



Appeal Decision

Site visit made on 4 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th August 2020

Appeal Ref: APP/W4325/W/20/3254079
22 Balls Road, Oxton, CH43 5RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Allan Charles of ARC Home Investments against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/00010, dated 24 December 2019, was refused by notice dated 16 April 2020.
 - The development proposed is described as "*application for the change of use from 4no. flats to a 12 bed with en-suite House of Multiple Occupation (Sui Generis) and rear dormer window (amended plans received)*".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The description of development given above is taken from the Decision Notice. This reflects amendments that were made to the scheme at application stage and the application was determined on this basis.

Main Issue

3. The main issue is the effect of the development on the living conditions of the occupiers of No 24 Balls Road with regard to noise and disturbance.

Reasons

4. The appeal building is a large, Victorian semi-detached property on the northern side of Balls Road. It is currently vacant, and the interior is in a poor state of repair. It is situated within a predominantly residential area, albeit there are some non-residential uses in the vicinity.
5. Policy HS14 of the Wirral Unitary Development Plan ('UDP') states that proposals to convert existing buildings to houses in multiple occupation ('HMOs') will not be permitted unless a number of criteria are met. In particular, criterion (iii) requires that proposals should not result in a private dwelling having an HMO on both sides. Criterion (ii) also requires that if the property is not detached then the adjoining property is not in single family occupation. In my view, Policy HS14 is generally consistent with the National Planning Policy Framework ('the Framework'), which seeks to ensure a high standard of amenity for existing and future users.

6. In this case, the appeal building physically adjoins No 24, which is a family dwelling in single occupation. The property on the other side of No 24 (No 39 Euston Grove) is also in use as a 10 bedroom HMO. Accordingly, the proposal would result in HMOs being located on either side of No 24, which would clearly be contrary to Policy HS14.
7. The appellant states that the appeal building was last used as 4 self-contained flats. In this regard, it is asserted that a fallback exists whereby the large upper flat could be converted to a 6 bedroom HMO, and the 3 smaller flats amalgamated and also converted to a 6 bedroom HMO, without the need for planning permission. The appellant states that this option will be pursued should the appeal fail. However, the subdivision of the property into 4 flats does not benefit from planning permission. Whilst the appellant states that this subdivision took place over 20 years ago, little evidence has been submitted with the appeal to substantiate this.
8. The subsisting lawful use of the building is not a matter for me to determine in the context of an appeal made under section 78 of the Town and Country Planning Act 1990. In this regard, it is open to the appellant to apply to have these matters determined under section 191 or 192 of the Act, and such an application would be unaffected by my determination of this appeal. I understand that the appellant has recently submitted 2 Lawful Development Certificate applications to the Council relating to the appeal property. However, these applications had not been determined at the time of my Decision, nor had those submissions been provided as part of this appeal.
9. On the evidence before me, it is unclear whether the previous subdivision of the building into 4 flats is lawful. Moreover, it is not necessarily the case that the amalgamation of 3 flats into a single dwelling (resulting in a net loss of dwellings) would fall outside of the definition of development. In these circumstances, I attach little weight to the purported fallback option.
10. The development would allow 12 unrelated adults to live at the property. In my view, this would be a far more intensive use of the building than either a single dwelling or 4 self-contained flats. Compared to a family unit, it would lead to a significant increase in comings and goings, at various times of the day, with a higher incidence of visitors. This pattern of movement has the potential to cause significant noise and disturbance to neighbours. In this regard, whilst the main entrance to the building is set in from the boundary, it is still in close proximity to No 24. Moreover, each bedroom would be likely to be used for recreation, listening to music, and receiving guests. This would inevitably lead to increased noise transmission through the shared party wall. In particular, 6 bedrooms would adjoin the party wall with No 24, which has the potential to significantly harm the living conditions of that property. Whilst it is proposed to install an acoustic lining to the party wall, the level of attenuation this would offer has not been provided, and it is unclear how effectively this could be incorporated into the fabric of the existing building.
11. The development would also be experienced in combination with the existing HMO at No 39 Euston Grove. Whilst the access to that property is onto Euston Grove rather than Balls Road, and there is no shared party wall, its rear windows face directly onto the side elevation of No 24 at a distance of around 4.5 metres (according to the appellant). A rear yard to that property is also positioned next to No 24. The effect of the appeal proposal would therefore be

experienced in combination with the existing noise and activity associated with that property.

12. I note that the current occupiers of No 24 have written in support of the appeal proposal. However, I must consider the likely impact of the development on both current and future occupiers of No 24.
13. It is asserted that the provision of communal living space will facilitate regular interaction between tenants, so that any issues of noise and disturbance can be resolved between them. However, it is common practice to provide communal living space in HMOs, and I am not persuaded that this arrangement would prevent issues from arising. Whilst it is asserted that the HMO would not be marketed towards students, and that a management strategy could be secured by condition, that does not alter my concerns as set out above.
14. Balls Road is in walking distance of Birkenhead Town Centre and has a moderate flow of traffic along it. There are also some non-residential uses in the vicinity. However, the existing level of background noise is modest and does not lend support to the appeal proposal in my view.
15. For the above reasons, I conclude that the development would significantly harm the living conditions of the occupiers of No 24 Balls Road with regard to noise and disturbance. It would therefore be contrary to Policy HS14 of the Wirral UDP (2000), and guidance contained in the Framework which seeks to ensure a high standard of amenity for existing and future users.

Other Matters

16. The proposed dormer window would have the same interface distance at the rear as the existing windows in the building. Accordingly, it would not result in a significant loss of privacy to No 40 Alfred Road.
17. The development would involve the removal of 2 existing conifer trees along the boundary with No 20 Balls Road. However, these trees heavily restrict the outlook from rear windows in No 22 and so they would need to be removed or heavily cut back in any event were the property to be brought back into use.
18. The appellant sought pre-application advice from the Council which was generally supportive of the development. However, I note that this advice mistakenly assumes that No 39 Euston Grove is not in use as an HMO. In any case, pre-application advice is not binding on the Council in the determination of later applications.

Overall Balance and Conclusion

19. As set out above, the development would significantly harm the living conditions of the occupiers of No 24 Balls Road with regard to noise and disturbance, and would be contrary to the development plan in this regard.
20. Set against this, the development would bring a vacant building back into use, would provide new low-cost accommodation in an accessible location, and would generate some economic benefits during the construction phase.
21. In these circumstances, even if I were to apply the 'tilted balance' at paragraph 11 of the Framework, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The material

considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.

22. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR