



Appeal Decision

Site visit made on 26 July 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2023

Appeal Ref: APP/Z4310/W/23/3314904

37 Arundel Avenue, Liverpool L17 3BY

- 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 Hawksmoor Properties Limited against the decision of Liverpool City Council.
 - The application Ref 22F/2548, dated 20 September 2022, was refused by notice dated 16 December 2022.
 - The development proposed is to use premises as an 8 person HMO.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On receipt of this appeal, it became apparent through an interested party representation that the appeal site is located within the Toxteth Park and Avenues Conservation Area (CA). The application ref. 22F/2548 which led to this appeal was not publicised as such during the application process. The Council has now carried out the appropriate public consultation in accordance with the requirements of Section 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990. Whilst no comments have been received in response to the publicity carried out, I am satisfied that all procedural requirements have now taken place and I am in a position to proceed with my decision.
3. The description of development in the application form specified the number of rooms in the property rather than the number of occupiers or bedrooms. I have therefore taken the description of development in the banner heading above from the Council's decision notice, removing wording that are not acts of development. The one I have used is also given on the appeal form and I am therefore satisfied that no party is prejudiced by my use of it.
4. The application relates only to the use of the property, not to any physical works. At the time of my site visit the property had eight bedrooms which appeared to be occupied. I am therefore considering this appeal retrospectively.

Main Issues

5. The main issues are:
 - whether the development results in the loss of family sized accommodation, having regard to the development plan;

- the effect of the development on the character of the area, including the CA, having particular regard to the balance and mix of housing and the living conditions of nearby residents with regard to noise and disturbance; and,
- the effect of the development on the living conditions of occupants of the property, with particular regard to daylight and outlook.

Reasons

Family sized accommodation

6. Policy H10 of the Liverpool Local Plan 2022 (the LLP) only permits conversions to HMOs where, amongst other things, 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. This is underpinned by the Council's SHMA as set out in Policy H3 of the LLP which, amongst other things, seeks to widen the city's housing offer in order to retain an increased 20-34 year old population as they progress to form family households and to encourage increased provision of larger (4 plus bedroom) homes on suitable brownfield sites throughout the city to meet the needs of larger households and the growth in households with managerial and professional occupations.
7. The evidence before me is not clear in respect of how many bedrooms were present at the property prior to the works to facilitate a conversion to an HMO which have already occurred. The appellant claims the property has been a HMO for many years. The property was listed for sale in 2018 as an 8 bedroom semi-detached house that had been licensed as an 8 bed HMO, although the information before me indicates that only 7 bedrooms were shown on the internal layout at that time. I am also aware of a current HMO licence for not more than 8 people dated 2 March 2020 that has been issued to the appellant. However, the Council advise there is no planning history for the property and no planning permission or certificate of lawful use has been presented with the appeal. I am therefore required to consider the development on the basis on which it has been submitted, which is the conversion of a dwelling into a HMO.
8. The appellant asserts the appeal property, prior to the historic conversion work, was a 7/8 bedroom house and thus would not have constituted a family dwelling. I note the example given in relation to a permission granted for the retention of a property at 5 Amphill Road as an 8 bedroom HMO¹ where the Council stated it was generally held that for the purposes of Policy H10.2.n. dwellings with more than 6 bedrooms did not constitute family dwellings. However, from the evidence provided, I am not aware of a policy or any other basis for this statement. Moreover, I have not been provided with the full details of this case, although it is apparent that the Council, at that time, considered that property had been occupied as a 9 bedroom HMO for several years. In any event, I am required to reach conclusions based on the individual circumstances of this appeal.
9. From the information before me, and my observations on site, whilst I did not enter locked bedrooms, I cannot be certain that the previous family accommodation would have included 8 bedrooms. It is likely that the ground floor of the property would have contained the general living accommodation

¹ LPA Ref: 21F/3719

associated with a family dwelling and the first and second floor would contain 6 bedrooms. There is also a good sized private rear garden.

10. Consequently, although large, I consider the property would be of suitable size, design, layout to be used as a family dwelling and is located within a primarily residential area. While I recognise that HMOs are also an important source of affordable accommodation for people who are not students, and the property is attached to an existing 12 person HMO, in the absence of evidence to justify why the appeal property is not suitable for use as a family home or evidence that the property is an authorised HMO, I find that the development results in the loss of family sized accommodation and therefore conflicts with criterion 2.n. of Policy H10 of the LLP which seeks to retain family housing.

Character

11. The site is a semi-detached property located within a residential street of terraced and semi-detached properties of differing age and size. A rear amenity space backs onto Toxteth Park Cemetery and the frontage is set back from the street and paved to accommodate vehicles and bins.
12. The appeal site is located within the Toxteth Parks and Avenues Conservation Area (CA), from the limited information before me and my observations on site, the significance of the CA lies in the fine examples of Victorian residential streets surrounding Toxteth Park Cemetery. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I have a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. The development before me relates only to the use of the property as an HMO, not to any external alterations. Nonetheless, intensification of the use of a building has the potential to affect the character of an area.
13. Policy H11 of the LLP identifies neighbourhoods where the concentration of HMO's has reached, or could reach, a level that could have an adverse impact on the character of the area. The site is located within the Area D: Sefton Park (north) periphery designated neighbourhood. Both parties agree that the current percentage of HMOs in this designated area is 8.5% and therefore the use of the appeal property as a HMO does not increase the percentage over 10%. Even though such a change of use in neighbourhoods with a concentration less than 10% will also be considered against criteria in Policy H10 of the LLP, for the council's purposes, above 10% is the point at which they consider the concentration of HMOs would be so great that it would have an adverse effect on the character of the area.
14. Evidence submitted with the appeal indicates that 39 Arundel Avenue is in use as a large HMO. The other neighbouring property at 35 Arundel Avenue is not attached. The Council confirm that the development does not add to the numbers of comings and goings from the appeal property to an extent that directly effects the living conditions of immediately neighbouring occupiers.
15. I recognise the use of the appeal property may be different numerically and in character to that of a family home. However, that does not automatically mean that it is harmful. The independent lifestyles of unrelated occupiers, living independently of each other could be different to that of the occupiers of a family home. If each occupant had their own live/work balance, this could lead to vehicle and pedestrian movements at different times of the day and night.

Be that as it may, different family make-ups, particularly in a large family home, could also create their own separate live/work balance.

16. There is no substantive evidence to indicate that the local area is overly saturated by HMOs or, even though the development results in a loss of a family dwelling, that the overall mix of housing in the designated neighbourhood is not balanced. Nor is there any indication that there have been formal complaints relating to noise and disturbance at the property. Notably, the Council's Environmental Health team did not raise any objections to the proposal.
17. In this instance, the significance of the CA is unharmed as the overall residential use of the property and character of the CA remains. As such, the CA is preserved.
18. To conclude on this main issue, although there would be some conflict with Policy H10.2.n of the LLP as set out in the first main issue above, the development does not have a harmful effect on the character of the area or the CA and occupiers of nearby properties have satisfactory living conditions with regard to noise and disturbance. It would therefore comply with Policy H7 of the LLP which seeks to ensure, amongst other things, that new development within Primarily Residential Areas protects the residential character and living conditions of existing residents. There is also no conflict with Policy HD1 of the LLP which requires proposals to preserve or enhance the historic environment and the significance of heritage assets.

Living conditions of occupants

19. The lower ground floor front room is used as a communal living area. Having visited the site and seen the size of this living area, it is reasonably large and useable. Even if the floorspace is slightly below the requirements of Policy H10 of the LLP for 8 occupants, I observed there was also a large kitchen/dining room that, cumulatively, ensures there is a satisfactory amount of living space for occupants of the property. Furthermore, a basement gym provides additional communal space.
20. The Council have not specified within the reason for refusal why this room would not provide acceptable living conditions for its occupants. I saw that there is a basement window to this room at the front of the property, facing the drive. Although not large, it faces south and, from my observations whilst in the room, provides sufficient levels of outlook and daylight for the room. Although outlook and light may be limited when a vehicle is parked on the forecourt of the property, this is unlikely to be for significant periods of the daytime.
21. For the reasons set out above, I consider that the proposal would provide satisfactory living conditions for future occupiers with particular regard to daylight and outlook. The proposal would, therefore, comply with Policy H10 of the LLP which seeks, amongst other things, that the configuration of internal space satisfactorily takes into account minimum room size, acoustic insulation, light and ventilation and that living rooms, kitchens and bedrooms are not solely lit by rooflights.

Other Matters

22. Even if the property has been licenced as an HMO by the Council and a final certificate under Building Regulations for the recent refurbishment of the property has been issued, both these matters are subject to different legislative regimes to that required for a planning application. The lawfulness of any existing use is not a matter to be determined by this appeal, other mechanisms exist to confirm or regularise the use of the site.
23. I recognise that the property has been renovated throughout to a good standard. However, this does not outweigh the harm I have found to the loss of a family dwelling.
24. My attention has been drawn to a number of other properties in the street and area that have been converted to HMO's. I have addressed the apparently similar 8 bedroom HMO at 5 Ampthill Road above. The appellant has also referred to an appeal allowed in 2018 for an 11 bed HMO at No.49 Arundel Avenue² and the 12 bed HMO at No.39 Arundel Avenue approved in 2014. However, I have not been provided with the full details or the background of this examples. In any event, both these decisions pre-date the current LLP. Moreover, I am required to reach conclusions based on the individual circumstances of this appeal.

Conclusion

25. For the reasons given above, the proposal would conflict with the development plan taken as a whole and there are no material considerations that would outweigh that conflict.
26. Therefore, the appeal is dismissed.

A Veevers

INSPECTOR

² Appeal Ref: APP/Z4310/W/17/3182037