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# Appeal Decision

Site visit made on 7 June 2022

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 8 July 2022**

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**Appeal Ref: APP/P4605/C/22/3295447**

**Land and buildings known as Carpenter Place, 101-105 Oldfield Road, Birmingham B12 8TN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Eco Property Services (West Midlands) Ltd against an enforcement notice issued by Birmingham City Council.
  - The notice, numbered 2020/0444/ENF, was issued on 3 March 2022.
  - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use to a homelessness hostel (Sui Generis) in the approximate position marked in green on the attached plan.
  - The requirements of the notice are to cease the use of the premises as a homelessness hostel (Sui Generis).
  - The period for compliance with the requirements is: Six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. The appeal is dismissed, 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.

## Background

2. The appeal site comprises a two storey H-shaped building located on Oldfield Road in Sparkbrook. The immediate surrounding area is mainly residential with rows of terraced housing opposite the site, to the rear and to the west side. The site is bounded by Pickwick Park to the east. An area of hardstanding to the front of the building provides off street parking spaces with access from Oldfield Road. Outdoor space, which is mainly laid to grass, surrounds the building and is available for use by the occupants of the appeal site. The previous use of the site was as a care home for elderly residents.
3. The site, which has been operating as sheltered accommodation for vulnerable and homeless people since April 2020, has a total of 33no. self-contained one-bed apartments with a small kitchen and bathroom, and 10 bedsits with access to shared bathrooms on both floors. On the ground floor, there is an entrance lobby with a small side office that was occupied by a security person, a laundry, a communal room and adjoining kitchen.

4. A retrospective application<sup>1</sup> was submitted to the council on the 31 September 2021 for the 'change of use from residential care home (Use Class C2) to homelessness hostel (Sui Generis) and formation of hardstanding for additional car parking areas and associated works'. The application was refused on the 4 February 2022.
5. The hostel is occupied by over 18s and there is no time limit for residents living within the accommodation, although the purpose is to provide a steppingstone to progress towards a more independent and unsupported way of living. There are no restrictions on residents' movements inside or outside the site but access for visitors is restricted to between 9am and 9pm. The staff organisation chart shows the appeal site is looked after by 6 members of staff: operations/company manager; compliance officer; department manager; and 3 support staff. All staff work Monday to Friday from 10am until 5pm and are also on 24 hour standby for emergencies. External support workers who specialise in substance misuse, and Council Social Services, also visit the residents as required. At the time of the appeal, it was estimated that 40% of the residents require this type of external support as frequently as once a week to once a month.

### **The appeal on ground (a) and the deemed planning application (DPA)**

#### **Main Issues**

6. This is the effect of the development on i.) the character of the area with particular regard to the living conditions of local residents in terms of disturbance, crime and disorder and fear of crime; and ii.) the living conditions of occupants of the appeal site.

#### **Reasons**

*Character of the area with particular regard to the living conditions of local residents*

7. Policy PG3 of the Birmingham Development Plan 2031 (adopted 2017) (BDP) states, amongst other things, that all new development should reinforce or create a positive sense of place and local distinctiveness, with design that responds to site conditions and the local area context and create safe environments that design out crime. Policy TP27 of the BDP states that new housing is expected to, amongst other things, contribute to making sustainable places by providing a wide choice of housing tenures to ensure balanced communities catering for all incomes and ages. Policy DM2 of the Development Management in Birmingham 2031 (adopted December 2021) (DMB) requires all development to be appropriate to its location and not result in unacceptable adverse impacts on the amenity of occupiers and neighbours by way of, amongst other things, compatibility of adjacent uses, noise, safety considerations, fear of crime and anti-social behaviour. Policy DM12 of the DMB states that specialist accommodation will be supported where, amongst other things, it will not lead to an unacceptable adverse impact on the amenity of the area and the scale and intensity of the proposed use is appropriate to the size of the building.
8. The appeal site is surrounded by residential properties with neighbouring buildings within close proximity to the hostel. The gardens of residential

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<sup>1</sup> 2021/08483/PA

properties along Kingsley Road adjoin the appeal site and the separation distance between windows is reported as being approximately 20m. To the rear, the side wings of the hostel extend to the boundary with neighbouring properties. Whilst the hostel is a large, detached building in its own grounds, the space around it is confined. This results in separation distances between the hostel accommodation and the windows and private outdoor space of neighbouring properties being compromised.

9. The hostel provides accommodation for a large number of residents who are accommodated as single individuals. By the nature of the hostel user and through an absence of a suitable alternative, individuals would likely spend much of the 24 hour period in their own rooms or congregating outside the premises. Although noise disturbance within the building could be controlled to some extent, normal noise levels created by an individual would be exacerbated by the sheer number of residents accommodated at the hostel. These noise levels would be greater than expected in an area mainly occupied by single households and would create further disturbance during periods when windows would be left open, which could at times be where a degree of peace and quiet would be typical and when good weather encourages outdoor get togethers.
10. Comings and goings are more probable over shorter periods for trips to the shops and visits to friends. As there are no restrictions of movement for residents, this level of activity can continue during all hours of the day and night. Whilst there is a curfew on visitors to the hostel between the hours of 9.00pm and 9.00am, there is no control on people congregating outside the property where noise and disturbance would be likely. Moreover, there seems to be no restrictions on visitor numbers, and this could create a far greater level of disturbance than that created by the housed residents both inside and outside the appeal site.
11. There is clearly an issue with the use of the site. Objections from residents and a petition with circa 100 signatures have been submitted against the appeal. The appellant acknowledges that this type of accommodation 'will always pose a risk of creating potential issues with anti-social behaviour and fear of crime'. But submits that the recorded incidents were due to a small number of individuals, who have since been evicted, and ineffective management, which has been replaced. The appellant notes that there had been no recorded incidents at the property since the beginning of July 2021.
12. However, the council's submissions disclose reports of involvement with West Midlands Police from April 2020 to April 2022, which includes logs on incidents occurring since July 2021. Whilst details of each incident are limited, I have no reason to believe such incidents have not occurred. The ongoing and cumulative picture painted of those incidents supports the view that the hostel gives rise to a greater level of crime and fear of crime than that which would normally be expected in the context of the surrounding residential area. This undoubtably demonstrates the negative impact the hostel has had and continues to have on people who live and use the immediate area.
13. The appeal submissions include a Hostel Management Plan dated December 2021 (HMP). The purpose of which is said to form the basis of a robust and practical response to the previous issues experienced by the hostel and the concerns raised by the Police and local residents.

14. The appellant indicates that occupants are provided with, and must sign, a copy of the general rules of the hostel which are set out in the Tenant Excluded Licence Agreement. The residents are bound by these rules and codes of conduct during their stay at the hostel which, amongst other things, apply a zero-tolerance approach to matters regarding noise and general disturbance and state that these issues may lead to the eviction of residents.
15. In addition, the appellant indicates that the company operates an open-door policy that aims to direct and deal with any complaints that may arise from local residents. In response to existing complaints, it is intended to provide additional external lighting and security measures with an increase in CCTV cameras from 15 to 42 in and around the premises and for a security team to be present at the hostel 24 hours a day, 7 days a week, 365 days a year. It is claimed that the implementation of these security measures would have a positive effect on the disturbance from comings and goings by residents and anti-social behaviour.
16. The extra measures proposed by the HMP and suggested by the appellant in their submissions, such as restricting access to the open space within the appeal site, seem to me to confirm that the hostel is inappropriately located. Whilst the proposed measures may assist with the level of antisocial behaviour that has been reported, it would not overcome the increased levels of noise and disturbance that would arise simply from the daily activities and comings and goings of a large number of individuals living in the hostel. This would also likely increase in line with the proposed recommendations to place additional staff working a 24 hour shift pattern. The appellant compares the appeal proposal to the previous use as care home regarding the level of activity generated. However, the two uses vary significantly in terms of accommodation provided and are defined by separate use classes accordingly.
17. There is clearly a need for such accommodation to address increasing shortages in affordable housing and rising levels of homelessness. Whilst I acknowledge the appellant's intentions and their suggestion of a temporary consent to allow time to consider the proposed improvements, the site has been operating for 2 years, during which time improvements would have been expected. I note the appellant chose not to implement some proposals due to the uncertainty of ongoing enforcement action. However, the use of the appeal site has continued to have a detrimental effect on occupants of neighbouring dwellings and others using the area. This is evident from the submissions from interested parties and the Police incident reports. For these reasons I consider that allowing the use to continue for a further two years under a temporary consent would not be acceptable.
18. Policy TP27 of the BDP promotes sustainable neighbourhoods which are characterised by a wide choice of housing sizes, types and tenures to ensure balanced communities. However, the use as a hostel accommodating up to 43 residents in these circumstances contributes to an increase in activity within the area and has an unacceptable impact on the residential amenity of local residents by way of noise and general disturbance, crime and disorder and the fear of crime. The use is over-intensive for the size of the site and its context, resulting in a negative impact on the residential character of the surrounding area. This does not lead to a balanced community but undermines the quality of life and community cohesion and resilience. I am not satisfied that suitably

worded conditions to control the implementation of a management plan and other such matters would overcome the harm identified.

19. Overall, I consider that the use conflicts with Policy PG3 and the essence of Policy TP27 of the BDP, the Specific Needs Residential Uses SPG and saved paragraphs 8.28 and 8.29 of the Birmingham Unitary Development Plan 2005 (UDP) which require that hostel accommodation should not cause demonstrable harm to the residential amenity of occupiers of nearby properties by reason of noise and disturbance nuisance. There is further conflict with the National Planning Policy Framework (the Framework) which promotes safe communities where crime and disorder, and the fear of crime do not undermine the quality of life or community cohesion with a high standard of amenity for existing and future users.

