



Appeal Decision

Site visit made on 28 April 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 June 2021

Appeal Ref: APP/M4320/C/20/3258710

The land at 2 Barkeley Drive, Seaforth, Liverpool L21 4LX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs M Price against an enforcement notice issued by Sefton Metropolitan Borough Council.
 - The enforcement notice was issued on 6 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 10 years the change of use and conversion of the dwelling house to a 5 - studio house in multiple occupation (HMO).
 - The requirements of the notice are to cease using the premises as a House in Multiple Occupation (HMO).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the material change of use to a four bedroom house in multiple occupation (HMO), in accordance with the following plans: 0806.P.0104 and 0806.P.0103 dated July 2020, at 2 Barkeley Drive, Seaforth, Liverpool L21 4LX and subject to the following condition:
 - 1) No more than four persons shall be resident at the property at any time.
2. It is directed that the enforcement notice is varied by the deletion of two months and the substitution of four months as the period for compliance. Subject to this variation the appeal is dismissed and the enforcement notice is upheld insofar as it relates to the use as a five studio HMO and planning permission is refused in respect of the change of use and conversion of the dwellinghouse to a 5 - studio HMO on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary Matter

3. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less cost and disruption than total cessation of the use as currently required by the notice.

4. Under the ground (f) appeal the appellant proposes that if use as a five bedroom/five person HMO is not found to be acceptable, permission be granted for use as a four-bedroom/four person HMO. In this respect they have submitted a floor plan which shows room two being used as a lounge which would also then enable the outdoor amenity space to be accessed from within the property and used by all occupants. This proposal has been previously submitted to as a planning application¹ and subsequently refused by the Council, since the appeal was made.
5. However, since the use of the property as a four bedroom HMO would form part of those matters constituting the breach as stated in the notice, it is therefore open to me to consider the merits of the alternative proposal under the ground (a) appeal. In doing so I have had regard to the Council's reason for refusal.

The appeal on ground (a) and the deemed planning application

6. The main issue is the effect on the living conditions of current and future occupants with particular regard to the standard of accommodation.
7. The Council's Flats and Houses in Multiple Occupation (HMOs) Supplementary Planning Document (2018) (SPD) sets out minimum internal room sizes for HMOs. In this case there is dispute between the parties about which are the relevant standards. Whilst the rooms have double beds, the appellant confirmed that the rooms are let on a single occupancy basis and that there are five occupants. In the absence of contrary evidence, I have determined the appeal on this basis.
8. The rooms include a kettle, fridge, small work surface and some storage. Such facilities whilst normally found in kitchens are limited, and since the occupants have access to a communal kitchen, I consider it is reasonable to apply those standards relating to single room bedsits without kitchen facilities. However, there is no communal living room or lounge area, the only inside space for occupants outside of their bedrooms is the modest kitchen, which is not reasonably large enough for use as a communal dining or sitting area. Accordingly, I consider the standard to be applied is 15sqm. In this case all the rooms fall short of this standard.
9. The SPD recommends that all residents in HMO schemes have access to communal areas in which they can spend time to relax, socialise, eat meals etc. It goes on to state that this is particularly important as residents will otherwise only have one room to spend the majority of their time. However, if the rooms provided are spacious i.e., they meet the standards set out in the SPD, then the Council recognises that communal rooms may not be required as residents will have sufficient private space.
10. As already noted above, the only indoor space outside of the bedrooms consists of the modest kitchen and it seems unlikely that the occupants could comfortably spend a significant amount of time in that space together. Consequently, it seems occupants would spend a substantial amount of time in their bedrooms.
11. For a five person HMO the SPD requires a minimum of 40sqm outdoor amenity space which is accessible to all residents. The yard area at the house is,

¹ DC/2020/01442

according to the Council, around 22sqm which is a significant shortfall. Additionally, this space can only be accessed from within the house through bedroom two and therefore, it seems that only the occupant of bedroom two would reasonably have access to and use of the space.

12. The SPD states that the Council may, in limited exceptional circumstances, accept a lower amount of amenity space if it is not possible to meet these standards, including where the proposal is within easy walking distance to a local centre and where the benefits of being close to community facilities and public transport are significant.
13. Whilst the appellant stated that there are public parks within walking distance, they provided no details about how far away these are and, in any case, these provide a different function to private residential amenity space and as such do not provide a substitute.
14. Overall, considering the shortfall in room sizes, the need to utilise bedrooms due to the very limited communal space available and the absence of outdoor amenity space for all residents, I find that the accommodation is undersized, resulting in deficient residential quality to the detriment of the living conditions of the existing and future occupants.
15. Consequently, the use is contrary to Policy HC4 of the Sefton Local Plan which requires that there should be no significant harm to the living conditions of occupants. It also conflicts with the National Planning Policy Framework (the Framework) which requires a high standard of amenity for all existing and future users of buildings.
16. There is adequate space for bin storage, and this would not have been a reason alone to dismiss the appeal.
17. That the house could be occupied by a family of five does not alter my judgement since family occupation is different to occupation by unrelated individuals. Similarly, that the Council identified no other harm, is a neutral matter which cannot outweigh my findings.
18. However, the appellant's proposed alternative would see room two being used as a lounge which would mean that the occupants would have access to a communal lounge and the outdoor amenity space.
19. In the case, where occupants have access to a communal living room/lounge area, the bedrooms would need to provide at least 10sqm of space. All the bedrooms would achieve that standard and the kitchen and lounge would provide the required 7sqm and 11sqm.
20. The outdoor amenity space required for a four person HMO would be 30sqm. At 22sqm there would remain a shortfall however, whilst I consider the provision of outdoor space is important, based on my site observations it appears that the space would be sufficient for the intended number of occupants, including for drying clothes and socialising. As such and considering the generally transient nature of occupants of HMOs, I find that the shortfall in outdoor space would not be materially harmful to the living conditions of the occupants.
21. The Council referred to and provided copies of three appeal decisions in support of their argument on this matter. Those cases all related to the creation of self-contained flats. In the King Street case the shortfall was

significant and only two of six apartments would have direct access to outdoor space. In the Linacre Road decision, it was a combination of a shortfall in the size of both the internal and external accommodation which was considered to be harmful. Finally, in the Peel Road decision, two of the flats would have had small balconies and the occupants of the ground floor flat would have had no access to private or communal outdoor space. I consider none of these cases are directly comparable to the appeal development either in terms of the type of accommodation or shortfall in provision and they do not alter my judgement.

22. Although there would be conflict with the SPD in terms of the size of the outdoor amenity space, the proposed alternative would accord with the overall aims to ensure a good standard of accommodation for occupants.
23. Given my above findings, I consider that the use as a four bedroom/person HMO, would have an acceptable effect on the living conditions of the occupants having regard to the proposed standard of accommodation. Therefore, there would be no conflict with the amenity protection aims of Policy HC4 of the Sefton Local Plan or the Framework.

Conclusion on ground (a)

24. For the reasons given, I find that the current use as a five studio HMO is unacceptable. However, since the appellant's alternative, would resolve the harm caused, I find this to be acceptable. I therefore intend to grant planning permission under s177(5) of the 1990 Act for the use proposed with a reduction in the number of bedrooms and occupants from five to four, with room two being used as a lounge.

Conditions

25. The permission is subject to the plans specified and a separate plans condition is not necessary.
26. A condition limiting the number of occupants to four is necessary in the interests of safeguarding the living conditions of existing and future occupants.

The appeal on ground (f)

27. The appellant's case under ground (f) I have already considered in detail under ground (a). Although planning permission has been granted in respect of parts of the development enforced against, the notice has been upheld without varying any requirements relating to them, since this could have given rise to two separate planning permissions, namely the one that has been granted in this appeal decision and the one that would be deemed to be granted by section 173(11) due to under-enforcement.
28. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted. This provides that where planning permission is granted after the service of a copy of the notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission.
29. The appeal on ground (f) therefore fails.

The appeal on ground (g)

30. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
31. The appellant seeks to extend the period for compliance so that the occupants of the HMO can have more time to find alternative accommodation however, they did not specify what they consider a reasonable period to be. The appellant referred to the Government regulations² requiring landlords to give tenants six months' notice of their intention to seek possession, except in the most serious cases. I am aware that these measures were extended until 31 March 2021 however, I am not aware that they have been extended further.
32. Nevertheless, and whilst it is never possible to guarantee that occupants can find somewhere new to live, the HMO was occupied on the date of my visit and I must ensure anyone who will be deprived of their home is given a reasonable period of time to look for other housing.
33. Consequently, bearing in mind the potential disruption to one of the occupants, I conclude that it is reasonable and proportionate to extend the period from two to four months. The appeal on ground (g) succeeds to that extent.

Conclusion

34. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for the material change of use to a four bedroom HMO in accordance with the following plans: 0806.P.0104 and 0806.P.0103 dated July 2020 but otherwise I will uphold the notice with a variation and refuse to grant planning permission in respect of the use of the dwellinghouse as a five studio HMO. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Felicity Thompson

INSPECTOR

² The Coronavirus Act 2020 (Residential Tenancies: Protection from Eviction) (Amendment) (England) Regulations 2020