



Appeal Decision

Site visit made on 28 March 2023

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/Z4310/W/22/3308068

27 Spellow Lane, Liverpool L4 4DE

- 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 Denis Bordais against the decision of Liverpool City Council.
 - The application Ref 22F/1316, dated 9 May 2022, was refused by notice dated 30 September 2022.
 - The development proposed is described on the planning application form as 'Change of use from a small HMO (Class C4) to a large HMO (Sui Generis) arising from the use of 1 existing first floor room to accommodate 1 additional en-suite bedroom and the erection of cycle stores at the rear of the premises'.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use from a small HMO (Class C4) to a large HMO (Sui Generis) and the erection of cycle stores at the rear of the premises at 27 Spellow Lane, Liverpool, L4 4DE in accordance with the terms of the application, Ref 22F/1316, dated 9 May 2022, and the plans submitted with it, subject to the following conditions:
 1. The development hereby permitted shall begin before the expiration of 3 years from the date of this permission.
 2. The development hereby approved shall be carried out in accordance with the following drawings and documents: Site Location Plan (revision D), Existing Floor Plans (revision E), Proposed Floor Plans (revision E) and Secure Cycle Store Information (revision D).
 3. Before first occupation by the 7th resident the proposed living accommodation in the basement shall be provided in accordance with the approved plans. This will be retained thereafter at all times, regardless of the level of occupancy, as a communal living area for use by all occupants of the property and shall not be used as sleeping accommodation at any time.
 4. The number of persons in residence at the property shall not exceed 7 at any one time.

Application for costs

2. The appellant has made an application for an award of costs against the Council. This is the subject of a separate Decision.

Preliminary Matters

3. The description of the proposed development cited on the Council's decision notice differs to that specified on the planning application form. This is because

of a dispute over whether the lawful use of the property falls within Use Class C4 of the Use Classes Order 1987 (as amended).

4. The Council maintains that its description, *'To use premises as house in multiple occupation for 7 persons and erect cycle stores to the rear'* is appropriate as it considers that the impacts of 7 occupants must be assessed. Whereas the appellant has argued that this revision has not been agreed and rejects it because they claim that the property has already been put to a Class C4 use and therefore they believe that it is the proposed increase in occupancy by 1 person that is relevant.
5. Significantly, the Council's description of development has not been agreed with the appellant. It is also incomplete as it does not adequately state the terms of the change of use the Council believes is relevant. Furthermore, I must rely upon the appellant's description as that is what they sought permission for.
6. In doing so, I note that the submitted evidence confirms that the appeal property has been set up for occupancy which would fall within a Class C4 use, several rental agreements have been signed and an HMO licence secured. Also, paragraph 2.2 of the Council's Officer Report states, *'It is accepted that the property is currently occupied as a 6-bedroom HMO'*. The Council's Officer Report also confirms, the appeal property *'can legally operate as a 6-bed HMO without the need for any planning permission'*.
7. Furthermore, there is a separate process beyond the scope of this appeal to determine the lawfulness of the site's current use and that would confirm whether the change of use being sought could be lawfully implemented within the scope of the permission arising from this appeal.
8. The application was advertised on the basis of the Council's description. As the same maximum level of occupancy would arise regardless of which description is taken, and no objections have been received, I am satisfied that no interested parties would be prejudiced by my reliance on the appellant's description. Although relying on the appellant's description, I have removed references to *'part retrospective'* and *'over and above the lawful use of 6 bedrooms'*, as they are not a development type.
9. Since this appeal was lodged another appeal¹ with a similar description at the same site has been dismissed and the Council's decision predates this. The proposed intensity of use to be assessed through this appeal is consistent with that of the previous appeal. The current appeal differs because it proposes a communal living, dining, and games area. That previous appeal is relevant to my determination, although the Council's reason for refusal differs to the matter that caused its dismissal at appeal.
10. Since making its decision, the Council has sought to broaden its grounds for objection to the most recent appeal proposal before me. I address this later in my Decision. The Officer Report refers to a further reason for refusal; the loss of a family dwelling. However that is not cited on the decision notice or within the Council's appeal submission. Whilst not a main issue for this appeal, that consideration has formed part of my assessment of the appeal proposal against the development plan when read as a whole.

¹ Appeal ref: APP/Z4310/W/22/3298406 issued 3 November 2022

Main Issue

11. The main issue is the effect on the character and appearance of the area, with particular regard to the living conditions of the occupants of neighbouring properties.

Reasons

12. The appeal site comprises a traditional mid-terrace residential property, with accommodation over 3 floors. The property fronts directly onto Spellow Lane, which is residential on one side. The properties along this side of Spellow Lane are fairly large, older terraces with small rear back yards. During my site visit I observed physical characteristics including multiple doorbells which indicated that the occupation of some of these is on a flatted or multiple occupancy basis. The appeal site backs onto a narrow, gated walkway and rear elevations of other terraced residential properties in neighbouring Oxtan Street.
13. Commercial uses linked with the nearby football ground front onto the other side of Spellow Lane. The appeal site is within close proximity of the junction with Walton Road, a main route lined on either side by a range of shops, food and drink outlets and other services and facilities.
14. Collectively the surrounding properties convey a busy, well-trafficked, mixed-use context which defines the character and appearance of this area.
15. Through the previous appeal, it was found that the increased activity associated with occupation by one additional person would be small and would be unlikely to cause harm to the amenity of neighbouring properties. Having recently been renovated, it was noted that the property was smart and well-maintained. When compared with a small HMO for up to 6 occupants, it was concluded that the proposed use as a 7-person large HMO would not result in any discernible change to the character of the area.
16. The current appeal proposal would not result in any changes to the property's external elevations. There are no objections from neighbouring residents. Crucially, since the previous appeal was assessed, no material changes in circumstances have been drawn to my attention in respect to this particular main issue.
17. The Council's evidence is presented as a generalised assumption. It has not clearly evidenced that an additional occupant here would materially increase the comings and goings. Neither has it been demonstrated that this would cause an unacceptable level of noise and disturbance which, in turn, would harm the existing living conditions of the occupants of neighbouring properties.
18. Consequently, in the absence of significant change to the existing character of the property and the wider locality there is no good reason for me to deviate from the findings of the previous appeal on that matter.
19. For these reasons, the appeal proposal would not cause unacceptable harm to the character and appearance of the area, with particular regard to the living conditions of the occupants of neighbouring properties.
20. Policy H7 of the Local Plan states that planning permission will be granted for changes of use within designated Primarily Residential Areas providing that there is no adverse impact on residential amenity or the character of the area.

Policy H10 of the Local Plan states amongst other things that development involving the conversion of buildings to HMOs will be acceptable provided they do not cause significant harm to the character of the area, and that living conditions of neighbouring properties are acceptable.

21. In the absence of unacceptable harm, the appeal proposal does not conflict with Policies H7 or H10 of the Local Plan in respect to this main issue.

Other Matters

22. Bedroom No 5, as shown on the submitted plans, continues to be served only by a single, narrow rooflight. The small size of that opening, and its position on the north facing roof was previously found at appeal to impinge on the natural light serving this room. It was noted that this space would be the main living area for the occupant of bedroom No 5 in the absence of a communal living area. In combination, these circumstances led the Inspector to conclude that the previous appeal proposal conflicted with Policy H10.
23. As there are no plans attached to the submitted Assured Short Term Tenancy Agreements or HMO Licence, I attach no weight to these as a means of demonstrating that bedroom No 5 has been one of the rooms being let under the terms of a small HMO.
24. The scheme before me includes a large communal combined living, games, and dining area in the basement for use by all occupants. It exceeds the Local Plan's requirement of a dedicated lounge area of at least 12 square metres. This would provide the occupants, including that of bedroom No 5, with a generous internal living space as an alternative to their bedrooms. Significantly, the proposed communal area did not form part of the previous appeal proposal.
25. Being at basement level, the proposed communal living area would not have any windows. Significantly, the Council explicitly raised no objection over the adequacy of this additional living space, or bedroom No 5 in terms of lighting and ventilation in its Officer Report and decision notice. However, despite the Council's subsequent altered stance, the compromise which the occupant of bedroom No 5 would need to make to their living conditions would be significantly reduced by the provision of the proposed communal living space.
26. When viewed in its totality, this particular appeal proposal would not be harmful to the living conditions of its future occupants.
27. Furthermore, from the evidence before me and my site observations, there is no basis for me to deviate from the previous Decision findings that the appeal property is suitable for use as a large HMO in terms of its size, style, location, and highway safety. The evidence does not lead me to find that there will be an unacceptable loss of family accommodation. There are no other matters weighing against the appeal proposal, including the location, size, and design of the proposed cycle storage facility.
28. Policy H7 is concerned with ensuring no adverse impacts on residential amenity. Policy H10 of the Local Plan states amongst other things that development involving the conversion of buildings to HMOs will be acceptable provided that the living conditions for future occupiers of the property are acceptable. The Council's Supplementary Planning Guidance Note 7: Conversion of Buildings into Flats and Bedsits does not support basement

accommodation in general terms and Policy H10(2(i)) implies habitable rooms must have a window other than a roof light. The appeal proposal therefore conflicts with that particular part of Policy H10 in terms of the lack of the required vertical fenestration for bedroom No 5 and also the proposed communal living space.

29. Despite this tension with criterion 2(i) of Policy H10, the appeal scheme otherwise has conformity with that policy and its objectives when read as a whole. Furthermore, the provision of the proposed communal living space would be of a significant benefit to the other 6 people who can occupy this property in terms of improved amenities in the context of Policy H10 (2a). I attach considerable favourable weight to this.

Conditions

30. To make the proposal acceptable, conditions would be necessary to ensure that the development is implemented within the statutory timescales and in accordance with the approved plans. A condition would be necessary to ensure the provision before and retention thereafter of the communal living area as part of the occupation of the property as a large HMO. A condition would also be necessary to limit the number of occupants at the property in the interests of maintaining acceptable living conditions for all occupants of the appeal property and its neighbours.

Conclusion

31. The appeal proposal conflicts with a particular aspect of Policy H10 of the Local Plan. However, the proposed communal living area would be a significant benefit to all occupants of the property and carries considerable weight. This benefit outweighs that limited conflict. This leads me to find that a decision taken contrary to the development plan, when read as a whole, is justified in this particular instance. Therefore, I conclude that the appeal should be allowed.

C Dillon

INSPECTOR