



Appeal Decision

Inquiry Held on 10-13, 17-18 and 31 May 2022

Site visits made on 9, 10 and 13 May 2022

by R. Catchpole BSc (hons) PhD MCIEEM IHBC

an Inspector appointed by the Secretary of State

Decision date: 11th July 2022

Appeal Ref: APP/Z4310/W/21/3289762

Plot C02, Liverpool Waters, Jesse Hartley, Way, Central Dock, Liverpool L3 OBT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to determine a planning permission.
 - The appeal is made by Mr Greg Malouf (Romal Capital (C02) Limited) against the non-determination of Liverpool City Council.
 - The application (Ref: 21F/0377) is dated 2 February 2021.
 - The development proposed is a residential development in three blocks, 4-9 storeys creating 330 residential units (C3), commercial at ground floor (E), partial infill of West Waterloo dock, floating timber jetty & dockside walkway with associated parking, public open space, servicing and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development in three blocks, 4-9 storeys creating 330 residential units (C3), commercial at ground floor (E), partial infill of West Waterloo dock, floating timber jetty & dockside walkway with associated parking, public open space, servicing and landscaping at Plot C02, Liverpool Waters, Jesse Hartley, Way, Central Dock, Liverpool L3 OBT in accordance with the terms of the application, Ref: 21F/0377, dated 2 February 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The Inquiry sat on non-consecutive days between 10 and 31 May 2022 and an accompanied site visit was carried out on the 10 May 2022. Unaccompanied site visits were also carried out on the 9 and 13 May 2022. All site visits were carried out according to an agreed itinerary which included views of the appeal site from the Mersey River Explorer Cruise that runs parallel to the appeal site. It also included views across the river towards the Liverpool waterfront from multiple locations along the riverside walk that links Woodside Ferry Terminal and Vale Park. This included all relevant fixed and kinetic views.
3. The Liverpool Maritime Mercantile City World Heritage Site (WHS) that was first inscribed on the World Heritage List in 2004 was deleted by UNESCO in July 2021. Consequently, the heritage assets potentially affected by this proposal are no longer assets of the highest significance, as defined by paragraph 200(b) of the National Planning Policy Framework 2021 (the Framework). Moreover, the Outstanding Universal Value of the former WHS, as set out in its

Statement of Outstanding Universal Value (OUV), no longer applies as a material planning consideration.

4. Nevertheless, the Council still relies upon the Liverpool Maritime Mercantile City World Heritage Site Supplementary Planning Document (SPD) as guidance and maintains that it continues to have relevance in decision-making insofar as it relates to preserving the special interest of listed buildings and the significance of conservation areas. Whilst the appellant maintains that the SPD cannot apply as a result of the loss of its key purpose, i.e. preserving OUV, I nevertheless find it material to my decision-making insofar as it relates to the significance of heritage assets in their own right, as defined through national policy and legislation. In response to one of my questions, the Council conceded that the SPD was not principal policy guidance for the historic environment, as suggested in the adopted Historic Environment Planning Policy Advice Note 2022, but rather that it provided 'some guidance' along the above lines.
5. This appeal is against the failure of the Council to make a decision within the prescribed period¹. However, the putative reasons for refusal by the Council are set out in the report to the Planning Committee dated 18 January 2022². This is the basis upon which I have determined this appeal.
6. As the proposal potentially affects the setting of a listed building, I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Main Issues

7. The main issues are:
 - the effect of the proposal on the character and appearance of the local area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building, 'Waterloo Warehouse' (Ref: 1062576), and the extent to which it would preserve or enhance the setting of the Stanley Dock Conservation Area;
 - the effect of the proposal on the significance of the non-designated heritage asset, West Waterloo Dock;
 - the effect of the proposal on the delivery of public open space comprising the Cultural Square as part of the wider Liverpool Waters Central Docks regeneration scheme;
 - whether the proposed type of housing will satisfy local housing needs and support a housing offer that encourages a more diverse residential population; and
 - the benefits to be weighed in the planning balance, including any implications of not proceeding with the scheme.

¹ Second bullet of the above banner heading

² CD 3A.1

Reasons

Background

8. The appeal site comprises hard standing, made ground and open water covering an area of approximately 1.12 ha near the eastern bank of the River Mersey. The site includes the open water associated with the West Waterloo Dock (WWD). The western boundary of the site is flanked by a newly constructed link road, Triskelion Way, that will provide vehicular and pedestrian access to a new Isle of Mann Ferry Terminal from Waterloo Road via Jesse Hartley Way. It would also provide access to the proposed development via a bell-mouth that has already been constructed immediately to the west of what is currently open water.
9. The eastern side of the appeal site is flanked by an access road and extensive car parking associated with Waterloo Quay Apartments (WQA). These are set back from the WWD quayside by approximately 70 m, with the exception of the southernmost apartments that flank Princes Half Tide Dock. All of the apartments have habitable rooms overlooking the appeal site. The River Mersey waterfront is currently only accessible at this location from the south by a circuitous route, via Jesse Hartley Way. However, a pedestrian route, via a footbridge immediately to the south of the new ferry terminal, should be restored through a condition associated with the permission that has been granted for that scheme (Ref: 20F/2453).
10. The appeal site is a parcel of vacant, previously developed land that lies within the Central Docks Neighbourhood of the Liverpool Waters regeneration scheme. This scheme covers an area of approximately 60 ha of largely vacant dock space that extends from Princes Dock, in the south, to Bramley Moore Dock in the north. It remains the largest outline planning permission in England and Wales and will provide 1.7 m square feet of mixed development phased over the next 30-40 years. The outline planning permission (OPP) for the Liverpool Waters scheme was granted on 19 June 2013 (Ref: 10O/2424) for a range of different uses and establishes the principle of development of Plot C02 within Parcel 3b as well as the delivery of a similar quantum of development to the current scheme.
11. It also establishes the principle of the partial infilling of WWD³ to enable the effective use of this previously developed land as part of the comprehensive regeneration of the Liverpool waterfront as envisioned by Policy CC12 of the Development Plan (DP)⁴. This is a delivery-driven policy that stresses the wider, holistic benefits that are expected to accrue from the regeneration of 60 ha of historic dockland and is expected to deliver substantial growth of the city economy. Consequently, this policy requires due consideration to be given to whether or not individual proposals would frustrate the vision, when taken as a whole, across the entire OPP area.
12. The most recent non-material amendment (NMA) to the OPP, that was granted by the Council on the 18 September 2020 (Ref: 20NM/1801), amends the permission to take account of the effect of subsequent development and revises the parameter plans for the development parcels, development plots and building heights. These were necessary to ensure that the Central Docks

³ As shown on a series of indicative masterplans in CD 5.4, 5.5, 5.7 and 5.12

⁴ Liverpool Local Plan 2013 -2033 Adopted January 2022

Neighbourhood remains deliverable. The changes that are relevant to this appeal comprise extending Plot C02 and Parcel 3b to the south and moving Plot C02 further to the east. This amendment also altered the height parameters for Plot C02 to reflect the mixed scale of the previously consented hotel and cruise liner terminal. These amendments were preceded by an amendment to the Central Docks Detailed Neighbourhood Masterplan (MP) on 12 November 2019 (Ref: 19DIS/1315) that enables residential and commercial use to come forward on Plot C02.

13. Condition 4 of the OPP seeks to ensure general conformity with the parameters plans whilst Condition 11 seeks to establish detailed masterplans for each neighbourhood prior to the submission of the first reserved matters application (RMA) in each area. The most recent, amended, iteration of the MP for the Central Docks Neighbourhood that was approved by the Council was produced on 23 September 2019 and shows the partial infilling of WWD to the same extent as the current scheme. These conditions require RMAs to be in accordance with the approved details.
14. This is of considerable importance to the determination of this appeal as the requirement for strict conformity cannot apply to stand-alone applications that have since come forward across the wider Liverpool Waters area, including the current scheme. Such applications fall to be considered on their individual merits and essentially whether or not they would prejudice the delivery of the OPP and associated vision for the waterfront as a whole. However, this does not mean that 'anything goes'. Whilst the MP may not, as a matter of law, bind or control the appeal scheme it is nevertheless a material consideration in the absence of an established design code that ensures the creation of high quality, beautiful and sustainable buildings as required by paragraph 128 of the Framework.
15. Turning to the detail of the proposed development, the buildings would comprise two, nine storey blocks rising to a height of approximately 29.5 m and a single, four storey block rising to a height of approximately 14.1 m on the southern part of the plot nearest to the new ferry terminal. This predominantly residential development would include a number of ground floor commercial units with a total floorspace of approximately 300 m². The residential units would comprise 194 one-bedroom apartments (~58%), 124 two-bedroom apartments (~38%) and 12 three-bedroom apartments (~4%). Private amenity space would be provided for each town house in the form of either a front garden or a roof garden that would allow more expansive views of the Liverpool docklands.
16. The buildings would be of a contemporary design that aims to reflect the 'warehouse aesthetic' of nearby heritage landmarks, such as Waterloo Warehouse and Tobacco Warehouse. The blocks would be orientated to run parallel to Triskelion Way and the remaining open water of WWD. A wide, sheltered walkway along a cantilevered, timber jetty would be created parallel to the western waterside for use by pedestrians, cyclists and canal users. This would provide direct access to the water space as well as a north-south route in addition to the walkway that has already been created along Triskelion Way.
17. Approximately 49% of the water space within WWD would be infilled as part of the proposal. This would not only provide a development platform for the current proposal but also for the development of Plot C03 and Parcel 3c that

are identified, respectively, as a Cultural Building and the Cultural Square (CS). The latter being a prominent, nodal area of public open space within the Central Docks Neighbourhood. As set out in the OPP and associated strategies, this public open space would be delivered when Plot C03 is developed. The current scheme provides infill and a development platform for the CS that would otherwise be delivered at a later stage under the extant OPP through a RMA. It would consequently unlock C03 and 3c for development earlier than anticipated and reduces the associated costs of any, yet to be submitted, scheme that might come forward for this area.

18. The Council acknowledged, in response to one of my questions, that the lack of a development platform for the CS would be a significant cost burden to any future developer and that the resulting void would be detrimental to the public realm. Whilst the Council was unwilling to speculate on the likelihood of a suitable scheme coming forward under such circumstances, common sense dictates that this would significantly reduce the profit margin and increase the concomitant financial risk to any developer thus reducing the number of schemes likely to come forward.
19. The Council went on to confirm that nothing was currently 'in the pipeline' for this part of the Central Docks. Moreover, were it not to be delivered then the greater length of the platform edge and extent of pile driving associated with the current scheme would add to the already high, abnormal costs. As a result, the platform for the appeal scheme, as it currently stands, would be more cost effective and would also deliver a significant associative benefit in terms of enabling the delivery of the adjacent development plot and parcel.
20. Returning to the detail of the development, surface parking would be provided for 129 cars, benefitting 39% of the units. This would include 10 disabled and 21 electric vehicle parking spaces. Provision for 225 secure cycle parking spaces, benefitting around 68% of units, would also be present in the form of an internal cycle store with 12 external spaces for visitors. The majority of car parking spaces would be located in a central area between the main buildings with a significant minority flanking the access road in the northern part of the appeal site.
21. Both the parking and adjacent landscaped area, including a raised earthwork or bund, would extend over the Kingsway underground road tunnel which places a significant structural engineering constraint on what can be placed in this zone. The car parking area would extend into the area zoned for the CS in the MP by approximately 16 m. This would lead to an estimated loss of 11% of the CS. The landscaping, which includes the bund, would act as a temporary area of public open space until such time that a detailed proposal comes forward for the adjacent development plot and parcel⁵.

Character and Appearance

22. The site and its surroundings have a mixed quality. This arises from the post-industrial dereliction and openness of WWD when juxtaposed with the more enclosed, domesticated character of the East Waterloo Dock (EWD). Whilst its character has been denuded by the inauthentic scale and design of the WQA, the largely intact quayside fabric and close proximity of the Waterloo Warehouse provide a more tangible, historically articulate link to its past

⁵ CD 7.45, paragraph 1.2.7

associations and function. In contrast, the WWD is largely bereft of meaning beyond being part of a contiguous water space that is linked to EWD via Princes Half Tide Dock. It also has a transitional visual quality resulting from the construction of the new ferry terminal and Triskelion Way as well as from the partial infill that has already occurred in the northern part of WWD.

23. Looking beyond the immediate site and notwithstanding Quay Central and Park Central developments, its character mirrors the redundant docklands immediately to the north which are now largely unused but differs in the extent of open water owing to the historic infilling of Victoria, Trafalgar and Clarence Docks. These open water spaces have since given way to a series of unkempt, derelict spaces with hard-standing used for storing vehicles against an uncompromising background of modern, poor-quality industrial units of varying scale.
24. I agree with the appellant's townscape analysis⁶ in that the overall character of the appeal site and the wider area is one of a fractured and disaggregated place with little integration and poor public access to the waterfront. It lacks a coherent and legible urban form which is at odds with its proximity to the city centre and the vision to create a new, world-class townscape along the northern waterfront.

Design and Townscape

25. The Council noted in its own committee report that 'the proposed scheme appears broadly acceptable in design terms, presenting a scale and massing in the built form which sits comfortably in this docklands location'. It goes on to note that 'the buildings interact appropriately with the surrounding environment, providing animated edges to the public realm and water space, and a sufficient degree of visual interest in the design detailing of the building skin to make a positive contribution to this part of northern docklands townscape'⁷.
26. In response to one of my questions, the Council accepted that whilst not beautiful, the design and general form of the new townscape, with the exception of the CS interface, would achieve the vision of creating a world class development as part the wider Liverpool Waters scheme. This was notably at odds with the views of the Council's heritage witness, who objected to the height and bulk of the tallest elements despite conformity with the most recent NMA of the OPP. Notwithstanding this contradictory view, the substantive issues relating to design are discrete and focussed upon the northern elevations of Block A and Block C as well as the intervening area between the appeal site and the CS.
27. In particular, the Council took issue with the parking that would flank the access road and the fact that it would create a visually dominant, negative townscape feature. Whilst the putative reason for refusal was concerned with the resulting loss of area (11%), the Council accepted that it was the poor interface that this would provide rather than the loss of area *per se* that was the pivotal issue. In cross-examination, the Council's design witness acknowledged that such a loss might be tolerable provided the northern

⁶ CD 1.4, section 8.1

⁷ CD 3A.1, paragraph 2.21

interface contributed to the 'world-class vision'. The witness went on to state that the retained area would be sufficient, in principle, given this proviso.

28. Although the Council took issue with the bund as a landscaping feature, it is clear that this would be subject to alteration once a scheme for the CS comes forward⁸. I also note that the landowner and master developer (Peel L&P Developments Ltd) takes no issue with this feature in terms of compromising its ability to deliver a suitable space for the CS. As such, it cannot necessarily be considered as part of the longer-term place-making that will characterise the CS and should be weighed accordingly. Even if this were not the case, it would provide potential for terraced seating and passive overlooking of the CS and could be considered as an exemplar of the very space that the Council seeks to emulate. Moreover, it would provide a clear boundary to the southern edge of the square as well as shelter from prevailing winds on its leeward side.
29. Turning to the detail of the northern elevations. These are limited in extent as they would comprise the gable ends of Block A and Block C. The latter would have aluminium fascia panels extending to a height of at least 3.7 m⁹. Whilst there would be secondary windows to a sub-station and a residential unit, this would not represent, by any stretch of the imagination, the active primary frontage envisaged by the MP. However, the gable end of Block A would be more active given the presence of a commercial unit on the ground floor and a terrace for outdoor eating that would extend from the eastern elevation of this block. This is where most of the activity would take place given the location of the main entrance.
30. Whilst a secondary entrance would also be present on the northern elevation of Block A¹⁰, this would not benefit from the direct percolation of pedestrians to the same extent given the proximity of the main entrance to the dockside route situated immediately to the east of this block¹¹. In response to one of my questions, the appellant's design witness suggested that he attempted to retain the same extent of activity by moving the active area to the east to compensate for the lack of activation of the gable end of Block C. Although this would better integrate activity with the main north-south route, it would nonetheless lead to a largely inactive area in the vicinity of Block C with the interface to the CS being dominated by the car park, main access route and the SUDS attenuation beds.
31. The Council maintains that any residual activity would also be screened by the bund¹². However, users of the CS would nevertheless be able to visually engage with the proposal from the top of the bund. Further activation would also occur through the unbounded, open pathway situated on the southern side of the bund which would provide critical east-west linkage between Triskelion Way and the main north-south route through the site. In these respects, an active public realm with a degree of integration with the built environment would ensue. Bearing in mind the limited extent of the less active area, as well as the width of the gable ends and visual break between the two blocks, I find that the proposal would have a reasonable degree of activation and visual integration.

⁸ CD 7.44, paragraph 8.2.7

⁹ CD 1A.44

¹⁰ CD 1A.38

¹¹ CD 1A.14

¹² Closing comments

32. The appellant's design witness acknowledged that this aspect of his design was not consistent with the MP in cross-examination. This defines the northern elevation of Plot C02 as a primary frontage with the east and west elevations as secondary frontages. It goes on to state that primary frontages must not be compromised by large areas of surface car-parking or long frontages with no access or interaction with the adjacent public realm¹³. Furthermore, it recommends that primary frontages should lead to a positive interaction between the built form and the public realm.
33. Whilst not in strict conformity, which is not required for a stand-alone application, I do not find the extent of car parking to be excessive owing to the fact that it would comprise a single row of spaces either side of the access road. Neither would the northern building elevations lead to a long frontage with no access or integration. The lack of activation would be localised and ameliorated by the fenestration of Block C as well as an adjacent pedestrian route from Triskelion Way.
34. The Council suggests that a link between the two gable ends was a 'missed opportunity' that could have provided a more active frontage¹⁴. However, this ran contrary to preceding advice to avoid a large façade facing the CS. Not only did this run contrary to the design brief that was agreed with the Council, but the Inquiry also established that this would also face some very real practical difficulties. This included a loss of sunlight and daylight to the habitable rooms that would face into the southern end of the resulting courtyard, displacement of parking spaces from within its footprint, a need to accommodate additional parking spaces for the extra units and the potential restriction of emergency vehicle access. Acknowledging the Council was not bound by the advice it gave, I find this 11th hour suggestion to be unconvincing.
35. The inquiry also established that two alternatives to surface parking were considered by the Council in the form of a full basement (~£9.6 m¹⁵) or a half basement (~£5.1 m⁷). The Council agreed, in response to one of my questions, that it had seen these costs and conceded that they would have made the scheme undeliverable. The witness also conceded that the minimum number of parking spaces that the scheme provides, in combination with other measures, was why the Council found no putative reason for refusal on these grounds. Consequently, I am satisfied that the minimum extent of the car parking for a viable scheme that delivers the necessary quanta of development at this location has been adequately tested and optimised.
36. The Council's assertion that there might be a smaller viable scheme with a lower parking requirement¹⁶ are unfounded and speculative. Furthermore, the 'top-up' of plot-specific parking through the multi-storey car parks envisioned by the MP cannot be relied upon given the stand-alone nature of the scheme and the need for it to be considered on its individual merits.
37. Drawing matters together, the gable-ended arrangement of the buildings and the offset, active space would not lead to any significant loss of activation in absolute terms and I find that a relatively porous public realm that would be

¹³ CD 5.9, page 100

¹⁴ CD 7.57, figure 9

¹⁵ CD 7.47, paragraph 5.2.2

¹⁶ Mrs Dimba, cross-examination

created by the proposal. The main loci for commercial activity in and around the gable end of Block A would engage positively with the public realm along one of the principal north-south dockland routes that this scheme would help to deliver. Whilst the surface car parking and bund would create a visual break between the appeal site and the CS, I have no evidence that this would in any way compromise the delivery of the latter given the absence of any firm proposals at this time. Neither would it undermine the delivery of the world-class vision for the Liverpool Waters scheme as a whole bearing in mind the localised nature of the effect in an otherwise superlative area of new townscape.

38. Given the above, I conclude that the proposal would be consistent with policies CC10 and CC12 of the DP that seek to ensure, among other things, that all waterfront development is of a high-quality design that respects its historic surroundings and that a world-class, mixed-use waterfront quarter is created across the Liverpool Waters area as a whole. It would also be largely consistent with urban design policies, UD1 to UD5, with the exception of UD2(n) that requires active frontages onto all public realm areas to ensure natural surveillance and UD5(a) that also requires appropriate active frontages onto the public realm for the same reason. Clearly the gable end of Block C would not conform with this requirement and this would also be inconsistent with the MP that clearly requires an active, primary frontage.
39. Some support is also gained from policy STP2 that seeks, among other things, to ensure that sustainable growth through the delivery of economic growth, effective use of underutilised brownfield land and the creation of an attractive public realm. However, the scheme is not fully compliant with this policy given the acknowledged harm to the historic environment which is contrary to STP2(n). I do not find this to be the case for policy CC10 because the protections under CC10(a) that relate to the WHS no longer apply and because I am satisfied that the design responds to the form and mass of extant industrial heritage. This will be further explored in the following section.

Historic Environment

40. The main parties agree that proposal would cause harm to the settings of Waterloo Warehouse and Stanley Dock Conservation Area (CA) but that it would cause no harm to the setting of any other designated heritage assets including the Grade II listed, Princes Half Tide Dock (Ref: 1252907). This was also the position taken by Historic England¹⁷. Furthermore, the scope of the potential designated heritage assets to be considered was established when I set out the main issues at the start of the inquiry and was further verified by my own observations during the site visits that took place. The Waterloo Warehouse is situated approximately 150 m from the appeal site on the eastern side of EWD. Both this building and the dock itself are within the CA which wraps around the southern boundary of WWD to include Princes Half Tide Dock and associated quaysides.
41. Waterloo Warehouse was constructed around 1868 by George Fosbery Lyster and is the single remaining building of a trio of large warehouses that were arranged around the EWD. It is constructed from red brick on a satisfying, monumental scale. It rises to six storeys with a rusticated ground floor of open stone, segmental arches and square piers. The roof line is punctuated by two

¹⁷ CD 2.19 – Letter dated 29 September 2021

large and highly distinctive hoist towers with pedimented gables that allow it to be readily identified as a historic landmark within the northern docklands. It marks a later phase of dockland development that saw the subdivision of the earlier Waterloo Dock that was part of the historic spine and branch dock system originally laid out in 1834 by Jesse Hartley. Nothing survives from this earlier phase of the Waterloo Dock, including its original configuration as a single water body, which was the phase primarily associated with mass migration. This is also the case for the Liverpool Observatory that was relocated from the western quayside to the Wirral in 1866. All legibility and tangible association with this phase of its development has consequently been lost and no evidential value remains.

42. The historical and evidential value of the reconfigured docks is consequently vested in the later phase of development that was associated with the final repeal of the Corn Laws in 1846. This led to the subsequent construction of three corn warehouses around the EWD and two single storey, transit sheds along the eastern and western quaysides of WWD. The predominant function of WWD at this time was associated with general cargo handling despite being characterised as a mass migration dock by Historic England¹⁵. In response to one of my questions, the appellant's heritage witness indicated that migration from the WWD was extremely limited and that it only provided an occasional ancillary role to Princes Dock which became the main migratory dock. In functional terms there is clearly little now to link the two apart from their spatial proximity and contiguous water space.
43. The arrangement of the dockside buildings remained until relatively recently, as is apparent from an aerial photograph taken in 1934⁶. However, by 1949 the northern corn warehouse of EWD, that was damaged during an air raid in 1941, had been demolished and only one of the transit sheds remained on the eastern quayside of WWD¹⁸. The western corn warehouse was subsequently demolished in 1969 to make way for ferry terminal facilities at which point only a single corn warehouse remained. As such, Waterloo Warehouse and the largely intact, Lyster-phase dockside on which it is situated are important surviving features that have a high level of historical, evidential and communal value.
44. The wider dock system was also subject to significant change over this period. Whilst EWD remained largely intact, this was not the case for WWD. In 1949 a new river lock was formed leading to the loss of its historic western quayside and any residual fabric that might have been associated with the Liverpool Observatory. Further erosion of its evidential value followed with the loss of its northern quayside in the 1950s when it merged with Victoria Dock giving rise to a large, L-shaped expanse of water¹⁹. Subsequent dock infilling to the north resulted in the loss of open water, as previously noted, although a partial excavation occurred in 2007 saw the return of a much reduced and canalised area of water resulting from the extension of the Leeds-Liverpool canal.
45. All that remains of the Lyster-phase of the WWD is a limited section of the eastern quayside wall that would, in any event, be retained. Whilst the area of water is currently comparable to EWD, this volumetric relationship lacks authenticity given the loss of most of its historic quayside as well as its fluctuating, historical extent. Unlike EWD, it lacks historical continuity and is

¹⁸ CD 7.48G – Aerial photographs

¹⁹ CD 7.48A – Aerial photograph

- emblematic of the unsentimental approach that the city has taken to its dock spaces that have been reconfigured and filled in to meet changing economic needs.
46. Whilst I accept that open water spaces are a finite resource and that something more akin to a canal basin would result from the proposed scheme, this does not alter the fact that changes in this part of the northern docks have resulted in a dock space is little more than a historical cypher with limited embodied meaning that can only be read from what remains of the eastern quayside and its open water.
47. The appellant expresses 'some considerable doubt' as to whether the WWD should even be identified as a non-designated heritage asset in both written and oral evidence and highlights the processes of defining such assets in the Planning Practice Guidance 2016 (as amended) (PPG) in support of this position. However, the glossary of the Framework defines a heritage asset as 'having a degree of significance meriting consideration in planning decisions'. Bearing in mind the surviving historic section of the eastern quayside, as well as the interconnected nature of the water space with nearby docks, I find that whilst it only retains a limited degree of historical significance, it nevertheless merits consideration as a non-designated heritage asset.
48. The Council sought to repeatedly place considerable importance and weight on the harm that would be caused to this asset by the reduction in its extent in oral evidence and also stressed the need to find an optimum viable use and a need to balance the harm against public benefits²⁰. This was plainly wrong as highlighted in the cross-examination of the Council's planning witness. Paragraph 203 of the Framework only requires a balanced judgement to be reached concerning the scale of the harm and the significance of the asset. The Council's heritage witness comes close to a similar error by seeking to attach a high level of harm to be 'weighed in the balance'²¹.
49. In terms of the scale of harm that would be caused, the Council relies heavily on the SPD which stresses, among other things, the need to avoid infilling and the importance of open water to the integrity of the WHS. The departure from these imperatives in relation to the WWD infill that was approved through successive iterations of the OPP and MP is excused, in the Council's view, by the 'wider public benefits' of the international cruise ferry terminal²². However, the most recent NMA did not include the international ferry terminal but still included the same extent of infill deemed necessary to deliver Plot C02. This is a totemic and somewhat inconsistent application of the SPD that does not alter my opinion concerning the harm that would be caused to this asset.
50. Given the above, I find that whilst the infilling would change the character of the WWD, the historic fabric of the eastern quayside and an admittedly reduced water space that would nevertheless remain. This would maintain a degree of contiguity with the nearby dockland water spaces. Bearing in mind the limited heritage value of this asset, I do not attach significant weight to the harm that would be caused.

²⁰ CD 7.55 - Paragraph 16.6 and 16.9

²¹ CD 7.6, paragraph 5.31 and 5.32.

²² CD 7.56, paragraph 5.29

51. This harm would, of course, be greater if the WWD made a significant contribution to the setting of nearby designated heritage assets. However, I only find that it makes a very modest contribution because of the limited extent of its historic fabric, as well as the visual dislocation caused by the intervening, modern development of WQA. Both Waterloo Warehouse and the CA derive their significance from the close juxtaposition of warehouses and other industrial buildings as derived by a series of more intact and temporally consistent quaysides and dock water spaces.
52. Given the above, as well as my own observations, I find that the setting of Waterloo Warehouse and the CA, insofar as it relates to this appeal, to be at variable scales. At a local scale it is associated with the juxtaposition of this building with the historic open water and quayside of EWD and Princes Half Tide Dock in combination with glimpsed views of Tobacco Dock Warehouse when looking north. At a larger scale it is associated with the way in which both Waterloo and Tobacco Warehouse are experienced through more distant, kinetic views from the River Mersey and to a lesser extent from the western shoreline of the river. They stand as a clear testament to the proud mercantile seafaring history of the city and I consequently consider that both the closely juxtaposed as well as the more distant waterfront views directly contribute to the special interest of Waterloo Warehouse and the significance of the CA.
53. Turning to the potential impacts of the proposal on the setting of Waterloo Warehouse and the CA, whilst the main parties agree that the proposal would lead to less than substantial harm to the setting of these assets, they differ on the degree of harm that would be caused to the setting of Waterloo Warehouse. The Council maintains that low to moderate harm would be caused whilst the appellant maintains that only a low level of harm would result. Both agree that a low level of harm would be caused to the setting of the CA.
54. The PPG states that within each category of harm (i.e. less than substantial or substantial), the extent of that harm may vary and should be clearly articulated by decision-makers. Although recent case law²³ holds that the PPG is only guidance and is not binding, it nevertheless requires heritage decision-makers to give reasons for any departure from national guidance. Bearing in mind that neither party have requested any such departure and given the difference of opinion on the level of harm that would be caused to the setting of Waterloo Warehouse I see no reason to approach these matters any differently.
55. The difference of opinion in relation to the harm that would be caused lies in the extent to which Waterloo Warehouse would be screened by the proposal when viewed from fixed viewpoints across the River Mersey and the extent to which it could be considered a formal, landmark building. The appellant maintains that the partial screening of the building would only be from one fixed viewpoint to the west from the Magazine Promenade²⁴. Furthermore, that it was never intended to have a role as a landmark building given its scale, massing and materials and that this diminishes its importance in this respect.
56. I find the extent to which views would be restricted to be understated given my observations of Waterloo Warehouse from the ferry as well as the kinetic views I gained as I moved along the riverside pathway of the western river bank.

²³ R (Kinsey) v Lewisham LBC [2021] EWHC 1286 (Admin)

²⁴ CD 7.48C

Whilst the palette of materials blends into the background to a certain extent, the hoist towers and distinctive outline still make it clearly discernible from a number of viewpoints. As one of only two intact warehouses that face onto the river in this part of the northern docks, I find it an iconic and important testament to Liverpool's maritime hegemony. Whilst some views would still be possible given the lower height of southern blocks and open space of the CS, its prominence would nevertheless be much reduced.

57. Turning to the second point, although not designed as a landmark building, its setting has nevertheless evolved and changed, as is typically the case for many historic buildings. It has become more visually prominent over time which is reflected in the SPD which defines it as a 'key landmark building'²⁵. It is also noted as a prominent building in a key view of the DP²⁶. To suggest that the building is not a prominent landmark because of its design and materials is unanswerably wrong despite suggestions to the contrary by the appellant's heritage witness when giving evidence in chief. Its highly visible presence is such that it is a clear landmark that communicates a fundamental aspect of the city's history.
58. Given the above and bearing in mind the fixed view montages in the appellant's evidence²⁷, as well as my own extensive observations, I find that a moderate level of less than substantial harm would be caused to the setting of Waterloo Warehouse and agree with the parties that a low level of less than substantial harm would be caused to the setting of the CA. In both instances this harm is of considerable importance and weight.

Heritage Benefits and Harms

59. The appellant maintains that the proposal would enhance the setting of Waterloo Warehouse and the CA through the creation of a new, 'historically literate' townscape of an appropriate scale. Although the WWD quaysides were previously occupied by low level, transit sheds, the loss of the two large EWD warehouses and subsequent construction of the WQA has led to a more domesticated character at a much smaller scale. As the proposal would lead to buildings of a more appropriate scale and massing, I find this would go some way to redress the erosion of the industrial vernacular form that has taken place in this locale and I give this benefit moderate weight.
60. The appellant has also highlighted the fact that the proposal would screen the WQA development and that this would be beneficial owing to the negative effect that it has on the setting of Waterloo Warehouse and the CA. Whilst incongruent in its design and massing, it is nevertheless subordinate to Waterloo Warehouse and does not constitute such an egregious feature as to require screening given what I consider to be an overall neutral effect on the setting of these assets. As such, I am not persuaded of this benefit and I give it negligible weight.
61. I have identified one moderate less than substantial harm and one limited less than substantial harm to the setting of two designated heritage assets. Whilst such harms can have a significant cumulative effect that tip into substantial harm, I do not find this to be the case in this instance. In aggregating those

²⁵ ID2 – page 48 at paragraph 4.4.5

²⁶ Appendix 3 Identified key views sensitive to tall buildings and local and broad context heights – View 2

²⁷ CD 7.48C, 7.48D and 7.48E

harms and balancing them with the benefits to the setting of the listed building and conservation area I still find an overall harm, albeit one that is only moderately rather than significantly against the scheme.

62. Consequently, I find that the proposal would be contrary to policy HD1(1) and HD1(2) of the DP that seek, among other things to ensure that development proposals conserve or enhance the historic environment with particular regard to those elements that contribute most to the city's distinctive identity such as its docks and warehouses. This would not conform to the expectations of the Act and would also be inconsistent with guidance in the SPD that requires, among other things the preservation of views of landmark buildings, the retention of open water spaces and the avoidance of further dock infilling. However, the weight I attach to this guidance is tempered by the fact that the Council has already approved the infilling of WWD as well as the placement of buildings of substantial massing on Plot C02 through the OPP.
63. Having made the internal balance of the heritage benefits and harms and turning to the Framework, the less than substantial harm that I have found needs to be weighed against other public benefits arising from the proposal. In order to do this in a comprehensive manner, the wider planning benefits that are also public benefits need to be set out. Consequently, the final heritage balance will be made after I have finished addressing the main issues.

Housing Mix and Viability

64. As already stated, the housing mix for the scheme is such that 59% of the dwellings would comprise one-bedroom apartments. Policy CC24 of the DP supports a key ambition to increase the city centre population through distinctive neighbourhoods that include provision for families as well as for younger and older people. Policy CC24(1)(b) is both specific and clear and requires all residential development to include a 'greater proportion of 2 bed+ dwellings than 1 bed dwellings' with few exceptions. In cross-examination, the appellant's planning witness accepted that the proposal conflicts with this aspect of the policy given that the number of one-bedroom dwellings would be over the permitted threshold.
65. As the explanatory text makes clear, the purpose of this policy is to expand the housing mix and that planning permission will not normally be granted where the majority of units comprise one-bedroom properties²⁸. It goes on to identify very limited and geographically explicit exceptions in relation to Concert Square and Mathew Street where the night-time economy makes family accommodation less appropriate. I agree with the Council that there is no need to go behind this policy given the recent adoption of the DP, as such I am satisfied that any conflict carries full weight.
66. The Council also has an agreed 6.4-year housing land supply with a surplus of 5,935 units. It is also an undisputed fact that housing supply in the city centre has now been met and even if the whole of the Central Docks Neighbourhood Area were not to come forward then there remains sufficient housing provision across the city for the plan period. The Strategic Housing Market Assessment (SHMA)²⁹ also concluded that the number of one-bedroom properties that should be permitted during the plan period must be no more than 5% of all

²⁸ CD 4.33, paragraph 6.127

²⁹ CD 4.34 - Liverpool Strategic Housing Market Assessment, July 2016

market housing. Clearly the smaller units proposed by this scheme are likely to be unsuitable for larger families, including those with children or extended family members. Accordingly, it would only contribute to a more favourable mix that would meet local needs insofar as 41% of the proposed mix.

67. Furthermore, the limited provision of family homes was identified as a key feature of the Northern HMA City Region Housing Strategy³⁰ and the DP examining Inspector also noted that the profile of supply is 'heavily skewed to smaller apartments and flats rather than the need for family sized properties as identified in the SHMA'³¹. The report goes on to highlight that fact that the need to balance the housing market remains an ongoing, strategic planning matter. As more than half of required housing numbers have already been provided, the ability of the Council to influence property size in order to balance housing provision and ensure that mixed communities are encouraged is consequently limited for the remaining plan period.
68. The appellant maintains that Policy H3(4) of the DP provides some latitude in relation to the housing mix delivered on individual sites because the final mix for all development proposals is subject to negotiation with applicants according to character and location. I accept that this is an overarching housing policy that applies to every proposal and that it is relevant to the determination of this appeal. Both the appellant's planning and design witnesses maintain that such negotiations occurred and that Council officers played an active role in curating the final housing mix which included the more family-friendly, three-bedroom town houses. The negotiation and the conclusion that was reached was not disputed by the Council nor any of its witnesses during the course of the Inquiry. Moreover, the Council accepts that the scheme would not be able to deliver affordable housing owing to abnormal construction costs.
69. By the same token, the appellant maintains that a greater number of two-bedroom dwellings, capable of ensuring full policy compliance, could not be justified given the site-specific development constraints. The appellant suggests that the scheme is at the margins of deliverability. This position is informed by a revised viability assessment that I requested prior to the opening of the Inquiry³². In response to one of my questions, the Council's planning witness acknowledged that whilst there were some minor differences of opinion over the detail, the Council did not take issue with the overall assessment and agreed that the scheme is unviable, in policy terms, bearing in mind the projected 11.12% return on Gross Development Value and the fact that the PPG indicates 15% is the lowest acceptable level of return. Whilst the inflation of various costs had occurred since the first viability estimate, the main reason for the lack of viability remains the 'abnormal cost' of the development platform which is estimated as being around £10 m.
70. The effect of requiring a policy compliant mix, whereby the number of one-bedroom properties is reduced to 49%, was explored during the Inquiry. The appellant indicated that the necessary increase in the number of two-bedroom properties, without additional parking provision, would reduce the residual profit by around 10% which would be at the extreme margins of

³⁰ CD 4.49 - Housing Evidence Base – Housing Mix, December 2017, paragraph 1.33 and CD 4.34, paragraph 2.31

³¹ ID4 - Report on the Examination of the Liverpool Local Plan 2013-2033, 20 October 2021, paragraph 19

³² CD 3.3 and 3.4 - Updated Viability Report and Appraisal, CP Viability Limited (March and April 2022)

viability³³. This was based on credible data from the nearby Park Central and Quay Central schemes where one-bedroom properties, on average, sold for £27 and £21 more per square foot respectively in comparison with the two-bedroom properties. Added to this is the longer holding costs associated with two-bedroom dwellings that do not benefit from parking. The Council took no issue with these estimates and I am satisfied that this is a well-founded and significant material consideration. Although Save Waterloo Dock drew my attention to a different viability conclusion for a previous application for this site (Ref:18F/3247) I do not have the full circumstances of that application before me and, in any event, this appeal must be judged on its individual merits.

71. Given the above, I find that the proposal would conflict with policies H3(1) and CC24(1)(b) DP that seek to ensure that residential development for ten or more dwellings provides an appropriate mix of dwellings that responds to identified housing needs and demands as set out in the SHMA as well as a greater proportion of dwellings comprising two bedrooms or more. However, the weight of the conflict with H3(1) is reduced given compliance with H3(4) and the negotiated housing mix that applies in this instance that is a direct consequence of the abnormal development costs. These costs are such that the Council accepts that no developer contributions are justified through the independent financial valuation required by policy STP5.

Other Public Benefits

72. The appellant has identified a number of public benefits³⁴ that are not all worthy of the same material weight in the planning balance. I have identified the most important policies associated with these benefits, some of which accord whilst others do not.
73. The following matters are ones that are either to be expected from any development of the site, simply serve the development itself or are a requirement of policy. As such, they do not contribute anything significant to the wider area or are an inevitable consequence of development, thus attracting negligible weight:
 - Delivery of open market residential housing that includes novel 'town houses' that would provide greater choice than is commonly the case for city centre development. Although a significant number of dwellings would be delivered that would add to the national housing stock, they are not necessary in this location given the agreed 6.4-year housing land supply, a surplus of 5,935 units and a predominance of one-bedroom dwellings (Policies CC24 and H3).
 - Improved public access to the central and northern docks and greater engagement with the dock water space as well as enhanced north-south access through the creation of a new route that would serve the 60,000 capacity Everton Football Stadium that has recently been granted permission to the north. Whilst the scheme would provide a secondary route, this would be in addition to existing pedestrian routes along Triskelion Way and Waterloo Road (Policies CC10, GI5, UD2, TP5 and TP6).

³³ ID9

³⁴ CD 7.44, paragraph 1.2.7

- Provide a well-designed development which regenerates a partially cleared and previously developed site and re-introduces activity to a prominent waterfront site that is currently derelict, fragmented and unkempt. This is nothing other than what is to be expected and already consented through the OPP (Policies UD3, UD4, UD5, CC10, CC12, UD1, UD2, STP1, STP2 and EC6).
 - Create jobs during the construction phase but also during the operational phase through the commercial units and roles associated with property management and maintenance. The majority of these jobs would be temporary with only very limited, longer-term benefits in terms of employment opportunities for the local community (Policies STP1 and EC6).
 - A unilateral undertaking would lead to the creation of public realm at in the space between Plots C05 and C09 and Arrival Square at Plot C08 that would be maintained for the lifetime of the development. This is no more than is to be expected to mitigate the loss that this scheme would cause to part of the CS (Policies UD3, UD4, CC10, H14, GI8, STP4 and STP5).
74. The next matter is one to which moderate weight can be attached because it contributes some wider benefit through the development of the site:
- Additional public realm would be created through the 6m width public walkway as well as the areas of soft and hard landscaping to the north that would encourage visitors and greater public interaction with the water space. This is currently associated with the eastern side of WWD but with engagement largely limited to remote views from the high quayside. The proposal would incorporate the water space as an integral design feature on a more intimate scale that would activate its use as a recreational resource (Policies UD3, UD4, GI5, CC10 and CC11).
75. The final matters to which significant weight can be attached deliver key benefits that would make a substantial contribution to the local area:
- Creation of a development platform to deliver the most recently agreed OPP parameters for the appeal site and the adjacent development parcel. The absorption of the significant abnormal development costs by this scheme is fundamental to the delivery of a world-class waterfront in the absence of any tangible, alternative schemes (Policy CC12).
 - I also find that it will deliver significant development on land allocated for this purpose in the DP, noting this is previously developed land in an area of decline in which the mixed use coming forward would create positive environmental and economic benefits. These benefits, which include the early delivery of the CS, are likely to act as a catalyst to further investment in this area (Policies CC10, CC12 and STP2).

Development Plan

76. Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 (as amended) requires planning applications to be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

77. It is common ground between the parties that the most important policy is CC12 and that planning applications within the Liverpool Waters area are to be assessed against the provisions established in the OPP. I am satisfied that the proposal is in accord with the overarching purpose of this key policy despite the departure from the MP that I have already discussed.
78. It would lead to the delivery of a well-designed townscape that responds to the historic environment in a positive manner and would lead to significant regeneration of previously developed land. As such, it would also accord with policy CC10 and mostly accord with the sustainable growth principles of policy STP2 excepting the acknowledged harm that would be caused to the historic environment. The quality of the design is such that it would also mostly accord with the urban policies of UD1-UD5 excepting a localised area where the requirement for active frontages onto the public realm would not be met. Whilst these policy exceptions carry full weight, the conflict only relates to the ground floor of a single, constrained, gable end elevation.
79. There are a range of other policies that are directly relevant to the proposal as identified in the revised Statement of Common Ground³⁵ that was submitted during the course of the Inquiry. Notwithstanding the policy conflicts I have already identified, these are not associated with the putative reasons for refusal or identified during the course of the Inquiry as leading to any substantive conflicts. In general terms, I am satisfied that these policies, excepting the ones associated with identified conflicts, largely accord with the benefits I have set out in the preceding section.
80. This leaves two key policy areas comprising housing needs and heritage. In relation to the former, the key DP policies are H3 and CC24. In relation to the latter, the key DP policy is HD1. Whilst these policies carry full weight, the extent of the H3 housing policy conflict is moderated through H3(4) that requires specific account to be taken of character and location in determining the final housing mix which is a matter for negotiation. The appellant maintains that a negotiated, policy compliant position had been reached at a time when, what were then emerging policies, should have been given near full weight.
81. However, even if I were to accept that a negotiated position has been derived, the proposal clearly conflicts with policy CC24(1)(b) for reasons that I have already set out. Whilst this policy does not allow any viability-based exceptions, it is clearly the case that the deliverability of this scheme would be put at risk if it were to increase the number of larger dwellings to a policy compliant level.
82. Turning to the heritage policy, the parties agree that less than substantial harm would be caused to the setting of two designated heritage assets and I also find that limited harm would be caused to a non-designated heritage asset. This would fail to conserve the historic environment of Liverpool and leads to a direct policy conflict with HD1(1) and HD1(2) of the DP. This attracts considerable importance and weight in the planning balance and is a strong statutory presumption that stands against the proposal.
83. Whilst the DP pulls in different directions with the scheme gaining support from some policies, it would not be in strict adherence in relation to housing mix,

³⁵ ID3

urban design or the historic environment. In this particular case, there are material considerations of significant weight. These can be framed in the pragmatic balances sought by the Framework to which I now turn.

Planning/Heritage Balance

84. I have already addressed the internal balance of heritage harms and benefits and have found that the heritage benefits of the scheme do not outweigh the heritage harms. These harms, whilst less than substantial, nevertheless carry considerable importance and weight, as previously noted. However, there is a further balance to be struck with the wider public benefits associated with this scheme. I am left in no doubt that there are very significant public benefits, specifically in relation to the provision of a development platform and the effective use of previously developed land that already has an outline permission for a similar quanta of development.
85. I accept that the location is pivotal to unlocking the phased development of the wider Liverpool Waters scheme and I am left in little doubt that it will act as a catalyst for further schemes to come forward as well as enabling a nodal public space to be created in the form of the CS. This would clearly reflect the development that is sought through the development plan process. Added to this are the benefits of a new north-south route with better engagement with the WWD water space. This comes at a cost in terms of the failure to preserve the setting of Waterloo Warehouse and the Stanley Dock Conservation Area as well as the limited harm to the WWD non-designated heritage asset. Despite this cost, it seems to me that there is a clear and convincing justification for that harm to be accepted. As such, this material consideration justifies a modest departure from the associated DP policies against a background where other matters are in accord.
86. Turning to the DP conflicts in respect of housing mix, I do not find that the lack of compliance outweighs the benefits of this scheme. I am also mindful of the significant abnormal development costs, that other sites will not share, which impose a considerable barrier to the development of both the appeal site and the adjacent plot. Furthermore, around 41% of the units would be policy compliant and thus support the development of a balanced and diverse local community at an albeit reduced level when compared to the strict policy requirement. I therefore find that the adverse impacts of allowing the proposed development would not significantly and demonstrably outweigh the benefits that would accrue. As such there is a clear and compelling reason to allow the scheme contrary to strict compliance with the DP.

Other Matters

Noise

87. Construction noise continues to be a significant issue for the local community. I acknowledge that the construction of the Isle of Mann Ferry Terminal has led to a significant number of complaints and that the disturbance from this scheme was preceded by similar issues relating to, among others, the Park Central and Quay Central schemes. These effects have clearly been exacerbated by the Covid-19 lockdown when local residents spent more time at home than would otherwise have been the case. I accept that a cumulative impact is present and that the current scheme would add to this situation. During the Inquiry, particular concerns were expressed about pile-driving

activities³⁶ and I note that this was also the main focus of previous complaints to the Council's Environmental Health Department from an internal memorandum³⁷.

88. The same document highlights the fact that the spatial relationship of the appeal site in relation to nearby noise-sensitive receptors and the presence of an intervening body of open water is such that physical measures to mitigate against noise from the piling operations are not likely to be practical. On this basis the Council acknowledges that a significant adverse noise impact to nearby residents would occur. This would be a short-term impact and working from home is no longer required as a statutory response to the pandemic. However, I nevertheless accept that it is likely to aggravate previous noise disturbance and affect the same residents given the sensitisation that has already occurred. The worst-case scenario suggests that disturbance from king piling would last for approximately 7 weeks whilst disturbance from sheet piling would last for approximately 11 weeks, with all piling activity completed by week 13 of the construction phase³⁸. Mr Malouf indicated to the Inquiry that this impact would be reduced through the use of core-drilling wherever possible but could give no specific detail.
89. I acknowledge the concerns of the local community in terms of the undoubted negative effects of noise and other related construction issues, such as dust, that has arisen as a result of the ongoing development of the surrounding area. As one interested party noted, whilst the effects of individual schemes may be temporary, they are effectively leading to a continuous impact. Even so, the Council points out that the scheme would not be so disruptive as to warrant refusal on those grounds alone and that a balance must be struck bearing in mind the fact that the wider Liverpool Waters area is allocated for development and that the appeal site benefits from an extant outline permission³⁹. This was also the view the Council took in its Committee Report⁴⁰ which stresses the 'importance of re-purposing this key link site for the long-term benefit of regenerating this part of the city's waterfront'.
90. I am of a similar mind to the Council on this matter but recognise the need for more stringent control than was perhaps the case for the Isle of Mann Ferry terminal development. To this end, the appellant has agreed to a condition that would limit the pile driving periods and the hammer energies to be used alongside the adoption of soft-start procedures which are routinely used in the offshore construction industry. A further condition was also agreed whereby a Residents' Forum would be formed that would, among other things, specifically consider any breaches of the agreed measures. Whilst these would not completely eradicate noise issues, I am satisfied that they would mitigate some of the effects and ensure that respite periods are present during the evenings and weekends when most local residents are more likely to be at home.

Parking

91. Save Waterloo Dock and others have raised concerns over the limited parking provision associated with the scheme and the fact that insufficient parking for the Park Central and Quay Central schemes has led to illegal parking on Jesse

³⁶ Opening remarks: Ms Coughlan, Mr O'Leary and Mr Wertheim

³⁷ Internal memorandum from Environmental Protection Unit dated 6 May 2021

³⁸ Position Statement on Noise Impact, Andrew Raymond

³⁹ CD 7.55, appendix 4

⁴⁰ CD 3A.1, page 71

Hartley Way as illustrated by the photographs that were submitted to the Inquiry⁴¹. Whilst the latter is a traffic enforcement matter rather than a planning matter, local residents are concerned that the reduced parking provision associated with the proposal would affect the safety of other road users and potentially block emergency service vehicle access.

92. The Council's position is that the proposed parking provisions are sufficient when transportation matters are considered in the round. In evidence submitted to the Inquiry⁴², the Council accepts that the proposed level of parking, comprising 129 spaces, is below the Transport SPD recommendations of 330 spaces which represents a 39% provision and a shortfall of 211 spaces. This is greater than either the Park Central or Quay Central developments which had a lower overall parking provision of around 22%.
93. Taking into account the relative higher proportion of on-site parking and the development's proximity to the city centre, the Council highlights the fact that the Highways Authority has advised that the proposed parking levels would be acceptable given the city's aim to promote sustainable travel and minimise reliance on cars. Clearly, the scheme would be reliant on alternative modes of travel, such as walking, cycling and public transport, for this to succeed.
94. In respect to walking, I observed that the site benefits from high levels of accessibility by foot, with city centre only a short walk away. This provides opportunities for linked shopping, leisure and recreation trips as well as providing access to onward transport connections for longer distance journeys. Further enhancements would occur with the proposed north-south boardwalk through the site as well as the re-opening of the footbridge to the south that would create an important car-free route into the city centre.
95. In terms of cycling, the site is in easy reach of National Cycle Network Route 56 and 810. These routes provide a useful strategic connection in a north-west and a south-east direction from the development site. They are a blend of on-road and off-road cycle routes. Route 810 provides a link from Liverpool city centre to Formby via Crosby and Hightown whilst route 56 links Liverpool to Birkenhead, Wallasey and New Brighton via the Seacombe Ferry. Cyclists would also benefit from the car free, north-south route as detailed above.
96. Turning to public transport, the nearest accessible bus stop to the site is located on Waterloo Road, at a distance of approximately 100 m. A further bus stop is situated around 300 m northeast of the site on the A565 (Great Howard Street). Although there are services to a number of destinations from these stops, these are infrequent and not well suited to the daily needs of future occupants at the current time⁴³.
97. However, this is only temporary given that the appeal site is located in an area earmarked for future development where enhancements are required under the OPP to improve highway and transportation connectivity which includes funding for future bus services. These will pass close to the appeal site and new bus stop facilities have already been provided on Jesse Hartley Way to this end⁴⁴.

⁴¹ ID6

⁴² CD 7.55, appendix 3

⁴³ CD 7.54, table 2.1

⁴⁴ CD 7.55, appendix 3, page 47

98. I also note that the Council's Highways and Transportation Team have reviewed transport matters and confirmed they have no remaining objections subject to conditions relating to necessary highway improvement works, delivery of cycle stores, appointment of a travel plan co-ordinator, implementation of proposed measures for improving cycling and pedestrian connectivity from the Central Docks Neighbourhood to the city centre and a review of the Traffic Regulation Orders in the vicinity of the site which includes the one on Jesse Hartley Way.
99. Given the above and in the absence of any technical evidence to the contrary or any verified accidents relating to Jesse Hartley Way, I am satisfied that the proposed level of parking would be sufficient and that the scheme is unlikely to lead to any significant highway safety issues. Any residual issues that might arise are a highway enforcement matter and there is consequently an alternative control mechanism.

Wind Acceleration

100. Both Save Waterloo Dock and representatives of the Isle of Mann Steam Packet Company, who attended the Inquiry, drew my attention to the fact that the Environmental Statement (ES) identified risks associated with changes to the wind microclimate that could potentially place pedestrians at risk. However, the Committee Report explicitly dealt with the effects of wind acceleration and downwash and the Council came to the conclusion that a range of mitigation measures in the design including porous ground level wind screens and balcony balustrades as well as hedges and shrubs would resolve the safety and comfort issues raised in the ES⁴⁵. Further mitigation of this impact would also flow from an agreed condition requiring further details of any wind mitigation measures to be submitted to and approved in writing by the Council. In the light of concerns that were expressed, I have specifically included the Steam Packet Company as a consultee for this condition and I am satisfied that this would ensure that its concerns are adequately addressed and that the proposal would pose no harm to future passengers or staff.

Liverpool Canal Link

101. Potential economic impacts were highlighted by one interested person in relation to a business plan associated with an implemented bid for funding from British Waterways for the Liverpool Canal Link. Among other things, the business plan relies upon visitors being able to enjoy the currently open views of the 'historic Waterloo Dock'⁴⁶. It was alleged that there would be a 'regional economic impact' from the proposed scheme if this were to change during the course of the Inquiry. However, it was established that there would be no significant change to the views of Waterloo Warehouse that canal users currently experience. Moreover, I note that the new moorings would encourage more active use of the water space and encourage a greater integration between recreational and quayside uses. In the absence of any substantiated evidence to the contrary, I find any potential regionally significant economic impact to be unfounded.

⁴⁵ CD 3A.1, paragraph 12.2

⁴⁶ Mr McGarry, opening remarks

102. Additional concerns raised by local people that are not covered above or in my main reasoning, with regard to loss of blue-green space, unexploded ordnance, general effects on wildlife and loss of daylight/sunlight are acknowledged. These matters were considered in the Committee Report⁴⁷ and I support the view that the concerns do not warrant the refusal of the scheme. I also acknowledge the strength of local feeling against the proposal from the petitions that opposed the development. However, a significant number of individuals also support the scheme so this was by no means a universal response. Whilst important, it is the planning issues rather than the number of objectors or supporters that determine the outcome. Consequently, these matters were not determinative in my decision-making.

Protected Areas

103. The appeal site is within 25 m of the Liverpool Bay Special Protection Area (SPA) and 850 m of the Mersey Narrows and North Wirral Foreshore SPA and Ramsar Site which is also notified at a national level as Mersey Narrows Site of Special Scientific Interest (SSSI). Given their proximity to the appeal site, the following impact pathways leading to a likely significant effect (LSE) are present:

Construction Phase

- Loss of functionally linked habitat used by qualifying species;
- Disturbance of qualifying species due to increased noise and lighting;
- Pollution of habitats on which qualifying features rely; and
- Spread of invasive species into habitats upon which qualifying features rely.

Operational Phase

- Disturbance of qualifying species and damage to habitats upon which qualifying species rely via increased recreational pressure;
- Disturbance of qualifying species due to increased lighting; and
- Pollution of habitats upon which qualifying features rely via aerial emissions and surface or foul water drainage.

104. My screening of LSE also included the Mersey Estuary SPA and Ramsar Site, Dee Estuary Special Area of Conservation (SAC), Ribble and Alt Estuaries SPA and Ramsar Site and the Sefton Coast SAC. Bearing in mind their qualifying features, conservation objectives and separation distances I find that any effects would be *de minimis* and can therefore be ruled out.

105. Turning to the nearby sites, relevant case law⁴⁸ states that if a plan or project, either alone or in combination with other plans or projects, is likely to have a significant effect on those sites then an Appropriate Assessment must be undertaken by the Competent Authority to determine if an adverse effect on integrity would occur.

⁴⁷ CD 3A.1

⁴⁸ European Court of Justice ruling (Case C323/17 – People Over Wind and Sweetman 2018) relating to the application of the Habitats Directive.

106. The appellant has provided a Shadow Habitat Regulations Assessment⁴⁹ (Shadow HRA) that considers the potential adverse effects on the integrity of both sites. In relation to Liverpool Bay SPA, the only qualifying species that has been recorded in proximity to the appeal site is the great cormorant (*Phalacrocorax carbo*) which is part of the non-breeding, waterbird assemblage. It was observed during bird surveys associated with the Triskelion Way development (Ref: 17F/2628). These surveys were undertaken between 2016 and 2019. The results were consistent with overwintering bird surveys undertaken in 2019-20 and 2021 and indicate that the WWD is unlikely to provide a particularly valuable foraging resource for this species given the peak counts in 2018 recorded just 12 cormorants representing c. 1.6% of the SPA population.
107. Nevertheless, this suggests that the WWD and adjacent habitats provide at least a minor foraging resource for this species and are likely to be of value for roosting and preening. Infilling would lead to a direct loss of functionally linked habitat associated with these activities. Construction phase activities are also likely to cause disturbance in and around WWD from noise, movement and lighting. This would not only affect the use of roosting and foraging areas but could also lead to increased predation and navigation disruption. Pollution of the WWD could also lead to changes to supporting habitats and a disproportionate reduction in fish populations, over and above what would be otherwise lost through the reduction in area.
108. Increased human presence and associated visual disturbance during the operational phase of the development would also have the potential to result in the displacement of individuals that could, in combination with other Liverpool Waters development, result in noticeable, albeit minor, changes in cormorant distribution across the wider SPA. Lastly, contamination via run-off or foul water could result in a decline in the water quality of WWD leading to a change or decline in fish stocks, potentially leading to a reduction in the prey resource for individuals that continue to forage within the reduced dock space.
109. Bearing in mind the previously defined effects, the Shadow HRA and my own expertise, I find that the proposal would lead to the loss of functionally linked habitat and could affect the extent, distribution, structure and function of the habitats and supporting processes that this species relies upon which could, in turn, affect the distribution and number of individuals present in the SPA thus leading to an adverse effect on the integrity of this site.
110. Turning to the Mersey Narrows and North Wirral Foreshore SPA and Ramsar Site, the above surveys indicated that the only species recorded in proximity to the appeal site were oystercatcher (*Haematopus ostralegus*) and great cormorant, although redshank (*Tringa totanus*) was also recorded within the wider Central Docks Neighbourhood. These are all part of the non-breeding, waterbird assemblage that is a qualifying feature of this site. The peak counts are not capable of identifying the proportion of cormorants that were specifically associated with this site.
111. Given their highly mobile nature, it is likely that they are part of a single population that occurs on both sites and that a loss of functionally linked habitat as well as the other LSEs would lead to a similar adverse effect on the

⁴⁹ CD 1.218 – Shadow Habitats Regulations Assessment: Stage 1 Screening and Stage 2 Appropriate Assessment, June 2021

integrity of this site as far cormorants are concerned. Turning to the other qualifying species that could potentially be affected by the proposal.

112. A peak count of around 40 oystercatchers, representing around 1.5% of the SPA population, was recorded during one of the 2018 winter bird surveys, at high tide, on land located between the WWD and the River Mersey. Subsequent surveys of the Central Docks Neighbourhood indicated variable peak counts of between 3 (<1%) and 46 (1.7%) individuals. More recent results show that the docks across the even wider Liverpool Waters OPP area remain in use by oystercatcher, although the numbers vary considerably between years and at particular locations.
113. Whilst a loss in the area of habitat suitable for high tide roosting would occur, this species can readily access alternative roosting sites and, in any event, only a very low level of utilisation has been observed. This suggests that the partial infilling of WWD would result in only a very minor loss of habitat utilised by this species. Although wider construction works associated with the proposed development would result in the loss of a small amount of high-tide roosting habitat, the extensive presence of alternative habitats for this highly mobile species as well as its variable use of the wider Central Docks area suggests that the proposal would not affect foraging opportunities and that there would consequently be no loss of functionally linked foraging habitat.
114. A peak count of three redshank, representing <1% of the SPA population, was recorded in 2018. Subsequent surveys showed a similarly low number for the Central Docks area with just one and two individuals being recorded in separate years, both of which representing <1% of the SPA population. Given that the peak abundance of this species across the whole of the Mersey Estuary has increased from around 2,576 individuals in 2013 to around 5,140 individuals in 2020, as well as the extremely low utilisation of the Central Docks Neighbourhood, I find that the proposal would not have an adverse effect on the integrity of the SPA through the loss of functionally linked foraging habitat for this species.
115. A temporary increase in noise, lighting and visual disturbance to any oystercatchers or redshank during the construction phase within the site boundary is unlikely given a separation distance of almost 1 km from the appeal site. Consequently, any effect would be limited to displacement of individuals that might be utilising nearby intertidal habitats for roosting and feeding. The existing ambient levels of disturbance that have arisen from the construction of Triskelion Way and the Isle of Mann Ferry Terminal mean that these areas are unlikely to be utilised at the current time, but lighting from the operational phase of the proposal could have a combined effect on the population level of these species and thus an adverse effect on the integrity of this site thus requiring mitigation.
116. Turning to the effect of potential pollutants, it is conceivable that pollution occurring during the construction phase could enter the WWD. The connection between the dock and the River Mersey is such that any pollution is likely to be dilute by the time that it reaches this SPA. However, the toxicity and density of different pollutants varies widely and the potential harm that might be caused to the supporting processes on which the habitats

of these species rely is tangible and could therefore lead to an adverse effect on the integrity of the site thus requiring mitigation.

117. Turning to the potential for recreational pressure, I note that recreational pressure would be unlikely during the operational phase of the development given that the site is on the opposite bank of the river. As such, it would take approximately 40 minutes to reach the site via the ferry and approximately 20 minutes to reach it by car. This means that the use of the site for activities such as daily exercise and dog walking would not be practical. Whilst it could be used sporadically by future occupants, I do not find that this would be in sufficient numbers or at sufficient frequency to cause a significant increase in disturbance to these two species from the project alone. However, residual effects could occur in combination with other schemes that could affect the distribution of these species thus causing an adverse effect on integrity thus requiring mitigation.
118. A consultation letter from Natural England⁵⁰, having considered the Shadow HRA and the proposed mitigation measures, is satisfied that there would be no adverse effect on the integrity of these sites provided that the following mitigation measures are secured via suitable conditions: A detailed Construction Environment Management Plan, Lighting Strategy and Drainage Strategy; Implementation of an agreed Cormorant Mitigation Plan and provision of an information leaflet for new residents informing them of the presence and importance of nearby designated sites with details of a responsible users code. NE confirmed that any concerns over potential impacts upon the notified features of the Mersey Narrows SSSI would be address by these measures. I have no reason to come to any different conclusion and have no technical evidence before me to suggest that the proposed mitigation would be ineffectual.
119. Given the above and in the absence of any evidence to the contrary, I am satisfied that the mitigation measures would reduce the adverse effects of the proposal to a *de minimis* level and that the integrity of the SAC and Ramsar sites, as well as the notified features of the SSSI, would thus be preserved.

Planning Obligation

120. A completed Unilateral Undertaking⁵¹, dated 30 May 2022, has been provided by Peel L&P Developments Ltd and Peel L&P Land (Intermediate) Ltd to offset the loss of public open space at the CS as a result of the proposed development. This would ensure the delivery of public open space between Plots C05 and C09 (Green Link) and Arrival Square at Plot C08 (Arrival Square Extension).
121. I find that the provisions of the undertaking are necessary in order to make the development acceptable, taking into account the discussions at the beginning of the Inquiry as well as the brief roundtable discussion at the end. I therefore conclude that the statutory tests in paragraph 57 of the Framework are met and that the provisions of the planning agreement are a material consideration in this appeal.

⁵⁰ CD 2.17 – Letter dated 24 June 2021

⁵¹ ID11

Conditions

122. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 56 of the Framework. Subject to the amendments that were considered in the round table discussion, I am satisfied that they meet the necessary requirements. Furthermore, all pre-commencement conditions have been accepted by the appellant in writing and are consequently compliant with the necessary legislation⁵².
123. Only one of the conditions was not agreed between the parties. This was Condition 17 that seeks to prohibit first use of the development until such time that a public pedestrian route linking it to Princes Parade, via a footbridge across the river gates associated with Princes Half Tide Dock, is completed.
124. I have already highlighted the fact that this would be delivered through a permission associated with the Isle of Mann Ferry Terminal (Ref: 20F/2453). Condition 15 of that permission states that: 'The development hereby approved shall not be brought into use until public pedestrian access has been provided via a footbridge at the southern boundary of the site across the top of the river gates leading from the site to Princes Dock. The link to the footbridge shall remain open at all times (24/7) and the ferry service shall thereafter only operate whilst this route remains open and available for public use unless the written consent of the Local Planning Authority is obtained otherwise'.
125. The round table discussion established that the Council accepted that it might not be strictly necessary but that it was suggested because of the stand-alone nature of the application. It also emerged that the Council has secured approximately £200 K of s106 funds and that the cost of the bridge is likely to be around £130 K but that no final decision had been taken concerning the allocation of the funds for this purpose. Irrespective of the availability of funding, I find that the condition duplicates an existing delivery mechanism that is already in place thus failing the test of necessity. I have not included it for this reason.
126. I have altered Condition 14 because it made the appellant liable for the costs of any amendments to existing Traffic Regulation Orders that might be found to be necessary as a result of the review secured by this condition. The PPG states⁵³ that a condition should not be used to require the payment of money and that this can only be secured through a planning obligation.
127. I have altered Condition 47 and the terms of reference of the Residents' Forum to include a summary of the feedback on construction activity from a wider constituency of local residents who may have raised issues directly with the contractor via the general point of contact. This is in the interests of transparency and protecting the living conditions of the local community.

⁵² The Town and Country Planning (Pre-commencement Conditions) Regulations 2018

⁵³ Paragraph: 005 Reference ID: 21a-005-20190723

Conclusion

128. For the above reasons and having regard to all other matters raised I conclude that, subject to the attached schedule of conditions and the obligations in the planning agreement, that this appeal should be allowed.

R. Catchpole

INSPECTOR

APPEARANCES

For the Appellant

Mr Russel Harris QC	Instructed by Addleshaw Goddard LLP
He called	Mr Siddique BA (hons) DipArch ARB RIBA
	Mr Marsh BA (hons) PGDipLA CMLI
	Mr Burns BA (hons) MCD
	Mr Claxton MA MRICS
	Mr Raymond BSc (hons) MBA MIOA
Mr Malouf	Appellant

For the Council

Mr Giles Cannock QC	Instructed by Roger Mann, Liverpool City Council
He called	Mr Edwards BSc (hons) MA MSc
	Mr Simmins BA (hons) MSc
	Mrs Dimba BSc (hons) MCD
	Dr Rushforth BSc (hons) PhD

Interested Parties

Mr Teasdale	Chair, Liverpool Green Party
Ms Coughlan	Local Resident
Mr Cunningham	Save Waterloo Dock
Mr Wertheim	Save Waterloo Dock
Mr Burnell	Save Waterloo Dock
Mrs Cunningham	Save Waterloo Dock
Dr Ghosh	Local Resident
Mr McGarry MBA MRTPI	Interested Person
Ms Ryan BA (hons)	Local Resident
Mr O'Leary	Waterloo Quay Tenants Association

Cllr Hanratty	Kirkdale Ward
Ms McDowall	Isle of Mann Steam Packet Company
Mr Reddington	Isle of Mann Steam Packet Company
Mr Griffiths	Local Resident

DOCUMENTS SUBMITTED

ID1 – Notification of the Inquiry date and venue

ID2 – Liverpool Maritime Mercantile City World Heritage Site SPD (2009)

ID3 – Updated Statement of Common Ground

ID4 – Examination Report of the Liverpool Local Plan 2013-2033, 20 October 2021

ID5 – Development Plan Policy Bundle

ID6 – Car Parking Photographs Taken by Local Residents

ID7 – Enlarged Diagram from Appellant's Opening Statement

ID8 – Agreement of Appellant to Pre-Commencement Conditions

ID9 – Viability Evidence Clarifications

ID10 – Revised List of Conditions

ID11 – Completed Unilateral Undertaking

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

REASON: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) The development hereby permitted shall be carried out in accordance with the following approved plans and supporting documents:

X1951-PLA-XX-XX-DR-0001-P13 - Landscape General Arrangement
1951-PLA-XX-XX-DR-0002-P07 - Landscape Vehicle Tracking Overlay
1951-PLA-XX-XX-DR-1000-P08 - Hardworks Plan
1951-PLA-XX-XX-DR-2000-P07 - Softworks Plan
1951-PLA-XX-XX-DR-3000-P06 - Indicative Levels Plan
1951-PLA-XX-XX-DR-4000-P07 - Street Furniture Plan
1951-PLA-XX-XX-DR-5000-P07 - External Lighting Plan
1951-PLA-XX-XX-DR-7000-P07 - External Wind Mitigation Plan
A005_P_001A - Site Location Plan
A005_P_002A - Existing Site Plan
A005_P_003A - Existing Site Levels Plan
A005_P_005A - Proposed Site Infill Plan
A005_P_101C - Proposed Site Plan
A005_P_102C - Proposed Site Plan Ground Floor Plan
A005_P_103C - Proposed Site Plan First Floor Plan
A005_P_104C - Proposed Site Plan Second Floor Plan
A005_P_105C - Proposed Site Plan Third Floor Plan
A005_P_106C - Proposed Site Plan Fourth Floor Plan
A005_P_107C - Proposed Site Plan Seventh Floor Plan
A005_P_108C - Proposed Site Plan Roof Plan
A005_P_110B - Block A Proposed Ground Floor Plan
A005_P_111B - Block A Proposed First Floor Plan
A005_P_112C - Block A Proposed Second to Seventh Floor Plan
A005_P_113B - Block A Proposed Eighth Floor Plan
A005_P_114B - Block A Proposed Roof Plan
A005_P_120B - Block B Proposed Ground Floor Plan
A005_P_121B - Block B Proposed First Floor Plan
A005_P_122B - Block B Proposed Second Floor Plan
A005_P_123B - Block B Proposed Third Floor Plan
A005_P_124B - Block B Proposed Roof Plan
A005_P_130B - Block C Proposed Ground Floor Plan
A005_P_131B - Block C First Floor Plan
A005_P_132C - Block C Proposed Second to Seventh Floor Plan
A005_P_133B - Block C Eighth Floor Plan
A005_P_134B - Block C Roof Plan
A005_P_300B - Proposed East + West Contextual Elevation
A005_P_301B - Proposed North + South Contextual Elevation
A005_P_302B - Block A North + West Elevations
A005_P_303B - Block A South + East Elevations
A005_P_304B - Block B North + West Elevations
A005_P_305B - Block B South + East Elevations
A005_P_306B - Block B North + West Court Elevations

A005_P_307B - Block B South + East Court Elevations
A005_P_308B - Block C North + West Elevations
A005_P_309B - Block C South + East Elevations
A005_P_401B - Proposed Long Section AA
A005_P_402B - Proposed Long Section BB
A005_P_403B - Proposed Long Section CC
A005_P_404B - Proposed Cross Section DD
A005_P_405B - Proposed Cross Section EE
A005_P_406B - Proposed Cross Section FF
A005_P_407B - Proposed Cross Section GG
A005_P_408B - Proposed Cross Section HH
A005_P_501B - Building Entrances Canopy Elevations
A005_P_502B - Commercial Unit Elevations
A005_P_504 - Proposes Intermediate Facade Section
A005_P_505 - Proposed Upper Level Facade Section
A005_P_506 - Proposed Block B Facade Section

Supporting Documents

Design and Access Statement (02.02.21)
Design and Access Addendum (14.06.21)
Dock Infill Methodology (Rev5, 17.12.20)
Drainage Strategy (Rev9, 09.12.21)
Environment Statement, Volume I Main Text (18.01.21)
Environment Statement, Volume II Figures and Appendices (18.01.21)
Environment Statement, Volume III Non-Technical Summary (18.01.21)
Updated Environment Statement Volume II Appendix 12B (Rev9, 09.12.21)
Updated Environment Statement Volume II Appendix 15B (Rev E, June 2021)
Flood Risk Assessment (Rev5, 17.12.20)
Heritage Impact Assessment (November 2020)
Marine Ecology Report (ER18-379)
Microclimate Design Note (November 2021)
Planning Gateway 1 Fire Statement (8.11.2021)
Preliminary Ecological Report (December 2020)
Phase 1 and 2 Ground Contamination Report (Rev 1, December 2020)
Shadow HRA (Rev E, June 2021)
Transport Assessment (January 2021)
Transport Assessment Technical Note (November 2021)
Travel Plan (January 2021)

REASON: For the avoidance of doubt and in the interests of good planning.

- 3) Notwithstanding the submitted plans and drawings, the following details shall be submitted to and agreed in writing by the Local Planning Authority prior to the implementation of the respective elements:
- i) street furniture including seating, bollards/balustrading, external cycle stands, bins and planters;
 - ii) dock edging treatment;

- iii) all external lighting systems, which for the avoidance of doubt shall not exceed 6 lux at any habitable room window or cause unacceptable glare to occupiers of adjoining buildings and passing motorists;
- iv) any CCTV cameras, which for the avoidance of doubt shall be fixed and angled downwards away from nearby properties;
- v) all roof treatments, including rainwater goods, roof vents, lift overruns, plant and crane equipment, extract flues and balustrades;
- vi) safety balustrade alongside the dock edge;
- vii) all boundary treatments and enclosures including the vehicular access barrier;
- viii) all wind mitigation measures agreed in consultation with the Isle of Mann Steam Packet Company including but not limited to sliding wind gates;
- ix) all internal window treatments including blinds and curtains for the residential units;
- x) any signage associated with the ground floor commercial units;
- xi) all finished ground surfaces, including the colonnaded promenade; and
- xii) the platform lift.

All elements shall be implemented as agreed.

REASON: To ensure that they are satisfactory in the interests of character and appearance, public safety and to ensure inclusive access.

- 4) Prior to their first use on site, samples or detailed specifications of the following materials to be used in the external construction of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority and shall include the pontoon walkway, jetty structure and sub-station:
- i) all external facing materials;
 - ii) all roofing materials;
 - iii) all hard landscaping including ground finishes; and
 - iv) the vehicular access gate.

The development shall be carried out in accordance with the approved details.

REASON: To ensure these aspects of the development are suitable in the interests of character and appearance.

- 5) Prior to commencement of development a Method Statement detailing the provisions for infilling the dock shall be submitted to and approved in writing by the Local Planning Authority. The Method Statement shall reflect the details of the initial methodology and philosophy for the infill works and type of piling operations set out in Appendix 11A of the Environmental Statement (ES Volume II, 18.01.21) submitted with the application.

REASON: To ensure that the details of the infilling and dock reclamation operation reflect the details considered in the assessment of the application in the interests of public health and ensure protection of the water supply.

- 6) Except for site clearance and remediation, no development shall take place until a scheme for the design and construction of the site accesses has been submitted to and approved in writing by the Local Planning Authority. The accesses shall be designed in accordance with the principles set out in the approved drawings. For the avoidance of doubt, the site access points shall include pedestrian crossing points and tactile paving.

The approved scheme shall be constructed and completed prior to first occupation. The accesses shall be kept available for use at all times for the lifetime of the development.

REASON: In order that the Council is satisfied that the highway works are carried out to the appropriate standard and to enable vehicles to enter and leave the premises in a safe manner without causing a hazard to other road users in the interests of road safety.

- 7) The swept paths shown on the approved plans for access by service vehicles shall be kept free of all obstructions and shall be available for use at all times for the lifetime of the development.

REASON: In the interests of road safety as vehicles reversing into the highway cause a hazard to other road users.

- 8) Prior to first occupation/use of the premises, parking provision in line with the submitted plans shall be provided in accordance with details submitted to and approved in writing by the Local Planning Authority. The approved parking provision shall be kept free for that specific use thereafter. Notwithstanding the provisions of the Town and Country Planning Act (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no building works, which reduces this provision, shall take place except following the express grant of planning permission by the Council.

REASON: To ensure adequate parking provision is made thereby avoiding hazards caused by indiscriminate parking and to encourage the benefit of natural surveillance and security in order to actively deter criminal activity, including vandalism.

- 9) The parking spaces indicated on the approved plans shall be provided for the sole use of residents, occupiers and visitors of the development hereby permitted and shall not be sold, leased or hired out to any third party.

REASON: To ensure that appropriate provision for parking vehicles is made and maintained, thereby avoiding hazards caused by indiscriminate parking.

- 10) The development shall not be brought into use until the areas indicated on the submitted plans to be set aside for cycle parking have been provided in accordance with the details and specifications shown. The cycle parking shall be retained as such thereafter for the lifetime of the development.

REASON: To ensure that adequate provision is made for parking cycles on the site and to establish measures to encourage non-car modes of transport.

- 11) No works shall take place on the site at all until a Construction Method Statement (CMS) comprehensively detailing the phasing and logistics of demolition and construction has been submitted to and approved in writing by the Local Planning Authority.

The method statement shall include, but not be limited to:

- i) construction traffic routes, including provision for access to the site;
- ii) entrance/exit from the site for visitors/contractors/deliveries;
- iii) location of directional signage within the site;
- iv) siting of temporary containers;
- v) parking for contractors, site operatives and visitors;
- vi) identification of working space and extent of areas to be temporarily enclosed and secured during each phase of demolition/construction;
- vii) temporary roads/areas of hard standing;
- viii) schedule for large vehicles delivering/exporting materials to and from site;
- ix) storage of materials and large/heavy vehicles/machinery on site;
- x) measures to control noise and dust;
- xi) details of street sweeping/street cleansing/wheel wash facilities;
- xii) details for the recycling/disposing of waste resulting from demolition and construction works;
- xiii) hours of working, which for the avoidance of doubt will include details of what hours contractors may arrive on site at the beginning of the working day to start any site preparations and the time the site will be closed down and contractors left at the end of the working day;
- xiv) timing of all deliveries (not just large deliveries); and
- xv) the phasing of works including start/finish dates.

The development shall be carried out in accordance with the approved statement.

REASON: To ensure that adequate on-site provision is made to ensure the safe operation of the site, maintain highway safety and mitigate any impact on the living conditions of nearby residents.

- 12) The development shall not be occupied until the owners and occupiers of the site have appointed a Travel Plan Co-ordinator. The Travel Plan Co-ordinator shall be responsible for the implementation, delivery, monitoring and promotion of the Travel Plan, including the day-to-day management of the steps identified to secure the sustainable transport initiatives. The details (name, address, telephone number and email

address) of the Travel Plan Co-ordinator shall be notified to the Local Planning Authority upon appointment and immediately upon any change.

REASON: To ensure that an approved Travel Plan is implemented in order to establish sustainable, non-car modes of transport.

- 13) The development shall not be occupied until a Residential Travel Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall include immediate, continuing and long-term measures to promote and encourage alternative modes of transport to the single-occupancy car. For the avoidance of doubt, the Travel Plan shall include, but not be limited to, the following:
- i) production and distribution of an information pack for residents detailing travel options and information for all modes of travel;
 - ii) information on existing transport policies, services and facilities, travel behaviour and attitudes;
 - iii) access for all modes of transport;
 - iv) resource allocation including Travel Plan Co-ordinator and budget;
 - v) a marketing and communications strategy;
 - vi) appropriate measures and actions to reduce car dependence and encourage sustainable travel;
 - vii) an action plan including a timetable for implementation of each of each of the above; and
 - viii) mechanisms for monitoring, reviewing and implementing the travel plan.

The approved plan shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.

An annual report shall be submitted to the council no later than 1 month following the anniversary of the first occupation of the development and thereafter for a period of 5 years. The annual report shall include a review of the Residential Travel Plan measures, monitoring data and an updated action plan.

REASON: To maximise opportunities for travel by modes of transport other than the private car, and to ensure that the development is sustainable.

- 14) Prior to first occupation of the development hereby permitted, a review of effectiveness will be undertaken of Traffic Regulation Orders (TRO's) on the approaches to and within the vicinity of the access to the proposed development site. For the avoidance of doubt the review will include Jesse Hartley Way and Triskelion Way.

REASON: To ensure that sufficient restrictions are in place to ensure highway safety for all highway users and the clear passage of essential vehicles (particularly emergency service vehicles) at all times. It is also paramount that the locality does not become victim of nuisance or blanket parking by inconsiderate drivers.

- 15) The colonnaded walkway situated along the dockside edge shall remain open and publicly accessible to pedestrians at all times and no gates or

barriers shall be placed within the development which restricts access for the lifetime of the development.

REASON: To ensure that a pedestrian route through the site is maintained to support and encourage non-car modes of transport.

- 16) No part of the development shall be occupied or brought into use until full details of the proposed landscaping have been submitted to and agreed in writing by the Local Planning Authority. The approved details shall reflect the information submitted with application and include details of all hard and soft landscaping, the finish of all other ground surfaces and detail the number, size, species and location of all proposed planting. For the avoidance of doubt, the landscaping scheme shall include the details of the roof garden proposed with Block B and landscape bund (with scaled sections).

Any plans submitted 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.

REASON: In order to confirm the precise details of the landscaping in order to ensure they are appropriate for the site and satisfactory in the interests of character and appearance.

- 17) The approved soft landscaping scheme shall be completed not later than the first planting season following first occupation or during the appropriate planting season as the development proceeds, in accordance with a programme to be submitted to and agreed in writing by the Local Planning Authority.

All works must be carried out according to the agreed programme and BS 8545:2014 Trees: from nursery to independence in the landscape and BS 4428: 1989 Code of Practice for General Landscape Operations.

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 in the first available planting season thereafter.

REASON: It is in the interests of character and appearance and in accordance with the duty of the Council under Section 197 of the Town and Country Planning Act 1990 in respect of the planting and preservation of trees

- 18) No part of the development shall be occupied or brought into use until a management plan for the continuous maintenance of public realm, hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The management plan shall be implemented in accordance with the approved details and retained for the lifetime of the development.

REASON: To ensure that these areas are appropriately managed in the interests of character and appearance.

- 19) No advertisements shall be displayed on, or within, any elevation of the development (including inside windows), without details of any such advertisements having first been submitted to and agreed in writing by the Local Planning Authority. All advertising shall conform to the agreed details.

REASON: In order that any advertisements displayed on the building are assessed in the context of Liverpool Waters overall design strategy, so as to ensure a satisfactory external appearance and to preserve the integrity of the design of the building.

- 20) No development shall take place in any phase, including demolition, site clearance or ground works, until:
- a) An investigation and assessment methodology, including analysis suite and risk assessment methodologies has been completed and submitted to and agreed in writing by the Local Planning Authority prior to any site investigations.
 - b) A site investigation and assessment has been carried out by competent persons to determine the status of contamination including chemical, radiochemical, flammable or toxic gas, asbestos, biological and physical hazards at the site and submitted to the Local Planning Authority. The investigations and assessments shall be in accordance with current Government and Environment Agency guidance and shall identify the nature and extent of any contaminants present, whether or not they originate on the site, their potential for migration and risks associated with them. The assessment shall consider the potential risks to: human health; controlled waters; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ecological systems; and archaeological sites and ancient monuments.
 - c) A detailed remediation scheme (if required), has been submitted to and agreed in writing by the Local Planning Authority. This scheme shall include an appraisal of remedial options, implementation timetable, works schedule, site management objectives, monitoring proposals and remediation validation methodology. The scheme once completed must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.

REASON: These details are needed prior to the commencement of development in order to ensure that risks from land contamination to future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 21) After development commences and prior to first occupation:
- a) Following completion of the measures identified in the approved remediation scheme and prior to occupation of any part of the development, a verification report which shall confirm the adequacy of remediation must be prepared and submitted to and approved in writing by the Local Planning Authority before this condition will be discharged. If a phased approach is being taken, then a validation/completion report for the areas within each of the proposed phases shall be submitted to and agreed in writing by the Local Planning Authority before the condition relating to the phase in question is discharged.

- b) If any potentially contaminated (unusual/suspect) material or flammable/toxic gas not previously identified is discovered this must be reported in writing to the City Council and a further assessment, that includes a revised remediation scheme, will be prepared and submitted to and agreed in writing by the Local Planning Authority. If no contamination is found then this should be detailed in the remediation verification report.

REASON: To ensure that risks from land contamination to future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

- 22) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

REASON: To comply with the Framework and ensure the future protection of the water environment from risks arising from land contamination.

- 23) The development shall be carried out in accordance with the submitted Flood Risk Assessment (Rev 5, 17.12.20) and the following mitigation measures it details:
 - i) finished floor levels shall be set no lower than 8.050 metres above Ordnance Datum (AOD) for Block's A, B (Waterloo Dock Side Block) & C;
 - ii) finished floor levels shall be set no lower than 8.400 metres above Ordnance Datum (AOD) for Block B (River Side Block);
 - iii) external ground profiles are to be designed and constructed to slope away from buildings;
 - iv) building construction materials and technologies used in construction of residential blocks up to first floor level are to be water resilient;
 - v) threshold drains to be constructed to external door thresholds;
 - vi) plinths to be used to raise & protect equipment located in substation and internal plant rooms; and
 - vii) service entries into the plant rooms are to be constructed at high level.

These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's phasing arrangements. The measures detailed above shall be retained and maintained thereafter for the lifetime of the development.

REASON: To comply with the Framework and reduce the risk of flooding to the proposed development and future occupants

- 24) Foul and surface water shall be drained into separate systems.

REASON: To secure proper drainage and to manage the risk of flooding and pollution.

- 25) No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme must include:
- i) an investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
 - ii) a restricted rate of discharge of surface water agreed with the Local Planning Authority (if it is agreed that infiltration is discounted by the investigations);
 - iii) a timetable for its implementation; and
 - iv) designs to prevent the discharge of water onto the public highway.

REASON: To secure proper drainage and to manage the risk of flooding and pollution.

- 26) Details of a scheme to demonstrate that all surface water from parking and servicing areas shall be passed through a suitably designed and adequate capacity oil interceptor prior to being discharged into any watercourse, surface water sewer or soakaway system, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is occupied or brought into use.

REASON: To prevent pollution of controlled waters.

- 27) The development hereby permitted shall be acoustically insulated in accordance with a scheme to be submitted to and agreed in writing by the Local Planning Authority. This shall include all units fronting Jesse Hartley Way and all those facing the Isle of Man Ferry Terminal within Blocks B and C. This scheme shall include details of a mitigation package of acoustic treatments to all habitable room windows and shall incorporate a suitable scheme of acoustically attenuated mechanical ventilation to remove the need to open windows. The scheme shall be implemented in accordance with the approved details prior to first occupation.

REASON: To protect the living conditions of local residents with respect to noise.

- 28) Prior to first occupation of the development hereby permitted a servicing and waste management strategy shall be submitted to and agreed in writing by the Local Planning Authority. For the avoidance of doubt, the strategy shall set out design and operational proposals for servicing and the storage, transfer and collection of waste ensuring that appropriate arrangements are made and that logistical requirements are appropriately considered and addressed. The strategy shall be subsequently implemented in accordance with the approved details.

Details of a purpose-built structure for the storage of waste and recycling bins, including location and size, shall also be submitted to and agreed in

writing by the Local Planning Authority. All waste materials generated by the development, whether to be discarded as refuse or recycled, shall be stored within the approved purpose-built structure and all waste material shall be kept within the curtilage of the premises until the day it is due to be collected. The waste storage facility shall be implemented in accordance with the approved details before the development is occupied or brought into use.

REASON: To safeguard living conditions of local residents and maintain the quality of the street environment.

- 29) Noise control measures must be employed within the development such that sound generated within the commercial entertainment areas does not give rise to noise levels exceeding NR30 in the residential accommodation (expressed in terms of the maximum sound pressure level in each octave band).

REASON: To protect the living conditions of local residents with respect to noise.

- 30) Prior to first use, a scheme for the hours of operation of all commercial ground floor units, including servicing, is to be submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be carried out in accordance with the approved details.

REASON: To protect the living conditions of local residents with respect to noise.

- 31) A kitchen extract system shall be installed to all areas where hot food is to be prepared. Any extract ducts included shall be acoustically insulated and acoustically isolated from associated fans and the building structure. The discharge point shall be at least 1 metre above the eaves or in other such position as to minimise the likelihood of nuisance to neighbouring premises.

REASON: To protect the living conditions of local residents with respect to noise and odour.

- 32) Any waste generated by the business to be discarded as refuse should be kept within the curtilage of the premises and should only be placed outside on such days as trade refuse collection will occur.

REASON: To protect the character and appearance of the public realm.

- 33) The rating level of the noise emitted from any plant shall not exceed the existing background noise level. The noise level shall be determined at the nearest noise sensitive premises. The measurements and assessments shall be made according to BS4142:2014. 'Method for Rating Industrial and Commercial Sound'.

REASON: To protect the living conditions of local residents with respect to noise.

- 34) No works shall take place, including any demolition, site clearance or ground works, until a Construction Environmental Management Plan (CEMP) describing how construction will be managed to avoid, minimise and mitigate any adverse construction effects on the environment has been submitted to and agreed in writing by the Local Planning Authority.

The CEMP shall include mitigation measures required for the purposes of Habitats Regulations Assessment conforming to the recommendations set in the MEAS Consultation Responses and E-mail (23rd June 2021) and Natural England Consultation Response (24th June 2021).

It shall also include mitigation measures that minimise noise arising from pile driving activities, insofar as it is practicable, and will include but not be limited to soft start procedures, maximum hammer energies and periods of respite where pile driving activities are strictly prohibited. As a minimum, no pile driving shall occur on Saturdays, Sundays or on public holidays. The hours during which such activity can reasonably occur at other times, bearing in mind when the majority of local residents are most likely to be at home, shall also be included.

The approved Construction Environmental Management Plan shall be strictly adhered to throughout the construction period for the development hereby permitted.

REASON: These details are needed prior to the commencement of development in order to ensure that any adverse impact on protected areas and the wider environment and the living conditions of local residents during the period of construction will be minimized.

- 35) No ground clearance or vegetation management is to take place during the period 1 March to 31 August inclusive. If it is necessary to undertake works during the bird breeding season then all affected areas are to be checked first by an appropriately experienced ecologist to ensure no breeding birds are present. If present, details of how they will be protected are required then these shall be submitted to and agreed in writing by the Local Planning Authority. All works shall be carried out according to the agreed details.

REASON: To ensure suitable measures are in place to avoid any harm to ground nesting birds.

- 36) The cormorant mitigation measures (comprising a floating pontoon within Princes Half Tide Dock) shall be undertaken in line with the recommendations set out in the shadow HRA (Rev E, June 2021) and no works shall commence until the permanent mitigation raft is installed.

REASON: To safeguard the integrity of protected areas and mitigate wildlife impacts.

- 37) Information leaflet shall be provided in sales packs informing residents of the presence and importance of nearby designated sites and providing details on a responsible users code for residents. The leaflet should clearly show alternative areas of recreation which will be available to residents.

REASON: To safeguard the integrity of protected areas and mitigate wildlife impacts.

- 38) Prior to first occupation, a detailed Lighting Strategy will be submitted to and agreed in writing by the Local Planning Authority to ensure that any operational external lighting is directional and limits light spill to the surrounding areas to prevent disturbance to birds during the hours of darkness. All lighting shall be installed as agreed and the mitigation measures shall be maintained for the lifetime of the development.

REASON: To safeguard the integrity of protected areas and mitigate wildlife impacts.

- 39) No development shall take place until the applicant has submitted a written scheme of investigation for archaeological work for approval in writing by the Local Planning Authority. The work shall be carried out strictly in accordance with the approved scheme.

REASON: To ensure appropriate investigation, conservation, recording and publication of archaeological remains that would be affected by the development.

- 40) Notwithstanding the provisions of Schedule 2 of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no telecommunications equipment shall be installed upon the roof area(s) of any building hereby permitted without the written agreement of the Local Planning Authority.

REASON: The City Council wishes to retain control over any addition of telecommunications equipment or roof top structures in the interests of protecting the integrity of the building design and the character and appearance of the general area.

- 41) Any untenanted shopfronts/commercial units must have an interim treatment which will achieve a visually acceptable method of screening and securing vacant ground floor spaces. Details shall be submitted to and approved in writing by the Local Planning Authority with all interim treatments implemented according to the approved details.

REASON: It is in the interests of character and appearance and in order to achieve a visually acceptable method of securing vacant ground floor spaces.

- 42) No security grilles, screens or roller shutters shall be installed on any of the commercial units or cycle stores unless details are submitted to and agreed in writing by the Local Planning Authority. Any security measures that are approved shall be removed or retracted during the hours the premises are open for trading.

REASON: It is in the interests of character and appearance.

- 43) Use of the external terrace as a pavement café shall not commence until the following details have been submitted to and agreed in writing by the Local Planning Authority:

- i) details of furniture including chairs, tables and umbrellas;
- ii) details of any external lighting; and
- iii) details of the proposed means of enclosure and the layout of street furniture.

The pavement café shall only be operated in accordance with the approved details.

REASON: These details are not included in the application and the Council wishes to ensure that they are satisfactory in order to safeguard character and appearance and the living conditions of nearby residents.

- 44) The external terrace and associated pavement café shall not operate outside the hours of 0800 and 2200 and outside of these hours all furniture, including barriers, shall be removed and stored within the curtilage of the building.

REASON: To safeguard the living conditions of adjacent occupiers and maintain the character and appearance of the street scene.

- 45) There shall be no amplified music generated within the external seating area, including any music directed thereto from within the host premises, and the level of any incidental amplified sound escaping from the host premises shall not exceed existing background noise levels as measured and assessed in accordance with appropriate BS standards to the satisfaction of the Local Planning Authority.

REASON: To safeguard the living conditions of adjacent occupiers.

- 46) The developer must consult Liverpool John Lennon Airport and secure written permission to work if any crane is to be used within 6 km of the Aerodrome and its height exceeds 10 meters or that of the surrounding structures or if any crane height will exceed 91.4 m above ground level.

REASON: In the interests of safeguarding aviation safety.

- 47) The developer shall hold meetings with a residents' forum every three months until the practical completion of the proposed scheme and the first meeting shall be held prior to commencement of the development.

The forum shall include a maximum of one Ward Member, two tenants of Waterloo Quay (or their representatives), one representative of the developer or its architect and one representative of the contractor/s currently working on site.

The matters to be considered at such meetings shall comprise: an update from the developer/contractor(s) to the other members of the forum as to the programme and phasing of works; the scheduled programme for any particularly noisy work including times and days when this will occur; any significant breaches of the agreed CMS or CEMP that may have occurred; and a summary of matters raised by local residents with the appropriate point of contact since the last meeting.

The developer shall issue a newsletter to the members of the residents' forum which records the updates provided and issues raised at each and every meeting with the residents' forum within a reasonable timeframe following each meeting.

Details shall be provided of an appropriate point of contact where any issues relating to construction matters can be raised with the main contractor for the duration of the development.

REASON: In order that there is an on-going liaison and adaptation of working practices where practicable concerning construction noise, works programme and timing for interested parties in the interests of safeguarding the living conditions of nearby residents.