



Appeal Decision

Site visit made on 21 December 2021

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th January 2022.

Appeal Ref: APP/Z0116/W/21/3281047

38 Toronto Road, Horfield, Bristol BS7 0JP

- 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 Andrew Milner of Agalsi Properties Limited against the decision of Bristol City Council.
 - The application Ref 20/04646/F, dated 6 October 2020, was refused by notice dated 24 February 2021.
 - The development proposed is the change of use of a 6 bedroom house in multiple occupation (C4) to a 7 bedroom house in multiple occupation (sui generis use class).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site is covered by an Article 4 Direction, which was adopted on 29 June 2020. This restricts permitted development rights for the change of use of a single dwelling house in use class C3, to a small house in multiple occupation (HMO) in use class C4.
3. The development was described on the application form as a change of use from a 6 bedroom HMO to a 7 bedroom HMO, which would constitute a change from a small HMO to a large HMO. However, the Council did not accept that the established lawful use of the site was as a small HMO. The Council did not change the description of development, but the officer report set out the reasoning, supported by a legal opinion. Consequently, the Council assessed and refused the application on the basis of a change of use from a single dwelling house to a large HMO.
4. The appellant has set out the reasons why they consider the established use of the site to be as a small HMO. Whilst I acknowledge the challenges and delays caused by Covid 19, within the context of an appeal under section 78 of the Act, it is not within my remit to determine the lawful use of the site. If the appellant would like a determination from the Council on the established lawful use of the site, without prejudice, they may make an application under section 191 of the Act. In the absence of agreement between the main parties, or a formal determination that the established lawful use is as a small HMO, I have determined this appeal on the basis of a change of use from a single dwelling house to a large HMO.

Main Issues

5. The main issues are the effect of the proposed development on:
- The living conditions of the occupants of 40 Toronto Road, with regard to noise and disturbance; and
 - The supply of family housing.

Reasons

Living conditions

6. The appeal site is one of a pair of semi-detached dwellings situated in a residential street of semi-detached and terraced dwellings. In common with others in the street, the dwelling is set back from the road by a modest front yard and includes a reasonable sized rear garden. The appeal dwelling has been extended at ground floor to the rear and also into the roof. The proposal would result in a HMO with 7 bedrooms and a shared kitchen and dining area.
7. The Bristol Local Plan Site Allocations and Development Management Policies 2014 (LP) Policy DM2 covers matters including the development of HMOs. Supplementary Planning Document Managing The Development of Houses in Multiple Occupation November 2020 (SPD) provides specific guidance on the implementation of LP Policy DM2. Amongst other things, Policy DM2 seeks to protect the living conditions of neighbouring occupants, by preventing harmful concentrations of HMOs. The SPD identifies situations where harmful concentrations of HMOs are likely to arise.
8. The Council has stated that 10 of the first 18 houses along Toronto Road are licensed HMOs. However, the stated proportion of dwellings in HMO use within what the SPD defines as the neighbourhood level, is 5.49%. The addition of the proposed HMO would therefore not take the proportion of HMOs at the neighbourhood level above the maximum of 10% which is set out in the SPD. The SPD also sets out that a harmful HMO concentration would arise at a street level, where an existing single dwelling house would be 'sandwiched' between HMOs. The Council have identified that 42 Toronto Road is a licenced HMO, meaning that the proposed development at No 38 would result in the single dwelling house at 40 Toronto Road being 'sandwiched' between two HMOs. This would amount to a harmful concentration of HMOs at a street level, as set out in the SPD.
9. The occupiers of an HMO are likely to lead lives which are independent from one another, whereas a family occupying a single dwelling house are more likely to carry out day to day activities together as a household. Seven individual people would likely have separate routines, with their attendant comings and goings, along with those of their visitors. The activity generated by this would be markedly more intensive than would reasonably be expected from a single dwelling, even one occupied by a large family. The increased level of activity would lead to an increased level of general noise and disturbance. This would be particularly intense for the occupants of No 40, who would experience the cumulative impact from both sides, as they would be 'sandwiched' between two HMOs. Consequently, the development would generate unacceptable levels of noise and disturbance which would be detrimental to the living conditions of the occupants of No 40.

10. The Council point to several noise complaints made in relation to the existing cluster of HMOs elsewhere on Toronto Road. By contrast, the appellant notes the lack of neighbour complaints in relation to the appeal site and states that a proactive approach to managing the property would mitigate noise and disturbance to a level no more than a standard family dwelling. However, as the noise and disturbance would be likely to arise from the normal way in which HMO properties are used, it would not be reasonable or enforceable to seek to mitigate this impact by the imposition of a planning condition.
11. The appellant argues that by improving the appearance of the property and the quality of accommodation, the neighbour experience has been improved. This may well be the case but does not outweigh the harm identified.
12. My attention has been drawn to two applications recently granted permission by Bristol City Council relating to the use of other sites as large HMOs. The appellant states that one was granted permission despite the already high concentration of HMOs at the neighbourhood level, and the other was granted permission despite noise concerns. Details of these applications are not before me, but I note that one site was already an established and lawful small HMO, and no 'sandwiching' of neighbouring properties has been mentioned for either site. Hence the context of the applications and the sites are different to this appeal. In any event, each case must be considered on its own merits.
13. The appellant has also drawn my attention to planning applications and an appeal decision from other planning authority areas. I have no details of these before me, but they were not determined against Bristol City Council policy, so have no direct bearing on this appeal.
14. I conclude that the proposed development would cause unacceptable harm to the living conditions of the occupants of 40 Toronto Road, with regard to noise and disturbance. Consequently, the development would not comply with LP Policies DM2 and DM35, or the guidance contained in the SPD. Together, amongst other things, these seek to ensure that development does not result in harmful concentrations of HMOs at the street level, particularly in regard to the sandwiching of single dwelling houses between HMOs, and that any unacceptable noise impacts are mitigated to an appropriate standard.

Supply of family housing

15. The appeal dwelling is already extended but the current size and configuration of the house and garden mean that it would be suitable for family accommodation, including those with children. The effect of the development would be that the house would no longer be available for family accommodation. However, the proposal does not include physical sub-division of the internal or external space, meaning it could fairly easily be turned back into a family dwelling. As a result, the development would not necessarily lead to the permanent loss of a family house.
16. As set out above, the proposed development would not take the proportion of dwellings in use as HMOs at the neighbourhood level above the maximum set out in the SPD. The majority of dwellings in the area would remain available for use as family dwellings. This means that, on balance, the proposal would have an acceptable impact on the overall supply of family housing in the area. Therefore, I find no specific conflict with the general principles of the Bristol Development Framework Core Strategy 2011 (CS) Policy BSC18.

17. The site is conveniently located in terms of access to transport and services and would seem to provide good quality, affordable accommodation. The dwelling has already been extended, but this proposal includes no physical changes, beyond a modest bin store to the front, and a cycle store to the rear. The Council has raised no issues with either of these elements or with regard to parking. Consequently, I have not been presented with evidence that leads me to conclude that the development would contravene LP Policy DM30, which relates to extension and alteration.
18. The lack of any clear conflict with CS Policy BSC18 or LP Policy DM30, does not outweigh the identified harm to the living conditions of the occupants of No 40, and the consequent conflict with LP Policies DM2 and DM35.

Conclusion

19. For the reasons given above and taking into account the development plan as a whole and all other matters raised, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR