



Appeal Decision

Site visit made on 12 September 2023

by L Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 October 2023

Appeal Ref: APP/P4605/W/23/3320262

5 Bittell Close, Birmingham B31 4LH

- 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 Paul Brown against the decision of Birmingham City Council.
 - The application Ref 2022/04778, dated 13 June 2022, was refused by notice dated 5 January 2023.
 - The development proposed is change of use from a 6-bed HMO (Use Class C4) to 7-bed HMO (Sui Generis) along with erection of a rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from a 6-bed HMO (Use Class C4) to 7-bed HMO (Sui Generis) along with erection of a rear extension at 5 Bittell Close, Birmingham, B31 4LH in accordance with the terms of the application, dated 13 June 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The description of development in my formal decision is taken from the application form, but I have corrected the spelling for accuracy, and omitted the reference to the proposal being part retrospective, as this is not an act of development.
3. The appellant has provided an amended floorplan with their appeal statement demonstrating a different layout to bedroom 7. However, the mechanism for amending a scheme would typically be through a new planning application. I have therefore considered the appeal on the original plans submitted with the application.

Main Issues

4. The main issues are:
 - a) whether the seventh bedroom would provide acceptable living conditions for its future occupants; and
 - b) the effect of the development on the living conditions of the occupiers of neighbouring properties, with reference to noise and general disturbance; and
 - c) whether the proposal would provide adequate outdoor garden space for occupants.

Reasons

The seventh bedroom and living conditions for future occupiers

5. 5 Bittel Close is a House in Multiple Occupation (HMO) and is the end property in a row of terraces, located in a small cul-de-sac. The HMO comprises two bedrooms and a shared kitchen and living space at ground floor level, two bedrooms and a bathroom at first-floor level, and two bedrooms on the second floor. The seventh bedroom would be set over the first and second floors, with a mezzanine level to accommodate a sleeping area. The bedroom would have an ensuite, a small kitchen and living area.
6. The Technical Housing Standards – Nationally Described Space Standards (NDSS) sets out internal space standards and the requirement for gross internal floor areas. Policy DM10 of the Birmingham Plan Development Management in Birmingham Development Plan Document 2021 (DMB) sets out the standards for residential development in terms of residential amenity, including minimum bedroom sizes and internal floor space.
7. The area of the mezzanine sleeping area would be approximately 5.1m², with the width of the area ranging from 1.2m to 1.97m. When taken on its own, this would not meet the NDSS standards, the standards required in Policy DM11 of the DMB, nor the guidance contained within the Birmingham City Council Houses in Multiple Occupation Supplementary Planning Document 2022 (SPD), all of which state that single bedrooms should be at least 7.5m².
8. However, the proposed bedroom would include more living space than just the mezzanine sleeping area. When the first-floor element of the proposed bedroom is factored in, the bedroom would exceed the 7.5m² requirement stipulated in the NDSS, DMB and SPD. I do not think it is unreasonable to take the floor space as a whole into account, as would be the case in bedrooms without a separate mezzanine.
9. The proposed bedroom would be narrow. The submitted plans indicate that the width would be 1.97m not including the kitchen facilities and stairs up to the mezzanine level. This is 0.18m smaller than the 2.15m NDSS specification. However, I consider that the addition of the mezzanine sleeping level would leave an acceptable amount of living space at the first-floor level, including an ensuite, kitchen and seating area.
10. On the issue of whether the seventh bedroom would provide acceptable living conditions for its future occupants, I consider that the proposed seventh bedroom would be of a suitable size and standard and would provide acceptable living conditions. The proposal would therefore not be in conflict with Policy PG3 of the Birmingham Development Plan 2017 (BDP); Policies DM2, DM10 and DM11 of the DMB; Design Principles 12, 13 and 15 of the Birmingham Design Guide Principles Document 2022 (BDG); the SPD; NDSS; the National Design Guide; and the National Planning Policy Framework (the Framework) which together seek to ensure high quality design with adequate living space and efficient, functional internal layouts to support residents' mental and physical quality of life.

Living conditions of neighbours

11. The property is currently a 6 bedroomed HMO, and the principle of this use is already established. The Council considers that the proposed use is not considered to adversely impact upon the local community in terms of cumulative impacts of similar uses operating in close proximity to the site. However, concern has been raised that the provision of a 7th bedroom and the resultant increase in occupants would harm the living conditions of neighbouring occupants, in terms of noise and general disturbance.
12. The addition of one extra resident would lead to more comings and goings to and from the proposed development, and to one more person using the outdoor amenity space with the resultant noise that that would generate. The appellant has indicated a set of management measures for the HMO. I noted from my site visit that the HMO seemed responsibly managed, of high quality and well maintained. However, planning permission runs with the land rather than individual owners of the property, and therefore this high level of management cannot be guaranteed into the future. Nevertheless, I consider that the uplift of one further resident at the property would not increase the noise and disturbance levels to such an extent so as to harm the living conditions of neighbouring residents.
13. Interested parties have raised concerns regarding parking issues for local residents that would be exacerbated by the proposed increase in occupiers of the HMO. However, the Council's Officer report detailed that the proposal was considered acceptable in terms of highway safety, that there are off and on street parking options and good public transport links nearby. I have included an appropriate condition to secure appropriate cycle storage at the site to help mitigate the need for an additional motor vehicle.
14. Additionally, concern has been raised that the rear extension would lead to overlooking of nearby gardens. However, this element to the proposal does not breach the 45 Degree Code and is considered acceptable by the Council. The Council state that it would not cause any additional impacts to residential amenity over and above the existing situation. I see no reason to disagree, as it is a modest single storey rear extension.
15. I am content that the proposal would not harm the living conditions of neighbouring residents. There would be no conflict with Policy PG3 of the BDP; Policies DM2 and DM11 of the DMB; Principle 13 of the BDG Principles Document; and the SPD, which together seek to ensure that new development creates a positive sense of place, and will not result in unacceptable adverse impacts on the amenity of existing residential properties and neighbours. The proposal would also not conflict with the objectives of the Framework, which include fostering well-designed places that support vibrant and healthy communities.

