

Appeal Decision

Site visit made on 2 April 2025

by [REDACTED] BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 June 2025

Appeal Ref: APP/Z0116/W/24/3357125 357 Filton Avenue, Horfield, Bristol BS7 0BD

- 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 and Mrs Harpreet and Harminder Sehmbi and Kaur Sehmbi against the decision of Bristol City Council.
- The application reference is 24/03459/F.
- The development proposed is erection of a first-floor side extension to existing first floor flat. Partial demolition of rear extensions, to facilitate the change of use of part of the ground floor to a takeaway (sui generis), and part of the ground and first floors to a 6-bedroom HMO (C4 Use Class), including a new extract flue for takeaway (resubmission of planning application 22/05818/F).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) the effect of the proposal on the housing mix in the area;
 - b) the effect of the proposal on the living conditions of neighbouring occupants, and;
 - c) whether the proposal would provide a suitable standard of accommodation for future occupants.

Reasons

Housing Mix

3. Policy DM2 of the Site Allocations and Development Management Policies document (July 2014) (the SADMP) resists the conversion of dwellings to houses in multiple occupation (HMOs) where, among other criteria, it would create or contribute to a harmful concentration of HMOs within the locality. It is stated that this can result either from exacerbating existing harmful effects on the character of the area of neighbours' living conditions, or by reducing the choice of homes in the area through changes to the housing mix.
4. Supporting the policy is the Managing The Development Of Houses In Multiple Occupation Supplementary Planning Document (November 2020) (the SPD), which defines a 'harmful concentration' as where a residential dwelling is 'sandwiched' between HMOs, or where the concentration of HMOs within a 100m radius of the application site exceeds 10% of the dwelling stock.

5. The Council accepts that a sandwiching effect would occur in this case. It instead refers to data on the number of licenced HMOs and properties which have been granted permission to convert to HMOs. Of 133 properties within 100m of the application site, the Council indicates that 14 are HMOs, a concentration of 10.53%. The proposal would increase the concentration to 11.19%.
6. The SPD sets out the adverse impacts resulting from an overconcentration of HMOs, including reduced social cohesion due to demographic imbalance; reduced housing choice; reduced community engagement; increased noise and disturbance; overlooking and loss of privacy; harm to visual amenity from poor maintenance and waste management; reduced community services and increased parking pressure.
7. The proposal would result in the 10% threshold of the SPD being exceeded. While this is an indicator of the aforementioned adverse impacts occurring, it is still necessary to consider whether the proposal would actually cause harm. In this case, the Council accepts that single person/family households make up the prevailing occupancy type in the ward, and shared housing is not disproportionately represented. The Council points to there being a material increase in the concentration of HMOs since an earlier application on the same site in 2022, but this is not attended by any evidence of this causing demonstrable harm in terms of the impacts set out in the SPD. In particular, there is no evidence of social cohesion being undermined or the demographic balance being significantly altered.
8. Notably, the site is located on a commercial parade at the junction of Filton Avenue and Bridge Avenue, where greater levels of activity exist compared to residential side streets. In this respect, the location of the site is suitable for a higher density form of accommodation. The HMO accommodation would also be located to the rear of the existing building, out of public view, and would not have a tangible effect on the character of the area.
9. Importantly, the proposal would not involve the conversion of an existing dwelling, and therefore there would be no loss of housing choice for other residents in the area. Conversely, it would add to the stock of lower cost housing sought by younger residents, students and single person households. At 11.19%, the HMO concentration would be minimally over the SPD threshold and the balance would remain very much in favour of single dwellinghouses. In these respects, the proposal would accord with the overarching aims of Policy BCS18 of the Core Strategy (2011) (the CS) that all new residential development should maintain, provide or contribute to a mix of housing tenures, types and sizes to help support the creation of mixed, balanced and inclusive communities.
10. I have had regard to the appeal decisions cited by the appellant at 85 Whiteladies Road¹ and 102 Gloucester Road.² Both relate to HMO development, and I note the Inspectors' reasoning in each with respect to the application of the SPD methodology. However, each relates to a different location in Bristol and thus neither is directly comparable to the appeal before me, or decisive to my considerations which are based on the specific merits of the proposal.
11. In summary, whilst there would be technical conflict with the SPD in terms of the concentration of HMOs exceeding 10%, there is no persuasive evidence that this

¹ Appeal Ref APP/Z0116/W/20/3260047

² Appeal Ref APP/Z0116/W/23/3335671

would translate to harm to the character of the area, housing choice, social cohesion or general population imbalance within the local community. Therefore, with the exception of neighbours' living conditions to be addressed separately below, I find no conflict with the aforementioned aims of Policy DM2.

Neighbours' Living Conditions

12. The nearest neighbours to the appeal site would be occupants of flats in Rosemead, an age exclusive housing complex. The presence of a 2.83 metre boundary wall would prevent direct views between the respective ground floor windows, and also views from the ground floor of the HMO to the first floor of Rosemead. Intervisibility would therefore be between the first-floor windows – serving two bedrooms in the HMO and indicated to serve a bathroom and two kitchens in the neighbouring flats. The first-floor windows of the proposed HMO rooms would be some 6.8 metres from the first-floor windows of flats in Rosemead.
13. I saw on site that, at this distance, there would be views possible between the properties. Although the first-floor windows already exist at the appeal site, they serve commercial storage rooms and are therefore accessed infrequently. However, the nature of HMO living is that bedrooms are used for multiple purposes by occupants beyond sleeping, including studying, eating and relaxing. As such, occupancy levels have the potential to be high, intensifying the risk of overlooking of the neighbouring flats. One of the neighbouring windows, serving a bathroom, is obscurely glazed, but the others serving kitchens are not. These are habitable rooms where occupants are likely to spend significant time. Therefore, the proposal would lead to a harmful increase in overlooking and loss of privacy for neighbouring occupants.
14. The appellant points to the plans submitted under the previous application³ that showed a similar layout at the first-floor level, which it is claimed the Council did not oppose in terms of the effect on neighbours' living conditions. That application was appealed and neighbours' living conditions did not form a main issue. However, the Council states that the proposals were in fact different, with first floor windows proposed to be obscurely glazed. I do not have full particulars of the previous application before me and cannot therefore be certain as to the specific design proposed. I have therefore considered the appeal on its own merits.
15. For the reasons set out, I conclude that the proposal would cause harm to the living conditions of neighbouring occupants through overlooking and loss of privacy, contrary to Policy BCS21 of the CS and Policies DM2, DM27 and DM29 of the SADMP, which together seek a high standard of development that safeguards the amenity of existing development and create a high-quality environment for future occupiers, including by enabling appropriate levels of privacy, outlook and daylight.

Standard of Accommodation

16. The proposed HMO bedrooms would exceed the Council's floorspace standards of 6.5 square metres. The Council's concern is instead in relation to outlook from the rooms and their being overlooked by flats in Rosemead. In respect of the rooms proposed at ground floor level, I have already found above that no intrusive overlooking would occur due to the screening provided by the high boundary wall with Rosemead.

³ Council Ref 22/05818/F

17. However, given the proximity of the respective first floor windows set out above, future occupants of Rooms 5 and 6 would be subject to potentially significant overlooking at close range from the flats in Rosemead. Occupants would have to draw blinds/curtains to maintain privacy and, as a consequence, would sacrifice outlook and light to the detriment of their living conditions, as the windows in question would be the only ones serving the bedrooms at first floor level.
18. Elsewhere, the appellant has made changes to the layout following dismissal of the previous scheme at appeal, wherein the Inspector stated that occupants would suffer poor outlook from rooms in which they would spend a majority of their time. The layout now includes a single, large, shared courtyard in place of two smaller, enclosed courtyards. This layout would be slightly more open, with better levels of light due to the bedroom windows all facing roughly south-west. However, the ground floor windows would still face towards a tall boundary wall at a distance of between 3.7m and 4m that would severely limit outlook. Moreover, although not specifically raised by the Council, the communal nature of the courtyard would mean that other occupants, and visitors, could utilise the space immediately in front of the windows, which would allow for direct, invasive views into the bedrooms, leaving occupants of those rooms with a similarly unwelcome choice as occupants on the first floor between having light and some outlook or maintaining privacy.
19. I accept that the other changes to the layout to create an enlarged kitchen and living area would provide an improved communal living space for occupants. However, as already stated, the nature of HMO living is that occupants tend to live more independently than would a single household, and thus are likely to spend significant time in their own rooms. Given this, I am not satisfied that the proposed communal space would be sufficient to mitigate for the poor living conditions occupants would suffer in the bedrooms.
20. In this matter, therefore, I find that the proposal would fail to provide an acceptable standard of accommodation for future occupants, in conflict with the aforementioned requirements of Policy BCS21 of the CS and Policies DM2, DM27 and DM29 of the SADMP.

Other Matters

21. In the event permission is refused, the appellant indicates an intention to utilise permitted development (PD) rights under Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). This permits a change of use of building and any land within its curtilage from a use falling within Class E (commercial, business and service) to a use falling within Class C3 (dwellinghouses) and is raised specifically in respect of the potential overlooking from first floor windows toward Rosemead. I have no evidence before me of an alternative scheme; however, I note that Class MA relates to provision of dwellinghouses, not HMOs, which would necessitate a different site layout with larger, self-contained units that would provide occupants with private access to more than just a single bedroom. This would alter the extent to which any bedrooms provided on the first floor are used and thus the degree to which overlooking might occur. I am also doubtful that there is sufficient space on the first floor for a self-contained flat falling within Class C3. Therefore, I am not persuaded that a fall-back position involving a change of use under Class MA would represent a more harmful outcome compared to the appeal scheme. Consequently, it is not a factor weighing in the proposal's favour.

22. The proposal would involve the loss of existing commercial employment floorspace. I note a marketing exercise was undertaken several years ago which showed no interest in continuing the existing use. Although this evidence is no longer current, the Council accepts that it is a particularly large unit, but one which lacks off-street parking and is in an out-of-town location where there is a surplus of office accommodation. I have no firm evidence to contradict the Council's conclusions and am satisfied that the proposal accords with Policy DM12(i).
23. The evidence indicates that even with the addition of a takeaway, retail uses would continue to predominate within the Filton Avenue Local Centre, and the takeaway would be adjacent to a retail use, thus not contributing to a fragmented frontage dominated by non-retail uses. The Council recognises that the use would contribute to increased footfall within the local centre and provide an active frontage, both of which would help in maintain the vitality of the area.
24. The proposal would involve a side extension to the main building. It would replace the existing hipped roof and would maintain the general form and rhythm of the terrace. The replaced of the existing roller shutter door would be an improvement to the front elevation. The works to the rear would be away from public view and mainly within the interior of the site and at low level where they would not have a significant visual impact. I am satisfied that the design of the proposal would preserve the character and appearance of the area.
25. The application includes details of proposed mechanical extraction equipment to control fumes and odour from the hot food takeaway. However, no details of the location and/or design of necessary external flues have been provided. Neither is there any evidence of potential noise output from the extraction equipment, the proposed air source heat pumps or the use of the takeaway generally. Were the appeal to be allowed, it would be necessary to consider whether to attach conditions requiring suitable noise assessments, which may in turn dictate the form and nature of equipment installed.
26. The site is located within a local centre with access to various shops and facilities, and public transport on Filton Avenue. The local highway authority has raised no concern with the lack of off-street parking for either the HMO or the takeaway, and in light of the accessible location and nature of the uses, this arrangement is acceptable in the circumstances. Bin and cycle storage has also been proposed within the building, further details of which could be secured by condition.
27. The appellant has provided a sustainability/energy statement which demonstrates that the proposal would achieve a 20% reduction in carbon emissions through provision of an air source heat pump, in accordance with the requirements of Policy BCS14 of the CS.

Planning Balance and Conclusion

28. For reasons set out, there would be conflict with Policy BCS21 of the CS and Policies DM2, DM27 and DM29 of the SADMP. In light of the Framework stating that development should achieve a high standard of amenity for existing and future users, I afford the conflicts with these policies very significant weight.
29. The appellant states that the Council cannot demonstrate a five-year supply of deliverable housing sites in accordance with the Framework, with supply stated to be between 2.2 and 2.4 years. The Council has neither confirmed nor denied this,

but it did accept that position in the appeal determined in July 2024. In the absence of more up-to-date evidence to the contrary, I find that Paragraph 11(d) of the Framework is engaged.

30. The proposed HMO would count as one unit in terms of the overall housing stock. It would nevertheless accord with the Framework's objective of significantly boosting the supply of homes and would respond to the high demand for rented accommodation, particularly from students, outlined in evidence by the appellant. This attracts considerable weight in favour of the proposal in the circumstances. Enlargement of the existing first floor flat to the front of the site would not add to the housing stock, but it would modestly improve the quality of accommodation.
31. The proposal would also provide investment and employment during construction, spending in the local economy by future occupants and the takeaway would generate further employment and economic activity, albeit there is no substantive evidence this would be greater than that currently generated by the existing commercial use. Given the scale of the development, these are factors attracting limited weight in favour of the proposal. There would also be modest environmental benefits from proposed carbon reduction measures.
32. Set against these benefits, the proposal would have permanent adverse impacts in terms of the standard of accommodation and neighbours' living conditions, contrary to the Framework's expectations for high quality design and developments which create places with a high standard of amenity for existing and future uses. I afford very significant weight to these impacts. In light of this, whilst the proposal would make use of an existing building, the shortcomings in the quality of the accommodation means the proposal would not gain support from the Framework in terms of making effective use of land.
33. Overall, I find that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, Paragraph 11 does not indicate that permission should be granted, and the proposal does not benefit from the presumption in favour of sustainable development.
34. For these reasons, the proposal does not accord with the development plan, taken as a whole, and material planning considerations do not indicate that permission should be forthcoming in spite of this conflict. Therefore, the appeal should be dismissed.



INSPECTOR