



Appeal Decision

Site Visit made on 6 July 2021

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 6th August 2021

Appeal Ref: APP/Z4310/W/21/3272303

4 Clifton Road, Liverpool L6 4BQ

- 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 LMCC Trading Limited against the decision of Liverpool City Council.
 - The application Ref 20F/1716, dated 22 July 2020, was refused by notice dated 19 January 2021.
 - The development proposed is described as 'Change of use from 6 x flats (use class C3) to HMO (sui generis) for 12 x bedrooms with en suite accommodation and communal kitchen/dining and lounge area), refuse storage area and secure cycle storage'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the plans, which were amended during the course of the planning application, and accompanying details that the development proposed is the alteration and conversion of the property to an eight bedroom House in Multiple Occupation (HMO) with dormer windows to the front and rear and associated works. The Council dealt with the proposal on this basis and so shall I. In addition, and during my site visit, I noticed that some of the development forming this scheme has been carried out. Namely the dormer windows and some of the internal conversion works. I have considered the appeal accordingly as seeking part retrospective planning permission.
3. The application form states that the site address is 4A Clifton Road but the decision notice, the appeal form and appellant's statement of case indicate that the appeal site is 4 Clifton Road. In the absence of any conclusive information, I have adopted this consensus and amended the site address accordingly in my decision.
4. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. I have considered its provisions in relation to the appeal scheme and note that there are no significant changes from the 2019 iteration which would affect the main issues of the case. Accordingly, I have referred to the 2021 Framework in my findings.
5. The Council's suggested reasons for refusal refer to Policy H10 of the pre-submission draft Liverpool Local Plan (Emerging Plan). Notwithstanding the extent of public engagement to date, the Emerging Plan is not adopted and the

consultation on the main modifications is yet to take place. As such, and in accordance with Paragraph 48 of the Framework, I give moderate weight to the policies of the Emerging Plan.

Applications for Costs

6. An application for costs was made by LMCC Trading Limited against Liverpool City Council. This application is the subject of a separate decision.

Main Issues

7. The main issues are the effect of the proposed development on the living conditions of the occupiers of neighbouring dwellings with specific regard to noise disturbance; and whether or not the proposed development would represent the unacceptable loss of a family dwelling

Reasons

Living Conditions

8. The occupiers of an HMO are likely to lead independent lives from one another. Taking account of the size of the appeal property, the activity generated by eight persons living independent lives, with separate routines, would lead to a level of activity that would be more marked and intensive than that which could reasonably be expected to be associated with a single house, even one occupied by a large family.
9. It has been put to me that the combination of the good quality of the conversion, the proposed management arrangements and the relative isolation from the rest of the street close to the commercial area would prevent any issues arising for the residents of neighbouring properties.
10. However, disturbance from noise can also arise from general activities that take place outside of the property, such as those associated with the coming and goings of residents and their visitors. These can also include disturbance from car engines, car audio systems, the emptying of bins, slamming of doors and people conversing at any time of the day, including when residents would reasonably expect a certain degree of peace and quiet.
11. Whilst I accept that effective management may moderate effects, they are principally designed to manage extreme instances of disturbance. In my view noise and disturbance by virtue of the intensity of use of a property by eight unconnected individuals would be greater than the prevailing baseline, which is one of mostly close knit, terraced, single unit occupancy dwellings.
12. I therefore find, taking the above into account, that the proposed development would have a harmful effect on the residents of neighbouring properties in the surrounding area, in respect of disturbance from noise. As such it would conflict with Policy H7 of The City of Liverpool Unitary Development Plan (2002) (UDP), Emerging Plan Policy H10, and advice within Supplementary Planning Guidance Note 7: Conversion of Buildings into Flats and Bedsits (SPG7) in this regard. These seek, amongst other matters, to ensure that there is no severe loss of amenity.
13. Whilst I recognise the age of the UDP, Policy H7 is broadly consistent with paragraph 130 of the Framework which seeks to ensure that developments are sympathetic to local character and create places with a high standard of

amenity for existing and future users. It is therefore relevant to the main issue and not out-of-date.

Loss of Family Housing

14. The appeal relates to a large semi-detached property that is located in a Primary Residential Area. It is uncontested that the adjoining property is in use as flats, and on my site visit I saw that there is a motor vehicle repair garage on the opposite side of the road to the appeal site, and some other commercial properties nearby on West Derby Road. Nonetheless, the majority of the properties on Clifton Road appear to be in single occupancy residential use. The prevailing character of this street therefore appears to be of close-knit two storey family terrace and semi-detached properties.
15. In terms of the principle of development, UDP Policy H7 sets out criteria for the consideration of applications relating to HMOs. SPG7 provides further guidance on standards for the conversion of buildings into flats or HMOs. SPG7 guides that the conversion of properties to HMOs would not be appropriate in 'an area of predominantly single family dwellings where there would be an adverse impact on the character, environment and amenity of neighbouring properties'. I have reasoned above how that would occur, in respect of amenity, bringing the scheme into conflict with UDP Policy H7 (and Emerging Plan Policy H10).
16. The appellant considers that the appeal building's last use was for six flats. I have had regard to the submitted photographs of the property following the appellants' purchase of it, and the information in respect of the separate meter connections that have been submitted in support of its case. Nonetheless, the photographs only serve to confirm that the property was in a poor state of repair, and does not, to my mind, amount to convincing evidence to substantiate that the property was in use as flats. Furthermore, the main parties agree that planning permission was not obtained for a change of use from a dwelling to six flats, and I am mindful of local residents' representations which also question whether the appeal building has ever been in use for this amount of flats. I have no substantive reason to question their views.
17. Given the lack of convincing evidence to the contrary, I am unable to conclude that the previous established lawful use of the property was for flats or that it was used for these purposes. As a result, I consider that the development has resulted in the loss of a family dwelling.
18. Nonetheless, family housing appears to be the predominant house type along Clifton Road. Despite the recent Article 4 Direction, the Council accept that the appeal site is not located in a designated neighbourhood where the concentration of HMOs has reached a level that is having an adverse impact on the character of the area (as set out in Emerging Plan Policy H11). I am also aware that UDP Policy H7, in acknowledging the needs of smaller households in the City for adequate, affordable housing, states that the conversion of large, old buildings is often an effective way of securing their improvement and widening the choice of available accommodation. The appeal property satisfies this requirement.
19. With this and the above in mind, I am unable to conclude that the individual or cumulative effect of a further HMO as proposed would reach a level where the balance and mix of housing in this area would be significantly altered or would have an adverse impact on the character of the area.

20. Accordingly, the appeal scheme would not adversely affect the balance or mix of housing in the area. Thus, there would be no inherent conflict with UDP Policy H7, Emerging Plan Policy H10, or the relevant advice contained in SPG7. The aims of which I have set out above and insofar as they are relevant to this main issue.

Other Matters

21. The appellant contends that residential dwellings may be used by up to six unrelated individuals without the need for planning permission and that this represents a fallback position for the property. However, I have been made aware that a new Article 4 Direction came into force in this area in June 2021, which restricts the change of use of C3 dwellings to C4 use HMOs without the need of planning permission. As such this limits the weight that I can give to this as a perceived fallback position.
22. I have had regard to the appeal decisions that the Council has referred to in support of its case (Ref: APP/Z4310/W/20/3266319, APP/Z4310/W/21/3266320 and APP/Z4310/W/21/3266454). Nonetheless, the Council has confirmed that these cases all related to proposals in areas with an existing concentration of HMOs. Accordingly, their circumstances are not directly comparable to those which apply for this appeal.
23. As well as these examples, my attention has been drawn to other planning permissions for HMOs in Liverpool. Whilst I do not have the full details of all of these cases before me the planning officer reports demonstrate that only two of these examples are for 8 bed HMOs, some of which were already in authorised use as an HMO. Furthermore, they are all located in different parts of Liverpool to the appeal site, with different characteristics, and levels of existing HMOs. Accordingly, on the basis of the evidence before me, I cannot be sure that the circumstances in these cases represent a direct parallel to the appeal proposal. I have, in any case, determined the appeal on its own merits.
24. I note the appellant's dissatisfaction with the Council's handling of the application and the financial investment that it has already made. However, these matters have had no bearing on my decision as I have only had regard to the planning merits of the proposal that is before me.
25. It has been put to me that the proposal complies with the "Standards and Management of Houses in Multiple Occupation" requirements of the Council's HMO licensing division. However, these requirements are outside of the planning regime and have therefore had no bearing on my decision. The appellant also argues that Nationally Described Space Standards would be achieved and that the appeal building has been significantly upgraded to improve the character and appearance of the building and the street scene. However, these matters did not appear to be contentious in the application and are in any case neutral factors that cannot weigh against harm.
26. Concerns have also been raised by the appellant about how a significant proportion of the letters of objection have been formulated, their content, the timing of their submission, the public accessibility to view these, and the double counting of them by the Council. I have also had regard to the evidence that has been provided in regard to the proximity of objector's addresses to the

appeal site. Nonetheless, these are not determining factors in the consideration of an appeal. The question is whether there would be unacceptable harm in respect of, in this particular case, the living conditions of neighbouring residents, even if objections have or have not been lodged.

27. In reaching my findings I have had regard to a High Court Judgement *West Oxfordshire District Council v (1) Secretary of State for Housing Communities and Local Government (2) Rosconn Strategic Land Limited [2018] EWHC 3065 (Admin)* that has been submitted by the appellant to support its view that the Emerging Plan should be afforded limited weight. However, in this case, the Deputy Judge of the High Court considered the Inspector's assessment of weight to be a matter for his own judgment. The weight to be attached to material considerations, including emerging policy, is therefore a matter for the decision maker, and I have reasoned above why Emerging Plan Policy H10 should be afforded moderate weight. In any event, the appeal scheme would conflict with the adopted development plan for the reasons I have given.

Conclusion

28. Despite my findings on the balance and mix of housing, I consider the harm that would be caused by the proposed development in respect of the living conditions of neighbouring residents, with particular reference to noise disturbance to be an overriding concern. This would result in conflict with the development plan in the terms I have described. It is for these reasons that the appeal should be dismissed.

Mark Caine

INSPECTOR