



Appeal Decision

Site visit made on 27 March 2023

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2023

Appeal Ref: APP/Z0116/W/22/3303057

21 Oak Road, Bishopston, Bristol BS7 8RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Nigel Green against Bristol City Council.
 - The application Ref 21/05341/F, is dated 30 September 2021.
 - The development proposed is change of use from residential dwellinghouse (Use Class C3) to a House in Multiple Occupation (HMO) for up to 6 residents (Use Class C4), with associated cycle and refuse/recycling storage.
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Decision

1. The appeal is dismissed and planning permission is refused for change of use from residential dwellinghouse (Use Class C3) to a House in Multiple Occupation (HMO) for up to 6 residents (Use Class C4), with associated cycle and refuse/recycling storage.

Application for costs

2. An application for costs was made by Mr Nigel Green against Bristol City Council. This is the subject of a separate decision.

Preliminary Matters

3. The Council did not determine the application. However, it has indicated that had it been able to issue a decision, it would have refused permission on the grounds that the proposal would result in a sandwiching effect on existing dwellings and an overconcentration of Houses in Multiple Occupation (HMOs) in the immediate area.
4. The application sought permission for a change of use to an HMO for up to 8 residents (*Sui Generis*). It was subsequently amended to reduce occupancy to up to 6 persons. A revised description of development was agreed between the parties, and I have used this wording in the banner heading. My decision is based on the amended scheme.
5. The appeal property was unoccupied at the time of my visit. However, I saw that it had been recently refurbished and furnished ready for use as an HMO.

Main Issue

6. The main issue is the effect of the proposal on community balance and cohesion, having regard to relevant development plan policy and other material considerations.

Reasons

7. The appeal relates to a mid-terraced house within a street of similar properties. The plans show the existing layout as having four bedrooms, two of which are within a loft conversion. The proposal is for these to remain as bedrooms, with the living room at the front of the property being repurposed as a further bedroom. The current kitchen/dining area at the rear of the property, and partly within a rear extension, would remain as a communal area.
8. This area is covered by an Article 4 Direction which removes permitted development rights for the conversion of a residential dwelling (Use Class C3) into a small HMO (Use Class C4). The removal of permitted development rights does not suggest that all HMOs are inappropriate, only that proposals should be assessed against the development plan and other material considerations.
9. The most relevant development plan consideration is Policy DM2 of the Bristol Site Allocations and Development Management Policies Local Plan (2014) (LP). This explains that proposals for the conversion of existing dwellings to HMOs will not be permitted where the development would harm the residential amenity or character of the locality or create or contribute to a harmful concentration of such uses within a locality.
10. The Council adopted the 'Managing the development of houses in multiple occupation' Supplementary Planning Document (SPD) in November 2020. This provides guidance on the implementation of LP Policy DM2 with the aim of encouraging balanced communities in Bristol and achieving good standards of accommodation where new HMOs are permitted. The document has been prepared in accordance with part 5 of the Town and Country Planning (Local Planning) (England) Regulations 2012 and as such it will have been the subject of public consultation. It is an important material consideration to which I have attached significant weight.
11. LP Policy DM2 acknowledges that shared housing makes an important contribution to people's housing choice within the city. However, it also recognises that concentrations of such uses can give rise to harmful impacts. Section 1.3 of the SPD provides a list of such impacts which includes reduced social cohesion, reduced community engagement from residents, noise and disturbance, detriment to visual amenity from poor waste management and highway safety concerns from congested on-street parking.
12. The SPD seeks to define what is meant by a 'harmful concentration' of HMOs within development plan policy. It does this via two tests: the Sandwiching Assessment and the HMO Threshold Assessment. The former states that proposals are unlikely to be consistent with Local Plan policy where they would result in an existing C3 property or properties being sandwiched by HMOs on both sides. Paragraph 4.1 of the guidance provides a non-exhaustive list of potential sandwiching situations, including where up to three single residential properties are located between two single HMO properties. Under the Threshold Assessment, proposals which would result in more than 10% of the total dwelling stock being occupied as HMOs within a 100m radius of the application property are unlikely to be consistent with Local Plan policy. The SPD sets out in some detail how both tests will be applied, including worked examples.
13. Officers applied the SPD tests to the appeal scheme and concluded that their requirements were met. Although the case was recommended for approval, the

Development Control Committee resolved to defer the application until a future meeting to allow time for officers to 'bring back valid reasons to refuse the application'. Analysis of the minutes and subsequent email correspondence, between the appellant's agent and the case officer, suggests that members of the Committee were seeking further investigation of the number of HMOs in the area in response to concerns that the figures quoted in the report were inconsistent with information supplied by residents.

