



Appeal Decision

Site visit made on 27 July 2021

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2021

Appeal Ref: APP/W2465/W/21/3275150
37 Loughborough Road, Leicester LE4 5LJ

- 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 Rajesh Sharma of NYS Properties Ltd against the decision of Leicester City Council.
 - The application Ref 20210018, dated 30 December 2020, was refused by notice dated 23 March 2021.
 - The development proposed is described as change of use from outbuilding to 1 x bedsit and rear extension.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have been provided with a copy of an Enforcement Notice (EN) dated 2 October 2007 for this appeal site for the material change of use from a single dwellinghouse to self-contained flats. The EN was upheld subject to corrections and a variation at appeal (Ref APP/W2465/C/07/2059275, dated 6 March 2008) for *'...change of use of the property from use as a single dwelling house (Class C3) to use as 2 self-contained flats and a house in multiple occupation...'*. The requirements of the EN are *'i. Cease the use of the property as 2 self-contained flats and a house in multiple occupation; and ii. Return the use of the property to a single dwelling house'*, to be complied with within 6 months of the notice.
3. The appellant advises me the lawful use of the site is a House in Multiple Occupation (HMO) as the site does and has previously benefitted from HMO licences. However, HMO licencing is under the provisions of the Housing Act 2004, which does not constitute or override the requirement for planning permission. The EN is effective and requires the use of the appeal site to be a single dwellinghouse. It continues to take effect, even after it has been complied with. I have not been provided with any substantive evidence the EN has been withdrawn. Therefore, the lawful use of the property is a dwellinghouse. I have considered the appeal on this basis.
4. The application plans show all but one of the window openings shaded and these are labelled as being obscure glazed. What appears to be a door opening and one window are not shaded or labelled. Therefore, I have considered the appeal on the basis these two openings are to include clear glass.

5. Accompanying the appeal is amended plans and proposals which include replacing the obscure glass with switchable glass and erection of a new fence within the site. I have had regard to these in determining this appeal. The Council would not be prejudiced by this approach as they have had the opportunity to comment upon them through the appeal process.
6. Since the appeal was lodged the revised National Planning Policy Framework (2021) (the Framework) was published (on 20 July 2021). I have given the Council and the appellant the opportunity to comment upon the implications of this for their cases.

Main Issues

7. The main issues are the effect of the development upon:
 - the living conditions of the future occupiers of new dwelling, with particular reference to outlook; and,
 - the living conditions of the occupiers of No 37 Loughborough Road (the host dwelling) with particular reference to outdoor space provision.

Reasons

8. The appeal site comprises one of a pair of three storey villa buildings, with a rear two storey outrigger extended at ground floor level. This proposal seeks to extend the ground floor by a further approximately 5.24m into the rear amenity area and convert the ground floor element into a one bedroom flat. Windows serving the new dwelling would be along the south and eastern elevations facing onto the outdoor amenity space of the host dwelling. The original application plans show all but two of the openings serving the new dwelling would be obscure glazed. Given the proportion of window space that would be obscure glazed, these proposals would provide a very poor quality of outlook to the future occupiers, thereby resulting in harmful living conditions.
9. The standards in the Council's Residential Amenity Supplementary Planning Document (2008) (the SPD) state for the size of the host dwelling private garden space should be a minimum of 100sqm. Such space is of importance for household and leisure activities, such as gardening, drying clothes, play space, sitting outside, fresh air, and other hobbies. While the existing space is not currently fully private due to the limited height of the rear part of the garden walls, it retains some privacy and private usage which is of importance for such space, particularly for family sized dwellings.
10. Under the application proposals, the new flat would be accessed via and opens out directly onto the amenity space of the host dwelling. As a consequence of this, its non-enclosure, and overlooking from the new flat, the outdoor space of the host dwelling would not have any degree of privacy. This would be likely to discourage its use for many activities. The non-obscure glazed openings on the plans could be the subject of a suitable planning condition to require obscuring to prevent overlooking. However, this would not address all the matters of concern, and would further add to the harm to outlook of the new dwelling.
11. Therefore, for the reasons set out above the application plans would result in significantly harmful living conditions to the new dwelling with reference to outlook, and, to the host dwelling with reference to not having any private outdoor space.

12. Integrating a different grade of obscure glazing would not address both the loss of outlook and the privacy of the outdoor space together. Switchable glass would not address privacy concerns for the outdoor space. The suggested new fence would provide a similar level of privacy for the rear amenity space of No 37 as under the current lawful arrangements. The amount of space for No 37 would also be broadly in keeping with the SPD space requirements. However, the proposed 1.8m fence positioned at only between 2.7m and 3.6m from all the windows of the new dwelling, would be highly dominant and oppressive and highly constrain outlook from the new dwelling. For this reason, the development would result in significantly harmful living conditions to the future occupiers of the new dwelling in respect of outlook, and the absence of harm from privacy to the occupiers of the host dwelling would not overcome this.
13. The appellant has referred me to No 39 Loughborough Road, which was approved for the change of use to 4 flats in 1988 with an additional self-contained flat approved in 2016. Therefore, there was already a communal garden and the 2016 development did not significantly alter that arrangement. At my visit I was able to see the accommodation in the outrigger at No 39 was not enclosed by a boundary fence in such close proximity as proposed for the appeal site. Furthermore, the approval of that proposal pre-dates the current iteration of the Framework. Therefore, it is not directly comparable to the appeal proposal, and does not justify allowing this appeal.
14. For the reasons set out above the proposed development would not result in harmful living conditions to occupiers of the host dwelling with particular reference to privacy. However, it would result in harmful living conditions to future occupiers of the proposed new dwelling with particular reference to outlook. Therefore, in this regard it would conflict with Policy CS03 of the Leicester City Core Strategy (2014) and Policy H07 of the City of Leicester Local Plan (2006) (the LP). In combination and amongst other things these require that developments are well designed and provide a satisfactory living environment. It would also conflict with paragraph 130f) of the Framework which seeks development promotes health and well-being with a high standard of amenity for existing and future users.
15. The Council's first reason for refusal refers to Policy PS10 of the LP. As this does not specifically refer to outlook, I do not find a conflict with PS10. The Council's second reason for refusal in respect of outdoor space provision makes reference to the SPD. For the reasons set out above I do not find harm in respect of outdoor space. However, this does not mitigate or overcome the other harm I have found.

Planning Balance

16. The Council advised it cannot demonstrate a 5 year housing land supply (HLS), therefore, the tilted in paragraph 11d) of the Framework is engaged. This appeal development would result in a small economic benefit during construction and a small sustained benefit to the local economy once occupied. It would contribute to boosting the supply of housing and make more efficient use of the site in seeking to meet this objective. The precise shortage of 5 year HLS is unclear, but even if it were very acute, the provision of one additional dwelling would be a limited benefit attracting limited weight in favour of the scheme. Therefore, overall, the benefits of the development attract limited weight in favour of the scheme.

17. Compliance with policies such as those in respect of energy efficiency, the sustainability of the location, the living conditions of wider neighbouring occupiers and the character and appearance of the area would be neutral matters. There is no substantive evidence that increased Council tax revenue would do anything other than contribute to infrastructure and services for the new occupiers. Therefore, this would also be a neutral matter.
18. However, the policy compliance and benefits of the development would not outweigh the significantly harmful living conditions for the future occupiers of the proposed new dwelling in respect of outlook which is such that it attracts significant weight against the scheme. Therefore, for the reasons set out above, the harm from the development, significantly and demonstrably outweighs the benefits of the development when assessed against the policies in the Framework taken as a whole.

Conclusion

19. The proposed development conflicts with the development plan and the Framework taken as a whole. There are no material considerations, including the policies of the Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR