



Appeal Decision

Site visit made on 24 September 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2024

Appeal Ref: APP/P4605/W/24/3343609

211 Rotton Park Road, Soho, Birmingham B16 0LS

- 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 Torquil Chidwick of DC Living Ltd against the decision of Birmingham City Council.
 - The application Ref is 2024/00485/PA.
 - The development proposed is change of use from dwellinghouse (Use Class C3) to 5no. bed House in Multiple Occupation (HMO) – (Use Class C4).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development on the application form discussed the merits of the case and was thus wholly unclear. The description of development from the Decision Notice more accurately and clearly described the development before me. As such, I have taken the description of development that was used on the Decision Notice rather than the one on the application form.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the proposed development on the provision of a balanced community, with particular regard to the number of HMO's in the area and the supply of family housing; and
 - the effect of the proposal upon the living conditions of the neighbouring occupiers, with regard to noise and disturbance.

Reasons

Balanced Communities and the Supply of Family Housing

4. The appeal building is a four-bed semi-detached dwelling located in a predominantly residential area. The house is a two-storey dwelling with room in the roof and many of the dwellings along the same side of Rotton Park Road are similarly designed. The attached building varies from this and the Council state that it is used as a Use Class C2¹ care home.
5. Policy DM11 of the Development Management in Birmingham Development Plan Document (DMB), 2021, sets out several criteria that schemes to convert

¹ The Town and Country Planning (Use Classes) Order 1987

existing dwellinghouses to be used as HMO's would need to comply with to be permitted. Criterion a) of the policy states that the proposal would need to not result in this type of accommodation forming over 10% of the number of residential properties within a 100 metre(m) radius of the application site. The Council has identified that, if the appeal property was used as an HMO, 22.9% of the buildings within 100m of the application site would be in use as an HMO. The appellant has not disputed this figure and as such, criterion a) of the policy would not be met.

6. Criterion d) of the policy states that the scheme would need to not result in the loss of an existing use that makes an important contribution to other Council objectives, strategies, and policies. Paragraph 4.24 of the supportive text for Policy DM11 states that the Council's Strategic Housing Market Assessment, 2013, indicates a need for accommodation of all sizes, but the greatest need is for larger, three and four or more bed homes. The Housing and Economic Development Needs Assessment, 2022, demonstrates that new housing provision is failing to meet the city housing needs in terms of three and four or more bed homes. Overall, between 2011-2021 there has been a shortfall of 2,308 three bed properties and 3,485 completions of four or more bed properties. As a result, the housing completions are not meeting Birmingham's housing needs, particularly for three and four or more bed properties.
7. The proposal would result in the loss of a family sized house which would reduce the overall supply of such housing. This would undermine the Council's approach to support sustainable neighbourhoods and balanced communities. As a result, criterion d) of Policy DM11 would not be met.
8. The Housing in Multiple Occupation Supplementary Planning Document, 2022, (SPD) states that proposals comprising of the conversion of an existing Use Class C3 dwelling to an HMO must demonstrate that there is an established lack of demand for the single-family use of the property concerned. Anecdotal evidence has been provided identifying the difficulties that have been faced selling the property as it is. However, no detailed marketing information has been submitted to support this. The Council's evidence shows that there is a demand for properties such as this. It may be the case that locally demand for such properties is low. However, I do not have the substantive evidence before me to support this. As a result, it has not been demonstrated by robust evidence that there is an established lack of demand for the single-family use of the property, as required by the SPD.
9. Overall, I conclude that the proposal would adversely affect balanced communities due to the overconcentration of HMO's in the area. It would therefore conflict with Policy DM11 of the DMB as well as Policies PG3, TP27 and TP30 of the Birmingham Development Plan, 2017, (BDP). These policies seek, amongst other matters, to require development to contribute to a strong sense of place and sustainable neighbourhoods through providing a wide choice of housing sizes, types, and tenures to ensure balanced communities, taking into account the amount of provision locally. It would also not accord with the SPD for the reasons given above as well as the National Planning Policy Framework (the Framework) which states that there should be an aim to meet an area's identified housing need with an appropriate mix of housing types for the local community.

Living Conditions

10. The appeal property is located in a residential area and is a semi-detached dwelling. The proposed internal changes would provide modestly sized bedrooms and sized shared living spaces, including the garden.
11. The comings and goings from an HMO may differ in some respects from a typical family home. However, the movements to and from a property would be fleeting with noise only created for a limited time.
12. The overall number of people who could live in the HMO would not be substantially different, as a family of 5 or more could live in the property as it is. Furthermore, it is not disputed by the parties that the size of the internal accommodation would be acceptable and as such, internally the occupiers would have ample personal and shared space. The internal configuration would locate most of the bedrooms as well as the shared living spaces away from the shared wall with the attached property. The appropriately sized accommodation for the number of proposed occupants and the internal layout of the building would contribute to ensuring the noise and disturbances would generally occur away from the attached property.
13. 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 an HMO but rather a matter of individual behaviour.
14. 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 externally. Even in combination with the comings and goings from other HMO's in the area, the development would not give rise to a significant cumulative adverse impact on the living conditions of nearby occupiers.
15. Therefore, for the reasons given above the proposal would not cause significant harm to the living conditions of the neighbouring occupiers. Consequently, it would accord with Policies PG3 and TP44 of the BDP as well as Policy DM2 of the DMB. These seek, amongst other matters, to ensure that proposals would not give rise to unacceptable adverse cumulative impacts on amenity, character, appearance, highway safety and parking. It would also accord with the SPD 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

16. The appellant states that the occupiers of the HMO would be employees of a local business who would be in the UK on a working visa. However, there would be no mechanism to control who would occupy the building.
17. The Planning Practice Guidance² states that planning permission usually runs with the land, and it is rarely appropriate to provide otherwise. There may be

² Paragraph: 015 Reference ID: 21a-015-20140306

exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. However, the desire to provide affordable accommodation for the local business's employees would not demonstrate an exceptional need as it has not been robustly demonstrated that there are no other suitable properties available. As a result, the HMO could be occupied by anybody and the benefits that could be attributed to this would not be secured.

18. The wife of the owner of the property has a disability and as such I have had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
19. If planning permission was granted it would allow the owners of the property to sell it and release themselves from the burdens of ownership for this property and provide funds for the specialist accommodation that they require. The existing property is no longer appropriate for the owners given a change in personal circumstances which has necessitated the need to relocate. However, the use of the appeal building does not affect a person with a protected characteristic nor would the development itself secure facilities to support them. It has also not been evidenced through robust marketing that there is no reasonable interest in the property as a single-family home and why selling the property as an HMO would be the only route to secure the benefits from the sale of the house.

Conclusion

20. Whilst the scheme would not cause harm to the living conditions of the neighbouring occupiers, it would fail to protect balanced communities and the supply of family housing in the area. As a result, the proposal conflicts with the development plan. In this case, a key material consideration is the PSED, to which I have had due regard. However, the harms outweigh the benefits in terms of eliminating discrimination against the disabled person, advancing equality of opportunity for that person, and fostering good relations between them and others. I therefore I conclude that it is proportionate and necessary to dismiss the appeal and the material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR