



Appeal Decision

Site visit made on 1 July 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 July 2024

Appeal Ref: APP/Z4310/W/24/3339470

33 Balmoral Road, Fairfield, Liverpool L6 8NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr M Khan of Alkmak Ltd against the decision of Liverpool City Council.
 - The application Ref is 23F/1430.
 - The development proposed is alterations to existing building and two storey side extension to create 4 additional apartments (increase from 5 to 9 units) with associated refuse, cycle storage and landscaping
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the above banner heading is taken from the planning application form.
3. At the time of my site visit internal work had been undertaken within the appeal property and the top floor had been converted into two apartments. However, the layout of the top floor apartments was not as shown on the proposed plans. As such, neither the existing nor proposed floor plans are consistent with the layout I observed on site. Nevertheless, I have determined the appeal on the basis of the submitted plans.

Main Issues

4. The main issues are:
 - the effect of the proposed development on:
 - the character and appearance of the surrounding area, including its effect on a neighbouring tree;
 - the living conditions of the occupiers of 31 Balmoral Road, with regard to outlook and natural light;
 - whether the proposed development would:
 - provide appropriate living conditions for future occupiers, with regard to internal space, daylight and outlook;
 - create an accessible housing scheme with regard to the relevant policies of the development plan;

- provide appropriate tree planting; and
- the effect of the proposed development on biodiversity.

Reasons

Character and appearance

5. The appeal relates to a semi-detached property on Balmoral Road, currently in use as flats. The surrounding area is characterised by properties largely built in the Victorian era, with the predominant building type being semi-detached, although there are examples of short terrace rows within the vicinity of the appeal site.
6. A number of properties on this street contain a variety of pleasant design features in their front elevations. Within the appeal property these include a ground floor bay window and attractive stone detailing which surround the entrance door and all windows. The front elevation also has an overhanging eaves with a decorative running trim feature below. These design features are replicated on the adjoining property at number 35 (No.35) and this creates a strong sense of symmetry within the front elevations of this pair of semi-detached properties, resulting in a positive contribution to the street scene.
7. The positive contribution this pair of properties make to the character of the area is further enhanced by the relatively large side garden area situated either side of these properties. These side gardens are largely devoid of any structures and increase the collective prominence of this attractive pair of properties when viewed from the street.
8. In coming to this view I acknowledge that the adjoining property at No.35 has a single storey garage attached to its side elevation. However, this garage is set significantly back from the front elevation and thus does not disrupt the existing symmetry within the front elevation of this pair, nor does it impact upon the open aspect provided to the side of this building.
9. The appeal proposal seeks to erect a two-storey side extension. The extension would have a lower ridge and eaves height than the original property and would replicate some of the existing design features in the front elevation, such as the overhanging eaves, the ground floor bay window and surrounding stone detailing.
10. The proposed extension would however be significant in width and would appear as a disproportionate addition to the appeal property and detrimentally unbalance the existing attractive symmetry displayed by this pair of semi-detached properties. The harmful visual impact is only exacerbated by the proposed extension being set flush with the front elevation of the building. Furthermore, the proposal would significantly reduce the existing open aspect to the side, which is a positive feature of the appeal building and the adjoining property.
11. Overall, the proposal would therefore have a detrimental visual impact upon this pair of semi-detached properties, the street scene and the character and appearance of the area in general.
12. My attention has been drawn to other extensions on the street which have infilled existing gaps between properties. Whilst I have not been provided with the addresses and planning history details of these extensions, I observed that where there are side extensions they were not as wide as the appeal proposal

and are predominantly set back from the main front elevation of the building. This significantly reduces their prominence on the street scene in comparison to the appeal scheme. As such, none of the extensions I observed are directly comparable to the appeal proposal.

13. Additionally, to the front the neighbouring property at No.35 has a mature tree situated close to the boundary shared with the appeal site. This tree makes a positive contribution to the character and appearance of the area.
14. The appeal proposal includes external landscaping works by way of the creation of new paving which, along with the creation of a new bin storage area, would encroach into the root protection area of this adjacent tree. The appeal proposal is however not accompanied by detailed surveys or reports to fully establish the potential impacts of the appeal proposal on this tree, along with any required mitigation measures.
15. The appeal proposal therefore has the potential to cause harm to this neighbouring tree which is an existing positive landscape feature in this area. Consequently, any resultant damage to, or the loss of, this tree would also have a harmful visual impact upon the character and appearance of the street scene.
16. In view of all the above, the appeal scheme would have a harmful visual impact upon the character and appearance of the appeal property and surrounding area. Furthermore, insufficient information has been provided in respect of the potential impacts of the appeal proposal upon a neighbouring tree. The proposed development is therefore contrary to the objectives of Policies UD1, UD2, H13 and GI 9 of the Liverpool Local Plan 2013 – 2033 (2022) (Local Plan). These policies together seek to ensure, amongst other things, that development proposals take account of rhythms and patterns established by streets, spaces and built form; the relationship to existing structures; maintain or enhance the overall character and appearance of the local environment; and require a tree survey, Arboricultural Impact Assessment and Arboricultural Method Statement to be submitted where development is located within 3m of the outer extent of the canopy of any tree.
17. The proposal is also contrary to the provisions of the Framework where it states that development that is not well designed should be refused.
18. I note that there is a disagreement between the parties as to whether the appeal proposal represents an extension or a separate building, and consequently the relevance of Policy UD7 of the Local Plan. The matter of whether the appeal proposal represents an extension, or a separate building, is not ultimately determinative in my consideration of the impact of the proposal on the character and appearance of the appeal property and surrounding area. Nevertheless, I have for completeness also considered the appeal proposal against the requirements of Policy UD7 of the Local Plan.
19. In this regard, for the same reasons as those given above, I find that the appeal proposal would conflict with Policy UD7 of the Local Plan, where it seeks to ensure, among other things, that the overall character of the area is retained; and that extensions should take account of the scale, proportion and character of existing buildings.

Living conditions of neighbouring occupiers

20. The proposed extension would bring the appeal property closer to the side elevation of the neighbouring property at number 31 Balmoral Road (No.31). I

observed that No. 31 currently has four windows in its side gable elevation facing towards the appeal site, one at ground-floor, two at first-floor and one at second-floor level. I have not been provided with any plans of the layout of No.31, however the Council's submission states that this property contains self-contained flats and I have no reason to doubt this claim.

21. No. 31's second-floor window would, in the main, sit higher than the roof of the proposed two-storey extension. Thus, this window would benefit from an acceptable outlook, and receive natural light, above the roof of the proposed extension. As such, the appeal proposal would not unduly impact upon this window.
22. With regard to the other three windows at ground and first-floor levels, as detailed above I have not been provided with any plans of the internal layout of No.31. However, the Council contend that these are habitable windows. In the absence of any definitive evidence on this matter, I have exercised a balanced judgment, based on my observations on site, in relation to these windows.
23. Given the lack of openings in the rear elevation and the large size of the two windows in the rear half of the gable elevation of No.31, I consider that in all likelihood these are the only windows that serve habitable rooms in this neighbouring property. As such, based in the evidence before me, I therefore judge that these are both habitable windows.
24. However, I consider the smaller, more centrally positioned, first-floor window in the gable elevation of No.31 is unlikely to serve a habitable room, given its size and that it also appears as though this room connects to the main soil pipe, suggesting it likely serves a bathroom.
25. The Council's New Residential Supplementary Planning Guidance Note 10 (1996) (SPG) seeks to ensure a minimum separation distance of 15m is provided between a habitable room window and a two-storey wall. According to the submissions the appeal proposal would provide a separation distance of 9.22m between the extension and the two habitable windows in the side of No.31, and this is significantly below the SPG requirement.
26. I note the appellant has commented that the SPG is from 1996 and was written to support the previous Development Plan. However, the Council's submission confirms that in March 2022 it was resolved that this SPG would continue to be taken into account following the adoption of the Local Plan. As such, this SPG is a material consideration in the determination of this appeal.
27. Whilst I acknowledge that the habitable windows at ground and first-floor levels are situated in the rear half of the side elevation, the proposed two storey extension would be set flush with the rear elevation of the appeal property and would therefore be directly in line with, and project further back than, these windows. As such these windows would not benefit from an acceptable outlook beyond the rear elevation of the proposed extension.
28. Moreover, given the separation distance that would be achieved between the side elevation of the proposed extension and these habitable windows, the proposal would result in a loss of outlook by way of an overbearing impact and a sense of enclosure when viewed from these windows in the side elevation of No.31. Furthermore, it is also reasonable to conclude that lower levels of daylight would reach these windows due to the close proximity of the proposed extension.

