



Appeal Decision

Site visit made on 16 May 2023

by A Veevers BA(Hons) DipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2023

Appeal Ref: APP/Z4310/W/22/3313133

1-30 Beech Court, Allerton Road, Liverpool L18 3JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and 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 Mr Mike Rubinstein, RachMarc Properties, against the decision of Liverpool City Council.
 - The application Ref 21PEF/3673, dated 22 December 2021, was refused by notice dated 30 June 2022.
 - The development proposed is to erect one additional storey to existing block so as to create 9no. flats.
-

Decision

1. The appeal is allowed and prior approval is granted under the provisions of Article 3(1), Schedule 2, Part 20, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) to erect one additional storey to existing block so as to create 9no. flats at 1-30 Beech Court, Allerton Road, Liverpool L18 3JZ in accordance with the terms of the application, Ref 21PEF/3673, dated 22 December 2022, and the details submitted with it, subject to the standard conditions set out in paragraph A.2 of Part 20 of the GPDO and the additional conditions set out in the attached schedule.

Preliminary Matters

2. The description of development on the application form appears to contain a description of the appeal site and arguments in support of the proposal. These are not acts of development in themselves. I have therefore used the description from the Council's decision notice, omitting wording that is unnecessary to describe the development in my formal decision above. This description was used by the appellant for the purposes of the appeal. Consequently, I am satisfied that no party will be prejudiced by my use of it.
3. The application was amended through the submission of revised plans, which have been listed in the decision notice and to which I have had regard. However, the appellant has also submitted amended plans with the appeal. These include amendments to the number and locations of existing and proposed parking spaces.
4. Annexe M of the Planning Inspectorate's Procedural Guide (Planning Appeals – England dated February 2022) advises that if an applicant thinks that amending their application proposals will overcome the local planning authority's reason for refusal, they should normally make a fresh planning

application, and that the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought.

5. The appellant's appeal statement refers to potentially different numbers of parking spaces than those originally indicated during the application. The Council determined the scheme on the proposed parking spaces sought in the application and this was also the basis upon which consultation took place. I have had regard to the *Wheatcroft*¹ principles and in the interests of fairness, I have considered the proposal in the same way. Not to do so could potentially prejudice the interests of interested parties as I have insufficient evidence to suggest that the implications of such a change to the scheme have been fully considered. Notwithstanding that the Council would appear to be aware of the proposed change, I cannot be entirely certain there are not interested parties who did not comment on the basis of them being content with the scheme as submitted and are unaware of the proposed change.
6. Paragraph B.(15) of Part 20, Class A of the GPDO requires the local planning authority to take into account any representations made to them as a result of consultation, and to have regard to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a planning application. I have considered the appeal on the same basis.
7. In refusing the application, the Council cited Policy TP8 of the Liverpool Local Plan 2022 (LLP). However, the principle of the development is established by the GPDO. The prior approval provisions do not require regard to be had to the development plan, and I have therefore only had regard to it insofar as it is material to the matters for which prior approval is sought.

Background and Main Issue

8. Schedule 2, Part 20, Class A of the GPDO permits development consisting of works for the construction of up to two additional storeys of new dwellinghouses immediately above the existing topmost residential storey on a building which is a purpose-built, detached block of flats, as well as certain associated works.
9. The Council have concluded that the appeal scheme meets the criteria in Paragraph A.1 of the GPDO and I have no reason to find otherwise. Nevertheless, development under Class A is only permitted subject to conditions at paragraph A.2 that the developer must apply to the Local Planning Authority for prior approval for several specified matters. The Council refused prior approval specifically in respect of one matter set out at paragraph A.2, that is (a), the transport and highways impacts of the development.
10. Therefore, the main issue is whether prior approval should be granted having regard to the transport and highways impacts of the proposal.

Reasons

11. The proposal would add 9 flats to the existing development, a three storey building containing 30 flats. It is accessed by a private road off Allerton Road

¹ *Wheatcroft (Bernard) Ltd v Secretary of State for the Environment* [1982] JPL 37

which leads to several marked parking bays on each side of the access road and 19 garages arranged in three groups.

12. The Council's car parking standards are set out in Section 4 of the 'Ensuring a Choice of Travel' Supplementary Planning Document (SPD). It states that flats outside the city centre should provide 1 car space per dwelling (no maximum number of bedrooms is specified), 1 secure cycle space per flat and 1 visitor cycle stand per 10 units. In addition, 1 space per 10 flats should be reserved for people with disabilities. This would result in a requirement of 9 car parking spaces, one of which should be reserved for people with disabilities and 10 cycle spaces (9 plus 1 visitor).
13. The proposed site plan (Ref:374-L(--))07 Rev F) indicates a total of 39 formal parking spaces would be provided for the 39 flats, including the 19 garages. However, due to the limited size of the garages, both main parties agree that they are not used for the parking of cars but for storage purposes by residents of the flats. I saw at my site visit that the garages would be unlikely to accommodate most cars, particularly when the ability to open car doors is taken into consideration. Consequently, only 14 formal marked out bay spaces are presently available for the existing 30 flats, although it was apparent at my site visit that several cars were also parked informally in the garage area.
14. When these informal spaces and a clear access to the garages are taken into account, the Council suggest a total of 24 spaces would be available for the proposed 39 flats. Even if some additional vehicles could park directly in front of garages, the amount of vehicle parking would be well below the required standard set out within the SPD.
15. In addition, and in order to comply with the Council's 'Design for Access for All' Supplementary Planning Document (DASPD), the proposed two accessible spaces would be required to include a 1.2m transfer zone on both sides of each space. Despite a transfer zone only shown to one side and the rear of each space, I am mindful that the present layout does not include any formal accessible bays and the SPD requirement would require only one for the proposed development. On this basis, I consider the proposal would be acceptable.
16. Nevertheless, I recognise that the proposal would not comply with the guidance in the SPD in relation to parking provision. While the Council suggest this could lead to parking on the access road which would restrict access for emergency vehicles and obstruct other vehicles, there are double yellow lines along each side of the access road. I accept this road is private and therefore prevention of parking would be a matter for the owner to enforce. Nonetheless, having regard to the current measures already in place, I have no substantive evidence to indicate that parking in this area takes place or would be exacerbated by the proposed development. Any additional parking requirements resulting from the proposal would be likely to be dependent on opportunities to be found in surrounding streets.
17. The appeal submission is supported by a Transport Appeal Statement (egg Transport Planning Ref:TAS01 December 2022) (the TAS) that, in the interests of seeking to quantify the level of existing parking at Beech Court as well as on-street parking in the immediately surrounding area, contains parking beat surveys undertaken during early morning hours on consecutive days in November 2022. On both occasions, all 14 formal spaces at Beech Court were

occupied, and 9 cars were parked in the informal parking spaces. However, only one vehicle was parked along Allerton Road inside of a 200-metre walking distance from the site.

18. I acknowledge representations submitted by local residents that allude to a high demand for off-street parking. Although the TAS is a snapshot in time, I find this demonstrates that even though the number of vehicle parking spaces currently available at Beech Court, when discounting the garages, is below the required standard, it does not result in extensive on-street parking.
19. It has been put to me that Allerton Road is a busy retail area with several businesses, shops, restaurants and bars along it and the demand for parking in the area is high. I also acknowledge the proximity of the Calderstones High School and Calderstones Park, and the potential indiscriminate parking that might arise therefrom. While there may be high levels of demand for parking close to these areas, which would fluctuate during the day and night, during my own inspection of the local area I was able to identify a significant amount of unrestricted on-street parking opportunities between the site and these facilities. Indeed, I observed at my site visit, there was only one vehicle parked in the immediate vicinity of the appeal site, on Allerton Road, which was free-flowing and subject to a 20mph speed limit.
20. Whilst my observations represent a snapshot in time, I saw nothing to suggest that the current situation was problematic or that the surrounding streets do not have the capacity to reasonably accommodate the demand for parking from the proposal. Neither have the Council provided any substantive evidence of existing parking pressure that would be harmfully exacerbated by the proposal or to support their assertion that on-street parking is detrimental to pedestrian or highway safety. Moreover, I witnessed nothing to indicate the findings of the TAS to be either misleading or inaccurate.
21. I accept that parking on the footway should not be used to justify the retention of a two-way flow along Allerton Road. However, even when vehicles would be parked fully on the carriageway, it would not prevent vehicles passing and would potentially serve to reduce vehicle speeds in this residential area. I also note the proposed provision of secure cycle stands at the site would be a benefit of the proposal since currently there are none. Moreover, the site's position in proximity to a range of local facilities and services, including bus stops linking directly with the city centre, would be likely to promote occupation of the development without car ownership in at least some instances.
22. For the above reasons, despite the shortfall in available off-street parking spaces when measured against the SPD standard, I am satisfied that there would be no adverse effect on highway or pedestrian safety from the impact of any additional demand for on-street parking.
23. I therefore conclude that the proposal would not result in significant transport and highways impacts in the context of Part 20, Class A, Paragraph A.2 (1)(a), of the GPDO. Insofar as it is relevant to the subject matter of the prior approval, the proposal would not conflict with the objectives of paragraph 111 of the National Planning Policy Framework, which states, amongst other things, that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

24. For the same reasons, I find that the proposal would accord with Policy TP8 of the LLP in so far as this policy is material to my considerations, which seeks to ensure car parking provision is at an appropriate level taking into account the potential impact on the surrounding area. This further supports my conclusion that the transport and highways impacts of the proposed development would be acceptable.
25. Whilst the proposal would not fully comply with the guidance in the SPD and DASPD in relation to parking provision, each case must be considered on its own merits, and based on the circumstances of the site. For the reasons set out above, a decision other than in accordance with the guidance is justified in this case, but it is based on the specific circumstances of the appeal site and the details of the scheme before me.

Other Matters

26. I have given careful consideration to representations made about the proposal. With regard to the scale and appearance of the proposed development and its relationship with surrounding properties, including the separation that would be maintained, the application is accompanied by a Daylight and Sunlight Assessment Report. I consider the proposed development would not result in a significant increase in overlooking or harmful reduction in light, outlook or privacy for neighbouring occupiers in comparison to the existing situation. The Council does not contest the findings of the assessment, and I have not been presented with any technical evidence to lead me to a different conclusion. Neither would the resultant building appear at odds with its surroundings, having regard to the enclosed nature of the site and surrounding vegetation.
27. It has been suggested that the proposal, if built, would set a precedent for similar forms of development to come forward locally. However, I must consider the scheme that is before me upon its own individual merits.
28. The construction of the proposal would be likely to be disruptive and I am mindful of the effect this would have on the well-being of local residents, including within the existing flats, some of whom share a protected characteristic covered by the Public Sector Equality Duty (PSED) set out in the Equality Act 2010 (by age or disability). I have also had due regard to the three aims of that Act, including removing or minimising disadvantages that may be suffered by this group. I have also had regard to rights conveyed within Articles 8 and 1 (of the First Protocol) of the European Convention of Human Rights, as enshrined in the Human Rights Act 1998 (HRA). There would be interference with occupant's rights in respect of private and family life, and the peaceful enjoyment of possessions.
29. In considering the current proposal I need to take a proportionate approach to my application of the duties in respect of the PSED and the HRA in the light of the tests set out in the GPDO. While the construction process is likely to be intrusive, it would be short-term and any permission issued under the provisions of Part 20 is subject to a condition relating to construction management. This requires that 'before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development, which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated'.

30. The permitted development right is expressly intended to allow a building to be extended by up to 2 storeys. Even though this may result in disruption during construction, that is an inevitable consequence of permitted development. Acceptance of such is implicit in the introduction of the permitted development right, which supports the Government's objective of significantly boosting the supply of homes. On this basis, the interference is therefore necessary and proportionate, and there would not be a violation of the neighbouring occupier's rights under the HRA or the PSED.
31. Concerns have also been raised about contamination and flooding, which are relevant considerations under Paragraph A.2 (1). Nevertheless, these are not matters raised as reasons for refusal, and I have no evidence to reach a contrary conclusion to the Council that the proposal would not have a harmful effect in relation to these matters. As the resultant building would be less than 18m high, fire safety is not within the scope of consideration under Class A. Similarly, matters raised relating to the location of bins, blocked drains and reduction of greenery have been found to be acceptable by the Council and from the information before me I would agree.
32. Matters relating to the management and maintenance of Beech Court are outside the scope of the assessment of this appeal. Concerns regarding the ability of the existing building to support an additional storey, asbestos removal and other structural issues would be covered by other legislation.

