



Appeal Decision

Site visit made on 16 October 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2020

Appeal Ref: APP/P4605/W/19/3235314

191 Sheldon Heath Road, Sheldon, Birmingham B26 2DR

- 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 B Living Group against the decision of Birmingham City Council.
 - The application Ref 2019/03098/PA, dated 8 April 2019, was refused by notice dated 1 August 2019
 - The development proposed is change of use for the former Sheldon Police Station (sui generis) to a supported living centre (use class C2).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It is evident when comparing the appellant's Appeal Statement, his Planning Statement and the Council's report to committee, that the intended end-users of the proposed scheme have been amended from that initially stated. Originally the proposal was for homeless persons, individuals who have experienced domestic violence or substance misuse and asylum seekers. However, paragraph 12 of the Appellant's Statement confirms that the centre will provide services for adults and young persons who have "specialist needs such as learning disability, mental health issues, autism or ADHD".

Background

3. A previous application¹ for a 24-bedroom supported living centre was refused and dismissed on appeal². The appeal proposal before me has sought to address the previous Inspector's concerns relating to poor internal layout resulting in poor outlook for some of the proposed bedrooms; lack of meaningful internal amenity space, and lack of satisfactory external amenity space. I have been presented with that appeal decision, but not with any plans or details of the scheme for comparison.
4. The previous Inspector found that the proposed use, with its Management Plan and lack of evidence to the contrary, would not give rise to anti-social behaviour and increased crime. Furthermore, the general comings and goings would not give rise to undue noise and disturbance when compared to the site's former use as a Police Station. The Police have raised no objection to the

¹ 2017/10747/PA refused 4 June 2018

² APP/P4605/W/18/3208937 dated 22 March 2019

proposed development. From the evidence before me, I have no reason to come to a different conclusion with regards the use in principle.

5. The appeal scheme before me is the change of use of a former Police Station into a 20-bed supported living centre, now with 4 internal communal living rooms and 4 outside amenity areas in the form of 2 rooftop gardens, an internal courtyard, and a courtyard garden at the rear of the building in the former Police Station car park. This would have parking and turning for 2 vehicles and the remainder of the courtyard would be laid to lawn with seating, a herb garden and a water feature. The existing brick outbuilding would be used for group training and support sessions during the day and at other times would be used by residents as another communal recreation/living room.
6. During determination of the application the appellant submitted an updated Management Plan (June 2019). Individuals would likely stay for around 12-18 months, but some for shorter stays of days or weeks. There would be up to 4 members of staff on site during the day and one member of staff present during the night, with CCTV coverage of internal and external areas.
7. The appeal site occupies a prominent corner location with Sheldon Heath Road and Hengham Road. The area is predominantly residential, but with a builders' merchants opposite the site on Hengham Road and a medical centre nearby. There are bus stops nearby for public transport links to nearby shopping centres.
8. The existing vehicular gated access off Hengahm Road into the rear courtyard would remain and the other vehicular access off Sheldon Heath Road would be modified to a pedestrian access only. The entrance into the building for staff, residents and visitors would be via the existing main entrance up a flight of steps at the front of the building. There would be no alterations made to the external elevations of the building. Hengham Road and Sheldon Heath Road slope up beyond the site. As a result, there is difference in ground levels and the adjacent dwellings (Nos.132 and 189) are elevated above the external courtyard area.

Main Issue

9. The main issue in this case is the effect of the proposal on the living conditions of existing occupiers of adjoining dwellings, in particular Nos. 132 Hengham Road (No.132) and 189 Sheldon Heath Road (No.189), with regard to noise and disturbance from future occupiers and their use of the external amenity spaces and the outbuilding.

Reasons

10. The internal courtyard garden area would be set within the confines of the building and enclosed on all sides by two-storey building. This would provide sound containment and I am satisfied that use of this ground floor space by future occupiers would not cause undue noise and disturbance to adjacent dwellings.
11. The two roof gardens would be elevated above the surrounding dwellings and their gardens, albeit some distance away. Roof garden 2 would be enclosed on all sides due to the enclosed walkway and I am satisfied that although elevated, noise from future residents using this space would be sufficiently contained as to not result in undue noise and disturbance to nearby residents.

12. However, roof garden 1 is not fully enclosed and its western boundary is open and faces towards the nearest residential properties. Noise from residents socialising and chatting in this space would travel outwards to the nearby properties, compounded by the adjacent houses being elevated. Noise would likely be more noticeable to residents in the evenings and weekends when they are more likely to be at home or in their gardens, particularly in the summer and longer evenings, adversely affecting their living conditions. Furthermore, the roof garden would be visible and this would compound the impression of disturbance. The updated Management Plan proposes that access to, and use of, both roof gardens would cease by 2230 hours. Whilst this would prevent late night noise and disturbance, this would not stop noise and disturbance up until that time, especially in the summer months when it would be light until almost 2230 hours. A condition could be imposed ceasing the use of the roof gardens much earlier, but this would restrict access for residents to much needed external amenity space.
13. In the outside courtyard garden, the main useable area, including for seating, would be located directly beneath No.189 and its rear garden. The Management Plan does not stipulate any time restrictions to this area. Whilst the space is not of a size and shape to encourage more energetic activities, its use by residents to socialise and chat, together with comings and goings to the garden space, would nonetheless have the potential to cause noise and disturbance and harm the living conditions of existing nearby residents.
14. This would be exacerbated by the site being set at a lower level than the adjacent dwellings and enclosed with hard surfaced brick walls that would likely exacerbate noise levels, which would travel upwards to the dwellings and gardens above. This is the largest outside amenity area and I acknowledge that not all residents would use it at the same time. In addition, there would also likely be seasonal variations to the intensity of its use. However, the turnover of residents and their number would potentially result in more people using the space on a regular basis compared to an average family or occasional family-gathering BBQ. There is no end-time for use of this courtyard suggested in the Management Plan. A condition could be imposed restricting the hours of use, but this would impact on the living conditions of future occupiers, especially if use of the roof gardens are restricted as well.
15. The outbuilding would be used during the day between 0900 – 1700 hours for managed training and group sessions. I am satisfied that with the managed sessions, noise and disturbance would be limited during the day. However, after 1700 hours residents would be able to use it and come and go between it and the main building. The outbuilding is located beneath the rear garden of No.132. Music could be played and noise would be emitted as and when the door was opened and closed as residents come and go, or indeed left open in hot weather. No evidence has been submitted as to the building's construction and whether additional soundproofing would be installed in the building. Even if the building were subject to additional soundproofing with a condition, this would not mitigate against the external noise and disturbance from use of the outside garden area.
16. The proposal would be at odds with paragraph 180 of the National Planning Policy Framework (the 'Framework') which states that new development should be appropriate for its location taking into account the likely effect on, amongst

- other things, living conditions and should avoid noise giving rise to significant adverse impacts on quality of life.
17. I acknowledge that the site is located near roads with traffic and a builders' merchants opposite with deliveries and customer vehicles, and the previous use as a Police Station would likely have seen activity in the rear courtyard 24 hours, 7 days a week. However, the existing ambient environment and the previous use would not, in my experience, negate the type and duration of noise and disturbance that would be encountered from use of the private amenity spaces and outbuilding for socialising and relaxation, which would be different from its previous use as a police station. Furthermore, the prevention of noise and disturbance would rely on the few staff on site (only one at night) monitoring these outside spaces.
 18. The previous Inspector was concerned about the lack of amenity space and in commenting about the rear courtyard considered it was 'in effect the car park' and not very attractive for residents. There was also no mention of roof gardens in her decision. This would indicate to me that she was not considering the same provision or configuration of external amenity space that is before me and hence the issues of noise and disturbance from the use of these areas would not have been the same.
 19. I acknowledge that the Council's Regulatory Services has not raised any objection regarding the impact upon neighbouring residents. The proposal would re-use an existing building to make efficient use of land, encouraged by the Framework. I also accept that the provision of specialist housing would help broaden the range and type of housing. However, there is limited evidence of such a need in this location. These benefits do not outweigh the harm I have identified.
 20. From my site visit and seeing the relationship of the external amenity spaces and outbuilding to the adjacent dwellings I am not persuaded that there would not be harm to the occupiers of adjacent properties, in particular Nos. 132 and 189, from noise and disturbance arising from future occupiers of the living centre using the external roof top garden 1, the external courtyard garden and the outbuilding. Accordingly, the proposal would be contrary to Policy PG3 of the Birmingham Development Plan³. This seeks to ensure that development responds to site conditions and the local area context.
 21. Saved Policy 8.7 of the Birmingham Unitary Development Plan⁴ (UDP) relates to Hot Food Shops and Restaurants/Cafes it is not relevant to the main issue.
 22. The appellant refers to saved UDP Policies 8.28 and 8.29 which relate specifically to hostels and residential institutions and which are set out in the Council's Supplementary Planning Guidance (SPG) 'Specific Needs Residential Uses'. These state that proposals should not cause demonstrable harm to the residential amenity of occupiers of nearby properties by reason of noise and disturbance nuisance. I find the proposal would be contrary to this part of the SPG.

³ Adopted January 2017

⁴ Adopted October 2005

Other Matters

23. A number of third parties, ward Councillors and the local MP raise a series of other concerns about the proposal, including the site's unsuitability for vulnerable people and overlooking of rear gardens from the roof terrace. However, in view of the reason for refusal and my conclusions on the main issue, there is no need for me to address these in the current decision.

Conclusion

24. For the reasons given above, I conclude that the proposed development would not accord with the development plan and there are no other considerations which outweigh this finding. Accordingly, the appeal should be dismissed.

K Stephens
INSPECTOR