
Appeal Decisions

Site visit made on 4 June 2024

by S Hunt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2024

Appeal A Ref: APP/Z4310/W/24/3338504

Land bound by Great George St, St James St, Duncan St, Upper Pitt St and Cookson St and Hardy St, Liverpool L1 7BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by conditions of a planning permission.
 - The appeal is made by Ascot Capital Liverpool Limited against the decision of Liverpool City Council.
 - The application Ref 23DIS/1133 sought approval of details pursuant to condition Nos 10, 12 and 16 of planning permission Ref 18F/2727.
 - The development proposed is demolish existing structures and erect a mixed use development over 7 buildings (2-18 storeys) comprising 466 apartments and 37 townhouses (Use Class C3), 6,280sqm of commercial space (A1,A2,A3,A4,D1 and D2), 6,074sqm hotel (Use Class C1) and 4,183sqm of office space (Use Class B1) with associated access, parking, servicing, so and hard landscaping and public open space.
 - The details for which approval is sought are: Condition 10 relating to contamination investigation and assessment, and conditions 12 and 16 relating to surface water drainage.
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Appeal B Ref: APP/Z4310/W/24/3338505

Land bound by Great George St, St James St, Duncan St, Upper Pitt St and Cookson St and Hardy St, Liverpool L1 7BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval to details required by a condition of a planning permission.
 - The appeal is made by Ascot Capital Liverpool Limited against the decision of Liverpool City Council.
 - The application Ref 23DIS/1134 sought approval of details pursuant to condition No 15 of planning permission Ref 18F/2727.
 - The development proposed is demolish existing structures and erect a mixed use development over 7 buildings (2-18 storeys) comprising 466 apartments and 37 townhouses (Use Class C3), 6,280sqm of commercial space (A1,A2,A3,A4,D1 and D2), 6,074sqm hotel (Use Class C1) and 4,183sqm of office space (Use Class B1) with associated access, parking, servicing, so and hard landscaping and public open space.
 - The details for which approval is sought are: Condition 15 relating to highway improvement works.
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Decision

1. Appeal A is allowed, and the details submitted pursuant to conditions 10, 12 and 16 attached to planning permission Ref 18F/2727 in accordance with application Ref 23DIS/1133 are approved.

2. Appeal B is allowed, and the details submitted pursuant to condition 15 attached to planning permission Ref 18F/2727 in accordance with application Ref 23DIS/1134 are approved.

Background and Main Issues

3. Planning permission was granted for a mixed-use development in June 2020 (Ref 18F/2727). The permission is subject to 51 conditions, many of which require additional details to be approved by the Council. The evidence indicates that only conditions 10 (contamination investigation and assessment) and 15 (highway improvement works) are disputed in these appeals, and that the Council are satisfied with conditions 12 and 16 relating to surface water drainage details.
4. Consequently the main issues in this case are whether the details submitted in respect of the contamination investigation and assessment and the highway improvement works meet the requirements of conditions 10 and 15 respectively.

Reasons

Contaminated Land

5. Paragraph 189 of the Framework advises that planning decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from contamination, and proposals for mitigation including land remediation. Adequate site investigation information, prepared by a competent person, should be available to inform the assessment.
6. Condition 10 requires a phased approach to investigation and assessment of contamination, for which a methodology should be submitted and approved prior to any investigations. The assessment should consider risks to a variety of receptors. Depending on the results of the investigation and assessment, a detailed remediation scheme may be required.
7. The planning application was accompanied by a Phase I Site Appraisal (July 2015). A Phase II Ground Investigation Report (April 2023), based on the Phase I investigations, accompanied the application to discharge condition 10. The reports were carried out by competent persons.
8. The Council's refusal of the application to discharge condition 10 is on the basis that a complete ground gas risk assessment (six rounds of gas monitoring) had not been provided. The Phase II report (April 2023) included the findings from two rounds of gas monitoring, and identified a further four rounds would take place over the following months. An updated Phase II report (June 2023) was subsequently submitted, together with a Phase III remediation strategy report. However, it is unclear whether these were seen by the Council prior to making its decision on the application in August 2023.
9. The appellant puts that it is standard practice to submit Phase II reports with preliminary readings and to thereafter issue a supplementary statement with updated data. Nonetheless, submission of an application should be expected to be complete, without further information to be submitted at a later date unless specified or requested. The condition is broadly worded to cover a range of risks and it does not expressly refer to a specified number of rounds of gas monitoring. Notwithstanding this, it follows that the assessment would take

into account the Phase I Site Appraisal which makes reference to the methodology for ground gas being in accordance with CIRIA C665 'Assessing risks posed by hazardous ground gases to buildings'.

10. I note that no formal consultation response from the Council's specialist Environmental Protection team was provided with the application. The Contaminated Land Officer has since provided a response with the Council's statement of case, confirming agreement with the completed ground gas risk assessment.
11. The statement of case clarifies the Council's satisfaction with condition 10 (together with conditions 12 and 16). Consequently, I have no reason to disagree that the submitted information adequately meets the requirements of the condition in accordance with Liverpool Local Plan (LLP) policies STP2, R1 and R3 which amongst other things require proposals to minimise adverse impacts on the environment, and demonstrate that appropriate measures are incorporated for avoidance and control of pollution impacts.

Highway Improvement Works

12. Condition 15 requires approval of a scheme for the design and construction of highway improvement works. The condition sets out a range of works expected to be included, however the decision notice and officer report do not specify which details are lacking. The consultation response from the Highway Authority (4 July 2023) confirms their holding objection whilst the agreement under Section 278 of the Highway Act 1980 (s278) is completed, but makes no comment on the submitted information.
13. It is usual for a Grampian type condition to be imposed requiring details of certain highway works to be submitted and agreed, in the expectation that further, more detailed drawings for technical approval will be provided separately for the purposes of the s278. The Council's approach appears to be that the relationship is interdependent, such that a delay in the s278 has led to a corresponding delay in condition discharge. It appears that technically approved drawings and the associated fee had not been received by the Highway Authority at the time of the condition discharge application. Nonetheless, there is no reference to the requirement for a s278 in the condition, given this is separate legislation.
14. The appeal submission is accompanied by a range of drawings which seek to provide all the details sought by the condition, and the appellant's highway consultant has confirmed that such details provide sufficient technical details to enable discharge of each part of the condition. There are no specific comments before me from the Highway Authority to confirm whether or not such details are appropriate for the purpose of the discharge of condition application. Furthermore, it is unclear from the evidence whether all the proposed improvement works are off-site and within the adopted highway, and indeed whether they would all be within the remit of the s278.
15. The Council's statement of case indicates that the Highway Authority has reviewed the appeal submission and advised that they are able to in principle accept the highway proposals. This is with the proviso that any alterations to the details which become evident during the s278 process should be dealt with as part of that route and also via the appropriate planning process, should the

changes be considered material. The Council goes on to conclude that the Council consider that Condition 15 may now be discharged.

16. In the absence of any comments to the contrary from the Council, I am satisfied that the submitted details adequately provide a scheme of highway improvements works as required by condition 15. This is in accordance with LLP Policies UD2, UD3, UD4, TP1, TP2, TP5, TP6 and TP8 which, together and amongst other things, seek to ensure the primacy of non-car users, be accessible, and that consideration is given to safe and efficient operation of the transport network.

Other Matters

17. The appellant suggests that the Council's approach to the wider planning position on the site, and land ownership/leasehold matters, has coloured its decision-making on the condition discharge process. Such matters do not have bearing on my decision.
18. I acknowledge that two separate applications for non-material amendments pursuant to Section 96A of the Town and Country Planning Act 1990, seeking revisions to the wording of a number of conditions (23NM/0759 and 23NM/1516), have been refused by the Council. The evidence indicates that the decisions are subject to judicial review. An application for a certificate of existing lawful development (23LE/3120) has also since been refused. Consequently, I am cognisant that the conditions contain various pre-commencement triggers, and that the three-year period in which the permission should be implemented has passed. Nonetheless, I have dealt with the appeals against refusal to discharge conditions on the face of the submissions before me. Whether the appellant can ultimately lawfully implement the planning permission is not a matter which is before me for decision.

Conclusions

19. I conclude that both Appeal A and Appeal B should be allowed.

Susan Hunt

INSPECTOR