



Appeal Decision

Site Visit made on 20 July 2021

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Appeal Ref: APP/Z4310/W/21/3269276

38 Portman Road, Liverpool L15 2HJ

- 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 O'Flaherty against the decision of Liverpool City Council.
 - The application Ref 20F/3309, dated 17 December 2020, was refused by notice dated 8 February 2021.
 - The development proposed is change of use from a C4 use class HMO for up to six occupiers to a sui generis use class HMO for up to seven occupiers, facilitated by single storey rear extension, rear dormer, and installation of two rooflights on the front elevation.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As I observed at the time of the site visit the property is in use as a HMO, the rooflights have been installed within the bedroom, identified as 07 and the rear extension and dormer have been constructed. The bedroom was also laid out with furniture, although it appeared currently unoccupied. Nonetheless, whilst the above matters are a material consideration within the appeal, the proposal seeks the change of use for up to seven occupiers, facilitated by the physical works which have already taken place. I have dealt with the appeal on this basis, and in part retrospective.
3. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. In the interests of natural justice both main parties have had the opportunity to make representation. In reaching my decision I have had regard to the revised Framework.
4. The main parties have referred to policies within the emerging Liverpool Local Plan 2013-2033 Pre-submission draft January 2018 (LLP). The LLP has been independently examined by an Inspector and the Council are preparing main modifications. Most relevant to this appeal are emerging Policy H7, which has no main modifications and emerging Policies H10, H11 which had early schedule main modifications and limited representations. As such, in accordance with paragraph 48 of the Framework, and given its advanced stage of the plan preparation, I have afforded these policies moderate weight.

Main Issues

5. The main issues are:

- The effect of the proposal on the character of the surrounding area, with particular regard to the balance and mix of housing and the loss of a family sized dwelling;
- The effect of the proposal on the living conditions of neighbouring occupiers, with regard to noise and disturbance; and
- Whether the proposal provides an acceptable standard of living conditions for future occupants, with particular regard to outlook and natural light.

Reasons

Character, balance and mix of housing

6. The appeal site is a two-storey mid terrace property located within an identified primarily residential area (PRA). The immediate area consists of similar traditional terraced properties which are positioned in parallel rows and are back-to-back with alleyways separating the rows between rear yard areas. The majority of properties feature existing rear outriggers or have been extended and there are several with rear dormers and front rooflights in situ along Portman Road.
7. Saved Policy H4 of The City of Liverpool Unitary Development Plan, 2002 (UDP) sets out that permission will be granted for changes of use within a PRA, provided there is no adverse impact on residential amenity or the character of the area and subject to other policies of the plan. Saved Policy H7 grants permission for the conversion of buildings for multiple occupation, taking account of certain criteria including the suitability of premises in terms of size and location; the impact on the amenity of neighbouring properties and the character of the surrounding area.
8. Policies are also supported by the UDP, Supplementary Planning Guidance Note 7 (SPG7), '*Conversion of Buildings into Flats and Bedsits*' which sets out guidance relating to suitable premises and consideration of the impact on the character, environment and amenity of neighbouring properties.
9. The Council contend that the proposal would result in the loss of a dwelling that is suitable in size, design and layout and location to continue as a family dwelling. It would appear that the historic character of the location has been made up of single-family dwellings, but this has now changed over time. Moreover, as I observed at the time of the site visit, and from third party representations there appears to be a mix of both family dwellings and houses in multiple occupation (HMO) along Portman Road.
10. The proposal would inevitably lead to an increase of HMO accommodation within an existing concentration and result in the loss of a potential future family home. However, I have no substantive evidence to support whether the existing use of the property as an established HMO is part of the exceeded 10% threshold, given there does not appear to be any planning history or assessment provided of the 10%. Moreover, I have no evidence to the contrary that the property is not in use as an established 6 bed HMO, which appears it has been for some time or that external works were not done under permitted development. The appellant therefore indicates that if the appeal were to fail, the property could continue as a 6 bed HMO, resulting in a 'fallback' position.

11. Therefore, taking account of the existing use of the property as an HMO and that external works have been completed. I do not consider that the proposals to increase to a 7 bed HMO would unbalance housing provision or that the external works, including the rear extension, dormer and rooflights, have an adverse impact on the character of the area.
12. Consequently, I conclude that the proposal would not result in harm to the character of the area, with particular regard to the balance and mix of housing and the loss of a family sized dwelling. It would therefore not conflict with the requirements of Saved Policies H4 and H7 of the UDP and SPG7, only in regard to the effect on the character of the area, balance and mix of housing, as I have set out.
13. It would also not conflict with the requirements of emerging Policies H7, H10 and H11, which amongst other things, seek to ensure that there is balanced housing provision meeting the needs of families and households of varying sizes; and that permission will be granted where there would be no adverse impact on the character of the surrounding area.

Living Conditions – Neighbouring occupiers

14. The appeal property is a moderate sized terraced dwelling and is capable of a large family living together or as a 6 bed HMO. The works to facilitate a larger HMO would result in an increase of the number of bedrooms and has incorporated a rear extension and dormer. Residents of an HMO are most likely to be unrelated and the appellant confirms that the number of occupants would increase to seven.
15. Therefore, the proposal to increase occupants would result in a much larger property than the existing and would likely result in an intensification of use at the property. I do not consider that noise and disturbance would be of a similar level to either a large family living together or 6 occupants. There would be an appreciable increase of one further occupier in terms of coming and goings at the property, increase in visitors, deliveries and domestic paraphernalia associated with several individuals living together. Moreover, this would be particularly noticeable to occupiers of the adjoining properties given that the property is sited within the middle of a row of terraces.
16. The appellant's statement of case indicates that they have a physical presence in the area and operate a strict Noise and Nuisance Policy, including a 'three strikes' policy which is included within the tenancy agreement. Nevertheless, the Council and third parties indicate there are frequent complaints of anti-social behaviour within the vicinity of the site. Moreover, such management or contracts would not be relevant or enforceable under the planning regime.
17. For the reasons given above, I conclude that the proposal would cause harm to the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. The proposal would be contrary to Saved Policy H7 of the UDP and Supplementary Planning Guidance Note 7, which seek proposals to take account of the impact on the amenity of neighbouring properties. It would also conflict with emerging Policy H10 of the LLP which requires there to be no adverse impact on the amenity of neighbouring properties, particularly through increased noise or disturbance.

Living Conditions – Future occupiers

18. The proposal would result in 7 bedrooms which would be spread across the floors of the property. Bedroom-07 would be situated within the roof space and would meet the space standards for bedroom size. However, it would only be served by 2 rooflights. As I observed, the angle of the roof slope and the position of the rooflights within the plane are relatively low towards the room floor level. This results in a restricted outlook from these rooflights, particularly as you could only look up into them or view adjacent roof planes, which would not be adequate for any future occupier.
19. Furthermore, given that there is only two rooflights, angled at a substantially low position within the roof slope serving the habitable bedroom, natural light is also restricted. It would likely be that any future occupier of bedroom-07 would spend the majority of their time within that room. As such, the lack of natural light, particularly in the early mornings or evenings would result in inadequate and unacceptable conditions that would be detrimental to their health and wellbeing. Thus, in the absence of adequate natural light, there would be harm to the living conditions of any future occupant of bedroom-07.
20. Despite, the internal and external communal amenity areas meeting minimum or exceeding size requirements, floor area and bin storage being acceptable. This does not compensate or outweigh the inadequate internal living space in regard to outlook and natural light for bedroom-07. Furthermore, I have not been provided with any substantive evidence, including plans of any alternative layout for the property, even if there were 6 occupants.
21. For the reasons given above, I conclude that the proposal would not provide an acceptable standard of living conditions for all its occupants, with particular regard to outlook and natural light. The proposal would be contrary to Saved Policy H7 of the UDP which takes account of the criteria for the design of internal spaces, regarding minimum size, acoustic insulation, light and ventilation. It would also conflict with SPG7, paragraph 17 guidance, which advises that bedrooms should not be lit solely by rooflights as they do not provide a satisfactory level of amenity.
22. Moreover, it would be in conflict with emerging Policy H10 of the LLP, which amongst other things requires the premises to be suitable for the size of the number of households to be accommodated and that living rooms, kitchens and bedrooms are not solely lit by rooflights.

Other Matters

23. The Council have confirmed that the appeal site lies within an Article 4 Direction Area, which came into force on 17 June 2021 and prohibits the conversion of C3 use to C4 use under permitted development rights. From the evidence before me and site observations, it appears that there is a greater than theoretical possibility that the property would continue as an HMO for 6 persons, as this was the use / occupation prior to the direction coming in to force. Therefore, it represents a 'fallback' position'. As such I place moderate weight on the 'fallback'.
24. Nonetheless, the proposal before me increases the number of occupants to an unacceptable degree that would cause significant harm to the living conditions of existing occupiers and future occupants of bedroom-07. Therefore, it

appears that the 'fallback' would be less harmful than the proposal before me, and as such does not justify it.

25. I note that third parties have expressed additional concerns about the proposed development, including highway safety, car parking, waste and crime. However, the Council did not raise these points as reasons for refusal, and I have no substantive evidence to support those concerns. Given my findings in relation to the main issues, it is not necessary to consider these matters in detail.
26. I understand other developments have been granted by the Council in nearby areas. I have been provided with limited details of them, although there may be some similarities with the appeal scheme. The appellant suggests that the Council have been inconsistent, but this does not affect the precise circumstances of the appeal scheme. I have also had regard to the appeal decisions¹, which the main parties have brought to my attention. Insufficient information has been submitted on these schemes, and so I cannot be sure that they represent a direct parallel to the appeal proposal, in respect of location, public representation, emerging policies and the Article 4 Direction. In any event, the appeal needs to be determined on its individual merits on the basis of the evidence before me.
27. I recognise the appeal proposal would have benefits with regard to contributing to additional housing in the Borough and the contribution additional future occupiers of the HMO would make to the local economy. I acknowledge the importance of meeting the needs of groups with specific housing requirements and the location is within access to public transport links and within walking distance of local amenities.
28. These matters, however, do not outweigh my findings in respect of living conditions of existing occupiers, and future occupiers of the HMO nor the conflict I have found with the development plan read as a whole. Moreover, it would also conflict with the emerging policies contained within the LLP, Policies H7, H10 and H11, of which I have afforded moderate weight.

Conclusion

29. The proposed development would be contrary to the development plan and the Framework, taken as a whole. There are no other material considerations that would indicate that the proposed development should be determined other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

KA Taylor

INSPECTOR

¹ 3171743, 3231011, 3217701, 3258390, 3258393, 3183336, 3265366