
Appeal Decision

Site visit made on 14 January 2025

by **A Veevers BA(Hons) PGDip(BCon) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 February 2025

Appeal Ref: APP/W4325/W/24/3345831

Land named Pool Inn, Poulton Bridge Road, Wallasey CH44 5SN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Barry Lightburn, The Trustees of The Barry Dale Lightburn Sipp against the decision of Wirral Council.
 - The application Ref is OUT/23/00703.
 - The development proposed is construction of a building consisting of 15 No one and two bedroomed self contained apartments with car parking, cycles, refuge and amenity space.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme relates to an outline proposal, with access, appearance, layout and scale to be considered at this stage, and with landscaping reserved for future consideration. I have considered the appeal accordingly.
3. During the appeal, a new version of the National Planning Policy Framework (the Framework) came into effect. Accordingly for the purposes of this decision I have referred to the latest version of the Framework. The main parties have been given the opportunity to comment on the revised Framework. Therefore, I am satisfied that no one would be prejudiced by this change to the national policy context.
4. The emerging Wirral Local Plan 2021-2037 (WLP) is at an advanced stage of preparation. However, I am not aware of the extent to which any policies relevant to this appeal may be replaced and this limits the weight I can afford the WLP at the present time. I have determined the appeal on the basis of the adopted development plan at the time of my decision which should be afforded full weight.
5. A Unilateral Undertaking (UU) made pursuant to s106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal. The UU includes provisions relating to affordable housing and European Designated Sites¹ (EDS). The Council has had an opportunity to comment on the UU and I have also consulted Natural England. I therefore consider no injustice would be caused to interested parties in this regard.

¹ Mersey Narrows and North Wirral Foreshore Ramsar and SPA (Special Protection Area); Mersey Estuary Ramsar and SPA; and Dee Estuary Ramsar, SPA and SAC (Special Area of Conservation)

Main Issues

6. The main issues are:

- the effect of the proposal on the living conditions of occupiers of 469 and 471 Poulton Road with particular regard to daylight, sunlight and outlook; and 3 and 5 Poulton Bridge Road with particular regard to outlook and privacy;
- whether or not the proposal makes adequate provision for affordable housing, having regard to local policies; and,
- the effect of the proposal upon the character and appearance of the area.

Reasons

Living Conditions

7. The proposed apartment building would be positioned close to the western boundary of 471 Poulton Road (no 471). The building would be sited at a much lower ground level compared with no 471 and its ridge height would not be above that of no 471. Nevertheless, the proposed building would extend a considerable distance rearwards, beyond the rear facing elevation of no 471.
8. Although there are two windows on the first floor side elevation of no 471 facing towards the appeal site, one is obscurely glazed and the other, due to its position, appears to be a landing window rather than a room where people would be likely to spend longer periods rather than passing movements. However, I saw a ground floor window and a conservatory on the rear elevation of no 471, along with an obscurely glazed first floor window closest to the boundary.
9. Despite a drive-width gap between no 471 and the proposed building, due to its height and depth it would result in a dominant feature in close proximity to no 471. This would result in an imposing and uninviting outlook from the ground floor rear rooms of no 471. The proximity of the tall flat roof angled projection on the side elevation of the proposed building, which provides windows to bedrooms, would exacerbate the sense of enclosure. It would be overbearing when viewed from the ground floor window, conservatory and the external private amenity space closest to the dwelling of no 471.
10. In terms of the effect of light, it is not completely clear whether the Council's concerns are in relation to daylight as well as sunlight, although I have worked on the basis that both were a concern. The southward rear facing windows of no 471 receive daylight and sunlight for much of the day. As the sun moves to the west later in the day, this light would reduce. Given the height, proximity and orientation of the proposed building to the west of no 471, the ground floor window closest to the boundary and the patio area would be likely to receive significantly less sunlight late in the day, particularly during the months when the sun would be lower in the sky.
11. Paragraph 125 of the Framework advises a 'flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site (as long as the resulting scheme would provide acceptable living standards)'. Even if the ground floor window closest to the boundary is a kitchen window, it is a room in the dwelling where occupiers are likely to spend a reasonable amount of time. While the appellant claims the

proposal would not interfere with the 45 degree rule², this has not taken into account the effect on the kitchen window and no other assessment has been provided to lead me to a different view to that set out above.

12. Accordingly, and even having regard to the relatively long garden at no 471, whilst the proposed building would not result in a significant loss of daylight for occupants of this property, levels of sunlight would be notably diminished for a significant amount of the day. Overall therefore, the proposal would harm the living conditions for occupants of no 471 with regard to outlook and sunlight.
13. Given the separation distance to the proposed building, the proposal would not result in an unacceptable loss of light or be overbearing for occupants of 469 Poulton Road.
14. Turning to neighbouring properties along Poulton Bridge Road, my attention has been drawn by the parties to the Council's Supplementary Planning Document – SPD2 'Designing for self-contained flat development and conversions', October 2006 (SPD). This provides guidance on, amongst other things, local parameters applicable to new development in relation to privacy, light and outlook.
15. The proposed development would be a similar ridge height to the pair of adjacent semi-detached properties, 3 and 5 Poulton Bridge Road (no 3 and no 5) when viewed from this road. From information provided on the plans, the building would be approximately 7 metres from the boundary with no 3. However, it would extend almost the full depth of the plot towards no 471 and given the topography of the area, much of the building would be in a more elevated position than no 3 and no 5.
16. I acknowledge there would be some separation between the proposed building and the boundaries with no 3 and no 5 and that the existing garden of no 5 is relatively long. In addition, the stepped form of the building, glazed link and proposed use of varied external materials would add interest to the elevation facing the gardens of properties on Poulton Bridge Road and Morley Road. Nevertheless, due to the topography of the site, the scale of the proposed building and its location in proximity to the full length of the boundaries with no 3 and no 5, it would be a substantial and overbearing structure when viewed from the rear facing windows and gardens of no 3 and no 5. The provision of landscaping along the southern boundary of the site would not mitigate the adverse effects that would arise from the massing of the proposal which would unacceptably dominate the outlook from no 3 and no 5.
17. Windows along the south elevation of the building and the glazed stairwell would be obscured. Obscurely glazed screens would also be provided to the side of windows and balconies of proposed flats 5, 10 and 15. This would prevent overlooking towards the south and, in the event that I allowed the appeal, could be secured through the imposition of a suitably worded planning condition.
18. The windows and balconies of proposed flats 5, 10 and 15 would be a limited distance away from no 3 and they would be positioned on a building that would be located on higher land. Nevertheless, due to the juxtaposition of the building with no 3 and because of the proposed obscure glazed screens to these windows and balconies, no direct overlooking would occur. While oblique views towards the rear

² Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice (BRE209 2022)

elevation of no 3 may be obtainable, some overlooking is expected and tolerable in residential areas and already occurs to some degree at the surrounding properties. Consequently, the appeal proposal would not result in an unacceptable level of overlooking.

19. Although the appellant's evidence addresses the effect of light in relation to occupants of properties along Poulton Bridge Road, the Council do not allege harm in this regard. Having regard to the proposed building's separation from these properties and its predominantly northern orientation in relation to no 3 and no 5, I have no reason to disagree.
20. To conclude on this main issue, for the reasons set out above, the proposed development would be harmful to the living conditions of the occupiers of no 471 with particular regard to sunlight and outlook and to occupiers of no 3 and 5 with particular regard to outlook. The proposal would therefore conflict with Policy HS4 of the Wirral Unitary Development Plan, adopted 2000 (UDP). This states, amongst other things, that proposals for new housing will be permitted subject to the proposal being of a scale which relates well to surrounding property.
21. The proposal would also conflict with guidance at paragraph 5.7 of the SPD which advises development should not result in a significant loss of sunlight for neighbouring properties, nor be visually overbearing or dominant when viewed from adjoining property. In addition, the proposal would fail to accord with paragraph 135 (f) of the Framework where it seeks a high standard of amenity for existing and future users.

Affordable Housing

22. Although not all referred to in the decision notice, but referred to in the Council's officer report, Policies URN2, HS6 and HSG2 of the UDP refer to the provision of planning obligations, including for affordable housing. Such provision would contribute positively to helping address the need and demand for affordable housing in the local area and across the Wirral. That the proposal should make provision for affordable housing is not a point of dispute between the main parties. Because of the number of proposed residential units, I agree the requirement for a planning obligation in relation to the provision of affordable housing in this case would be necessary and reasonable.
23. The Council advise an affordable housing contribution of 10% would be necessary in this location, which would amount to one residential unit. Due to the difficulties in managing a single unit, the Council suggest an off-site financial contribution would be more appropriate in this case. As a result, the Council detail that a payment of 2% of the market value of the site should be provided towards off-site affordable housing. The appellant does not disagree and has provided a UU that obliges to pay a commuted sum of £20,700, supported by a valuation³, for use by the Council towards the provision of funding affordable housing and ensures that the development would not commence until such time as the commuted sum has been paid in full to the Council.
24. However, the market value of the site and thus the amount of financial contribution required has not been agreed with the Council. As such, I cannot be certain the UU would comply with the requirements of Policy HS6 of the UDP or accord with

³ Smith and Sons Property Consultants valuation report dated 8 August 2024

the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in paragraph 58 of the Framework.

25. Moreover, the UU is not sufficiently clear or legally sound. Amongst other things, whilst it has been signed and dated, the site is not clearly defined since no plan has been appended to define it as set out in the definitions. The address provided for the owner of the site does not tally with that provided in the evidence of title, and it is not clear whether there are other parties with an interest in the land and thus whether they should be included within the definitions, along with the definition of the Council. The obligations in Schedule 1 in relation to open space and highway matters are not clearly defined or enforceable. Furthermore, there is no reference to the appeal and that it would not be the Council that would grant the permission in the event I was to allow the appeal. As the UU has been executed as a deed, it is enforceable and registered as a charge on the land, neither can I make changes to it.
26. For these reasons, its effect and enforceability is flawed. It does not do what it is supposed to do and would not provide a clear and certain contribution towards the provision of affordable housing. This would be in conflict with Policies URN2, HSG2 and HS6 of the UDP.

Character and Appearance

27. The appeal site comprises a sloping parcel of vacant land in a prominent location at the corner of a busy road junction. It is presently enclosed by security fencing and includes areas of hardstanding and vegetation. The site falls in level from east to west and from north to south with a retaining wall along the boundary with no 471 which sits at a higher land level. The area is predominantly residential to the east, north and south, comprising generally of traditional two storey semi-detached or terraced dwellings. To the west, as the land slopes away, there are various land uses, including prominent St Luke's Church which lies diagonally across the road junction from the appeal site. A single storey sports and social club is opposite the site with its large car park fronting the road junction. Beyond to the west along Breck Road and Poulton Bridge Road are several commercial and industrial businesses. The area is therefore mixed in character.
28. The Council has indicated that it considers the appearance of the proposed building would be acceptable. The building would be arranged in two blocks linked by a recessed glazed central entrance and stairwell to each block. It would take the form of a two storey building with rooms in the roofspace, appearing three storey on the gabled elevations. A projecting gabled feature at the corner of the building would provide a focal point facing towards the junction and reflect the gabled form of St Luke's Church. The elevations show a variety of detailing and window design, and a roof scape broken up by gables. All these features would provide visual interest. The proposal would be constructed from a palette of materials that are present in the wider surrounds.
29. The building would provide built frontage to Poulton Road and Poulton Bridge Road and roughly align with the front elevations of neighbouring properties. When viewed from Poulton Bridge Road, the building would be at a higher level than the road, set back behind a retaining wall and landscaped frontage. This would be a similar arrangement to the adjacent semi-detached dwellings no 3 and 5 and

would therefore not appear conspicuous. The ridge height of the building fronting Poulton Bridge Road would also be similar to that at no 3 and 5.

30. In views from Poulton Road, the building would be stepped to follow the slope of the road. The central glazed link would break the mass of the building so that it would appear as two separate buildings. In addition, the development would be lower than the ridge line of no 471 and separated by the driveway to that property. These factors and the building's set back from the road would ensure it would not appear excessively high or dominant.
31. Policy HS4 (i) of the UDP and guidance in the SPD support an appropriate density and form of development. The footprint of the building would be significant and would cover most of the plot. However, there would be space around the building created by the set back from the road frontages and the private external amenity space at the rear. A gap would be provided between the gable elevations of no 471 and no 3 to the building. This, the glazed link and the stepped approach taken to the form of the building, would serve to mitigate the overall scale and form of the building. When viewed from public roads it would not appear conspicuous or discordant in the street scene.
32. While the plot coverage would be greater than surrounding terraced and two storey houses, the appeal site lies at the interface between residential development to the east and commercial development to the west. The appeal site would be seen in the context of a site at the corner of a busy road junction with surrounding varied character. In this regard, it is important to consider the overall context, which includes the way it is experienced dynamically within the townscape. By its very nature, it is not unusual for development on corner plots to fill much of a site and provide a focal point, as I saw in the local area where flatted development at the corner of Poulton Road and Rostherne Avenue has integrated successfully with its surroundings.
33. Notwithstanding my concerns in relation to the effect of the proposal on the living conditions of surrounding residents that I have set out above, I am satisfied the proposal would not cause any material harm to the character or appearance of the area. As the building would contain 15 apartments, the proposed development would have a higher density than that of the wider area. Nevertheless, I have found the proposal to be acceptable in its character and appearance.
34. Accordingly, the proposal would comply with Policy HS4 of the UDP and guidance in the SPD. Together these seek, amongst other things, that development relates well to surrounding properties and does not harm the character of an area.

Other Matters

35. As set out above, the appellant has provided a signed and dated UU. As well as the affordable housing contribution I have set out above, it also includes a financial contribution to address the recreational impacts of the proposed development on EDS, which are afforded protection under the Conservation of Habitats and Species Regulations 2017. If the circumstances leading to the grant of planning permission had been present, it would have been my duty, as the competent authority, to consider the impact of the proposed development upon these EDS. However, as I am dismissing the appeal on the main issues above and, for reasons given above, I find the UU to be unsound, I have not found it

necessary to consider such matters any further as it would not alter the outcome of the appeal.

36. It has been drawn to my attention by interested parties that a Grade II Listed building, The Old House, Limekiln Lane, is located to the south-west of the site. Little information about this building is before me but from my own observations, the significance of the building is derived from its local architecture, materials and age. Although the building is visible from the appeal site, the site is physically and visually separate from this designated heritage asset and its setting due to topography and the gap created by the intervening road network. Accordingly, the proposal would have no effect on the setting of the listed building and there would be no conflict with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. I am satisfied that the proposal complies with the heritage protection policies of the Framework.
37. I have considered all other matters raised by interested people, including in relation to highway safety and parking. However, as I have found the development to be unacceptable for the reasons given, it is not necessary for me to reach a conclusion on these matters.
38. For this proposed scheme, I acknowledge the appellant has sought to address the reasons cited by the Council in the decision notice for a previous refused planning application at the site⁴. I also note the appellant's comments about the Council's handling of the application. However, these matters have had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the proposal that is before me.

Planning Balance

39. The most relevant policies are wholly consistent with the aims of the Framework regarding the need to provide affordable homes and achieve well-designed places with a high standard of amenity for existing and future users. I attach significant weight to the conflict with the development plan.
40. For the reasons set out above, whilst I find no harm to the character or appearance of the area, the proposal is in conflict with the development plan in respect of the effects on the living conditions of neighbouring residents and would not deliver affordable housing in accordance with local policies. The proposal would be contrary to Policies HS4 and URN2 of the UDP and the development plan as a whole. I afford this conflict with the relevant policies of the development plan significant weight.
41. The appellant suggests the Council do not currently have a 5 year supply of housing and from the evidence before me the Council do not dispute this claim. Therefore paragraph 11(d)(ii) of the Framework is engaged.
42. The Framework seeks to boost the supply of housing and has a strong pro-growth agenda. The proposal would provide for the delivery of 15 new dwellings, contribute to the housing mix in the area and would be an efficient use of land on a previously developed site in an accessible location. Therefore, I give this matter considerable weight in favour of the proposed development.

⁴ LPA Ref: OUT/22/00687

43. The proposal would also deliver time-limited economic and social benefits through the creation of construction jobs as well as longer term post construction benefits through future occupiers spending and potentially working in the local area. Given the relatively limited number of units, I attribute these factors moderate weight in support of the proposed development.
44. Landscaping is a Reserved Matter and would provide an opportunity to enhance the biodiversity of the site but due to the limited area proposed for landscaping, I attribute this only limited positive weight.
45. There is no evidence to suggest the development would be particularly innovative or that it would go beyond the requirements of the development plan or Building Regulations in relation to the appellant's claim regarding energy efficiency. As such, it is of neutral weight.
46. Even if I were to conclude that the proposed development would be designed to be secure and provide natural surveillance, would not be harmful to the living conditions of future residents, highway safety, drainage and flood risk, these are expectations of well-designed schemes and the development plan. As such they are neutral factors rather than ones that carry positive weight in favour of the development.
47. While I note the appearance of the appeal site in this prominent location is currently poor, this factor would not justify the proposed development, a development which, for the above reasons, would lead to significant harm. This is therefore a matter of neutral weight.
48. Taking all of these considerations together in the overall planning balance, I find the adverse effects of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.

Conclusion

49. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is dismissed.

A Veevers

INSPECTOR