



Appeal Decision

Site visit made on 6 June 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th July 2023

Appeal Ref: APP/P4605/W/23/3316275

237 Dudley Road, Birmingham B18 4EJ

- 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 Philip Gayle of Servol Community Services against the decision of Birmingham City Council.
- The application Ref 2022/06999/PA, dated 12 September 2022, was refused by notice dated 7 December 2022.
- The development proposed was originally described as "Change of use from existing Class E to C2 class use for sheltering patient who suffer from mental health issues. The proposal will include a small staff area, a communal area, 4 self-contained and 2 bedroom units. The proposed development also includes installation of window on the east elevation for first floor and loft floor."

Decision

1. The appeal is dismissed.

Main Issues

2. The Council cites 4 reasons for refusal, but to avoid unnecessary duplication I have combined refusal reasons 3 and 4. The main issues in this appeal are therefore:
 - Whether the proposed development would provide acceptable living conditions for future occupants, with regard to the provision of private outdoor amenity space,
 - The effect of the proposed development on pedestrian and highway safety with regard to parking, and
 - Whether the proposal would create a safe environment, with particular regard to anti-social behaviour and fear of crime.

Reasons

Living conditions

3. The appeal site comprises a 3-storey property at the end of a row of shops in a mixed residential and commercial area on the corner of Dudley Road and Bellefield Road. Public open space in the form of Summerfield Park is nearby on the other side of Dudley Road.
4. The proposal is for the change of use of the property into a Class C2 use¹ which is a category for residential institutions that includes the provision of residential accommodation to people in need of care. The submitted plans show the living

¹ Under the Town and Country Planning (Use Classes) Order 1987 (as amended)

accommodation for occupants would comprise 4 no. units with ensuite bedroom and a kitchenette, with sink and microwave, and small dining area, and 2no. ensuite bedroom units (one on the ground floor and one on the top floor). A communal kitchen/dining area is also shown on the ground floor, as well as a staff room and utility/storage room.

5. There would be two small areas of outside space. One would be the rear yard on the ground floor measuring about 9m² and the other would be a roof garden on the first floor measuring about 9.6m².
6. The Council raises some uncertainty as to whether part of the premises would be run as a House in Multiple Occupation (HMO) and hence refers to outdoor space standards in Policy DM11 of the Development Management in Birmingham Plan (the DMB) which requires 10sqm of outdoor space per resident for an HMO. However, the proposal is for a Class C2 use. City Note LW-13 of the Council's 'Healthy living and working places city manual', which forms part of the Birmingham Design Guide (the Design Guide), requires minimum outdoor amenity space for Class C2 uses to be 10sqm per resident, which can be provided communally or privately.
7. There are 6 rooms offering accommodation for a minimum of 6 residents, that would equate to the need for 60sqm of outdoor space. Therefore, the proposed approximate 18sqm of outdoor space would fall significantly short of the minimum requirement.
8. Furthermore, the two areas of open space can only be accessed via individual units. The ground floor rear area would be accessed through a door in the ensuite bathroom of the rear unit. The roof garden would be accessed via the hallway of the first-floor rear bedroom unit. Therefore, whilst occupants of 2 units would have access to their own private outdoor space, occupiers of the remaining 4 units would have no access at all to any private outdoor space, communal or private.
9. I saw that Summerfield Park was within easy walking distance on the other side of Dudley Road. It was an attractive green space with places for sitting that could provide future occupants with opportunities for outdoor recreation and general well-being. However, the space is not dedicated to occupants of the proposed development and some vulnerable residents may not feel comfortable using public open spaces. The proximity of Summerfield Park does not compensate for the significant lack of on-site outdoor space.
10. The lack of outdoor space, either dedicated to each resident or configured for communal use, would leave future occupants with insufficient private outdoor space and hence provide unacceptable living conditions.
11. Accordingly, the proposal would be contrary to Policies PG3 and TP27 of the Birmingham Development Plan (the BDP) and Policy DM2 of the Development Management in Birmingham Plan (the DMB). Collectively these seek, amongst other things, to ensure that attractive environments are provided, that occupants have access to high quality and usable amenity space and that development does not have an adverse impact on the amenity of occupiers. It would also be contrary to the advice in the Design Guide.

Highway and pedestrian safety

12. The appellant has experience of looking after people with enduring mental health problems at a number of other centres it operates, including nearby at Gillott Road and Summerfield Crescent. They state that occupants of its facilities do not drive due to their medical issues and hence there would be no demand for parking from occupants. There is a regular bus service along Dudley Road with bus stops nearby that would offer easy access to public transport links. However, planning permission runs with the land so there would be no guarantee that in the future the premises would only be used by occupants who would be unable to drive.
13. The application form states there would be 6 part-time staff. According to Figure 3 of the Birmingham Parking Supplementary Planning Document² (the Parking SPD) the site would be located within Zone B and adjacent to Zone C. Appendix A then sets out the parking standards for a Class C2 use – for all Zones there would be a requirement for 1 parking space per 2 members of staff. The proposal would therefore require 3 parking spaces. The appeal site has no on-site parking.
14. The appellant confirms the scheme will be a 24-hour staffed premises, but it is unclear how many staff will be on the premises at any one time, or the frequency and duration of staff visits, including from health and other professional visitors. Without dedicated parking, the proposal would rely on staff and other visitors parking in the nearby streets.
15. There are double-yellow lines restricting parking on Dudley Road, but unrestricted on-street parking on Bellefield Road, a residential street of predominantly period terraced dwellings. On my visit, albeit a snapshot in time, I saw that parking spaces on Bellefield Road were limited such that I had difficulty finding somewhere to park. The road was well-used, and I saw a number of cars had been parked inconsiderately, making it more difficult for vehicles to manoeuvre and pass each other, especially near the junction with the busy Dudley Road.
16. There would be no guarantee that visiting staff would be able to park nearby. The appellant advises that staff would not necessarily need to park near the site as they would be able to utilise parking at the appellant's other facilities at Gillott Road and Summerfield Crescent, about a 10-minute walk through Summerfield Park. I do not regard this as a suitable or safe alternative for staff, particularly in the dark, wintertime, inclement weather and if staff were walking alone. The bus stops close by on Dudley Road could be used if any members of staff came by bus, but with staff working 24 hours public transport might not always be an option for some.
17. I therefore find it likely, in the absence of detailed information such as how staffing would operate, frequency and duration of visits, that staff would try and park on the streets near to the site, thereby increasing the demand for on-street parking and causing increased congestion and harm to highway and pedestrian safety. Accordingly, the proposal would be contrary to BDP Policies PG3 and TP44. Together these seek, amongst other things, to create safe environments and to manage demand to reduce the negative impacts of road traffic. It would also be contrary to the guidance in the parking SPD.

² November 2021

Safe environment

18. The courts have held that the fear of crime can be a material consideration if there is some reasonable, cogent evidential basis linking the proposed use or occupiers with criminal activity.
19. The nature of the use has been briefly described above, and the description of the development on the application form clearly states it is for patients who suffer with mental health conditions.
20. The Police state the only information they could find about the proposal was the description from the planning application, which is the description replicated in the banner heading of this decision. Based on that and the lack of information, the Police have raised a number of concerns about how the premises will be operated including the nature or severity of issues occupants may have. They also state that the area experiences a high demand for its services and that the top four recorded crimes for the area are violence, public order, vehicle crime and criminal damage.
21. The appellant, Servol Community Services, has submitted some information about itself with its appeal documentation, saying how since 1979 it has been supporting individuals with mental health issues and helping them on their journey to mental wellness. The appellant has been providing accommodation and services for people enduring mental health issues in Birmingham for over 40 years, and during the past 15 years has been working closely with Birmingham & Solihull Mental Health Foundation Trust, receiving most of its referrals from them. It is also regulated by the Care Quality Commission. The appellant also refers to other premises it operates nearby, although I have not been provided with any details of these and whether they have similar occupants and whether it would be run on a similar basis.
22. The premises would be staffed and monitored 24-hours a day and medication would be monitored. Staff would also support occupants with shopping and help them to access local amenities and recreational facilities. This indicates to me there would be significant supervision and interaction with occupants. I have no reason to believe the property would not be well managed. I have not been presented with any substantive evidence, including Police crime records, to link the proposed use or its occupants with criminal activity or anti-social behaviour, including any such evidence from other similar properties or those run by the appellant. Accordingly, I find the proposal would not conflict with BDP Policy PG3, which seeks, amongst other things, to create places that are safe.

Other Matters

23. I acknowledge the appellant's concerns with the Council's handling of the application. Any complaint the appellant has made with the Council is a matter between the parties. In reaching my decision I have been concerned only with the planning merits of the case.

Conclusion

24. There would be an unacceptable impact on the living conditions of future occupants from a lack of private outdoor amenity space and harm to highway safety due to a lack of parking. The absence of harm with regards crime carries

neutral weight in my consideration. The proposed development would not accord with the development plan as a whole and there are no other considerations identified above which outweigh this finding.

25. Accordingly, for the reasons given, the appeal should be dismissed.

K Stephens

INSPECTOR