
Appeal Decision

Site visit made on 29 May 2024

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/P4605/W/24/3338705

34 Birchwood Road, Birmingham B12 8BP

- 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 Mrs Ghazala Bibi against the decision of Birmingham City Council.
 - The application Ref 2023/05207, dated 31 July 2023, was refused by notice dated 25 September 2023.
 - The development proposed is described as "Retrospective application for 10 rooms supported accommodation supplemented with communal lounge/kitchen/laundry room".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The application seeks retrospective permission. The appellant states that the property has been in use as supported accommodation for people with learning difficulties or dementia for several years. The previous use is stated to have been as a 6-bedroom dwelling.

Main issues

3. From the submissions before me, the main issues in the appeal are as follows:
 - whether the proposed use would provide acceptable living conditions for its future residents, with particular regard to indoor amenity space;
 - and whether the loss of the former use as a family-sized dwelling is acceptable having regard to the relevant policies relating to housing.

Reasons for decision

Living conditions

4. Policy DM12 of the Development Management Policies¹ (the DMP), supports the provision of specialist residential accommodation, including supported living for vulnerable groups, subject to a number of criteria. These include criterion b), which requires that the accommodation and facilities are suitable for the intended occupiers, and criterion d), which is that the scale and intensity of the use is appropriate to the size of the building.

¹ 'Development Management in Birmingham', Development Plan Document, adopted December 2021

5. In the present case the appeal property provides a total of 10 lettable rooms, over three floors, with three shared bathrooms. On the ground floor, there is a single communal room which is described as a kitchen, lounge and laundry room, and evidently also serves as the dining area. On the appellant's measurements, this communal room measures just over 5.4 by 4.4m. To serve the range of uses described, the room needs to accommodate, at a minimum, some kitchen units and appliances, a washing machine, and a table with some dining chairs. The room is therefore not by any means a large one, having regard to the number of different purposes it is required to serve.
6. The appellant states that the residents of the property, given the nature of their particular disabilities, would spend much of their time away from the site, at training and organised leisure activities. But it seems probable that these types of activities will take place mainly in the daytime, and outside of those times there will still be significant periods when most residents are at home. At such times, it seems likely that vulnerable residents of this kind would wish to spend some time in the property's communal room, for eating, cooking, or socialising. If a number were to wish to do at the same time, it is by no means clear that they could do so in reasonable comfort.
7. It is said that the use of the communal room is managed to allow no more than two or three residents at a time, to avoid overcrowding. However, this seems to suggest that there will be times when, for the majority of the residents, the room will be effectively unavailable. At those times, residents would have no access to any other indoor space, apart from their own rooms. It may well be that managing the numbers in this way is a necessary measure, but it does not seem to support the contention that the space provided is adequate for the number of occupants.
8. In addition, it is also stated that residents take their meals together. Clearly this must take place in the communal room. At such times, even if meal times may be staggered, it seems likely that the numbers of residents needing to eat together will be larger than just two or three. And furthermore, whilst no information has been provided about staffing levels, those staff members present will also clearly be working primarily in the same communal room. Based on the information available, it seems likely that conditions in the communal area during mealtimes are likely to be uncomfortably crowded.
9. I appreciate that the appeal property has a reasonable-sized garden, meeting the standard set out in the Birmingham Design Guide. But a garden is not an all-weather facility, and thus cannot be a satisfactory substitute for adequate indoor space. I note that the Council has no specific standard sizes for communal rooms in supported accommodation. However, Policy DM12 does make clear the importance of providing facilities of an appropriate size and quality for the particular property and level of use proposed.
10. I conclude that the appeal scheme would fail to provide a suitable amount of indoor amenity space for the scale and intensity of the proposed use, resulting in unsatisfactory and unacceptable living conditions for the intended vulnerable occupiers. In this regard the development would conflict with criteria b) and d) of DMP Policy DM12.

Loss of a family dwelling

11. The appeal property is an extended end-terraced house, with four main rooms on each of the ground and first floors, plus some further accommodation in the converted loft. There is no dispute that the property was previously a single dwelling, and could be converted back to that use. In that case, it would be suitable for a larger family, possibly with four or more children or dependant relatives. It follows that the continuation of the present use, for supported living, would reduce the potential stock of family-sized dwellings in the area. I note the Council's view that this would not make the best use of the property, in the light of what it sees as a greater need of family housing.
12. However, as already noted, the provision of specialist accommodation is supported by Policy DM12. Paragraph 4.28 of the DMP confirms that this term includes supported accommodation for vulnerable groups, including those housed at the appeal property. Paragraph 4.29 makes clear that this type of accommodation is seen as important, as it can facilitate safe, independent living for people with special housing needs; and the need for such housing is described as a priority. Consequently, irrespective of whether the policy's detailed criteria are met, it seems to me that Policy DM12 provides clear support for the provision of such accommodation in principle.
13. In its refusal reason No 1 (RR1), the Council identifies various other housing policies which are said to support the retention of larger dwellings for family use. The first of these is Policy TP30 of the Birmingham Development Plan (the BDP)², which requires proposals for new housing to deliver a range of dwellings to meet local needs, and to support the creation of mixed, balanced and sustainable neighbourhoods. However, this policy is clearly directed towards new development rather than conversions. And in any event, there seems no reason in principle why supported living accommodation should not be consistent with these policy aims.
14. The second policy referred to in RR1 is BDP Policy TP35, which seeks to make the best use of existing housing, and to prevent the loss of housing. But this seems to me to relate to proposals involving a loss to uses other than residential, rather than changes from one type of housing to another. The present appeal proposal would not involve any loss to the overall housing stock, and therefore would not appear to be in conflict. And thirdly, RR1 also cites Policy DM11 of the DMP. However, this relates solely to houses of multiple occupation (HMOs), and is therefore not relevant to the appeal scheme.
15. In its further submissions, the Council also raises Policy DM12's criterion e), in which that policy's general support for specialist accommodation is excluded if there would be a loss of an existing use that makes an important contribution to the Council's objectives, strategies and policies. But in the light of the above, there appears to be nothing in terms of development plan policy that would justify interpreting this to include the loss of family housing. Indeed it seems likely that this would effectively negate the whole purpose of Policy DM12 in any event.

² The Birmingham Development Plan, adopted in January 2017

16. As a result, none of these identified policies seems to me to indicate any clear preference for family-sized dwellings over any other kind of housing. Nor does any policy contradict the in-principle support for supported living accommodation which is expressed in Policy DM12. In the light of that support, it is not necessary for an application for this form of development to show any further evidence of need. I therefore find no basis in any development plan policy for the Council's contention that the need for supported living is outweighed by that for family housing. In any event, the National Planning Policy Framework makes it clear that planning policies should seek to address all types of housing need, including those of groups with specific requirements (paragraphs 60 and 63).
17. Since the adoption of the BDP and DMP, more recent work has evidently been carried out, in connection with the Housing and Economic Development Needs Assessment (HEDNA), and this has informed the Council's Housing Strategy for 2023-28. This work is said to show that the quantity of supported accommodation has increased significantly, whilst the delivery of 3- and 4-bedroomed houses has fallen behind the level of need. This has led the Council to question the relative priorities given to these and other forms of housing in their current policies. But that process is evidently at an early stage. Neither the HEDNA nor the Housing Strategy form part of the development plan. It does not appear to be suggested that any of the adopted BDP or DMP policies are inconsistent with the NPPF. Consequently, the evidence presented regarding an increasing need for family housing does not outweigh the support that the adopted development plan gives to supported living, through Policy DM12.
18. I therefore conclude that the loss of the use of the appeal property as a family dwelling does not conflict with any relevant policies, and does not justify refusal of permission for the appeal proposal.
19. In the present case however, this does not overcome the objection relating to the lack of communal amenity space, which I have found to be justified, for the reasons already explained elsewhere in this decision.

Other matters

Effects on occupiers of the appeal property

20. In the light of my findings, as set out above, I have considered the possible effects on existing occupiers at the appeal property, if the appeal is dismissed. From the appellant's submissions it appears that some, at least, are likely to be elderly or to suffer disability, which are protected characteristics under the Equalities Act 2010. And in addition, all of the occupiers enjoy the right to respect for their private and family life, and to freedom from discrimination, under the Human Rights Act 1998.
21. However, there is no evidence that a refusal of permission for the present appeal scheme would mean that the property would have to close, or that any existing occupier would be forced to leave; still less that they would be made homeless. Indeed, on the balance of probabilities, it seems more likely that the deficit in the amount of communal space could be remedied, and that any consequent reduction in the number of bedrooms could be managed through natural turnover. On the information before me, I find no evidence that the rights of existing occupiers would be infringed, or that the effects on those

occupiers would be likely to be so great as to outweigh the harm that I have previously identified.

Effects on neighbouring residents

22. Several of the objections received from local residents, and a local Councillor, refer to problems of crime and antisocial behaviour associated with the appeal premises. Whilst I saw no direct evidence at the time of my visit, I have no reason to doubt the seriousness of the issues raised, and I fully understand the extent of the concerns expressed. Given the number of such letters, it seems clear that these concerns are widespread within the local community.
23. However, none of these issues seems to me to be an inevitable consequence of the use of the property for its present or proposed use, but rather they are matters arising from the behaviour of some individual occupiers. As such, these are capable of being controlled through proper management, and through enforcement by the police and other relevant authorities. In this regard, I note that the property is said to be managed by a registered social landlord body, under an arrangement with the Council's social services department. But in any event, for the reasons stated, I do not consider that a refusal of permission on these grounds would be warranted in this case.

Conclusion

24. Despite Policy DM12's general support for the principle of supported living, the present appeal scheme involving 10 bedrooms would conflict with criteria b) and d) of that policy, and would fail to provide satisfactory living conditions, due to the inadequacy of the single communal kitchen/laundry/lounge/dining room. The development would therefore fail to accord with Policy DM12 as a whole.
25. In the absence of any other relevant development plan policies, the loss of a family home would not, on its own, justify refusal. Nor would the other issues raised by residents. However, in the light of my findings regarding the lack of compliance with Policy DM12, these matters are not determinative.
26. Accordingly, I conclude that the appeal should be dismissed.

J Felgate

INSPECTOR