



Appeal Decision

Site visit made on 2 September 2024

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal Ref: APP/P4605/W/24/3338603

16 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 Mr S Ahmad against the decision of Birmingham City Council.
 - The application Ref is 2023/06678/PA.
 - The development is the erection of a House in Multiple Occupation (Class C4 of the Town and Country Planning Use Classes Order 1987 (as amended)).
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Decision

1. The appeal is allowed, and planning permission is granted for a House in Multiple Occupation (Class C4 of the Town and Country Planning Use Classes Order 1987 (as amended)) at 16 Hubert Croft, Birmingham B29 6DU in accordance with the terms of the application, Ref 2023/06678/PA and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (2023) (the Framework). The consultation and draft Framework do not constitute Government policy or guidance. However, they are capable of being material considerations in appeals. Notwithstanding this, in relation to this appeal the aims of both sets of policies are similar. No party would be prejudiced or caused any injustice by me proceeding with the appeal in light of the consultation.

Main Issues

3. The main issues in this appeal are the effect of the proposed development on:
 - (i) the character and appearance of the area;
 - (ii) the living conditions of future occupiers in terms of safety; and
 - (iii) the living conditions of occupiers of Chapter Court in terms of use of their private garden.

Reasons

Character and Appearance

4. The site is within a predominantly residential area, the appeal site forms part of the garden area of No. 16 Hubert Croft. Properties in the area vary in terms of

type and design, however in the immediate area they appear to be of little architectural merit.

5. Both parties confirm that the area has a high concentration of Houses of Multiple Occupation with a significant student population.
6. The appeal site is screened to a degree from the road leading into Hubert Croft due to its location to the side of No. 16 and due to the site being set back. The site has pedestrian access via a shared path with No. 16 which extends down the side of the existing property.
7. The prevailing pattern of development comprises properties facing footpaths or roads, with blocks of properties, in general, maintaining a consistent arrangement. Notwithstanding this the blocks of terraces within the area do not form a regular pattern of development.
8. I observed during my site visit that a large single storey building is located within Hubert Croft and bungalows on Hubert Road. The proposed development whilst a different form to many of the properties Hubert Croft, would not be an alien form of development. The proposed dormer windows would be similar to those on properties to the rear, Chapter Court.
9. Whilst the proposed development would not have any windows or doors on the elevation facing Hubert Croft due to the set back and design of the property along with the boundary treatment this would not be dominant or stark in the area.
10. I conclude that the proposed development would not harm the character and appearance of the area.
11. There is no conflict with Policy PG3 of the Birmingham Development Plan (2017) (the BDP) and Policy DM2 of the Birmingham Development Plan Document (2021) (the DPD) which seeks amongst other things to ensure developments create an attractive and high quality development appropriate to its location.
12. There is also no conflict with the Birmingham Design Guide Supplementary Plan Document (2022) (the SPD) which amongst other things seek to ensure development respect the appearance of a property and local area.
13. There is no conflict with the Framework which seeks amongst other things to ensure developments are of good design appropriate and sympathetic to their surroundings.

Living Conditions Future Occupiers

14. The proposed development would not have windows facing towards Hubert Croft, and the door to the property would be located on the side elevation. I observed during my site visit that there is a CCTV located on the side wall of No. 16 Hubert Croft providing a degree of surveillance to the access of the appeal site.
15. A footpath leading from Hubert Road to the Hubert Croft provides some degree of surveillance of the site, notwithstanding this the access from the front of No. 16 Hubert Croft to the site would not have surveillance from surrounding properties or the proposed property itself.

16. Design Principle 3 of the SPD amongst other things seeks to ensure developments create safe and inviting spaces for people, provides an active frontage and that principal entrances are from primary streets and spaces. The proposed development does not provide an active frontage and the entrance is not located to gain access from primary streets and spaces.
17. Nonetheless, it is important to recognise that such guidance does not constitute a 'black and white' set of rules to be applied rigidly or exclusively when other material considerations indicate that an exception may be appropriate.
18. The Council highlight that crime is a known concern in this area. I note that West Midlands Police confirm that calls for service in the area are very high and that due to the high level of student occupation Selly Oak is targeted in terms of burglaries.
19. Whilst the limited natural surveillance would potentially create an unsafe environment for the proposed occupiers. Notwithstanding this the Police do not object to the proposed development, I give the lack of objection from the Police significant weight.
20. Due to the comments from the Police, the surveillance from the footpath from Hubert Road, the presence of CCTV and appropriate lighting which can be controlled through the imposition of a planning condition I find that the development would not harm to the living conditions of future occupiers in terms of safety.
21. There is no conflict with Policies PG3 of the BDP and Policy DM2 of the DPD and the Framework which amongst other things seeks to ensure developments are safe places.

Living Conditions Neighbours

22. City Note LW-3 of the Birmingham Design Guide, Healthy Living and Working Places City Manual (2022) highlights that the Council will require the application of minimum privacy distances where it is considered necessary to retain or enhance the character of an existing area, and/or to effectively protect resident amenity and privacy. The standards should be applied to all new development adjacent to an existing residential use; and within new housing schemes.
23. In relation to the proposed development a 5m setback per storey is the standard applied where primary windows overlooking existing private space is proposed. The main amenity space associated with Chapter Court is an area of grass located adjacent a residents parking area which extends up to the shared boundary with the appeal site. The proposed development does not meet the standard set out in City Note LW-3.
24. City Note LW-3 does confirm that the weight given to these standards may be influenced by the location of the development, and the scale of surrounding properties.
25. I observed during my site visit that Chapter Court comprises flats which all overlook the communal amenity space. The area in general has a dense urban grain as such mutual overlooking occurs. On this basis I find that there is no harm to the living conditions of occupiers of Chapter Court in terms of use of their private garden.

26. There is no conflict with Policies PG3 and TP27 of the BDP and Policy DM2 of the DPD which amongst other things seeks to protect the amenities of neighbours from developments.
27. There is also no conflict with the Framework which seeks to ensure developments have high standards of amenity for existing and future users.

Conclusion and Conditions

28. For the above reasons I conclude that this appeal should be allowed.
29. I have imposed a standard condition relating to the commencement of development and a condition specifying the relevant plans as this provides certainty. In order to safeguard the character and appearance of the area I have imposed a condition concerning materials.
30. I have imposed a condition requiring the submission of a construction method statement in order to help minimise the negative effects of the construction phase on neighbouring occupiers. I have attached a condition relating to the provision of external lighting and CCTV covering the access to the property in the interest of improving safety for occupants of the development.
31. I have imposed a condition relating to the provision of a cycle storage area and also boundary treatments which are shown on the plans submitted to ensure that the development provide security and safeguards the character and appearance of the area.
32. The Council suggest a condition relating to the submission of a noise insulation scheme, the area is residential in character I have not been provided with substantive evidence to demonstrate that this is necessary or reasonable.
33. The Council suggest a condition restricting the number of occupants to 5 residents however the proposed development is for a C4 HMO in which 6 people can occupy the property. I have not been provided with substantive evidence to confirm why 6 occupants would not be acceptable. I have imposed a condition clarifying the use of the property as a C4 HMO.
34. A condition is suggested relating to hard and soft landscape works by the Council in order to ensure a high quality of external environment and reinforce local landscape character. As the proposed development would be screened by fencing and set back from the streetscene it is not considered that this condition is reasonable or necessary.

C Pipe

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 23:620:P01 Rev A and 23:620:P02 Rev C
3. No development above damp proof course level shall commence until details/samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. The use permitted is a House in Multiple Occupation (Use Class C4).
5. The bicycle storage area and boundary treatments shown on drawing number 23:620:P01 Rev A shall be provided before occupation of any room on the site and shall thereafter be retained.
6. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The method statement shall provide for details of the following:
 - * The parking of vehicles of site operatives and visitors
 - * Location of loading and unloading of plant and materials
 - * Hours of demolition/construction/delivery

The development shall be implemented in accordance with the approved details.
7. Details of external lighting and CCTV covering the access to the hereby approved development shall be submitted to and approved in writing by the Local Planning Authority prior to its installation. The approved scheme shall be implemented before occupation of the dwelling hereby permitted and shall be retained thereafter.