



Appeal Decision

Site visit made on 14 February 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/Z4310/W/22/3306489

234 Menlove Avenue, Liverpool, L18 3JF

- 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 Mr Chris Convery against the decision of Liverpool City Council.
 - The application Ref 21F/0052, dated 18 December 2020, was refused by notice dated 9 March 2022.
 - The development proposed is to erect detached dwellinghouse in rear garden following demolition of existing swimming pool structure, install outdoor swimming pool, partially demolish side of 234 Menlove Avenue to create new vehicular access to rear.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Chris Convery against Liverpool City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Following the decision of the Council, the appellant has submitted an updated Bat Survey¹ in support of the appeal. They suggest that this updated information should be considered in the appeal decision. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles, the degree of engagement of all parties with the issue of the updated information, the opportunity for the Council to respond, the duty under Regulation 9 of the Conservation of Habitats and Species Regulations 2017, and the interests of fairness. On the basis that the updated report reaffirms the findings of the original survey and therefore the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the updated information into account.

Main Issues

4. The main issues are the effect of the development on:
 - the living conditions of neighbouring occupiers with particular regard to overlooking arising from the siting, scale and design of the building in conjunction with proposed ground level changes

¹ EnviroSolution Ltd. 234 Menlove Avenue, Liverpool Bat Survey June 2022

- the character and appearance of the locality
- trees
- protected species and their habitats.

Reasons

Living conditions

5. The appeal site comprises a detached 2-storey house set behind an in-out driveway and landscaping enclosed by a low stone wall. The dwelling is at the end of a row of large detached properties facing on to Menlove Avenue (A562), a broad tree-lined dual carriageway bordered by verges and pavements.
6. The site lies within a predominantly residential area. It benefits from an uncharacteristically large back garden which has a slope from northeast to southwest. It is bordered by the rear garden boundaries of residential properties fronting Menlove Avenue, Middlefield Road, Yewtree Road and one fronting Dowsefield Lane. A large detached single-storey building located close to a domestic garden shed at the southern extent of the garden includes a swimming pool. Both structures are proposed to be demolished.
7. The proposed plans show the building and paved amenity area incorporating a swimming pool to be constructed on a single level. Given the site's general slope and the existing land-forming, which has created various terraces, levels and slopes, the site would require a significant degree of cut and fill to establish the levels shown on the submitted cross-sections.
8. At the level shown, the further extent of the outside paved area on the south-western side of the building would be close to the top of the existing rear boundary fences of 12 and 14 Middlefield Road. Without screening, this would lead to undue overlooking of the neighbouring private amenity spaces. To a lesser degree, views would also be afforded into the rear garden of No16.
9. An existing tree within the grounds of No12 would provide a degree of screening. However, this is outside the control of the appellant. It could not therefore be relied upon to prevent loss of privacy. As the installation of a screen fence would be at considerable height against the ground levels of the neighbouring gardens, this would appear unneighbourly on account of an excessive overall height and non-domestic scale for boundary treatments. It would not be a suitable form of mitigation.
10. A proposal for tree planting alongside the paved amenity area could provide a degree of screening. However, there is limited detail of retaining structures to support the raised land levels. Being in such close proximity to the boundary, and partially underneath the identified canopy spread of the nearby tree, I am not persuaded that an adequate long-term vegetation screen could be provided to prevent undue overlooking of the nearest rear gardens.
11. The proposed design includes usable external roof spaces bordered by parapet walls and doorways from the accommodation to the various roof levels. Although the proposal would meet the Council's adopted interface distances between buildings, the amenity use of the terraces in close proximity to gardens of the properties fronting Middlefield Road would afford views into the private amenity areas of some of those properties. If retained, the existing

vegetation close to the boundaries of 8 and 10 Middlefield Road would provide some mitigation, however, it would not fully prevent the overlooking of those rear gardens or that at No12 which would be unscreened.

12. I note the appellant's contention that the access arrangements are for maintenance purposes only. Annex A of Circular 11/95: the use of conditions in planning permissions remains extant. It provides for the restriction to the use of roof areas which could be used for amenity purposes. Accordingly, harm arising from the use of the roofs could be addressed through a suitably worded planning condition.
13. Although the dwelling would be sited close to the rear boundaries of the properties fronting Middlefield Road, the single storey nature of the nearest element with solar panels to its roof would ensure it would not overbear on residential occupiers of those properties, including their garden areas. Two storey elements and the projecting stairwell would be at sufficient distance from surrounding boundaries to avoid any imposing sense of enclosure.
14. I note the concerns of some neighbouring occupiers in terms of potential disturbance. The comings and goings associated with a single dwelling would not be significant. The effect of vehicular activity associated with the development on occupiers of neighbouring dwellings, including No234, would not be dissimilar to that at existing residential properties where neighbours utilise forecourts, or side driveway parking.
15. In normal residential use, the occupation of the dwelling is unlikely, in my view, to give rise to any greater potential for noise or disturbance than that associated with the existing established use as a family garden. In a location of predominantly family housing, I find the effect of an additional residential unit would not be material.
16. Any noise associated with running water or use of a swimming pool would be little different to an outdoor domestic pool or water feature provided in an established residential property. Given the proposed distance to neighbouring buildings, the effects of noise and disturbance on the living conditions of nearby occupiers would not be significant.
17. For the above reasons, I find the design and siting of the scheme would result in overlooking and loss of privacy of neighbouring residents. It would conflict with Policies UD2, UD5, H7 and H13 of the Liverpool Local Plan 2013-2033 [2022] (the LLP) in relation to the need to protect the living conditions of existing residents, including the effects of overlooking and standards of privacy.

Character and appearance

18. By its nature, the existing plot contrasts significantly with the sizes, regular pattern and shape of surrounding plots. It plays a limited role in the bordering streetscapes and only serves to augment the backdrop of taller vegetation in some of the rear gardens of the neighbouring properties.
19. The modern design of the building, incorporating an amalgamation of flat-roof box elements and a variety of glazed apertures, would contrast starkly with the designs of the surrounding houses. However, as a backland site, it could only be glimpsed through the limited gaps between the buildings from the enveloping highway network. Even then, only the upper part would be visible

- where views are not screened by existing vegetation. It would be enclaved and not seen in the context of the surrounding road-fronting development.
20. Although it would be visible in the outlook from neighbouring properties to varying degrees, it would be largely read in isolation provided by the considerably larger plot size and the proposed retention of much of the existing mature boundary landscaping. As a consolidated design encompassing modern detailing elements, it would stand as an unashamedly contemporary and innovative addition in the locality but without material effect on the surrounding street-scenes.
 21. The scale of the building would be greater compared to most locally. However, it would make effective use of a considerably larger plot. Furthermore, the subdivision of the plot would retain sufficient amenity space to No234, and in a manner comparable with other residential plots nearby.
 22. The higher elements of the building would be located along the site's central axis where they would benefit from a significant sense of spacing between it and other built development. Alongside the gaps to development on Menlove Avenue and Dowsefield Lane this would, in my view, adequately temper the scale of the building against that of the surrounding 2-storey houses of similar overall height.
 23. The design would include a minor third floor element as a focal point above a main entrance. This would provide a necessary vertical element to interject in the otherwise large single-plane of the north-western elevation. This would be the most imposing façade of the building; however, views of its scale would only be fully appreciated within the site. The existing boundary hedging, proposed tree-planting close to the north-western boundary and existing garden trees beyond the site, would limit views of the whole elevation. Furthermore, the sense of scale would be reduced by the incorporation of a large area of living wall to soften its appearance.
 24. However, the combined linear scale of the building and rear terrace would work against the natural topography of the area. Notwithstanding that levels within the site have previously been altered to provide for buildings and landscape features, a considerable cut and fill exercise would be required to accommodate the proposal. As identified above, this would lead to some parts of the site being significantly higher than the levels of the adjoining gardens, particularly along the lower section of the south-eastern boundary.
 25. The introduction of such significant level changes between neighbouring plots would contrast starkly with the more graduated stepping of property levels (most evident in the properties fronting Middlefield Road and Yewtree Road). Accordingly, the layout and design would respond poorly to the site topography. It would introduce significant land level changes that are not characteristic in the surrounding residential development and would lead to a poor relationship with some neighbouring plots.
 26. In that regard, it would thereby conflict with the aims of Policies H13, UD1 and UD2 of the LLP as they seek new housing development to respond to the site characteristics, including topography, and the character of the local built environment. For similar reasons, it would conflict with the National Planning Policy Framework.

Trees

27. A roadside tree is set between the existing in-out driveway openings. These are proposed for retention in their existing positions. Although the addition of a single dwelling on the site would increase comings and goings, in general domestic use, the use of the established driveways would be unlikely, in my view, to change any effects of traffic using the crossings on the long-term health of the tree.
28. I note the Councils' arboricultural advisor has objected on the basis that the driveway within the highway is shown to be widened in the appellant's arboricultural report. However, the detailed plans accompanying the planning application identify the extent of the site area subject of the planning application. Notwithstanding that the crossing lies within the highway and outside of the appeal site, it is shown to be retained as existing on the submitted plans.
29. Subject to securing replacement planting for the removal of trees on the south-eastern boundary of the site, and adequate protection of those shown for retention, I find there would be little conflict with Policy GI 9 of the LLP as it requires the consideration of trees in development proposals, or s197 of the Town and Country Planning Act 1990, as it imposes a duty to consider adequate provision is made for the preservation and planting of trees.

Protected species

30. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development. A report, dating from April 2018, which accompanied the planning application was close to the limit of its validity when submitted. This has since been updated to include an additional survey undertaken at an optimal time of year to establish the presence, or otherwise, of protected species.
31. The report concludes that no bat roosts were present and the existing buildings due for demolition and alteration were of low or negligible suitability for roosting bats. Subject to precautionary approaches to demolition, the risk to this protected species would be negligible.
32. Similarly, avoidance measures could be secured to ensure no disturbance to nesting birds would arise. Pursuant to the findings of the updated report, these matters, and the incorporation of measures to enhance the site's biodiversity value, could be addressed through planning condition/s.
33. Concerns have been raised by third parties in respect of the use of the site by hedgehogs, foxes and other forms of wildlife, however, there is little substantive evidence to support those claims. I am therefore unable to attribute significant weight to this argument.
34. For the above reasons, I find that the site's development could take place without undue risk to protected species. It would thereby accord with the aims of Policy GI6 of the LLP to conserve legally protected species.

Other Matters

35. I note the concerns that a grant of planning permission could lead to other proposals on the land. However, those are considerations beyond the scope of this appeal and would be subject to further consideration if that were to occur. The proposals have been considered on their own merits.
36. The existing site access would remain unchanged. Vehicular entry and exit would be single direction only on account of the central reservation to Menlove Avenue. In conjunction with traffic light phasing, this would provide for safe access and egress. I find there is little evidence to suggest the continued use of the current arrangements would lead to materially greater risks to highway safety in the vicinity, and the Council's highway advisor raised no concerns in this regard.
37. Any effects from the construction period would be short-term and could be mitigated by careful construction management, which could be conditioned. The loss of a view over third party land is rarely a matter of great weight in the consideration of planning decisions. I note the other representations submitted by third parties; however, pursuant to my finding on the main issues, my decision does not turn on those matters.
38. I acknowledge that the construction and operation of the dwelling could be carried out in an environmentally friendly manner and provide economic benefits. The incorporation of 'living walls', green roofs and sustainable drainage schemes could aid air and water quality and enhance biodiversity. These are benefits of the proposal. Council Tax, however, is mitigation not a public benefit.

Conclusion

39. Whilst I have found in favour of the appellant with respect to some matters of character and appearance, protected species and trees, I do not consider these matters, or the benefits identified, outweigh the significant harm in relation to the Council's policies for protection of the living conditions of neighbouring residents and the single-level layout against the underlying site topography. The proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR