



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: 30th July 2024

Appeal Ref: APP/Z4310/W/23/3332941

Land to rear Cabbage Hall Bar and Grill, Liverpool L4 2RB

- 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 Patrick Young on behalf of Young Homes Ltd against the decision of Liverpool City Council.
 - The application Ref is 22F/2019.
 - The development proposed is redevelopment of the site to provide new residential dwellings along with associated works including landscaping, highways and provision of access from Walton Breck Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address as detailed within the application form is incomplete and I have therefore amended for clarity within the above banner heading.
3. The description of development in the above banner heading is taken from the planning application form. However, the decision notice and appeal form both describe the development as *'To erect 2no. two-storey residential apartments blocks (22 units), a new vehicular access point via Walton Breck Road, associated 22no. space car park, hard and soft landscaping and associated works'*. I consider this to be a more accurate description of the appeal proposal and have therefore determined the appeal on the basis of this description.
4. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions, had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issues

5. The main issues are:
 - the effect of the proposal on the living conditions of nearby occupiers with regard to outlook and privacy;
 - whether the proposed development would:
 - provide appropriate living conditions for future occupiers, with regard to internal space, outlook, daylight, sunlight and privacy;

- provide appropriate levels of outdoor amenity space for future occupiers;
- create an accessible housing scheme with regard to the relevant policies of the development plan; and
- whether a planning obligation is necessary in respect of matters relating to affordable housing; open space; trees; employment skills and future monitoring.

Reasons

6. The appeal relates to a vacant plot of land situated to the rear of the Cabbage Hall Bar and Grill. Access to the site is obtained via Walton Breck Road and the appeal proposal seeks to erect a total of 22no. residential apartments within two separate blocks, along with associated hard and soft landscaping works, including the provision of 22no. car parking spaces.

Living conditions of neighbouring occupiers

7. Proposed Block A would be situated at the front of the site, facing onto Walton Breck Road. The Council's Officer Report details that separation distances ranging between 20.3 and 21m would be provided between the habitable windows in the front elevation of Block A and the dwellings situated on the opposite side of this highway.
8. The Council's New Residential Supplementary Planning Guidance Note 10 (1996) (SPG) seeks to ensure a minimum separation distance of 21.5m is provided between facing habitable room windows. Whilst Block A would fall slightly below the SPG guidance, the SPG does state that in practice these standards will vary depending on the character and spaciousness of the surrounding area.
9. In this regard the surrounding area is characterised by high-density housing, with the predominant house type being terrace properties. As such, there are many examples of facing habitable room windows not achieving the SPG guidance within the vicinity of the appeal site. Thus the proposed relationship between Block A and the dwellings opposite is considered to be in keeping with the character of the area and therefore acceptable.
10. To the west of the appeal site is a short row of four terrace properties (Nos. 342 – 348 Walton Breck Road), with the end property at No. 348 being closest to the appeal site. This end terrace property does not include any windows facing towards the appeal site, only a door opening.
11. The Council's Officer Report states that a separation distance of 18.7m would be provided between the gable elevation of this end terrace and the side elevation of proposed Block A, in compliance with the SPG requirements. I note that the property at No. 346 Walton Breck Road (No. 346) has a two-storey outrigger which contains windows in its side elevation facing towards the side of proposed Block A. However, given the significant separation distance that would be provided, the appeal proposal would not result in an unacceptable loss of privacy, or loss of outlook, for the occupiers of No. 346.
12. To the rear of the proposed site are residential units fronting onto St Ambrose Grove, and the rears of a number of properties on this street have habitable windows facing towards the rear of proposed Block B. The SPG states that

habitable windows in rear elevations should normally be 23m from other habitable windows.

13. According to the Council's Officer Report, separation distances of 22.5m and 18.65m would be provided between Block B and the rears of No. 4A and No. 6A St Ambrose Grove (Nos. 4A and 6A) respectively. As such, the separation distance between these properties and proposed Block B would fall below the SPG guidance.
14. However, the rear elevations of Nos. 4A and 6A would be set at an oblique angle to the rear elevation of proposed Block B and this would limit any sense of enclosure, imposing an overbearing impact resulting from the siting and height of Block B on the windows in the rear elevation of these properties. Furthermore, there are a number of mature trees within the appeal site, close to the boundary with numbers 4A and 6A, and these existing features currently reduce the outlook from the rear elevations of these properties.
15. Additionally, the submitted plans show that all first-floor windows in the rear of Block B would be obscurely glazed, thus significantly reducing any potential impacts by way of overlooking and loss of privacy for the occupiers of the properties on St Ambrose Grove.
16. In respect of the distance between proposed Block B and the rear gardens of Nos. 4A and 6A, as detailed above Block B is set at an angle to the shared boundary and the first-floor windows in the rear elevation would be obscurely glazed. This ensures that the appeal proposal would provide adequate levels of privacy in the rear garden areas of Nos. 4A and 6A. In coming to this view, I acknowledge that some existing trees close to the boundary would be removed, nevertheless the proposed relationship would be acceptable.
17. The Council have also raised concerns in respect of an overbearing impact and sense of enclosure within the rear garden areas of Nos. 4A and 6A. However, as a result of the separation distance that would be provided, and the aforementioned oblique angled position of Block B to these gardens, the appeal proposal would not have any undue impact upon these rear garden areas. Additionally, the existing trees, some of which would be removed, currently create a sense of enclosure within these rear garden areas.
18. I note that the submitted plans do not detail the finish floor levels of the proposed apartment blocks in relation to neighbouring properties, however should I be minded to allow the appeal these details could be required to be submitted by way of a suitably worded condition.
19. In view of the above, I conclude that the proposed development would not result in an unacceptable harmful impact upon the living conditions of neighbouring occupiers, by way of loss of outlook and privacy. The proposal therefore complies with Policies UD1, UD2, UD5, H7 and H13 of the Liverpool Local Plan 2013 – 2033 (2022) (Local Plan) which together seek to ensure, among other things, that development proposals take into account the local grain and pattern of development; provide a good outlook and maintain adequate levels of privacy; consider overlooking and provide appropriate separation between dwellings; and protect the living conditions of existing residents.

20. Furthermore, the appeal scheme also complies with paragraph 135(f) of the Framework which seeks to ensure developments provide a high standard of amenity for existing users.

Internal living conditions for future occupiers

21. The Council's second reason for refusal states that future occupiers of proposed Block B would not be provided with an acceptable outlook, levels of light and adequate privacy.
22. As detailed earlier, Block B would be sufficiently distanced, and angled, from the existing properties on St Ambrose Court to ensure that acceptable levels of outlook, daylight, sunlight and privacy would be provided for future occupiers in respect of the relationship between buildings.
23. To the rear of Block B however are a number of mature trees. The proposed units closest to these trees are dual aspect apartments with the main habitable windows located in the side elevations. Thus, these windows would not face towards these trees and as a result would provide adequate levels of daylight and sunlight to these apartments, as well as an acceptable outlook.
24. The Council's third reason for refusal states that a number of units within Block A would not adhere to the Nationally Described Space Standards (NDSS), with the Council's Officer Report specifying that the first-floor units within Block A fall marginally below the NDSS.
25. In assessing the proposals compliance with the NDSS the Council have determined that the first-floor units should be considered as two-storey units, as they are each accessed via a ground floor door and staircase. However, given that the main accommodation¹ serving each of these apartments is set out on one level only, I find that it is reasonable to adopt the single-storey standards to these units. When applying the single-storey standards all units would adhere to the NDSS and thus the proposed development is acceptable in respect of the provision of internal space.
26. In view of all the above, future occupiers of the proposed development would be provided with acceptable levels of outlook, daylight, sunlight and privacy, as well as sufficient levels of internal living space. Consequently, I find no conflict with Policies UD1, UD2, UD5 and H13 of the Local Plan, where they seek to ensure, among other things, that development proposals provide a good outlook and adequate privacy for proposed users; that overlooking and interface issues have been considered; and appropriate separation between dwellings is provided.
27. Additionally, I find no conflict with paragraph 135(f) of the Framework which seeks to ensure developments provide a high standard of amenity for future users.

Provision of outdoor amenity space

28. According to the submissions the proposed development would be provided with a total of 757sqm of shared outdoor garden / amenity space for residents, including the provision of 2m wide footpaths, new tree planting and 10no. benches.

¹ Bedroom; Kitchen; Living/Dining and Bathroom

29. The Council contend that the proposed development would fail to provide sufficient areas of high-quality amenity space, based on a minimum of 50sqm of outdoor amenity space being provided for each new unit. However, the Council's submission does not draw my attention to any specific policy requirement for each new residential unit to be provided with a minimum of 50sqm of outdoor amenity space.
30. Notwithstanding the above, given the aim of the Framework to make efficient use of land for housing needs, alongside the surrounding dense grain of urban development within the wider area, the proposed areas of outdoor amenity space would provide sufficient useable space for residents.
31. I therefore conclude that the proposed development would provide an appropriate provision of outdoor amenity space for future occupiers, both in terms of its size and quality. I therefore find no conflict Local Plan Policy H13 where it requires new residential development to provide adequate garden space and landscaping.

Accessible housing

32. 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)) and this is supported by the Council's Design for Access for All Supplementary Planning Document. The Council contends that the proposed first-floor apartments would fail Part M4(2), specifically the requirement to have step-free access.
33. Policy H12 of the Local Plan does however also state that where evidence is submitted to demonstrate that step-free access is not viable, there will be no requirement for adaptable and accessible housing under Part M4(2).
34. Whilst the appellant has not provided evidence as to why step-free access is not viable, their submission details that the first-floor flats are fully adaptable to allow for a stair lift to be installed in the future and this has not been disputed by the Council.
35. Furthermore, my attention has been drawn to the Liverpool City Council Accessible Housing 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 states that the city council will not require a lift within new-build walk up flats where there is only one unit on the first floor and accessed via private stairs. The proposed first floor units would all be walk-up flats, accessed via private stairs, with only one unit on the first-floor above a ground-floor flat.
36. In view of the above, given that each first-floor flats would be the only flat above a ground floor flat and have their own private staircase, as well as the appellant's comment that the flats are fully adaptable to allow for a stair lift to be installed in future, the requirement for all units to comply with M4(2) could, in this case, be secured by a suitably worded planning condition.
37. Local Plan Policy H12 also requires 10% of the units within this development to comply with Part M4(3) Part (2) (a) of Building Regulations (Part M4(3)). The submission proposes a total of 5no. units to be Part M4(3) compliant, and this equates to 23%, thus exceeding this requirement.

38. The Council's Officer Report details that the layout of these units meet the Part M4(3) standard, however raises a concern in respect of the lack of 1200mm clear access zones on both sides of the accessible car parking bays within the communal parking area. The submitted plans show a clearance on only one side of the accessible parking bays, however there is scope to increase the size of the car parking area to allow for 1200mm clear access zones to be provided either side of the accessible spaces. This matter could be dealt with via a suitably worded planning condition should I be minded to allow the appeal.
39. I conclude that subject to the imposition of conditions, the proposed development would provide quality living environments for future occupiers and contribute to the delivery of sustainable communities through the provision of accessible housing in accordance with Local Plan Policies H12 and H13, as well as the relevant sections of the Framework where it requires new development to be accessible and adaptable.

Planning Obligation

40. Local Plan Policy STP5 allows for contributions to be made to ensure that new development meets the reasonable costs of providing on and off-site infrastructure requirements to meet the needs for additional infrastructure or improvement to infrastructure. My attention has also been drawn to the Council's Advice note – Section 106 planning obligations (2022) (S106 Advice Note) which is a material consideration.
41. The Council's Officer Report provides details of contributions which they consider are required to be secured by way of a planning obligation. However, a completed planning obligation has not been provided with the appeal. In this regard the planning obligations section of the procedural guidance² states that for appeals following the written representations procedure the appellant must ensure that an executed and certified copy of the planning obligation is received at the time of making their appeal.
42. In the absence of a completed planning obligation it is however for me to determine whether a planning obligation is necessary and whether the contributions requested by the Council all meet the tests for planning obligations outlined in paragraph 57 of the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (CIL Regulations).

Affordable Housing

43. The Local Plan describes the need for affordable market housing and how its analysis predicts that from 2013 to 2033 there is a need for 386no. affordable homes per year. Local Plan Policy H3 requires schemes of ten or more units to include 20% affordable units and therefore a planning obligation is reasonable, necessary and required to secure this minimum provision of affordable housing.
44. I acknowledge that the submitted application states that the proposed development would be backed by a registered provider and would be a 100% affordable scheme. However, as detailed above a planning obligation has not been provided to secure any affordable housing as part of this proposed development.

² Planning Inspectorate Procedural Guide: Planning Appeals – England (updated May 2024)

45. Accordingly, the absence of a planning obligation to secure any affordable housing results in conflict with Local Plan Policy H3, and this weighs significantly against the appeal proposal.

Open Space and Trees

46. Local Plan Policy H14 requires new developments exceeding 10no. dwellings to provide high quality public open space on-site. Local Plan Policy GI 10 states where fairly and reasonably related to the development proposal, financial contributions through an appropriate legal agreement would be sought towards the creation of new off-site green infrastructure provision, or to enhance and improve existing provision off-site, where it is clearly demonstrated that on-site provision is not possible, beneficial or appropriate.
47. The Council's Officer Report details that where the Council agrees that on-site provision cannot be provided, an off-site sum is charged at £1,000 per dwelling and consequently the Council contend that a commuted sum of £22,000 is required for open space provision as part of this proposed development. Whilst no specific analysis has been provided, it is reasonable to assume that the fact the Council has requested an off-site contribution be secured via a planning obligation suggests they are satisfied that the required on-site provision cannot be provided.
48. Nevertheless, whilst I acknowledge that the S106 Advice Note states that the off-site sum is charged at £1,000 per dwelling, the Council has not provided any details of the methodology for calculating the figure of £1,000 per dwelling, nor any details as to where, or on which off-site open space provision, the contribution secured by any planning obligation would be spent.
49. In addition, Local Plan Policy GI 8 states that new development should make provision for on-site planting and successful growth of new trees, and where it can be demonstrated that on-site provision cannot be achieved, or off-site tree provision is more appropriate the Council will require a commuted sum based on the cost of providing and establishing new trees in the locality.
50. The Council's Officer Report states that the contribution for off-site tree planting has a rate of £800 per tree. The Officer Report continues by explaining that 22no. trees would be required and a total of 14no. trees would be provided as part of the appeal proposal. The Council therefore contend there is a shortfall of 10no. trees and consequently a £8,000 commuted sum is required.
51. Firstly, it is unclear from the Council's submission why they consider there to be a shortfall of 10no. trees when the difference between the 22no. required and the 14no. provided results in a shortfall of 8no. trees.
52. Nevertheless, again whilst I acknowledge that the off-site contribution figure of £800 per tree is taken from the S106 Advice Note, the Council has not provided any details of the methodology for calculating the figure. Moreover, there are no details before me as to where this contribution would be spent in order to provide trees off-site in the locality.
53. Accordingly, and in view of the above, I cannot be certain that the contributions sought in relation to off-site open space provision and off-site tree planting would be necessary to make the development acceptable or that

they would be directly related to the development and fairly and reasonably related in scale and kind.

54. Consequently, and notwithstanding the aims of Local Plan Policies H14, GI 8 and GI 10, on the evidence before me I am unable to conclude that a planning obligation seeking to provide these contributions for off-site open space provision and off-site tree planting would comply with the CIL Regulations and paragraph 57 of the Framework. In these circumstances the absence of a planning obligation to secure these contributions does not weigh against the development.

Employment Skills

55. The Council have requested that an Employment and Skills Statement be secured as part of any planning obligation and have drawn my attention to Local Plan Policy STP2. This policy sets out a number of key strategic sustainability principles to ensure development contributes to the delivery of sustainable development in the City and the improvement of economic, social and environmental conditions.
56. However, my attention has not been drawn to any Local Plan Policy, Supplementary Planning Document or advice note that specifically requires the submission of an Employment and Skills Statement in order to achieve the objectives of Local Plan Policy STP2. As such, I have not been provided with evidence to indicate that the requirement for an Employment and Skills Statement to be submitted is necessary having regard to the statutory tests in the CIL Regulations and the Framework. In these circumstances the absence of a planning obligation to secure this does not weigh against the development.

Monitoring

57. The S106 Advice Note states that a 15% value of the planning fee is required to support the Council's future monitoring of any planning obligation. In this case the Council have confirmed that the monitoring fee would be £1,801.80. Given the amount of officer time required to administer and manage any obligation, this requirement for a monitoring fee would be both proportionate and reasonable in this case.

Summary

58. In view of all the above, on the basis of the information before me I conclude that the requested contributions for off-site open space provision and off-site tree planting, as well as the requirement for the provision of an Employment and Skills Statement, would not comply with CIL Regulations and paragraph 57 of the Framework.
59. However, a planning obligation is required in relation to the provision of on-site affordable housing and a contribution towards the future monitoring of any planning obligation.
60. The absence of a completed planning obligation to secure any affordable housing within this appeal scheme results in conflict with the requirements of Local Plan Policy H3, where it states that schemes of ten or more units shall include 20% affordable units. As detailed above, this weighs significantly against the appeal proposal.

Other Matters

61. The Council's Officer Report states that the appeal proposal would result in increased visits (recreational pressure) to national and international designated sites. The consultation response received from Merseyside Environmental Advisory Service (MEAS) provides a list of designated sites³ that are easily accessible (by car and public transport) from the development site. However, I have not been provided with specific details of the Zones of Influence which apply to each of these designated sites, and therefore from the information before me it is unclear as to which of these designated sites the appeal site would potentially impact.
62. The submitted comments from MEAS go on to explain that in order to ensure the recreational pressure effects of the proposal are adequately mitigated, the appellant may opt-in to mitigation measures by way of a commuted sum of £278.26 per new dwelling and the distribution of information leaflets to new households. The Council's Officer Report states that this commuted sum could be secured by way of a planning obligation, however no details have been provided as to how the distribution of the information leaflets would be secured.
63. Additionally, I have been provided with very limited information by either party in respect of how the proposed development would potentially impact upon these designated sites, nor details of their specific ecological importance. Furthermore, I have not been provided with details as to how this suggested commuted sum of £278.26 per new dwelling has been calculated, or how the money would be spent if secured by planning obligation.
64. Had I been minded to allow the appeal I would have sort additional comments from both parties in respect of the above matters, and if required undertaken an appropriate assessment (AA) of the effect of the proposal on the integrity of any relevant designated sites. However, as the proposed development is unacceptable for other reasons, I have not sought further comments on the above matters as doing so would not change the outcome of the appeal.
65. As such, given the lack of information before me at this stage in relation to the designated sites and any potential impacts arising from the appeal proposal, undertaking an AA is not possible and unnecessary in this particular case.
66. Whilst not included within the reasons for refusal on the decision notice, I note that the Council's Officer Report states that the proposal would result in the creation of an overly dominant central car park that is not of a scale characteristic of the wider area. In this regard the centrally positioned car park would be predominantly screened from public vantage points by proposed Block A and thus would not be highly prominent or dominant within the street scene. As such, I find no harm arising from the siting and layout of the proposed car parking area.

Planning Balance and Conclusion

67. I have found that the appeal proposal would not harm the living conditions of nearby occupiers and would provide acceptable living conditions for future

³ Mersey Narrows & North Wirral Foreshore Special Protection Area (SPA) and Ramsar, Mersey Estuary SPA and Ramsar, Dee Estuary SPA, Special Area of Conservation (SAC) and Ramsar, Sefton Coast SAC, and Ribble & Alt Estuaries SPA and Ramsar.

occupiers, including the provision of appropriate levels of outdoor amenity space. I have also found that subject to the imposition of appropriately worded conditions the proposed development would provide an accessible housing scheme.

68. However, the failure of the appellant to provide a completed planning obligation which secures any affordable housing as part of this appeal proposal, along with a contribution towards the future monitoring of the planning obligation, conflicts with the requirements of Local Plan Policy H3.
69. I note the appellant comments that the appeal proposal represents an achievable and deliverable scheme on a long-vacant previously developed site, and the proposal would positively contribute to the Council's supply of housing. Given the scale of the development I attribute these benefits moderate weight in favour of the appeal scheme. However, these benefits do not overcome the identified conflict with Local Plan Policy H3.
70. In view of the 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. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR