
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: 26 November 2024

Appeal Ref: APP/P4605/W/24/3346028

12 Farm Road, Birmingham B11 1LT

- 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 Shezad Shah of WMHC Ltd against the decision of Birmingham City Council.
 - The application Ref is 2024/00004/PA.
 - The development proposed is retention of change of use from dwelling house (Use Class C3) to care home (Use Class C2) and single storey rear extension, and installation of dormer to rear and rooflights.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I saw during my site visit that the development at 12 Farm Road has commenced as a care home with the addition of a single storey rear extension. The installation of the proposed dormer to the rear and rooflights has not been commenced. However, I have considered the appeal on the plans before me as did the Council.
3. I have used the Council's description of the development in reaching my decision as it more fully describes the details of the development than that given on the original planning application form. The appellant's appeal form also makes reference to the updated description.
4. The appellant submitted an appeal decision¹ at final comment stage. The Council have been given the opportunity to comment and I have had regard to any comments made.
5. In determining this appeal, I have had due regard to the First Protocol of the Convention on Human Rights and the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010. The PSED 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. From the evidence, my decision has the potential to affect persons with a protected characteristic for the purposes of the PSED.

¹ Planning Appeal Decision Reference: APP/P4605/W/24/3338705

Main Issues

6. The main issues are:

- Whether the development would provide acceptable living conditions for the future occupants of No 12 Farm Road, with particular regard to the provision of external and internal amenity space.
- The effect of the development on the living conditions of neighbouring occupants at Nos 11 and 13 Farm Road with reference to noise and disturbance.
- The consequences of a refusal of planning permission on the residents of the care home.
- The effect of the retention of the care home on the provision of family sized homes.

Reasons

External and Internal Amenity Space

7. The appeal property is a semi-detached dwelling located in an established residential area of Birmingham. No 12 Farm Road (No 12) is currently used as a care home and provides 9 bedrooms across three floors.
8. The hard standing communal external amenity space at the rear of the property measures approximately 57m² and the appeal scheme also includes a 1.2m high metal railing and low-level planters to define private amenity space for bedrooms 8 and 9. City Note LW-13 of the Birmingham Design Guide – Healthy Living and Working Places City Manual 2022 outlines that the minimum requirement for Houses in Multiple Occupation (HMOs) and shared residential uses of 9 residents requires 90m². Consequently, it does not provide a quality external amenity space for the residents of No 12 and results in harm to the living conditions of existing and future residents.
9. The use of the care home for residents with mental health conditions does not equate to their being less of a need for external amenity space in comparison to other types of care homes. The use of the public open space near the appeal site does not justify the appeal scheme providing external amenity space considerably below the minimum standard.
10. The proposed rear dormer would be L Shaped and provide space for two bedrooms (bedrooms 6 and 7) located on the loft floor of No 12. There has been no cross section drawing of the dormer provided to demonstrate that the ceiling heights for the bedrooms are sufficient to provide adequate living conditions for any future occupiers. Accordingly, I cannot be certain that the proposed development would provide adequate internal space for future residents.
11. Additionally, whilst the development would provide a second internal communal area, it would be located in the loft space that currently provides accommodation for two residents. It has not been demonstrated that the ceiling heights would be sufficient to provide a functional living space for future residents.

12. Consequently, there is insufficient evidence before me to demonstrate that the proposed bedrooms (6 and 7) and the proposed communal area would provide adequate space for future residents. However, even if the height in the internal communal area was sufficient as well as the ceiling height in the proposed bedrooms (6 and 7) this would not overcome the harm I have identified above with regard to external amenity space.
13. In summary, the appeal scheme would fail to provide adequate external and internal amenity space for existing and any future occupants. It therefore fails to comply with Policy PG3 of the Birmingham Development Plan 2017 (BDP), and Policies DM2 and DM12 of the Development Management in Birmingham Development Plan Document 2021 (the DPD). These policies seek to ensure, amongst other things, that new development is of a high design quality and that both internal and external spaces are functional and suitable for the intended occupiers.

Living Conditions – Noise and Disturbance

14. The use of No 12 as a residential care home is likely to increase the number of coming and goings when compared to a family dwelling given the presence of staff members, professionals, visitors as well as the residents. Additionally, due to the number of residents there is likely to be an increase regarding the levels of activity from within No 12 in both the day and through the night. Consequently, with regard to noise and disturbance there is a marked difference between a family dwelling and a care home. Accordingly, the appeal scheme would result in harm to the living conditions of both 11 Farm Road (No 11) and 13 Farm Road (No 13).
15. In particular, the rear garden of No 11 adjoins the external rear yard of the appeal property. The yard is the only access for residents to bedrooms 8 and 9. Accordingly, the level of noise emanating from the frequent coming and goings in relation to these bedrooms would also result in an adverse impact upon the living conditions of the occupants of No 11.
16. Furthermore, the use of the rear yard by other residents would impact the occupants of bedrooms 8 and 9 in terms of noise, disturbance and, due to their close proximity to the communal area. The proposed low-level planters and 1.2m high metal railing would not mitigate the harm I have identified with regard to noise and disturbance.
17. The comparison of an annexe and the two bedrooms provided in the single storey extension are not wholly comparable given the intense nature of a care home. The use of the bedrooms will be by two residents and consequently due to the nature of a care home and the caring responsibilities of staff, it is likely that there will be frequent coming and goings as I have identified above.
18. The appellant highlights that the level of care required by the residents is minimal and that independence is encouraged. However, the visits by professionals are based on the assessment of the individual residents needs and visitor appointments are on an appointment basis in the working day. Whilst the care home does encourage independence this does not necessarily correlate to a minimal number of visits or activity in the appeal property. The current residents cannot be assumed to live there in perpetuity and therefore future residents may need more intensive care and consequently result in a significant level of activity within the property.

19. Additionally, the appellant refers to other appeal cases, I do not have the details of these cases before me. However, each case is determined on its own merits and therefore even if there are examples of other cases in which appeal decisions have been in favour of the development, I cannot be certain that these are wholly comparable to the appeal before me.
20. The appellant highlights that there have been no complaints because of the care home at No 12. However, the existing occupants of neighbouring properties cannot be assumed to live there in perpetuity and consequently the lack of complaints does not preclude the proper planning assessment of the impact of the proposal. As such it is a material consideration to which I can attach only limited weight in my decision.
21. In conclusion, the appeal scheme results in an adverse impact upon Nos 11 and 13 Farm Road with regard to noise and disturbance. Therefore, the development would conflict with Policy PG3 of the BDP, and Policies DM2 and DM12 of the DPD. These policies seek to ensure, amongst other things, that new development is of a high-quality design and do not result in an adverse impact on the amenity of occupiers and neighbours.

Consequences of a Refusal of Planning Permission

22. The residents of the care home have mental health conditions which require a level of care that includes support staff. Consequently, the appeal scheme would be beneficial to provide residential care for the existing residents.
23. My attention has been drawn to long waiting lists for similar residential care provision and consequently the possibility that residents would have to move out of the City to be provided with the level of care which the appeal scheme would provide. Accordingly, there is a potential for there to be an adverse impact upon individuals with a protected characteristic if the development does not proceed.

Provision of Family Sized Homes

24. Policy TP35 of the BDP seeks to prevent the loss of housing via conversion or redevelopment unless there is either a good planning justification or an identified social need for the proposed use. However, this policy seems to relate more to the loss of residential uses to other uses rather than the conversion to a different type of residential use, as is the case in the appeal before me.
25. Furthermore, Policy DM12 of the DPD outlines criterion that need to be met in order to ensure that residential conversion into specialist accommodation does not have an adverse impact upon the Council's objectives, strategies and policies amongst other things. However, considering the development plan policy given above, I am not satisfied that this policy includes the loss of family sized dwellings.
26. Data contained within the Birmingham Housing and Economic Development Needs Assessment 2022 (HEDNA) highlights the demand for family housing in the city, including 3- and 4-bedroom dwellings. However, this is not policy and consequently whilst it illustrates a need for family sized dwellings it does not outweigh the support with regard to specialist accommodation within the development plan and specifically Policy DM12 which I have identified above.

27. I conclude therefore, that the development complies with Policy TP35 of the BDP and Policy DM12 of the DPD. Both of these policies seek, amongst other things, to ensure the best use of existing housing stock including the development of specialist accommodation.

Planning Balance

28. For the reasons set out above, I find that the development would result in harm to the living conditions of future residents and neighbouring occupants. In favour of the appeal is the provision of residential care with the additional accommodation could be beneficial to the residents and would advance equality of opportunity through allowing them to continue to reside at the property.
29. Having regard for the First Protocol of the Convention of Human Rights the dismissal of the appeal would not unacceptably violate the human rights of the potential occupants with mental health conditions, and this would be a proportionate and justifiable decision.
30. Accordingly, having regard for the PSED, I find that the development would provide the opportunity to advance their aims. However, set against the aim of achieving well designed places and developments with a high standard of amenity as outlined in chapter 12 of the Framework, dismissing this appeal is a necessary and proportionate response in this case.

Conclusion

31. The development 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