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# Appeal Decision

Site visit made on 5 December 2023

**by F Rafiq BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21<sup>st</sup> February 2024**

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**Appeal Ref: APP/Z4310/W/23/3318830**

**241 Vauxhall Road, Kirkdale, Liverpool L5 8TY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Kersh Worral Commercial Ltd against Liverpool City Council.
  - The application Ref 21F/0722, is dated 10 March 2021.
  - The development proposed is to erect 39 no. dwellinghouses and four storey block comprising 29 no. flats with associated parking, landscaping and ancillary works.
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## Decision

1. The appeal is allowed and planning permission is granted to erect 39 no. dwellinghouses and four storey block comprising 29 no. flats with associated parking, landscaping and ancillary works at 241 Vauxhall Road, Kirkdale, Liverpool L5 8TY in accordance with the terms of the application, Ref 21F/0722, dated 10 March 2021, subject to the conditions in the attached schedule.

## Applications for costs

2. An application for costs was made by Kersh Worral Commercial Ltd against Liverpool City Council. This application is the subject of a separate decision.

## Preliminary Matters

3. A revised National Planning Policy Framework (Framework) was published in December 2023. The main parties were provided with an opportunity to comment on the revised Framework. I have had regard to the revised Framework in reaching my decision.
4. I have taken the description of development from the appeal form as this reflects a change in the original description of development which the Appellant has stated was amended during the course of the application subject of this appeal.

## Background and Main Issues

5. The Council failed to determine the planning application within the statutory timescale. The Council has provided an Appeal Statement of Case and this sets out that had they been able to make a decision, the application would have been refused for reasons relating to the lack of affordable housing, the lack of open space provision and the lack of biodiversity net gain. The main issues therefore are:
  - whether the proposal would make satisfactory provision for affordable housing, having regard to the viability of the scheme,

- the effect of the proposal on open space provision, and,
- the effect of the proposed development on biodiversity.

## **Reasons**

### *Affordable Housing*

6. Policy H3 of the Liverpool Local Plan 2013-2033 (Local Plan), sets out the Council's policy towards the provision of affordable housing. It states the need for developments of 10 or more dwellings to ensure that 20% of the homes to be provided are affordable.
7. The appellant submitted an Economic Viability Assessment (EVA) during the consideration of the application by the Council which concluded that the provision of a policy compliant level of contribution to affordable housing would result in the development not being viable. This was assessed independently by the Council Viability Consultants who agreed that the development could not provide affordable housing as required by Local Plan Policy H3 and remain viable.
8. Although the Council has subsequently raised concerns on the lack of affordable housing provision, it has provided no evidence contrary to either the appellant's EVA or the conclusions of its own independent assessment of the evidence. I therefore conclude that the proposed development, having regard to the viability of the scheme, would be acceptable in relation to the provision of affordable housing. As such, it would not conflict with Policy H3 of the Local Plan, which seeks, amongst other matters, the delivery of affordable housing.

### *Open Space Provision*

9. Part of the appeal site is designated as an Open Space, Green Corridor and Key Recreational Route in the Local Plan. Policy GI 4 of the Local Plan sets out that proposals for development on open space, including green corridors and recreational routes will not be acceptable unless an assessment has been undertaken to show that it is surplus to requirements. Local Plan Policy GI 1 seeks to protect locally important open spaces, green corridors and recreational routes, with Local Plan Policy H14 seeking the provision of new public open space.
10. Local Plan Policy GI 4 requires consideration of visual amenity and structural value in terms of key vistas into and across the site. The Council has raised concerns the proposal will impact on important vistas across the site from Eldonian Way, part of which is elevated on a bridge, and from properties on Burrows Court and Little Court. Although views from these vantage points would inevitably change following the development, the Council has not set out how the proposal would have a negative impact. The proposal would replace the existing open space area with built development, but the former is overgrown and in a poor condition and its replacement with the proposed scheme would benefit the townscape from various views by integrating with the surrounding built form.
11. An area of open space is proposed as part of the development, however, where the required quantum cannot be appropriately achieved on site, Local Plan Policy H14 does state that a commuted sum will be required based on the cost of providing, designing and establishing an equivalent area of open space. The

Council accepted that there was a viability justification for removing all planning obligation requirements, subject to a legal agreement with a clawback provision. The appellant has provided a Unilateral Undertaking which includes for such a provision.

12. I therefore conclude that the proposed development would not have a harmful effect on open space provision. As such, it would not conflict with Policies GI 4 or H14 of the Local Plan in this regard.

### *Biodiversity*

13. Local Plan Policy GI 10 requires all major development proposals to contribute to a net gain in biodiversity in the City. Although the Council has set out that the site is a hub of wildlife activity and considers the ecological value of the site would be negatively affected, the appellant's Preliminary Ecological Appraisal Report<sup>1</sup> concluded that the site has a relatively low wildlife value. A Biodiversity Net Gain Assessment<sup>2</sup> has been provided by the appellant which finds the proposal would lead to a net change in biodiversity of 3.91% which would exceed the required gain set out by the Council.
14. Given the above, I conclude that the proposed development would not cause unacceptable harm to biodiversity. As such, it would not conflict with Local Plan Policies GI 6 or GI 10, which seek, amongst other matters, to ensure a net gain in biodiversity in the City. It would also not conflict with Paragraph 180 of the Framework, which seeks to minimise impacts on and provide net gains for biodiversity.

### **Other Matters**

15. Concerns has been raised by the Fire Authority stating that a dead-end access route longer than 20m require turning facilities. However, the appellant has set out that given the layout of the proposed development, it is not necessary for the fire service to use the full length of the road to have adequate access to all parts of the development in case of a fire, or for such fire vehicles to reverse more than 20m. As such, I do not consider the development to be unacceptable in this regard.

### **Conditions**

16. I have considered the conditions suggested by the Council, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended those suggested as appropriate.
17. I have attached a materials condition in the interests of ensuring the development's acceptable appearance in order to safeguard the area's character and appearance, as well as a condition in relation to landscaping for the same reason.
18. Conditions requiring a Construction Method Statement and a Construction Environmental Management Plan are necessary as the site is located in an area containing residential properties. A condition in relation to contamination is necessary to address such risks and a condition requiring a Risk Assessment and Method Statement for works adjacent to the canal in the interests of ensuring the structural stability of the canal. It is essential for these conditions

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<sup>1</sup> Preliminary Ecological Appraisal Report (Indigo Surveys, March 2021)

<sup>2</sup> Biodiversity Net Gain Assessment (Arbtech, September 2023)

to be pre-commencement conditions to ensure there are no adverse effects arising on living conditions, from contamination and on the stability of the canal.

19. For highway safety reasons, I have imposed conditions relating to highway improvement works, and for vehicular and cycle parking to be provided. Conditions are required in relation to drainage to address surface water run-off.
20. A condition relating to noise from any installed plant is needed in the interests of living conditions of surrounding residential occupiers. I consider a condition on the storage of waste is required for this same reason, as well as in the interest of the character and appearance of the area. A condition seeking details of the management and maintenance for the canal facilities is needed to ensure the development is not detrimental to Canal activities and in the interests of living conditions. A condition to secure Biodiversity Net Gain is also necessary, as well as a condition restricting permitted development rights in the interests of the character and appearance of the area and living conditions.
21. The suggested condition relating to electric vehicle charging is not necessary as it would duplicate other regulatory requirements, in this case the Building Regulations.

### **Conclusion**

22. I conclude, for the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal is allowed.

*F Rafiq*

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 permitted shall be carried out in accordance with the following approved plans:

GA\_100\_Existing Site Location Plan  
240-15-DAY-GA-110-PROPOSED SITE PLAN-P17  
240-15-DAY-EL-20Apartment Block, Elevations-P9  
240-15-DAY-GA-120-Apartment Block, Floor Plans – Sheet 1 of 2-P10  
240-15-DAY-GA-121-Apartment Block, Floor Plans – Sheet 2 of 2-P9  
240-15-EL-130-Proposed Street Scenes-P6  
240-15-GA-111-House type A – 3 Bedroom 2 Storey M4(3)-P8  
240-15-GA-112\_1-House Type B – 2 Bedroom 2 Storey-P5  
240-15-GA-113\_1-House Type C1 – 3 Bedroom 3 Storey-P5  
240-15-GA-113\_2-House Type C2 – 3 Bedroom 3 Storey-P5  
240-15-GA-113\_3-House Type C3 – 3 Bedroom 3 Storey-P6  
240-15-GA-113\_4-House Type C4 – 3 Bedroom 3 Storey-P5  
240-15-GA-114\_1-House Type D1 – 4 Bedroom 3 Storey-Canal  
Fronting-P6  
240-15-GA-114\_2-House Type D2 – 4 Bedroom 3 Storey-Canal  
Fronting-P5  
240-15-GA-115\_2-House Type E1 – 3 Bedroom 3 Storey-Canal  
Fronting-P5  
240-15-GA-115\_2-House Type E2 – 3 Bedroom 3 Storey-Canal  
Fronting-P5  
240-15-GA-117-House Type F – 3 Bedroom 3 Storey M4(3)-P2  
240-15-GA-118-House Type G – 4 Bedroom 3 Storey M4(3)-P2  
240-15-SE-10-Section through Site Entrance-P4  
LIV2205\_LP01\_Landscape Layout  
LIV2205\_LP01\_tree Pit Detail  
DRAINAGE LAYOUT  
Former Elaine Norris Centre – Preliminary Ecological Appraisal  
Former Elaine Norris Centre Design & Access – November 2022  
Planning Statement  
The Former Elaine Norris Centre Transport Statement Final Issue5  
Former Elaine Norris Centre\_NIA  
Former Elaine Norris Centre\_AQA  
Former Elaine Norris Centre – Preliminary Ecological Appraisal  
11944\_vauxhall\_rd\_pi\_2-32-69  
11944\_vauxhall\_rd\_fra\_2-70-259  
11944\_vauxhall\_rd\_fra\_2-25-35  
11944\_vauxhall\_rd\_fra\_2-1-24  
11944\_vauxhall\_rd\_fra\_2-36-209  
Phase I Environmental report for Land off Vauxhall Road Liverpool L5  
8TY November 2020  
Ground Secure Location Intelligence CMAPS-AAG-901277-4165-  
110920EDRGEO Land off Vauxhall Road Liverpool L5 8TY  
Elaine Norris EVA FINAL 01 22

- 3) No development above floor slab level shall take place until details and samples of all proposed external facing materials have been submitted to and approved in writing by the Local Planning Authority (LPA). Development shall be carried out in accordance with the approved details/samples.
- 4) No works shall take place, including any demolition, site clearance or ground works, until a Construction Method Statement comprehensively detailing the phasing and logistics of demolition/construction has been submitted to and approved in writing by the LPA. The method statement shall include, but not be limited to:
- (i) Construction traffic routes, including provision for access to the site
  - (ii) Entrance/exit from the site for visitors/contractors/deliveries
  - (iii) Location of directional signage within the site
  - (iv) Siting of temporary containers
  - (v) Parking for contractors, site operatives and visitors
  - (vi) Identification of working space and extent of areas to be temporarily enclosed and secured during each phase of demolition/construction
  - (vii) Temporary roads/areas of hard standing
  - (viii) Schedule for large vehicles delivering/exporting materials to and from site
  - (ix) Storage of materials and large/heavy vehicles/machinery on site
  - (x) Measures to control noise and dust
  - (xi) Details of street sweeping/street cleansing/wheelwash facilities
  - (xii) Details for the recycling/disposing of waste resulting from demolition and construction works
  - (xiii) Hours of working
  - (xiv) Phasing of works including start/finish dates
  - (xv) A public engagement strategy for the duration of the build from pre-commencement through to completion

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 5) The approved landscaping scheme shall be completed either: not later than the first planting season following first occupation of the development; or during the appropriate planting season progressively as the development proceeds, in accordance with a programme to be agreed in writing with the LPA.

All works must be carried out to BS 8545:2014 Trees: from nursery to independence in the landscape and BS 4428: 1989 Code of Practice for General Landscape Operations.

Any trees/plants which die, become diseased, damaged or are removed within 5 years of planting shall be replaced with trees/plants of similar sizes and species or as may otherwise be agreed with LPA in the first available planting season thereafter.

An audit trail of the plant stock used for the scheme must be retained for biosecurity reasons and made available to the Local Planning Authority on request.

The newly planted trees must be irrigated in accordance with following schedule and include at least 75 litres of water per session ideally delivered using watering bags. Watering must be carried out on the first working day after each date for the 3 years following the planting: 15 April; 1 & 15 May; 1 & 15 June; 1, 8, 15 & 22 July; 1, 8 & 15 August; 1 September.

- 6) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B, C, D, E and F; or Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any equivalent Order following the amendment, revocation and re-enactment thereof, the dwellings hereby approved shall not be altered or extended, and no buildings, structure, gates, fences or walls shall be erected within their curtilage except with the prior written approval of the LPA.
- 7) Except for site clearance and remediation, no development shall commence until a scheme for the design and construction of highway improvement works has been submitted to and approved in writing by the LPA. The works shall include:
  - Creation of a new vehicle access at Eldonian Way with drop kerbs and tactile paving on both sides. This includes the standard carriageway markings (give way, centre line etc.).
  - The imposition of a Traffic Regulating Order to deter parking at any time on both sides of Eldonian Way, stretching from the junction with Vauxhall Road to the junction with Colin Drive, to negate any highway safety implications of residents or visitors to the development parking on Eldonian Way.
  - Reinstating the redundant vehicle accesses at Vauxhall Road as cycleway/footway.
  - Creation of a new vehicle access at Vauxhall Road with drop kerbs and tactile paving on both sides. This includes the standard carriageway markings (give way, centre line etc.).
  - The area of footway stretching from the rear of the bus stop layby to the private boundary of the houses facing Vauxhall Road to be dedicated to the highways authority, so for future maintenance.
  - The inbound and outbound bus stops on Vauxhall Road are to be retained and upgraded to current Merseytravel specifications through a Section 278 agreement at the developers expense, to ensure they are robust for the additional use associated with the development
  - Resurfacing the footways of Eldonian Way and Vauxhall Road contiguous with/along the development site frontage to provide a continuous palette of material
  - Replacement/upgrade of street lighting necessary as part of the detailed design.
  - Drainage works necessary to facilitate the highway works.



The approved scheme shall be completed in accordance with the approved details before the development is occupied/brought into use.

- 8) No part of the development shall be occupied or brought into use until the areas indicated on the submitted plans to be set aside for 29 cycle parking spaces have been provided. The cycle parking shall be retained as such thereafter.
- 9) The development shall not be brought into use until the areas identified for parking and servicing have been surfaced, drained and permanently marked out or demarcated in accordance with the details agreed. The parking and servicing areas shall be retained as such thereafter.
- 10) The surface water drainage of the site shall be designed to prevent the discharge of water on to the public highway in accordance with a drainage design which shall be submitted to and approved in writing by the LPA and completed in accordance with the approved details before the development is occupied/brought into use.
- 11) Prior to the first occupation of the development hereby approved, details for the implementation, maintenance and management of the sustainable drainage system must submitted to and approved in writing by the LPA. Those details shall include:
  - (i) a timetable for its implementation; and,
  - (ii) a management and maintenance plan for the lifetime of the development
  - (iii) contact details must be supplied for person / company responsible for this maintenance.
- 12) The rating level of the noise emitted from any plant shall not exceed the existing background noise level. The noise level shall be determined at the nearest noise sensitive premises. The measurements and assessments shall be made according to BS4142 2014. Method for Rating Industrial and Commercial Sound.
- 13) 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 LPA 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 the LPA. The investigations and assessments shall accord with current Government and Environment Agency recommendations and guidance 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.

c) A detailed remediation scheme (if required), has been submitted to and agreed in writing with the LPA. 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.

14) After development commences and prior to first occupation;

a) Following completion of the measures identified in the approved remediation scheme and prior to occupation of any part of the development, a verification report which shall confirm the adequacy of remediation must be prepared and submitted to and approved in writing by the local planning authority before this condition will be discharged. If a phased approach to the development is being proposed, then a validation/completion report for an agreed number of plots within each of the proposed phases shall be submitted to the local planning authority and approved in writing before the condition relating to the phase in question shall be discharged.

b) If any potentially contaminated (unusual/suspect) material or flammable/toxic gas not previously identified is discovered, this must be reported in writing to the local planning authority and a further assessment and a revised remediation scheme will be required by the LPA. If no contamination is found then this should be detailed in the remediation verification report.

15) Any waste generated to be discarded as refuse or recycled shall be kept within the curtilage of the premises and shall only be placed outside the premises on the appropriate refuse collection day.

16) Prior to any development (including demolition/site clearance) within 15m of the existing canal wash wall on the western site boundary taking place, the appellant shall first have secured and implemented a scheme of investigation (the content of which to be first approved in writing by the LPA) to establish the existing structural condition of the canal wash wall, the extent to which any proposed works associated with the development will increase loadings on the wall and the need for any rebuilding or strengthening works as may be necessary to ensure that the structural integrity of the canal wall can be maintained. The report shall also set out the ongoing management and maintenance of the canal wall.

Any works on or adjacent to the canal wall shall thereafter only be carried out in strict accordance with the recommendations set out in the approved scheme of investigation and the findings of the report. The agreed remedial works to the canal wall shall be carried out in full.

- 17) No development shall take place until a Risk Assessment and Method Statement outlining all works to be carried out adjacent to the canal has been submitted to and approved in writing by the LPA. The details shall:
- demonstrate that additional loads from the permanent or any temporary works, plant and machinery or storage of materials would not harm the structural integrity of the canal infrastructure;
  - provide cross sections showing the distance from the canal to the proposed buildings, new towpath, boundary walls and towpath access ramps. The cross section should include annotated levels and distances;
  - include the design, depth and means of construction of the foundations of the buildings, towpath, boundary wall and access ramps, together with any other proposed earthmoving and excavation works required in connection with demolition or construction of the buildings;
  - details specifying how the canal will be protected during the works and include any details of proposed protective fencing to be erected to safeguard the waterway infrastructure during construction;
  - include the steps to be taken to prevent the discharge of silt - laden runoff, materials or dust or any accidental spillages entering the canal.

The development shall only be carried out in strict accordance with the agreed Risk Assessment and Method Statement.

- 18) No works shall take place, including any demolition, site clearance or ground works, until a Construction Environmental Management Plan (CEMP) describing how construction will be managed to avoid, minimise and mitigate any adverse construction effects on the environment has been submitted to and approved in writing by the LPA. The CEMP shall include:
- A plan showing the areas of storage of plant and materials used in constructing the development;
  - Include the steps to be taken to prevent the discharge of silt - laden runoff, materials or dust or any accidental spillages entering the waterway;
  - Details specifying how the waterway corridor and its users would be protected during the works and include any details of proposed protective fencing to be erected to safeguard the waterway infrastructure during site clearance/construction.

The approved Construction Environmental Management Plan shall be adhered to throughout the construction period for the development.

- 19) Prior to the first occupation of the residential dwellings hereby approved a management and maintenance plan for the proposed canal facilities

building shall be submitted to and agreed in writing by the Local Planning Authority. The details shall also include the arrangements for boaters using the moorings to be able to access the facilities. The facilities shall be operated in strict accordance with the agreed details.

- 20) Other than works of demolition and site clearance, no development shall take place until a full drainage scheme, with evidence of an assessment of the site conditions, has been submitted to and approved in writing by the LPA. The development shall be carried out in accordance with the approved details.
- 21) Prior to the first occupation of any part of the development, full details of a Plan setting out the details of the delivery, management and monitoring of Biodiversity Net Gain (BNG), shall be submitted to and approved in writing by the LPA. The BNG delivery, management and monitoring shall be implemented in accordance with the agreed details and timetable, and all measures shall be retained and maintained thereafter in accordance with the approved details.

### **End of Conditions**