



Appeal Decision

Site Visit made on 25 May 2021

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2021

Appeal Ref: APP/Z4310/W/21/3268107

39 Wellington Avenue, Liverpool L15 0EH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Sam O'Flaherty against Liverpool City Council.
 - The application Ref 20F/2642, is dated 13 October 2020.
 - The development proposed is the erection of one dwelling (reconstruction of 39 Wellington Avenue) to use as a C4 use class HMO for up to 4 occupiers.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one dwelling (reconstruction of 39 Wellington Avenue) to use as a C4 use class HMO for up to 4 occupiers at 39 Wellington Avenue, Liverpool L15 0EH in accordance with the terms of the application, Ref 20F/2642, dated 13 October 2020, subject to the conditions in the attached Schedule.

Preliminary Matters

2. The appeal has been made following the Council's failure to determine the application within the required period. Following the submission of the appeal the Council has not clarified the position it would have taken on the application if it had made a decision within the required timescales. In the absence of such a position, I have had regard to the comments from interested parties received on the application or as part of this appeal in formulating the main issues and in reaching my decision.
3. Following the submission of the appeal a revised National Planning Policy Framework (the Framework) was published. The main parties have been given the opportunity to comment on it. I have taken the new Framework and any comments thereon into account in my decision.
4. The emerging Liverpool Local Plan (emerging LP) is being examined. The Framework advises that weight can be given to relevant policies in emerging plans according to their stage of preparation, the extent to which there are unresolved objections to relevant policies and the degree of consistency of the relevant policies to the policies in the Framework. The emerging LP has not yet been found sound or adopted. Consequently, whilst the emerging LP appears to be at an advanced stage in its preparation, I cannot yet accord it full weight. When referring to the emerging LP policies, I have referred to the most up to date version of that policy as they now stand in the examination process.

Main Issues

5. The main issues are the effects of the proposed development on:

- the character and appearance of the area;
- the housing mix in the area; and
- the living conditions of existing residents with particular regard to outlook, light, noise and disturbance, parking provision and litter.

Reasons

Character and Appearance

6. Wellington Avenue and the streets in the wider area are characterised by rows of terraced dwellings set close to the pavements with small rear yards/gardens. The appeal site is a vacant plot between 37 and 41 Wellington Avenue. It sits at the end of a row of terraces on the western side of the street, adjoining 37 Wellington Avenue.
7. The proposed development has been designed to reflect the neighbouring properties and would appear as a continuation of the existing row of terraces, with matching eaves and ridge line, windows sitting at the same height, and a bay window on the front elevation. The use as a house in multiple occupation (HMO) for up to four occupants would not manifest itself significantly differently from the occupation of a property as a single dwelling in terms of its effect on the character and appearance of the area. Consequently, there would be no material harm to the characteristics or appearance of the street scene or the local area.
8. Insofar as this main issue is concerned, the proposed development would therefore accord with relevant elements of Policies H5 and HD18 of the City of Liverpool Unitary Development Plan, adopted 2002 (the UDP) which set out the requirements for new development to ensure that it respects the character of the surrounding area, relates well to its locality and includes characteristics of local distinctiveness in terms of design, layout and materials, amongst other matters. The proposed development would also accord with Policy H7 of the emerging LP¹, which states that new housing development will be granted in Primary Residential Areas provided that the residential character of the area is protected. The development would also accord with the design objectives of the Framework.

Housing Mix

9. Policy H11 of the emerging LP, as set out in the Main Modifications² is specific to HMOs and appears to be focussed on helping to manage concentrations of HMO dwellings. It aims to ensure that there is balanced housing provision meeting the needs of families and households of varying sizes. Neighbourhoods where the concentration of HMOs has reached, or could reach, a level that could have an adverse impact on the character of the area are designated on the associated Policies Map. The supporting text identifies Smithdown Road / Gainsborough-Wellington Roads / Picton Road / Cranborne Road as such an area. The appeal site lies within the area bounded by these roads.

¹ Liverpool Local Plan 2013 – 2033 Pre-submission Draft 2018

² Draft Schedule of Main Modifications - FINAL (June 2021)

10. Policy H11 goes on to state that in designated neighbourhoods with an HMO concentration equal to or exceeding a threshold of 10% of all dwellings in the designated neighbourhood, further planning applications for a change of use from C3 to small (C4) or large HMO dwellings will not be supported. In addition, an Article 4 Direction covering a wide area including the appeal site came into effect on 17 June 2021. It limits permitted development rights for a change of use from C3 to C4 use class.
11. Whilst several properties in the vicinity of the appeal site appear to be in use as HMOs, I have no evidence before me that demonstrates what the concentration of this use is in this area. The proposed development is for a new build development that requires planning permission in its own right, and so would not be affected by the Article 4 Direction. Furthermore, I saw that properties in the immediate vicinity of the appeal site appear to have a mixture of tenures, including family homes and flats as well as HMOs. As stated above, the use of the proposed building as a small HMO would not manifest itself significantly differently from the occupation of it as a single dwelling. As the proposed development is for a new build property, a loss of a family dwelling would not occur.
12. For the above reasons, I therefore conclude that the proposed development would not result in a meaningful change to the housing mix of the area, supporting an appropriate mix in respect of those with differing housing requirements. As such, a suitable balance in terms of accommodation in the community would not be unduly affected.

Living Conditions of Existing Occupiers

13. Concerns have been raised about the potential noise, disturbance and anti-social behaviour and litter that might be caused by the proposed use as an HMO, the additional pressure that the proposed development may cause to on-street parking provision and a potential loss of sunlight to gardens. I am also mindful of the Council's reason for refusal on the previous application which, based on the information within the appellant's appeal statement, related to the effect on outlook for the occupiers of neighbouring properties.
14. HMO occupation can be different to family occupation. It is generally more transient, with a different nature and pattern of activity. However, I have little evidence before me to suggest that, on the basis of the level of occupancy proposed and baseline characteristics of the area, that the use of the proposed building as an HMO for up to four occupants would result in a significant increase in activity, disturbance or noise. In addition, the proposed occupation would only be a slight increase over and above that of the existing situation within Wellington Avenue. I also note the appellant's noise and nuisance policy for tenants, which would aid in controlling the behaviour of future occupiers, although this would rely principally on controls outside of planning.
15. The appeal site is near public transport routes and a range of shops and services and provision for cycle storage is included within the proposed development. Occupiers of the proposed development would therefore not necessarily have to rely on a car for day-to-day requirements. From my observations, which was only a snapshot in time, it is clear that on-street parking is a feature of the area, and that on-street parking is well used on Wellington Avenue. There was on-street parking capacity on nearby streets

such as Thorneycroft Road and Bagot Road. There is no evidence to suggest that this is not representative of the general parking situation.

16. Whilst there is demand for on-street parking within the vicinity of the appeal site, there is little substantive evidence to demonstrate that the existing on-street parking situation has reached saturation point. Furthermore, in my experience of HMOs, occupants often have a low rate of car ownership. There is therefore no evidence to suggest that the proposed development would result in an increase in on-street parking such that there would be an unacceptable impact on highway safety.
17. The appellant has reduced the overall scale of the proposed development from that which was refused permission by the Council. The depth of the proposed development has been reduced and it is no longer proposed to have a two-storey outrigger. The scale of the roof dormer has also been reduced. Although the separation distance between the elevations of the proposed development and the windows of 41 Wellington Avenue and the property to the rear on Thorneycroft Road may be less than those set out in the SPG³, the separation distances and the resulting outlook would reflect the existing nature of Victorian terraced streets. The reduced scale of the proposed development would reduce its effect on the outlook for occupiers of the two adjacent properties and the property immediately to the rear and would not result in an unacceptable loss of outlook for occupiers of those properties. For the same reasons, there would not be an unacceptable loss of light for occupiers of neighbouring properties.
18. With regard to litter, the proposed development makes provision for the storage of refuse and recycling bins to the rear of the property. I saw no evidence around the appeal site or the general area to indicate that there were issues of over-spilling bins or inconsiderate waste disposal, nor have I been directed to any reports or complaints to the Council's waste collection teams or to the Council's enforcement or environmental health teams with regards to anti-social behaviour.
19. As such, I conclude that the proposed development would not have an unacceptable effect on the living conditions of occupiers of neighbouring properties. It would therefore accord with Policies H5 and HD18 of the UDP which seek to protect privacy and amenity for existing residents, amongst other matters. It would also accord with Policy H13 of the emerging LP Main Modifications which requires new residential development to have regard to the need to protect privacy and amenity, including through adequate separation distances for windows and walls amongst other matters. It would also accord with the requirements of the Framework regarding the promotion of high standards of amenity.

Other Matters

20. Concerns have been expressed that a student HMO may be vacant at certain time of the year and this would invite crime. There are properties on Wellington Avenue that are not HMOs and so there would be activity and natural surveillance throughout the year, and deterring crime is not solely reliant on a property being occupied. I therefore have no reason to conclude that crime would materially increase were the appeal to be allowed.

³ Supplementary Planning Guidance Note 10, New Residential Development

21. I appreciate the concerns expressed that the proposed development would have a detrimental effect on the established character of the local community including the creation of tensions and instability, the local economy and pressures on services. Nevertheless, I have reasoned above how the proposal would result in little tangible change compared to the existing mixed nature of the area in planning terms. Therefore, whilst I understand the perspectives of nearby residents, no other matters raised are sufficient to alter my overall finding regarding the acceptability of the proposed development.

Conditions

22. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework, and have amended the wording of certain conditions in that light (without altering their fundamental aims).
23. A condition to require the development to be carried out in accordance with the approved plans is necessary in the interests of certainty.
24. In the interest of the character and appearance of the area and to safeguard the living conditions of occupiers of nearby properties, details of external materials, boundary treatments, soft landscaping, external lighting, CCTV cameras and roof treatment are necessary. Also in the interests of safeguarding the living conditions of occupiers of nearby properties, a condition is necessary to control the installation of additional windows on the development.
25. A requirement to ensure a secure cycle store is on site is necessary to provide residents with an alternative sustainable method of transport in line with Policy T6 of the UDP.
26. It is also reasonable and necessary to impose a condition restricting the number of residents in the HMO to ensure a suitable quality of accommodation for its occupiers and to safeguard the living conditions of neighbouring occupiers.
27. The properties on Wellington Avenue have a mixed front elevation including window and door surrounds, materials and roof details. A condition requiring the development to replicate the decorative details characteristic of the terrace would not therefore have the required precision nor is it necessary given the detail provided within the approved plans and the condition requiring the submission of details of external materials. A condition requiring waste generated to be placed outside the development only on the appropriate refuse collection day would not be reasonable.

Conclusion

28. The proposed development would respect the character and appearance of the area and would not have an unacceptable effect on the housing mix in the area or the living conditions of existing occupiers. Therefore, for the reasons given above, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should succeed.

F Wilkinson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 002, 0001, 0002 and Asgard Addition All-Metal Bike Store specification.
- 3) Notwithstanding the approved plans, approval of the following details shall be obtained from the local planning authority in writing, prior to the respective elements of development commencing on site:
 - (i) a detailed schedule of all external materials, their colour, size and finish;
 - (ii) boundary treatments;
 - (iii) all ground surfaces not built upon including soft landscaping details;
 - (iv) all external lighting systems;
 - (v) any CCTV cameras;
 - (vi) details of roof treatment, including rainwater goods and roof vents.

Once the development hereby permitted has been carried out in accordance with the approved details, it shall be retained as such thereafter.
- 4) Notwithstanding the approved plans, prior to first occupation of the development hereby permitted, details of the cycle parking shown on drawing 0001 shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be provided in accordance with the approved details prior to first occupation of the development and shall be retained as such thereafter.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no window openings, other than those expressly authorised by this permission, shall be inserted into the development.
- 6) The maximum number of occupants permitted within the development hereby permitted is four.