



Appeal Decision

Site Visit made on 9 June 2021

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2021

Appeal Ref: APP/M4320/W/20/3266042

Former Central Buildings, Church Road, CROSBY, L23 5RD

- 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 Penny Lane Builders Limited, Plus Dane Housing Limited, and Urban Generation (Crosby) Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2020/00734, dated 1 May 2020, was refused by notice dated 19 November 2020.
 - The development proposed is the erection of a 4-storey building containing 2 commercial units and 39 apartments with associated parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 4-storey building containing 2 commercial units and 39 apartments with associated parking, at Former Central Buildings, Church Road, CROSBY, L23 5RD in accordance with the terms of the application, Ref DC/2020/00734, dated 1 May 2020, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Penny Lane Builders Limited, Plus Dane Housing Limited, and Urban Generation (Crosby) Limited against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. I have used the description of development from the Council's decision notice, which describes the proposal more succinctly than that included in the initial application form.

Main Issue

4. The main issue is whether the proposal would provide satisfactory living conditions for future occupiers, with particular regard to outdoor amenity space.

Reasons

5. The appeal site is located on a prominent, vacant site in the centre of Crosby, adjacent to the pedestrianised shopping area. The proposed 4 storey building would comprise of two commercial units and parking at ground floor level, with residential accommodation above. This would take the form of 39 apartments, of which 15 would be two-bedroomed and the remainder one-bedroomed.

6. The Council has confirmed that the size of the apartments would be acceptable, and all would provide an adequate outlook. However, no outdoor amenity space would be provided. As such, the proposal would not meet the requirement of 20m² of communal or private outdoor space per flat, which is set out in the Flats and Houses in Multiple Occupation Supplementary Planning Document 2018 (SPD).
7. Paragraph 33 of the SPD sets out instances where, in limited exceptional circumstances, a lower standard of provision may be acceptable. The proposal would be within easy walking distance of a local centre and, although it would not re-use an otherwise vacant building, it would redevelop a vacant site, and would have significant regeneration benefits. As such, the proposal would therefore broadly reflect the exceptions in paragraph 33. However, the SPD makes clear that under no circumstances will the Council accept the provision of no amenity space, or space that is significantly below the standard.
8. The building would occupy the majority of the site with active frontages on three sides and servicing areas on the fourth, which would leave little scope to create any quality open space around the building. Alternative options for providing outdoor amenity space were explored during the course of the application. The creation of a roof terrace was considered, but this would result in the loss of the upper floor of accommodation and would impact on the viability of the scheme. The incorporation of balconies was discounted due to concerns about overlooking, particularly in relation to the adjacent Crown Buildings, as well as design considerations, including the potential to reduce internal floor areas.
9. The SPD says that residents should have access to an area of high quality outdoor private amenity space, which should be designed to provide an area for informal recreation, gardening, drying clothes and socialising. Given the difficulties of achieving any outdoor amenity space on site, it is necessary to consider the harm that would be caused to the living conditions of future residents, and whether there are any other mitigating circumstances which would compensate for the lack of on-site space.
10. The location of the appeal site in the centre of Crosby offers a number of opportunities for informal recreation and socialising nearby. The adjacent pedestrianised area is an attractive space which, at the time of my visit, seemed thriving and busy, with people meeting to chat and browse the market stalls. There are plenty of opportunities to sit outside on benches in the shopping area and in the nearby landscaped area fronting onto Coronation Road.
11. The site is within easy walking distance of Coronation Park, which has a number of facilities including a play area and bowling green. Slightly further away, but still within a short walk, is Alexandra Park, which is an attractive and well treed area of open space. The site is also within easy reach of the expansive beach at Crosby and the Rimrose Valley Country Park, and there are a variety of playing fields and leisure centres nearby. Good public transport links provide access to recreation opportunities further afield.
12. No outdoor space for drying clothes would be provided, but the appellant has confirmed that tumble dryers would be provided as a stock item in each of the units. This is important to avoid problems associated with condensation.

13. Opportunities for gardening may be limited but plants can be grown indoors, and for keen gardeners, allotment gardens or community garden projects may be available locally.
14. Although it would not meet the requirements of the SPD, the proposed development would be located in an area well provided for opportunities for outdoor recreation and socialising, and provision would be made for drying of clothes inside. Consequently, I am satisfied that in this case, the development would provide a satisfactory standard of living conditions for future residents, despite the lack of on-site amenity space. Consequently, the proposal would comply with Policy EQ2 of the Sefton Local Plan 2017 (Local Plan), which requires in criterion 2c that the site design, layout and access of new development protects the amenity of those within and adjacent to the site. Similarly, there would be no unacceptable conflict with paragraph 127f of the National Planning Policy Framework (the Framework), which requires that development provides a high standard of amenity for existing and future users.

Other Matters

Planning Obligation

15. A signed legal agreement has been submitted in counterpart as part of the appeal proposal, which makes provision for affordable housing and a contribution towards education provision.
16. Local Plan Policy HC1 requires that for developments of 15 or more dwellings in this area, 30% should be affordable, of which 80% should be provided as social rented/affordable rented and the remainder as intermediate housing. In this case, the signed agreement makes provision for 100% of the proposed 39 units to be made available for affordable rent. Whilst the proposed tenure split does not reflect that set out in the policy, the Council has raised no objection to this, and given the fully affordable nature of the scheme, I have no reason to disagree.
17. In relation to affordable housing, the provisions are necessary to make the development acceptable in planning terms. They are directly related to the development, and fairly and reasonably related in scale and kind.
18. Local Plan Policy IN1 states that where appropriate, contributions will be sought to enhance and provide infrastructure to support new development. This policy is based on the findings of Infrastructure Delivery Plan 2014, which identified that additional primary school places would be required in some areas to support development proposed through the Local Plan. Prior to a Community Infrastructure Levy being adopted, the Contribution Towards Education Provision Note 2017 sets out the circumstances in which contributions will be sought for education provision, with details of the current level of the charge.
19. Using the calculation in the guidance note, an education contribution of £33,225 would be required for the proposed development, which would relate to the two bedroomed apartments and would be directed towards primary school provision in the Crosby area. The legal agreement makes provision for this, but the appellant has requested that the requirement for an education contribution be removed from the section 106 agreement, in the event that I find that it does not meet the relevant tests.

20. Appendix C of the Contribution Towards Education Provision Note sets out the current and projected capacity of primary schools in the area, and shows that for the Crosby area, pupil numbers were anticipated to exceed spaces by 184 in the year 2020/21. The calculation is based on a comparison of capacity compared with the actual number of pupils in 201/16, which has been projected forward over a five-year period, taking account of anticipated population growth and pupil yield arising from the anticipated number of new homes in the area.
21. However, the information contained in Appendix C is based on data from 2015/16, and does not appear to have been updated. Whilst a significant shortfall in capacity was predicted for the Crosby area, the extent to which the projections for the years between 2016 and 2021 reflect actual pupil numbers in those years is unknown, and there are no projections for the years beyond 2021. Furthermore, there is no current information about the existing capacity situation at local schools and the extent of any shortfall.
22. The requirement for the education contribution is not supported by up-to-date evidence and its necessity to make the development acceptable in planning terms has not been demonstrated. It would not, therefore, meet the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and Paragraph 56 of the Framework. As such, the education contribution is unnecessary.

Other considerations

23. The proposal would result in the redevelopment of a prominent site in the centre of Crosby which has been vacant for a number of years. It would make a positive contribution to the regeneration of the centre, so would be consistent with Local Plan Policy ED11. Although the scheme only incorporates two commercial units, active frontages would be provided onto Liverpool Road, which forms part of the main shopping area, and Coronation Road, which is also a busy street. The incorporation of non-retail uses would not undermine the overall retail function of the centre, and so the proposal would also comply with Local Plan Policy ED2. Furthermore, the development would make a positive contribution towards meeting local housing needs, and the particular requirement for affordable housing.
24. The height and scale of the building are acceptable in this district centre location. The design would be unfussy yet would incorporate sufficient variation in materials and texture to provide visual interest.
25. The proposed level of car parking is below the Council's standard for flats, but the site is well positioned for accessing local services with good public transport options available close by. A lower level of parking provision is therefore acceptable in this location, and I note the planning officer's comments that future residents would be eligible to apply for a permit for use in nearby Council car parks.

Conditions

26. The Council has suggested a number of conditions which I have reviewed in light of advice contained in the Planning Practice Guidance (the Guidance). I have combined some of the conditions to make them more concise and have made minor wording changes in places to improve clarity and enforceability.

27. The Council has suggested that a period of 5 years be given to implement the scheme, rather than the standard 3 years. The Guidance does allow for the imposition of a longer time period, where this would assist delivery of very complex projects where there is evidence that 3 years is not long enough to allow all the necessary preparations to be completed before development can start. However, the appeal proposal is not a particularly large scheme and I have been provided with no evidence to justify a longer time for its delivery. I have therefore imposed the standard 3 year timescale for implementation.
28. A condition requiring a construction method statement to be agreed and fully adhered to is necessary in the interests of highway safety, and to protect the living and working conditions of neighbouring land users and residents.
29. The site has been identified as having the potential to contain archaeological deposits and features of historical interest. The Council has suggested a pre-commencement condition requiring the submission, approval and implementation of a programme of archaeological site investigations. I agree that this is reasonable and necessary in the interests of understanding and conserving the historic environment.
30. As part of the application, a Phase I Desk Study and Phase II Site Appraisal were undertaken to assess the geotechnical and geo-environmental setting of the site and to identify any areas of particular concern that required targeted investigation. The Phase II report contains a number of recommendations for site remediation which may be necessary to protect end users from potential contamination. In the interests of protecting human health, I have imposed a condition requiring the submission and approval of a Remediation Method Statement and a Gas Protection Measures Design and Verification Plan, as recommended by the Phase II report.
31. In the interests of highway safety, I agree that a condition requiring details of the proposed vehicular and pedestrian accesses and highway works along the road frontages is necessary, as is a condition restricting the location of waste collections. To ensure safe and satisfactory access within the site, I have imposed a condition requiring that the proposed areas for parking and manoeuvring of vehicles be marked out as shown in the approved drawings.
32. The Council has suggested a condition requiring the provision of electric vehicle charging. I agree that this is reasonable, given the requirement in Local Plan Policy EQ7 that major development incorporates infrastructure for low emission vehicles, and Framework paragraph 110e), which requires that development should be designed to enable charging of vehicles in safe accessible and convenient locations.
33. A condition requiring details of the materials to be used in the external surfaces of the development is necessary to ensure a satisfactory appearance and to safeguard the character of the area.
34. As part of the application, a noise survey was carried out (NOVA Acoustics, 15 June 2020) which set out a number of recommendations to ensure a satisfactory noise climate for the proposed residential use, from both external sources and from the proposed commercial uses on the ground floor. A condition requiring that the recommended measures are incorporated into the development is necessary to safeguard the living conditions of future residents.

35. The Council has suggested a condition requiring details of full fibre broadband connections to all dwellings, but I have been provided with no policy to justify this requirement, so the suggested condition does not pass the tests of reasonableness. Given the highly accessible location of the appeal site by a range of transport options, it is unclear why a Travel Plan is needed, or what it would achieve. I have therefore not imposed either of these suggested conditions.
36. The future use of the commercial units is currently unknown but there is potential for noise or odour if extraction systems are installed. I agree that a condition requiring details of any kitchen equipment, plant or equipment is necessary, in order to safeguard the living conditions of future residents.
37. To provide satisfactory means of drainage and minimise the risk of flooding, a condition is required specifying that the development is carried out in accordance with the approved drainage strategy undertaken by Alan Johnston Partnership.
38. The Council has suggested a condition restricting the use of the proposed commercial units and have specified a number of uses which are considered to be appropriate within this town centre location. I agree that retaining some control over the use of these units is reasonable in the interests of maintaining the vitality and viability of the town centre. However, there is no clear justification for restricting uses within Class E of the Use Classes Order (2020), which was established to reflect the diversity of uses found on high streets and to provide flexibility. Hot food takeaways were specifically excluded from Class E to provide additional local control over such uses, and in order to avoid a proliferation in the town centre, I agree that such uses should be restricted. I have therefore imposed a condition restricting uses to those within Class E, as well as pub and drinking establishments.
39. Conditions restricting the hours of use of the commercial units and the playing of music are necessary to protect the living conditions of neighbouring occupiers and future residents of the apartments.

Conclusion

40. For the reasons given, the appeal is allowed subject to the attached schedule of conditions.

R. Morgan

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - drawing 01 - Location Plan
 - drawing 02 – Existing site plan and topographic survey
 - drawing 05 - Proposed Site Plan
 - drawing 06C - Proposed General Arrangement Ground Floor
 - drawing 07B - Proposed General Arrangement First Floor
 - drawing 08A - Proposed General Arrangement Second Floor
 - drawing 09A - Proposed General Arrangement Third Floor
 - drawing 10 – Proposed General Arrangement Roof Plan
 - drawings 11A, 12A, 13A, 14B, 15A, 16A – Proposed unit types
 - drawings 17D and 18B – Proposed massing elevations 1 and 2
 - drawings 19C and 20A - Proposed Elevations rendered 1 and 2
 - drawing 24A - Boundary Treatments
 - drawing 25 - Proposed Sections
 - drawing 27C - Landscaping Plan
 - Design and Access Statement Revision D October 2020
 - Sustainable Drainage Strategy (09/04/2020/CBC-AJP-ZZ-XX-RP-C-3000/The Alan Johnson Partnership LLP) and submitted Sustainable Drainage Proforma
 - GRN Report P9206/F.1 April 2020 Central Buildings Phase II Site Appraisal
 - NOVA Acoustics noise report ref 4457LP-V2 dated 15th June 2020
- 3) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the location of a site compound;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) measures to control noise and vibration during construction, including details of piling and the days/hours when piling will take place;

- viii) details of external lighting during construction;
- ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- x) details of construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place until a Written Scheme of Archaeological Investigations has been submitted to and approved in writing by the local planning authority. No development shall take place other than in accordance with the agreed Scheme.
- 5) Prior to the commencement of development, a Remediation Method Statement and Gas Protection Measures Design and Verification Plan (if required following the completion of gas monitoring works) shall be submitted to and approved in writing by the local planning authority. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 6) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures, and a verification report for all the remediation works shall be submitted to, and approved in writing by, the local planning authority.
- 7) No development shall commence above slab level until a detailed scheme of highway improvement works has been submitted to the local planning authority for its written approval. The scheme shall include works for the proposed vehicular and pedestrian accesses; details of the construction of flagged footways across the Church Road, Islington Road and Coronation Road frontages; and works to the existing block paviour areas of Church Road and Liverpool Road.

No part of the development shall be brought into use until the highway improvement works and accesses have been constructed in accordance with the approved details.
- 8) There shall be no waste collection or servicing carried out from Coronation Road or via the private passageway to the rear of 1-6 (inclusive) Coronation Road.
- 9) No part of the development shall be brought into use until areas for vehicle parking, turning and manoeuvring have been laid out and demarcated in accordance with approved drawing 06C, and these areas shall be retained thereafter for that specified use.
- 10) Electric vehicle charging points shall be provided in accordance with a scheme to be approved in writing by the local planning authority. The charging points shall be installed and made fully operational prior to first occupation of the development, and the equipment shall be retained in working order thereafter.
- 11) No development shall commence above slab level until details / samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in

- writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 12) No development shall commence above slab level until a scheme of sound insulation to protect future residents from noise associated with the ground floor commercial use has been submitted and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.
 - 13) The building envelope, including façade, roofs, glazing and ventilation, shall as a minimum meet the sound reduction performance standards set out in the Residential Noise Survey submitted as part of the application (Nova Acoustics, 15 June 2020). The building elements shall be installed in accordance with the approved performance standards prior to the occupation of the dwellings, and retained thereafter.
 - 14) Prior to the first use, or subsequent alternative use, of the commercial units, a scheme of noise and odour control for any kitchen equipment, plant or equipment shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and retained thereafter.
 - 15) The development hereby permitted shall be carried out in accordance with the approved Drainage Strategy (Alan Johnston Partnership 9/4/2020) and the mitigation measures detained within. The mitigation measures shall be fully implemented prior to occupation of the development unless otherwise agreed in writing with the local planning authority.
 - 16) The commercial units on the ground floor of the development hereby permitted, shown on drawing no. 06C, shall be used for uses falling within Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification), or for pub or drinking establishments (sui generis use).
 - 17) No live or recorded music or entertainment shall be provided in the commercial units other than background music
 - 18) Use of the commercial units hereby permitted shall only take place between the hours of 08:00-23:00 on any day, including Sundays and Bank Holidays.