
Appeal Decision

Site visit made on 24 July 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2020

Appeal Ref: APP/Z4310/W/20/3252771

Crawford House (Royal British Legion), 161 Rose Lane, Mossley Hill, Liverpool L18 5EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline and full planning permission.
 - The appeal is made by Mr D J McQueen against Liverpool City Council.
 - The application Ref 190/2160 is dated 21 August 2019.
 - The development proposed is (i) outline planning application to erect 13 apartments, layout 14 car parking spaces, erect bin/cycle store and layout associated internal access roads and (ii) full planning application to carry out partial demolition to side of building and extend in connection with creation of new vehicular access to side, convert premises to 8 self-contained apartments, layout 6 parking spaces and associated internal access roads.
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Decision

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

Procedural Matters

2. The appeal has been submitted on the basis that the Council failed to determine the planning application within the statutory timescale.
3. The planning application has been submitted partly in outline (with all detailed matters reserved) and partly in full as per the details in the banner heading above. I have taken the description of development from the Council's validation letter as this precisely and succinctly describes the proposal. This has been agreed by the main parties, although I have adjusted this slightly to reflect the amended plans submitted by the appellant on 10 May 2020 and the request in the applicant's accompanying letter to deal with the outline proposal based on 13 proposed apartments.
4. For the avoidance of doubt, the amended plans submitted to the Council on 10 May 2020 included drawing Ref Nos E02 E; E04 E; E05 D, L03 H; L02 J; L04 H and P02 G. I am not certain whether these plans were the subject of public consultation as the Council has not responded to my request for clarification in respect of this matter. However, and in any event, the plans have been submitted only on an illustrative basis. In submitting them the appellant has confirmed the amended quantum of development proposed and hence a revised description of development. I am satisfied that in determining the appeal on the basis of the amended illustrative plans, none of the interested parties would be prejudiced from a public consultation point of view.

5. The above amended plans include several changes to the original illustrative outline proposal in an attempt to address a number of concerns raised by the Council in respect of the position of habitable room windows. The amended plans also include a 5.5 metre access from Rose Lane with footway provision. They remove the originally proposed apartment No 19 which was a matter of specific concern raised by the Council in respect of the outlook that would be afforded to occupants from main room windows. I have determined the appeal based on the amended outline planning application illustrative plans in terms of establishing whether it would be acceptable in principle to erect 13 dwellings on this part of the site.
6. The Council has referred me to the Draft Liverpool Local Plan and say that it has been published. As this is not adopted, I have afforded it limited weight in the overall planning balance as a material planning consideration.

Main Issues

7. As this is a failure case, there is not a refusal notice. Nonetheless, the Council has submitted an appeal statement and this indicates what decision it would have made had it been able to do so.
8. I acknowledge the concerns raised by several other interested parties, including a local Councillor, about traffic generation, car parking provision, the manoeuvring of service vehicles and the safety of the vehicular and pedestrian access. However, the evidence before me indicates that the overall level of car parking provision would accord with the Council's car parking standards. I am also satisfied that in principle service vehicles could manoeuvre acceptably and enter and leave the site in forward gear.
9. From a layout and access point of view, unacceptable harm would not be caused to matters of pedestrian and highway safety. It is also of note that the Highway Authority has commented that *"it is accepted that the proposal to construct housing on the site would not generate a level of traffic over and above that which could be associated with the sites current use"*. In respect of all these matters, I have no reason to disagree with the Council's expressed views about the acceptability of the proposal as a whole.
10. The Council raises no objection to the conversion and part demolition of the Royal British Legion building to eight apartments (i.e. the full planning application part of the wider proposal) in respect of design or living conditions effects. I have no reason to disagree with the views expressed by the Council about this part of the development proposal.
11. In the context of the above, the main issues are (i) the effect of proposed buildings B and C (i.e. the outline part of the proposal) on the living conditions of the occupiers of residential properties on Ribbledale Road in respect of the private use of rear gardens and the effect of the adjacent works building in respect of the outlook of future residents, and (ii) whether it is necessary for the appellant to make financial contributions relating to off-site public open space; street trees; the Council's strategy/programme of public art; legal fees and associated monitoring, and, if so, whether there is a mechanism in place to deliver any necessary requirements.

Reasons

Living conditions

12. The appellant's amended drawings and accompanying information provide an indication as to the scale, position and design of the above apartment buildings and hence the relationship with the semi-detached dwellings, including associated gardens, off Ribblesdale Road. It is proposed that outline planning application buildings would include a range of heights from single storey to three storeys.
13. Based on the indicative plans, I do agree with the Council that owing to the position and height of the windows in Blocks B and C, there would be significant overlooking of residential gardens on Ribblesdale Road. Indeed, and accepting that the submitted plans are only indicative, the windows shown would be in very close proximity to the boundaries of rear gardens. I acknowledge that the illustrative proposal would be acceptable in terms of window to window overlooking distances, but that does not obviate the need to also consider acceptable levels of privacy in residential gardens.
14. I acknowledge that it might be possible to opt to increase the height of existing boundary fencing with properties on Ribblesdale Road (e.g. a 0.75 metre lattice fence on independent posts) which would suitably deal with overlooking issues from ground floor apartments. This would, however, have some limited adverse impact on the outlook enjoyed by the occupiers of some of the existing residential properties. Furthermore, such an arrangement would not address potential overlooking from windows that would be at a higher level in Blocks B and C. According to the illustrative plans, windows would either face towards the rear gardens of properties on Ribblesdale Road or include the oblique overlooking of gardens to the pair of angled semi-detached dwellings located on the other side of the boundary at the far end of the appeal site.
15. In addition, I am not persuaded that a fixed central glazed opaque window (i.e. within a bay window arrangement) would be an adequate solution. Overlooking of gardens would still be possible, albeit at an angle: I am not satisfied that this would reasonably address direct overlooking concerns. In addition, I do not doubt that the occupiers of the impacted properties on Ribblesdale Road would have the perception of being overlooked from the occupiers of the multi-storey apartment blocks, even with the inclusion of possible central opaque glazed windows. I also have some concerns about the likely adverse effect that a fixed central glazed opaque window arrangement would have on the outlook afforded to the occupiers of any such room.
16. I do not therefore agree with the appellant that the requirements of the Council's SPG 10 (23) 'New Residential Development' (SPG) would be fully met in respect of the amended illustrative outline proposal which relates to partly three storey development.
17. It might be the case that the Council has approved developments where garden to window interface distances are less than in respect of the illustrative outline planning application development. Furthermore, there may be other developments in the locality where gardens are overlooked at a closer distance. However, the gardens on Ribblesdale Road are not currently overlooked from existing development on the appeal site. I have determined this appeal on the basis of the effect of the proposed development on existing neighbouring

gardens, on its own individual planning merits and using my own planning judgement with reference to relevant policies including the SPG. The appellant's references to other developments/separation distances in the area does not alter or outweigh my overall conclusion.

18. In this case, I cannot be certain whether it would be possible to design the apartments in such a way that unacceptable overlooking of gardens did not take place, whilst also ensuring that each apartment was afforded acceptable levels of outlook and light. This is partly an outline application and other than the submitted indicative plans I have no other alternative proposals before me. I find that I am unable to conclude that in principle it would be possible to provide the quantum of apartments on the outline part of the application site without harm being caused to the use of rear gardens on Ribbledale Road from a privacy point of view.
19. Owing to the scale and appearance of the adjacent works building, it would not add positively to the overall proposed residential environment. It would appear oppressive and stark for those driving into the illustrative car park between Blocks B and C. However, the amended plans show that it would be possible to include a design/layout where windows did not directly face this building and where there was some reasonable separation from this development. Furthermore, it may be possible to include landscaping on the boundary with the adjacent works building thereby softening its impact. Therefore, I find that in principle it would be possible to soften the harmful impact of the adjacent works building whilst also ensuring an acceptable level of outlook and design for residents on the outline planning application part of the appeal site.
20. The Council's outlook concerns in respect of apartment No 19, as detailed in its appeal statement, have been resolved by the removal of this apartment from the illustrative plans and the appellant's instruction that the description of development should be changed so that it relates to 13 apartments. I am not certain why the Council does not appear to have considered the amended illustrative plans submitted on 10 May 2020.
21. In conclusion, whilst in principle it would be possible to erect 13 apartments on the outline planning application part of the site with reasonable levels of outlook for occupants of the apartments, I am unable to conclude that in principle it would be possible to erect 13 apartments without unacceptable harm being caused to the occupiers of Ribbledale Road in terms of overlooking gardens. Even if I had taken the view that the central opaque glass solution was acceptable, I have not been persuaded that this would represent an acceptable living environment or outlook for occupiers of specific apartments.
22. Consequently, I conclude that the proposal would not accord with the living conditions requirements of saved policies H5 and HD18 of adopted Liverpool Unitary Development Plan 2002; the Council's SPG and paragraph 127 (f) of the National Planning Policy Framework (the Framework). The appellant considers that the above development plan policies are out of date. However, I am satisfied that they are consistent with Chapter 12 and paragraph 127 (f) of the Framework. Hence, they are not out of date taking into account paragraph 213 of the Framework.

Financial Contributions

23. In respect of public open space provision, the Council has referred to saved Policy OE14 of the UDP. The Council says that this policy relates to "*all major development*". However, that is not how the policy is worded in so far that it says "*when granting planning permission for new residential developments exceeding 25 family dwellings, the City Council will normally require developers to make appropriate provision for recreational open space to meet the needs generated by the development*". The total number of residential units proposed is 21 and so this falls short of the 25 family dwellings threshold. Consequently, there is no policy justification for providing an off-site financial contribution towards public open space. Even if there had been a policy justifying the provision of a public open space contribution, the Council has not substantiated how it has reached the figure of £1000 per residential unit, where or how the money would be spent or indeed whether there is a deficiency of public open space in the area.
24. The Council indicate that the appellant should contribute £20,000 for planting street trees. There is no policy justification for this request and it is not clear how the Council arrived at the figure of £1000 per tree per five residential units. It is also uncertain where the trees would be planted. On the evidence that is before me, I fail to see how the request for a financial contribution towards off-site street trees would be necessary to make the development acceptable or directly related to the development proposal. Consequently, the request fails to meet the tests for planning obligations as outlined in paragraph 56 of the Framework.
25. Similar to the above, the Council's request to provide a financial contribution of 15% of the value of the planning application fee to part fund "*the Council's costs in relation to the implementation of a strategy/programme for the provision of public art*" (including a public art officer), has not been justified with reference to any specific identified policy or indeed detailed costings. There is no reasonable evidence before me to indicate that such a financial contribution would be necessary to make the development acceptable or directly related to the development proposal.
26. Given my findings above, I conclude that a planning obligation relating to the payment of financial contributions in respect of public open space; street trees; public art and monitoring is not necessary and the various requests for financial contributions fail to accord with the tests as laid out in paragraph 56 of the Framework. Furthermore, I find no conflict with policy OE14 of the UDP.

Other Considerations

27. I acknowledge that the proposal would make a positive contribution as a windfall site to the supply of homes in the area. To this extent, the proposal would accord with the emerging development plan for the area. The proposal would also mean that the existing and narrow vehicular access from Rose Lane was no longer used by motorists. I also accept that in developing the site for housing it would give it a certain future in the context that the evidence indicates that the social club has been struggling in commercial viability terms.
28. In this case, there is no suggestion from either of the main parties that the proposal would be unacceptable in land use principle terms from the point of view of erecting some form of residential development on the site. Indeed, it

may be possible that some kind of residential development could take place on the outline part of the site thereby ensuring that social and economic benefits are realised, including positive contributions from construction employment (albeit short lived) and supporting local facilities and services.

29. However, the evidence in respect of this hybrid planning application is such that I am not persuaded that it would be possible to provide the quantum of residential units proposed on the outline part of the site without harm being caused to identified living conditions. This is a matter to which I afford significant weight in the planning balance.
30. I have already concluded that I consider that in terms of the living conditions main issue, the identified policies are not out of date in so far that they are consistent with the Framework. It is not certain whether the appellant is also suggesting that paragraph 11d of the Framework is engaged because the Council is unable to demonstrate a deliverable five year supply of housing sites or that it has not met its Housing Delivery Test. The evidence from the main parties is not conclusive in this regard. However, even if it were the case that there was a shortfall in the supply of housing or that the HDT had not been met, the identified adverse effects of approving the outline part of the wider development proposal would not be significantly and demonstrably outweighed by the identified benefits when assessed against the policies in the Framework taken as a whole.

Conclusion

31. Whilst I have concluded that there is no requirement for a planning obligation in this case, this is of neutral consequence in the overall planning balance. It does not alter or overcome my conclusion in respect of the harmful effect of the proposed outline development on the living conditions of the occupiers of the surrounding residential properties from the point of view of the overlooking of gardens. This is a matter of overriding concern. When the proposal is considered as a whole, I therefore conclude that the appeal should be dismissed and planning permission refused.

D Hartley

INSPECTOR