
Appeal Decision

Site visit made on 11 February 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2020

Appeal Ref: APP/P4605/C/19/3231142
283 Warwards Lane, Birmingham B29 7QR

- 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 Mohammed Fiaz against an enforcement notice issued by Birmingham City Council.
 - The enforcement notice, numbered 2019/0424/ENF, was issued on 22 May 2019.
 - 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 a house in multiple occupation (Use Class A4).
 - The requirements of the notice are to permanently cease the use of the premises as a house in multiple occupation (Use Class C4).
 - The period for compliance with the requirements is 1 month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by:

- *Deletion* of "1 month" and *substitution* with "3 months" as the period for compliance.

Subject to this variation the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on Ground (a) and the Deemed Application

2. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice. The prescribed fees have been paid within the specified period. Hence the application for planning permission deemed to have been made under section 177(5) of the Act, as amended, falls to be considered.

Main Issues

3. The issues in this case are i) the effect of the development on the character and appearance of the area, and ii) the effect of the development on the living conditions of adjoining premises.

Character and appearance

4. According to the appellant the property has been a House in Multiple Occupation (HMO) since September 2016. Appendix 1 of the appellant's

statement includes the HMO licence, which was granted in April 2017 to cover the period until 31 December 2021. It is a two storey property with accommodation in the roof situated at the end of a long terrace of similar properties. From my site visit the accommodation comprised one ground floor ensuite bedroom, a communal open-plan kitchen with sitting area and separate WC. A second ground floor en-suite bedroom was currently in use as a dining room. There were two ensuite bedrooms on the first floor and a further two in the roof space. Access to a communal rear garden was from the kitchen and there was also a gated path alongside the property to the road, allowing access for refuse bins and bicycles.

5. The property is located within walking distance of Birmingham University and the Queen Elizabeth hospital and its associated medical school and I noticed there were regular buses in the area and shops and various facilities nearby. It was evident from my visit and from the many signboards I saw on properties advertising letting agents or 'To Let', that many properties in the terrace containing the appeal property and the surrounding area are in use as shared accommodation. Both parties advise that the area is popular with key workers in the medical profession as well as students.
6. The Council has made an Article 4 Direction that came into force in November 2014 that removes permitted development rights that prevents dwellings (Use Class C3) changing use to HMOs (Use Class C4) without first obtaining planning permission.
7. At around the same time as making the Article 4 Direction, the Council published a Planning Policy Document¹ (PPD) to provide a policy approach for dealing with planning applications for HMOs. Whilst the document does yet not form part of the development plan, it is an evidence-based document that accompanies the Article 4 Direction. Therefore it and the policies it contains are a material consideration to which I give substantial weight. This is broadly consistent with the National Planning Policy Framework² which states that the needs of groups with specific housing requirements should be addressed (paragraph 59) and that the size, type and tenure of housing for different groups, including students, should be assessed and reflected in policy (paragraph 61).
8. In the PPD the Council acknowledges that HMOs are an important element of the city's housing stock. However, the Council has also recognised housing issues with too many of the same type and tenure of property. A proliferation of shared or multi occupied housing can cause concerns for local amenity from noise, disturbance, car parking and litter, and put strains on local services such as refuse collection and environmental health. To address these environmental and social concerns and to achieve sustainable and more balanced communities, the PPD and Article 4 Direction seek to manage the growth of HMOs by dispersing their locations and preventing clusters and over concentrations of such accommodation. Some roads in Selly Oak, such as the nearby Bournbrook Road, have been excluded from the Article 4 area due to the already high number of existing HMOs.

¹ "Houses in Multiple Occupation in the Article 4 Direction Area of Selly Oak, Edgbaston and Harborne Wards" dated November 2014

² The National Planning Policy Framework, published in March 2012, was revised 24 July 2018 and subsequently updated 19 February 2019.

9. The Article 4 Direction and PPD contribute to a package of measures the Council is using, together with "The Wider Selly Oak" Supplementary Planning Document (June 2015), to guide development in the area to make it a better place by building upon the employment, teaching, research and healthcare excellence in the area. In terms of housing, the measures seek to improve the residential environment, address the problems caused by the high concentrations of HMOs in the area, and concerns of an unacceptable erosion of the character of the residential environment. To this end, the Council also encourages proposals to bring HMOs back into family accommodation.
10. The PPD, however, accepts that within the Article 4 area there is some capacity to have further HMOs, provided they are in the right locations. To aid the assessment of suitable locations and applications for HMOs, Policy HMO1 of the PPD states that conversion of family housing to HMOs will not be permitted where there is already an over concentration of HMO accommodation. An over concentration is then defined as 10% or more of the houses within a 100m radius of the application site not in use as a single family dwelling. Schemes that breach this will be resisted.
11. The appellant's survey of HMO properties in Appendix 3 of his Statement identifies more HMO properties than the Council's survey in Appendix 1 of its Statement. The Council's evidence identifies 37.5% of properties as being HMOs within a 100m radius of the appeal property. The appellant's survey identifies this as 58.6%. Of the 37 properties along Warwards Lane within the 100m radius, which include a number of commercial premises, the appellant estimates that some 73% are HMOs. Nonetheless, the evidence from both parties clearly shows an existing and substantial over concentration of HMOs. However, because the threshold is already exceeded is not necessarily an argument to endorse one more property.
12. The appeal property itself looked to be generally well-maintained, but there were others in the street that were less so. I have no reason to believe the appeal property is not well managed or that the appellant does not choose his tenants carefully. Whilst my visit was a snap-shot in time, there was no evidence to indicate to me that the appeal property was causing issues of excessive refuse generation, over-spilling bins or inconsiderate waste disposal or even other anti-social behaviours. Again this was not the case at other properties I saw in the area. Planning permission runs with the land and the current occupants and considerate landlord may well change in the future, so the current good state of the property may not always be the case.
13. However, it was evident to me that the preponderance of HMOs in this part of Warwards Lane has changed the character and appearance of the area such that it is no longer mixed, balanced and sustainable, something the appellant accepts. I accept that this part of Warwards Lane is different from other nearby streets, as there is housing only along part of one side of the street due to the Selly Park, with its open expanse of informal green space. This gives the street a more spacious character and appearance, compared to some of the more densely packed streets. However, this fact does not make Warwards Lane more appropriate to have a concentration of HMOs – one could argue they would be better as family dwellings with a large area of informal open space for children to play on.

