
Appeal Decision

Site visit made on 21 July 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 06 September 2021

Appeal Ref: APP/P4605/C/21/3273740

21 Sandon Road, Birmingham B17 8DR

- 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 Mrs S Butt against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 25 March 2021.
- The breach of planning control as alleged in the notice is the material change of use of the premises from hotel (Use Class C1) to provide supported accommodation (sui generis).
- The requirement of the notice is to permanently cease the use of the premises as supported accommodation.
- The period for compliance with the requirements is 1 month.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matter

1. On 20 July 2021 the Government published its revised National Planning Policy Framework (the Framework) which represents the Government's up-to-date planning policies for England and how they should be applied. Both main parties were given the opportunity to comment on the relevance of the revised Framework to their cases.
2. Although not specifically referred to in the enforcement notice both main parties have identified policies within the draft Development Management in Birmingham Development Plan Document (DMB Draft). The DMB was submitted in July 2020 and hearings were carried out by the Inspector in November 2020. Following the hearings it is my understanding that the City Council agreed some Main Modifications proposals with the Inspector and consultation on these took place in May 2021. It is anticipated that the Inspector's report will be issued in the near future. Consequently, the DMB, including the proposed modifications, carries a good deal of weight in policy terms. With reference to the main issues the overall aims and objectives of the relevant sets of policies are broadly similar and so neither party has been prejudiced by the updated position.

The appeal on ground (a)

3. The ground of appeal is that permission should be granted for what is alleged in the notice. The main issues are:

- a) the effect on the character and appearance of the area;
- b) whether adequate living conditions are provided for occupants of the premises with particular reference to indoor and outdoor communal amenity space; and
- c) the effect on the living conditions of the occupants of nearby residential properties with particular reference to the fear of crime and disorder and noise and disturbance.

Character and appearance

- 4. Policy PG3 of the Birmingham Development Plan Adopted January 2017 (the BDP) relates to Place Making and states that all new development will be expected to demonstrate high quality design and should create safe environments that design out crime. Policy TP27 seeks to achieve a wide choice of housing sizes, types and tenures to ensure balanced communities which cater for all incomes and ages.
- 5. Saved paragraph 8.29 of the Birmingham Plan Birmingham Unitary Development Plan 2005 (the UDP) states that where proposals for hostels and residential homes relate to areas which already contain premises in similar uses, as well as houses in multiple occupation and premises converted to self-contained flats, account will be taken of the cumulative effect of such uses upon the residential character and appearance of the area.
- 6. Policy DM12 of the emerging DMB relates to residential conversions and specialist accommodation, stating that such development will be supported where, among other objectives, it will not lead to an adverse impact on the amenity and character of the area, taking into account the cumulative effect of similar uses in the area.
- 7. The appeal site comprises a part two storey and part single storey brick and pale rendered building adjacent to the corner of Carisbrooke Road and Sandon Road within a predominantly residential area of Birmingham. It is situated in a prominent location within the Barnsley Road Conservation Area. There is a large hard surfaced area alongside Carisbrooke Road which provides car parking space to serve the building and there are also small outdoor amenity areas to the front and rear. There is a variety of residential development in the locality in terms of design, appearance and typology which includes flats, houses in multiple occupation (HMOs), hostels and care homes.
- 8. It is my understanding from the evidence presented that the building was originally used as a hotel but since 2003 has been operating as a hostel providing temporary accommodation for vulnerable and homeless people. Since 2012 the appellant has operated the property as what is described by her as "supportive accommodation". Notwithstanding the appellant's argument that use as a hostel is no different in nature or character to supported accommodation, I have determined the current appeal on the basis of the allegation as set out in the enforcement notice.
- 9. The Council has clarified that in terms of character and appearance the concern relates to the effect that may be attributed to residential character and appearance as a consequence of there being an over concentration of intensive residential uses in the area. The evidence before me shows that there are 28 properties within 100 metres of the appeal site and of these, ten are used for

flats, two as houses in multiple occupation (HMOs) and one is in use as a care home. At my site visit I noted that in the wider area there is also a high concentration of intensive residential uses. Therefore, should the current appeal be allowed, intensive residential uses would make up half of the total properties in the immediate locality. This would inevitably result in a range of potentially harmful cumulative effects on the overall character of the area.

10. The appellant has argued that the fact that there is an already established high concentration of intensive residential uses in the locality means that the effects of allowing the current development would be less of an issue. However, that fails to recognise the effects of such intensive residential uses in terms of the overall mix of housing and, in particular, the overall balance of family housing in the interests of achieving well-balanced and sustainable communities. The appellant also states that the current development replaces a hotel rather than single dwellinghouse, but the characteristics of supported accommodation are very different to those that may be attributed to a hotel.
11. Consequently, on this issue I conclude that the development has a harmful effect on the character and appearance of the area and conflicts with Policies PG3 and TP27 of the BDP, saved paragraphs 8.28 to 8.30 of the UDP, Policy DM12 of the DMB, guidance contained within the Specific Needs Residential Uses Supplementary Planning Guidance (the SPG) and the Framework.

Living conditions of occupants

12. The only internal amenity spaces are a kitchen and dining area. My understanding is that there was a second kitchen, but that was not used by residents, but by staff preparing meals for residents. At my site visit I observed that the lounge and dining area are rather narrow which would inhibit their use for the number of residents that may occupy the premises. I understand that the bedrooms meet the required standards as set out in (the SPG) but are relatively small with little living space. There are 22 bedrooms with a maximum occupancy number of 25 residents given that some are considered to be double rooms. It is very clear to me that the internal amenity space is wholly insufficient to meet the potential requirements of up to 25 residents.
13. Policy 8.29 of the UDP and the SPG states that for each resident, 16 square metres of amenity space should be provided. Consequently, the total amenity space that should be provided is 400 square metres. Policy DM2 of the emerging DMB states that all development will need to not result in unacceptable adverse impacts on the amenity of occupiers. I observed at my site visit that there is a small outdoor flagged area to the rear of the dining space and a small outdoor amenity area to the front of the property. In addition, there is a fenced in hardstanding area along Carisbrooke Road which is primarily used as a car parking area. The evidence before me is that the total outdoor area is approximately 275 square metres and this includes the parking area. Therefore, the site does not provide anywhere near sufficient outdoor amenity to serve the needs of occupants.
14. In addition, the nearest public outdoor amenity space is Lightwoods Park which is approximately 0.7 kilometres from the site and Summerfield Park is approximately 1.7 kilometres from the site. Neither of these is close enough to the site to provide a convenient place for occupants to regularly use for outdoor amenity purposes. I also noted at my site visit that there is a small

outdoor green space directly opposite the site at the junction of Hagley Road and Sandon Road. However, that space is more of a visual feature at the junction of two main roads and is not configured in a way which makes it usable for outdoor amenity purposes other than sitting outside.

15. Therefore, on this issue I conclude that the development fails to provide adequate living conditions for occupants with particular reference to indoor and outdoor communal amenity space. As such it conflicts with Policies PG3 and TP27 of the BDP, saved paragraphs 8.28 to 8.30 of the UDP, Policy DM12 of the emerging DMB, Policy DM2 of the emerging DMB and guidance contained within the SPG and the Framework.

Living conditions of neighbouring occupants

16. There is detailed evidence of crime, disorder and disturbance associated with the appeal site, including data from the West Midlands Police and comments from the North Edgbaston Residents Action Group and local residents which confirm the level of concern with respect to crime and anti-social behaviour. There are many incidents of prostitution, drug dealing, aggression and other anti-social behaviour in this mainly residential area. As a consequence of the level of anti-social behaviour and crime associated with the use of the premises West Midlands Police have successfully pursued a Closure Order through Birmingham Magistrates Court.
17. In view of the evidence I can understand the fears of the local community that the supported accommodation leads to a greater number of incidents of crime and disorder in the local area. I consider this to be an important material consideration that carries some weight as the concerns are substantiated. In addition, evidence is presented that shows that the use of the property has resulted in unacceptable additional levels of noise and disturbance to local residents and, in particular, neighbouring residential properties. This includes speeding cars, noise from residents and general disturbance from anti-social activities that have taken place.
18. Therefore, I conclude that the development has a harmful effect on the living conditions of the occupants of nearby residential properties with particular reference to the fear of crime and disorder and noise and disturbance. As such it conflicts with Policy PG3 of the BDP, Policies DM2, DM6 and DM12 of the emerging DMB and the Framework. Among other objectives these seek to ensure that specialist accommodation does not lead to public safety concerns and development should be managed and operated to reduce exposure to noise.

Other matters

19. The appellant contends that the benefits of retaining the use of the property as supported accommodation outweighs the potential harm it causes. She identifies the benefits of meeting the need for supported accommodation in Birmingham, but there is little evidence to support this argument. Therefore, in this particular case and based on the evidence before me, the benefits do not outweigh the harm I have identified above.

The appeal on ground (f)

20. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve that purpose. The purposes of an

enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent cessation of the use of the premises as supported accommodation the purpose is clearly to remedy the breach.

21. The appellant contends that the requirement is imprecise and unclear but in my judgement the wording is clear and adequately sets out what the Council requires to be done in order to remedy the breach. The description of the alleged breach of planning control describes the use as supported accommodation which is accurate in the light of the evidence before me. Consequently, the requirement to cease that use is unambiguous and tells the appellant what she is required to do. Therefore, the appeal on ground (f) fails.

The ground on ground (g)

22. The ground of appeal is that the time given to comply with the requirements is too short. The one month given would be sufficient to cease the use, but the appellant has expressed some concern regarding re-housing residents. The premises is currently empty as a consequence of the Closure Order and at my site visit, I observed that it is currently being renovated. I understand that the property was emptied and residents relocated to alternative accommodation within one month. This has demonstrated that the time for compliance is achievable.
23. Furthermore, given the harm caused by the use I consider the period set out in the enforcement notice to be reasonable. Therefore, the appeal on ground (g) fails.

Conclusion

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

Formal decision

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

A A Phillips

INSPECTOR