



Appeal Decision

Site visit made on 15 October 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/C1055/W/24/3345557

52 Vicarage Avenue, Derby DE23 6TP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr J Weller, of Stanway Property Group Ltd against the decision of Derby City Council.
- The application Ref is 24/00271/VAR.
- The application sought planning permission for Change of use from a six bedroom (six occupant) house in multiple occupation (UseClassC4) to a seven bedroom (eight occupant) house in multiple occupation (Sui Generis) without complying with conditions attached to planning permission Ref 23/00246/FUL, dated 13 April 2023.
- The conditions in dispute are Nos 2 and 4 which state that:

2. The development shall conform in all aspects with the plans and details shown in the application as listed below.

Plan Type:	Plan Ref – Rev:	Date received:
Location Plan	22041-P-000	16/02/2023
Block plans	22041-P-103	16/02/2023
Elevations - Proposed	22041-B-106 Rev C	16/02/2023
Floor Plans - Proposed	22041-B 103 Rev C	16/02/2023

4. The property shall be permanently occupied by no more than 8 persons.
- The reasons given for the conditions are:
 2. For the avoidance of doubt.
 4. The impact of a 7 bed, 8 person HMO has been found to be acceptable but intensification of the use may have a different impact that may unacceptably affect amenities of the local area and to accord with the adopted policies of the Derby City Local Plan Part 1: (Core Strategy) and the saved policies of the adopted City of Derby Local Plan Review as included in this Decision Notice.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. I observed at the time of the site visit that works to provide an additional bedroom (the additional bedroom) were complete. However, it was not clear from my site visit whether the additional bedroom was occupied or not. Nonetheless the bedroom was ready for occupation. Consequently, the

building is an eight-bedroom House in Multiple Occupation (HMO). I have dealt with the appeal on that basis.

Background and Main Issues

3. Planning permission has previously been granted at the appeal property for a change of use from a six bedroom (six occupant) HMO to a seven bedroom (eight occupant) HMO (the previous permission). The proposal seeks to substitute approved plans with revised plans to change the internal layout to provide eight bedrooms. A change to window positions is also sought.
4. The variation of condition 4 is to alter the wording within the reason for the condition from the impact of a 7 bed, 8 person HMO, to the impact of an 8 bed, 8 person HMO.
5. The main issues are:
 - whether or not the accommodation provides satisfactory living conditions for existing and future occupiers, with regard to the provision of internal living space, outlook, natural light, and privacy; and
 - the effect of the proposed development on the living conditions of the neighbouring occupiers of 50 Vicarage Avenue, with particular regard to privacy.

Reasons

Living conditions for future occupiers

6. The appeal site is a three storey semi-detached property, located within an urban residential area. The property is occupied as a House in Multiple Occupation (HMO). The property has eight bedrooms, each with an en-suite bathroom. Some of the bedrooms also have kitchenettes. The bedrooms are split over the ground floor, first floor and second floor.
7. A communal dining / kitchen is located at ground floor, which also has external access to the front and rear of the property via a pedestrian access pathway to the side of the building. The rear of the property benefits from a sizeable private garden.
8. The additional bedroom is located on the ground floor and has three windows, two which serve the bedroom and its kitchenette (bedroom windows) and one which serves its en-suite.
9. The outlook from the bedroom windows is towards the two storey side wall of the neighbouring property, 50 Vicarage Avenue (No 50). The side wall of No 50 is of a considerable length and the separation distance between the bedroom windows and the side wall is limited. Therefore, whilst it is possible to establish whether it is daytime or nighttime from the windows, as well as the weather conditions outside, the juxtaposition of the bedroom windows, with the two storey side wall of No 50, results in an oppressive and poor outlook from these windows.
10. For similar reasons, the room lacks natural light and is relatively dark. As a result, internal lighting would need to be switched on for much of the day and at night. Collectively, these factors would not create a satisfactory living environment for the future occupier.

11. The side wall of No 50 has a window in its side elevation that directly faces one of the bedroom windows. While the parties have been unable to establish what internal room the side window of No 50 serves, there is clear intervisibility between the two at close quarters. In addition, the bedroom windows are located immediately adjacent to the pedestrian access pathway to the side of the property. Even though the use of the pathway is restricted to other occupiers of the HMO and movements are likely to be infrequent, the juxtaposition of the pathway to the bedroom windows allows uninterrupted views into the windows. In combination, these factors do not provide an acceptable level of privacy for the future occupier of the additional bedroom.
12. The additional bedroom has resulted in the loss of a communal lounge and whilst the room is dark, and the windows offer a poor outlook, it previously provided an additional communal area for the occupiers of the HMO. As a result, the only remaining communal space is the dining / kitchen (the kitchen). The size of the kitchen is modest and although the external door is glazed, the amount of natural light into the room is limited. In addition, the position of the glazed external door does not offer a suitable outlook.
13. I accept that the rear garden is large and offers alternative communal space for the occupiers of the building, but its use would be restricted by weather conditions, and this does not overcome my concerns of the lack of suitable internal communal space within the building.
14. Furthermore, I am not persuaded on the evidence before me and my own observations that the individual bedrooms are of a size that would facilitate socialising, as an alternative to adequate communal space. Therefore, without any substantive evidence to the contrary, I am not satisfied that the kitchen and rear garden offer an inviting space for the occupiers to spend time away from their private bedrooms and to facilitate social interaction. This would particularly be the case for the occupier of the additional bedroom.
15. Reference is made to other examples of HMO schemes¹ in Derby, including an appeal decision² at 72 Radbourne Street, Derby. However, full details, including a copy of the plans for those schemes has not been provided. A copy of the appeal decision at 72 Radbourne Street has also not been submitted and whilst there may appear to be some similarities, a proper comparison has therefore not been possible. Inevitably, it is the detail and specific context of any development which determines whether it is acceptable in practice. Having considered the internal layout of this building, the size of the bedrooms and the level of communal space, as well as the position of windows and the juxtaposition with the neighbouring building, I consider that there would be unacceptable harm to the living conditions of existing and future occupiers of the building. Given this, these examples do not add weight in favour of the development. Accordingly, as I am required to do, I have determined the case before me on its own merits.
16. The appellant states that the Council's Housing Standards Team have raised no objections, and that the development, including the additional bedroom meets with relevant space standards. Even so, compliance with licensing

¹ Derby Business College, St Peters Churchyard, Derby DE1 1NN (23/01544/FUL) and 103 Ashbourne Road (22/3303619).

² Appeal Ref: APP/C1055/W/21/3270904

standards does not automatically mean that planning permission should or will be forthcoming as licensing and planning legislation are separate.

17. For the above reasons, I conclude that the accommodation does not provide satisfactory living conditions for existing and future occupiers, with regard to the provision of internal living space, outlook, natural light and privacy. Therefore, the development does not accord with Policy H13 of the City of Derby Local Plan Review 2006 (LP) which together, amongst other matters, expect development to create a high-quality living environment for existing and future users.

Living conditions of neighbouring occupiers

18. The additional bedroom was previously a communal lounge and while one of the bedroom windows has been repositioned, the outlook from the old window would have been similar to that from the new window.
19. There is clear intervisibility between the bedroom windows and the side window of No 50. However, on the evidence before me, the outlook from the repositioned bedroom window, compared to the old window, which served a communal lounge, is unlikely to result in a materially greater loss of privacy to the occupiers of No 50.
20. Consequently, I conclude on this main issue that the development would not cause unacceptable harm to the living conditions of the occupiers of 50 Vicarage Avenue, with particular regard to privacy. As such, it would not conflict with Policy GD5 of the LP, which seeks to ensure that development does not cause unacceptable harm to the amenity of nearby areas.

Planning Balance and Conclusion

21. The appellant advises that the Council has a serious shortfall of housing land supply. Indeed, while the Council has not clarified its position, it is suggested that the published figure in February 2024 was 3.69 years of deliverable sites. This represents a significant shortfall and without any evidence to the contrary, I have determined the appeal on the basis that the Council cannot currently demonstrate a five-year housing land supply. In this situation, paragraph 11(d)(ii) of the Framework confirms that in such circumstances, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. The development would provide an additional bedroom at the property to meet identified demand for those seeking such accommodation in an accessible area, close to the City Centre, the Royal Derby Hospital, the Hospital's Nursing College and the University Medical School. The accommodation is also ready to be occupied and would be delivered quickly. It would also add to the mix of dwelling types in the area and contribute to boosting the supply of new housing, as referenced in the Framework. There would also be social and economic benefits to local services following the occupation of the additional bedroom. I also accept that the fixtures and fittings within the property, including the additional bedroom, are of a high standard. However, these benefits would be limited by virtue of the proposal only adding one additional bedroom at the property.

23. The appeal scheme would not provide satisfactory living conditions for the existing and future occupiers of the building. I have concluded that the proposal would conflict with Policy H13 of the LP. This matter carries significant weight against the scheme.
24. Consequently, the adverse impacts of the developments failure to provide acceptable living conditions for the existing and future occupiers of the building significantly and demonstrably outweighs the benefits when assessed against the policies of the Framework taken as a whole. It therefore follows that the appeal scheme does not benefit from the presumption in favour of sustainable development.
25. Overall, I conclude that the development conflicts with the development plan and the other material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given, the appeal should be dismissed.

N Bromley

INSPECTOR