



Appeal Decision

Site visit made on 14 June 2022

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Ref: APP/Z4310/W/21/3282925

168 Richmond Row, Liverpool L3 3BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr O Gilkes (of Gilkes Property Limited) against Liverpool City Council.
- The application Ref PP-09953272 is dated 21 June 2021.
- The application sought planning permission to use building as offices (use class B1) and as hotel (use class C1) and carry out associated external alterations without complying with conditions attached to planning permission Ref 18F/0894, dated 11 December 2018.
- The conditions in dispute are Nos 2, 5, 7, 10, 11 and 13 which state that:
- *2. The development hereby approved shall be carried out in accordance with the following drawings and documents:*
 - (i) Drawing numbers*
 - 000 Location Plan*
 - 100 rev a Proposed Ground Floor*
 - 101 Proposed First Floor*
 - 102 Proposed Second Floor*
 - 103 rev a Proposed Front Elevation*
 - 104 Proposed Side Elevation*
 - 105 Proposed Side Elevation*
 - (ii) Supporting Documents*
 - Wardell Armstrong Noise Assessment Report July 2018 and addendum letter dated 25th September 2018.*
- *5. No part of the development shall be occupied or 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 in drawing number 100. The cycle parking shall be retained as such thereafter.*
- *7. Except for site clearance and remediation no development shall take place until a scheme to permanently close off the existing vehicular and/or pedestrian access on to Drinkwater Gardens has been submitted to and approved in writing by the Council as Local Planning Authority. The scheme shall be implemented as agreed before any part of the development has been brought in to use.*
- *10. Prior to the commencement of the uses hereby approved, the remedial works to the ground floor frontage to Richmond Row shall be completed in accordance with drawing number 103 A.*
- *11. Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, D, E or F; or Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any equivalent Order following the amendment, revocation and re-enactment thereof, the dwellings hereby approved shall not be altered or extended, and no buildings, structure, gates, fences or walls shall*

be erected within their curtilage except with prior written approval of the local planning authority.

- *13. Notwithstanding the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any equivalent Order following the amendment, revocation and re-enactment thereof, the office space hereby approved shall not be converted to residential accommodation.*
 - The reasons given for the conditions are:
 - *2. For the avoidance of doubt*
 - *5. To ensure that adequate provision is made for parking cycles on the site; and to establish measures to encourage non-car modes of transport.*
 - *7. To limit the number of access points to, and to maintain the proper construction of, the highway in the interests of road safety.*
 - *10. It is in the interests of visual amenity.*
 - *11. To prevent overdevelopment of the site and in order to safeguard the amenities of surrounding occupiers*
 - *13. The Council wishes to retain control over any proposal to convert the space to residential use in order to ensure nearby businesses are not adversely affected and in order to protect the amenity of any future residents.*
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Decision

1. The appeal is allowed and planning permission is granted to use building as offices (use class B1) and as hotel (use class C1) and carry out associated external alterations at 168 Richmond Row, Liverpool L3 3BL in accordance with Ref PP-09953272 without compliance with condition numbers 6, 7 11, 12 and 13 as previously imposed on planning permission 18F/0894, dated 11 December 2018, but subject to the conditions set out in the schedule below.

Preliminary Matters and Background

2. This appeal follows the failure of the Council to determine the planning application within the prescribed period. The Council have not indicated whether it would have refused the application had it been able to determine the application.
3. Although the Council have not submitted a statement of case, they have provided copies of internal consultation responses. While these are not the application decision, as jurisdiction over that was taken away when the appeal was lodged, I have treated them as the decision the Council would have made, had it been empowered to do so.
4. Since the permission 18F/0894 was granted, use classes have been changed under the Town and Country Planning (use Classes) (Amendment) (England) Regulations 2020. Consequently, uses such as B1 now form part of the broader E use class. I have been mindful of this change in my considerations below.

Main Issues

5. Therefore, the main issues are:
 - The effect of varying disputed condition 2 on highway safety and the living conditions of future occupiers; and,
 - Whether disputed condition 13 is reasonable and necessary having regard to the effect of the development on nearby businesses and the living conditions of future occupiers.

Reasons

6. The appeal site is located at the junction between Richmond Row and Drinkwater Gardens within a small area characterised by predominantly commercial and industrial uses. The site itself is a long, narrow plot containing a three-storey building with a two-storey rear wing.

Condition 2

7. Proposal would introduce a number of changes over the scheme approved under 18F/0894. These would include changes to the approved uses on the ground floor, the installation of new doors and windows and changes to the pavement outside of the host building.
8. I do not find, by way of the nature of the changes of the approved uses, the installation of new door or windows, that there would be any adverse impacts on the safety of those using the existing or proposed pavement along Drinkwater Gardens.
9. However, the proposed changes would include the extension of the existing pavement outside of the host building and the creation of ramps to provide access to the proposed doors. Given that the ramps would be within the footpath I find that it has the potential to harm the ability for pedestrians to pass the site.
10. In particular, the ramps would leave very little of the width of the pavement flat, affecting the ability for pedestrians, especially those with mobility or sight issues, to safely use the extended pavement. Moreover, the ramps are only one sided and as such there would be a drop on the other side of the platforms in front of the doors. Without a ramped transition this would result in an unacceptable obstacle to the free and safe movement of pedestrians along this section of pavement.
11. Therefore, the proposed changes to the pavement would have an unacceptable impact on highway safety, with particular regard to pedestrians, in conflict with Policies EC4, TP1 and UD2 of the Liverpool Local Plan 2013-2033 (the LLP, January 2022). These policies, collectively and amongst other matters, require that developments are highly accessible, including to pedestrians, and allow for an ease multi-modal movement.

Condition 11

12. Condition 11 removes the ability for the permitted developments described under Schedule 2, Part 1, Classes A, B, C, D, E and F and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) to be carried out. The National Planning Policy Framework requires under Paragraph 54 that planning conditions must only remove permitted development rights where there is a clear justification. In this case the justification is to prevent over development of the site and to safeguard the amenities of surrounding occupiers. However, the classes under Part 1 can only be carried out by dwellinghouses and so, would not apply to the appeal site. Furthermore, the site does not currently contain any means of enclosure and I do not find that there would be any opportunity for one to be erected given the site is completely covered by existing built development.

13. In light of the above, a clear justification for the imposition of condition 11 has not been provided and it would therefore be unnecessary. As such, condition 11 conflicts with Paragraph 54 of the National Planning Policy Framework (the Framework), as outlined above.

Condition 13

14. Condition 13 removes the ability for the change of use of a building and any land within its curtilage from an office to a dwellinghouse set out under Schedule 2, Part 3, Class O of the GPDO to be carried out. As part of such a change of use the development must apply for prior-approval for matters such as the impacts of noise from commercial premises on the intended occupiers of the development. Given that such a conversion would still require the effect of noise on the living conditions of future occupiers to be considered, it would not be necessary to require a full planning application in order to protect their living conditions.
15. Therefore, in line with the requirements of the GPDO, and Paragraph 54 of the Framework, as outlined above, the imposition of this policy would not meet the tests and would be unnecessary.

Other Matters

16. The appellant also requested conditions 5 and 10 be varied so that the drawing numbers referred to in each condition reflected the proposed drawing numbers submitted as part of this appeal. However, as I have found harm would occur through the variation of condition 2, it would be unnecessary to vary conditions 5 and 10.

Conditions

17. As I have concluded that conditions would not be reasonable or necessary to prevent the conversion of offices to a dwelling, or the erection of extensions, alterations, outbuildings and means of enclosure in the interests of character and appearance, and the living conditions of future occupiers, I have removed conditions 11 and 13.
18. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have sufficient information before me to be confident that conditions 6, 7 and 12 have been discharged and that as such these conditions are no longer necessary in their current form. However, as it is necessary to ensure that the matters they cover are still provided, I have amended them to reflect the existing situation.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting disputed conditions 11 and 13, replacing conditions 6, 7 and 12, and by restating those conditions that are still subsisting and capable of taking effect.

Samuel Watson

INSPECTOR

Schedule of Condition

- 1) The development hereby approved shall be carried out in accordance with the following drawings and documents:
 - (i) Drawing Numbers
 - 000 Location Plan
 - 100 rev a Proposed Ground Floor
 - 101 Proposed First Floor
 - 102 Proposed Second Floor
 - 103 rev a Proposed Front Elevation
 - 104 Proposed Side Elevation
 - 105 Proposed Side Elevation
 - (ii) Supporting Documents
 - Wardell Armstrong Noise Assessment Report July 2018 and addendum letter dated 25th September 2018
- 2) The number of guests to be accommodated on the premises shall not exceed 38 at any one time.
- 3) Any waste generated to be discarded as refuse or recycled shall be kept within the curtilage of the premises and shall only be placed outside the premises on the appropriate refuse collection day.
- 4) No part of the development shall be occupied or 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 in drawing number 100. The cycle parking shall be retained as such thereafter.
- 5) The development and uses hereby permitted shall be carried out in accordance with the Servicing and Waste Management Strategy.
- 6) The development hereby permitted shall not be brought in to use until the agreed scheme to permanently close off the vehicular and/or pedestrian access on to Drinkwater Gardens has been implemented as agreed.
- 7) All doors and windows on elevations of the building adjacent to the highway shall be constructed and installed such that from the level of adjacent highway for a height of up to 2.4 metres they do not open over the highway and for a height of above 2.4 metres no part of an open door or window shall come within 0.5 metres of the carriageway. Any future replacement doors and windows shall also comply with this requirement.
- 8) The full package of noise mitigation measures set out in the Noise Assessment report by Wardell Armstrong (dated July 2018), and their addendum letter dated 25/9/18, shall be implemented in full prior to commencement of the uses hereby approved.
- 9) Prior to the commencement of the uses hereby approved, the remedial works to the ground floor frontage to Richmond Row shall be completed in accordance with drawing number: 103 A.
- 10) The approved management plan for the operation of the hotel shall be implemented from the first day of operation of the use and the specified operational arrangements maintained in perpetuity.