14. The officer report for Development Control Committee on 12 October 2022 indicates that circumstances had changed since the first committee meeting in that 7 more HMOs had been identified, through licensing, within 100m of the application site. Three of those are new licences. The threshold proportion under the Threshold Assessment is now calculated to be 11.98%. This is above what the SPD considers to be the likely tipping point, beyond which negative impacts to residential amenity and character are likely to be experienced and housing choice and community cohesion start to weaken.
15. One of the new licences relates to 15 Oak Road. The use of this property as an HMO means that the proposal would lead to a sandwiching effect on No 17 and No 19. There is no evidence before me to indicate that No 15 has planning permission for change of use. The appellant contends that permission could never be forthcoming, due to sandwiching effects with 11 Oak Road, itself a licensed HMO, and as such it is unreasonable to factor No 15 into the Sandwiching Assessment. Whilst I note this argument, it does not align with the methodology set out in Section 4.5 of the SPD which states that all licensed HMOs should be included in the assessments, in addition to all planning permissions for HMOs that are not licensed. Until such time as the planning status of No 15 is clarified, it is legitimate to treat No 15 as an HMO. Applying that approach, which fully accords with the SPD methodology, the proposal would fail the Sandwiching Assessment and Threshold Assessment.
16. It is suggested that any assessment should be based on the situation at the time the planning application was submitted. Whilst I note that reassurance was given to this effect by the case officer, there is nothing within the SPD to indicate that this is the correct approach. In my view, the decision should be made against the situation as it exists at the point of the decision. Although the SPD refers to the dataset being updated at fixed points in the year (quarterly), this is not a good reason to ignore the most recent information available. In the face of seemingly conflicting information, the Committee was within its rights to defer the application and instruct officers to make further investigations.
17. The appellant has provided census data to demonstrate that the Bishopston and Ashley Down ward has a mixed demographic. The information suggests that the supply of terraced family housing is good and that it is dominated by the owner-occupied sector, with headroom for further rental accommodation. I am told that the latter is borne out by research on the 'Spare Room' website. Based on the evidence, I agree that the loss of one family dwelling would have a negligible impact on housing mix and choice of homes in the ward. However, this does not address the harmful impacts which can often arise due to an overconcentration of HMOs at neighbourhood and street level. These impacts are measured using the assessment methodology contained in the SPD. Although the SPD has the status of guidance and not policy, it provides a robust and consistent basis for decision making. The proposal fails both tests

and this is sufficient to persuade me that it would have an unacceptable impact on community balance and cohesion in conflict with LP Policy DM2.

Other Matters

18. Occupants of the proposed HMO would rely upon existing on-street parking which evidence suggests is in short supply. The Highway Authority has indicated that the maximum parking standard for a 5-bedroom HMO would be the same as that applying to the existing use as a 4-bed dwelling. The working assumption here is that 40% of bedrooms would own cars. Although it is not clear where this figure is derived, it is important to note that the site is located within walking distance of the services and facilities on nearby Gloucester Road. The scheme would also make provision for cycle parking in line with the Council's minimum standards. On the evidence before me, the effect on parking provision would not be reason to dismiss the appeal.
19. I note the concerns regarding the transmission of noise through party walls. The appellant provided details of the noise mitigation measures proposed for the property and this was sufficient to satisfy the Council's Pollution Control Officer. I have no reason to take a different view.
20. Residents have alleged that 25 Oak Road is being used as an HMO. Investigations by the Council have since confirmed that this is not the case. The officer report for committee on 12 October 2022 states that the property has had either a joint tenancy (two people) or single tenant for more than two years. Consequently, the status of No 25 has had no bearing on my decision.
21. I have taken account of all other matters raised in representations, but none is so significant as to lead me to a different overall conclusion.

Conclusion

22. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Parker

INSPECTOR