



Appeal Decision

Site visit made on 4 May 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2021

Appeal Ref: APP/M4320/W/21/3266992

Abbotsford Court, 24 Abbotsford Road, Crosby, Liverpool L23 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Kelleher, York Montague Ltd, against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2020/00455, dated 10 March 2020, was refused by notice dated 17 July 2020.
 - The development proposed is described as two new one bedroom flats on the roof.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal the Council refused prior approval¹ at the appeal site for a similar proposal. The appellant has had an opportunity to comment upon the decision and as such I have had regard to this in making my decision.

Main Issues

3. The main issues are:
 - The effect of the proposed development upon the character and appearance of the host building and surrounding area, including the effect on trees and vegetation; and
 - Whether or not the proposed development would provide acceptable living conditions for future and existing occupants, having regard to the provision of private outdoor space.

Reasons

Character and appearance

4. Abbotsford Court is a three-storey block of flats with a flat roof, situated at the end of a cul-de-sac. The building is set back from the road behind a low wall and lawned area. To the rear of the building is a garage court which is accessed via a driveway and to the southern side of the site is a bank covered in trees and vegetation which slopes up to Mersey Road.

¹ DC/2021/00713

5. Abbotsford Road contains a mix of three storey blocks of flats and more traditional three-storey buildings. The blocks of flats are typical 1970's buildings. The parapets of the flat roof buildings and the eaves of the pitched roof buildings within Abbotsford Road are broadly consistent. In addition, both Homewood and Ingleside Court have a similar roofline, and are similar in design, to Abbotsford Court. Whilst some of the more traditional buildings are taller, they read as three storey buildings and are not bulky due to architectural detailing and their roof design.
6. The appeal site sits considerably lower than Mersey Road. The trees within the appeal site and surrounding area make a positive contribution to the character and appearance of the area. The trees to a degree screen Abbotsford Court but the building is visible from Mersey Road due to its height. The building would be more prominent in winter months when the trees are not in leaf.
7. The proposed fourth storey and steeply sloping sides of the roof would appear at odds with the three storey buildings and roof designs within Abbotsford Road. The additional floor and its roof design would unduly increase the scale, massing and bulk of the building. Due to the increase in height of the building, the proposed development would be conspicuous from the surrounding area and would result in an incongruous addition which would not reflect the existing roof designs or three storey buildings. The scheme would not be consistent with the prevailing height and form of neighbouring properties nor the overall street scene.
8. The Council are concerned that the scheme seeks to widen the access which would reduce the tree bank. The appellant asserts that no changes are proposed to the existing site layout and the existing tree line will not be affected by the access. They have clarified that it is not their intention to widen the access and have illustrated this on a plan. I am satisfied that this illustration indicates that any harm to those trees could be adequately prevented by suitably worded planning conditions. Therefore, I am satisfied that the scheme, in relation to trees and vegetation, would not cause significant harm to the visual amenity of the character and appearance of the site and surrounding area.
9. For the reasons given above, and having regard to paragraphs 118, 127 and 130 of the National Planning Policy Framework (the 'Framework') and based on the evidence submitted, the development would be visually harmful to the character and appearance of the host building and surrounding area. However, I do not consider that it would result in a significant loss of trees or vegetation.
10. Consequently, the scheme would conflict with Policy EQ2 (1a) and (3a) of A Local Plan for Sefton (2017) (LP) which seeks, amongst other matters, to ensure new development responds positively to the character, local distinctiveness and form of its surroundings through the quality of its design. Whilst there would be no conflict with Policies EQ2 (1c) and EQ9 (7) of LP which requires important landscape features to be retained and development must not result in unacceptable loss of, or damage to, existing trees, the proposal would conflict with the development plan taken as a whole.

Living conditions

11. The proposed development does not provide any new outdoor space for future or existing occupiers. The existing flats have limited useable private outdoor

space due to the garage court, access to the garage court and the tree bank. To the front of the building is a communal outdoor space.

12. Occupiers of the new flats would only have access to the front lawn which is not private. The garage court and bank to the side would not provide high quality outdoor space. They would not provide an appropriate space due to their current function and topography. Although some existing occupiers have small balconies, there would be an increased pressure on the current front lawn. The outdoor space would not provide sufficient space for informal recreation, gardening, drying clothes and socialising for all of the existing and future occupiers.
13. The Sefton Council's Flats and Houses in Multiple Occupation Supplementary Planning Document (2018) (SPD) sets out the minimum amenity space required and states that areas to the front of a building that are not private will not be included in the calculation. Both main parties agree that the current level of outdoor space, for the existing occupiers, does not meet the standards set out in the Council's SPD.
14. The proposal would not comply with the 20sqm amenity space requirement per flat set out in the SPD. Furthermore, the substandard space is not considered private due to its location to the front. Nonetheless, the current communal outdoor space would provide existing and future occupiers with a degree of outdoor space.
15. The SPD does point out that in limited exceptional circumstances a lower amount of amenity space may be accepted if it is not possible to meet the standards. The appellant suggests that domesticated additions such as balconies or roof terraces could result in an overbearing appearance. They also highlight that the site is constrained, not every resident wishes to have a garden and the new flats are not designed for families. In addition, I acknowledge that there are parks and Crosby beach nearby, but these amenities cannot provide private space in close proximity to the proposed flats.
16. Although the existing outdoor space is substandard that should not be a reason to justify further inadequate outdoor space which would have a greater demand than the existing situation. The proposed development falls considerably short of the minimum standards.
17. The considerations highlighted by the appellant do not outweigh the substandard private outdoor space and they have not clearly demonstrated why a lower standard should be accepted. Thus, the scheme would provide a substandard level of outdoor space and would increase pressure on the existing non-private space to the front of the building.
18. For the reasons given above, and having regard to paragraph 127 of the Framework, the proposal would not provide acceptable living conditions for future and existing occupants, having regard to the provision of private outdoor space. Accordingly, the scheme would conflict with policy EQ2 (2e) of LP which seeks, amongst other matters, to ensure new development creates well-connected and attractive outdoor areas which fulfil their purpose well.

Other matters

19. The appellant considers that the Council's approach contrasts with the Government's desire to make effective use of land in sustainable locations and

utilising airspace. The appellant also states that the proposed development can be delivered quickly and provide much-needed local housing of a desirable mix.

20. I understand from the evidence presented that the Council can demonstrate a 5 year housing land supply. Therefore, this benefit carries very limited weight given the small scale of the development and the Council's housing land supply position. These considerations do not outweigh the harm identified above and the proposal's failure to comply with the policies of the development plan as a whole.
21. I have also taken into account that permitted development rights exist, which permits an additional storey above an existing building subject to limitations, and I have had regard to the potential fallback position².
22. The appellant asserts that the recently refused prior approval demonstrates that the Council now accepts that an additional storey can be accommodated at the site without any harmful impacts to the external appearance of the existing building. Whilst the Council did not raise the design and external appearance of the prior approval scheme to be a concern, it cannot be directly compared to the scheme before me as its design and siting differs.
23. The two main parties dispute whether an unacceptable level of private outdoor space can lawfully be used as a reason to refuse prior approval. Whether or not the prior approval application should have been refused for this reason or whether a similar proposal could be constructed using permitted development rights is not a matter for me to determine in the context of a Section 78 appeal.
24. In order for permitted development rights to be implemented, prior approval is required. Prior approval has been refused and therefore there is not a real prospect that the fallback position can be implemented and therefore I attach limited weight to this matter. In any event, even if the Council unlawfully refused prior approval, there are differences between the two proposals and the permitted development rights would not justify the scheme before me and outweigh the harm I have identified.

Conclusion

25. Although I have found that the proposed development would not have an unacceptable impact on trees and vegetation, the scheme would be visually harmful to the character and appearance of the host building and surrounding area and would not provide acceptable living conditions for future and existing occupants to which I attach significant weight. The benefits associated with two new flats would be small. The benefits in that respect do not outweigh the deficiencies that would arise as a result of the conflict with the development plan and there are no other considerations that outweigh this conflict.
26. For the reasons given above the appeal should be dismissed.

L M Wilson

INSPECTOR

² The appellant refers to the case of *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314