



Appeal Decision

Site visit made on 25 April 2023

by S Crossen BA (Hons) PgCert PgDip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/P4605/W/22/3311140

54 Anderson Road, Birmingham B23 6NN

- 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 Ms Susan Lau against the decision of Birmingham City Council.
 - The application Ref 2022/02675/PA, registered 11 April 2022, was refused by notice dated 1 June 2022.
 - The development is a change of use to a children's care home (Use Class C2)
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development used in the heading above has been taken from the Council's decision notice and not from the planning application form. An amended description of development was agreed between the parties prior to the Council's determination, and I have determined the appeal accordingly.
3. The appellant's evidence suggests that the use of the property has already changed and at the time of my site visit, the property was already in C2 use, so I have assessed the appeal on that basis.

Main Issue

4. The main issue is the effect of the development on the provision of family housing in the area. The development is the use of the property as accommodation with care for a child or young person. Children are a group sharing a protected characteristic and therefore the Public Sector Equality Duty (PSED) applies¹ and as the use has already taken place, the Human Rights Act² also applies.

Reasons

Provision of family housing

5. Anderson Road is characterised by residential properties. The appeal site comprises a semi-detached property and surrounding garden.
6. Whilst the appellant states that the property has been used to house vulnerable young adults for the past 10 years, the planning application form describes the existing use as a domestic dwelling house. Moreover, the original description of development described the proposed development as change of use from C3(a)

¹ Section 149 of the Equality Act 2010.

² Section 8 of the Human Rights Act 1998.

to C3(b), both of which are a form of residential use. Having regard to the above, and to the lack of any definitive evidence which suggests that the existing lawful use of the property has changed from a single dwelling, it appears that the development has resulted in the loss of a dwelling. The submitted plans indicate that the dwelling contained three bedrooms.

7. Policy TP35 of the Birmingham Plan 2031, Birmingham Development Plan, Planning for sustainable growth, adopted January 2017 (BDP) states, amongst other things, that best use will be made of the existing dwelling stock and that the Council will seek to prevent the loss to other uses (through conversion or redevelopment) of housing which is in good condition or could be restored to good condition at reasonable cost and that the loss will only be permitted if there are good planning justifications or an identified social need for the proposed use.
8. Policy DM12 of the Birmingham Plan 2031, Development Management in Birmingham Development Plan Document adopted December 2021 (DMBDP) states that the conversions of existing dwellinghouses to specialist accommodation will be permitted where, amongst other things, it will not result in the loss of an existing use that makes an important contribution to the Council objectives, strategies, and policies.
9. The Council states that the highest net change in the number of homes required by 2031, as evidenced in the Strategic Housing Market Assessment (SHMA) (updated in 2013), is for three and four or more, bedroom homes, and that completions up to 2019 show that most of the housing provision has been in the form of one and two bed dwellings which is failing to meet the Councils housing needs. This evidence has not been disputed by the appellant.
10. The appellant states that placements like those which are provided by the development are scarce and that in the absence of such provision children could be placed hundreds of miles away from family. They further state that the appeal property is suitably placed in a diverse area. However, no specific evidence has been provided to demonstrate the demand for, and supply of care placements in the area and how this compares to the demand and supply of family housing. There is no evidence before me of any planning justification or evidence of an identified social need and that the loss of a 3 bedroom family home would not result in the loss of an existing use which makes an important contribution to the Councils objectives, strategies and policies in respect of providing housing which caters for all incomes and ages.
11. Consequently, I conclude that the development has harmfully reduced the provision of family housing in the area, for which I give significant weight. The development is therefore contrary to Policy TP35 of the BDP, Policy DM12 of the DMBDP, and contrary to relevant paragraphs of the National Planning Policy Framework (the Framework) which seek to ensure that a sufficient number and range of homes can be provided to meet the needs of present and future generations.

Current occupation by Children

12. In reaching my decision I note the details provided by the appellant regarding the care provided, the ethos of the home, how it serves the needs of those who live there, and the experience and qualifications of staff and management.

13. The appeal property is already in use, and I recognise that the failure of this appeal would put the occupation of the dwelling by children at risk. This would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act. Because children also have protected characteristics, I have had due regard to the PSED.
14. The evidence from the appellant suggests that the children's best interests are to provide them with a home in the locality of the appeal site. I attach significant weight to the benefit the development affords to current and potential future occupiers and its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. Moreover, whilst as stated above, there is no specific evidence regarding the need for such housing in the area, the Framework states that it is necessary to ensure that the needs of groups with specific housing requirements are addressed. A grant of planning permission would ensure the retention of a home for children, and this would be a clear benefit of the development.
15. Section 38(b) of the Planning and Compulsory Purchase Act, 2004 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found that the development conflicts with the development plan as it has resulted in the loss of family housing in the area. I attach significant weight to this harm. Set against this harm is the significant benefit that the development affords to current and potential future occupiers, albeit that there is a lack of evidence regarding the need for the provision of such care facilities in the area.
16. Dismissing the appeal would interfere with the occupant's rights to peaceful enjoyment of their possessions and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act. However, those are qualified rights; interference with them in this instance would be in accordance with the law and in pursuance of a well-established and legitimate aim: to ensure a range of dwellings in the area, including family housing, and to contribute to a balanced community. I have had due regard to the PSED but the harm caused by the development outweigh its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others. I conclude that it is proportionate and necessary to dismiss the appeal.
17. There is no evidence to suggest that occupiers of the property would be made homeless, rather that they would be re-located elsewhere. There will be no violation of the human rights of the occupants and the protection of the public interest cannot be achieved by means that are less interfering with their rights

Conclusion

18. For the reasons given above, the development is contrary to the development plan as a whole. There are no material considerations, including the Framework, which indicate that I should take a decision otherwise than in accordance with the development plan in this case. Therefore, I conclude that the appeal should be dismissed.

S Crossen

INSPECTOR