



Appeal Decisions

Site visit made on 20 June 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 24th August 2023

Appeal A Ref: APP/Z4310/W/23/3315540

32 Lesseps Road, Liverpool L8 0RD

- 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 Daniel Goldsmith against the decision of Liverpool City Council.
 - The application Ref 22F/2934, dated 21 October 2022, was refused by notice dated 18 January 2023.
 - The development proposed is change of use from Use Class C4 dwellinghouse in multiple occupation (for up to six occupants) to sui generis house in multiple occupation for eight occupants.
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Appeal B Ref: APP/Z4310/W/23/3315541

32 Lesseps Road, Liverpool L8 0RD

- 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 Daniel Goldsmith against Liverpool City Council.
 - The application Ref 22F/2967, is dated 21 October 2022.
 - The development proposed is change of use from Use Class C4 dwellinghouse in multiple (six occupants) to sui generis house in multiple occupation (HMO) for eight occupants with associated front dormer extension.
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Decision

Appeal A Ref: APP/Z4310/W/23/3315540

1. The appeal is allowed and planning permission is granted for the change of use from Use Class C4 dwellinghouse in multiple occupation (for up to six occupants) to sui generis house in multiple occupation for eight occupants at 32 Lesseps Road, Liverpool L8 0RD in accordance with the terms of the application, Ref 22F/2934, dated 21 October 2022, 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 strict accordance with the following submitted plans: 'Location plan'; and 'Rev A' showing existing and proposed floor plans and elevations.
 - 3) Prior to the commencement of the use hereby permitted, details of cycle parking shall be submitted to and approved in writing by the local planning authority. The approved scheme shall then be carried out within 3 months after the written approval and shall be retained as such thereafter.
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- 4) The number of persons in residence at the premises shall not exceed 8 at any one time.
- 5) Any waste generated to be discarded as refuse or recycled shall be kept within the curtilage of the premises and shall only be placed outside the premises on the appropriate refuse collection day.

Appeal B Ref: APP/Z4310/W/23/3315541

2. The appeal is dismissed and planning permission is refused.

Preliminary Matters

3. As set out above, there are two appeals on this site. They differ only in that Appeal B is against a failure of the Council to give notice of planning permission within the prescribed period and includes a dormer window on the front elevation. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. The existing plan shows two rooflights on the front elevation, however, as I observed on my site visit, these had been removed for the construction of the dormer, which appeared to be completed. I also noted that building works to the second floor were ongoing with the insertion of partitions and insulation panels. This is to create 3 ensuite bedrooms. On the ground floor, the front living room would be altered to include a further ensuite.
5. The appellant has submitted evidence in support of the C4 use of the property having taken place prior to the submission of the application to change it to a sui generis HMO. This includes shorthold tenancy agreements for the property since 1 July 2018 showing that five unrelated individuals have lived in the house since this period; and an HMO Licence issued for the property on 27 May 2020 which is valid until 26 May 2025. It also details applications submitted to the Council, including a Lawful Development Certificate for a proposed dormer extension to the rear¹.
6. However, I consider that the proposal for a change of use for an HMO for eight occupants has not commenced.

Main Issues

7. The appeal is against the refusal of the Council with regard to Appeal A; and the failure of the Council to determine Appeal B. The Council has stated that if it had determined Appeal B it would have been refused.
8. Therefore, I consider that the main issues in respect of both appeals are the effects of the development on:
 - The supply of family dwellings; and
 - The character of the area with regard to the mix and balance of housing and the living conditions of the occupiers of nearby properties in terms of noise and disturbance.
9. An additional main issue in respect of Appeal A is:

¹ 21LP/2559

- The living conditions of the occupiers of the second-floor front bedroom with regard to whether rooflights would provide sufficient outlook and light; and

10. An additional main issue in respect of Appeal B is:

- The effect of the dormer window on the character and appearance of the house and the area and the living conditions of the occupiers of the second-floor front bedroom.

Reasons

Appeals A and B - Family housing

11. The appeal site is a two storey, semi-detached dwelling with double bays to the front. It is within an established residential area of terraced and semi-detached housing, some of which has been converted to flats. The area would appear to have a mix of private housing and Houses in Multiple Occupation (HMOs).
12. Criterion n. of Policy H10 of the Liverpool Local Plan 2013-2033 (LLP) allows the conversion of houses into HMOs, providing that the development would not cause the loss of a dwelling that is suitable in size, design, layout and location for continued use as a family dwelling.
13. The Council has assessed the application as a family dwelling and not as a small HMO. It has stated that there is no planning history for the use of the house as an HMO and there has been no Lawful Development Certificate submitted to establish this use. However, the appellant has submitted substantive evidence which points to the building having been used as a small HMO for some years. Although the changes proposed include the insertion of an ensuite to the ground floor living room, the overall layout of the house would not change to such an extent, that if the use of the property as a HMO was to cease, the house could not be used as a family dwelling in the future. Notwithstanding that potential, there is nothing to suggest that the property would revert to a family dwelling if the appeal were dismissed.
14. Therefore, based on the evidence that the property is already used as a small HMO, I find that there would be no conflict with criterion n. of Policy H10 of the LLP which seeks to prevent the loss of dwellings that are suitable for family use.

Appeals A and B - Character, housing mix and living conditions of neighbouring residents

15. Policy H11 of the LLP seeks to prevent the conversion of properties into large HMOs where there is a concentration of 10% or more within an area, and which have a detrimental effect on the character of the area. The site is within a designated neighbourhood, identified as Area D, Sefton Park (northern periphery) where the Council state 8.5% of properties are in HMO use.
16. Based on the submitted evidence, the property has been used as a six-bedroom HMO for a number of years. Therefore, the proposal would increase the number of people occupying the property by two. The use of a house as a HMO, occupied by a group of individuals living together would have differing living patterns to a family group. The occupiers would lead independent lives from one another and there would be a more intensive level of activity with an

increase in comings and goings. This has the potential to lead to increased noise and disturbance and affect the living conditions of neighbouring residents. However, in this case, there is no documented evidence or objections to the proposal, despite the use of the property as an HMO for some time. Consequently, the proposal would not have an impact on the amenity of neighbouring properties through increased activity, noise or disturbance.

17. Whilst the Council has set a target to not increase the numbers of HMOs above 10%, the figure within Area D is currently below this. Based on this figure and the fact that there is substantive evidence that the site was used as an HMO prior to the introduction of an Article 4 Direction limiting HMOs within particular wards of the city, the proposal would not alter the mix and balance of housing. The house is within a residential area of terraced housing and the area has not exceeded the target set by the Council. Moreover, from what I viewed on my visit, the change of use of an existing HMO to a larger HMO would not have a detrimental effect on the character of the area.
18. Therefore, it would not conflict with criterion b of Policy H10 of the LLP which states that there should be no adverse impact on the amenity of neighbouring properties and the character of the surrounding area in particular through increased activity, noise or disturbance. Furthermore, it would not conflict with Policy H7 of the LLP which permits a change of use within residential areas provided there is no adverse impact on residential amenity or the character of the area.

Appeal A – Rooflights and living conditions

19. Criterion i of Policy H10 of the LLP requires living rooms, kitchens and bedrooms in HMOs to be not solely lit by rooflights. The rooflights in the 2nd floor bedroom had been removed by the time of my site visit. The submitted plans do, however, show that they are set fairly low on the roof slope and are 1.2 metres in height from the floor. This would enable the occupiers to see out of the room. Furthermore, as the property is for shared living, the occupant would also have the use of the living and kitchen facilities on the ground floor and external space to the rear. As both rooflights are for the bedroom only and not the adjoining ensuite, they would provide a well-lit room to occupy and study in.
20. Whilst the proposal would be contrary to criterion i of Policy H10 of the LLP, the size and position of the rooflights would provide a satisfactory outlook and light levels to this bedroom. Therefore, despite some conflict, I consider that the proposal would achieve the overall aims of the policy and would provide suitable living conditions in terms of outlook and light for the occupiers of the second-floor front bedroom.

Appeal B – Dormer window on character and appearance and living conditions

21. The front dormer, which replaces the two rooflights, is located roughly in the centre of the roof and is not centrally positioned above the double bay windows below. I noted from my visit that the dormer, as shown on the plans, has a flat roof, a window subdivided horizontally into two, with a white fascia board to the front and grey coloured surround and side cheeks.
22. I did not observe any other front dormers along Lesseps Road, where the appeal site is located, although the appellant has pointed out other dormer

windows in the adjacent Hartington Road, in the Toxteth Park Conservation Area. I viewed these dormers, which are in a short run of housing and are of a traditional design, with pitched roofs and constructed of a matching brick to the house. They are set central to the bay windows and would appear to have been constructed at the time that these houses were built.

23. From my observations of streets close to the site, dormers are not a characteristic feature of the area. Furthermore, the dormer that has been built is in a non-traditional style and although small in scale, its flat roof and grey finish is not characteristic of the style of the limited number of dormers in the vicinity. Even if it was clad in materials to match the existing roof, as set out in the application form and appeal statement, I find that its form, position and materials create a discordant feature on the roofscape of the appeal site which harms the character of the house and the area.
24. Therefore, it would not accord with Policies H7 and H8 of the LLP, whose combined policies allow extensions and alterations to dwelling houses where the size, scale and materials are in keeping with the original dwelling and the surrounding area and do not impact on residential amenity. It would also not accord with LLP Policy UD1 which requires development proposals to take into account local character and distinctiveness.
25. I viewed the dormer window from the second floor of the dwelling and was able to see that it was an opening window that provided a satisfactory outlook and would provide suitable light levels to the bedroom. It would therefore accord with criterion i of Policy H10 of the LLP and so would provide appropriate living conditions for the occupiers of the second-floor front bedroom.

Other Matters

26. A number of appeal decisions were submitted by the appellant which the Council has referred to in its statement. The Council considers that two of the appeals are not relevant as the lawful existing use of the property is in question, although there would appear to be evidence to suggest that they had already been used as HMOs. In two of the appeals the LLP was not attributed full weight as it had not been fully adopted and there were concerns that there could be objections to the policies. However, I find that these appeal decisions are comparable with this case and provide moderate weight in support of the appeal, which has been determined on its own merits. In the 5th case², the Council has highlighted that, as the entrance door would be on the side of the house, not next to the adjoining house, it would have less of an impact in terms of comings and goings, than the appeal site, where the door is on the front, next to the attached dwelling. As the appeal site is already used as an HMO, and there is no evidence of objections to the proposal, particularly in relation to noise and disturbance, this matter is of limited weight.
27. The Council's highways department has confirmed that the site is in a sustainable location and has no objection to the proposal. The site plan shows in the rear yard 3 Sheffield cycle stands, together with a bin store.

Conditions – Appeal A

28. As the building is not currently operating as an 8-bedroom HMO, it is necessary to attach a condition specifying its commencement. To provide certainty

² APP/Z4310/W/22/3291515

regarding the proposal, I have imposed a condition listing the approved plans. A condition is also required to ensure that cycle parking is provided in the interests of sustainable travel.

29. I have also imposed a condition limiting the maximum occupancy of the premises to 8 people so that it aligns with the description of development. This is reasonable and necessary to ensure that the living conditions of both neighbouring residents and the occupiers of the house are not harmed.
30. I note that the Council requested a condition in relation to a management plan but as the property is already in use as an HMO, I do not consider that this is necessary or reasonable. I have also imposed a condition so that refuse, and recycling is kept within the curtilage of the property to safeguard the living conditions of nearby residents and the character of the street, which is reasonable and necessary.

Conclusion

31. With regard to Appeal A, I have found no harm with respect to the supply of family housing, the character, mix and balance of housing or the living conditions of neighbouring residents and the occupiers of the second-floor bedroom. It would not conflict with the development plan when considered as a whole and the appeal is allowed.
32. Turning to Appeal B, whilst I have found as in Appeal A, no harm to the supply of family housing, and the character, mix and balance of housing, I have found that the dormer window, whilst it would not harm the living conditions of the occupiers of the second-floor bedroom, it would harm the character and appearance of the house and the area. I therefore find that the appeal would conflict with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict. For the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR