



Appeal Decision

Site visit made on 2 January 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/Z4310/W/23/3326419

1A Hailsham Road, Aigburth, Liverpool L19 3QY

- 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 Simon Kinsella against the decision of Liverpool City Council.
 - The application Ref 22F/3204, dated 20 November 2022, was refused by notice dated 18 May 2023.
 - The development proposed is to erect a 2 storey detached dwelling with carport, and associated amenity space involving hard and soft landscaping, alterations to access lane, garden at 1A Hailsham Road, and part demolition of existing garages.
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Decision

1. The appeal is allowed and planning permission is granted to erect a 2 storey detached dwelling with carport, and associated amenity space involving hard and soft landscaping, alterations to access lane, garden at 1A Hailsham Road, and part demolition of existing garages at 1A Hailsham Road, Liverpool L19 3QY in accordance with the terms of the application, Ref 22F/3204, dated 20 November 2022, subject to the conditions in the attached schedule.

Preliminary Matters

2. On the 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework) later updated on 20th December 2023, together with a written ministerial statement (WMS). The revised Framework is a material consideration which should be taken into account from the day of publication. I have familiarised myself with the content of the revised Framework and the accompanying WMS. Having considered the parties' respective cases and the nature of the revisions, in light of the principles of natural justice, I have not considered it necessary to invite any submissions from the parties on the revised Framework.
3. The local planning authority amended the description on the decision notice from that on the original application form. I have used the description from the decision notice as it more accurately describes the proposed development.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site forms part of a larger site of what was originally a bowling green, which has been out of use for approximately twenty years. Two large detached properties with sizeable gardens were approved on the former

- bowling green site in 2018. The appeal site forms part of the rear gardens of one of the recently approved and built properties, 1A Hailsham Road.
6. The larger former bowling green site was bounded by the rear of properties at all sides, with a row of garages and an alleyway running along one edge of the site, separating the site from the rear of properties along Alresford Road. Access to the appeal site would be via the alleyway accessed from Hailsham Road. The proposed development would necessitate the demolition of a number of the garages.
 7. The appeal site would be bounded by the rear gardens of properties along Aigburth Road, along with the alleyway and the rear gardens of 1A and 1B Hailsham Road.
 8. The proposed development would fall within a designated Primarily Residential Area. Policy H7 of the Liverpool Local Plan 2013 -2033 (2022) (LP) highlights that within these areas planning permission will be granted for new housing development, provided that the residential character of the area and living conditions of existing residents is protected.
 9. The appeal site is within a pleasant residential neighbourhood, which largely comprises semi-detached and terraced houses. Properties tend to front the road, but are generally set back from it behind small front gardens on a strong building line. The properties have rear gardens or yards. The simple pattern of development with open frontages contributes positively to the character and appearance of the area. However, the surrounding properties are not wholly uniform in materials or style, and the overall character is one of an attractive residential area with two-storey properties from various types and eras forming an attractive and cohesive whole.
 10. The two modern detached dwellings in the immediate vicinity now form part of and add to the mixed residential character of the area. Although the majority of the surrounding buildings are terraced or semi-detached, the size and scale of the proposed modern, detached dwelling would relate well to the two large, detached properties, and would not appear incongruous in this setting. The proposed building relates well to the character of the surrounding properties in relation to building height and design with a pitched roof with gables. I therefore consider that the overall character of the area would not be significantly altered by the addition of one further detached dwelling at the appeal site, particularly when viewed in the context of the two existing modern properties and the limited views of the proposal that would be visible from the surrounding streetscapes due to the backland nature of the development.
 11. The detached dwellings are on larger plots than those of surrounding properties. Although the proposed dwelling would see the loss of part of the garden of No 1A Hailsham Road, the remaining garden area would still be of an appropriate size for the existing dwelling which would remain comfortably located within its plot. The rear garden is therefore adequate in size to accommodate the proposed dwelling, and the overall characteristic of the detached dwellings would still be one of spaciousness. The cumulative impact of backland development in this instance would not result in a cramped appearance or overdevelopment of the site.
 12. The proposal would have a garden which would be to the side rather than the rear of the proposed dwelling, which would be untypical for the locality.

However, the garden would be an appropriate size for the proposed dwelling, and despite its position to the side rather than to the rear of the proposed property, it would not be visible from the street and would be a usable private space that would function in the same way as a conventional rear garden. I consider that the positioning of the proposed garden would not cause undue harm to the character or appearance of the area.

13. Although the proposed dwelling would breach the building line of the two modern dwellings, this would not harm the established character. The proposed dwelling would be located on a different side of the larger former bowling green site than the existing two detached dwellings and would maintain the building line of the remaining garages. The proposal's size, type, scale, and design would ensure that a contextual relationship with the two modern dwellings would be achieved.
14. Policy H13 of the LP indicates that the development of backland sites on residential gardens will normally be resisted. However, there is no blanket policy ban on this type of development. The policy seeks to ensure that residential development is well designed, provides a good quality of life for occupants, and is compatible with and contributes to the distinctive character and amenity of an area whilst also achieving the optimum housing delivery on individual sites. In this particular instance I consider that the existing dwelling's rear garden would be able to accommodate the proposed development without causing harm to future or existing occupiers' living conditions. Furthermore, the proposed development would be of an appropriate design and would relate well with the surrounding dwellings.
15. Consequently, I conclude that the proposed development would not harm the character and appearance of the area. The proposal would be in accordance with Policies H13, UD1 and UD2 of the LP which require proposals for new residential development to take account of the local grain and pattern of development, ensure that the design has been considered from both a macro and micro-scale, and ensure that the cumulative impact of backland development is not to the detriment of the character and appearance of the locality.

Other Matters

16. I have carefully considered the concerns raised by interested parties, and was invited to view the appeal site from a neighbouring property on Aigburth Road. I consider that the separation distances between the proposed development and neighbouring properties would be sufficient to ensure that the proposed dwelling could be accommodated without causing material harm to neighbouring living conditions in relation to privacy, outlook or overshadowing.
17. Concerns have been raised over the condition of the alleyway at the rear of Alresford Road and photographs have been submitted from an interested party showing defects in the surface. However, given that the proposal would replace existing garages, it is unlikely to lead to a material increase in vehicle movements along the lane. A refusal of planning permission would not be justified on highway grounds, and I note that highway issues were not a reason for refusal.
18. A number of concerns were raised regarding construction disturbance, and problems regarding issues with construction when the previously approved

dwellings were developed. Whilst I have determined this appeal on its own merits, and therefore cannot consider previous breaches associated with a different scheme, I have attached a condition requiring the submitted Construction Management Plan to be adhered to throughout the construction of the scheme.

19. Regarding the ownership of the land and the garages, the appellant has certified that he is the owner of the land to which the appeal relates. I have determined the appeal on this basis.
20. It has been brought to my attention that previous applications for planning permission have been made for a greater number of properties on the site than the two dwellings that have previously been approved, and have been refused. However, I have considered this case on its merits, and with regard to local and national planning policies, and concluded that it would not cause harm for the reasons set out above.
21. I note concerns regarding the possibility that fabrication of the garages to be demolished may contain asbestos. I have attached a condition to ensure that a site investigation assessing the status of contamination, including asbestos, a risk assessment and where necessary a remediation scheme are undertaken to ensure the safety of residents and workers.
22. I have also noted concerns regarding security. However, problems regarding the previous removal of security gates do not form part of this appeal.

Conditions

23. I have considered the conditions suggested by the Council, having regard to the Planning Practice Guidance on conditions. I have amended a number of the conditions in the interest of clarity. The appellant has confirmed their agreement to proposed conditions where they are pre-commencement.
24. In addition to the standard timeframe condition, it is necessary to impose a condition requiring the development to be carried out in accordance with the submitted plans in the interest of certainty (conditions 1 and 2).
25. A condition regarding the materials to be used is necessary in order to protect the character and appearance of the area (condition 3).
26. Condition 4 is necessary to ensure that adequate on-site provision is made for construction traffic, including allowance for the safe circulation, manoeuvring, loading and unloading of vehicles, as well as parking, and to reduce impact on residential amenity and the general amenity of surrounding occupiers during construction.
27. In order to ensure that a satisfactory drainage design can be achieved for the development pre-commencement condition 5 is necessary.
28. Conditions 6,7 and 8 are necessary in order to ensure that risks from land contamination to future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.
29. A condition (9) requiring the planting of a tree has been included to ensure compliance with the Council's requirements for development.

30. I have considered the Council's suggested condition regarding the removal of permitted development rights (Schedule 2, Part 1, Classes A-F, and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)). The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance advises that conditions restricting the use of permitted development rights may not pass the tests of reasonableness and necessity. The Council considers the removal of permitted development rights is necessary to prevent overdevelopment of the site and in order to safeguard the amenities of surrounding occupiers.
31. The restrictions contained within Classes A-D and F put a limit on the size and height of extensions that may be permitted, with extensions under Class A conditioned to ensure materials used are of a similar appearance to the existing dwellinghouse. Even if those additions were made to the appeal dwelling, I consider that they would not result in extensions of such a size that would project excessively beyond the built form of the dwelling to an extent that would lead to overdevelopment of the site, nor harm the living conditions of neighbouring residents.
32. However, although permitted development built under Part 1 Class E have limitations placed on them restricting their size and extent, it would nonetheless allow for the provision of a sizable building on the appeal site, as buildings under Class E are able to cover up to 50% of the total area of the curtilage. Moreover, buildings under Class E can be constructed up to 4 metres in height with no condition requiring the use of matching materials. I consider that in this instance there is the possibility that the height, scale and positioning of such a structure could unacceptably limit the available amenity space of the appeal property and could have an unacceptable impact on the living conditions of neighbouring residents in terms of outlook. I have therefore considered it necessary and reasonable to include a condition removing the permitted development rights for Part 1 Class E (condition 10).

Conclusion

33. For the reasons given above, I conclude that the development would comply with the development plan as a whole and there are no other material considerations, including the Framework, to lead me to find otherwise than in accordance with it. As a result, the appeal is allowed.

L C Hughes

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby approved shall be carried out in accordance with the following approved drawings and supporting documents:-

- Existing Block & Site Levels Plan 100 Rev. B
 - Existing Block Plan incl. Garage Elevations 100A.
 - Proposed Block Plan 101 Rev. D
 - Proposed Ground Floor Plan Rev. D
 - Proposed Ground Floor Vehicle Tracking Plan 103 Rev. E
 - Proposed Attic Floor Plan 104 Rev. D
 - Proposed Roof Plan 105 Rev. D
 - Proposed Elevations 106 Rev. D
 - Proposed Site Sections 107 Rev. D
 - Proposed Master Plan 108 Rev. C
3. No development shall commence, other than demolition works and site clearance, until precise details of the materials to be used in the construction of the external elevations and roof of the proposed developments have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
 4. The approved Construction Method Plan shall be adhered to throughout the construction period for the development.
 5. Except for site clearance and demolition, no development shall commence until a full drainage design has been provided in accordance with the submitted drainage information and approved in writing by the local authority. The scheme shall be implemented in accordance with the approved details and managed and maintained thereafter. For the avoidance of doubt the full drainage scheme shall be drained by infiltration techniques and testing results to BRE 365 will be required to demonstrate the suitability of the ground for use of soakaways and permeable paving.
 6. No development shall take place on any phase, including any demolition, site clearance or ground works, until:-
 - a) An investigation and assessment methodology, including analysis suite and risk assessment methodologies has been submitted to and approved by the local planning authority in writing, prior to any site investigations.
 - b) A site investigation and assessment has been carried out by competent persons to determine the status of contamination including chemical, radiochemical, flammable or toxic gas, asbestos, biological and physical hazards at the site and submitted to and approved in writing by the local planning authority. The investigations and assessments shall accord with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) and identify the nature and extent of any contaminants present, whether or not they

originate on the site, their potential for migration and risks associated with them. The assessment shall consider the potential risks to

- (i) human health,
- (ii) controlled waters,
- (iii) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- (iv) adjoining land,
- (v) ecological systems
- (vi) archaeological sites and ancient monuments.

7. No development shall take place until a detailed remediation scheme (if required) has been submitted to and approved in writing by the local planning authority. This scheme shall include an appraisal of remedial options, implementation timetable, works schedule, site management objectives, monitoring proposals and remediation validation methodology. The scheme once completed must ensure that the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out [and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority] before the development is occupied.
8. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued. If no contamination is found then this should be detailed in the remediation verification report.
9. Prior to the first occupation of the dwelling details of the proposed tree to be planted shall be submitted to and approved by the local planning authority. The specification shall include the species of the tree, its position and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification. If the tree is cut down, uprooted, destroyed or dies, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Class E shall take place within the curtilage of the dwellinghouse.

END OF CONDITIONS