29. The landscaping plan shows that a tree will be planted near to the shared boundary with No.31, close to these habitable windows. However, this tree would not fully screen views of the proposed extension or provide sufficient mitigation against the harmful effects I have identified.
30. I acknowledge the submitted plans show that five windows in the existing side elevation of the appeal property would be blocked-up, thereby reducing the levels of overlooking and loss of privacy experienced between the residents of both No. 31 and the appeal property. However, this does not mitigate against, nor overcome my concerns in respect of, the detrimental impact the appeal proposal would have upon the outlook from the habitable windows in the side elevation of No. 31.
31. In view of all the above, I conclude that the proposal would result in harm to the living conditions of the occupiers of No. 31 Balmoral Road by way of loss of outlook and natural light, and overbearing impact when viewed from the habitable windows in the side elevation of this neighbouring property. For these reasons the proposed development would be in conflict with policies UD2, H7 and H13 of the Local Plan. These policies together seek to ensure, among other things, that there is a good outlook for existing development; that proposals protect the living conditions of existing residents; appropriate separation is provided, taking into account positioning of windows; and there will be no detrimental impact on daylight.
32. Furthermore, the proposal is also considered to be contrary to paragraph 135(f) of the Framework which seeks to ensure developments provide a high standard of amenity for existing users.

Living conditions for future occupiers

33. The Council's third reason for refusal states that proposed apartments 5, 6, 8 and 9 would fail to meet the Nationally Described Space Standards (NDSS), as required by Policy H12 of the Local Plan. However, within their appeal statement the Council have confirmed that proposed apartments 8 and 9 would meet the space standards and therefore this reason for refusal only relates to proposed apartments 5 and 6. I shall proceed on that basis.
34. According to the submitted evidence, proposed apartments 5 and 6 would measure 38 square metres (sqm) and 37sqm respectively. The NDSS require single-storey one-bedroom units to have a minimum gross internal floor area of 39sqm. However, the NDSS state that where a shower room is provided instead of a bathroom, the floor area may be reduced to 37sqm. The NDSS notes also state that furnished layouts are not required to demonstrate compliance.
35. The plans submitted with the planning application show that apartments 5 and 6 would be served by bathtubs, however as part of the appeal the appellant has provided alternative plans to show that these rooms could be utilised as shower rooms, demonstrating compliance with the NDSS.
36. On the basis that it is wholly plausible that apartments 5 and 6 could include showers rather than bathtubs, I find that these apartments would adhere to the NDSS.
37. The Council's fourth reason for refusal states that proposed apartments 5, 6, 8 and 9 would all have bedrooms solely lit by rooflights, and this would be contrary to criterion (i) of Local Plan Policy H10.

38. The submitted plans show that the bedrooms serving apartments 8 and 9 are mezzanines, with rooflights and windows in the front and rear elevations of these apartments. The submitted plans show that the mezzanine bedroom would not be enclosed at the front and therefore in addition to the light received from the rooflights, they would also receive some natural light from the window in the front elevation.
39. Additionally, according to the submitted plans, apartments 5 and 6 would be open plan units, and therefore again whilst the bedrooms would primarily be served by rooflights, they would also receive some light from the windows in the rear elevation. As such, the bedrooms serving apartments 5, 6, 8 and 9 would not be solely lit by rooflights and would receive acceptable levels of daylight.
40. With regard to outlook, as per the above, apartments 5 and 6 would be open plan and an acceptable outlook would be provided from the windows in the rear elevation of these apartments.
41. Apartments 8 and 9 would be provided with an outlook from the shared lounge / kitchen area by the windows in the front elevation, as well as an additional outlook from the windows in the rear elevation. The mezzanine bedrooms would be served by a low level rooflight in the front elevation. Additionally, as the window in the front elevation can also be viewed from the mezzanine, I find that an acceptable outlook would be provided for the occupiers of these apartments.
42. I therefore conclude that the proposal would provide appropriate living conditions for future occupiers, with regard to internal space, daylight and outlook. I therefore find no conflict with Policies H10, H12 and H13 of the Local Plan, which together seek to ensure, among other things, that all homes meet the NDSS; bedrooms are not solely lit by rooflights; and levels of amenity for future residents will be maintained.

Accessible housing

43. Policy H12 of the Local Plan requires all new housing development to comply with Building Regulations Part M4(2) 'accessible and adaptable dwelling' (Part M4(2)). The Council contend that proposed apartments 5 and 6, within the existing property, would not adhere to Part M4(2) as there are no handrails on the staircases and the front entrance door does not have ramped access. These requirements could however be secured by a planning condition should I be minded to allow the appeal.
44. In respect of the proposed apartments within the new build element of the appeal proposal, the Council have highlighted a number of areas where the proposal would not adhere to Part M4(2) but some of these matters could again be addressed via a suitably worded planning condition to ensure compliance with M4(2). These include the provision of a canopy over the main entrance door, internal door widths and bathroom layouts.
45. However, it has not been demonstrated that the bedroom mezzanine floors within the two upper floor flats (Apartments 8 and 9) can provide a clear access route 750mm wide to the window. Furthermore, my attention has been drawn to the Liverpool City Council Accessible Planning Practice Note (2022) (Practice Note) which provides guidance on accessible housing matters and this document is a material consideration in the determination of this appeal. Specifically, this Practice Note requires new-build multi storey residential development, which has

two or more units located above the entrance storey and is accessed via a communal entrance and communal stairs, to have a suitable lift to access the units on the upper floor(s). This guidance within the Practice Note is applicable to proposed apartments 8 and 9 and the stairs serving these apartments do not include a lift. Furthermore, it has not been demonstrated that these stairs could be adapted to contain a lift in future if required.

46. I am not convinced that the above matters could be addressed via a planning condition and thus it has not been demonstrated that apartments 8 and 9, as proposed, would adhere to all the requirements of Part M4(2) and the Council's Practice Note.
47. I acknowledge that the proposal seeks to provide accommodation at ground floor level (Apartment 7) for a wheelchair user in accordance with Part M4(3) Building Regulations (Part M4(3)). As there is no policy requirement for this provision on a development of this scale this is a benefit of the appeal proposal.
48. While there is a disagreement between the parties as to whether apartment 7 fully adheres to the requirements in Part M4(3), given the areas of discrepancy this could be secured by planning condition. Nevertheless, while I acknowledge the benefit of providing an apartment suitable for a wheelchair user, this would not override my concerns in respect of the appeal proposal's failure to demonstrate the proposal fully complies with Part M4(2) and the Council's Practice Note in respect of apartments 8 and 9.
49. As such, I conclude that the appeal scheme has not demonstrated the proposal would create an accessible housing scheme and is therefore contrary to Policy H12 of the Local Plan where it requires all new housing developments to provide quality living environments for residents both now and in the future, and comply with Part M4(2).

Tree Planting

50. The proposal includes a landscaping scheme showing the planting of four new Common Maple trees. The provision of four trees would adhere to the subtext in Local Plan Policy GI 8 which states that as a guide, the Council will seek the provision for the planting of at least one tree per dwelling in residential developments.
51. I acknowledge the Council's concerns that this provision does not mitigate for the loss of the large trees that previously existed on this site. However, I have insufficient evidence before me as to when these previous trees were removed, and by who, and thus I cannot be sure these trees were removed to facilitate the proposed development.
52. The appeal proposal would therefore provide appropriate tree planting and complies with Local Plan Policy GI 8, which requires, amongst other things, new development to make provision on site for the planting and successful growth of new trees and landscaping.

Biodiversity

53. My attention has been drawn to the Council's Biodiversity Net Gain Policy Advice Note (published April 2023, revised March 2024) (BNGPAN), which is a material consideration, and the weight to be given to this document is a matter for the decision maker.

54. Within this document the diagram below paragraph 3.2 sets out that minor applications made before 14 June 2023 are not required to submit Biodiversity Net Gain (BNG) information (eg. Metric). However, it goes on to state that notwithstanding this, decisions need to assess whether biodiversity gain has been achieved under Local Plan Policy. In this regard, criterion 3 of Local Plan Policy GI 10 requires that all development proposals should contribute to ensuring a net gain in biodiversity.
55. The appeal scheme is accompanied by a landscape plan which shows areas of grass seeded lawns to be provided, the planting of four new trees, as well as the provision of one bat box and one bird box. I am satisfied that this landscaping plan is sufficient evidence that the appeal proposal would provide BNG on site in comparison to its existing biodiversity value.
56. The Council's submission has drawn my attention to the requirement of the BNGPAN for any potential habitat degradation of the site to be taken into consideration when determining whether the appeal proposal results in BNG. This section of the BNGPAN refers specifically to the wording within the Planning Practice Guidance (PPG), which itself draws from Paragraph 6 of Schedule 14 of the Environment Act 2021 (Environment Act).
57. The requirement for habitat degradation to be taken into account, as referred to in the PPG and Environment Act, is however only relevant in relation to applications made on or after 12 February 2024, and the appeal proposal was submitted before this date.
58. As such, whilst acknowledging the content of the BNGPAN in relation to the habitat degradation of the site, I attribute this matter very limited weight in my determination as to whether the appeal proposal provides BNG on site and its subsequent compliance with Local Plan Policy GI 10.
59. In view of all the above, through the submission of a landscape plan the appeal proposal has sufficiently demonstrated that BNG would be provided on this site, and were I minded to allow the appeal the timings for the provision of these BNG measures could have been conditioned. I therefore find no conflict with Local Plan Policy GI 10 where it requires that all development proposals should contribute to ensuring a net gain in biodiversity.

Other Matters

60. The appellant has stated that Local Plan Policy H9 provides strong support for the appeal proposal. Specifically drawing my attention to the section of this policy which relates to the support for proposals which achieve a reduction in the level of vacant housing through the refurbishment and alteration of the internal dwelling layout.
61. In respect of the above, based on my observations on site the appeal property was not vacant and appeared to have already undergone recent internal refurbishment. Notwithstanding this, I have very limited evidence before me that the appeal proposal would be the only means to achieve the refurbishment and alteration of this property.
62. Furthermore, this policy also states that planning permission will be granted subject to other policies in the local plan, and for the reasons given above I have found conflict with other policies in the Local Plan. As such, I give any

compliance with the relevant aspects of Policy H9 limited weight in favour of the appeal scheme.

Planning Balance and Conclusion

63. The provision of a mix of additional residential units in a sustainable location, and the effective use of land, are social benefits arising from this proposal, as well as positively contributing to the Council's housing land supply, albeit the benefits arising from the provision of four additional units would be limited.
64. The appellant has drawn my attention to the appeal site being located within the top 1% of the most deprived areas of the country. I therefore acknowledge that given the scale of the proposed development there would be some limited economic benefits arising from investment in this area, including employment during the construction works and additional expenditure in the area through occupation of the proposed units. Whilst a policy requirement, the proposal would also result in on-site BNG which is an environmental benefit.
65. However, these benefits would not outweigh the conflict I have found in respect of the harm the proposed development would have upon the character and appearance of the area, including the potential impact upon an existing tree within neighbouring land; the living conditions of neighbouring occupiers; and the failure to provide an accessible housing scheme.
66. For the reasons above, the proposal conflicts with the development plan when taken as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. As such, the appeal is dismissed.

R Major

INSPECTOR