Outdoor amenity space

16. The rear garden amenity area measures 68m² which falls marginally short of the 70m² which guidance contained within the BDG and the HMO SPD specify would be required for 7 residents. The Council have raised concern that the shortfall could be even higher, as at least two of the bedrooms could be considered double bedrooms, so there could be 9 or more residents using the amenity space. However, were I minded to allow the appeal, a condition will be placed limiting the number of occupants to 7. Regardless, there would still be a shortfall of 2m² outdoor amenity space.

17. My attention has been drawn to the proximity of the proposed development to two areas of outdoor public open space. I do not consider that these public open spaces would compensate for a lack of private outdoor amenity space, and so I place minimal weight on this fact.
18. However, the figures specified in the Design Guide and HMO SPD are guidance, rather than policy, and the shortfall of outdoor space of 2m² is minimal. City Note LW-13 of the Birmingham Design Guide Healthy Living and Working Places City Manual states that if proposals are seeking to gain support for amenity space below the City Council's minimum standards, designs must clearly demonstrate how this reduction will not impact on the delivery of quality amenity space. I noted from my site visit that the outdoor amenity space was well designed and usable, and an attractive and inclusive place for residents. I do not consider the shortfall in outdoor amenity space to be so severe as to render the proposed development unacceptable.
19. Concerns have been raised that the shortfall of usable outdoor amenity space would be worsened due to the necessity of providing cycle storage at the rear of the proposed development. However, from my site visit I noted that cycle storage could be achieved at the front of the property where a storage unit already exists. An appropriate condition is included to ensure that cycle storage is provided to the satisfaction of the local authority.
20. On this issue, I conclude that the proposal would provide adequate outdoor amenity space for occupants. The proposed development would therefore be in accordance with Policy PG3 of the BDP; Policies DM2, DM10 and DM11 of the DMB, Principles 12 and 15 of the BDG Principles Document; City Note LW-13 of the BDG Healthy Living and Working Places City Manual; and the SPD, which together seek to ensure that private external spaces are attractive and functional, and that residents have access to amenity space of a sufficient size and quality. It would also not conflict with the objectives of the NPPF, which include fostering well-designed places that support communities' health and social well-being.

Other Matters

21. I have noted that an Article 4 Direction exists in the area. This indicates that there is concern over particular clusters and overconcentration of HMOs which can sometimes have a detrimental impact on local housing areas. The Council have stated that there are no known HMOs within a 100m radius of 5 Bittell Close. As such, the proposed development is not considered to adversely impact the local community in terms of cumulative impacts.
22. I have noted the concerns relating to the development being out of character with surrounding family houses. However, the principle of the HMO use has already been established. Concerns have also been raised that the proposed extension would be out of character with the existing dwelling and street scene. However, the Council did not raise concerns regarding the character and appearance of the proposed development, and consider the extension, which would not be visible from the street, to be acceptable. I see no reason to disagree.
23. There has been a concern raised that the property would lead to overcrowding. However, the development proposal would comply with communal living space standards, and I have found that the seventh bedroom and outdoor amenity

space will provide adequate standards for future occupiers. I therefore do not agree that the development proposal would lead to overcrowding.

24. I acknowledge concerns in relation to the proposed development having an adverse impact on property values. This is not a material planning consideration in determining the appeal.
25. It has been brought to my attention that two previous applications for HMO proposals have been refused, and the need to protect the integrity of the planning system. However, I have considered this case on its merits, and with regard to local and national planning policies.

Conditions

26. I have had regard to the conditions suggested by the Council, as well as to national Planning Practice Guidance on conditions. In addition to the standard commencement condition, I have attached a condition specifying the approved plans for the avoidance of doubt. I have included a condition limiting the number of residents of the HMO to seven, to safeguard the amenity of the future occupants of the development. Additionally, I have included conditions to provide cycle storage at the property to encourage more sustainable modes of travel, and refuse storage to ensure a satisfactory development of the application site. I have not thought it necessary to include a condition on noise insulation, as the bedroom would be located on the outside wall away from neighbouring properties.

Conclusion

27. For the reasons given above, I conclude that the development would comply with the development plan as a whole and there are no other material considerations, including the Framework, to lead me to find otherwise than in accordance with it. As a result, the appeal should be allowed.

L Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be implemented in accordance with the following approved plans:
 - Existing and Proposed Plans Drawing No. PL02 Rev F
 - Location Plan Drawing No. PL01
- 3) The HMO hereby permitted shall not be occupied by more than seven (7) residents.
- 4) Within 3 months of this decision, secure cycle storage facilities for the occupants of the development shall be provided in accordance with details that have been first submitted to and approved in writing by the local planning authority prior to the first occupation of the development. The approved facilities shall be retained for use at all times thereafter.
- 5) Within 3 months of this decision, facilities for the storage of refuse within the curtilage of the building shall be provided in accordance with details that have been first submitted to and approved in writing by the local planning authority prior to the first occupation of the development. The approved facilities shall be retained for use at all times thereafter.

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