

Appeal Decision

Site visit made on 27 August 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2024

Appeal Ref: APP/M4320/W/24/3337581

117 Liverpool Road, Birkdale, Sefton PR8 4BZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr C Simpson against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2023/00737 sought approval of details pursuant to outline planning permission Ref DC/2020/02573, granted on 31 May 2022.
 - The application was refused by notice dated 26 September 2023.
 - The development proposed is outline planning application for a detached dwellinghouse following the sub-division of the existing plot with all matters reserved (layout, scale, appearance, access and landscaping reserved for future consideration).
 - The details for which approval is sought are: access, scale, layout, appearance and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 20 December 2023 version.
3. On 30 July 2024 the Government published a consultation on proposed reforms to the Framework and other changes to the planning system. Whilst a direction of travel has been outlined within the Written Ministerial Statement, which is a material consideration of very significant weight, the weight I give to the changes in the draft Framework is limited given that no final document has been published and it is subject to potential change in the future.
4. In any event, the policies that are material to this decision are not subject to any fundamental changes, and I am satisfied that this has not prejudiced any party. Consequently, in reaching my decision I have therefore had regard to the Framework published in December 2023.

5. Within their Statement of Case the Council has confirmed that a revised version of the New Build Home Supplementary Planning Document (May 2023) (SPD) has been adopted since the appeal was determined. The appellant had an opportunity to comment on this revised SPD during the 'Final Comments' stage of the appeal procedure. I have given the revised SPD due consideration in the determination of this appeal.

Background

6. Outline approval¹ was granted at the appeal site on 31 May 2022 for a detached dwellinghouse following the sub-division of the existing plot with all matters reserved (layout, scale, appearance, access and landscaping reserved for future consideration).
7. Following this outline approval the appellant made an application for approval of all the reserved matters². The reserved matters application was refused on 26 September 2023 and is the subject of this appeal.

Main issue

8. The main issue is the effect of the proposed development on the living conditions of the occupiers of No.115 Liverpool Road, with particular regard to outlook.

Reasons

9. The proposed dwelling would be situated towards the bottom of the rear garden area of the dwelling at No. 117 Liverpool Road, very close to the shared side boundary with the neighbouring property at No. 115 Liverpool Road (No.115). At present this shared boundary is defined by a timber fence, with a small cluster of tall, mature trees located on the appeal site side of this boundary.
10. The properties along this section of Liverpool Road have long rear gardens and these create a positive sense of openness at the rear of the properties, to the enjoyment of occupiers. To that end, I observed on site that the rear garden of the property at No.115 is well maintained and includes external patio areas with various forms of outdoor furniture.
11. From No.115's rear garden, its external patio areas and from openings in the rear elevation of the dwelling itself, the proposed two-storey dwelling, as a result of its size, scale and siting in the rear garden and so close to the shared boundary would create an overly oppressive, dominant and overbearing feature. The proposed dwelling would therefore result in a loss of outlook at the rear of this neighbouring property, both within the rear garden area and from the rear elevation of the dwelling itself, resulting in a significantly detrimental impact upon the living conditions of the occupiers of No. 115.
12. I acknowledge that the dwelling has been designed with a pitched roof that slopes away from this shared boundary. However, the substantially sized two-storey side elevation of the proposed dwelling would extend along a significant section of the shared boundary and the scale of the proposed dwelling as a whole would be an overtly obtrusive and intrusive feature at the rear of No.115.

¹ DC/2020/02573

² DC/2023/00737

13. I therefore conclude that the appeal proposal would have an unacceptable adverse impact upon the living conditions of the occupiers of No. 115 Liverpool Road by way of creating an overly obtrusive, dominant and overbearing feature, resulting in a loss of outlook when viewed from the rear of this neighbouring property (No. 115). The proposal is therefore contrary to Policies HC3 and EQ2 of the Local Plan for Sefton (2017) where they state, among other things, that residential development will be permitted where it is consistent with other Local Plan Policies and require development to protect the amenity of those adjacent to the site.
14. 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, as well as the SPD where it states that development should not have an overbearing or dominant effect on nearby properties.

Other Matters

15. The description of development on the outline approval granted outline planning permission for a detached dwellinghouse with all matters reserved.
16. My attention has been drawn to Condition 3 on the outline approval which requires the development to be carried out in accordance with the submitted plans that are subsequently listed within that condition. I have been provided with a copy of the plans submitted with the outline application and note they are very similar to the plans submitted with the reserved matters application subject of this appeal. The appellant contends that the plans submitted at outline stage, and referred to on the outline decision notice, should carry significant weight in the consideration of the reserved matters application. The appellant has also referred to paragraph 035 within the 'Making an application' section of the Planning Practice Guidance (PPG).
17. Whilst I acknowledge that plans were provided with the outline application and subsequently listed within Condition 3, the description of development on the outline approval decision notice is clear that all matters were reserved at outline stage. As such, the requirement of Condition 3 for the development to be carried out in accordance with these plans is in direct conflict with the outline approval which had all matters reserved.
18. Additionally, case law³ has established that drawings submitted with outline applications which relate to matters that are reserved, can only be sensibly understood as being indicative, even when they are not marked as "Illustrative" or "Indicative".
19. Furthermore, Condition 3 on the outline approval is also in direct conflict with Condition 2 on the same decision, which requires a reserved matters application in respect of layout, scale, appearance, access and landscaping to be submitted to and approved in writing by the Local Planning Authority before any development begins.
20. In summary of the above, whilst plans were provided with the outline application, all matters were clearly reserved at outline stage and this therefore limits the weight I can attribute to the outline plans. In any event, the appeal before me seeks approval for those reserved matters and I have therefore determined the appeal on that basis and against the plans submitted with the reserved matters application.

³ Crystal Property (London) Ltd v SCLG & LB Hackney EWCA Civ 1265 [2016]

21. The appellant has also raised a number of concerns with how the outline application was handled by the Council and why the matters that have been raised during the reserved matters application were not addressed at outline stage. Whilst I have sympathy for the appellant in relation to some of these matters, as detailed above, all matters were reserved at outline stage and are being sought as part of this appeal scheme. Therefore, I must determine the reserved matters appeal accordingly, including assessing the impact of the layout, scale and appearance of the proposal on the living conditions of neighbouring occupiers.
22. The appellant has referred to a sun path study that was submitted as part of the planning application, stating that this document demonstrates that the impact of the proposal upon the neighbouring occupiers would be acceptable. In this regard, I note that the Council's reason for refusal does not raise any issue in respect of loss of sunlight and overshadowing at the rear of No.115. Moreover, the submission of the sun path study does not overcome my concerns in respect of overbearing impact and loss of outlook arising from the appeal proposal, when viewed from the rear of No. 115.
23. I note that interested parties have commented that the proposed dwelling would also significantly overlook neighbouring properties, resulting in a loss of privacy for existing neighbouring occupiers. Had I been otherwise minded to allow this appeal I would have gone back to both the main parties and sought further comments in respect of the potential privacy implications of the appeal proposal in relation to neighbouring properties, both in terms of the relationship with openings in neighbouring dwellings, and their rear garden areas. However, as I am dismissing the appeal on the main issue, I have not pursued this matter further.
24. Within their Statement of Case the Council has referred to the revised SPD, suggesting that the revised SPD alters the assessment of backland development. Whilst I note the Council's submissions on this matter, the principle of this backland development has been established by the outline approval and thus it is not a matter before me as part of this reserved matters appeal.

Conclusion

25. 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, I conclude that the appeal should be dismissed.

R Major

INSPECTOR