



Appeal Decision

Site visit made on 9 August 2022

by K Williams MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2022

Appeal Ref: APP/Z4310/W/22/3291515

3 Halkyn Avenue, Liverpool L17 2AH

- 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 T Cowell (Your Student Living Ltd) against the decision of Liverpool City Council.
 - The application Ref 21F/1848, dated 14 June 2021, was refused by notice dated 23 December 2021.
 - The development proposed is Proposed Change of Use from Class C4 House in Multiple Occupation (HMO) for six occupants to a sui generis HMO for seven occupants.
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Decision

1. The appeal is allowed and planning permission is granted for Proposed Change of Use from Class C4 House in Multiple Occupation (HMO) for six occupants to a sui generis HMO for seven occupants at 3 Halkyn Avenue, Liverpool L17 2AH in accordance with the terms of the application, Ref 21F/1848, dated 14 June 2021, and the plans submitted with it, subject to the following 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 submitted plans: Location Plan '3 Halkyn Avenue, Liverpool L17 2AH' and Drawing No. ODS/01.
 - 3) The number of occupants residing at the premises shall not exceed 7 persons.

Applications for costs

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate decision.

Preliminary Matter

3. The Council has advised that the Liverpool Local Plan 2013 - 2033 (LLP) was adopted on 26 January 2022, and therefore the LLP and its policies now carry full weight and replace the Liverpool Unitary Development Plan and its policies. I have determined the appeal accordingly and, in any event, note that emerging Policy, H10, was considered to carry significant weight at the time that the application was determined, and was included in the Council's reason for refusal.

Main Issue

4. The main issue is the effect of the proposed development on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance.

Reasons

5. The appeal property is a substantial semi-detached dwelling, which is in use as a House of Multiple Occupation (HMO), providing accommodation for 6 people. The property is located close to a vibrant part of Smithdown Road in an area of high-density housing, comprising a variety of tenures.
6. The proposed development would increase the number of occupants at the existing HMO from 6 to 7. Although this would not increase the proportion of HMOs or reduce the amount of single occupancy homes within the road or wider area, it would lead to an intensification of the residential use of the property including any associated comings and goings.
7. The appeal property is located within a densely populated area, with a variety of residential accommodation and tenures and close to a vibrant location. Consequently, there is already a high level of activity in the area. The proposed use of the appeal property as a 7-bedroom HMO would be likely to increase the amount of comings and goings and associated noise and disturbance when compared with its use as a 6-bedroom HMO. However, given the appeal site location and existing character of the area, any increase in noise and disturbance arising from the proposed use would be unlikely to be significant or to have a material adverse effect on the living conditions of neighbouring occupiers.
8. Whilst my attention has been drawn to the fact that there have been instances of anti-social behaviour at the appeal property, there is no evidence to suggest that this is ongoing or would be likely to result from the proposed increase in the number of residents by one person. The acceptability of the appeal proposal in all other respects and in the absence of objections from the Council's environmental protection unit, I do not consider that any increase in noise and disturbance arising from the proposed use would be significant or likely to have a material and adverse impact on the living conditions of adjoining occupiers or nearby residents, notwithstanding the close relationship and type of households accommodated.
9. For the above reasons, I conclude that the proposed development would not have an adverse effect on the living conditions of neighbouring occupiers, with particular regard to noise and disturbance. It therefore accords with LLP Policy H10, and relevant guidance contained within the Liverpool Unitary Development Supplementary Planning Guidance Note 7 (Guidance Note 7). This policy and guidance permit the use of buildings as HMOs provided that, amongst other things, they do not cause significant harm to the living conditions of occupiers of neighbouring properties.

Other Matters

10. The appeal proposal would provide adequate and safe internal space for future occupants, sufficient external space for residents, refuse, cycle storage, and on-street parking would not be unacceptably compromised. These are elements, which if they did not operate successfully could prevent the

development from being able to function well and cause additional disturbance. Whilst concerns about these elements have been raised, they are able to be adequately accommodated, and ultimately also meet the Council's requirements contained within Guidance Note 7.

11. In determining the appeal, I have had due regard to the Public Sector Equality Duty (PSED) set out in s149 of the Equality Act 2010 and the possible impacts of the proposal on groups with protected characteristics. Interested party comments suggest harm arising from the appeal proposal may specifically affect older residents and those with young children, with age being a protected characteristic. However, I have seen nothing to suggest that the area has a particularly high level of older residents or young children, or how the proposal would fail to foster or encourage good relations, particularly given my conclusions in relation to the main issue. Whilst I note the Council's intention in relation to an Article 4 Direction to achieve greater control over the balance of HMOs in the locality, this cannot be applied retrospectively. I have assessed the appeal proposal on the basis of an increase from 6 to 7 residents, and not the creation of an HMO, which I have found does not result in harm to living conditions of nearby occupiers. As such, the proposal would not lead to a significant impact on those with protected characteristics.
12. The appeal property is within the Toxteth Park and Avenues Conservation Area (CA). As such I have paid special attention to the desirability of preserving or enhancing its character or appearance in accordance with the statutory duty set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The significance of the CA lies, in part, from the historic social development and the layout of the buildings within this predominantly residential area. However, there are no external alterations proposed, with UPVC windows not forming part of the appeal proposal, and the residential use is compatible with the character of the area. Consequently, I am satisfied that the character and appearance of the CA would be preserved.
13. The issue of developer profits, non-payment of council tax for student accommodation or the safety of HMO's are matters which are either not before me or controlled by other legislation, and do not form part of or alter my assessment of the proposal.
14. In terms of increased people, visitors and deliveries, the appeal property door is on the opposing side of the adjoining dwelling. There is also a separation gap with the adjacent property, and the downstairs living accommodation is further away. This is likely to make comings and goings less noticeable. The overall density of development in the area is also such that there is likely to be activity throughout the day and evening, as such I did not find it was an inherently quiet area.
15. In addition, it is said that the proposal would lead pressure for parking on the road for the surrounding dwellings, and a precedent for similar development in the future. However, these matters are not supported by convincing arguments, particularly in the absence of concerns from the Local Highway Authority. The Council's intention in relation to an Article 4 Direction would allow for greater control over the balance of HMOs in the locality.

Conditions

16. I have imposed a condition specifying the approved drawings as this provides certainty. I have also imposed restriction limiting the maximum occupancy of the premises to 7 people to align with the description of the development. This is reasonable and necessary to maintain accommodation standards and to protect the living conditions of neighbouring occupiers. Though I note that the Highway Authority requested cycle storage, I do not consider it is necessary or reasonable to impose a condition in relation to this or the Council's condition in relation to bin storage, given the scale of the proposed development and as the appeal property is already in use as a HMO.

Conclusion

17. The proposed development accords with the development plan as a whole and for the reasons given above, the appeal should be allowed.

K Williams

INSPECTOR