



Appeal Decision

Site Visit made on 4 November 2021

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2022

Appeal Ref: APP/Z4310/W/21/3277863

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 planning permission
 - The appeal is made by Mr DJ McQueen against Liverpool City Council.
 - The application Ref 200/2581, is dated 25 September 2020.
 - The development proposed is a HYBRID APPLICATION:
 - (i) OUTLINE PLANNING APPLICATION : To erect 10 apartments, lay out 11 car parking spaces, erect bin and cycle stores, and lay out an associated internal access road, communal open space, means of enclosure and hard / soft landscaping, including a living green wall [all matters reserved]
 - (ii) FULL PLANNING APPLICATION : To carry out partial demolition to side of building and extend in connection with the creation of a new vehicular access to the side, convert the premises to 8 self contained apartments, lay out 6 parking spaces and an associated internal access road, communal open space, means of enclosure and hard / soft landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a HYBRID APPLICATION : (i) OUTLINE PLANNING APPLICATION : To erect 10 apartments, lay out 11 car parking spaces, erect bin and cycle stores, and lay out an associated internal access road, communal open space, means of enclosure and hard / soft landscaping, including a living green wall [all matters reserved]
(ii) FULL PLANNING APPLICATION : To carry out partial demolition to side of building and extend in connection with the creation of a new vehicular access to the side, convert the premises to 8 self contained apartments, lay out 6 parking spaces and an associated internal access road, communal open space, means of enclosure and hard / soft landscaping at Crawford House, Royal British Legion, 161 Rose Lane, Mossley Hill, Liverpool L18 5EA in accordance with the terms of the application, Ref 200/2581, dated 25 September 2020, subject to the conditions set out in the schedule at the end of this decision.

Applications for costs

2. An application for costs was made by Mr DJ McQueen against the Liverpool City Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The appeal is against a failure by the Council to determine the planning application. However, the Council's Planning Committee has resolved that they would have approved the planning application subject to a legal agreement and

conditions, had the appeal against the non-determination of the planning application not been made.

4. Furthermore, I note that a previous appeal¹ relating to a similar proposal was dismissed in 2020 on only one ground, relating to the harm that would be caused to the living conditions of the occupiers of residential properties on Ribblesdale Road from overlooking. The proposal subject to this appeal has been reduced in terms of the number of dwellings proposed, in order to attempt to address that matter.
5. In his decision letter, the previous Inspector also found that financial contributions in respect of public open space, street trees and public art were not necessary and failed to accord with the tests as laid out in the National Planning Policy Framework (The Framework). Notwithstanding this, the Council maintains its position that these planning obligations are required in its report to Planning Committee that has been provided with the appeal, while the appellant disputes their necessity.
6. The main issue is therefore whether or not it is necessary to make financial contributions relating to off-site public open space, street trees and the Council's strategy/programme of public art.

Reasons

7. The previous Inspector set out their reasoning as to why financial contributions relating to off-site public open space, street trees and the Council's strategy/programme of public art were not necessary and did not meet the relevant tests. Whilst the Council maintain that they are necessary, they have not provided any direct information or commentary in relation to the conclusions made by the previous Inspector. They have not, therefore, provided any evidence or reasoning in support of a case that the contributions are required or that I should come to a different conclusion than my colleague on this main issue.
8. The conclusions of the previous Inspector are set out succinctly, and in summary they relate to the fact that Saved Policy OE14 of the Unitary Development Plan 2002 only requires the provision of public open space on developments exceeding 25 family dwellings and that there is no policy justification for the requested contribution for street trees and public art. On the basis of the information that I have before me, and in particular given that it does not provide any detailed justification or explanation for the requested contributions nor does it attempt to address the previous Inspector's findings, I have no reason to take a different view.
9. I therefore conclude that planning obligations relating to public open space, street trees and public art are not necessary and do not meet the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Paragraph 57 of The Framework. Whilst a completed unilateral undertaking has been provided, clause 13.1 allows for one or more obligations to be struck out if I find that they do not meet the relevant tests. For the avoidance of doubt, on the basis of the above I find that none of the obligations relating to off-site public open space, street trees and public art should take effect or be enforceable.

¹ APP/Z4310/W/20/3252771

Other Matters

10. Due to the proposed development's potential pathways and impacts on the Mersey Estuary Special Protection Area (SPA) and the Mersey Estuary Ramsar site, a Habitats Regulations Assessment (HRA) for likely significant effects has been undertaken by Merseyside Environmental Advisory Service. This HRA concludes that there would be no likely significant effects on the SPA or Ramsar site either alone or in combination with other residential developments. Accordingly, it is concluded that an Appropriate Assessment is not required in relation to the proposal. Having considered the information before me in this respect, I find no reason to reach a different conclusion on this matter.
11. Interested parties have raised concern with regard to the amount of development proposed and its impact upon the character and appearance of the area, living conditions, highway safety, air pollution, ecological interests, drainage, security, waste disposal, the retention of existing gardens, boundary treatments and trees along with a loss of green space and a loss of a community facility. However, based upon the position the Council has adopted, the responses from the relevant consultees, the previous appeal decision, the information available to me and my own observations during my site visit, I am satisfied that no harm would arise with respect to these matters. Furthermore, the matter relating to overlooking which was pertinent to the previous appeal dismissal has been addressed.

Conditions

12. I have separated the conditions into those relating solely to the full planning permission phase, those relating solely to the outline planning permission phase and those which relate to both. I have also amended, reworded and combined the Council's suggested conditions where appropriate, in the interests of precision and to avoid duplication.
13. With respect to the full planning permission, conditions relating to the time period for commencing development and the approved plans are necessary to provide certainty. A condition requiring compliance with the submitted drainage strategy is needed to ensure that the appropriate provisions are put in place in that respect, and conditions relating to landscaping, external facing materials and boundary treatments are required to ensure that the proposed development has an appropriate visual appearance.
14. The conditions required with regard solely to the outline planning permission also include those which provide certainty as to the timescales for commencing the development, submitting reserved matters and the approved plans. A pre-commencement condition requiring the submission of a drainage scheme is needed as the form and layout of the outline element of the scheme is as yet unknown and for the same reasons details of cycle parking are needed. Details of the living wall are required in order to ensure that this element of the proposal has a satisfactory appearance.
15. The conditions which relate to both phases of the development are those relating to land contamination and a method statement for demolition/construction, both of which must be pre-commencement conditions so that it can be ensured that any contamination risks are addressed at the appropriate time and that the construction of the proposed development does not cause harm to highway safety. An Arboricultural Impact Assessment &

Method Statement has been submitted and a condition requiring compliance with this will be sufficient to ensure matters relating to the protection of trees that adjoin the site are addressed for both the full and outline elements of the proposal.

16. Details of highway improvement works are required to ensure that these works are undertaken in a satisfactory manner and details of any external lighting to be installed are required in the interests of protecting the living conditions of the occupiers of adjacent dwellings. Details of bird boxes shall be submitted for approval in accordance with the recommendations of the ecological reports. Conditions relating to the implementation of the approved landscaping schemes, their subsequent management and the maintenance and management of the drainage system are needed to ensure that satisfactory provisions are put in place. A condition relating to the surfacing, layout and drainage of parking and servicing areas is required to ensure that this is undertaken in accordance with the approved plans and details.
17. Due to the proximity to an operating public house details of a scheme to acoustically insulate the development is required and conditions relating to waste storage are needed to ensure that appropriate provisions are put in place. A condition which addresses the possibility that the full planning permission could be implemented but the outline planning permission may not be implemented is required, and this would secure details of landscaping on the land that forms the outline element of the proposals if development does not come forward on it.
18. It is not necessary to specify the maximum heights of the outline proposals, as scale is a reserved matter and these considerations would be addressed at that point. As layout, scale and appearance are reserved matters, issues relating to the use and need for obscure and fixed glazing too would be considered at that stage. Landscaping including boundary treatment, external facing materials and bin storage in relation to the outline element of the proposal would also be part of the reserved matters submissions.
19. It is not necessary or reasonable to require details of CCTV to be submitted and details of ground surfaces and road phasing would be collectively covered by the full and outline planning submissions so separate planning conditions are not necessary. Bin storage details are on the full planning permission plans and therefore a condition is not required in this respect.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

Graham Wraight

INSPECTOR

Schedule of Conditions

Conditions relating to the full planning permission phase

- 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:
 - 10782 L01
 - 10782 L07 Rev E
 - 10782 L08 Rev D
 - 10782 L09 Rev E
 - 10782 L10 Rev A
 - 10782 P03 Rev C
 - 10782 E03 Rev H
 - 10782 E06 Rev D
- 3) The drainage for the full planning permission phase shall be carried out in accordance with the submitted Drainage Strategy Layout LV752-CIV-500, Rev E, dated 24/02/21 by Thomasons. The rate of surface water discharge shall not exceed 11.7 l/s for the entire application site. Prior to first occupation of any relevant part of the development which the drainage strategy serves, that part of the development shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.
- 4) Approved Block A shall not be occupied or brought into use until a plan detailing the number, size, species, and location of planting proposed has been submitted to and approved in writing by the local planning authority. For the avoidance of doubt, the plan must be to a recognised scale and the symbols used and plant schedule provided must comply with BS EN ISO 11091:1999 Construction Drawings Landscape drawing practice.
- 5) Prior to their implementation and use on site, samples or specifications of all materials to be used in the external construction of the development hereby approved shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details.
- 6) Details of all new boundary treatment, gates and means of enclosure shall be submitted to and approved in writing by the local planning authority prior to their erection. Development shall thereafter be undertaken in accordance with the approved details.

Conditions relating to the outline planning permission phase

- 7) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any

- development takes place and the development shall be carried out as approved.
- 8) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 9) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 10) The development hereby permitted shall be carried out in accordance with the following approved plans:
- 10782 L01
 - 10782 L10 Rev A (relating to the extent of the outline planning application boundary only, as hatched orange)
- 11) No development shall commence until details of a surface water drainage scheme and a foul water drainage scheme have been submitted to and approved in writing by the local planning authority. The drainage schemes must include:
- (i) A restricted rate of discharge for surface water of 11.7 l/s for the entire application site;
- (ii) Levels of the proposed drainage systems including proposed ground and finished floor levels in AOD; and
- (iii) Foul and surface water shall drain on separate systems.
- The schemes shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and in accordance with the principles set out on the submitted Drainage Strategy Layout LV752-CIV-500, Rev E - Dated 24/02/21 by Thomasons.
- Prior to first occupation, the development shall be completed in accordance with the approved details and retained thereafter for the lifetime of the development.
- 12) No dwellings within the outline planning permission phase shall be occupied until a scheme for the provision of cycle parking has been implemented in accordance with details that have first been submitted to and approved in writing by the local planning authority. The cycle parking shall thereafter be retained in accordance with the approved details.
- 13) No dwellings within the outline planning permission phase shall be occupied until the living wall is installed in accordance with details that have first been submitted to and approved in writing by the local planning authority.

Conditions relating to both the full planning permission phase and the outline planning permission phase

- 14) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of

Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its 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 the local planning authority within 7 days of the report being completed and approved in writing by the local planning authority.

- 15) No development shall commence until a method statement comprehensively detailing the phasing and logistics of demolition/construction has been submitted to and approved in writing by the Council as Local Planning Authority. The method statement shall include, but not be limited to: Construction traffic routes, including provision for access to the site, Entrance/exit from the site for visitors/contractors/deliveries, Location of directional signage within the site, Siting of temporary containers, Parking for contractors, site operatives and visitors, Identification of working space and extent of areas to be temporarily enclosed and secured during each phase of demolition/construction, Temporary roads/areas of hard standing, Schedule for large vehicles delivering/exporting materials to and from site, Storage of materials and large/heavy vehicles/machinery on site, Measures to control noise and dust, Details of street sweeping/street cleansing/wheel-wash facilities, Details for the recycling/disposing of waste resulting from demolition and construction works, Hours of working, Phasing of works including start/finish dates. The development shall be carried out in accordance with the approved method statement, unless otherwise agreed in writing with the Council as Local Planning Authority.
- 16) Development shall be undertaken in accordance with the Arboricultural Impact Assessment & Method Statement referenced 19/AIA/LIV/40 (Rev B) and dated September 2020.
- 17) Prior to the first occupation of the development hereby approved, a highway improvement works scheme shall be implemented in accordance with details that have first been submitted to and approved in writing by the Council as local planning authority. For the avoidance of doubt, the scheme shall include details of the design and construction of the highway improvement works, including but not limited to:
 - i. The provision of dropped kerbs and tactile paving at the proposed site access junction.

- ii. The provision of a highway design for the Rose Lane access including replacement of the street lighting column in conflict with the access proposals.
 - iii. Drainage works necessary to facilitate the highway works.
 - iv. Any traffic regulation orders necessary for the development proposals including all consultation costs, advertising and materials.
 - v. The removal of the existing bollards fronting the building on Rose Lane and the guardrails outside the buildings former entrance also on Rose Lane.
 - vi. arrangements for future management and maintenance of the proposed roads within the development.
- 18) No external lighting shall be erected on any phase of the development until a lux contour diagram for that phase has been submitted to and approved in writing by the local planning authority. The submitted diagram shall extend to adjacent premises and demonstrate that external lighting fittings are orientated so that measurements taken at any nearby habitable roomed windows do not exceed 6 lux. External lighting shall thereafter be implemented in accordance with the approved details.
- 19) The development on each phase shall not be occupied until details of bird boxes for that phase to include number, type and location on an appropriately scaled plan as well as timing of installation, have been submitted to and approved in writing by the local planning authority. Bird boxes shall thereafter be installed in accordance with the approved details.
- 20) (a) The approved landscaping scheme for each phase of development shall be completed either:
- i) not later than the first planting season following first occupation of that phase of development; or
 - ii) during the appropriate planting season progressively as the development proceeds, in accordance with a programme to first be agreed in writing with the local planning authority.
- (b) All works must be carried out to BS 8545:2014 Trees: from nursery to independence in the landscape and BS 4428: 1989 Code of Practice for General Landscape Operations.
- (c) Any trees/plants which die, become diseased, damaged or are removed within 5 years of planting shall be replaced with trees/plants of similar sizes and species or as may otherwise be agreed with the local planning authority in the first available planting season thereafter.
- (d) An audit trail of the plant stock used for the scheme must be submitted to the local planning authority on completion of the planting.
- 21) The development on each phase shall not be occupied until a landscape management plan for all trees and undeveloped areas outside of the curtilage of any dwelling within that phase (and including the living wall on the outline phase) has been submitted to and approved in writing by the local planning authority. The plan shall include details of the timescale, programme and the body responsible for its implementation. The approved management plan(s) shall thereafter be implemented in perpetuity for each phase. Any successors to the original body

- responsible for its implementation shall be notified to the local planning authority in writing within one month of any such change occurring.
- 22) The development on each phase shall not be occupied until details of the maintenance and management of the drainage system for that phase have been submitted to and approved in writing by the local planning authority. The drainage system(s) shall thereafter be managed and maintained in accordance with the approved details.
- 23) The development on each phase shall not be occupied until the areas to be set aside for parking and servicing on that phase have been surfaced, drained and permanently marked out or demarcated in accordance with the details and specifications on the relevant approved plans and details. The parking and servicing areas shall be retained as such thereafter.
- 24) The residential buildings within each phase shall be acoustically insulated in accordance with a scheme that has first been submitted to and approved in writing by the local planning authority. The approved scheme(s) shall be implemented prior to the buildings in each relevant phase being first occupied.
- 25) The development on each phase shall not be occupied until details of a waste management strategy relating to that phase has been submitted to and approved in writing by the local planning authority. The approved strategy(s) shall thereafter be implemented in perpetuity.
- 26) Any waste generated to be discarded as refuse or recycled shall be kept within the curtilage of the premises and shall only be placed outside the premises on the appropriate refuse collection day.
- 27) In the event that the full planning permission element of the scheme is implemented but that the outline planning permission element of the scheme is not implemented within the timescales detailed in this permission (or an alternative permission is not implemented), details of a landscaping scheme for the land forming the outline part of the site, including the timescale for implementation and proposals for its long-term management, shall be submitted to the local planning authority within one month of the outline permission expiring, for their approval in writing. The landscaping scheme shall thereafter be undertaken in accordance with the approved details.

-----End of Conditions-----