



Appeal Decision

Site visit made on 7 October 2024

by T Bennett BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/P4605/W/24/3346679

29 Hubert Croft, Birmingham B29 6DU

- 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 L N Foster against the decision of Birmingham City Council.
 - The application Ref is 2024/01927/PA.
 - The development proposed is Change of use from a Class C3 dwelling house to a House in Multiple Occupation (HMO) falling within Class C4 of the Town and Planning Use Classes Order 1987 (as Amended).
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from a Class C3 dwelling house to a House in Multiple Occupation (HMO) falling within Class C4 of the Town and Planning Use Classes Order 1987 (as Amended) at 29 Hubert Croft, Birmingham B29 6DU in accordance with the terms of the application, Ref 2024/01927/PA, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan and Proposed Plans and Elevations (Drawing No 2).

Main Issue

2. The main issue is whether the proposal would provide acceptable living conditions with particular regard to external amenity space.

Reasons

3. The appeal property is a three bedroom maisonette within a three storey building comprising of eight dwellings. The area is residential and consists of a mix of property styles including maisonettes, bungalows and terraced properties.
4. The appeal property, like the other maisonettes has no designated private outdoor amenity space, but it is set within pockets of accessible communal greenspace. I also observed on my site visit a large outdoor area adjacent to the appeal site designated for the drying of clothes.
5. Part f of Policy DM11 of the Development Management in Birmingham Development Plan Document (2022) (DPD) requires HMOs to provide high quality accommodation with adequate living space, including outdoor amenity

space. No specific reference to private amenity space is contained within the Policy.

6. The Houses in Multiple Occupation Supplementary Planning Document (2022) (SPD) provides guidance on the application of Policy DM11 of the DPD. It explains that the external area should be of a sufficient size to provide space for outdoor clothes drying and amenity space for residents. It then makes reference to the Birmingham Design Guide (2022) (BDG) which sets out the provision of 10 square metres of private outdoor amenity space per resident for a HMO.
7. Given that the proposal does not provide any private outdoor amenity space, it would not comply with the guidance contained in the SPD and city note LW-13 contained within the BDG. However, the figures specified are guidance, rather than policy. While the external amenity space would not be private, future occupants would have access to outdoor amenity space adjacent to the property. This space benefits from a southerly orientation and would serve a useful purpose for future occupiers and is of a sufficient size to sit and socialise, with a dedicated outdoor space for drying clothes. During my visit, I also observed several open spaces within walking distance in the local area, in particular Bournbrook Recreation Park. As such, future occupiers would have good access to outdoor open space.
8. Furthermore, the property meets all of the required internal space standards, has sufficient internal communal space, and is close to local services, facilities and sustainable modes of travel. In this regard, whilst the outdoor space may not be private or meet the specific size requirements specified in the SPD and BDG, it accords with the general thrust of the SPD which seeks to achieve good standards of living accommodation.
9. Taking all of the above factors together, I find that the appeal site would provide acceptable living conditions for future occupiers with regards to external amenity space. It would therefore comply with Policy DM2 and Policy DM11 of the DPD which, amongst other matters, seek high quality, useable amenity space and would accord with the National Planning Policy Framework which seeks a high standard of amenity for future occupiers.
10. Policy PG3 of the Birmingham Development Plan (2017) (BDP) is a general placemaking policy and refers to the creation of sustainable neighbourhoods and attractive public spaces. I do not find this policy determinative in respect of this main issue.

Other Matters

11. Concerns have been raised about the potential impact of the proposal on neighbouring residents in relation to noise, littering, waste management and the types of HMO occupants. However, there is no substantive evidence before me to suggest that the use of a small HMO by a maximum of 4 persons would significantly increase the level of activity and noise at the property over and above occupation by a single family. As such I find no harm would arise as a result.
12. An interested party has raised concerns in relation to the loss of family housing. I have no substantive evidence before me that there is high demand for family housing in this area. There is a high concentration of HMOs in the

area catering predominantly for the student population, alongside purpose-built student accommodation. Whilst the proposal would exceed the threshold of HMOs set out in Policy DM11 of the DPD, I find it would meet the exceptional circumstances requirements set out in the explanatory text to the policy, concurring with the Council in this regard. An exceptional circumstance is considered where an area has such a high concentration of HMOs that the loss of a family dwelling would not change the character of the area.

13. I understand frustrations related to parking availability, however no objection to the appeal scheme has been raised by the Highway Officers concerning such matters. The property is located close to amenities and public transport, providing sustainable travel options for future occupants other than depending on private cars. There is little evidence that the proposal would result in undue parking stress over and above the existing situation.
14. There is no substantive evidence before me that the proposal would result in a dwelling being sandwiched between two HMOs.
15. The particular circumstances of the development mean it does not set a precedent. I consider that the scheme is acceptable, and I can see no reason why it would lead to harmful developments at other locations. Moreover, each case should be assessed on its own merits.
16. My attention has been drawn to an appeal decision at Jiggins Lane¹. Whilst I note the findings, that appeal scheme was for a house and not a flat where often external outdoor amenity space is not provided, furthermore that scheme was for a much larger HMO than the appeal before me. Thus, I do not find the circumstances directly comparable.
17. The Council have raised concerns that the use of the adjacent amenity space could lead to disturbance and privacy issues for neighbouring occupiers. However, as this space can already be used, the proposal would not materially change the existing situation. This therefore does not alter my conclusions.

Conditions

18. The Council has provided a list of suggested conditions, I have reviewed these against the tests set out in the Planning Practice Guidance. In addition to the standard time limit condition, it is necessary that the development be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of certainty.
19. The suggested condition limiting the occupancy is not reasonable or necessary as the occupancy limits would be covered by the HMO licensing regime. The suggested condition requiring the erection of cycle parking has not been imposed as the property does not have a specific curtilage available to erect cycle parking, the condition would therefore not be enforceable.

Conclusion

20. For the reasons given above, and subject to the attached conditions the appeal is allowed.

T Bennett INSPECTOR

¹ Ref: APP/P4605/W/22/3296115