



Appeal Decision

Site visit made on 28 July 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/Z4310/W/20/3250427
339 Smithdown Road, Liverpool L15 3JJ

- 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 Arthistory Ltd against the decision of Liverpool City Council.
 - The application Ref 18F/2659, dated 13 September 2018, was refused by notice dated 12 November 2019.
 - The development proposed is described as: '1. To remove the stud partition between bedrooms 2 and 3 to form large living room, reducing bedrooms to 5; 2. To discontinue A3 usage of retail unit and revert to A1; 3. To change use of residential unit to HMO'.
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Decision

1. The appeal is allowed and planning permission is granted for use of upper floors and part of the ground floor as a house in multiple occupation at 339 Smithdown Road, Liverpool L15 3JJ in accordance with the terms of the application, Ref 18F/2659, dated 13 September 2018, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan dated 22 September 2014; Floor Plan Drawing No 1 of 2 Amended 11.09.18.
 - 2) The house in multiple occupation hereby permitted shall not be occupied by more than 5 residents.
 - 3) Any waste generated which is to be discarded as refuse or recycled shall be stored within the rear yard of the site in accordance with the details on Drawing No 1 of 2 Amended 11.09.18 and shall only be placed outside the premises on the relevant collection days. Access to the rear yard area for any commercial and/or residential occupants of the site shall be provided and maintained at all times.

Application for costs

2. An application for costs was made by Arthistory Ltd against Liverpool City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description in the banner heading above is taken from the application form. The appellant contends that, notwithstanding that description, the use of the property as a house in multiple occupation (HMO) did not require planning permission and commenced before a recent Article 4 direction came into effect

which removes permitted development rights for the change of use from C3 dwellings to C4 HMOs. On that basis they suggest I amend the description to refer instead to the variation of the approved plans condition on the previous planning permission for 'two storey extension to rear in connection with ground floor shop and first floor flat and install associated replacement shop front'¹ to substitute the approved floor plan with an amended version that includes the ground floor kitchen to the proposed HMO.

4. However, whether planning permission is required 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 (the Act). It is open to the appellant to apply to have the matter formally determined under section 191 or 192 of the Act should they wish. Nor is it within the scope of an appeal under section 78 to consider a variation to a condition on a previous permission, or thus appropriate for me to amend the description in the manner suggested. It is open to the appellant to have such a variation considered under section 73 or 73A of the Act should they wish.
5. Therefore, notwithstanding works which have been carried out to the property, I have dealt with the appeal as it was submitted to and considered by the Council, as an application for planning permission, and based on the use and layout as shown on the submitted drawings. The description in my decision above reflects this. Whilst it differs from those used by the main parties and in the Council's publicity, I am content that it accurately describes the development proposed, on which interested parties' views were sought. Therefore, and as I have sought comments on it from the main parties, I am satisfied that no party would be prejudiced by my amending the description.

Main Issues

6. The main issues are:

- the effect of the proposed HMO on the housing mix, character and amenity of the area;
- whether satisfactory arrangements would be made for the storage of waste for the ground floor commercial unit and the proposed HMO having regard to the living conditions of existing and future occupants, including with regard to noise and odour.

Reasons

Housing mix, character and amenity of the area

7. Policy H7 of the City of Liverpool Unitary Development Plan (the UDP) states that planning permission will be granted for the conversion of buildings into various forms of multiple occupation taking account of certain criteria. Supplementary Planning Guidance Note 7: Conversion of Buildings into Flats and Bedsits (SPG7) provides further guidance on standards for the conversion of buildings into flats or HMOs.
8. The Council also refers to Policy H11 of the emerging Liverpool Local Plan 2013-2033 (the emerging Local Plan), which identifies areas of the city with particularly high concentrations of HMOs and seeks to impose greater controls

¹ Application ref: 17F/0318, which itself was an application to vary the condition relating to the approved drawings on the original planning permission for the development described, application ref: 14F/2269.

on the creation of further HMOs in those areas. The 'Dales', which includes the appeal site, is one of those identified areas, defined as those where HMOs make up more than 10% of the housing. The emerging policy evidently reflects the Council's concerns regarding high concentrations of HMOs in some areas and the implications for the character of, and balance of housing in, those areas. However, whilst the Council has made amendments to the emerging policy in the light of comments from an examining Inspector, it remains subject to examination and its terms remain subject to further changes. I therefore afford emerging Policy H11 limited weight in this case.

9. The recent Article 4 direction removing permitted development rights for the change of use of C3 dwellings into C4 HMOs is a material consideration. However, whilst indicative of the Council's intention to control HMOs in the area, the Article 4 direction is not a planning policy. It is a mechanism for bringing such proposals under the control of the Council. Any such applications must still be considered on their individual planning merits, and the Article 4 direction itself carries little weight in that consideration.
10. Therefore, whilst recognising the Council's concerns regarding the proportion of HMOs in the wider area, I have based my decision on the adopted development plan policy, UDP policy H7, and the supplementary guidance in SPG7.
11. The Council has indicated that the site is within an area where more than 10% of the properties are in HMO use. However, the appellant's submissions indicate that, even including the appeal property, only 10% of the properties on the section of Smithdown Road within the Dales area and only 8% of properties on Gainsborough Road, which provides rear access to the property, are HMOs. On the basis of those figures, which have not been disputed by the Council, I am satisfied that the proposal would not lead to an overconcentration of HMOs or unduly unbalance the housing mix in the vicinity of the site, or adversely affect the character of its surroundings as a result.
12. The evidence indicates that the upper floors of the building were a residential flat previously. The addition of a ground floor kitchen would not significantly increase the level of accommodation within the building. The level of activity associated with the property's use as an HMO is therefore unlikely to differ materially compared with that associated with its occupation as a flat. Consequently, I consider that its use as an HMO would not have significant implications for the living conditions of other nearby residential occupants with regard to noise or disturbance.
13. I therefore conclude that the use of the appeal property as an HMO would not have an adverse effect on the housing mix, character or amenity of the area. It would therefore accord with the criteria in UDP Policy H7 and the guidance in SPG7 in those respects.

Living conditions – waste storage arrangements

14. On the basis of the submitted drawing and my own observations I am satisfied that adequate provision could be made in the rear yard for the storage of bins for both the HMO and the commercial unit which occupies the remainder of the appeal building's ground floor.
15. As there would be no direct access to the rear yard from the ground floor commercial unit, its occupiers would have to walk round from the front of the

property to deposit waste in the storage area in the rear yard. However, the distance involved is short and the frequency of such trips is likely to be limited given the unit's relatively modest size, even taking account of the range of A1 businesses which could occupy it. Consequently, I am satisfied that the waste storage and access arrangements would not prevent or discourage occupants of the ground floor commercial unit from making use of that area. I have no reason to believe that its occupants would dispose of their waste other than in a lawful and considerate manner and, even if that were the case, the Council would have recourse under separate legislation in any event.

16. I therefore conclude that the proposed development would not give rise to the unauthorised dumping of waste or cause harm to the character or appearance of the area or the living conditions of nearby residents in that regard.
17. Occupiers of the ground floor commercial unit would have to pass the kitchen windows of the HMO to reach their bin storage area. However, as the frequency of those trips is likely to be limited, such activity would not give rise to a significant or detrimental amount of noise or disturbance for occupiers of the HMO or other nearby properties, either from people passing those kitchen windows or opening and closing the gates to the rear yard and alley.
18. The bin storage areas for the HMO and the commercial unit would be close to windows in the ground floor kitchen of the HMO, which includes dining areas. However, the kitchen windows closest to those respective areas have high sills which would be some distance above the bins below. The proposed HMO kitchen also has other windows and a door further away from the bin storage areas, and thus is not necessarily reliant solely on those windows immediately above the waste storage areas for ventilation. I have no reason to conclude from the evidence that those areas would be too small to accommodate adequate bin provision for the two uses, or that those bins or waste storage areas would be likely to overflow as a result.
19. On that basis, I am satisfied that the bin storage arrangements would not give rise to a significant likelihood of unacceptable odour affecting the ground floor kitchen of the HMO or the living conditions of its occupants.
20. Therefore, I conclude that satisfactory arrangements would be made for the storage of waste for the ground floor commercial unit and the proposed HMO having regard to the living conditions of existing and future occupants, including with regard to noise and odour. The development would accord with Policies HD18 and EP9 of the UDP which require that adequate arrangements and access are made for the storage and collection of refuse and commercial waste within the curtilage of the site.
21. I have also had regard to Policies UD2 and UD7 of the emerging Local Plan, which are similar to those UDP policies in requiring waste storage to be designed in a positive manner and that sufficient space is retained within the curtilage of the property for adequate containment of waste. However, as those emerging policies remain subject to examination and possible amendment, the weight I give them is limited.

Other Matters

22. The Council has not identified any specific concerns regarding the size or design of internal spaces within the building or the living conditions of future

occupants in that regard. From the evidence before me I have no reason to reach a different conclusion.

23. Concerns have been raised that the proposed HMO could exacerbate parking and traffic problems in the vicinity of the site. However, the evidence indicates that the development would not significantly increase the amount of residential accommodation compared with the pre-existing residential use. Therefore, and given the site's proximity to local facilities and public transport routes, the proposed HMO would not give rise to a significant increase in traffic or parking demand compared with that pre-existing use.

Conditions

24. As both main parties refer to the development having commenced, the standard 3 year commencement condition is not necessary in this case. I attach a condition specifying the approved drawings for certainty.
25. The application form description does not specify a particular number of tenants. However, the plans show 5 bedrooms and it is evident from the Council's submissions that it concluded that satisfactory internal space would be provided on the basis that the HMO would have 5 occupants, a reasonable assumption in the absence of substantive evidence to indicate otherwise. Whilst similar matters may be controlled via HMO licensing regulations, living conditions are a material planning consideration. Therefore, and as I cannot be certain from the evidence that satisfactory space standards would be maintained if the HMO had more than 5 occupants, a condition limiting its occupancy to 5 residents is necessary and reasonable to maintain satisfactory living conditions.
26. I attach a condition requiring waste and recycling to be stored within the rear yard of the premises and that access to those areas for commercial and residential occupants is maintained, to ensure that adequate, accessible waste storage areas are provided in the interests of character and appearance.
27. Having regard to the pre-existing residential use of the building's upper floors and as the evidence indicates that the development would not introduce new residential rooms into parts of the building facing Smithdown Road compared with that pre-existing use, a condition requiring acoustic treatment to the windows in that elevation would not be reasonable in this instance.

Conclusion

28. For the reasons given, the appeal is allowed.

Jillian Rann
INSPECTOR