



Appeal Decision

Hearing Held on 15 January 2020

Site visit made on 15 January 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/P4605/C/18/3213920

69 Church Road, Moseley, Birmingham B13 9EB

- 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 S Zaman against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 18 September 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the material change of use of the premises from a dwelling house (Use Class C3) to 8 self-contained flats (Sui Generis).
- The requirements of the notice are Cease the use of the premises as 8 self-contained flats and return the property to its original condition as a C3 dwelling house.
- The period for compliance with the requirements is 6 months.
- The appeal was made on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Birmingham City Council against Mr S Zaman. This application is the subject of a separate Decision.

Preliminary Matters

2. The Council said at the Hearing that it had not received the appellant's final comments (including rebuttal statement) until the day of the Hearing. The Council subsequently confirmed that it was satisfied it had been given adequate opportunity to make comments on this information at the event.
3. At the Hearing the Council agreed that each of the eight flats should be regarded as being within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended). It was agreed by the parties that the enforcement notice could be corrected accordingly, without resulting in any injustice.
4. The appellant confirmed that the most recent tenant, Rodor Housing and Support Ltd (RHS), had vacated the property. He therefore no longer sought to challenge the compliance period set in the notice, and consequently the appeal on ground (g) was withdrawn. I therefore take no further action specifically in relation to this matter.

5. It was apparent at the site visit that the internal configuration of some of the flats differed from the layout plan referred to by both the Council and the appellant in their respective cases¹. At the visit it was accepted, by the parties, that my assessment would be based on the layout shown in this drawing.

The appeal on ground (d)

6. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the use of the appeal site as eight flats had commenced at least 4 years before the notice was issued, that is by 18 September 2014, and had continued in such use over this period. It must be shown that there has not been any significant interruption in the use in order to demonstrate the necessary continuity.
7. The appellant's case is essentially that the flats were brought into use in two stages during 2013, with five flats becoming occupied in around February 2013 and the remaining three flats, following completion of an extension to the rear of the property, in November 2013. Thereafter, according to the appellant, the same residents occupied the respective flats until summer 2015, when the property was let to RHS, under a single tenancy agreement².
8. It is claimed that RHS then let the flats to various individuals, such that at any one time between four and seven flats were occupied³, though which flats were occupied, by whom and at what time is unclear. The appellant says that this arrangement was persisting when the enforcement notice was served.
9. At the Hearing, the appellant stated that, due to data protection reasons, they had been unable to provide any information with regard to the occupation history of the flats under RHS. I have taken into account that letters provided by occupants of the adjoining property claim that all of the flats had been occupied since 2013. However the statements made are vague and are not provided in the form of statutory declarations. Furthermore the statement that all flats were occupied would not accord with the appellant's own evidence, which refers to between four and seven occupiers at any one time, during the RHS tenancy.
10. Accordingly I attach very limited weight to this supporting information. Therefore, when also taking into account the absence of details of occupation under RHS, I am unable to conclude, on the balance of probability, that the various flats have been occupied such that the use of each has continued, without any material interruption, throughout the necessary 4-year immunity period.
11. I have taken into account the various other supporting documents provided by the appellant, including tenancy agreements for the eight flats, dating from 2013 and the various electricity and gas installation certification relating to the flats, also dating from this time. However irrespective of the veracity of this information and whether each of the eight flats were occupied continuously between 2013 and 2015, this does not overcome my aforementioned conclusion. The ground (d) appeal therefore fails.

¹ Drawing no: SPD/0196/001

² Dated 4 August 2015

³ See Appeal Form

The appeal on ground (a)

Main Issue

12. The ground (a) appeal is that planning permission should be granted. The main issue is the effect of the development on the supply of large family dwellings in Moseley and in the wider Birmingham city area.

Reasons

13. Policy TP35 of the Birmingham Development Plan 2017 (BDP) states, amongst other things, that best use will be made of the existing dwelling stock and that the loss of housing, either in good condition or capable of being restored to good condition, to other uses will be resisted. Whilst it is accepted by both parties that the development in this case would retain the premises in residential use, the Council confirmed at the Hearing that it takes a nuanced approach to the interpretation of this Policy. It finds that whilst there would not be a loss of housing in general terms, there would nevertheless be a loss of a type of housing, namely larger family dwellings, for which there is a recognised need.
14. The Council confirmed at the Hearing that it regards family sized dwellings to be those capable of accommodating three or more bedrooms. It says within its statement that the appeal property could potentially be turned into a six-bedroom house. It further sets out that its Strategic Housing Market Assessment (SHMA) (updated in 2013) indicates that in the period 2011 – 2031, the proportion of net new market accommodation required, at a city-wide level, is greatest in the four or more bedroom category (35.2%) compared to one-bedroom properties (13%)⁴.
15. It seems to me that because the housing use of the premises would not be lost, this is plainly not a reason for the development to be in conflict with Policy TP35. I accept that the aforementioned statistics would demonstrate that, over the period specified, larger family sized dwellings are in the greatest need across Birmingham as whole. Relying on the same analysis, there is however still a significant need for one-bedroom properties, and there is no compelling evidence to persuade me that allowing the appeal would frustrate and conflict with the objectives of securing a net addition of larger dwellings or making best use of the existing stock. Rather it seems to me that the development would accord with Policy TP30 of the BDP and with the National Planning Policy Framework (the Framework) insofar as they seek to deliver a range of dwellings to support mixed and balance communities.
16. Furthermore the Council confirms, within its statement, that the SHMA data provides an evidence base for the BDP. Had the Council concluded that the sub-division of larger dwellings, such as that the subject of this appeal, to provide one-bedroom properties would be counter-productive to its housing strategy it could have sought to formulate a policy to prevent this. However I have not been referred to the existence of, or any attempt to develop, a policy of this kind.
17. In addition, the variation in new housing stock requirements, identified above, is at the city-wide level, and does not necessarily reflect the position within the Moseley area. Local Policy H1 of the Moseley Supplementary Planning

⁴ See Council Statement paragraph 2.5

Document 2014 (SPD) states that the provision of family-sized accommodation at appropriate locations in Moseley will be encouraged, whilst Local Policy H3 of the SPD indicates that the conversion of large domestic properties to Housing in Multiple Occupation (HMO) will be resisted. Notwithstanding this, and I am mindful of the forthcoming introduction of an Article 4 Direction in June 2020, removing permitted development rights for the conversion of properties to small HMOs, I do not consider the development in this case to conflict with either of these policy objectives. Neither is there any evidence before me to indicate an over-concentration of one-bedroom dwellings in Moseley or in the wider city area.

18. The Council has drawn my attention to a recent appeal decision⁵ where permission was refused for the conversion of a three-bedroom house to two one-bedroom flats, elsewhere in the city. I note that the Inspector in that case considered that the development would result in the loss of a type of accommodation for which there is an identified need and under supply, and that the appeal scheme would not justify this loss.
19. The Council confirmed at the Hearing that the appeal site in that case was not in the Moseley area. I also note that, as a three-bedroom dwelling, it would be smaller than the appeal premises in this case. Accordingly, and with the limited information before me regarding all the circumstances of that appeal, I am not persuaded that the two cases are sufficiently similar to mean that it should automatically follow that I should refuse to grant planning permission.
20. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission.
21. I have had regard to the 2011 Census information submitted by the appellant, setting out a comparison between dwelling sizes in the Birmingham city-wide area and the Moseley / Kings Heath Ward. However, given the age of this information, I am disinclined to place any significant reliance upon it, and in any event consider that it does not present any evidence that would conflict with the findings I have made above.
22. I have also had regard to the Council's representation regarding evidence of households waiting for larger Council houses in the Moseley area. However, even if the property were to remain as a single family-sized dwelling, there is nothing to persuade me that it would necessarily become available to those in need of Council housing. This point does not therefore bolster the Council's case. Aside from this, I have not been made aware of any immediate shortage in the market supply of larger family dwellings of this type, either in the city or in the Moseley area in particular.
23. At the Hearing, the Council accepted that the development did not result in harm to the area's character, and it was apparent from my visit that this type of use would not be unusual or alien in the context of the wider area.
24. I therefore conclude, from the evidence before me, that the development would not result in unacceptable harm to the provision of large family-sized

⁵ Ref APP/P4605/C/W/19/3221584

dwellings in Moseley and in the wider Birmingham city area. I find no conflict with Policy TP35 of the BDP insofar as it seeks to promote the best use and resist the loss of the City's housing stock, or with the SPD or the Framework insofar as they respectively seek to encourage the provision of family sized accommodation in Moseley and create diverse communities.

Conditions

25. I have had regard to the conditions suggested by the Council in the event that the appeal is allowed. I concur with the view that conditions are necessary to ensure that provision is made for the storage of cycles on the site in order to promote sustainable travel choice and the storage of refuse associated with the property to protect the living conditions of residents. I shall also impose a condition confirming the relevant plan in interests of certainty.
26. I have not imposed a condition requiring the implementation of a noise insulation scheme, with a view to protecting the living conditions of adjoining residents. It would appear from letters supplied by differently named individuals, occupying the adjoining property, as part of the appellant's supporting information, that that property is unlikely to be occupied as a single household. The Council confirmed that it would not normally seek to impose such a condition in circumstances where both adjoining properties are split into apartments, and I have no reason to take a different view.
27. With regard to the appellant's suggested condition regarding an occupancy limit for each of the flats, I also concur with the Council that such a condition would not be appropriate, as its enforceability could not be secured.

Conclusion

28. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.

Formal Decision

29. It is directed that the enforcement notice be corrected by the deletion of the words "(Sui Generis)" in paragraph 3 and the substitution of the words "(Use Class C3)" instead.
30. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of the premises from a dwelling house (Use Class C3) to 8 self-contained flats (Use Class C3), subject to the conditions set out in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The layout of the flats hereby permitted shall be in accordance with the following approved drawing: SPD/0196/001.
- 2) Within a period of two months from the date of this decision, details of facilities for the storage of refuse within the curtilage of the appeal site shall be submitted to the Local Planning Authority for approval in writing. The refuse facilities approved shall be installed within a period of three months from the date of their approval and shall thereafter be retained.
- 3) Within a period of two months from the date of this decision, details of the provision for the secure and covered storage for cycles shall be submitted to the Local Planning Authority for approval in writing. The cycle storage approved shall be installed within a period of three months from the date of its approval and shall thereafter be retained.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Mr S Zaman
Mr D Barnes

Appellant
Agent (Star Planning and Development)

FOR THE LOCAL PLANNING AUTHORITY:

Ms A Stevenson
Mr M Franklin

Principal Planning Officer
Principal Enforcement Officer

DOCUMENTS SUBMITTED AT HEARING:

1. Electricity Installation Certificates (Flats 1 – 8).
2. Dwelling size information (2011 Census).
3. List of Suggested Conditions