



Appeal Decision

Site visit made on 25 October 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/Z4310/W/22/3298912

40-54B Berwick Street, Liverpool L6 9DZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Yakel Property Ltd against the decision of Liverpool City Council.
 - The application Ref 21PEF/3632, dated 7 December 2021, was refused by notice dated 2 March 2022.
 - The development proposed is described as 'upper extension (2 floors) to create 10 apartments and associated external alterations (including new lift to provide convenient access)'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council's second reason for refusal states that the proposed development would cause unacceptable levels of overshadowing to the existing 2.5 storey block of flats to the rear. In order to address this reason for refusal the appellant has submitted additional information in the form of an External Daylight, Sunlight and Overshadowing Study. I am satisfied that no party, including the Council who have had opportunity to formally comment on the additional information, would be prejudiced by my assessment of the scheme with regard to it and I have taken it into account in reaching my decision.
3. The description of development in the banner header above omits some of the text from the description provided on the application form. The omitted text refers to the drawings and documents submitted as part of the application, which is not a description of development.

Background and Main Issue

4. The provisions of Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) require the local planning authority to assess the proposed development on the basis of the matters listed under paragraph A.2(1). The Council refused to grant prior approval in relation to paragraph A.2(1)(g) which refers to the impact on the amenity of the existing building and neighbouring premises, including overlooking, privacy, and the loss of light.
5. The Council have referred to development plan policies. As the principle of development has been established by the GPDO, the prior approval provisions

do not require regard to be had to the development plan. I have therefore only had regard to these policies in so far as they are material to the matters for which prior approval is sought.

6. The main issue is therefore the impact of the development on the living conditions of the occupants of the following neighbouring properties:
 - Nos 56, 58 and 60 Berwick Street with regard to outlook;
 - The existing 2.5 storey block of flats with regard to outlook and light; and
 - 1 Berwick Close with regard to overlooking.

Reasons

7. The appeal site is an existing part three storey and part two storey block of flats with an L-shaped footprint located within a predominantly residential area. The buildings frontage onto Berwick Street comprises principally of three storeys with a mansard roof, patterned brickwork, and recessed stairwells. A small two-storey element however is found at the southern end of this frontage which has its ground floor level open so to provide access to the car parking area to the rear. The site is bounded to the south-east by residential dwellings, with further dwellings located on the opposite side of Berwick Street to the north-east. St Michael RC Primary School is located to the west of the site.
8. The proposed scheme would create an additional two floors on top of the existing three storey block of flats which front onto Berwick Street, creating an additional ten flats and in effect a five-storey building.

56, 58 and 60 Berwick Street

9. Nos 56, 58 and 60 are residential dwellings located to the south-east of the appeal site, with their rear gardens sharing a boundary with the site. Nos 56 and 58 form a pair of two-storey semi-detached dwellings, whilst No 60 is a detached bungalow which also contains a single storey outbuilding. The rear elevations of Nos 56 and 58 would be approximately 17.4 metres from the proposed five storey block of flats.
10. The Council has referred to its Supplementary Planning Guidance Note 10 (SPG) which provides guidance for new residential developments including window to wall separation distances. In this case, given the height of the proposal, the SPG advises that a separation distance in excess of 25 metres should exist between the rear elevations of Nos 56 and 58 and the proposed development. However, whilst the proposal would therefore fail to meet the separation distances contained within the SPG, this guidance is designed with a particular aim of avoiding excessive overshadowing of main windows and rear gardens.
11. The External Daylight, Sunlight and Overshadowing Study submitted by the appellant includes an assessment of whether the amenity areas of Nos 56, 58 and 60 would be subjected to unacceptable levels of overshadowing. The study concludes that all amenity areas would retain their current sunlight value and would not be subjected to any undue overshadowing or loss of light. Overshadowing or loss of light to these properties was not expressly referred to

by the Council in their reasons for refusal, and I have not been presented with any alternative evidence which would lead me to conclude otherwise.

12. Notwithstanding the conclusion of the study with regards to overshadowing, due to its significant scale and height the proposed development would be clearly visible and dominate views from the rear of these adjacent properties and their respective gardens. In particular, the proposal would be unduly prominent when viewed from the rear of Nos 56 and 58 and despite the separation distance afforded by the intervening building which would remain at 2 storeys, I find that by virtue of its proximity and overall scale and height the proposed development would have a significant overbearing impact causing harm to the occupiers of Nos 56 and 58 outlook.
13. The bungalow at No 60 is located to the west of Nos 56 and 58 and further away from the proposed development which, in addition to its orientation, would significantly reduce the impact of the proposal on outlook from this property. Similarly, although the single storey outbuilding at the property is located towards the boundary with No 58 and is a similar distance from the proposal as the neighbouring properties at Nos 56 and 58, due to its orientation the proposal would not appear as significantly overbearing.
14. Existing rearward views from No 60 and the single storey outbuilding are largely onto the car park of the appeal site which would remain unchanged. Whilst it is acknowledged that the proposal would be clearly visible from the rear of the property, due to its distance and orientation, the proposed development would not have a significant overbearing impact and would therefore not cause undue harm to the occupiers of No 60 outlook.
15. I therefore conclude that the proposed development would cause unacceptable harm to the living conditions of occupiers of Nos 56 and 58 Berwick Street, with particular regard to outlook. In so far as they are a material consideration, the development would therefore conflict with Policies H7 and UD7 of the Liverpool Local Plan (adopted January 2022) (LP) which seek, among other things, to ensure that developments protect the living conditions of existing residents.

Existing block of flats

16. The External Daylight, Sunlight and Overshadowing Study submitted by the appellant also considers the loss of light to habitable rooms in the existing 2.5 storey block of flats that forms part of the appeal site. This existing block stands approximately 4.6 metres from the rear elevation of the three-storey block of flats subject of the proposed development and is connected to it by a two-storey link. The study uses methodology as prescribed by the British Research Establishment (BRE), with the main criteria used being Vertical Sky Component (VSC) and Annual/Winter Probable Sunlight Hours (APSH/WPSH).
17. There are 11 windows on the south front facing elevation of the existing 2.5 storey block of flats. The study outlines that out of these windows, two windows, shown marked as window receptors 4 and 9, would fail to meet minimum requirements in terms of BRE Guidelines. The VSC analysis concludes that window receptor 4 may experience a minor impact and window receptor 9 a moderate impact in terms of the amount of daylight received. The APSH analysis also identified that both of these windows would fail to meet minimum requirements for annual sunlight hours.

18. Whilst I acknowledge that window receptors 4 and 9 both serve rooms which have additional windows, there is nothing within the study which demonstrates that these existing additional windows would sufficiently mitigate the anticipated loss in daylight and annual sunlight hours. I also observed during my site visit that the immediately adjacent windows that serve these rooms, shown marked as window receptors 3 and 8, are not large windows and are therefore unlikely to sufficiently mitigate any such loss. In the absence of any new additional mitigation being proposed, occupants of the flats concerned would be subjected to a reduction of daylight and annual sunlight hours from the current levels.
19. In addition to the loss of light detailed above, given the size, scale, and proximity of the proposed development, I find that the outlook from the 2.5 storey block of flats would be significantly harmed by the appeal proposal. The proposed development would introduce a five-storey building that would tower above and extend in front of the existing 2.5 storey block for the full length of the appeal site. The development would be in very close proximity to the 2.5 storey block of flats, with some flat windows towards the eastern side of the block being very close to the proposed development. Accordingly, the proposed development would appear significantly overbearing and detrimentally effect the outlook from the south facing windows of the existing 2.5 storey block of flats.
20. As a result, I conclude that the proposed development would cause an unacceptable level of harm to the living conditions of the occupiers of the flats contained within the existing 2.5 storey block, with particular regard to outlook and light. In so far as they are a material consideration, the proposal would be contrary to Policies H7 and UD7 of the LP which seek, among other things, to ensure that alterations and extensions to existing buildings minimise the impact on neighbouring properties in terms of overshadowing.

1 Berwick Close

21. No 1 is a two-storey semi-detached dwelling located approximately 15 metres from the appeal building on the opposite side of Berwick Street. The Berwick Street facing elevation of the existing three-storey block of flats contains several windows, with the windows associated with the flats at the northernmost end of the building facing towards No 1. The only existing screening between the rear garden of No 1 and the appeal site is a modest sized brick boundary wall and timber gate and fence which fronts onto Berwick Street.
22. Whilst it is accepted that an element of overlooking may already exist from the existing three-storey block of flats, I find that the addition of a further two stories would serve to significantly exacerbate any such issues. The flats on the proposed third and fourth floors at the northernmost end of the appeal building would directly overlook the rear garden of No 1, with the building's increased height serving to provide clearer views of the private rear garden space from the windows of the additional flats.
23. The submitted floor plans also detail that the windows on the front elevation of the proposed third and fourth floors would serve the living rooms of the respective flats, where future occupants would be likely to spend a substantial amount of time when at the property. Consequently, I find that the proposed development would likely result in the rear garden of No 1 being overlooked for

prolonged periods, causing an unacceptable loss of privacy to occupiers of the property.

24. I therefore conclude that the proposed development would cause an unacceptable level of harm to the living conditions of the occupiers of 1 Berwick Close, with particular regard to overlooking. In so far as they are a material consideration, the proposal would be contrary to Policies H7 and UD7 of the LP which seek, among other things, to ensure that alterations and extensions to existing buildings minimise the impact on neighbouring properties in terms of overlooking.

Conclusion

25. The proposal would not comply with one of the prior approval matters set out by Schedule 2, Part 20, Class A of the GPDO, namely, that concerned with the impact on the amenity of neighbouring premises. It would not therefore benefit from the provisions thereof. As such, the appeal should be dismissed.

David Jones

INSPECTOR