



Appeal Decisions

Site visit made on 17 January 2023

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 March 2023

Appeal A Ref: APP/M4320/W/22/3307024

101 South Road, Waterloo, Merseyside L22 0LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Harold Jones Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/01361, dated 6 July 2022, was refused by notice dated 26 August 2022
 - The development proposed is the retention of a ground floor Class E use, and change of use of the 1st and 2nd floors from Class E (former bank) to form an 8 bedroom sui generis HMO with an associated rear deck extension to provide 2 floors of external amenity space, with refuse and cycle storage in the rear yard, replacement windows and reinstatement of original entrance door to provide access via Neville Road, the latter works already subject to approval under permission DC/2022/00340.
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Appeal B Ref: APP/M4320/W/22/3307028

101 South Road, Waterloo, Merseyside L22 0LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Harold Jones Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/01399, dated 9 July 2022, was refused by notice dated 26 August 2022
 - The development proposed is the retention of a ground floor Class E use, and the change of use of part of 1st and 2nd floors from Class E (former bank) to form a 5 bedroom Class C4 HMO with an associated rear deck extension to provide 2 floors of external amenity space, with refuse and cycle storage in the rear yard, replacement windows and reinstatement of original entrance door to provide access via Neville Road, the latter works already subject to approval under permission DC/2022/00340] [this application calls to be considered in context with the sister/concurrent PDR application proposing 2 class C3 flats in the remaining parts of the 1st and 2nd floors].
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Appeal C Ref: APP/M4320/W/22/3307322

101 South Road, Waterloo, Merseyside L22 0LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Harold Jones Limited against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2022/01358, dated 5 July 2022, was refused by notice dated 26 August 2022.
 - The development proposed is the retention of a ground floor Class E use, and the change of use of 1st and 2nd floors from Class E (former bank) to form a 5 bedroom Class C4 HMO with associated refuse and cycle storage in rear yard (with flat roof extension), and replacement windows minor external works and reinstatement of original door to provide access via Neville Road, the latter works already subject to approval under permission DC/2022/00340.
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Preliminary Matters

1. In the interests of clarity, the descriptions of the development have been amended based on those used by the local planning authority (lpa) in each of the decision notices. The appeals have been determined based on:

Appeal A. the change of use of the first and second floors of a former bank (Class E) to an 8 bedroom House in Multiple Occupation (HMO) (Sui Generis), with a rear deck extension to provide amenity space.

Appeal B. the change of use of the first and second floors of a former bank (Class E) to a 5 bedroom House in Multiple Occupation (HMO), with a rear deck extension to provide amenity space.

Appeal C. the change of use of the first and second floors of a former bank (Class E) to form a 5 bedroom House in Multiple Occupation (HMO) with associated refuse and cycle storage in the rear yard with a flat roof extension.
2. The applications, the subject of Appeals A and B were refused for the same 3 reasons, inadequate living and outdoor amenity space, the effect of the decks on (a) the street scene and (b) neighbours' living conditions. The application the subject of Appeal C was refused for a single reason, a lack of private outdoor amenity space.
3. In concluding on the merits of these appeals, regard has been to the various appeal decisions referred to. What these decisions show is that they were balanced decisions based on the individual features and merits of each case.

Decisions

Appeal A

4. The appeal is dismissed.

Appeal B

5. The appeal is dismissed.

Appeal C

6. The appeal is allowed, and planning permission is granted for the change of use of the first and second floors of a former bank (Class E) to form a 5 bedroom House in Multiple Occupation (HMO) with associated refuse and cycle storage in the rear yard with a flat roof extension at No. 101 South Road, Waterloo, Merseyside L22 0LS. in accordance with the terms of the application Ref DC/2022/01358, dated 5 July 2022 subject to the following conditions:
 1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, and Drawing Nos. 131 PLN E 07 Rev A, 131 PLN E 14, 131 PLN L 04 and 131 PLN P 07.
 3. No development shall commence until a noise report has been submitted to and agreed in writing by the local planning authority. The report shall show the enhancement of all walls and ceilings within the application site by a minimum of 10db above the standard within table 0.1a of Approved

Document E of the Building Regulations. The requirements and recommendations of the report shall be implemented on site and thereafter retained as such.

4. Prior to the development hereby approved being first occupied, the secure cycle parking shown on Drawing No. PLN L 07 shall be installed and made available for use. The facilities shall be retained thereafter, without impediment to the intended use, for the lifetime of the development.
5. Prior to the development hereby approved being first occupied, the secure refuse store shown on approved plan PLN L 07 shall be installed and made available for use. The facilities shall be retained thereafter, without impediment to the intended use, for the lifetime of the development.

Main Issues

7. These are:

Appeals A & B

1. Whether the proposal would provide satisfactory living conditions for prospective residents, with reference to internal living and external amenity space.
2. The effect on the appearance of the street scene.
3. The implications for neighbours' living conditions with reference to outlook and privacy.

Appeal C

1. Whether the proposal would provide satisfactory living conditions for prospective residents, with reference to external amenity space.

Reasons

Policy and Other Guidance

8. Development plan¹ Policy HC4 (2b) says that the conversion of a building into a HMO will be permitted where it would not result in significant harm to the character of the area or the living conditions of prospective residents and/or neighbours. Policy EQ2 indicates that development will be permitted where, amongst other things, it responds positively to the character and form of its surroundings.
9. The lpa has produced a Supplementary Planning Document (SPD) on Flats and Houses in Multiple Occupation dated June 2018. Whilst the SPD does not form part of the development plan, it provides further detail on the application of development plan policies and is a material consideration. Recognising the contribution of HMOs to a diverse housing supply, the SPD has the same overarching objective to ensure that development provides acceptable levels of accommodation and does not unacceptably affect the living conditions of neighbours.
10. To ensure that HMOs are large enough to provide suitable accommodation for prospective residents, the SPD sets out minimum room sizes depending on

¹ Sefton 2030 – A Local Plan for Sefton.

whether the property provides a shared living room/lounge area. Single-room bedsits without integral kitchen facilities and no access to a shared dining room/lounge, requires a minimum internal room size of 15 sq. m, excluding WCs/shower rooms. The SPD specifies space standards for, kitchens, lounges, dining rooms, multi-use rooms and external private amenity areas. The SPD recognises the importance of external space for, amongst other things, clothes drying and socialising and sets out a minimum requirement based on the number of units proposed. Whilst the SPD recognises there may be, limited exceptional circumstances when a lower amount of floorspace may be accepted, it indicates that, *"...under no circumstances will the Council accept the provision of no amenity space or space that is significantly below the standard."*

11. Before dealing with the mains issues, I need to address the appellant's submissions regarding a fallback position that would justify allowing these appeals. In June 2022, Prior Approval² was granted for the change of use from a bank (Class E) to 6 self-contained flats. I appreciate the appellant's obvious frustration with the lpa regarding the handling of the appeal applications. However, there are material differences as to how planning applications and Prior Approval proposals are treated. The key difference is, the limited range of matters that a lpa can address when considering a proposal under Schedule 2, Part 3, Class MA of The Town and Country Planning (General Permitted Development) Order 2015 (as amended). These matters do not include, as the SPD does, reference to the development plan and internal/external space standards. What I have before me are appeals against the refusal of planning permission for which I must address development plan policy and the SPD as a material consideration. Accordingly, the Prior Approval scheme has not been treated as a fallback situation.

Appeals A & B

Appeal A

12. This would provide 8 units each with a bathroom on the first and second floors. Whilst each floor would have a shared kitchen, there would be no shared lounge/dining room. An existing ground floor single-storey rear extension would be used as a bicycle/bin store for the HMO and the ground floor use. The bin stores would have access both to Neville Road and a rear entry between No. 101 and No. 3 Neville Road. External amenity space would be provided by increasing the height of the rear extension to decks of some 25 sq. m at first floor level and 25.9 sq. m at second floor level.

Appeal B

13. This would provide 5 units each with a bathroom on the first and second floors. There would be a shared kitchen on the first floor serving units 1 to 5 and no shared lounge/dining room. In addition, the proposal includes 2 apartments (1 and 2) each with a kitchen. This scheme would have the same arrangement for cycle/bin storage and external amenity space as Appeal A.

² DC/2022/00857

Issue 1 - Living Conditions Internal & External Space

Appeal A - Internal Space

14. Whilst the appellant's layout plan shows all the rooms exceeding the 15 sq. m requirement, the appellant's figures include the WCs/shower rooms. The planning officer's report and a plan submitted with the lpa's statement, asserts that all the rooms would fall below the required standard, albeit 2 would be marginally lower.
15. The lpa's plan shows each of the rooms edged in red, which I assume is the floorspace it measured. However, the lpa's figures cannot be relied on. First, the basis on which the lpa appears to have taken measurements is inconsistent. In all rooms, the lpa excludes the area of floor over which the entrance door arcs. However, in some rooms the area excluded is based on a straight line across the widest part of the arc, whilst in others the red line follows the arc of the door. Moreover, in measuring the area of Room 1, the lpa excludes the arc of the bathroom door, whilst in Rooms 2, 4, 5, 6, 7 and 8 it includes the arc of the door; the bathroom door in Room 3 opens inwards. Second, although the SPD is specific in that it excludes WCs/shower rooms, it makes no reference to the measurement excluding the arc of the entrance or bathroom doors. There is no explanation in the lpa's statement as to why in these cases these areas are excluded. The appellant's CAD measurement for one of the rooms, Room 5, which excludes the WC/shower room but includes the arc of the entrance door, shows an area of 12.5 sq. m. In the absence of any explanation how the lpa undertook its measurements i.e. manually or electronically, the appellant's method for measuring Bedroom 5 is more reliable, albeit it would still fall below the SPD requirement.

Appeal B

16. The appellant's layout plan shows rooms 1 to 5 exceeding the 15 sq. m requirement albeit the WC/shower room are included. The lpa's report and plan shows that rooms 1, 2, 3 and 4 fall below the required standard and that room 5 exceeds the SPD requirement. For the same reasons as above, the lpa's figures cannot be relied on. For rooms 1 and 5, the lpa includes the area of floor over which the entrance door arcs whereas in Units 2, 3 and 4 the same arc is excluded. Unlike Appeal A, the appellant does not include a CAD assessment of room floorspaces.

Conclusion on Internal Space

17. Given the above, it is impossible to come to a firm conclusion whether units would achieve the required SPD standard. All that can reasonably be concluded is that, on the balance of probabilities, more than a few of the rooms in either case would fall below the 15 sq. m set out in the SPD.

External Amenity Space

Appeals A & B

18. For both Appeals A and B, the schemes provide for outdoor space at first and second floor level. The first floor would be a largely enclosed space of just over 25 sq. m and the second floor would be open at almost 26 sq. m. Access to both areas would be via a staircase from the ground floor cycle/bin store area at the rear. The spaces would be attractive and provide usable areas for

residents for relaxation, socialising and when necessary, clothes drying. For the Appeal A scheme, the SPD would require 70 sq. m of external amenity space. For the Appeal B scheme, the lpa's report refers to an external space requirement of 40 sq. m.

19. Whilst the SPD highlights the importance the lpa attaches to the provision of private external amenity space, the SPD allows for a reduced amount of external open space based on a case by case assessment of local factors. The SPD indicates that, *"...under no circumstances will the Council accept the provision of no amenity space or space that is significantly below the standard."* As a matter of fact, and degree, a deficit of some 19 sq. m would be a significant reduction
20. The above local factors, include, accessibility to a local centre or bringing into use a vacant building. Here, the building is located right in the heart of the Waterloo local centre, a few steps away from an extensive range of facilities and a transport interchange that includes a railway station and bus station. In short it is a highly sustainable location. Moreover, No. 101 is within 400 to 850m of 3 areas of informal and formal recreational facilities. Whilst access to public open space is not a complete substitute for private amenity space, the SPD standard is something that is applied across the whole of the district. Applying the SPD requirement uncritically could rule out otherwise suitable properties where reduced or no external amenity space could not be provided because of the dense urban nature of the location. Here, where space is at a premium, consideration must be given to what harm would be caused to the living conditions of prospective residents.
21. Drawing the above together, whilst the extent of external space proposed in Appeal A is less than that required by the SPD, given the nature of the location and the usability of the proposed space, the shortfall would not result in unacceptable living conditions for prospective residents.

Appeals A and B - Conclusions on Internal & External Space

22. In terms of room size, the appellant highlights that, although some rooms do not meet the SPD requirement, (a) they would be materially larger than the minimum standard prescribed in the The Licensing of Houses in Multiple Occupation (Mandatory Conditions of Licences) (England) Regulations 2018, (b) that adjoining lpa's apply a different and lesser floorspace figure and (c) that the provision of private bathrooms would result in better quality accommodation.
23. Turning first to the space required by the licensing regulations, the key, in my view, is that the floorspace threshold is a minimum figure and it is well within the lpa's remit to set what standard it wishes to apply when determining planning applications. Similarly, what standards adjoining authorities apply is a matter for them and cannot be applied to this planning authority. As to providing better quality accommodation, access to a private bathroom would contribute to better living accommodation. However, when assessing the overall quality of a proposal it has to be assessed holistically.
24. In this scheme, whilst access to private facilities is a positive feature, the absence of a shared lounge/dining room would result in the individual rooms being the only place where residents would live, eat, socialise, and sleep. In such cases, limited space is a significant negative feature. Thus,

notwithstanding the conclusion on the acceptability of the external amenity space, when the significant deficit is taken together with the deficit in terms of room size and the absence of access to internal lounge/dining space, these proposals would not provide adequate living conditions.

Issue 2 - Street Scene

25. The Neville Road frontage of No. 101 is 3-storey and where it abuts the residential properties to the rear, it reduces to single-storey. Such a relationship is typical of areas such as this and provides a degree of openness and visual relief between the taller commercial frontage and residential areas to the rear. The existing single-storey extension, which has a depth of some 4.8m and width of some 7.1m fills the area to the rear of No. 101. The proposal would increase the overall height of the rear extension to some 8.2m. The Neville Road elevation would have a window opening at first-floor matching those on the existing side elevation. The rear elevation to the alleyway between No. 101 and No. 3 Neville Road would be a substantial area of blank brick wall. The houses on both sides of Neville Road are set back from the back of the pavement by shallow front gardens, which reinforces the sense of openness referred to above. In this context, the nature, scale and particularly the location of the extension at the back of the pavement would appear unacceptably dominant in and adversely affect the street scene.

Issue 3 - Living Conditions

26. Concerns regarding overlooking from the proposed amenity spaces would be acceptably mitigated by the disposition of existing buildings to the rear of adjoining properties and through the imposition of planning conditions. That said, the nature and projection of the extension beyond the front elevation of No. 3, as described above, would, given the limited degree of separation, appear dominant and overbearing when viewed from the front and front habitable room windows making it a less pleasant place to live.

Appeals A & B – Overall Conclusions

27. For the above reasons and having taken all other matters into consideration, these proposals would not provide acceptable living conditions for prospective residents and would unacceptably affect the appearance of the street scene and the living conditions of the occupiers of No. 3 Neville Road. Accordingly, these proposals would conflict with Policies HC4 and EQ2 and the development plan when taken as a whole.

Appeal C

28. This proposal would provide on the first and second floors, 5 units each with a bathroom. There would be a shared kitchen on the first floor and a shared lounge/dining room on the second floor. An existing ground floor single-storey rear extension would be used as a bicycle/bin store for the HMO and the unspecified ground floor use. The bin/cycle stores would have access both to Neville Street and a rear entry between No. 101 and No. 3 Neville Road. The proposal would not provide any external amenity space.
29. Whilst the lpa does not suggest that there is conflict with the SPD in terms of internal floor space requirements, the planning officer's report refers to a requirement for 40 sq. m of private external amenity space. This scheme does not provide any external amenity space and as such the lpa asserts there

would be, "...intrinsic harm arising from the shortfall in private outdoor amenity space...". Whilst the SPD allows for a reduced amount of external open space based on a case by case assessment of local factors it indicates that, "...under no circumstances will the Council accept the provision of no amenity space..."

30. In assessing the provision of private external space, the SPD refers to accessibility to a local centre and bringing back into use into use a vacant building. Here, the building is located right in the heart of the Waterloo local centre, a few steps away from an extensive range of facilities and a transport interchange that includes a railway station and bus station. Although it is a highly sustainable location the ability to provide external private space is limited. Whilst access to public open space is not a complete substitute for private amenity space, here, the building is within 400 to 850m of 3 substantial areas of publicly accessible informal and formal recreational facilities. In such locations, applying the SPD requirement uncritically could rule out otherwise suitable properties. Given the SPD standard is something that is applied across the whole of the district, consideration must be given to what harm would be caused to the living conditions of prospective residents.
31. Here, the lpa accepts that adequate internal space would be provided. Substantial areas of public open space easily accessible to residents would provide space where residents could congregate either as a group or in areas where privacy could be created should they so wish. As to the drying of clothes, this, as the appellant indicates, can be achieved through the provision of drying machines. The lpa refer to 2 appeal decisions³, dismissing proposals that provided for external amenity space albeit below the SPD. Whilst not aware of all the circumstances in those appeals, there are, in my view, significant material differences. In the case of 98-102 King Street Southport, there was a shortfall of around a two-thirds of the requirement and not all residents could access the space directly. In the case of 104 Lineacre Road, Litherland, the deficit in external amenity space was exacerbated by inadequate internal space, which is not the case here.
32. Drawing this together, whilst the proposal does not provide the external space required by SPD, No. 101 is in an area well served by opportunities for outdoor recreation and socialising with facilities being made for clothes drying. Accordingly, on this issue, the absence of external amenity space would not, on its own, not result in intrinsic harm to or result in unacceptable living conditions for prospective residents.

Other Matters

33. These include refuse storage, car parking and the use of the ground floor. Dealing first with the use of the ground floor, that is not a matter before me as part of this appeal. A change from its permitted use would require the submission of a planning application, which neighbours would have the opportunity to comment on. As to car parking, No. 101 is in a highly sustainable location where prospective residents would have access to modes of transport other than the private car. Moreover, the Council as highway authority have no objection to the proposal on parking grounds and I have no reason to disagree with that conclusion. Having observed the presence of bins in the rear alley, which I understand are used by other premises on South Road, I can understand the concern expressed. This proposal makes adequate

³ APPM4320/W/20/3248160 & APP/M4320/W/20/3256645

provision for the internal storage of refuse and the effect of refuse being stored in the alley would be for the Council to enforce under other legislation.

Overall Conclusion on Appeal C

34. For the above reasons and having taken all other matters into consideration, this proposal would not conflict with development plan Policies HC4 and EQ2 and the development plan when taken as a whole. Accordingly, the appeal is allowed.

Conditions

35. In the interests of clarity, a condition specifying the approved plans is imposed. In the interests of the living conditions of prospective residents and neighbours, conditions relating to the provision and retention of cycle parking and refuse storage are necessary.
36. The suggested condition on the submission of a noise attenuation scheme is a pre-commencement commencement condition, which the appellant indicates would be acceptable should it be considered necessary. Whilst the Noise Exposure Assessment report submitted with the application addresses and makes recommendations relating to potential noise disturbance from adjoining uses, it does not address the potential for noise transfer between the retained Class E use on the ground floor, and residential use above. Class E includes several uses that have the potential to result in disturbance and as such sound insulation would be required. Accordingly, in the interests of the living conditions of prospective residents, a condition requiring the submission and implementation of a noise attenuation scheme is necessary.
37. Where necessary in the interests of precision and enforceability, I have reworded the conditions where necessary.

George Baird

Inspector