Conditions

33. Planning permission granted for development under Article 3(1) and Schedule 2, Part 20, Class A of the GPDO is subject to conditions set out in paragraph A.2 of that Class which specify that:
- the development must be completed within a period of 3 years starting with the date prior approval is granted;
 - before beginning the development, the developer must provide the local planning authority with a report for the management of the construction of the development which sets out the proposed development hours of operation and how any adverse impact of noise, dust, vibration and traffic on occupiers of the building and adjoining owners or occupiers will be mitigated;
 - the developer must notify the local planning authority of the completion of the development as soon as practicable after completion and the notification must be made in writing and include the name of the developer, the address or location of the development and the date of completion; and
 - any new dwellinghouse is to remain in use as a dwellinghouse within the meaning of Class C3 of the Schedule to the Use Classes Order and for no other purpose, except to the extent that the other purpose is ancillary to the primary use as a dwellinghouse
34. Paragraph B (18) of Part 20, Class A further states that the local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval. The Council has suggested conditions that the appellant has had the opportunity to comment upon and which I have considered against advice in the Framework and

Planning Practice Guidance. As a result, I have made amendments where necessary for clarity and consistency purposes.

35. Given the conditions laid out above, a separate condition to specify the time limit for development to be carried out would not be necessary in this case.
36. Sub-paragraph (17) of Paragraph B to Part 20 sets out that development must be carried out in accordance with the details approved. In this sense, a condition listing the approved plans is reasonable to impose in the interests of certainty.
37. In the interests of promoting sustainable travel choices and positively influencing the scheme's transport and highways impact, a condition to secure the implementation and subsequent retention of the indicated cycle storage provision is necessary. Furthermore, details of the external appearance of the cycle and bin storage areas are necessary in order to ensure their appearance is acceptable.
38. The Council's suggested condition in respect of materials is related to the external appearance of the building and I consider it to be reasonable and necessary to secure harmonious architectural treatment
39. To ensure certainty and to ensure the transport and highways impacts of the proposal are acceptable, the Council's suggested condition to ensure that the parking bays layout is implemented in accordance with the submitted details is reasonable and necessary.

Conclusion

40. For the reasons given above the appeal is allowed, and prior approval granted subject to conditions.

A Veevers

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 374-L(--)01 Rev A (Existing Elevations)
 - 374-L(--)02 Rev A (Existing Plans)
 - 374-L(--)03 Rev C (Proposed Plans)
 - 374-L(--)04 Rev C (Proposed Elevations)
 - 374-L(--)05 Rev B (Key Dimensions Plans & Elevations Extracts)
 - 374-L(--)07 Rev F (Proposed Site Plan)
 - 374-L(--)08 (Site Location)
 - 374-L(--)09 (Section Location Plan)
 - 374-L(--)10 Rev C (Existing & Proposed Site Sections W-W & X-X)
 - 374-L(--)11 Rev B (Existing & Proposed Site Sections Y-Y & Z-Z)
2. The development hereby approved shall not be occupied until details of the following external works have been submitted to and approved in writing by the local planning authority:
 - (i) Bin storage facilities
 - (ii) Cycle storage facilitiesThe development shall be carried out in accordance with the approved details and retained as such thereafter.
3. The development hereby approved shall not be occupied until samples or specifications of all materials to be used in the external construction of the development have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
4. Prior to the occupation of the development hereby approved, the areas indicated on the submitted plans to be set aside for parking shall be surfaced, drained and permanently marked out or demarcated in accordance with the details and specifications shown in drawing number 374-L(--)07 Rev F. The parking shall be retained as such thereafter.

END OF SCHEDULE