



Appeal Decision

Site visit made on 1 July 2024

by G D Jones BSc(Hons) DipTP DMS MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2024

Appeal Ref: APP/W2465/W/23/3331062

Land at junction of Vaughan Way and St Margarets Way, Leicester LE1 4QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Toscafield Leicester Limited against the decision of Leicester City Council.
 - The application Ref 20230634, dated 11 April 2023, was refused by notice dated 13 July 2023.
 - The development proposed is described as outline application for construction of a 9 and 7 storey building to provide 104 flats (63 x 1 bed, 41 x 2 bed) (Class C3) with access, appearance, layout and scale committed and other matters (landscaping) reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposals are for outline planning permission with landscaping only to be determined at this stage and with access, appearance, layout and scale reserved for future approval. Whilst not formally part of the scheme, I have treated the reasonably extensive details relating to these reserved matters as a guide as to how the site might be developed.
3. Following the submission of the main evidence, the Government published consultation on *Proposed reforms to the NPPF and other changes to the planning system* and the *National Planning Policy Framework: draft text for consultation* as well as the Secretary of State's written ministerial statement *Building the homes we need*. In the circumstances, both main parties were given the opportunity to comment. I have taken those publications and the parties' comments thereon into account when making my decision.

Main Issues

4. The main issues are:
 - The proposed development's effect on the character and appearance of the area;
 - Its effect on the significance of designated heritage assets, including the grade II listed building the Former Richard Roberts Factory;
 - Its effect on archaeological remains;
 - Its effect on the living conditions of occupants of the neighbouring properties, The Annexe and The Chimney, having particular regard to outlook, light and privacy;

- Whether the proposed development would secure acceptable living conditions for future occupiers;
- Whether it would provide adequate refuse facilities for occupants;
- Whether it would provide suitable vehicular access, cycle parking and service provision;
- Whether it would meet 'Building Regulations Category M4(2) Accessible and adaptable dwellings';
- Whether it would secure sufficient Biodiversity Net Gain; and
- In the event that the proposed development were to give rise to any harm, whether any such harm would be outweighed by any benefits.

Reasons

Character & Appearance

5. The area surrounding the appeal site is rather varied in terms of the built form. Nonetheless, while of diverse design and age, the buildings in the site's vicinity tend to be substantial in scale. While it appears that efforts have been made to improve the pedestrian environment and experience, the streetscape of both Vaughan Way and St Margaret's Way, to the south and east respectively, is dominated by the multi-lane carriageways and the associated traffic and street furniture. In contrast, Junior Street to the rear of the site has a far more calm, intimate feel, with part of 'The Chimney' building, which is positioned roughly opposite the site to the west of the street, standing substantially lower in height than most of its near neighbours.
6. The appeal site itself is something of an anomaly within this context as it is conspicuously open, cleared above ground level of development and of any vegetation of note. Its redevelopment presents an important opportunity to help repair the streetscene at a prominent corner site. While appearance, layout and scale are reserved for future approval, the appellant has set out clear aspirations for the site, supported by a considerable amount of reasonably detailed information. Accordingly, I have employed that information to help inform my assessment and determination of the appeal.
7. There are taller buildings in the wider area. I also note that a study completed to inform the emerging local plan identifies the appeal site as appropriate for heights of 8-plus storeys. Nonetheless, the redevelopment of the site must sit comfortably with its more immediate context and the study is purely that, a study intended to help inform policy-making. The emerging local plan has yet to be adopted and is likely to be subject to objections and further change, such that it attracts only limited weight at this stage. Notwithstanding the Council's submissions, the Leicester Waterside Supplementary Planning Document states in respect to this area that in some locations it may be appropriate to include elements above 6 storeys, but that taller buildings will only be permitted where exceptional design quality can be demonstrated.
8. The proposed development is shown as being predominantly 7-storeys in height, with a central 8-storey element set back from the front and rear elevations. This approach would help with the height transition to the immediately neighbouring properties, Highcross House to the west on Vaughan Way and The Annexe to the north on St Margaret's Way.

9. There would, nonetheless, be a substantial and visually abrupt change in height to Highcross House. This might be softened through more detailed design at the reserved matters stage. However, due to the proximity of Highcross House and the scale of the height transition concerned, particularly bearing in mind that the fifth floor of this neighbouring building is somewhat inconspicuous due to being set back, the proposed development would be very likely to result in a prominent, visually jarring relationship with Highcross House to the detriment of the character and appearance of the area.
10. The relationship between the proposed development and The Annexe and the greater existing building to the north would be far more comfortable in terms of height. However, as the majority of the proposed building to the St Margaret's Way frontage would stand substantially forward of its neighbour, it would also sit awkwardly in the streetscene, discordant with The Annexe. This too would be very likely to result in harm to the character and appearance of the area.
11. When experienced to the northwest, from within Junior Street, the relationship with Highcross House, while a little less noticeable due to the more confined views available, would still appear awkward thus causing harm to the character and appearance of the area. In contrast to the frontage, however, as the adjoining rear elevation of the proposed building would be set back from its counterpart in The Annexe, the two buildings could sit comfortably together without harm to the Junior Street streetscene. Although it would be significantly taller than the closest part of The Chimney building, due to the separation that could be achieved and bearing in mind that there are a number of tall buildings already in the vicinity, notwithstanding any effect on heritage assets, the proposed development could also be compatible with the existing built form immediately to the northwest of Junior Street.
12. For the foregoing reasons, therefore, some aspects of the proposed development would be very likely to cause significant harm to the character and appearance of the area in terms that could not be reasonably resolved at the reserved matters stage. Such harm would be contrary, in that regard, to CS Policy 3 (Designing Quality Places) of the Leicester City Core Strategy, June 2014 (the Core Strategy) as well as to the National Planning Policy Framework (the Framework).

Heritage Assets

13. Although there are a number of heritage assets in the vicinity of the site it appears to be common ground between the main parties that the significance of all but one of these would not be adversely affected by the proposed development. I have found no reason to disagree in respect to those heritage assets.
14. Nonetheless, both main parties have also concluded that the proposed development would cause 'less than substantial harm', in the terms of the Framework, to the significance of the Former Richard Roberts Factory via its effect on the setting of this grade II listed building. Again, notwithstanding my conclusions regarding the effect of the proposed development on the character and appearance of the area, I have found no good reason to disagree with the main parties in this regard.
15. The appellant maintains that there would be no conflict with either of the development plan policies cited in the second reason for refusal. However,

given the extent and nature of harm that the appellant has acknowledged - in terms of the effect that the proposed development would have on the significance of the grade II listed Former Richard Roberts Factory - there would be conflict, in that regard, with CS Policy 3 and CS Policy 18 (Historic Environment) of the Core Strategy.

16. The adoption of the Core Strategy post-dates the publication of the first iteration of the Framework in March 2012. Yet the supporting text to CS Policy 18 refers to PPS5: Planning for the Historic Environment, which was published in 2010 and then cancelled with the publication of the first version of the Framework in 2012.
17. Although Policy HE.9.4 of PPS5 contained a public benefits balancing exercise comparable to that of para 208 of the current Framework, neither of these Core Strategy Policies contain any such public benefits balance. Consequently, the identified conflict with CS Policy 3 and CS Policy 18, in terms of the harm to the significance of the listed building, carries limited weight only. I return to the relative weight of the identified harm compared to the public benefits of the appeal scheme in the *Other Considerations & the Planning Balance* subsection below.

Archaeology

18. The evidence indicates that the site has high potential for Roman and medieval archaeology to be present. I note that the Council's case officer indicated via correspondence prior to the determination of the planning application that further archaeological evaluation could be controlled by planning condition were planning permission to be granted. Evidently, a different conclusion was reached by the local planning authority at the time the application was determined several weeks later.
19. In the event that planning permission were to be granted, if a planning condition or suite of conditions were to be imposed to address this matter, they would need to be Grampian style, negatively worded conditions preventing the commencement of development prior to the satisfactory completion of additional archaeological evaluation. It would also be necessary, contingent on the outcome of the additional archaeological evaluation, to control below ground works associated with the development, such as foundations, piling and services.
20. Were such an approach to be followed, harm to archaeological remains could be avoided, albeit that it also has potential implications for the development's effect on the character and appearance of the area. I note that the relevant reason for refusal refers to conflict with CS Policy 17 of the Core Strategy. However, this Policy concerns Biodiversity, such that it appears to be irrelevant to this particular matter. It seems likely, therefore, that this was an error and that the Council had intended to refer to the Core Strategy's CS Policy 18, regarding the Historic Environment.
21. In any event, conflict with the development plan in this regard could be avoided because suitably worded Grampian condition/s would either: a) prevent development proceeding, if it were found following further evaluation that any archaeological impact could not be mitigated, or b) in the alternative, ensure suitable mitigation, thereby avoiding harm. This approach could also ensure conformity with the Framework in this regard.

Living Conditions - Neighbours

22. As described above, the northern boundary of the appeal site adjoins The Annexe. It contains flats, some of which are served by windows to habitable rooms that face onto the site and Junior Street. The main Former Richard Roberts Factory, as referred to above, has been converted into flats. Although the nearest of these flats are not as close to the site as those within The Annexe, they are nonetheless within reasonably close proximity, a little to the west, on the opposite side of Junior Street.
23. Thought has evidently been given to the siting of the proposed development relative to The Annexe, notably in terms of avoiding a direct overlapping of the new built form with the existing windows in the south elevation of neighbouring building across six floors. However, the proposed building shown in the indicative material would nevertheless be located very close to those windows. The evidence indicates that these are the only windows that serve the flats concerned. For these reasons and bearing in mind the substantial mass of the proposed building, it would be very likely to have a significantly detrimental impact on the living conditions of occupants of these flats within The Annexe due to the effect on natural light and outlook.
24. This relationship also has the potential to result in overlooking between occupants of the aforementioned flats of The Annexe and the nearest of the flats in the appeal development. While the views would be somewhat oblique, given the close proximity, the effect on privacy has the potential to be significant.
25. The nearest flat of the proposed building, as detailed in the indicative material, shows a dual aspect room on most of the floors closest to The Annexe. On this basis I see no reason why the windows to this room shown in the western elevation could not be fixed closed and fitted with opaque glass, thus overcoming any concerns in respect to overlooking. This is because adequate outlook and ventilation could be secured from the windows in the eastern elevation, or via mechanically assisted ventilation as discussed below.
26. However, the other rooms to these flats are bedrooms served only by windows in the west elevation. Preventing overlooking by fixing closed these windows and fitting them with opaque glass would be likely to unacceptably constrain outlook, thereby failing to secure satisfactory living conditions for occupants. Consequently, I also have significant concerns about the effect the proposed development would have in terms of privacy.
27. I also have some reservations over the effect that the proposed development would have on the living conditions of occupants of The Chimney. Nonetheless, given the distance that the proposed building would be located away from the nearest windows to habitable rooms, based on the information before me, I am not convinced that the appeal scheme would necessarily have an unacceptable impact on occupants of this neighbouring building.
28. On this basis the appeal scheme would have a significantly harmful effect on the living conditions of some residents of The Annexe having particular regard to outlook, light and privacy. Consequently, in these respects, it would conflict with Policy PS10 (Residential Amenity and New Development) of the City of Leicester Local Plan, January 2006 (the Local Plan).

Living Conditions - Residents

29. For the reasons outlined in the preceding subsection regarding the proposed development's relationship with some of the flats within The Annexe, there would be very likely to be unacceptable overlooking of some of the proposed flats which could not be adequately mitigated and outlook would also be significantly constrained. Consequently, satisfactory living conditions for all occupants of the proposed development would not be secured due to the likely substandard level of privacy and quality of outlook to some of the flats.
30. Thought has clearly been given to how to provide a reasonably significant quantum of amenity space for the benefit of occupants of the development. This involves outdoor space, including a communal terrace and private space, as well as an internal gym. However, I hold significant reservations regarding the quality of some of the space identified given the likely constraints on natural light and exposure to wind and noise.
31. The Council has not adopted the *Technical housing standards - nationally described space standard* (the NDSS) via its development plan. Nonetheless, in my view, the NDSS is a useful indicator of the acceptability of unit sizes. I note the uncontested evidence that, based on the indicative material, only 9 of the 104 units proposed would meet the NDSS. This adds further weight to my concern that the proposed development would be unlikely to secure a satisfactory living environment for at least some of its occupants.
32. The Council is also concerned about ventilation and noise on the basis that the application material indicates that the proposed windows could not be used for ventilation and that a mechanical system would be needed. Nonetheless, there is no substantiated evidence to suggest that the required standard of mechanical ventilation could not be reasonably incorporated into the development without resulting in other issues, such as noise and vibration. Accordingly, based on the information before me this particular matter would not justify withholding planning permission.
33. Overall, therefore, there are several factors that indicate that at least some of the residents of the proposed development would not be provided with acceptable living conditions. Accordingly, in this respect, the appeal scheme would conflict with Policies PS10 (Residential Amenity and New Development), PS11 (Protection from Pollution) and H07 (Flat Conversions and New Build Flats) of the Local Plan, and CS Policy 3 and CS Policy 6 (Housing Strategy) of the Core Strategy, as well as with the Council's Residential Amenity Supplementary Planning Document, February 2008.

Refuse

34. Having regard to the appellant's uncontested evidence on this matter as set out in its statement of case, particularly at paragraph 2.39, it appears that the matters raised by the Council could be satisfactorily addressed at the detailed design stage bearing in mind that this is an application for outline planning permission. In this way any potential conflict in this regard with Policy PS10 of the Local Plan and CS Policy 3 of the Core Strategy could be avoided.

Access, Cycle Parking & Service Provision

35. No substantiated evidence has been advanced to suggest that access arrangements for the proposed development would necessarily be

unacceptable. Indeed, the consultation response of the local highway authority indicates that there need not be any significant issues in this regard. Accordingly, from the information before me and bearing in mind the 'outline' nature of this aspect of the proposals, there is no good reason to resist the appeal scheme in terms of whether acceptable vehicular access arrangements could be secured. On this basis, any associated potential conflict with the development plan or with the Framework could be avoided.

36. I note the appellant's submission that, although 90 on-site cycle parking spaces have been proposed, the required 137 spaces could be accommodated through the reconfiguration of the ground floor accommodation. However, no evidence has been provided to illustrate how this might be achieved. The appellant has not contested that 137 cycle spaces are 'required'. In contrast to the matter of refuse as discussed in the preceding subsection, the transition from 90 to 137 spaces appears to be substantial to the point that, based on the information before me, it is likely to be a matter that cannot be resolved, at least not without giving rise to other potentially significant issues.
37. Nonetheless, like refuse and recycling facilities, wider service provision appears to be a matter that could be adequately controlled via conditions and at the reserved matters stage. Accordingly, it also need not be a basis on which to resist the proposed development.
38. Overall, while adequate vehicular access and general service provision could be secured as part of the development, there is good reason to believe that that would not be the case in respect to cycle parking, or at least not without potentially significant consequences. In that latter regard, therefore, the appeal development conflicts with Policy AM02 (Cycling and Development) of the Local Plan and CS Policy 15 (Managing Demand for Car Use) of the Core Strategy. Nonetheless, for the foregoing reasons, there would be no conflict with Core Strategy CS Policy 14 (The Transport Network).

Accessible & Adaptable Dwellings

39. No evidence has been advanced to suggest that the proposed development could not reasonably meet Building Regulations Category M4(2) Accessible and adaptable dwellings. Indeed, the 'Housing' consultation response, referred to in the Council officer's report on the appeal proposals, suggests that this standard of dwelling could be secured via planning condition. The appellant has stated that such a condition would be acceptable. I have found no good reason to conclude that this matter, along with wider issues of dwelling accessibility and adaptability, could not be reasonably controlled via conditions and at the reserved matters stage. Accordingly, in this regard, any potential conflict with CS Policy 6 of the Core Strategy or with the Framework could be avoided.

Biodiversity Net Gain

40. The appellant's unchallenged evidence is that the appeal site is of very limited ecological value, as reflected in its Preliminary Ecological Appraisal. The submitted Biodiversity Net Gain Calculation (BNGC) uses a baseline that pre-dates the site being cleared of most, if not all, vegetation. The limited vegetation that had been present appears to have been primarily self-seeded buddleia scrub. There is no suggestion within the evidence that the removal of

the buddleia or any other vegetation was intended to deliberately harm biodiversity.

41. Accordingly, there is no basis on which to discount the current biodiversity value of the site having regard to the Planning Practice Guidance on Biodiversity Net Gain. Therefore, while it would have been helpful had the appellant re-run the calculation on this basis, the current biodiversity value of the site is likely to be lower than what was assessed in the BNGC.
42. Although opportunities for habitat creation at ground level would be limited based on the indicative material and detailed landscaping drawing, the BNGC recommends that a green roof is included on the two eight floor flat areas. Overall, bearing in mind the site's limited current baseline value, these measures could provide some Biodiversity Net Gain as part of the development. These are matters that could be secured and controlled via planning conditions.
43. On this basis the proposed development could reasonably secure sufficient Biodiversity Net Gain. In this regard, therefore, it would accord with CS Policy 17 (Biodiversity) of the Core Strategy, as well as with the Framework.

Other Considerations & the Planning Balance

44. As the appeal development would cause less than substantial harm to the significance of the grade II listed Former Richard Roberts Factory, there are two balancing exercises to be done. The first is that set out in para 208 of the Framework, in the context of the statutory requirements of s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The second is the more common balancing exercise under s38(6) of the Planning and Compulsory Purchase Act 2004 having regard, amongst other material considerations, to the Framework, including its para 11 and the engagement of the so-called 'tilted balance'. The former is dealt with first as its outcome has the potential to affect the operation of the latter.
45. The proposed development would give rise to public benefits, notably those associated with the delivery of 104 homes in an established residential area well-served by facilities on an unsightly, underused site, within an area where the Council cannot demonstrate a Framework compliant supply of housing land with a history of under-delivery. Recent Government policy and consultation documents also supports the principle of higher density urban development. Given the scale of the development proposed, all of the benefits would be very significant.
46. While not its principal source, the listed building's setting nonetheless makes a considerable and valuable contribution to the significance of this designated heritage asset. The total weight of all the benefits identified by the appellant would be great. However, they are not collectively sufficient to outbalance the less than substantial harm to the significance of the listed building given that such harm should be given considerable importance and weight and bearing in mind the rebuttable yet strong presumption against harm to listed buildings.
47. In coming to this conclusion, I have taken into account that although the housing land supply shortfall is significant and likely to take some time to bridge, it is also likely to be temporary. In contrast, the harm to the significance of this important heritage asset would be of a far more permanent nature. Consequently, the tilted balance of Framework para 11 does not apply.

48. As outlined above, the conflict with CS Policy 3 and CS Policy 18 resulting from the harm to the significance and special interest of the listed building carries only limited weight. Nonetheless, given the outcome of the Framework para 208 balance, even if there were no other harm arising, when undertaking the s38(6) planning balance there would be insufficient additional weight in favour of the appeal scheme to outweigh the harm to the listed building and the associated development plan conflict. On this basis alone the appeal should be dismissed.
49. In any event, even if I had accepted the appellant's case that the 'tilted balance' should apply, I would have concluded that the appeal should be dismissed. This is because the collective weight of the benefits of the scheme would be significantly and demonstrably outweighed by the combined weight of the identified harm relating to the character and appearance of the area, the significance of the listed building, neighbours' and occupants' living conditions and on-site cycle parking. Indeed, given the importance of reasonably protecting the living conditions of neighbouring residents, the harm identified in this regard alone would be sufficient to significantly and demonstrably outweigh the development's benefits.

Conclusion

50. In some respects, the proposed scheme would contribute positively to sustainable development objectives as set out in the Framework, particularly in terms of housing delivery and securing the re-use of a prominent piece of previously developed land in a sustainable location. Nonetheless, even though the tilted balance is not engaged, given the significant identified harm and associated development plan conflict when taken as a whole, the combined benefits of the scheme would be significantly and demonstrably outweighed by the adverse impacts. Accordingly, it would not be sustainable development in the terms of the Framework, both in its current form and proposed amended form. Consequently, there is no presumption in its favour.
51. The appeal should, therefore, be dismissed.

G D Jones

INSPECTOR