*Living conditions of occupants of the appeal site*

20. The council considered in its reasons for issuing the notice that hostel use provides inappropriate apartment/bedsit sizes and insufficient communal spaces for its residents. Therefore, the use results in inadequate and unsatisfactory living conditions for occupiers of the site in conflict with local policy.
21. However, there appear to be no relevant policies for standards for internal living space for hostel accommodation. I am also not aware of space standards for shared internal facilities in these circumstances and as stated by the council in its statement, the hostel would not need to comply with National Described Spacing Standards. Furthermore, although the Specific Needs Residential Uses SPG was provided by the council in its reasons for issuing the notice and further referred to in its submissions, size requirements do not relate to hostel accommodation.
22. Nevertheless, Policy DM12 of the DMB requires that accommodation and facilities for specialist accommodation<sup>2</sup>, including outdoor amenity space and provision for safety and security, is suitable for intended occupiers. Although there is no apparent concern about the available external space, the provision of internal shared facilities is considered insufficient.
23. The hostel provides one communal room with an adjoining kitchen, which appeared to provide basic equipment. These rooms are available for use by all residents although the amount of time they are available is restricted. At the time of my visit, which was around 1pm on a warm summer's day during the week, there appeared to be no residents using the communal room or the kitchen or the private outdoor garden space. However, part of the communal room was set aside and being used as office space for a number of staff.
24. The communal space is not a 'comfortable' space, but it is a space that should be available to allow residents to socialise away from their rooms or to have space within a different set of 'four walls'. Furthermore, a communal space should provide facilities to allow or encourage leisure use or a form of entertainment.
25. Overall, I find that the hostel lacks appropriate internal communal facilities for accommodation of this size. In my view, an absence of sufficient internal communal spaces is likely to generate more comings and goings as residents

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<sup>2</sup> This is defined in para 4.28 as housing that meets the needs of specific groups of people and can include hostels

leave the property to escape their rooms and meet with others. This undoubtedly leads to an increase in the level of noise and disturbance beyond the hostel.

26. Communal space is an important facility especially where the accommodation is for separate individuals and where the private accommodation, although acceptable, is limited in size. It is particularly important to provide suitable shared space for those who are accommodated in bedsitting rooms and also to provide space to accommodate visitors whether personal or professional. Although the accommodation is classed as temporary, there seems to be no time restriction on how long residents can stay. It is reported that within the last 2 years only 5 residents have moved on to permanent accommodation elsewhere. Whatever the length of stay of the 43 residents, the hostel should provide living accommodation for residents that provides a positive and welcoming environment. Provision of such communal facilities would allow the residents to socialise and pursue recreational activities and would also be an attractive alternative for those less willing/able to use the outdoor spaces or chose not to for reasons such as inclement weather.
27. The change of use of the building to hostel accommodation does not provide access to high quality and useable indoor amenity space which is suitable for the residents of the hostel. This is contrary to Policies DM2 and DM12 of the DMB, the general requirements of the Places for Living SPG and the Framework. Whilst Policies PG3 and TP27 of the BDP, are more general in respect of place making and sustainable communities, and I consider that in these circumstances, the contents are not directly applicable, although the underlying principles are relevant.

### **Other Matters**

28. The appellant has brought my attention to examples of hostel accommodation within Birmingham that has been looked upon favourably by the council. The examples are of various sizes of accommodation in different styles of property. Although the provided schemes may have similarities in providing inner city accommodation for the homeless, I do not have the full circumstances of the individual cases which has resulted in planning approval. In any event, each proposal for hostel accommodation should be considered on its own individual merits.
29. Both the Framework and Policy PG3 of the BDP encourage the efficient and best use of land and buildings, especially for meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. The existing building is said to have been specifically designed as a care home for the elderly, and the appellant considers its size, internal layout and design as ideal for the type of specialist accommodation currently operating from the property. Whilst alternative uses for the property such as a data centre and a community use have apparently been considered, it is stated that these would be unacceptable in principle due to locational requirements for such uses within existing local centres and allocated employment areas. Whether that is the case for those uses, in the absence of any evidence, I am not persuaded that there are no other appropriate alternative uses for the building.

**Conclusion on ground (a) and the DPA**

30. Although I have found that the size of the apartments/bedsits is not inappropriate, I have identified considerable harm to the character of the area with particular regard to the living conditions of local residents and also the living conditions of existing and future occupants of the hostel by reason of insufficient internal communal facilities. There are no material considerations that indicate the DPA should be determined other than in accordance with the Development Plan. For the reasons given, the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the DPA.

*SA Hanson*

INSPECTOR