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## Appeal Decision

Site visit made on 23 November 2021

**by Helen B Hockenhull BA (Hons) B. PI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 December 2021**

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**Appeal Ref: APP/Z4310/W/21/3276967**

**23 Anfield Road, Liverpool L4 0TE**

- 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 Messrs Schriewersmann and Cosgrove, Happy Days Group against the decision of Liverpool City Council.
  - The application Ref 20F/1548, dated 26 June 2020, was refused by notice dated 14 December 2020.
  - The development proposed is the erection of a marquee, erection of WC facilities and associated landscaping.
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### Decision

1. The appeal is allowed, and planning permission is granted for the erection of a marquee, erection of WC facilities and associated landscaping at 23 Anfield Road, Liverpool L4 0TE in accordance with the terms of the application Ref 20F/1548, dated 26 June 2020, subject to the following conditions:
  1. The development hereby permitted shall be operated in accordance with the submitted Noise Management Plan (Appendix B to Echo Acoustics Noise Assessment dated 20 October 2020) to control the emission of noise from the structure and from traffic leaving the site. The Plan shall be adhered to at all times thereafter.
  2. Operating hours shall be limited to 8am to midnight, Mondays to Saturdays, and 8am to 11pm Sundays and Bank Holidays.
  3. The buildings hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 56 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
    - i) Within 3 months of the date of this decision, a scheme for the disposal of surface water based on the hierarchy of drainage options in the National Planning Policy Framework, with evidence of an assessment of the site conditions, shall be submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for its implementation and a plan showing that no surface water runoff from the development will discharge onto adjacent land or properties. For the avoidance of doubt the full drainage scheme shall be drained by soakaway designed to BRE 365.
    - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision

within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained in use.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Procedural Matters**

- 2. As the works affect the setting of several listed buildings, I have had regard to section (66)1 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Act.
- 3. At the time of my site visit the marquee had been erected and was in use and the toilet block was substantially completed. The appeal is therefore retrospective, and I deal with it on that basis.
- 4. The original planning application made reference to the provision of a green wall treatment to the rear elevation of the marquee, though this was not specifically shown on the submitted plans. The appellant has confirmed that this no longer forms part of the scheme. Additional screen planting has been provided and the details of the toilet block have been amended. The toilet building is now constructed in reclaimed brick. Revised plans illustrating these changes were submitted with the appeal. As they are minor alterations and do not prejudice any party, I consider them in my determination of this appeal.
- 5. The marquee was erected by the previous owner of the hotel in late 2016. The Council made no attempt to take enforcement proceedings. The appellant argues that as the building has been in place more than 4 years, it is immune from enforcement action and planning permission is not required. This is not a matter within my remit to comment upon. Irrespective, the appeal is valid, and I shall deal with it accordingly.
- 6. At the time of my visit the appellant had placed netting over the rear elevation of the marquee which reduced its visual impact. However, this is not a permanent solution and is not part of the appeal proposal. I cannot therefore take it into account.

### **Main Issues**

- 7. The main issues in this case are:
  - Whether the development would preserve the setting of the Grade II\* Registered Park and Garden, Stanley Park (Ref: 1001000), and the Grade II listed Pavilion at East End of Main Section of Screen Wall (Ref:1063330) (the East Pavilion), and Screen Wall (Ref: 1359842);

- The effect of the proposal on the living conditions of adjoining neighbours with particular regard to noise and general activity;
- the effect of the proposal on flood risk.

## **Reasons**

8. The appeal property, known as Hotel Anfield forms a two and a half storey late 19<sup>th</sup> century semi-detached Victorian villa. At the rear is an extensive garden area which slopes down towards Stanley Park. Planning consent is being sought for a marquee and toilet building with associated landscaping to the rear of the hotel.

### *Effect on the setting of the heritage assets*

9. The appeal site itself lies within the setting of Stanley Park, a Grade II\* Registered Park and Garden, and two Grade II listed buildings within the park, the East Pavilion and the screen wall.
10. Designed by the landscape designer Edward Kemp, Stanley Park was laid out between 1867-70. It is one of his major works, forming part of a chain of late 19<sup>th</sup> century parks in Liverpool. The design consists of 3 separate but complementary zones, that maximise the topography of the site and are linked by sinuous paths and key views. These are a formal terrace landscape, an informal middle ground and a 'picturesque' landscape including a large lake. The major elements of Kemp's design remain intact or have been restored. The park contains numerous listed buildings and structures, many designed by E.R. Robson, who was then the Liverpool Corporation Surveyor, including a bridge spanning the lake, a top walk with a series of Gothic pavilions and a high screen wall. The Gladstone Conservatory is also listed but forms a later addition constructed around 20 years after the park opened.
11. The park is an early example of a true 'public park', with its design tailored to meet the needs of the local working-class community and respond to the living conditions of the time. The large areas of open grassland in the middle ground reflect the wider sporting history of the working classes, designed to play football. Everton Football Club played their first games in Stanley Park in 1879. This football connection continues with Anfield and Goodison Park Stadiums being visible from within the park.
12. Given the above, I find the significance of the park, insofar as it relates to this appeal, to derive from its association with the designer Kemp, its design comprising the three distinct areas integrating architecture with the landscape and its social and historic context as a public park with an association to football.
13. The formal terrace, constructed on higher ground, dominates the south west part of the park. The terrace is enclosed by a screen wall and is aligned around the boundary of the park, with views along the central section being terminated by an East and West Pavilion. The screen wall extends along the northern boundary of the appeal site. It is built in dressed stone which incorporates blind arcading with gabled buttresses ending in conical pinnacles. It has an important function enclosing the terrace and directing views along its length. It also defines the boundary with the residential properties to the south of the park. Its significance, as far as it relates to this appeal, is derived from its

function in enclosing the terrace, its notable length and its architectural interest.

14. The East Pavilion constructed in dressed red sandstone with a slate roof has a round central column with a lantern with 5 segmental lights on each side. When built it provided a means of shelter from which to appreciate the view of the adjacent Anfield Cemetery, also designed by Kemp, and the wider agricultural land beyond. This view, whilst it has changed over time, still makes a positive contribution to the historic setting of the park which contributes to its understanding and significance. With the complementary West Pavilion, the East Pavilion defines the central section of the terrace. Its significance as it relates to this appeal, derives from its historic and architectural interest as a good example of a late 19<sup>th</sup> century Gothic revival style building and also its contribution to the form and design of the terrace.
15. The marquee brings built development closer to the park boundary than the existing properties on Anfield Road. The Council argue that the long rear gardens to the properties backing onto the park were a deliberate design principle. It is asserted that the park was designed to screen out the surrounding city to create an idealised landscape and that the marquee weakens the landscape boundary of the listed park. In so doing, it harms its setting.
16. Historic maps provided by the appellant show that a few dwellings were already present when the park was constructed, some were built contemporaneously and others later. There is nothing in the evidence before me, to support the Council's assertion that the long rear gardens and siting of the adjacent buildings were an important part of the designed setting. The appeal site does not contribute to the park's significance or allow a better appreciation of its significance. Given the above, I conclude that the appeal proposal is not harmful to the setting of the park.
17. I agree with the Council that the proposal has an impact on the character of the eastern section of the park. However, as the Heritage England Good Practice Advice in Planning Note 3, The Setting of Heritage Assets explains 'Views out from a heritage asset that neither contribute to significance nor allow appreciation of significance are a matter of amenity rather than setting'.
18. Turning to the Screen Wall, the park itself is the element of its setting that contributes to its significance and not the gardens of the properties beyond. The appeal site does not therefore contribute to the significance of the wall as derived from its setting. The appeal proposal therefore causes no harm to this heritage asset.
19. The development is not visible from the 'picturesque' area that occupies the north western part of Stanley Park. Neither can it be seen from the central or western sections of the formal terrace, with the long-distance views from the terrace unaffected. I noted on my site visit that when walking alongside the eastern section of the terrace closest to the appeal site, due to the height of the screen wall and the difference in level at this point, the marquee is obscured from view.
20. The setting of the East Pavilion largely consists of the park and the framed views to the landscape beyond. The appeal site does not contribute to this

setting. The proposal therefore has a neutral impact on setting and causes no harm to the understanding and significance of this heritage asset.

21. Bringing the above points together, I find that the proposal would preserve the setting of the Grade II\* Registered Stanley Park, the Grade II listed East Pavilion and Screen Wall. The scheme would therefore satisfy the requirements of the Act and section 16 of the Framework.
22. Saved City of Liverpool Unitary Development Plan (UDP) Policies HD5 and HD15 which concern development affecting the setting of listed buildings and historic parks and gardens, are referred to in the Council's first reason for refusal. This Plan was adopted in 2002 and the policies do not consider significance or refer to the heritage balance. They are therefore inconsistent with the Framework and I give greater weight to national policy in the consideration of this appeal.

### *Living conditions*

23. Whilst the appeal property is located in an area with a residential character, there is a mix of uses. There are residential dwellings opposite the site on Anfield Road and the property to the south east is also in residential use. The adjoining building to the west is in use as a hotel as is the next door but one property. The Anfield Stadium lies further down Anfield Road to the east.
24. A noise assessment accompanied the original planning application. It concluded that events in the marquee have the potential to cause noise nuisance if it is not suitably controlled. A Noise Management Plan was submitted which included various measures relating to the playing of music, the management rowdy guests, the emptying of bottle bins, information and signage for guests, the movement of stock, CCTV, and staff movements at the end of a day's operation.
25. I note that there have been complaints about noise from the hotel, however the appellant states that these date from before the use of the marquee and must have been associated with noise from the rear garden. There has also been a complaint from a local councillor on behalf of residents about noise from the appellant's premises and the adjacent hotel. This does not appear to have been pursued, though this could be due to the pandemic and little activity at the two premises.
26. Whilst I agree with the Council that the complaints are material, they do not appear to be directly attributable to the use of the marquee. I observed on my site visit that the rear garden provides outside seating and benches and is currently used for gatherings and events without restriction. The rear garden has the capacity to accommodate the same number of persons as the marquee, possibly more, without any controls in place. The provision of the marquee would to some extent assist to contain and reduce noise impacts from the activities in the rear garden area of the hotel.
27. The appellant has indicated that whilst no operating times were included in the appeal submission, a condition preventing use between midnight and 8am would be acceptable. The Environmental Health Department of the Council raised no objection to the development though suggested a 1-year temporary permission to monitor the noise impact. However, in my mind if the scheme is acceptable for 1 year it is acceptable on a permanent basis.

28. I take account of the fact that there is a cluster of hotels in the immediate area of the appeal premises and that the property is in very close proximity to Anfield Stadium. There is therefore the likelihood of significant activity in the area particularly on match days, such that whilst it would have quiet times it would also be very busy at others.
29. Accordingly, subject to the imposition of an appropriate condition to control hours of use and the provision of a Noise Management Plan, I consider that the proposal would be acceptable with appropriate safeguards in place to protect the living conditions of nearby residents.
30. The scheme would therefore comply with saved City of Liverpool UDP (2002) Policies H4 and EP11 and emerging Liverpool Local Plan Policies H7 and R1, which seek to protect residential amenity.

#### *Flood Risk*

31. The appeal proposal results in an increase in impermeable area with the risk of surface water flooding. The Council raise concern at planning application stage that insufficient details of drainage had been provided to ensure that the drainage system was acceptable and would not lead to an increased risk of flooding.
32. The appeal submission is accompanied by a Drainage Statement which outlines that surface water would be dealt with through a soakaway. Percolation tests have been carried out and found to be satisfactory. Foul drainage from the toilet block would drain via a new connection to the existing foul drain which runs to the rear of the property.
33. On the basis of the above and my observations on site, I am satisfied that the scheme would provide appropriate drainage and would cause no risk to flooding. The scheme would therefore comply with saved UDP Policy EP13 which aims to prevent the direct risk of flooding and development that would increase the risk of flooding elsewhere.

#### **Other matters**

34. The Council have argued that should the appeal be allowed; the scheme would set a precedent for other similar developments adjacent to the park. I noted the presence of a smaller marquee in the rear garden of the Epstein Guest House to the east of the appeal site on my site visit. However, each individual proposal must be considered on its merits and that is the basis on which I have determined this appeal.

#### **Planning conditions**

35. I have considered the conditions suggested by the Council in accordance with the tests in the Framework and the Planning Practice Guidance. I have amended the wording where appropriate in the interest of clarity and enforceability. As the scheme is retrospective, a commencement condition is not necessary. In the interests of safeguarding residential amenity, conditions requiring a Noise Management Plan and controlling the hours of operation are necessary. I note that the Council has raised concern that a Noise Management Plan would be difficult to enforce. The appellant has referred my attention to

the use of a such a condition in another appeal in Wicklewood.<sup>1</sup> I am satisfied that such a condition would meet the statutory tests.

36. To ensure the site is properly drained, condition 3 is required to secure the submission of a detailed drainage scheme incorporating a soakaway and ensuring no surface water run off drains onto to adjacent properties. The wording of the condition ensures that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of these matters before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.

### **Conclusion**

37. For the reasons given above, and having had regard to all other matters raised, I allow this appeal.

*Helen Hockenhull*

INSPECTOR

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<sup>1</sup> APP/L2630/C/18/3197523