



Appeal Decision

Site visit made on 23 November 2021

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/P4605/W/21/3278681

662 Chester Road, Erdington, Birmingham B23 5TE

- 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 Ridgacre Property Limited against the decision of Birmingham City Council.
 - The application Ref 2021/01060/PA, dated 20 January 2021, was refused by notice dated 21 June 2021.
 - The development proposed is the conversion from 4no one bedroom flats (Use Class C3) to 8 room House in Multiple Occupation (sui generis) over 3 floors.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion from 4no one bedroom flats (Use Class C3) to 8 room House in Multiple Occupation (sui generis) over 3 floors at 662 Chester Road, Erdington, Birmingham B23 5TE, in accordance with the terms of the application Ref 2021/01060/PA, dated 20 January 2021, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, scale 1:1250, DWG No RP/rjs/10/01, DWG No RP/rjs/10/02, DWG No RP/rjs/10/03
 - 2) The development hereby permitted shall not be occupied by more than eight persons at any one time.

Preliminary Matters

2. At the time of my site visit the development had already been carried out therefore I have determined the appeal on this basis.
3. The Council refers to Policy DM11 of the emerging Development Management in Birmingham Development Plan Document (DPD) in the reason for refusal. I understand that the Examining Inspector has issued their report and has not raised concerns with Policy DM11. I find that the approach of the policy has broad alignment with the aim of the National Planning Policy Framework (the Framework) to protect the amenity of existing occupiers. However, I am not aware whether there are any outstanding objections specifically to Policy DM11 and modifications to the DPD still have to take place following which consultations will be carried out. I am therefore uncertain whether the policy will be adopted in the form provided to me and, moreover, it may be a considerable time before the DPD is adopted. Accordingly, and in light of the advice at paragraph 48 of the Framework, I can only attach moderate weight to Policy DM11.

Main Issue

4. The effect of the development on the living conditions of neighbouring occupiers at 664 Chester Road, with particular regard to noise and disturbance.

Reasons

5. This appeal concerns a three storey end of terrace property located at the end of a row of 5 terraced properties of similar size and character. The evidence before me indicates that the appeal property once comprised of 4 flats, following which it lay vacant and in a poor state of repair for several years, before the implementation of the appeal development.
6. The appeal property is of a substantial size and the existing house in multiple occupation (HMO) accommodates a total of 8 occupiers. The property's previous use as four one bedroom flats, which could have been double occupancy flats due to the size of the rooms, could have potentially accommodated a total of 8 occupiers. Additionally, given the layout of the property and the generous size of the rooms, it could reasonably accommodate a large family across 6 bedrooms. Therefore, the total number of occupiers of the HMO would not be dissimilar to the number of people who could reasonably reside at the property if it was in its previous use as flats or used as a single family dwellinghouse.
7. Despite this, I acknowledge that individuals of the HMO may have different living characteristics and routines to occupiers of a single-family dwellinghouse. However, unacceptable levels of noise and disturbance are not the inevitable consequence of HMOs and there is no reason for me to consider that the daily routine of occupiers of the HMO is significantly more intense than a large family. Indeed, the neighbouring occupier at 664 Chester Road has confirmed that the appeal HMO, which has been operating for a considerable time, has not resulted in noise which has impacted their living conditions. Although residents of the HMO may change, it would be unreasonable to assume that future occupiers would create excessive noise or disturbance. This is a question of individual behaviour and appropriate management of the property.
8. Furthermore, the appeal site and adjacent properties are located on the A452 with various commercial uses within close proximity. Accordingly, occupiers of the adjacent property would already be accustomed to a likely high level of comings and goings and general activity in this locality. As such, and for the reasons above, the change of use has not resulted in a significant introduction of noise and disturbance in this location.
9. Taking all the above into consideration, the development does not harm the living conditions of occupiers at 664 Chester Road. The Council's decision notice refers to saved Policies 8.26 and 8.27 of The Birmingham Plan, Birmingham Unitary Development Plan 2005 (adopted July 1993) however these do not appear to be relevant to the appeal proposal as they concern the subdivision or conversion of properties into self-contained dwelling units. Accordingly, I have relied upon the guidance at paragraph 130 of the Framework, which states that developments should have a high standard of amenity for existing users which, for the reasons noted above, this proposal accords with.
10. The proposal would result in No 664, a single family dwellinghouse, being sandwiched between the HMO at the appeal property and No 666 on its other

adjoining side, which leads the Council to state that the development would fail to accord with criteria B of emerging Policy DM11 of the DPD. I note that the Council has suggested that a Lawful Development Certificate has been granted for No 664 for a change of use from a dwellinghouse to a small HMO. However, I do not know whether this is for an existing or proposed use and therefore, based also on the representation from the neighbour and observations at my site visit, the evidence is unclear on this point. Nevertheless, for the reasons noted above, whilst I attach moderate weight to the policy, given the character of the area as described above and evidence over the quality of the accommodation and the property's previous condition, I consider that in this case any such conflict with Policy DM11 is outweighed by the benefits of the development. Moreover, as the proposal would not result in harm to the living conditions of No 664 it therefore accords with the general aim of this policy to ensure that HMOs preserve residential amenity and the character of an area.

Conditions

11. The Council has recommended a time limit condition however this is not necessary as the use has already been implemented. A condition stating the approved drawings is necessary to provide certainty and there is nothing before me to suggest that the development has not been implemented other than in accordance with the submitted plans. A condition limiting the maximum number of residents is also necessary to avoid unacceptable harm by reason of noise to the living conditions of neighbouring occupiers.

Conclusion

12. For the reasons set out above, the proposal accords with the Framework when read as a whole and there are no material considerations, including the emerging DPD, that indicate a decision should be made otherwise. Therefore, the appeal should succeed.

H Ellison
INSPECTOR