



Appeal Decision

Site visit made on 17 November 2022

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2023

Appeal Ref: APP/Z4310/W/22/3303117

Telegraph Service Station, Scotland Road, Everton, Liverpool L5 5AQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Patel against the decision of Liverpool City Council.
 - The application Ref 18O/3094, dated 15 November 2018, was refused by notice dated 28 April 2022.
 - The development proposed is an outline application for the erection of a four storey building to provide 14 No. student studios (use class Sui Generis) with access, scale, and layout for approval (appearance and landscaping reserved for subsequent consideration).
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr A Patel against Liverpool City Council. This is the subject of a separate Decision.

Preliminary Matters

3. The scheme originally comprised 16 student studios, which reduced to 14 during the determination period. The original outline application also proposed that only landscaping would be a future reserved matter, but both parties subsequently confirmed that appearance would also be reserved. The Council's decision was based on these amendments, and so I have reflected them in the banner heading above.
4. The site plan, floor plans, and elevation plans which were the basis of the Council's decision are not marked as indicative. However, as appearance is reserved, then those aspects within the elevation drawings which relate primarily to appearance I have taken as indicative only. I discuss this in further detail below.

Main Issues

5. The main issues are the effect of the proposed development:
 - on the living conditions of future occupiers of the building with regard to inclusive design, access, and layout; and
 - on the character and appearance of the area.

Reasons

Living conditions

6. The appeal site comprises a hand car wash facility within a wider petrol filling station forecourt. The site is adjacent to Scotland Road, a busy and wide carriageway with a number of recent four storey residential blocks to its other side as well as an area of open space. To its side and rear the site is bounded by Penrhyn Street and Wilbraham Place, which are terraced 2-storey residential streets. The remaining side consists of the modern petrol station building and pumps. The area is predominantly residential alongside a range of other uses, including St Anthony's Church which is a Grade II listed building situated nearby along Scotland Road.
7. The proposal is for a block of 14 student studios, providing 3 at ground floor, 4 on the first and second floors, and 3 on the third floor. The vehicle access and main building entrance are both off Penrhyn Street, with parking and cycle storage and a laundry room also provided within the scheme.
8. The proposal does not include a lift to access upper floors. It is appropriate to consider this matter at this time because matters of layout and access are for approval. Provision of a lift could not later be achieved at a future reserved matters stage without major amendments to the layout. The Town and Country Planning (Development Management Procedure) (England) Order 2010 defines 'access' as "the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network." The Order defines 'layout' as "the way in which buildings, routes and open spaces within the development are provided, situated and orientated in relation to each other and to buildings and spaces outside the development."
9. The Liverpool Local Plan 2013-2033 (2022) policy UD5 criteria 1) requires all new buildings to fully meet the requirements of inclusive design principles. Similarly, policy UD4 'Inclusive Design' criteria 1) identifies that "all development proposals, by virtue of their location and physical features, should meet the highest standards of accessibility and inclusion so that all potential users, regardless of mental or physical ability, age or gender can use the development safely and easily." I do find that policy UD4 criteria 2) is not relevant as it only relates to any building which the public may use, and guests of residents or people who are working on behalf of the management company would not fall under this category.
10. Criteria 8) of policy UD4 is also applicable, requiring residential development proposals to meet the requirements set out in Local Plan policy H12 'Accessible Housing'. H12 in turn requires that all new homes should provide quality living environments for residents both now and in the future, and contribute to delivering sustainable communities. Furthermore, Local Plan policy H5 relates specifically to student housing provision. While the scheme meets the majority of the H5 criteria, 2a) requires that the design, security, space, specification and facilities, and access arrangements provides high quality accommodation. Overall, I find this suite of policies provides a compelling requirement for the proposed development to address the needs of all people.
11. Additionally, the National Planning Policy Framework ('the Framework') paragraph 92 specifies that planning decisions should aim to achieve healthy,

inclusive and safe places which promote social interaction, and are safe and accessible. Paragraph 130 identifies that planning decisions should create places that are safe, inclusive, and accessible, and promote health and well-being, with a high standard of amenity for existing and future users.

