



Appeal Decision

Site visit made on 31 October 2023

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2023

Appeal Ref: APP/W2465/W/23/3321485

12 Bramley Road, Leicester City, Leicester LE3 9DA

- 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 Sanjay Gurjar of Star Buy Property Ltd against the decision of Leicester City Council.
 - The application Ref 20222171, dated 8 November 2022, was refused by notice dated 19 January 2023.
 - The development proposed is the change of use from existing 6 bed 6 person HMO (C4) to 7 bed 7 person (Sui Generis).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has confirmed that the name of the organisation on the application form was incorrectly entered and that the correct company name is Star Buy Property Ltd. Therefore, I have amended the details in the banner head above.
3. The Council referred to the National Planning Policy Framework 2021 (the Framework) on the decision notice. A new version of the Framework came into effect in September 2023, and I have determined the appeal in accordance with it. However, as the Framework's policy content insofar as it relates to the main issues is unchanged, no party would be prejudiced as a result of this approach.

Main Issue

4. The main issue is the effect of the development on the living conditions of existing occupiers of 12 Bramley Road (the appeal property) and the future occupier of the proposed Bedroom 7, with particular regard to communal facilities.

Reasons

5. The appeal property comprises single occupancy rooms for six people, including three studios and three bedrooms. A licence¹ for occupation for not more than the maximum of seven households and seven persons has been granted for the appeal property. However, this does not constitute planning permission for this use. Furthermore, legislation relevant to the licensing process incorporates different considerations, including statutory minimum standards² to ensure that

¹ Licence Number: L1678 issued by Leicester City Council on 2 September 2022

² Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018

it is safe for the occupants and properly managed. While these standards must not be lowered, they are not intended to be the optimum. Councils therefore have discretion to set their own higher standards. In the absence of development plan policies which specifically deal with Houses in Multiple Occupation (HMO), the Council agreed to its Corporate Guidance³, which includes HMO amenity and space guidance. Although these standards may have been used by the Council to assess the appeal property when determining the licence for occupation application, as the Corporate Guidance is not an adopted document, an assessment of the planning merits of the development is therefore required. This does not mean, however, that the Corporate Guidance is disregarded, but rather that it assists in the assessment of the extent and quality of the accommodation.

6. The existing studios are provided with a dedicated kitchenette with facilities including a small hob, microwave with oven function, small fridge with freezer compartment and cupboard space. Occupiers of these rooms are not therefore reliant on the communal facilities comprising a kitchen, dining and lounge area. Occupants of the bedrooms use the communal facilities for cooking as these rooms are not fitted with a kitchenette. The future occupant of the proposed Bedroom 7, currently indicated on the application plans as Landlord's Storage although empty at the time of my site visit, would also need to use the cooking facilities. Therefore, based on the Corporate Guidance, the kitchen space required for those without a dedicated kitchenette would be seven square metres. As this is a requirement for up to five people, provided this amount of kitchen space is already provided in the appeal property, an increase of a single occupant would not trigger additional space.
7. In respect of shared dining space, two square metres per person is required by the Corporate Guidance. Those occupying bedrooms with exclusive use of adequate and suitably located dining space are excluded from the calculation. The application documentation indicates that the size of Bedroom 7 meets the minimum standard for a one-person bedroom where there are no cooking facilities in the room but space to dine would be provided. However, the dimensions shown on the Proposed Floor Plan⁴ do not demonstrate how the area of Bedroom 7 has been derived. Consequently, I cannot conclude with certainty that Bedroom 7 would be of sufficient size to provide a dedicated dining space. As a result, the minimum standard of shared dining space, for the occupants of the three existing bedrooms plus the proposed Bedroom 7 would be eight square metres.
8. The Proposed Floor Plan indicates that the existing kitchen, dining and lounge area comprises 20 square metres, exceeding the combined required standard, despite the lack of a precise area for Bedroom 7. Regardless, separate measurements have not been provided for the kitchen or dining spaces, and it is also unclear if the overall dimension includes the lounge area. Therefore, I am unable to conclude that the minimum standards for the kitchen and dining areas would be met.
9. Notwithstanding the above, irrespective of the dimensions, the shape and useable living space of any room is a determining factor in the calculation of the maximum number of people for which it is suitable. The layout of the appeal property means that the communal kitchen, dining and lounge area is

³ Achieving Well Designed Homes: residential space standards, amenities and facilities, October 2019.

⁴ Drawing ref: 21114-P-202/A

the only shared means of access to the rear yard and Bedroom 5. Although long, the shared space is narrow with the kitchen facilities in a galley arrangement which provides limited space for multiple occupiers to cook, eat or move through the room at any one time.

10. The dining area comprises two narrow bar tables and three bar stools, located close to Bedroom 5 and the door to the rear yard. Positioned underneath a wall-mounted television, the dining space is constrained with limited scope to increase the number of seat positions. When in use the circulation space through the dining and lounge area would be restricted, particularly if anyone was seated on the sofa on the other side of the room.
11. All the existing rooms have been equipped and maintained to a high standard, and have been furnished with a desk and chair, except Studio 2 which has an area of kitchen counter for dining. The application plans show a similar level of furnishing is proposed for Bedroom 7. I accept that the desks could be used as a dining space, however, during my site visit, I observed that several of them were being used for or were set up to provide workspaces. No other furniture capable of providing an adequate dining space was present in any of the rooms. As such, given the use of technology in everyday life and the recent increase in home working, it is not unreasonable to expect the desk provided in the rooms to be used, at least part of the time, for computer use. That being the case, this increases the likelihood of occupiers of the appeal property making use of the already constrained shared dining space.
12. Additionally, occupiers of the studios will still have access to the communal facilities for cooking and eating, socialising and doing their laundry. Even if occupiers of these rooms would not be reliant on their use, the fridge/freezers, hobs and ovens in the kitchen are significantly larger than those within the kitchenettes, thereby providing more extensive storage and cooking facilities.
13. Despite recognising that a degree of flexibility will sometimes be necessary where existing buildings are unable to achieve the minimum standards set out in the Corporate Guidance, this would be in circumstances where other compensating features are present. I have no substantive evidence before me to conclude compensating features are present in this case, nor did I observe any during my site visit.
14. I conclude that the development would cause harm to the living conditions of existing occupiers of the property and the future occupier of the proposed Bedroom 7, with particular regard to communal facilities. It would conflict with paragraph 130f of the Framework which seeks to ensure development creates places with a high standard of amenity for existing and future users.
15. Whilst the Council referred to Saved Policy H07 of the City of Leicester Local Plan on the decision, this relates to the conversion of existing buildings to self-contained or newly built flats. Additionally, although Saved Policy PS10 sets out the factors that development will be assessed against concerning the amenity of existing and future occupiers, the quantum or quality of community facilities is not a factor listed. As such, these policies are not determinative in this appeal.

Other Matters

16. The appellant has confirmed that the existing use of the appeal property will be retained should I dismiss the appeal. Regardless of any conclusion I may reach on the acceptability of the appeal property's existing arrangements, the proposed change of use would lead to an increase in the number of its occupants. In turn, this would put greater pressure on the communal facilities, to the detriment of the living conditions of existing and future occupiers. Therefore, I attach limited weight to this fallback situation.
17. My attention has been drawn to the Council's HMO Article 4 Direction ⁵ which covers several areas of the City, including the sub-area within which the appeal property is located. It took effect during the determination of the planning application. This removes the permitted development rights for a change of use from a dwelling (Class C3) to a small (6 bed/6 person) HMO (Class C4) without express planning permission. Based on the evidence before me, the appeal property was changed to a 6 bed/6 person HMO before this date. Although the Article 4 Direction does not apply to a change of use from a small HMO to a large HMO (*Sui Generis*), such as the appeal scheme, in any event, planning permission is required for this to lawfully occur.
18. I have also been referred to several appeal decisions regarding HMOs. Irrespective of the similarities between these decisions and the appeal scheme, they do not relate to schemes located within the Council boundary and have, therefore, been determined against differing policies and varying standards. I have, therefore, determined the appeal based on its specific merits.
19. The site is located within the St Paul's Conservation Area (the SPCA). In accordance with 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. The main significance of the SPCA is derived from the area's historical interest, including the Roman Road known as Foss Way and the formal pattern of streets addressed by period terraced properties, many of which retain their original architectural features. This includes the appeal property with its double-height bay window and low brick wall at the pavement edge. Although the development would increase the number of people living at the appeal property, this would be limited to one additional occupant. Furthermore, as no physical alterations to the appeal property are proposed, the appeal scheme would preserve the character and appearance of the SPCA.
20. Any concerns regarding the actions of the Council during the determination of the application, including whether or not an Officer entered the property during a site visit, fall outside the remit of this decision.
21. Even if I were to conclude that the future occupier of Bedroom 7 would benefit from adequate living conditions with regard to daylight and outlook, this would be a neutral factor in my decision.

⁵ Council's HMO Article 4 Direction 2021 - Direction made under Article 4(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Conclusion

22. The proposed development conflicts with the development plan as a whole and there are no material considerations, either individually or in combination, that outweigh this conflict. For the reasons identified above, the appeal is dismissed.

Juliet Rogers

INSPECTOR