
Appeal Decision

Site visit made on 21 April 2017

by Matthew Birkinshaw BA(Hons) Msc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17th May 2017

Appeal Ref: APP/M4320/W/17/3167226

Land to rear of The Lifeboat Public House, 41A Three Tuns Lane, Formby, L37 4AQ

- 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 J D Wetherspoon PLC against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2016/01744, dated 31 August 2016, was refused by notice dated 15 December 2016.
 - The development proposed is a full planning application for residential development comprising 9no. apartments – land to rear of The Lifeboat P.H, Three Tuns Lane, Formby.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development comprising 9no. apartments on land to the rear of The Lifeboat Public House, 41A Three Tuns Lane, Formby, L37 4AQ in accordance with the terms of the application, Ref DC/2016/01744, dated 31 August 2016, subject to the conditions in the schedule at the end of this decision.

Procedural Matter

2. Following submission of the appeal the *Sefton Local Plan* has been adopted. As a result, the Council confirms that *Sefton Unitary Development Plan* Policies CS3, DQ1, R6 and H10 have been superseded by Local Plan Policies SD1, SD2, HC3 and EQ2. Both parties have been provided with an opportunity to comment on this change, and I have taken the Local Plan policies into account as part of the development plan for the area.

Main Issue

3. The main issue is whether or not the proposal would provide an adequate standard of living accommodation for potential future occupiers, having particular regard to private outdoor space.

Reasons

4. At the rear of The Lifeboat pub is a vacant parcel of land fenced-off from the adjoining beer garden. As part of the proposal it would be redeveloped for a 2-storey building containing 9 flats. Each of the ground floor properties would have private rear gardens, whilst the flats at first floor level would have balconies and/or share the use of communal areas.
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5. The private rear gardens serving the ground floor flats would measure between roughly 34 square metres and approximately 48 square metres. This comfortably exceeds the Council's latest guidance concerning the size of private outdoor areas within the *New Housing Supplementary Planning Document* (SPD). It states that gardens should be at least 20 square metres, which is also reflected in the updated *Houses in Multiple Occupation (HMO) and Flats SPD*.
6. Situated at first floor level the remaining 4 flats would have no private gardens. It is also highly unlikely that the small area in the corner of the car park outside Flat 1 would be conducive to recreational use by residents. This aspect of the scheme therefore falls short of the Council's standards in both SPDs. However, the apartments at the front of the building would contain balconies. A central communal area measuring roughly 60 square metres would also be provided at first floor level. Although access would be taken through this area, and it would be visible from the neighbouring Formby Club and parts of the beer garden, it would still be a generous, usable and partially enclosed outdoor space. Subject to a high quality landscaping scheme and appropriate lighting it would provide potential future occupiers with somewhere to sit outside and incorporate areas of planting etc. It could therefore become an attractive, usable area for residents of the first floor flats, especially those without access to a balcony.
7. Furthermore, to the south-west of the appeal site is a public park on Duke Street. The park is approximately 10 minutes' walk from the proposed flats and includes a children's play area, tennis courts and sports pitches. Potential future occupiers would therefore be able to access a good range of outdoor recreation facilities only a short distance away.
8. It is also pertinent to consider the type of accommodation proposed and its location. Paragraph 6.1 of the New Housing SPD states that minimum garden sizes should be provided unless "*A lesser space would be consistent with the character of the area*", or "*particular site constraints mean that it is not possible to achieve the standard*". In this case the proposal seeks to reuse a vacant parcel of land in the centre of Formby. Although the communal space at first floor level is unlikely to represent a realistic area for children to play, the flats would offer relatively modest 2-bedroom accommodation in a District Centre. Given the context and constraints of the site, and bearing in mind that the ground floor flats would have generous gardens well in excess of the 20 square metres standard, overall the amount of private outdoor space would be acceptable for the type of development proposed.
9. The Council refers to three other sites where Inspectors have dismissed appeals due to a lack of adequate private outdoor space.¹ However, in the case of the Strand Tavern, Bootle, only a small yard was proposed for a 16-bedroom HMO. The scheme at Sea View Road also involved the creation of a HMO with only a small outdoor area bounded by a 3-storey building. In both situations the circumstances were therefore materially different. Furthermore, the proposal at The Priory, Litherland, included a thin strip of land between a building and the footway which the Inspector concluded would not function as useable outdoor space. This is not comparable to the situation before me.

¹ Appeal Refs APP/M4320/A/14/2224651, APP/M4320/W/16/3148674 and APP/M4320/A/14/2223513

10. I therefore conclude that due to the use of balconies and a communal area at first floor level, the proximity of a park nearby, and considering the context of the site and the type of accommodation proposed, the amount of private outdoor space would be acceptable and the proposal would provide an adequate standard of living accommodation for potential future occupiers. As such, it accords with Local Plan Policy EQ2 which, amongst other things, requires site design, layout and access arrangements to protect the amenity of those within and adjacent to the site. For the same reasons there is also no conflict with Policy HC3 which seeks to prevent unacceptable residential environments, Policy SD2 which is concerned with high quality design, or the presumption in favour of sustainable development in Policy SD1. The scheme accords with the aims and objectives of the *HMO and Flats* SPD concerning the provision of private outdoor space, and the National Planning Policy Framework which seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

11. At the rear of the adjacent pub is a first floor balcony used by the Formby Club. Although the balcony is opposite the proposed flats, the scheme would be set-back from the shared boundary behind an area of car parking. No concerns regarding the potential for mutual overlooking have been raised by the Council, and the Planning Committee report confirms that there would be *"a good separation distance to the boundary fence enclosing the neighbouring pub beer garden"*. Due to this separation, which the appellant describes as roughly 30m, I agree with the main parties that the relationship with the Formby Club would be acceptable. The flats would not be subject to, or give rise to any harmful overlooking of neighbouring land and buildings. Consequently, the use of obscure glazing in habitable room windows would be unnecessary.
12. The planning application was also supported by a noise assessment. This demonstrates that subject to using glazing with a high acoustic performance, and providing an additional source of ventilation so that windows can remain shut, noise levels in the bedrooms and living rooms of the flats would be acceptable. It also confirms that daytime levels within the gardens and on the balconies would fulfil the criteria for external areas set out in BS8233:2014. In response no objections have been raised by the Council subject to implementing the proposed mitigation measures. This could be controlled and enforced through the use of a suitably worded planning condition, and would ensure an adequate standard of living accommodation for potential future occupiers having regard to noise.
13. In opposition to the scheme reference has been made to the previous use of the appeal site as a bowling green. In particular, representations on behalf of the Formby Club state that the original planning application to redevelop the wider site was only allowed on the basis that the bowling green became a beer garden and open space. However, no evidence has been provided to indicate that there is anything that would prevent the scheme from coming forward. The Council also confirms that the principle of developing the site is acceptable. Whether or not the appellant has broken an agreement with the former owners of the site, or whether budgets have been exceeded are not matters for me. Instead, I am required to consider the proposal on its own planning merits and I have determined the appeal on that basis.

14. As part of the proposal a new vehicular entrance is required onto Sumner Road which would result in the loss of 2 car parking bays. Although the car park was near to capacity at the time of my mid-afternoon site visit, several spaces were still available. No evidence has been provided to show that this situation is likely to be worse at other times, or that on-street parking causes obstructions on surrounding roads. As a result, the loss of 2 bays would not have any significant adverse impact on the availability of public parking in Formby. Nor would it prejudice the safe or efficient operation of the car park. Subject to the proposed highway improvement works no compensation would be necessary in order to make the development acceptable in planning terms. The inclusion of 1 parking space per flat with a visitor bay is also adequate in this location given the proximity of shops, services and public transport.

Conclusion and Conditions

15. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed.
16. Aside from the standard time limit condition it is necessary to list the approved plans, as this provides certainty. Because there is a separate condition relating to acoustic performance measures there is no need to include reference to the Noise Assessment in the list of approved drawings.
17. Although not suggested by the Council, in the interests of the character and appearance of the site and surrounding area a condition requiring the approval of external materials is necessary. As this relates to the construction of the scheme approval is required prior to the commencement of development.
18. For the same reasons a condition is required for the approval of landscaping, and to ensure that any trees or plants that die within 5 years are replaced. However, I have re-worded the Council's suggested condition which only refers to trees illustrated on the proposed site layout. This is necessary to ensure that all landscaping is appropriately considered. Moreover, some of the proposed trees are within very close proximity to the proposed building, car parking spaces and/or bedroom windows. In the absence of a detailed landscaping scheme a more flexible approach is therefore necessary to ensure that the condition does not affect the ability to implement the permission.
19. To ensure that appropriate drainage is provided, and to prevent localised flooding it is necessary to require the approval of a surface water drainage scheme based on an assessment of site conditions. As with landscaping, because this relates to the construction and final layout of the site, approval is required prior to development commencing. Ensuring that foul water drains on a separate system could be achieved as part of the same scheme and therefore suggested condition no.7 is unnecessary.
20. For the same reasons it is necessary to require details of subsequent drainage management and maintenance practices to be approved. However, I have re-worded the Council's suggested condition so that the details are approved prior to first occupation, as management practices may not be known until further into the construction process. Because the condition requires the approval of ongoing maintenance and management under part a), I find no reasons to suggest why part b) specifically relating to future funding mechanisms is also necessary. The condition has been amended accordingly.

21. In the interests of highway safety it is necessary to require the approval of details relating to construction traffic and measures to keep mud off the road. Nevertheless, along with the storage of plant and machinery, this could form part of a single Construction Management Plan. The interests of the character and appearance of the area and the living conditions of neighbouring residents also necessitate the approval of any temporary hoardings and working hours.
22. In order to provide an adequate standard of living accommodation for potential future occupiers, and due to the proximity of the adjacent beer garden, a scheme of acoustic glazing and passive ventilation is necessary. As this relates to the construction of the flats the details are required before development commences. For clarity I have re-worded the suggested condition to remove reference to parts a) and b), as glazing and ventilation details could form part of the same requirement.
23. The interests of safety also require the approval of highway improvement works around the proposed site entrance. This includes the provision of a new footway, tactile paving and remarking of the Sumner Road public car park bays as illustrated on the proposed plans. However, to provide greater flexibility I have reworded the suggested condition to require implementation of the scheme prior to occupation. I have also removed reference to 'unless otherwise agreed in writing'. The proposed site entrance forms part of the approved plans and any variations without appropriate consultation would prejudice any interested parties.
24. The same reasons necessitate a condition to ensure that the development is not brought into use until all vehicle parking, turning and manoeuvring spaces have been laid out. Because the approved site plan does not include specific details of surface materials or drainage I have reworded the suggested condition to require the details to be approved in writing by the local planning authority. In the interests of the character and appearance of the area a condition is also required to specify that the proposed 2m close boarded fence shall be painted and/or stained to match existing boundary treatments.
25. Finally, although not suggested by the Council, but as requested by the Police Architectural Liaison Officer, it is necessary to incorporate appropriate external lighting as part of the scheme. This is especially important for the communal area at first floor level.

Matthew Birkinshaw

INSPECTOR

Conditions Schedule

- 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: F1846/01 Rev B, F1846-100 Rev D, F1846-101 Rev C and F1846-102 Rev F.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out prior to the occupation of any part of the development or in accordance with a timetable approved in writing with the local planning authority. Any trees or plants which, within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 5) No development shall take place until a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance, with evidence of an assessment of site conditions has been submitted to and approved in writing by the local planning authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and no surface water shall discharge to the public sewerage system either directly or indirectly. Development shall be carried out in accordance with the approved scheme.
- 6) No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction; and
 - vii) delivery and construction working hours.

The approved Construction Management Plan shall be adhered to throughout the construction period for the development.

- 7) No development shall take place until a scheme of acoustic glazing for all windows and openings, and for passive ventilation to all of the flats hereby approved has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved scheme which must be installed prior to first occupation of the flats and maintained at all times thereafter.
- 8) The development hereby permitted shall not be occupied until a sustainable drainage management and maintenance plan for the lifetime of the development has been submitted to and approved in writing by the local planning authority. The plan shall include the arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a Resident's Management Company. The development shall be maintained and managed in accordance with the approved plan at all times thereafter.
- 9) The development hereby permitted shall not be occupied until a scheme of highway improvement works has been completed in accordance with details first submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) A 2m wide footway either side of the proposed vehicle access for the full frontage of the site to the west of the access and approximately 10m to the east, to the 90 degree bend in the existing footway;
 - ii) Flush kerbs and tactile paving across the proposed vehicle access; and
 - iii) Alterations to and the remarking of the Sumner Road public car park bays fronting, and adjacent to the site.
- 10) The development hereby permitted shall not be occupied until the vehicular access and areas for vehicle parking, turning and manoeuvring have been laid out, demarcated, levelled, surfaced and drained in accordance with details first submitted to and approved in writing by the local planning authority. The vehicular access and areas for vehicle parking, turning and manoeuvring shall be retained for their intended purpose at all times thereafter.
- 11) Within two months of being installed, or prior to first occupation of the development hereby permitted (whichever is the earlier), the 2m high close boarded boundary fence shown on approved drawing F1846-100 Revision D shall be painted and/or stained to match existing fencing to the Sumner Road car park.
- 12) The development hereby permitted shall not be occupied until a scheme of external lighting has been implemented in accordance with details first submitted to and approved in writing by the local planning authority.