14. The appellant refers to the greater number of family dwellings in neighbouring Gristhorpe Road that can serve to offset the over concentration of HMOs in Warwards Lane. I accept the two roads have different characters with larger houses in Gristhorpe Road that may be more attractive to families. However, this does not negate the over concentration of HMOs that the Council is seeking to manage in its pursuit of mixed and balanced communities. The appellant identifies HMOs along Raddlebarn Road, that exacerbate the overall concentration. But Raddlebarn Road is not within the Article 4 area and hence is not subject to the percentage threshold and the properties have not been included in the Council's survey.
15. I have not been made aware of how many of the identified HMOs within the 100m radius have a lawful use, planning permission or are subject to enforcement action, and how effectively the Council is applying the Article 4 Direction. Nonetheless, the over concentration that already exists would be made worse by allowing the appeal property to become another HMO and would undermine the purpose of the Article 4 Direction, which has a strong evidence base, and the package of measures to improve the residential environment in the area.
16. For the reasons above I find the change of use of the property would exacerbate an over concentration of HMOs within a 100m radius of the site and further contribute to the change to the character and appearance of the area. The proposal would be contrary to Policies 8.24 and 8.25 of the 2005 Birmingham Unitary Development Plan (UDP), and Policies PG3 and TP27 of the Birmingham Development Plan 2031 (BDP) which in my view do apply to 'new' housing being created including through reuse of existing buildings. The policies collectively seek to encourage a wide choice of housing sizes, types and tenures to ensure balanced communities and which respond positively to the local area. It would also be contrary to Policy HMO1 of the PPD and guidance in the "The Wider Selly Oak" Supplementary Planning Document.

Living conditions

17. The property is already in use as an HMO and has been for a number of years. It is generally recognised that multiple households have different patterns of activity to a single household as occupants tend to come and go independently of each other, with their own friends and family visiting, and this could give rise to noise and disturbance. I accept that students may elect to rent a property together as friends and there would be more connection as a group, but this cannot be controlled and does not necessarily reduce general noise and disturbance.
18. I note clause 1.9 in the tenancy agreement that requires tenants to not play music, televisions, musical instruments or other similar equipment that would cause nuisance, annoy neighbours or be audible outside the property between the hours of 23:00 and 0800. This is laudable and indicates to me a thoughtful landlord. However it could change with new tenancy agreements and different landlords in the future, and therefore could not be relied upon.
19. Notwithstanding the above, I have not been presented with any substantive evidence from the Council, local residents or their representatives that the existing HMO has caused, or is causing, unacceptable noise and disturbance, anti-social behaviour issues or other incidents to the detriment of the living conditions of neighbouring properties. This may be due to the existing

preponderance of HMOs in Warwards Lane and that the adjacent properties are also HMOs, according to the evidence from both parties.

20. In light of the above and the evidence before me, I find there is no conflict with UDP Policies 8.24 and 8.25 which require consideration of the effect of the proposal on the amenities of adjoining properties, taking into account the cumulative effect of such uses.

Other matters

21. I have no reason to doubt that the appeal property is rented at an affordable and competitive rate. Whilst conditions could be imposed to limit the number of occupants to 6, and restrict any audible noise to the above mentioned hours, these would not overcome the loss of a family dwelling and the exacerbation of the over concentration of HMOs and the resulting harm I have identified.

Conclusion on ground (a) and the deemed planning application

22. Whilst I find no harm to the living conditions of adjoining dwellings based on the evidence before me, the loss of a family dwelling to an HMO would result in an over concentration of such uses and would harm the character and appearance of the area. There are no material considerations to outweigh a departure from the development plan and the Article 4 Direction.

23. I therefore conclude that the appeal on ground (a) fails and planning permission is refused.

Appeal on ground (g)

24. Ground (g) is that the period specified for compliance with the Notice falls short of what is reasonable. The Notice gives 1 month for all the use to cease.
25. The appellant suggests that the compliance period is extended up until the end of the existing tenancy agreement to avoid students having to be evicted and look for alternative accommodation at a critical time in their studies.
26. At the time the Notice was issued, the Notice was to take effect on 22 June 2019. This would have conveniently coincided with the impending end of the academic year and tenancy. However, due to the appeal process the tenancy agreement has several more months to run. The tenancy agreement submitted as Appendix 5 of the appellant's statement shows that the current tenancy runs from 25 January 2019 until 30 June 2020.
27. In my view it would be more difficult for students to find alternative accommodation part way through the academic year or near to their exams. This would likely bring added stress and anxiety to students, although it is not unheard of. As the property is occupied by students, it is not unreasonable, in my view, to extend the compliance period to 3 months to include the end of the current tenancy. I will vary the Notice accordingly.
28. Therefore the appeal on ground (g) succeeds.

Overall Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

K. Stephens
INSPECTOR