



Appeal Decision

Site visit made on 12 December 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/Z4310/W/23/3323143

54-56 Kensington, Liverpool L7 8XB

- 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 Garcia on behalf of Ron Sullivans Limited against the decision of Liverpool City Council.
 - The application Ref 22F/1958, dated 15 July 2022, was refused by notice dated 4 January 2023.
 - The development proposed is described as “change of use of the properties from Houses in Multiple Occupation (Use Class C4) to Houses in Multiple Occupation (Use Class Sui Generis) to form two 8 bedroom HMOs and to retain dormer extensions to the rear, rooflights to the front, replacement windows, and to reinstate original features and enhancements to the front elevations”.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. From the evidence submitted, and from my site visit, the proposed development has commenced. However, other parts of the proposal have not been completed. Dormers have been added to the rear roof slope which are closer to the ridge than the proposed. In the interests of certainty, I have, therefore, considered the appeal based strictly on the proposed plans.
3. The Council’s first reason for refusal refers to Policy HD10 of the Liverpool City Council Liverpool Local Plan, 2022, (LP). However, the Council has confirmed that this was a drafting error and should have referred to Policy H10 of the LP. As Policy H10 has been sent with the evidence, I have considered the appeal on the basis of the policies submitted and do not consider that any parties will have been prejudiced by my doing so.
4. A revised National Planning Policy Framework (the Framework) came into force on the 19 December 2023 with a further change published on 20 December.. The paragraphs most pertinent to this appeal are unchanged, other than their numbering. Having considered the revisions and in light of the principles of natural justice, in this instance I do not consider it necessary to invite any submissions from the parties on the revised Framework.

Main Issues

5. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Kensington Field Conservation Area;

- Whether the proposed development would provide appropriate living conditions for the existing and future occupiers of the properties, with regard to internal living space, outlook, and noise;
- The suitability of the proposed development, having regard to the development plan's approach to the provision of Houses in Multiple Occupation (HMOs).

Reasons

Conservation Area

6. 54 & 56 Kensington (Nos 54 & 56), lie within the Kensington Field Conservation Area. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) ('the Act') provides, at section 72(1), that with respect to any buildings or other land, in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character, or appearance of that area.
7. The Kensington Fields Conservation Area Appraisal (the CAA) details the historic development of the area and the characteristics which are of special architectural or historic interest. Insofar as it is relevant to the appeal, I consider that the significance of the conservation area is mainly derived from the grid formation of long streets of terrace housing and the clear distinction of the area as a planned development. The subtle varieties in design but uniformity in materials and street line also contribute positively to the character and appearance of the conservation area as a whole.
8. Nos 54 & 56 are mid terrace properties which were built as three storey and previously provided retail units on the ground floor. The front elevations of both properties have been altered over time, as have others along Kensington. Notwithstanding these alterations, the frontage of the terrace retains some of its historic interest and can clearly be read as part of the planned development which is a characteristic of the Conservation Area.
9. The rear roof slope of the terrace block is visible from Albany Road and Low Hill and from the properties on Guelph Street. Although there have been changes to the roofing material, none of the other properties within this terrace have had extensions to their roofs. The long, uninterrupted, roof slope has been retained. The consistent rooflines are noted as a feature of views within the area as part of the CAA and this is not restricted to front roof slopes. The rear roof slope of this terrace is, therefore, sensitive to change and makes a positive contribution to the significance of the Conservation Area.
10. The proposed rear dormer extensions would span nearly the full width of both Nos 54 & 56 and would have a shallow pitch. Although they would be finished in matching materials, set lower than the ridge line, and lower than the existing dormer extensions which have been built at the site, the scale, design, and proportions of this part of the proposal would have a significant bulk and massing which would not be sympathetic to the roof line of the terrace.
11. For these reasons, the dormers would not preserve nor enhance the character or appearance of the Conservation Area as a whole.
12. My attention has been drawn to other dormer extensions elsewhere in the Conservation Area, some of which I saw at my visit and some of which are

more visually prominent from public vantage points. However, although those referred to by the appellant have been built since the designation of the Conservation Area, none are within the same terrace block as the appeal site.

13. The appeal at 16 Kensington¹, albeit more visible from public vantage points, is within a block where the Inspector noted that the rear of the terrace included other roof enlargements. I do not have the full details of the planning permission approved at 205 Albany Road². However, this property is also in a different block to the appeal site. The appeal at 141 Empress Road³ also relates to a different terrace block at which the Inspector saw another rear dormer. As such the presence of other dormer extensions does not justify the proposal before me or temper the harm that would arise in this case.
14. Whilst the Article 4 Direction, removing permitted development rights for alterations, only relates to the front elevations, this does not diminish the importance of the rear elevation to the character and appearance of the area. Neither does it, as the appellant contends, suggest that the rear elevations hold little significance to the Conservation Area.
15. Turning to the proposed changes to the front elevation, as conservation rooflights are proposed, and only one per property, the rooflights would not significantly alter the roof line of the front of the terrace and would preserve the appearance of the Conservation Area. The appellant intends to install new ground floor windows which would have the appearance of shopfronts with timber surrounds, reflecting the late 19th century original of the properties. This work, along with reinstatement of other original features would enhance the appearance of the Conservation Area.
16. However, given the degree of harm that would arise as a result of the dormers, it is my judgement that there would be less than substantial harm to the significance of the Conservation Area overall.
17. The appellant's evidence suggests that this harm is at the lower end of a notional sliding scale of less than substantial harm. Even so, there is harm, and this harm must be attributed great weight within the context of the Framework. The Framework advises that such harm should be weighed against the public benefits of the proposal.
18. The appellant contends that reducing the height of the dormer extensions, from what has been built, is a positive benefit of the current proposal. However, I must assess the proposal on its own merits, not as a comparative exercise with a different, unconsented scheme.
19. Moreover, although the enhancements to the front elevation would be a public benefit, to which I have given moderate weight, I do not consider that the large rear dormer extensions are necessary to allow the enhancements to the frontages, which could be carried out without the need for the dormer extensions and would still act as a catalyst for other similar investment.
20. The development would provide additional rooms close to local services, universities, nearby employers, including the hospital, and public transport facilities. I also acknowledge the appellant's intention to provide high quality

¹ APP/Z4310/D/21/3272461

² Council reference 14H/1831

³ Appeal reference APP/Z4310/W/22/3307945

rooms each with en-suite shower rooms. However, the public benefits arising from four additional rooms would be limited. Overall, the public benefits, taken together, would not outweigh the harm to the Conservation Area.

21. For the reasons given above, I find that the proposal fails to preserve or enhance the character or appearance of the Kensington Field Conservation Area. I have had regard to the Act as detailed above. As such the proposal is contrary to Policies HD1, H8 and H10 of the LP which, taken together seek to protect or enhance the character and appearance of the Conservation Area and seek to ensure that extensions, including to HMOs, are sympathetic and in keeping with the original dwelling.

Living conditions of existing and future occupiers

22. With regard to the internal floor space the Council's concerns relate to a number of the bedrooms, not just the additional rooms created through the dormer extensions to the rear, as detailed in the officer report.
23. Although the floor plans show some of the rooms have corridor areas and awkward shapes, I noted at my visit that these areas were being used to provide space for a wardrobe or set of drawers. Even the long narrow parts of bedrooms 3 and 6 of No 56, for example, were being used by the occupants for everyday use. All of the rooms would have space for a bed, TV, storage for clothes and an en-suite bathroom. All of the rooms would provide sufficient floor space for appropriate living conditions for the future occupants, even with the sections of narrow corridors. Moreover, contrary to the Council's assertion, the evidence before me indicates that all of the rooms would be above the 6.5sqm minimum room size as required by Policy H10 of the LP and SPG7.
24. Bedroom 1 of No 56 and the kitchen of No 54 would both face towards the high brick boundary wall which separates the rear yard of the two properties, contrary to the advice at paragraph 10 of The Liverpool Unitary Development Plan Supplementary Planning Guidance Note 7 – Conversion of Buildings into Flats and Bedsits (SPG7). At the first floor the window of bedroom 4 of No 56 would face the window of the kitchen to No 54. However, I note that these windows, both at ground floor and at first floor, currently serve habitable rooms and the effect on the living conditions of the future occupants of these rooms, as shown on the proposed plans, would not be any more harmful than the existing conditions.
25. Bedroom 1 of No 56 is also accessed off the kitchen. However, this is one of the larger bedrooms and would include a corridor off the kitchen, past the en-suite bathroom. The main bedroom space is at the rear of the property and would have some physical separation from the kitchen smells and noise.
26. Bedroom 1 of No 54 would be on the ground floor at the front of the property, with its window directly on the back of the pavement. Kensington is a busy road with a long bus stop bay directly outside the appeal site. The proposed changes to the ground floor windows would increase the size of the window to this bedroom significantly. However, the new window is proposed to be triple glazed which would reduce noise from traffic and comings and goings in comparison to the existing window and, therefore, improve the living conditions of the occupants of this room.

27. Bedroom 8 in both properties would only be served by a single roof light. This would be contrary to the advice in of Policy H10 of the LP and SPG7. However, both the policy and SPG7 seek to resist habitable rooms being served solely by roof lights on the basis of providing suitable accommodation for the future occupants of the room. Although both of these bedrooms only have one roof light the roof light is large and centrally positioned in the roof slope above the room. At my visit I was able to see inside both of these bedrooms and the rooms were not dark or gloomy. The bedrooms would be provided with a satisfactory level of sunlight and daylight and would, in my judgement, provide suitable accommodation for the future occupiers.
28. For these reasons, although there would be some conflict with Policy H10 of the LP as detailed above, the proposal would provide appropriate living conditions for the existing and future occupiers of the HMOs, with regard to internal living space, outlook, and noise disturbance.
29. There is support within the Liverpool local plan policies for conversion of existing dwellings into HMOs, acknowledging the significant contribution which HMOs make to the provision of affordable housing in the city. The proposal would provide such accommodation and, therefore, I find no conflict with Policy H7 of the LP.
30. For the same reasons, there is some conflict with the advice contained in SPG7. However, the development would provide satisfactory standards of accommodation and, therefore, complies with the general aims of SPG7.
31. The Council has also referred to Policy H8 in their second reason for refusal. However, H8 relates to the design and form of extensions and alterations and the effect on the living conditions of neighbouring properties. There is no requirement within H8 to consider the living conditions of future occupants. As such Policy H8 is not relevant to the consideration of this main issue.

Suitability of development

32. The evidence before me indicates that the appeal site lies within a neighbourhood which exceeds 10% HMOs. Policy H11 of the LP resists the change of use from C3, dwellinghouse, to small (C4) or large (sui generis) HMO. The site is also covered by an Article 4 Direction preventing the change of use from C3 to C4. However, the Council acknowledge in their officer report that the use of both of the properties is already a small HMO (C4).
33. As the appeal properties are already HMOs, they are no longer in C3 use and Policy H11 would, therefore, not prevent the proposed development. Although the Council contend that there has been a surge in the number of HMOs in Kensington Fields in recent years the appeal proposal would not add to the concentration of HMOs in the area or add to the over-provision of shared accommodation as it is already shared accommodation. As such the proposal would not harm the balance of the mix of housing.
34. The Council contend that Policies H10 and H11 of the LP and the Article 4 direction also intend to restrict the intensification of the use of existing HMOs. However, neither of the policies, nor the Article 4, refer to consideration of intensification of existing HMOs or seek to place any restrictions on changes from C4 to large HMO use. Policy H10 is supportive of conversion to HMO use,

subject to a number of criteria, and Policy H11 seeks to resist conversion away from C3 uses.

35. There would be some increase in activity resulting from the addition of two extra bedrooms per unit, therefore four additional bedrooms overall. However, as two existing HMOs accommodating six unrelated individuals per property there is already a level of activity, noise and disturbance from the occupiers and visitors. Moreover, the properties lie on Kensington which is a busy road with existing noise.
36. I have no substantive evidence that the additional rooms would result in a noticeable increase in activity, noise, disturbance, or crime. Notwithstanding my conclusion on the effect on the Conservation Area, the additional bedrooms in themselves would not harm the character of the area, substantially change the character of the existing properties, or significantly increase the risk of noise or disturbance to occupiers of nearby properties, including the occupiers of the terrace houses to the rear.
37. For the reasons given above I find that the appeal proposal would be a suitable development, having regard to the development plan's approach to the provision of HMOs. As such, the proposal accords with the requirements of Policies H10 and H11 of the LP which, taken together, seek to ensure that there is a balanced housing provision, protect the living conditions of neighbouring properties, in particular through increased activity, noise or disturbance and seek to protect the character of designated areas.

Other Matters

38. Two Grade II listed buildings have been noted in the Council's evidence, the Bridewell Studios, and the Church of the Sacred Heart. Section 66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
39. The setting in which Bridewell Studios is currently experienced is limited due to the presence of other built development close to the building. The frontage is prominent in views from Prescott Street and the A580 and is experienced as part of the street scene with more modern buildings and the Church of the Sacred Heart.
40. The setting of the Church is experienced more widely due to its prominent location on the junction of several roads and due to its form, layout, and materials. However, the appeal site is separated from both listed buildings and there are intervening buildings and roads. This separation limits the opportunity for views of the appeal site and the listed buildings together. As such, the proposal would preserve the way the settings of the listed buildings are experienced and therefore preserve the significance of both of the listed buildings.
41. Even if I were to agree that there is no harm to highway safety this matter would only be neutral and would not weigh in favour of the proposal.

Conclusion

42. Notwithstanding my conclusions on the living conditions of existing and future occupiers, the suitability of the provision of HMOs in this area, and the setting of the two listed buildings, the harm to the Kensington Field Conservation Area brings the scheme into conflict with the development plan as a whole. Moreover, there are no material considerations, including the public benefits of the proposed front elevation alterations, which indicate that my decision should be made other than in accordance with the development plan.
43. For the reasons given above I conclude that the appeal should be dismissed.

K Townsend

INSPECTOR