



Appeal Decision

Site visit made on 26 September 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2023

Appeal Ref: APP/W2465/W/23/3321309

71-73 Rowsley Street, Leicester LE5 5JP

- 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 G Mawji against the decision of Leicester City Council.
 - The application Ref 20230116, dated 23 January 2023, was refused by notice dated 30 March 2023.
 - The development proposed is described as 'Construction of detached single storey building to form house in multiple occupation (4 Bed) (6 persons) at rear (Class C4)'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Based on the evidence submitted the appeal site is located in an area covered by an Article 4 Direction, which has the effect of requiring planning permission to be obtained for a change of use, which would otherwise be covered by "permitted development" rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This includes changes of use from Class C3 (dwellinghouse) to Class C4 (house in multiple occupation) (HMO). As a new build proposal, the Article 4 Direction is not applicable to the appeal before me.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) in September 2023, replacing the version published 20 July 2021. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

4. The main issues are:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) the effect of the development on the living conditions of the occupiers of neighbouring properties, with particular regard to noise and disturbance; and
 - iii) the effect of the development on the mix and balance of housing in the area.

Reasons

Character and appearance

5. The appeal site lies to the rear of Nos 71-73 Rowsley Street which is a two-storey detached building comprising flats. There is a gated vehicular access to the side of the property which leads to a hard surfaced area and a lawn.
6. The area surrounding the appeal site is residential development within a suburban setting. Properties in the area are largely two storey, semi-detached or terraced situated relatively close to each other behind uniform lines close to the back edge of the pavement with no off-street parking. Rear gardens of properties generally have deep plots. A limited number of outbuildings are found within these gardens, maintaining open views across them and a strong sense of spaciousness. This arrangement clearly defines a perimeter block pattern of development. Existing dwellings are of varied traditional appearance, including pitched tiled roofs and brick, tiled and/or rendered façades.
7. The proposal would introduce backland development which would contrast starkly with the prevailing pattern of development in the locality. Whilst I observed other structures within the rear gardens of properties these were ancillary domestic structures, not standalone properties. As such, the proposed development would be out of character with its surroundings and would harm the character and appearance of the area.
8. Although single storey, which would contrast with the prevailing scale of development in the locality, the design and external appearance of the proposal would not be harmful to the character and appearance of the locality. Furthermore, there would be limited views of the proposed building from the streetscene due to its location within the site, obscured by existing built development. However, this is a neutral matter and does not outweigh the harm arising from the positioning of the property in stark contrast to the established pattern of development.
9. Accordingly, the proposed development would be contrary to policies CS03 and CS08 of the Leicester City Local Development Framework Core Strategy Development Plan Document (2014) (CS), saved policy PS10 of the City of Leicester Local Plan (2006) (LP) and the Framework in regard to matters of character. These policies seek, among other matters, for development to assimilate with existing development, being sympathetic with local character.

Living conditions – existing occupiers

10. The proposed building would be positioned to the east of the appeal site within close proximity to the gardens and shared boundaries of adjacent residential properties. Adjacent properties have habitable room windows to the rear elevation at both ground and first floor level which face towards the appeal site.
11. The occupiers of an HMO are likely to lead independent lives from one another. Taking account of the size of the appeal proposal, the activity generated by a 4-bed (up to 6 people) HMO, and their associated comings and goings, along with those of visitors, would lead to a level of activity that would be more marked and intensive than that which could be reasonably be expected to be associated with a single household, even when occupied by a large family.

12. The layout plan shows parking, however, the application form does not differentiate between parking for the existing residents of the flats or the proposed occupiers of the HMO. The parking spaces are shown within close proximity to the rear windows of adjacent properties. Whilst the number of spaces, and re-configuration, would be similar to the existing parking provision on the site, the parking spaces would be shared by more occupiers with potentially more movements in this area.
13. The rear of the appeal site has a noticeably and distinctly different noise environment to that at the front. With the quieter nature of the surroundings at the rear the additional movements to the proposed building, including deliveries, visitors and occupants close to the rear garden of neighbouring properties would noticeably increase the noise environment and would result in disturbance to the existing residents. The intensification of the use of the appeal site would consequently be detrimental to the living conditions of existing occupiers by way of general noise and disturbance.
14. For the above reasons the proposed development would harm the living conditions of the neighbouring residential properties with particular regard to noise and disturbance. Accordingly, the proposal conflicts with Policy CS03 of the CS and saved Policy PS10 of the LP. Collectively, these seek, among other matters, for development to consider the effects on existing residents and to create a high standard of amenity for existing users. I also find conflict with paragraph 130 f) of the Framework which promotes a high standard of amenity for existing and future users.

Mix of housing

15. The site lies within an area covered by an Article 4 Direction seeking to retain family housing. However, as a new build the nature of the proposal differs from a change of use and would not have the same effect on housing mix. The proposal would provide additional accommodation and provide choice as promoted in paragraph 60 of the Framework.
16. The Council references the evidence base for the Article 4 Direction in its evidence for this appeal. Whilst the Council refers to an over-concentration of HMO's in its Statement of Case, 'significant' is not defined and limited evidence has been provided with an analysis to demonstrate that the number of HMOs in the area of the appeal site is currently significant and the housing mix unbalanced.
17. The Council argues that an over-concentration of HMO's can lead to fly-tipping. The proposal would provide for refuse and recycling to serve the development and I have no evidence to suggest that the proposal before me would give rise to fly-tipping.
18. For the reasons given above, I conclude that the development would not harm the mix and balance of housing in the area, with particular regard to an over-concentration of HMO's. I find no conflict with Policy CS08 of the CS, which states that new houses in multiple occupation requiring planning permission will not be permitted where they would result in a local concentration. Nor do I find conflict with Policy PS10 of the LP. I also find no conflict with the requirements set out in the Framework, which seek, amongst other things, to create neighbourhoods of choice, ensuring development has regard to the

character of the surrounding area and the size, type and tenure of housing need is considered.

Planning Balance

19. The Council cannot demonstrate a deliverable 5-year housing land supply. I note the contribution the proposal would make towards housing land supply and the benefits of providing a choice of accommodation. I also accept that the proposal would make efficient use of land and that the site is within an accessible location where there is policy support for the principle of residential development. Given the scale of the development, these benefits would be of limited weight in favour of the proposal. Having regard to Paragraph 11 d ii) of the Framework the adverse impacts of the development would significantly and demonstrably outweigh the limited benefits when assessed against the policies in the Framework when taken as a whole.

Other Matters

20. My attention has been drawn to a number of planning approvals which the appellant submits provides support for the proposal before me. From the limited evidence before me No 40 Highbury Road¹ relates to a larger development site where the site context differs to the appeal before me. No 98 Kedleston Road² relates to an ancillary domestic building and No 100 Kedleston Road³ a residential annex. I am satisfied that the proposals relate to development and site contexts that are substantially different to that proposed by this appeal. Accordingly, these decisions are of limited weight in my consideration of the issues affecting this proposal.

21. The appellant has drawn Policy H07 of the LP to my attention, however, this relates to flats and the conversion of existing buildings, and so is not determinative in this appeal.

Conclusion

22. For the reasons given above, the proposal would conflict with the development plan when taken as a whole, and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

R. Gee

INSPECTOR

¹ Ref. 20221012

² Ref. 20101169

³ Ref. 20221243