12. I acknowledge that the proposed development is designed to Building Regulations Part M(4)2 standards as regards aspects such as door widths, stair risers, and handrails. The appellant has also sought to make the scheme accessible through the provision of 2 ground floor flats which are suitable to meet the needs of students who are wheelchair users. I recognise that this is almost 3 times higher than the requirement of 5% under Local Plan policy H5 criteria 3). A further ground floor flat also allows for fully level access. I also note that the proposed development has been designed to be capable of future adaptation to other uses. Local Plan Policy H5 criteria 4) provides particular encouragement to such schemes. Overall, these are moderate benefits of the scheme alongside its general contribution of new student flats.
13. However, without provision of a lift, any residents and visitors with mobility problems would be disadvantaged. This would include residents who may have no initial issue with choosing an upper floor unit, but subsequently develop a physical ability issue during the course of their tenancy. Furthermore, I would expect a small development of only 14 students to generate a sense of community and friendship in excess of that to be expected in a larger scheme, or in a non-student residential scheme, and for the majority of prospective residents to hope for this as part of their student experience. This need is further amplified due to the site's location some distance away from the main university campuses, where other key student social space would be located. Precluding any ground floor residents with mobility impairments from socialising with other students on the upper floors would thus be socially exclusionary.
14. In exercising my function on behalf of a public authority, I have also had due regard to the Public Sector Equality Duty contained in the Equality Act 2010. Since my decision has the potential to affect persons with the protected characteristic of disability, I have considered the three equality aims set out in Section 149 of the Act, being the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations. I find that as outlined above, the lack of provision of a lift for 4-storeys of student accommodation in this location would not fully support these aims.
15. No exceptional circumstances for the lack of a lift have been suggested. The proposal is for a new building and so there would be no particular limitations in terms of access and layout in this regard, in demonstrating those highest standards of accessibility and inclusion as required under policies UD4 and UD5.
16. In conclusion therefore, I have noted the positive aspects of the proposal in providing new student flats, accessibility of wheelchair user flats on the ground floor, and the ability for adaptation to other uses. It is a finely balanced judgement, however, due to the lack of lift provision to upper floors the proposed development would result in harm to the living conditions of future occupiers of the building with regard to inclusive design, access, and layout. This would thus be contrary to the Local Plan policies UD4, UD5, and H5, and the Framework Sections 8 and 12 with regard to matters of inclusive design.

Character and appearance

17. As highlighted above, only matters of access, layout, and scale are submitted for approval. The Town and Country Planning (Development Management Procedure) (England) Order 2010 defines 'scale' as "the height, width and length of each building proposed within the development in relation to its surroundings." From an understanding of layout and scale together, the visual appearance of the building can therefore be surmised as relates to its 3D position and general interaction with the buildings and spaces around it.
18. The ultimate appearance of the building, including its finishing materials and detailed design elements, is reserved for future consideration. The Order defines 'appearance' as "the aspects of a building or place within the development which determines the visual impression the building or place makes, including the external built form of the development, its architecture, materials, decoration, lighting, colour and texture."
19. The Council's concerns relate to the scheme's detailed design and appearance, while acknowledging that appearance is reserved. Its justification is that the necessary resulting amendments would be so impactful and intrinsic to the scheme, that its layout would be affected to the extent of a reduction in the number of units. This could not therefore be satisfactorily addressed under a future reserved matters application for appearance.
20. The Council takes issue with a lack of defensible space alongside ground floor windows impacting on the residential amenity of the future occupants. This was not a standalone reason for refusal, but a need for adequate privacy for occupants is encompassed within the Local Plan policy UD2 criteria m). It is therefore relevant to my consideration, and I agree that the scheme needs to better address this, notwithstanding that the elevation was moved to this position at the Council's request in order to address other streetscene character matters.
21. Pushing back the ground floor windows to create alcoves and a plinth effect would overcome these issues, as suggested by the Council. However, the resulting slight reduction in the internal space of the studios would be more aligned with external appearance rather than layout. The general arrangement of the layout would not be materially different in the overall context of the proposed development. I am also satisfied from the size and positioning of the ground floor flats, and bearing in mind that they must remain suitable to meet the needs of students who are wheelchair users, that a minor reduction in floorspace for some form of window alcove would still achieve suitable internal space and living conditions for potential occupiers.
22. Furthermore, the creation of alcoves is only one solution to the issues, and there may be alternative appearance and landscaping solutions which could be suggested by the appellant. Because these are reserved matters, the solution should therefore be assessed in full in a future such application. I am therefore comfortable that the scheme complies with policy UD4 in this regard insofar as the matters before me.
23. The plans also show an overall lack of fenestration and articulation in the side and rear elevations, creating an expanse of brickwork, alongside a lack of hierarchy to the windows on the front elevation. This would make the building too dominant and out of character with the streetscene and the other buildings

along Scotland Road. The Council also references a concern of insufficient daylight within the units. However, these are only indicative plans insofar as appearance is a reserved matter. As above, I do not consider that the potential insertion of additional or larger windows, or other measures to break up the solid to void ratio and to provide more daylight, would be so fundamental to the scheme's design that it would require an overall layout amendment.

24. I disagree that there is an overriding need to provide a doorway from Scotland Road in terms of legibility of the building or its primary entrance. It would still be clear for visitors where the entrance is located just a short distance away on Penrhyn Street. This lack of front entrance would also not be conspicuous within the context of the surrounding streetscene buildings. The majority of views of the building would also be at some oblique extent, and therefore would include part of the side elevations to give an increased impression of activity. Overall, I do not find that there is a requirement to amend the location of the stair core and thus the overall layout.
25. The Council's preference for a duo-pitched roof may be addressed at a future reserved matters stage. I note the Council's concerns regarding the windows facing the petrol station potentially precluding future redevelopment. This would be exacerbated by the insertion of further windows into habitable rooms in order to resolve the issues outlined above. However, I have seen no evidence that the petrol station site is likely to come forwards for redevelopment, or a policy requirement to consider this in detail. Any future scheme would be able to take its context and relationship with existing windows into account at that time.
26. I also have a statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the impact of the proposal on the special architectural and historic interest of listed buildings and their settings. Section 16 of the Framework also requires that great weight should be given to the conservation of designated heritage assets. St Anthony's Church is a Grade II listed building approximately 65m further to the north along Scotland Road. Its external significance within this part of the streetscene derives from its historic association with the surrounding area, and attractive architectural ornamentation with its associated height and massing. It has a clear and imposing stature as a place of worship.
27. The Council considers that the setting of St Anthony's Church would not be impacted by the appeal proposal, because views of the side flank elevation of the church from the south are already impeded by existing residential and commercial properties. I agree with this conclusion. The student flats would be higher than the existing buildings, but due to the separation distance from the Church, and because other buildings are in between, the proposed development would not detract from the setting of the church. I therefore find that no harm would arise.
28. In conclusion therefore, the proposed development would not result in harm to the character and appearance of the area, insofar as the matters before me for consideration. This would comply with the Liverpool Local Plan policies UD1, UD2, UD5, and the Framework with regard to matters of design. Together these policies aim for all new buildings to be designed to the highest design standards, to retain local character and distinctiveness, and for layout and form to demonstrate appropriate scale and massing in its context and function.

Other Matters

29. I acknowledge the detail with which the appellant has compared the development plan policy context for the June 2019 Committee, compared to that for the April 2022 Committee. However, this does not affect the primacy of the current development plan context on which I have based my decision. I have therefore not addressed in detail the differences in this regard. The Council's management of its decision making over this period, including any variance in details which the Committee considered to be reserved matters, has similarly not affected my judgement.
30. The appellant has submitted a signed and dated Unilateral Undertaking as a planning obligation under section 106 of the Town and Country Planning Act 1990. As the proposed contributions were not an item of key concern for the Council in its initial decision, and because I am dismissing the appeal for other reasons, there is no need for me to consider this matter further.

Conclusion

31. While I have identified that the proposed development would not result in harm to the character and appearance of the area, I have found harm would be caused to the living conditions of future occupiers. The proposal conflicts with the development plan as a whole, and with no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L Hughes

INSPECTOR