



Appeal Decision

Site visit made on 17 January 2023

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 23 February 2023

Appeal Ref: APP/M4320/W/22/3302947

50 Elm Road, Seaforth L21 1BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr A Rolfe against the decision of Sefton Council.
 - The application Ref DC/2021/02819, dated 3 December 2021, was approved on 21 February 2022 and planning permission was granted subject to conditions.
 - The development permitted is the change of use from dwellinghouse (Class C3) into a House in Multiple Occupation (HMO) (Sui Generis) (7 persons) (Alternative to DC/2021/02343 refused 26/11/21).
 - The conditions in dispute are Nos 1 and 2 which states that:
 - *'1. The development hereby permitted shall cease on or before two years of the date of this permission'*
'2. The development is hereby permitted on a temporary basis in accordance with the following approved plans: Drawing No. 100 rev A Existing Location Plan Drawing No. 103 rev C Proposed GA Plans and Elevations Drawing No. 104 rev A Proposed Site Plan.'
 - The reasons given for the conditions are: *'The Council wants to ensure control over the use of the land so as to monitor the potential impact of the use in terms of noise, disturbance, anti-social behaviour and refuse storage, and the harm this could have on the living conditions of neighbouring residents.'* and *'For the avoidance of doubt.'*
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Decision

1. The appeal is allowed and the planning permission Ref DC/2021/02819 for the change of use from dwellinghouse (Class C3) into a House in Multiple Occupation (HMO) (Sui Generis) (7 persons) (Alternative to DC/2021/02343 refused 26/11/21) at 50 Elm Road, Seaforth L21 1BL, granted on 21 February 2022 by Sefton Council, is varied by deleting condition 6, and deleting conditions 1 and 2, and substituting them for 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 approved plans:

Drawing No. 100 rev A Existing Location Plan, Drawing No. 103 rev C Proposed GA Plans, and Elevations Drawing No. 104 rev A Proposed Site Plan

Application for costs

2. An application for costs was made by Mr A Rolfe against Sefton Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission was granted in February 2022 for the change of use of 50 Elm Road into a 7-person house of multiple occupation (HMO). However, this was subject to planning conditions (1 and 2) which restrict the permission to a temporary period of 2 years. The Council state that this is to monitor the potential impacts of the proposal on neighbouring residents.
4. The appeal seeks to vary these conditions so that the HMO use can be operated on a permanent basis. The main issue is therefore whether the conditions are reasonable or necessary in the interests of the living conditions of the residents of neighbouring properties, with particular regard to noise and disturbance, anti-social behaviour and refuse storage.

Reasons

5. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
6. The Planning Practice Guidance (PPG) advises that circumstances where a temporary permission may be appropriate include where a trial run is needed in order to assess the effect of the development on the area or where it is expected that the planning circumstances will change in a particular way at the end of that period.
7. The Council consider a temporary consent to be necessary to monitor matters relating to noise, disturbance, anti-social behaviour and refuse storage. However, condition 4 already requires details of bin storage to be provided in accordance with a scheme to be approved by the Local Planning Authority. Furthermore, the Council's environmental health team has not raised any objection to the proposal on noise and environmental grounds, subject to condition 5, which requires that a scheme of sound insulation be submitted for the Local Planning Authority's approval. I am satisfied that these conditions would provide effective mitigation and control of these matters.
8. Moreover, the PPG also advises that conditions which place unjustifiable and disproportionate financial burdens on an applicant will fail the test of reasonableness. To my mind the financial burden for the proposed works without the assurance of a permanent permission is unreasonable.
9. There is also no firm evidence that occurrences of anti-social behaviour and crime, which are ultimately a matter for the relevant authorities in specific instances, would be attributed to future occupants of the property at issue or multi-occupied properties in general. In any event, there are remedies available via separate regimes to certain matters, such as through landlord obligations and HMO licensing. Much is therefore reliant on effective management, which lies outside of planning.
10. As such, condition 6, which requires the submission and approval of a management plan, to detail how these impacts would be minimised is not necessary. Whilst this condition has not been disputed by the appellant, I have the power under s79 of the Act to delete a non-disputed condition and consider it reasonable and necessary to do so in this instance.

11. For the reasons above, conditions 1 and 2 in their current form, are also not reasonable or necessary and are required to be removed and replaced by conditions that do not restrict the permission to a temporary timeframe. This would not, in my view, conflict with Policies HC3, HC4 and EQ2 of A Local Plan for Sefton 2017 which seek, amongst other things, to protect amenity and ensure that the living conditions for either the occupiers of the property or for neighbouring properties are not significantly harmed.

Other Matters

12. I recognise that the proposal would result in the loss of a family house. However, based on Council data about the very limited number of HMOs within a 50 metre radius of the appeal site, planning officers reached the view that the proposal would not cause an overconcentration of HMOs locally. I have no substantive reason to question these findings or conclude that it would adversely affect the balance or mix of housing in the area.
13. Whilst I have noted arguments regarding highways, the Council's highway authority has not raised any objections in regard to transportation or the availability of parking, and I am satisfied that the number of vehicle movements would not result in any congestion or highway safety risk.
14. I have also had regard to the representations made regarding the condition of the appeal property, the increased pressure on local services, insufficient water pressure, the amount of communal space for future residents, and whether the means of escape from fire would be suitable. However, there is no substantive evidence before me to demonstrate that the standard of accommodation would be unacceptable or to support the claims made. It is also a well-founded principle that the planning system does not exist to protect private interests such as value of land or property.
15. Comments from local residents in respect of their anxiety and distress are also acknowledged. However, I have reasoned above, with reference to planning considerations in terms of the public interest, that the proposal would not have unacceptable effects.

Conclusion

16. I therefore find that conditions 1, 2 and 6 are not reasonable or necessary in the interests of the living conditions of the residents of neighbouring properties, with particular regard to noise and disturbance, anti-social behaviour and refuse storage. I shall therefore allow the appeal and vary the original permission by deleting condition 6, and deleting and replacing conditions 1 and 2 with conditions that include the statutory time limit and omit reference to a temporary period.

Mark Caine

INSPECTOR