



Appeal Decision

Site visit made on 17 January 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2023

Appeal Ref: APP/P4605/W/22/3306308

5 Lime Avenue, Birmingham B29 7AJ

- 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 Babetas UK Limited against the decision of Birmingham City Council.
 - The application Ref 2022/04804/PA, dated 13 June 2022, was refused by notice dated 9 August 2022.
 - The development proposed is the change of use from a 3 bedroom House in Multiple Occupation to a Small House in Multiple Occupation (Class C4).
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from a 3 bedroom House in Multiple Occupation to a Small House in Multiple Occupation (Class C4) at 5 Lime Avenue, Birmingham B29 7AJ in accordance with the terms of the application, Ref 2022/04804/PA, dated 13 June 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan – Drawing no 3, Existing & Proposed Floor Plans – Drawing no 2.
 - 3) Within three months of the date of this decision secure and covered storage for 5 cycles shall be provided within the curtilage of the property and maintained thereafter.
 - 4) The development hereby permitted shall be occupied by a maximum of 5 persons at any one time.

Procedural Matter

2. The Council's decision notice refers to guidance contained within the 'Places for Living' Supplementary Planning Document (SPD). I am aware though that since the determination of the application this SPD has been replaced by the Birmingham Design Guide (adopted September 2022) (BDG). The appellant has referred to parts of the BDG in their statement of case and has had further opportunity to provide comment on it during the appeal process. As such, I do not consider that the appellant has been prejudiced by this change and I have determined the appeal accordingly.

Main Issue

3. The main issue is whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to outdoor space.

Reasons

4. The appeal site consists of a mid-terrace two-storey dwelling situated within a predominately residential area. The property currently benefits from an extant planning permission¹ which enables the use of the property as a 3-bedroom House in Multiple Occupation (HMO). The submitted floor plans detail that the appeal proposal would increase the number of bedrooms at the property to 5.
5. Policy DM11 of the Development Management in Birmingham Development Plan Document (adopted December 2021) (DPD) relates specifically to HMOs. Amongst other matters, Policy DM11 states that proposals for the intensification or expansion of an existing HMO will be permitted where they would not give rise to unacceptable cumulative impacts on amenity and would provide high quality accommodation with adequate living space, including outdoor amenity space.
6. Further guidance regarding the provision of private outdoor amenity space is contained within the BDG, which states that for an HMO 10m² per resident should be provided. The Council's Houses in Multiple Occupation Supplementary Planning Document (adopted April 2022) (HMOSPD) repeats the requirement for 10m² of outdoor amenity space per resident, whilst also stating that the external area serving the property should be of sufficient size to accommodate waste storage requirements, cycle parking, and space for outdoor clothes drying.
7. The appeal property provides two areas of outdoor amenity space for its occupiers, with one located to front and one to the rear. The amenity space to the rear is enclosed by timber fencing and a wall and can be accessed via an alleyway as well as through the property itself. The Council suggest that this rear amenity space measures around 3.5m², however it was clear from my site visit that its size was in fact closer to the 10m² stated by the appellant. The area to the front of the property measures around 12m² and is enclosed by timber fencing measuring roughly 2 metres in height. Accordingly, the property benefits from a total of approximately 22m² of outdoor amenity space.
8. The Council however disputes whether the amenity space to the front of the property could be considered 'private'. Unlike many properties in the surrounding area, the property does not front onto a road but instead fronts onto a pedestrian alleyway which serves a limited number of other dwellings. Consequently, the front amenity space is located in a relatively quiet location with a limited level of footfall passing the property. Additionally, the existing timber fencing screens this area from the view of any passers-by and the ground floor windows of nearby properties.
9. Whilst I acknowledge that there would be an element of overlooking of this area from the first-floor windows of properties opposite, this would remain the case for the current permitted use of the appeal property as a 3-bedroom HMO. Furthermore, I find that the relationship between the first-floor windows opposite and the amenity space at the property would be no different to those

¹ Council Ref: 2020/09687/PA

which exist between other properties on Lime Avenue or that can be found in other similar densely developed urban areas. Accordingly, I find that the amenity space to the front of the property would be sufficiently private so to afford useable outdoor amenity space for future occupiers. Although visitors would likely access the property through this space, I do not consider that this detracts from its useability.

10. On the basis that each of the proposed 5-bedrooms would be single occupancy, the outdoor amenity space provided would fail to meet the 50m² stipulated in the BDG and HMOSPD. Notwithstanding this shortfall, I find that the front and rear outdoor spaces would still be of sufficient cumulative size to be able to accommodate waste storage bins, cycle storage, and allow for other domestic activities such as drying clothes or sitting outside should the occupants so desire. As a result, I am satisfied that the property would provide adequate outdoor amenity space and therefore would not have a harmful impact upon the living conditions of future occupiers.
11. The appellant has also drawn reference to the presence of nearby public open spaces, including Selly Park and Bournbrook Recreation Ground, that would be accessible to future occupiers. Though I agree with the Council that these spaces could not in anyway be considered 'private', they nevertheless provide supplementary outdoor space for occupants to use in addition to the private outdoor amenity space that exists at the appeal property.
12. For the above reasons, I therefore conclude that the proposed development would provide acceptable living conditions for future occupiers with regard to outdoor space. The development would therefore accord with Policies PG3 and TP27 of the Birmingham Development Plan (adopted January 2017) and Policies DM2 and DM11 of the DPD. These policies seek, amongst other matters, to ensure that developments do not result in unacceptable adverse impacts on the amenity of occupiers and provide high quality accommodation with adequate living space, including outdoor amenity space. Whilst there would be conflict with the guidance contained within the BDG and HMOSPD, that is outweighed by the lack of any significant harm in this case.

Other Matters

13. The appellant has referred to the ability to convert the property back to a use falling within Use Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) without the need for planning permission as a potential 'fallback' position. This includes the potential use of the property as a 5-bedroom dwelling which could be occupied by 5 or more family members. However, as I have found that the proposal would not result in any harm, there is no need for me to consider any potential fallback position further.
14. The Council has stated that a number of other properties in Lime Avenue were converted to HMO's under permitted development rights prior to the introduction of a City Wide Article 4 Direction in June 2020. Whilst that may be the case, I have determined the appeal based on its own planning merits.

Conditions

15. The Council has provided suggested conditions which I have considered against the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework). As a result, I have amended the wording of some for clarity.

16. In addition to the standard time limit condition, I have imposed a condition concerning the approved plans for clarity. In the interests of sustainable travel, a further condition is imposed requiring that within three months of the date of this decision secure and covered storage for 5 cycles shall be provided within the curtilage of the property.
17. The Council also suggested that a condition limiting occupancy to 5 persons should be imposed. Both main parties have referred me to previous appeals where such a condition has either been attached or considered not enforceable due to the potential difficulty of detecting a breach. Furthermore, the appellant contends that such a condition would not be reasonable as the number of occupants would be controlled by the HMO licensing regime under the Housing Act 2004, as well as the limitations stipulated under Use Class C4 of the UCO.
18. However, given the size of the dwelling and in particular its outdoor amenity space, in this instance I find that such a condition is both reasonable and necessary to ensure a suitable standard of living accommodation for future occupiers. I am also satisfied that the condition is suitably precise, and that it would be possible for the Council to undertake enforcement action if a breach became apparent.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed.

David Jones

INSPECTOR