



Appeal Decision

Site visit made on 9 July 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/W2465/W/24/3340896

23-27 Lincoln Street, Leicester LE2 0JU

- 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 Mojarria on behalf of Escorp Ltd against the decision of Leicester City Council.
 - The application Ref is 20230305.
 - The development proposed is retrospective change of use to C3 dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Hitesh Majoria against Leicester City Council. This application is the subject of a separate decision.

Preliminary Matter

3. At the time of my site visit, I saw that part of the development was complete and I have dealt with the appeal on that basis.

Main Issue

4. Whether the proposed development provides adequate living conditions for future occupiers with regard to the provision of internal space.

Reasons

5. The Nationally Described Space Standards (NDSS) prescribe minimum gross internal floor areas and storage. However, the failure to meet the technical requirements does not necessarily mean that living accommodation would be unacceptable or sub-standard. The Council have no development plan policy securing these standards and compliance with this cannot be required and any deficiency can only be afforded limited weight. However, the NDSS is a material consideration and provides a useful benchmark for new housing.
6. The appellant confirms that all of the flats would be for single occupancy and in this regard, nine of the proposed flats would provide internal space below the minimum internal space as outlined within the NDSS. However, the occupation of the flats is unique as it provides tenancies to vulnerable people that lasts between 13 weeks and 10 months.
7. Two of the nine flats are marginally below the NDSS and the remainder are varying in being moderately below and significantly below. In the case of flat 3

on the ground floor, this would provide less than half of the minimum floor space given within the NDSS and flat 3 on the first floor and flats 1 and 2 on the ground floor would also be significantly below. The small size of these rooms would not, in my opinion, provide sufficient space for the needs of the future occupiers, especially with furniture and storage within the rooms which would result in congested and cramped spaces that would not function well and would fall short of what would be a beneficial addition to the housing stock.

8. I acknowledge the unique type of occupation proposed, however, a potential tenancy of 10 months is a long period of time for an occupier to be living in one of the flats that would be significantly below NDSS. Therefore, even with the unique living situation of the occupiers they should still be provided with a good sized and functional space, and I am not satisfied that the small amount of space provided within some of these flats would provide adequate living conditions for future occupiers. I also recognise that people opt to live in them now, but there could be many reasons for this, and so occupancy does not necessarily indicate the flats should be considered acceptable accommodation.
9. The appellant suggests that student accommodation is exempt from NDSS and as such rooms could be below these standards which they compare to the appeal proposal. However, in most cases student accommodation will not be their only place of residence and it is also more likely that there would be shared spaces such as communal areas and kitchens which would provide additional space to make up for the shortfall in bedroom sizes. I acknowledge the reasons why shared spaces and communal areas are not suitable for vulnerable users, but this still limits the amount of space available for these occupiers.
10. I have considered a planning condition that prevents the permanent occupation of the units, however, on the basis that the units could still be occupied for most of a year I am not satisfied that this would justify the lack of internal space available for the occupiers during this period.
11. The appellant refers to the DLHC's 2018 'Homelessness code of guidance for local authorities Section 326 (3), Part 10 of the Housing Act (1995) which suggests space standards of 6.5sq.m per room. I have not been provided with precise details of this guidance to understand the circumstances that this requirement applies to, however, 6.5sq.m is very low and while the development provides room sizes above this, it has not been shown that such a small space would apply to the potential occupation of a unit for 10 months and it would also provide very little space for storage and kitchen facilities.
12. I therefore conclude that the development would not provide adequate living conditions for future occupiers with regard to the amount of internal space provided. It would be contrary to Policies H07 and PS10 of the Leicester City local development framework Core Strategy adopted July 2014 (CS) and Paragraph 135 (f) of the National Planning Policy Framework (the Framework). Amongst other things, these seek to ensure the creation of a satisfactory living environment and a high standard of amenity for future users.

Other Matters

13. The appeal site is located within the South Highfields Conservation Area (CA). The Council considers that the proposed development would not harm the character or appearance of the CA. The CA is located to the south-east of the

city centre and its significance is derived from its architectural character of domestic styles of the Victorian period which creates a character of great diversity. The appeal proposes no external alterations and I therefore find that the proposal would have a neutral impact on the CA.

14. The Council have found that the proposed development would not unacceptably harm highway safety, the character and appearance of the area or heritage assets. However, these are neutral matters that do not outweigh the harm I have identified.
15. The Council's Residential Amenity Supplementary planning document Adopted: February 2008 provides a definition of perception which is the subjective understanding that a particular person has of the environment. This will depend on such matters as their experience, mental state, social background and education. In the context of the SPD, the definition of residential amenity is considered as the benefit enjoyed from physical external space which is part of the private home. In this regard, the Council have found that acceptable private amenity space would be provided for future occupiers, and I have no reason to conclude otherwise. However, this is a neutral matter that does not outweigh the harm I have identified.

Planning Balance

16. The development would not provide adequate living conditions for future occupiers with regard to the amount of internal space provided. It therefore conflicts with Policies H07 and PS10 of the CS and Paragraph 135 (f) of the Framework which attracts substantial weight against the proposal.
17. The development provides temporary housing for occupants otherwise at a high risk of homelessness which is a benefit to the scheme that attracts significant weight.
18. The development is partly retrospective, and the determination of this appeal could result in some of the occupiers becoming homeless. The Human Rights Act 1998, Article 8 of the First Protocol, is primarily concerned with the right to live a family life without interference. I recognise that the dismissal of this appeal could interfere with the occupiers' rights under Article 8. However, the small size of some of the rooms could also conflict with Article 8 through providing poor living conditions for future occupiers which I must also have regard to.
19. Those rights are qualified and my role in this appeal is to ensure that any interference with those rights is necessary and proportionate. There are legitimate planning policy aims to create a satisfactory living environment and a high standard of amenity for future users. On balance, the harm to the living conditions of occupiers, and the scheme's poor contribution to the housing stock, attracts substantial weight, therefore, the interference with the rights of individual occupiers is necessary and proportionate and outweighs the benefits of providing homes.

Conclusion

20. For the reasons given above the appeal should be dismissed.

D Wilson INSPECTOR