kitchen and bed all in one space, with a separate very small shower room/WC. Because there is no shared communal area in the building such as a lounge/TV room, the occupiers of those rooms must undertake all their living in one confined space. Students might also spend longer in their rooms due to studying, as compared to persons who go out daily to full-time jobs. I find that these flats are too small and cramped.
15. The two flats on the top floor cause me most concern. They have ceilings that slope due to them being in the former roof space of the building. As such they are much more limited in terms of useable floor area and the beds are tucked into the cramped eaves space. Moreover, the main room to each only has a small rooflight. Overall, they are much too small to provide even a reasonable standard of living space.
16. The fact that the occupiers have access to a small rear garden and a very small shared laundry facility does not overcome my concerns above, particularly in relation to the top floor flats.
17. I have had regard to the appellant's suggestion that the occupancy of the building could be reduced to 8 people and that they would accept a condition restricting occupation of each flat to a single fulltime student. However, just restricting the occupiers to 8 would not resolve the above concerns. There is also no plan or any other details to show how the accommodation might need to be rejigged to address the space shortfalls. Thus, while there may an alternative arrangement that might be acceptable, it is not a clearly worked out one that gives certainty to possibly grant planning permission for that now.
18. Regarding the suggested condition restricting occupancy to students in full-time education which the Council has apparently imposed elsewhere, for the reasons given that would not address the harm related to the lack of space in some of the flats. Moreover, I do not see why being a student would necessarily mean that a lesser standard of accommodation would be acceptable compared to the occupation by any other resident. I also do not know the background to the scheme where the Council used the condition.
19. Taking the above in the round, there may be a solution, but that is not by simply imposing conditions and it is not my place to search around, or to come up with, the alternative. I also must bear in mind that the alleged breach of planning control, which gives rise to the deemed planning application, is for 10 self-contained flats. There may be a fallback position to create a small HMO for up to 6 persons as permitted development. However, I am not raising concerns about the principle of the building being converted into flats and it does not justify making a leap from 6 to 10 self-contained dwellings.

20. Consequently, I find under this main issue the appeal development conflicts with saved paragraphs 8.26 and 8.27 from the UDP which aim to achieve flats that have a satisfactory size and layout. The scheme also does not accord with the NPPFs aims of securing high standards of amenity. Whilst the scheme may accord with policies TP33 and TP35 from the BDP insofar as it may make the best use of the housing stock, that does not justify providing poor standards of accommodation. The scheme conflicts with the development taken as a whole.

Ground (a) Conclusion

21. For the reasons given, I find that the use of the building in terms of the living spaces provided to be unacceptable. In relation to the extensions, I find those to be acceptable. Given that the operational development has been attacked separately in the EN and that there has been no harm to the character and appearance of the area or to the living conditions of neighbours, I intend to grant planning permission under s177(5) of the 1990 Act for the extensions.

Ground (f)

22. Further to the above, I shall leave the allegation and the requirements of the EN as they are, subject to the below, and let s180 of the 1990 Act take effect. This states that where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that planning permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently, I have no need to consider whether requirements (ii) and (iii) of the EN are excessive.
23. Regarding step (i), an enforcement notice shall specify the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in s173(4) of the 1990 Act. Those purposes include remedying the breach by discontinuing any use of the land. In this case, step (i) requires the use of the premises as 10 flats to permanently cease. That element of the requirement is clearly aimed at remedying the breach. However, the way the step is worded it could allow the property to be used for less than 10 flats. It therefore needs varying to require cessation of the use of the property as self-contained flats. It would not be an excessive step at this point.
24. It is not necessary to require the use of the premises to revert to a single dwellinghouse and it could be perceived that doing so would infringe on what may be a lawful position to use the property as a small HMO under permitted development rights. I therefore intend to vary requirement (1) accordingly. To this extent the ground (f) appeal succeeds.

Ground (g)

25. Aside from the length of the tenancies that the occupiers of the flats may have, a three months compliance period would be very disruptive on those students and they would clearly need to seek alternative accommodation within an academic year. I am also mindful, having regard to my findings under the ground (a) appeal, that time may be needed to consider how the internal arrangements may be modified to create acceptable spaces for living in. That may involve the submission and determination of a change of use planning application to the Council. It seems sensible to me to therefore extend the compliance period to 9 months, but no longer than this in view of the ongoing unsatisfactory living conditions.

26. I shall vary the compliance period in line with the above. The ground (g) appeal succeeds.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of a two storey side extension, ground and lower ground floor rear extension in the approximate position marked in green on the plan attached to the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission in respect of the other part of the matters, namely the material change of use of the Premises from a single dwellinghouse (Use Class C3) to 10 self-contained flats. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Gareth Symons

INSPECTOR