



Appeal Decision

Site visit made on 27 February 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2024

Appeal Ref: APP/P4605/W/23/3330177

191 Willow Avenue, Birmingham B17 8HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr S Pattni of GeminiPI Limited against the decision of Birmingham City Council.
 - The application Ref is 2023/02557/PA.
 - The development proposed is extension of existing 5 bed HMO to 6 bed HMO, erection of a single storey rear extension and rear dormer at roof level, internal alterations to make all rooms ensuite.
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Decision

1. The appeal is allowed and planning permission is granted for extension of existing 5 bed HMO to 6 bed HMO, erection of a single storey rear extension and rear dormer at roof level, internal alterations to make all rooms ensuite at 191 Willow Avenue, Birmingham B17 8HJ in accordance with the terms of the application, Ref 2023/02557/PA, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P00-000 Rev 01; P00-002 Rev 04; P01-002 Rev 04; P02-001 Rev 04; P02-002 Rev 04; P02-003 Rev 03; P02-004 Rev 04; and P02-005 Rev 04.
 - 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on Drawing No P02-001 Rev 04 and P02-002 Rev 04.

Preliminary Matter

2. Following the issuing of the Council's decision notice the National Planning Policy Framework (the Framework) was updated in December 2023. As the updates do not fundamentally alter that part referred to by the parties, it has not been necessary to consult them further.

Background and Main Issue

3. The main issue is the effect of the proposal upon the living conditions of the neighbouring occupiers in the vicinity with regard to noise and disturbance.

Reasons

4. No 191 Willow Avenue (No 191) is located in a residential area and is a terrace dwelling. The surrounding buildings are similar in design and appearance

although within the wider area there is a mix of terrace, semi-detached and detached properties, although these are typically within residential use. On Willow Avenue there are limited parking restrictions and as such, it appears that vehicles are commonly parked on the road. However, many of the properties on the road do have off street parking, like the appeal property.

5. The use of No 191 as a 5-bedroom House in Multiple Occupation (HMO) has already been established and this has been confirmed by the Council. The proposal includes a rear single storey extension, and the living room and kitchen would be located within it to the rear of the house. The proposed dormer window on the rear roof slope would support the conversion of the roof space to a bedroom. These alterations to the house would create an additional bedroom within the HMO.
6. The proposed internal and external alterations would provide suitably sized bedrooms and large shared living spaces, alongside the deep rear garden. This would create a larger building overall whilst only increasing the occupation by a single individual. This would ensure that the internal and external use of the dwelling as a 6-bedroom HMO would not be intensive for a property of this size.
7. The house is a terraced property with the front door located close to the neighbouring dwellings and the comings and goings from a HMO may differ in some respects from a typical family home. However, the building is already a HMO and neighbouring occupiers would likely be accustomed to activity associated with that use. Additionally, movements to and from the property would be fleeting with noise only created for a limited time. Furthermore, the reconfiguration of the internal layout alongside the rear single storey extension would contribute to ensuring noise and disturbances from the occupiers would generally occur to the rear of the property within the communal areas and garden.
8. There are off street parking spaces available to the front of the dwelling as well as on street parking nearby. Additional vehicles parked nearby could cause some disruption to the neighbouring occupiers, especially if it occurred at night. However, the house is in a residential area where vehicles coming and going is likely to be a common occurrence. The limited scale of the proposed development would ensure the increase in the number of vehicular movements associated with it would not cause significant disruption above and beyond what would typically be expected in this residential area.
9. There is an outbuilding to the rear of the garden and the submitted plans show there would be space for secure cycle storage for up to 6 bicycles and this would reduce reliance on private car use and the associated noise.
10. Even if the occupiers of the HMO worked during the evenings with comings and goings occurring at night, this does not necessarily infer that there would be an unacceptable impact in terms of noise and disturbance to other nearby residents. The issues raised are not predicated on the use of the building as a HMO but rather a matter of individual behaviour.
11. There is no compelling or substantiated evidence that the occupiers of HMO's are more likely to undertake in anti-social behaviour and have no respect for the property or the areas in which they live. The West Midlands Police also did not state that the occupiers of this dwelling had been involved in anti-social

behaviour and only identified that the property itself had been subject to a burglary in recent years.

12. There may be issues with the management of other HMO's and private rented accommodation nearby, however having viewed the property it appeared to be well kept and managed. While this was only a snapshot in time there is no substantive evidence that this HMO is poorly managed. Whether or not this is suitably maintained is a matter that relates to the individual behaviour of those living in the property rather than the building being used as a HMO.
13. By virtue of the limited intensification of the existing use, the proposal would not necessarily result in a substantial increase in activity either within the property, or as a result of additional vehicular or pedestrian movements around it. Even in combination with the comings and goings associated with the existing HMO use, the development would not give rise to a significant adverse impact on the living conditions of nearby residents.
14. Therefore, for the reasons given above, the proposal would not harm the living conditions of the neighbouring occupiers in the vicinity. Consequently, it would accord with Policy PG3 of the Birmingham Development Plan (BDP) as well as Policies DM2 and DM11 of the Development Management in Birmingham Development Plan Document (DMB). These seek, amongst other matters, to ensure that proposals for the intensification or expansion of an existing HMO would not give rise to unacceptable adverse cumulative impacts on amenity, character, appearance, highway safety and parking. It would also accord with the Houses in Multiple Occupation Supplementary Planning Document which provides guidance for HMO's and identifies that schemes shall be considered against policies within the BDP and DMB. Finally, it would generally be in accordance with the Framework which seeks to ensure developments have a high standard of amenity for existing and future users.

Other Matters

15. The building is already used as a 5 bed HMO and as such, the housing mix for the area would not be altered by this scheme to increase the number of bedrooms within it. Given that the scheme is for an extension to an existing HMO and not a new HMO the effect on housing mix is not determinative.
16. Furthermore, matters related to licencing are outside of the remit of this appeal. A planning condition to require the HMO to comply with licencing legislation would not be reasonable or enforceable as this does not fall within planning control.
17. Paragraph 115 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. The Transportation South Officer concluded that the increase of one bedroom would be unlikely to increase the parking demand significantly to have a severe impact on the surrounding highways. Given my conclusions above regarding parking and vehicular movements and in light of the evidence before me I see no reason to disagree with the Transportation South Officer.
18. The window proposed on the flank wall of the single storey rear extension would be a fixed high-level window with opaque glass and this, alongside the

fencing between the properties, would preserve the privacy of the neighbouring occupiers.

19. There is no substantive evidence that identified that the drainage to the property is a significant issue or that the condition from Severn Trent Water requiring drainage plans for foul and surface water is necessary. The Council also did not include this condition within its list of suggested conditions.
20. Furthermore, there is no substantive evidence that the surrounding services and facilities could not accommodate a single additional individual.
21. The planning system does not exist to protect private interests such as the value of land and property.

Conditions

22. Further to the statutory commencement condition a condition requiring the development is carried out in accordance with the approved plans is necessary in the interest of certainty.
23. A condition requiring the external materials of the proposed additions shall match those shown on the approved plans is necessary in the interest of the character and appearance of the area.
24. A condition limiting the occupation of the HMO to 6 persons is not necessary because following the development the site would remain in Class C4 use¹. Class C4 use is the use of a dwellinghouse by not more than six residents as a HMO. The occupation of the house by more than 6 persons would amount to a material change of use for which planning permission is required.

Conclusion

25. For the reasons given above the appeal should be allowed.

G Sibley

INSPECTOR

¹ The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020