



Appeal Decision

Site visit made on 24 September 2024

by B Astley-Serougi BA(Hons) LLM MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2024

Appeal Ref: APP/P4605/W/24/3344712

241 Warwards Lane, Birmingham B29 7QR

- 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 B Maleki-Toyserkani and Rose Oak Developments Ltd against the decision of Birmingham City Council.
 - The application Ref is 2023/08265/PA.
 - The development proposed is single-storey rear extension and rear dormer to existing 7/8-bed HMO (Sui-generis) to create extra accommodation to form revised 8-bed HMO.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the appeal property is a suitable location for a house in multiple occupancy (HMO) having regard to local and national policies.
 - Whether the proposed development would provide acceptable living conditions for future occupiers with regard to outlook.

Reasons

Suitable Location

3. Number 241 Warwards Lane (No 241) is a semi-detached dwelling located opposite an open green space within an established residential area. Warwards Lane consists of a mix of terraced and semi-detached dwellings.
4. Policy DM11 of the Development Management in Birmingham Development Plan Document 2021 (DPD) establishes support for HMOs subject to certain criteria. Policy DM11(a) establishes that proposals would not be supported if they result in over 10% of residential properties being HMOs within a 100-metre radius of the appeal site. The aim of Policy DM11 and in particular DM11(a) is to ensure a suitable location for an HMO and prevent an overconcentration of this type of accommodation. The proposal would result in 21.88% of dwellings within 100m of the appeal site being classed as HMOs.
5. The appellant refers to No 241 as having been an HMO since 2013. However, there is insufficient evidence before me to demonstrate its continuous use. Whilst the appellant has provided a letter with regard to the subcontracting of the appeal property, this is not dated. Other evidence has been submitted in the form of tenancy agreements, council tax records as well as HMO licencing

forms. However, this evidence does not span a continuous 10-year period. Accordingly, I cannot be certain on the longevity of the HMO.

6. The appellant has applied to the Council for a certificate of lawful use which is a separate process to the appeal before me. Consequently, this matter is not in my jurisdiction to determine.
7. In summary, the proposed development would result in the overconcentration of HMOs within 100m of the appeal site. Therefore, it would conflict with the identified criteria of Policy DM11 of the DPD. It would also conflict with Policies TP27 and PG3 of the Birmingham Development Plan 2017 which seek to ensure that development contributes to balanced neighbourhoods with regard to providing a wide choice of housing types, sizes and tenures.
8. Furthermore, the appeal scheme would also fail to accord with the Wider Selly Oak Supplementary Planning Document 2015 which seeks, amongst other things, to ensure a balance of housing provision and manage the number of HMOs in appropriate areas of the City.
9. The proposal would also fail to accord with the principles outlined in the National Planning Policy Framework in relation to achieving well designed places.

Living conditions

10. The proposed single storey rear extension would provide a communal lounge/kitchen area as well as another habitable room. The extension would adjoin the rear elevation but would not span the width of No 241. Therefore, the proposed window on the side elevation would be directly adjacent to the appeal site boundary fence as would the set of French doors. Consequently, in comparison to the existing living room window which has an adequate outlook into the garden, the proposed extension would result in an inadequate level of outlook for any future occupants.
11. My attention has been drawn to an appeal decision regarding 74 Harrow Road, Birmingham¹. The Inspector suggested that limited outlook is not uncommon in high density urban areas, and that the bedrooms all had windows with adequate outlook. Consequently, the Inspector found that the bedroom windows compensated for the lack of windows with an appropriate outlook in the communal area.
12. The floor plans for 74 Harrow Road have been provided and demonstrate a similar layout to that proposed in the appeal before me. However, each appeal is determined on its own merits, including site context.
13. I am not satisfied that the window of the rear habitable room would provide adequate outlook into the rear garden, given that it would be channelled between the boundary fence and proposed extension. Therefore, considering the poor level of outlook for the future occupier of this habitable room, it would not provide adequate compensation for the limited level of living conditions in the communal living/kitchen area. Consequently, unlike the appeal regarding 74 Harrow Road, the proposed extension would result in significant harm to the living conditions of future occupiers.

¹ Planning Appeal Reference: APP/P4605/W/23/3326225

14. The addition of further communal space and the consequent communal amenity does not justify the harm I have identified with regard to the loss of outlook for future occupants.
15. Accordingly, given that the extension would harm the living conditions of future occupants with regard to outlook, the development would conflict with Policy PG3 of the Birmingham Development Plan 2017. This policy seeks, amongst other things, to ensure new development responds positively to site conditions. It would also conflict with Policy DM11 of the DPD which aims, amongst other things, to ensure that HMO development provides high quality accommodation and does not result in an adverse impact upon amenity.
16. The proposal would also fail to accord with the principles outlined in the National Planning Policy Framework (December 2023) in relation to achieving well designed places.

Conclusion

17. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR