The Planning Inspectorate

Appeal Decision

Hearing Held on 11 February 2020

Site visits made on 10 February 2020 and 12 February 2020

by Jillian Rann BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2020

Appeal Ref: APP/M4510/W/19/3238763
Land south of Heber Street, Newcastle-upon-Tyne

- 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 St James Boulevard Developments against the decision of Newcastle-upon-Tyne City Council.
- The application Ref 2018/1094/01/DET, dated 14 August 2018, was refused by notice dated 12 April 2019.
- The development proposed is the erection of residential development (Class C3) comprising a 10-13 storey building (plus lower ground floor), with associated vehicular access, landscaping and boundary treatment.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's first reason for refusal refers to the effect of the development on the daylight and sunlight of neighbouring buildings 'namely 2 St James Boulevard'. 2 St James Boulevard is an adjoining site which has two extant planning permissions for developments of student flats. The latter was granted after the Council refused permission for this appeal scheme. However, it was agreed by both main parties at the hearing that, as either of those permitted schemes could be implemented, it was appropriate to consider the effects of the proposed development on both of those schemes, and the effects of each of those schemes on the proposed development. I have received submissions and heard evidence from the main parties on the implications arising in relation to each of those schemes, and have considered the appeal on that basis.

3. At the hearing, the Council confirmed that its first reason for refusal also referred to the effect of the proposed development on the occupants of existing student housing buildings at The View and Liberty Plaza South. The effects on those buildings were addressed in the main parties' submissions and discussed at the hearing, and I have also considered the effects on those buildings.

4. The Council's decision was based on several revised and additional daylight and sunlight reports, which superseded other earlier reports. For the avoidance of doubt, I have based my decision on those revised and additional reports,

consistent with the Council's own consideration[1], and on a further study submitted by the Council as part of its statement of case[2]. I have also had regard to figures received from an interested party, but in reaching my decision I have used the information from those studies listed in the footnotes below, which were discussed and agreed at the hearing.

Main Issues

5. The main issues are:

- whether the proposed development would provide satisfactory living conditions for future occupants of the proposal with regard to daylight and sunlight;
- the effect of the proposed development on the living conditions of future occupants of 2 St James Boulevard with regard to daylight and sunlight;
- the effect of the proposed development on the living conditions of the occupants of The View and Liberty Plaza South with regard to daylight and sunlight; and
- whether adequate provision would be made for affordable housing, open space and public realm, a Travel Plan and a Training and Employment Plan arising from the development.

Reasons

Background

6. The appeal site is currently vacant, and is part of a larger area allocated as the Helix (Science Central) Key Site in Policy C2 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030, adopted March 2015 (the Core Strategy). The site was part of an outline planning permission granted in July 2012 for a mixed-use development of the Science Central Area including employment, university, residential and student accommodation, retail and leisure uses[3] (the 2012 outline permission).

7. The 2012 outline permission remains extant, and includes a masterplan which identifies parameters for building heights and uses across that area. The masterplan envisaged that the appeal site would be developed together with the adjoining site at 2 St James Boulevard (2SJB). However, two separate outline permissions have subsequently been granted for stand-alone developments of student housing on the 2SJB site. The first was granted in 2017 (the 2017 SJB permission/scheme)[4], and relates to a building within the parameters permitted by the 2012 outline permission. The second, granted in 2019 (the 2019 SJB permission/scheme)[5] was for a building with a similar footprint, but taller than the maximum height parameters permitted in 2012.

[1] Daylight and Sunlight Report for the Proposed Development at Heber Street, Newcastle – Ref: 72150/IM/MJB, dated 23 January 2019; Email and attachments from Ian Kettlewell, Lichfields to Jill Young, Newcastle City Council 11 March 2019; Addendum Daylight and Sunlight Report for the Proposed Development at Heber Street, Newcastle – Ref: 72150/16/MJB/SM, dated 21 March 2019; Second Addendum Daylight and Sunlight Report for the Proposed Development at Heber Street, Newcastle – Ref: 72150/16/MJB/SM, dated 21 March 2019.
[2] Council's Statement of Case – Appendix 12
[3] Application reference: 2011/0110/01/OUT
[4] Application reference: 2016/1764/01/OUT
[5] Application reference: 2018/0933/01/OUT

At the time of my visit, the buildings proposed for demolition as part of those schemes were still present on the 2SJB site.

8. Many surrounding sites which were part of the 2012 outline permission have subsequently been developed. On Heber Street opposite and adjacent to the site, those developments include the Sandman Hotel, and student housing buildings at The View, Liberty Plaza North and Liberty Plaza South, all of which are of some significant height. Slightly further afield to the north there is more student housing and to the west, a public square and university buildings.

9. The appeal relates to a development of 179 private rented sector (PRS) apartments and studios, in a building ranging in height from 10-13 storeys. The building would be taller than the maximum height parameter permitted by the 2012 outline permission, and would differ in its footprint and location within the site compared with that indicated on the outline masterplan.

Relevant policy and guidance

10. Saved Policies H2 and H4 of the Newcastle upon Tyne Unitary Development Plan (the UDP) require a high quality of design in all housing development and state that development which would harm the amenity of any dwelling or group of dwellings will not be allowed. Amongst other things, they state that particular attention will be paid to good standards of natural light, and to ensuring satisfactory daylight and sunlight for all dwellings, existing and proposed. The policies are consistent with the National Planning Policy Framework (the Framework), which requires that planning policies and decisions should ensure that developments create places with a high standard of amenity for existing and future users.

11. The Council's emerging Development and Allocations Plan (DAP) has been found sound by the Inspector, subject to a number of main modifications. Policy DM23 of the emerging DAP has similar requirements to those of UDP Policies H2 and H4, in requiring development to provide a high quality environment and a good standard of residential amenity, including with reference to maintaining a good standard of daylight and sunlight for all existing and future occupants of buildings, and stating that development which would have an unacceptable adverse impact on the residential amenity of existing or future occupants of land and dwellings will not be allowed. Given the stage that the DAP is at, and as those requirements of emerging Policy DM23 are consistent with those of the Framework as set out above, I also give weight to the DAP and to that emerging policy.

12. Those development plan and emerging policies do not specify particular targets for daylight or sunlight. However, the Council's Maintaining Sustainable Communities Supplementary Planning Document (the SPD) provides further guidance on the matter. The SPD advises that applications will be expected to demonstrate that each habitable room in a property will achieve good standards of natural light, and that the development would maintain adequate daylight to adjacent buildings, and goes on to say that developments will need to demonstrate this through daylight and sunlight tests, which should be carried out in accordance with BRE guidance Planning for Daylight and Sunlight: A guide to good practice (second edition) (the BRE guidance). As adopted local guidance, I afford significant weight to the SPD.

13. The submissions before me also refer to British Standard BS8206–2:2008[6], which was withdrawn in May 2019 and replaced with BS EN 17037:2018[7]. The BRE guidance is based on the 2008 British Standard. However, although it is expected to be updated to reflect the more recent British Standard, that update has not yet been carried out. On that basis, both main parties agreed that, until such time that the BRE guidance is updated and published, the current BRE guidance remains the widely accepted guidance and the most appropriate document to use in that regard. I agree and, as it is a well-established document providing guidance on matters of daylight and sunlight, specifically referred to in the Council's SPD, I afford the BRE guidance significant weight as a further material consideration.

14. The BRE guidance sets out that the guidelines within it should be interpreted flexibly and refers to the possibility that, in an area with modern high rise buildings, a higher degree of obstruction may be unavoidable if new developments are to match the height and proportions of existing buildings. The Framework also recommends a flexible approach in applying policies or guidance relating to daylight and sunlight where they would otherwise inhibit making efficient use of a site. However, that advice is subject to the caveat that the resulting scheme would provide acceptable living standards.

Living conditions of future occupants of the appeal scheme

BRE targets used

15. The main parties agreed that the appropriate BRE guidance targets to consider in assessing the proposed development are the average daylight factor (ADF) and daylight distribution (DD) (or no sky line (NSL)) for daylight, and the annual probable sunlight hours (APSH) for sunlight. I accept this.

16. I have also been provided with some vertical sky component (VSC) figures. The VSC is a daylight calculation based on the amount of sky visible on the outside face of a window. However, the ADF is a more comprehensive calculation of the amount of daylight which also takes account of factors such as the volume of a room, its use, and items within it. As it would therefore more accurately and fully represent the likely amounts of daylight in each room, I have used those ADF figures.

17. The BRE guidance refers to a minimum target of 2% for kitchens, 1.5% for living rooms and 1% for bedrooms. The development would mainly comprise flats with living, kitchen and dining areas in a single, open plan space, referred to hereafter as LKDs. The remaining units would be studios. As those LKDs and studios would thus encompass all of their occupants' main habitable accommodation, I consider a 2% minimum target appropriate to ensure a satisfactory amount of daylight for those rooms. However, as much of the evidence presented is based on a 1.5% target I have considered the proposal from the perspective of this lower target, albeit recognising that the proportion of those rooms meeting the minimum 2% target is likely to be lower.

18. I have been referred to 1.5% ADF targets being used for 'communal areas' in the daylight and sunlight report submitted as part of the 2019 SJB application. However, the evidence before me indicates that the student occupants of that development would have access to various other communal spaces in the

[6] Lighting for buildings. Code of practice for daylighting.
[7] Daylight in buildings.

building. It would therefore not be directly comparable to the PRS development before me, where the LKDs and studios would represent the sole habitable areas for future occupants in what is more likely to be their principal, year-round residence.

19. There was some disagreement between the parties as to whether to use a reflectance value of 0.68 or 0.5 in calculating the ADF figures. The 0.68 value makes little or no allowance for furniture, pictures or carpets, and assumes very light coloured walls, whereas the 0.5 figure allows for furniture etc and slightly darker walls. As the proposed units would be modern, city centre apartments for rent, the appellant's suggestion that they could be painted in light shades, with light laminate flooring, is realistic. Therefore, whilst accepting some limitations with regard to furniture and pictures, I am content to apply some flexibility and to use the 0.68 reflectance factor, recognising the type and context of the accommodation proposed in this case.

20. The BRE guidance advises that, even if the amount of daylight in a room is sufficient, the overall daylit appearance will be impaired if its distribution is poor. I have therefore considered the DD figures alongside the ADF figures, to gain a more comprehensive overview of the daylight in the proposed rooms.

21. The DD figure is based on the position of the NSL, which divides those points on the working plane (0.85m from the floor level) which can and cannot see the sky. The BRE guidance advises that areas beyond the NSL, since they receive no direct daylight, usually look dark and gloomy compared with the rest of the room, however bright it is outside. The BRE guidance also advises that if a significant area of the working plane (normally more than 20%) lies beyond the NSL then the distribution of daylight in the room will look poor.

22. The LKDs in the apartments would have their main sitting areas located closest to the windows. However, those areas and the dining areas beyond them would extend back some distance from those windows. On the basis of the evidence before me, I cannot be certain that those main habitable areas would receive satisfactory daylight if a lower 50% DD target, suggested by the appellant, were used. Therefore, whilst recognising the site's urban context and surroundings, I have considered the proposal based on the 80% DD target which is based on the BRE guidance.

23. The APSH, for considering sunlight, is a long-term average of the number of hours during a year in which direct sunlight reaches unobstructed ground, and includes an annual target and a target for the winter months which, the main parties agreed, should both be met to 'comply' with the APSH measurement. I agree.

24. The ASPH figures considering the effects of the 2017 SJB permission on the appeal scheme were provided by the appellant, whereas those considering the effects of the 2019 SJB permission were provided by the Council. As there is a discrepancy in the number of rooms considered in each, I cannot be certain that they are directly comparable. However, in the absence of comparable information, I have considered each of those scenarios based on the respective figures before me.

Appeal scheme if the 2017 SJB permission were built

25. Even using the lower 1.5% ADF target for LKDs and studios, the evidence shows that only 70% of the rooms in the development would meet or exceed the relevant ADF targets. A significant proportion of rooms within the development would therefore not meet even the minimum targets for ADF, and thus would not receive satisfactory daylight levels.

26. It would primarily be the LKDs and studios, and thus the main habitable living spaces, which would fall below the ADF targets. Those shortfalls would not be limited to the very lowest floors of the development, since the evidence indicates that none of the studios or the LKDs up to and including Level 4 (around 75 separate flats or studios) and many of those on levels 5 and 6 would not meet the 1.5% target. Furthermore, the degree of shortfall would be highly acute in numerous cases, with some LKDs having ADFs below 0.5%, and several between 0.1% and 0.2%.

27. Only 47% of the rooms in the development would achieve the 80% DD target, and around a fifth of rooms would not meet even a lower 50% target. Most of those rooms falling below the 80% target would be on the lower floors of the building, coinciding with those studios and apartments with LKDs which would also fail to achieve the minimum ADF targets. Both the amount and distribution of daylight in those rooms would thus be poor. However, those rooms falling below the targets would not be limited to the very lowest levels of the building, and the degree of shortfall, together with the proportion of the building which would fail to meet the BRE 80% target, is also of concern.

28. The evidence before me indicates that the levels of daylight distribution would be very low in numerous cases, and that several LKDs on floors up to and including Level 5 would receive less than 25% DD, largely coinciding with those rooms which would achieve very low ADF scores of 1% or below.

29. Even applying some flexibility to the targets, when the proportion of rooms which would not meet those targets, the significant shortfalls below them in numerous cases, and the frequency with which those rooms with low levels of daylight coincide with those which would also have poor daylight distribution is taken into account, overall I consider that the proposed development would not provide satisfactory living conditions for future occupants in terms of daylight.

30. Turning to sunlight, the evidence indicates that only 62% of the LKDs and studios with windows within 90 degrees of due south would meet both APSH targets. Even having regard to the location of the site and the high rise nature of surrounding development, that proportion would be unacceptably low. Whilst APSH covers only those rooms within 90 degrees of due south, over a third of those rooms would not achieve the sunlight targets, adding weight to my conclusion that the development would fail to provide satisfactory living conditions for future occupants with regard to light, and would thus be unacceptable in that regard.

Appeal scheme if the 2019 SJB permission were built

31. If the 2019 SJB permission were implemented, the evidence shows that 70% of the rooms in the proposed development would meet the ADF targets based on a minimum target of 1.5% for LKDs and studios and 0.68 reflectance.

32. Those rooms falling short of the targets would be located towards the bottom of the building. However, the evidence indicates that such instances would not be limited to its very lowest floors, and also that the levels of ADF in some LKDs would be significantly lower than the 1.5% minimum target.

33. If the 2019 SJB scheme were built, the evidence shows that only 42% of the rooms in the proposed development would have DD levels of 80% or above. As only 51% of rooms would meet or exceed 50% DD, the situation would not improve significantly even if the lower target were to be used. Whilst some LKDs on the lower floors of the building would achieve 80% or more, those falling short of both the 80% and 50% targets would be concentrated towards the bottom of the building and would include numerous instances of daylight distribution levels below 25%. Again, the evidence before me indicates that those rooms with the lowest levels of DD tend to coincide with those having some of the lowest ADF levels.

34. On the basis of the evidence before me, 90% of the LKDs and studios with windows within 90 degrees of due south would meet the relevant APSH targets. Therefore, having regard to the site's urban context and high rise surroundings, I consider that future occupants would benefit from satisfactory levels of sunlight overall.

35. However, a significant proportion of rooms would fail to achieve even the lower suggested targets for ADF and DD, with almost half not even achieving daylight distribution to 50% of their floor areas. The LKDs may be relatively large and deep rooms. However, even if they had their main sitting areas closest to the windows, the dining areas and other areas of those habitable rooms beyond them would not receive direct daylight in a significant proportion of cases. Overall therefore, I consider an unacceptable proportion of rooms within the development, particularly main habitable rooms, would not receive adequate daylight and thus would be unduly gloomy and reliant on artificial lighting, to the significant detriment of the living conditions of their future occupants.

Conclusion: living conditions of future occupants of the appeal scheme

36. The building would have areas of outdoor amenity space on either side of its rear-projecting wing. As a result, most rooms would benefit from a good outlook and a reasonable degree of separation from other parts of the building and surrounding buildings. The windows would also be of a size which would maximise daylight as far as possible whilst still maintaining privacy for future occupants.

37. However, even applying some flexibility to the ADF and DD targets in recognition of the constraints of the site and the character of its surroundings, the proportion of rooms falling below those targets would be significant, whether the 2017 or the 2019 SJB permission were implemented, and the amount and distribution of daylight experienced in the main habitable rooms of numerous flats would be very low in both scenarios. Therefore, although generally acceptable standards of outlook and access to outdoor amenity space would be provided for many units, an unacceptable number of the proposed flats would experience very poor daylight to their main habitable areas, creating unpleasant and unsatisfactory living conditions for their occupants.

38. The low percentage of rooms which would achieve satisfactory sunlight levels if the 2017 SJB permission were implemented adds weight to my conclusion that

the development would fail to provide adequate living conditions with regard to light in that eventuality. Whilst the evidence points to a higher proportion of rooms receiving adequate sunlight in the event that the 2019 SJB permission were to be implemented, that does not alter my concerns regarding the poor daylight levels in that scenario.

39. I was advised at the hearing that a development within the parameters of the 2012 outline permission would achieve particularly low levels of VSC to its lower floors. However, the footprint and layout of such a scheme would be materially different to that which is before me. The current appeal is for detailed planning permission, and I have considered it on its own planning merits and based on ADF figures, which more comprehensively represent anticipated daylight levels in the particular rooms proposed.

40. I have been referred to specific instances of low ADF values in a scheme permitted by the Council at Strawberry Place[8]. However, the information before me, whilst limited, indicates that amendments were made to that scheme to improve some of the lowest values and that, in any event, those instances were within the context of a scheme where a significantly higher proportion of the rooms would achieve the minimum ADF targets than in this case.

41. I have also been referred to instances of kitchens falling below ADF minimum targets in a development at Hill Court[9]. However, from the limited information before me it appears that many of the kitchens in that student housing development would achieve more than 2% ADF, and that those that did not would achieve at least 1.8% ADF. Consequently, as well as differing in the nature of the accommodation proposed, the shortfalls in ADF would not be as significant as those in many of the main habitable areas in the appeal proposal.

42. Therefore, on the basis of the evidence before me, it appears that those other schemes referred to would not be directly comparable to the current appeal proposal which, in any event, I have considered on its own planning merits.

43. For the reasons given, I conclude that the proposed development would not provide satisfactory living conditions for future occupants of the proposal with regard to daylight and sunlight. The proposal would therefore conflict with the requirements of UDP Policies H2 and H4 and emerging DAP policy DM23, which seek to ensure the provision of satisfactory amenity, including with regard to daylight and sunlight, and with the guidance in the SPD and the Framework in that regard.

Living conditions of future occupants of 2 St James Boulevard

BRE targets used

44. The BRE guidance recommends that VSC is generally the appropriate parameter to use in assessing the loss of light to an existing building[10]. I have received evidence regarding the effects of the proposed development on the VSC levels of 2SJB, and representations from an interested party referring to those levels. However, paragraph F8 of the BRE guidance goes on to advise that there are some situations where meeting a set ADF target value with the new development in place could be appropriate as a criterion for loss of light.

[8] Application reference: 2015/1778/01/DET
[9] Application reference: 2014/0542/01/DET
[10] Paragraph F6 of the BRE guidance

Those include where the existing building is one of a series of new buildings being built one after another, and where the existing building is proposed but not built. In this case, the appeal site is in a wider area of redevelopment which has been taking place since the 2012 outline permission, and the 2SJB schemes have received planning permission but not yet been constructed. It is common ground between the main parties that the use of ADF in the assessment of the effect on 2SJB is appropriate as per the guidance in paragraph F8. I agree.

45. The permitted student housing schemes at 2SJB would include cluster flats, made up of several bedrooms with a communal kitchen and lounge, and studio apartments. However, the details before me indicate that their future occupants would have access to other communal and amenity areas elsewhere in the building. Consequently, they would not be reliant on those studio rooms or communal areas within the cluster flats as their sole habitable areas. The ADF figures presented to me generally assume a 2% target for kitchen areas, 1.5% for studios and 1% for bedrooms, which I consider appropriate given the nature of the accommodation at 2SJB and the inclusion of those other communal areas. For the reasons given previously, having regard to the location and the modern, purpose built nature of the accommodation, a reflectance value of 0.68 is also reasonable in this case.

46. Whilst not specifically referred to in the BRE guidance, I have also considered the evidence before me regarding the effects of the proposed development on the DD levels at 2SJB, to more fully understand its overall effects on the daylight of those two permitted schemes.

47. As the appeal site is to the north of 2SJB, the number of rooms facing the appeal site having windows within 90 degrees of due south would be negligible. Therefore, I have not considered the effects of the development on the APSH levels of either of those permitted schemes.

48. Future occupants of 2SJB would be likely to spend more time in their bedrooms than the occupants of general housing, since those areas would probably be one of their main places of work or study. Therefore, those student bedrooms are not 'less important' for the purposes of assessing daylight, and I have not counted them in the 'compliance' percentages unless they would meet the relevant targets.

49. As the 2SJB schemes exist only on paper, the main parties agreed that, having regard to the BRE guidance[11], it would not be appropriate to use a value of 0.8 times the 'existing' daylight scores as a benchmark for compliance, as one would if considering the effects on an existing building. Therefore, I have considered the effects of the proposed development based on the proportion of rooms in each of the 2SJB schemes which would meet the relevant targets if the appeal scheme were built.

50. Whilst I have been presented with some evidence regarding the number of rooms across the whole of the 2SJB building that would meet the targets if the appeal scheme were built, I do not have that evidence for both of the 2SJB permissions. Therefore, for consistency, and as I consider that the number of rooms in 2SJB facing the site is sufficient to allow conclusions to be drawn as to the effect of the development on its future occupants, I have based my

[11] Paragraph F2 of the BRE guidance

decision only on the evidence before me relating to those rooms in each 2SJB scheme which would be in the parts of the building facing the appeal site.

Occupants of 2 St James Boulevard if the 2017 SJB permission were to be built

51. Using a 1.5% target for studios and a 2% target for kitchens, the evidence indicates that only 66% of the rooms in the 2017 SJB scheme facing the site would meet the minimum ADF targets if the appeal scheme were built. There are some discrepancies between the DD figures in the various written submissions and those reported at the hearing and confirmed subsequently. However, even taking the higher of those figures, the evidence indicates that only 27% of the rooms in the 2017 SJB scheme facing the site would achieve DD levels of at least 80%, and only around half would achieve a 50% target.

52. Whilst the student bedrooms facing the site may be laid out with their desks closest to the windows, the use of those bedroom areas by future occupants for study or leisure would not necessarily be limited to those areas closest to the windows. In any event, those rooms facing the site would also include studios and communal living and kitchen areas, which would have habitable spaces further from their windows.

53. Therefore, having regard to both the amount and the distribution of daylight, a significant proportion of rooms in the 2017 SJB scheme facing the site would not receive satisfactory daylight if the appeal scheme were built.

54. Having regard to the site's planning history, the main parties agreed that it would also be appropriate to compare the appeal proposal's effects on 2SJB with those which would arise if a building within the parameters permitted by the 2012 outline permission were to be built on the appeal site. The outline masterplan envisaged a single building covering both the appeal site and the 2SJB site, whereas two separate permissions have subsequently been granted for the stand-alone development of 2SJB, separate from the appeal site. However, the parameters established within that outline masterplan represent a structure which the Council has previously considered acceptable on the part of that wider site to which the current appeal relates. Therefore, as a form of fallback, and as I was advised that the daylight and sunlight assessments for the 2SJB permissions assumed a building on the appeal site within the 2012 outline parameters, I consider such a comparison to be appropriate and pertinent to my decision.

55. The main parties agreed that such a comparison should be measured on the basis of the number of rooms in 2SJB facing the site which would either meet the relevant BRE target or, if they would not, would score no worse against that target if the appeal scheme were built than they would if a building within the 2012 outline parameters were built on the appeal site. Such an approach is sensible, and I have considered the proposal in this way.

56. In addition to the 66% of rooms in the 2017 SJB scheme facing the site which would achieve the relevant ADF targets if the appeal scheme were built, the evidence indicates that a further 15% would have ADF levels no worse if the appeal scheme were built than if a building within the parameters of the 2012 outline permission were built, despite not actually meeting the ADF targets.

57. The evidence indicates that only around 84% of the rooms in the 2017 SJB scheme facing the site would either achieve a 50% DD target or would achieve

the same or better DD score if the appeal scheme were built than if a building within the 2012 outline parameters were built on the site. That proportion would be much lower if an 80% DD target were used.

58. Therefore, even compared to a building within the parameters previously permitted on the site, almost a fifth of the rooms in the 2017 SJB scheme facing the site would not only fail to meet the minimum ADF targets, but would receive even lower levels of daylight if the appeal scheme were to be built compared with a structure within those 2012 masterplan parameters. Furthermore, even applying some flexibility and using a 50% DD target, the proposed development would also have a worse effect on the daylight distribution within the 2017 SJB scheme than if a structure within those outline parameters were built, with around 16% of those rooms facing the site having DD levels which were both less than 50% and worse than they would be in that alternative scenario.

59. The BRE guidance also makes provision for setting alternative target values for skylight access in circumstances 'where an existing building has windows that are unusually close to the site boundary and taking more than their fair share of light'[12]. It goes on to say that to ensure that new developments match the height and proportions of existing buildings, the targets for those windows 'could be set to those for a 'mirror image' building of the same height and size and equal distance on the other side of the boundary'[13].

60. The 2017 SJB scheme would have windows very close to the appeal site boundary. The layout of the 2017 SJB scheme and the position of those windows may be taken to be consistent with those established in the 2012 outline masterplan for that part of the wider site. However, the masterplan envisaged that 2SJB would be developed together with the appeal site as a single development, whereas the 2017 SJB permission would allow for the development of 2SJB as a separate, stand-alone scheme. Whilst the 2012 outline permission remains extant, a separate application would be required for the development of the appeal site if the 2017 SJB scheme were implemented. Any such stand-alone proposal for the appeal site must be considered on its own planning merits, and it is reasonable to expect that it should not be prejudiced by permission having been granted separately for that alternative stand-alone scheme on the adjacent site.

61. Therefore, having regard to the BRE guidance, I have also taken into account evidence presented with regard to the mirror image scenario, as a further sensitivity test against which to consider the effects of the proposed development on 2SJB, recognising the specific planning histories of the appeal site and 2SJB and the context of those sites and their surroundings.

62. The BRE guidance on mirror image comparisons refers to the use of VSC for daylight. However, as I have set out in paragraph 44 above, the BRE guidance makes provision for using ADF values where the 'existing' building being assessed is proposed but not built. The BRE guidance also sets out that whatever the targets chosen for a particular development, it is important that they should be self-consistent[14]. Therefore, and as it was agreed by the main parties that ADF values be used as the basis for considering the effects of the

[12] Paragraph F5 of the BRE guidance
[13] Paragraph F5 of the BRE guidance
[14] Paragraph F3 of the BRE guidance

appeal proposal itself on 2SJB, and those values have also been used in comparing the appeal proposal to a building within the 2012 outline parameters, I consider their use appropriate for the mirror image scenario.

63. I have considered the mirror image scenario on the same basis as I considered the comparison between the appeal scheme and the 2012 outline parameters, taking account of the proportion of rooms which would either meet the relevant targets or score no worse against those targets as a result of the appeal proposal than they would against that mirror image baseline.

64. Using an ADF target of 1.5% for studios and a 2% target for kitchens, the evidence indicates that, if the appeal scheme were built, around 83-84% of the rooms in the 2017 SJB scheme facing the site would either meet the relevant ADF target or achieve an ADF score which was no worse than in that mirror image scenario.

65. The evidence indicates that around only around 34-35% of the rooms in the 2017 SJB scheme facing the site would either meet an 80% DD target or receive daylight distribution at a level no worse than the mirror image baseline. The proportion of rooms facing the site which would fail to meet that 80% DD target and also receive a lower degree of daylight distribution if the appeal scheme were built compared to the mirror image scenario would therefore be significant. Even if a 50% DD target were used, 10% of the rooms facing the site would fall below that level and be worse off in terms of daylight distribution as a result of the appeal proposal compared with that mirror image scenario.

66. Drawing those threads together, an unacceptably high proportion of rooms within the 2017 SJB scheme facing the site would receive inadequate daylight as a result of the proposed development, with only 66% achieving the relevant ADF targets and only around half achieving even a lower 50% DD target if the appeal scheme were to be built. Furthermore, it is evident that the proposed development would have a greater effect on the daylight levels experienced by future occupants of 2SJB than if a development within the 2012 outline masterplan parameters were built on the appeal site. The mirror image assessment also indicates that a greater proportion of rooms in 2SJB facing the site would be adversely affected if the appeal scheme were built than in that mirror image scenario, which recognises and reflects the proximity of the permitted 2SJB scheme to the site boundary. The proportion of rooms more affected by the proposal compared to each of those alternative scenarios would not be marginal, and neither of those comparisons alters my conclusion that the proportion of rooms in 2SJB which would receive adequate daylight if the appeal scheme were built would be unacceptably low.

67. Therefore, even having regard to the site's context and planning history, I conclude that the proposed development would have an adverse and unacceptable effect on the living conditions of future occupants of the 2017 SJB scheme with regard to daylight.

Occupants of 2 St James Boulevard if the 2019 SJB permission were to be built

68. Based on the evidence before me, around 85% of the rooms in the 2019 SJB scheme facing the appeal site would achieve the minimum targets for ADF if the appeal scheme were built. However, the evidence shows that only 36% of the rooms in the 2019 SJB scheme facing the site would receive daylight distribution to at least 80% of their floor areas if the appeal scheme were built

and that, even if a 50% DD target were used, only 51% of those rooms facing the site would achieve it.

69. Therefore, even though many of the rooms in the 2019 SJB scheme facing the site would receive an adequate amount of daylight, the distribution of daylight within a significant and unacceptably high proportion of those rooms would be very poor. Consequently, notwithstanding the ADF scores, large areas of many of the rooms facing the appeal site would receive no direct daylight and, as set out in the BRE guidance, would appear unacceptably dull and gloomy, to the significant detriment of the living conditions of their future occupants.

70. For the reasons set out in paragraph 54, I have also compared the effects of the proposed development on the 2019 SJB scheme with those likely to arise if a building within the 2012 outline parameters were built on the appeal site. However, I have not been provided with evidence setting out the proportion of rooms in the 2019 SJB scheme facing the site which would score better or worse against the respective BRE targets with the appeal scheme on the site compared to the 2012 outline parameters. I have only been presented with figures setting out the proportion of rooms which would meet the relevant targets in each case. I have therefore necessarily based my assessment on a direct comparison between those figures.

71. The evidence indicates that, if a structure within the 2012 outline masterplan parameters were built on the appeal site, the proportion of rooms in the 2019 SJB scheme facing the site which would achieve the relevant ADF targets, at around 85%, would be similar to those which would meet those targets if the appeal scheme were built.

72. However, the evidence shows that if a building within the parameters of the 2012 outline permission were built on the site, 65% of the rooms in the 2019 SJB scheme facing the site would meet the 80% DD target and 77% would achieve at least 50% DD. Whilst still relatively low, the proportion of rooms facing the site which would achieve acceptable levels of daylight distribution if a structure within the 2012 outline parameters were built would nonetheless be significantly higher than the 36% which would meet the 80% DD target and the 51% that would meet a 50% target if the appeal scheme were built.

73. Therefore, whilst it appears that the appeal scheme would not have a materially greater effect on the amount of daylight, it is evident from the details before me that the effects of the appeal scheme on the distribution of daylight within those neighbouring rooms facing the site would be significantly greater compared with that alternative 2012 outline scenario.

74. As with the 2017 SJB scheme, the 2019 SJB scheme would also have windows very close to the appeal site boundary. In addition, the 2019 SJB permission is for a building which would be taller than the maximum height parameter permitted in the 2012 outline permission, and thus materially different from the structure for which outline permission was originally granted. Therefore, and for the reasons I have given in paragraphs 60 and 61 above, I have also considered evidence presented with regard to a mirror image scenario for the 2019 SJB scheme, and have done so on the same basis as for the 2017 SJB scheme, as I have set out in paragraphs 62 and 63 above.

75. Using ADF targets of 1.5% for studios and 2% for kitchens, the evidence before me indicates that all rooms in the 2019 SJB scheme facing the site would either

meet the relevant targets or attain ADF scores no worse if the appeal scheme were built compared to the mirror image scenario. However, the daylight distribution levels within the 2019 SJB permitted scheme would be worse as a result of the appeal proposal than in that mirror image scenario, with around a fifth of those rooms facing the site both falling below the DD target and attaining a lower DD score if the appeal scheme were built, compared with that mirror image baseline.

76. Therefore, whilst a relatively high proportion of rooms facing the site would receive adequate levels of daylight, the evidence shows that the daylight distribution in those neighbouring rooms would generally be very limited as a result of the appeal proposal. The BRE guidance advises that areas beyond the NSL, since they receive no direct daylight, usually look dark and gloomy compared with the rest of the room, however bright it is outside. On that basis, notwithstanding the amount of daylight reaching those rooms, I consider that the overall daylight conditions within a significant and unacceptably high proportion of them would be poor. The proportion of rooms in the 2019 SJB scheme facing the site which would experience unacceptably low daylight distribution would be significantly higher as a result of the appeal proposal than if the 2012 outline permission were implemented, and also higher compared to the mirror image scenario. The proportion of rooms more affected by the proposal compared to each of those alternative scenarios would not be marginal, and neither comparison alters my conclusion that the appeal scheme would result in poor daylight conditions to an unacceptable proportion of rooms in that neighbouring development.

77. Consequently, even having regard to the site's planning history and the character of its surroundings, I conclude that the proposed development would have an adverse effect on the living conditions of future occupants of the 2019 SJB scheme with regard to daylight.

Conclusion – Living conditions of future occupants of 2 St James Boulevard

78. I have been advised that anticipated VSC scores to that part of the outline masterplan building facing the appeal site on what is now the 2SJB site were very low. Nonetheless, on the basis of the figures before me, including detailed ADF daylight calculations, it is evident that many of those rooms facing the site would receive even lower levels of daylight as a result of the appeal scheme than if a structure within those 2012 outline parameters were built on the appeal site. Therefore, the reference to those low VSC scores does not alter my conclusions on the matter.

79. As the appeal site is to the north of 2SJB, the proposed development would not materially affect the sunlight of future occupants of either 2SJB scheme. However, for the reasons given, I conclude that the proposed development would have an adverse effect on the living conditions of future occupants of 2SJB with regard to daylight. The proposal would therefore conflict with UDP Policies H2 and H4, and with emerging DAP policy DM23, insofar as they seek to protect the amenity of existing and future residents, including with regard to daylight, and with the guidance in the SPD and the Framework in that respect.

Living conditions of occupants of The View and Liberty Plaza South

BRE targets used

80. The appellant's submissions consider the effect of the development on existing surrounding buildings with reference to VSC, DD and APSH. The appellant confirmed at the hearing that, in those submissions, the rooms in those existing buildings which are considered to meet the BRE criteria are those which would be reduced to no less than 0.8 times their existing values as a result of the proposed development. That approach is consistent with the BRE guidance, and I am thus content to rely on those figures.

Occupants of The View

81. The View is a tall building with a frontage extending along the opposite side of Heber Street to the north of the site, which has commercial units on the ground floor and 12-17 storeys of student housing above, with a large number of windows facing the appeal site.

82. As a result of the proposed development, the evidence indicates that 58% of the windows in The View facing the site would meet the BRE criteria for VSC and 66% of rooms facing the site would meet the BRE criteria for DD. Therefore, 42% of facing windows and around a third of facing rooms would experience reductions in the amount and distribution of daylight to a level less than 0.8 times their existing values. In such circumstances, the BRE guidance indicates that the reductions in daylight will be noticeable, and that rooms will appear gloomy and poorly lit.

83. The site is in a city centre location, surrounded by other tall buildings, and the calculations may not fully account for matters such as reflected light from surrounding buildings which may arise in such circumstances. However, even taking such factors into account, an unacceptably high proportion of windows and rooms in The View would experience a significant reduction in the level and distribution of daylight, to the detriment of their occupants' living conditions.

84. In terms of sunlight, at 75%, the proportion of windows in The View facing the site which would meet the BRE criteria for APSH is slightly higher. However, a quarter of windows facing the site would still have their sunlight levels reduced to less than 0.8 times their existing value. I consider that proportion unacceptably high, particularly in the context of the reductions in daylight which would also arise as a result of the development.

85. By way of comparison, if a building within the parameters established in the 2012 outline permission were to be built on the appeal site, the evidence indicates that the proportion of windows and rooms in The View which would meet the BRE criteria would be substantially higher, at 86% of windows for VSC, 87% of rooms for DD and 92% of windows for APSH. Therefore, even having regard to that extant permission on the appeal site, the proportion of those neighbouring windows and rooms experiencing a detrimental reduction in daylight and sunlight would be significantly higher if the appeal scheme were built.

86. The appellant suggested that a mirror image assessment would be likely to indicate more favourable results in relation to the proposed development's effects on The View. However, I have not been provided with any such assessment, and have based my conclusions on the evidence before me.

87. As The View is a student housing development, its occupants may not reside there all year round. However, those units would effectively serve as their occupants' homes for lengthy periods during term time, and they should still be able to expect reasonable levels of daylight and sunlight during those times. Bedrooms may generally be identified as 'less important' by the BRE guidance for the purposes of some daylight and sunlight measures. However, it appears from the evidence before me that the rooms in The View facing the site include LKD areas and studio apartments as well as bedrooms. In any event, it is likely that students may spend more time in their bedrooms compared with the occupants of general housing, as they would probably serve as one of their main work or study areas as well as providing sleeping accommodation. Accordingly, the fact that The View's occupants are students does not alter my conclusions regarding the effect of the proposed development on its daylight and sunlight levels.

88. Therefore, and on the basis of the significant proportion of rooms and windows which would be affected to a degree beyond that considered acceptable in the BRE guidance, I conclude that the proposed development would have an unacceptable effect on the living conditions of the occupants of The View with regard to daylight and sunlight.

Occupants of Liberty Plaza South

89. Liberty Plaza South is a student housing development around 9 storeys high, located to the west of the appeal site. As a result of the proposed development, 58% of the windows in Liberty Plaza South facing the site would meet the BRE criteria for VSC, compared with around 84% if the 2012 outline were built. However, the proposed development would have much less effect on the daylight distribution within those rooms at Liberty Plaza South facing the site, with 86% of those rooms meeting the BRE criteria, a proportion not dissimilar to the proportion of rooms at The View which would meet the BRE criteria for VSC and DD if the extant 2012 outline scheme were built.

90. In addition, the evidence indicates that the proportion of windows in Liberty Plaza South which would meet the BRE criteria for sunlight (APSH), at 90%, would actually be slightly higher than the proportion that would comply if the 2012 outline scheme were built (89%), as well as being comparable to the proportion of rooms in The View which would meet that criteria if the 2012 outline scheme were built.

91. Furthermore, the 2012 outline permission envisaged a building which would have extended almost the full depth of the site, close to and roughly parallel with the boundary with Liberty Plaza South. In contrast, the layout of the appeal building would be such that its rear-projecting section would be positioned at an angle in relation to that boundary. The appeal proposal would thus break up and significantly reduce the continuous massing of the building close to the boundary with that neighbouring site, compared with the outline layout. Consequently, the appeal proposal would provide the occupants of Liberty Plaza South with a more open, less oppressive outlook and a greater degree of privacy overall, as well as having slightly less effect on sunlight levels, compared with that outline scheme, which remains extant as a fallback.

92. Whilst a relatively high proportion of windows in Liberty Plaza South would experience reductions in the amount of daylight above those recommended in the BRE guidance, the development's effect on daylight distribution to those

rooms facing the site would not be at a level that I consider unacceptable, having regard to its context and surroundings. Therefore, and having regard to the benefits of the appeal scheme in terms of improving the outlook, privacy and sunlight levels to Liberty Plaza South compared with the 2012 outline scheme, overall I conclude that the development would not have an adverse effect on the living conditions of its occupants.

Conclusion: Living conditions of occupants of neighbouring buildings

93. I have been referred to the effect on neighbouring buildings likely to arise from a scheme permitted by the Council at Hadrian's Tower[15] and to instances of low daylight scores in surrounding buildings as a result of that development. However, from the limited information before me it does not appear that the circumstances in that case were directly comparable to those in the current appeal, including with regard to the buildings which existed on that site previously, the nature and layout of the residential buildings around it, the proportion of rooms in those neighbouring buildings which would be affected by that proposed development, or the degree of reductions in daylight relative to pre-existing levels in those that were. In any event, I have considered the current appeal on its own planning merits.

94. Although I have found no harm overall to the living conditions of the occupants of Liberty Plaza South, for the reasons given I conclude that the proposed development would have an adverse effect on the living conditions of the occupants of The View with regard to daylight and sunlight. The proposal would therefore conflict with the requirements of UDP Policies H2 and H4, and with emerging DAP policy DM23, insofar as they seek to protect the amenity of existing and future residents, including with regard to daylight and sunlight, and with the guidance in the SPD and with the Framework in that regard.

Provision for requirements arising from the development

95. The Council has identified contributions towards the provision of affordable housing off-site and open space and public realm improvements in the vicinity, a Travel Plan and a Training and Employment Management Plan as being necessary to make the development acceptable in planning terms. Those obligations have been identified, and contributions calculated, on the basis of the specific development proposed and the Council's adopted development plan policies and supplementary guidance. Accordingly, I am satisfied that they are necessary to make the development acceptable in planning terms, directly related to the development, and fairly related in scale and kind to the development, and would thus meet the relevant tests for planning obligations as set out in the Framework and in Regulation 122 of the CIL Regulations[16].

96. In the light of viability reports submitted by the appellant, the Council agreed that the development could not viably provide the full amount of the contributions to affordable housing and open space and public realm. On that basis the Council has agreed to accept a reduced initial contribution towards affordable housing, with provision for an overage payment up to the remaining value of the off-site affordable housing and open space contributions in the event that viability circumstances improve. I have been provided with a completed legal agreement (s106) which makes provision for those sums,

[15] Application reference 2016/0330/01/DET
[16] The Community Infrastructure Levy Regulations 2010 (as amended)

together with a Training and Employment Management Plan, a Travel Plan, and the payment of monitoring costs associated with the various obligations.

97. The sums set out in the S106 are agreed by the Council, and I have no reason to reach a different conclusion with regard to those sums or the scheme viability on the basis of the evidence before me.

98. Therefore, I conclude that adequate provision would be made for affordable housing, open space and public realm, a Travel Plan and a Training and Employment Plan arising from the development. The proposal would therefore not conflict with Policies CS5, CS13, UC6 or DEL1 of the Core Strategy, Policies IM6, OS1.1, OS1.2 or T7.1 of the UDP, or emerging Policies DM27 or DM30 of the DAP. Amongst other things those policies require new development to be made acceptable through the provision of necessary infrastructure, and refer to the specific obligations and infrastructure included in the S106.

Planning Balance

99. Even allowing some flexibility in the BRE targets, I have found that a large proportion of rooms within the proposed appeal development would fall short in terms of the amount and distribution of daylight, to a significant degree in numerous instances. On the basis of the evidence before me, I also conclude that sunlight levels to the proposed appeal development would be unacceptable if the 2017 SJB scheme were built.

100. For the reasons given, I also conclude that the development would have an adverse effect on the daylight and, in the case of The View, sunlight, of surrounding buildings. Therefore, even having regard to the site's context and planning history, I find that the proposed development would not provide acceptable living standards, or the high standard of amenity for existing and future users required by the Framework. That harm to the living conditions of existing and future occupants carries substantial weight against the proposed development.

101. The development would provide 179 residential units on a previously developed site, in a wider redevelopment area and an accessible location close to Newcastle city centre. Although it has not been suggested that the Council is currently unable to demonstrate a 5 year supply of deliverable housing sites, the scheme would nonetheless be of benefit to housing supply. The residential development of the site would also create employment opportunities and make a notable contribution to the local economy from purchasing during the construction period and additional expenditure locally from future residents.

102. Reference has also been made to future Council Tax receipts from the development, and to the New Homes Bonus. However, there is nothing to suggest that such payments would relate directly to any specific planning aspects of the development and, from the evidence before me, I have no reason to conclude that they would comprise anything other than a general financial benefit to the local authority. As such, and in accordance with the Planning Practice Guidance, I afford those matters little weight.

103. The proposed building would be of a modern, high quality design, in keeping with the scale and appearance of surrounding buildings. It would provide a clear entrance and a sense of presence to Heber Street and would complement

its surroundings. It would include two external courtyards and a roof terrace, providing its future occupants with adequate levels of outdoor amenity space, and its layout would allow sufficient separation from surrounding buildings to ensure the privacy of existing and future occupants.

104. The benefits of developing the site for housing would thus weigh in favour of the proposal. The scheme would also be of a high quality design which would contribute to the character and appearance of its surroundings, and I have taken into account comparisons between the appeal scheme and the 2012 outline layout in that respect. I have also had regard to the submissions before me regarding the site's viability, and have been referred to the appeal scheme representing the only viable means of redeveloping the site. However, neither those matters, nor those benefits which would arise from the residential development of the site, would outweigh the substantial harm to the living conditions of existing and future occupants which would arise as a result of the particular development proposed in this case. Consequently, I find that the appeal proposal is unacceptable.

Conclusion

105. For the reasons given, and having regard to all other matters raised, the appeal is dismissed.

Jillian Rann
INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jill Young	Planning Officer, Newcastle City Council
Julie Seaton	Planning Team Manager, Newcastle City Council
Sam Wallis	GIA

FOR THE LOCAL PLANNING AUTHORITY:

Peter Groves	Chartered Surveyor, St James Boulevard Developments
Kevin Northey	St James Boulevard Developments
Harvey Emms	Planning Consultant, Lichfields
Anthony Jarvis MCIAT	Malcolm Hollis LLP
Barney Soanes-Cundle	Malcolm Hollis LLP
Jonathan Baker	Ryder Architecture
Ronnie Graham	Ryder Architecture

DOCUMENTS SUBMITTED DURING THE HEARING

1. List of agreed conditions.
2. Update statement regarding Development and Allocations Plan.
3. Floor plans, Lower Ground Floor to Level 5 inclusive, showing living kitchen dining rooms with Average Daylight Factor (ADF) less than 1.33% and bedrooms with ADF less than 1.00%.
4. Floor plans, Lower Ground Floor to Level 5 inclusive, showing rooms with Daylight Distribution to less than 80% of the room.

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Appellant agreement to pre-commencement conditions.
2. Signed S106 Agreement, dated 27 February 2020.
3. Emails from appellant and Council confirming and clarifying additional daylight calculations reported at the hearing.
4. Emails from appellant and Council regarding mirror image assessment results for the 2019 SJB scheme.