



Appeal Decision

Hearing held on 30 October 2024

Site visit made on 29 October 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal Ref: APP/M4510/W/24/3342084

7-45 Lime Street, Ouseburn Valley, Newcastle upon Tyne, NE1 2PQ

- 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 Rob Cameron of Property@LimeSt against the decision of Newcastle Upon Tyne City Council.
 - The application Ref is 2022/1578/01/DET.
 - The development proposed is for the demolition of existing structures and erection of 4 to 6 storey mixed use building comprising 57 apartments along with Class E accommodation at ground floor level including parking and ancillary accommodation.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by both Mr Rob Cameron of Property@LimeSt and Newcastle City Council against each other. These applications are the subject of separate Decisions.

Preliminary Matters

3. The Government published the 2023 Housing Delivery Test (HDT) results, alongside an updated revised National Planning Policy Framework on 12 December 2024 (the 2024 Framework). I have given the main parties the opportunity to comment on the 2024 Framework, and on the HDT results. Further revisions to the 2024 Framework have taken place on 7 February 2025 (the Framework), but as the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. This action will not prejudice any party and reference to the Framework throughout this decision is to the revised Framework.

Main Issues

4. The main issues for this appeal are:
 - whether satisfactory accommodation would be provided for future occupiers of the scheme, with particular regard to proposed units 13, 26 and 39; and,
 - the effect of the proposed development on the Lower Ouseburn Valley

Conservation Area (the Conservation Area), particularly through scale and massing of the proposed development, and the demolition of a locally listed building;

Reasons

Living conditions

5. A Daylight and Sunlight Study (the DSS) was submitted with the application, then a Rebuttal Statement, dated 23 September 2024 was supplied to inform my consideration of this appeal. The DSS has been carried out in accordance with the Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a good practice guide, 3rd Edition' and it assesses the proposal's level of compliance with the BRE's recommendations in terms of daylight and sunlight. During the event, there was verbal agreement between the parties that Units 13, 26 and 39 were the focus of the dispute.
6. The 57 units within the proposed development were tested, which comprise 170 rooms that are served by 191 windows. Whilst more units than those identified above have deficiencies, they benefit from compensatory views overlooking the Ouseburn. Units 13, 26 and 39 would be located at the southern end of the proposed development and occupy the first, second and third floors respectively. Unit 26 would be above Unit 13 and Unit 39 would be above Unit 26.
7. Regarding Units 13, 26 and 39, the DSS advises that the BRE's minimum recommended target illuminance levels would not be achieved within the kitchen/dining/living areas. The targets comprise of 100 lux in bedrooms, 150 lux in living rooms and 200 lux in kitchens to be exceeded over at least 50% of the reference plane. Although, I recognise that a number of bedrooms would meet the daylight target, the BRE Guide acknowledges that natural light to bedrooms is less important than to main living rooms.
8. I consider that future occupiers would likely spend more time in the main living area within each unit, including Units 13, 26 and 39. Even when applying some discretion, and not applying the highest target to shared/main living areas, I find that overall, the future occupants of these units would not be provided with sufficient levels of daylight, as they would likely have to rely on artificial light for much of the time.
9. In terms of sunlight exposure, as set out in the DSS and when excluding trees Units 13, 26 and 39 would all achieve the recommended target sunlight exposure for main living areas, and all bedrooms in the case of Unit 39, with Units 13 and 26 only having one bedroom each achieving the target. When taking into account trees as solid obstructions, Unit 13 would not achieve the recommended target. However, the possible range would be somewhere between 1.3hrs to 1.8hrs.
10. The DSS advises that the BRE numerical guidelines should be interpreted flexibly since natural light is only one of the many factors in the design of a layout. This is also reflected in the Framework which requires a flexible approach should be taken to applying policies or guidance relating to daylight and sunlight where they would otherwise inhibit making efficient use of a site. However, the Framework only supports such flexibility where the scheme would provide acceptable living standards.

11. Even taking account of the flexibility advised in the BRE guidelines, the Framework and the Planning Practice Guidance, the significantly low levels of daylight for Units 13, 26 and 39, particularly in the main living areas, would result in harmful living conditions for the future occupants of these units. Consequently, I find that the proposed development would not result in a very good level of compliance with the guidance, even in the context of an urban development and would not provide an acceptable level of accommodation for future occupants.
12. I recognise the constraints with topography and trees in the southwest section of the site, but I have no compelling evidence that the proposed development before me is the only way of achieving residential development on the site and consequently, the need for efficient use of the site would not outweigh the harm I have identified. I also acknowledge the number of units that are considered acceptable in this regard, but on the evidence before me, this does not justify otherwise unacceptable development.
13. For these reasons, the proposed development would not provide satisfactory living conditions for future occupiers, with particular regard to units 13, 26 and 39, and to daylight. This would be contrary to Policy DM23 of the Newcastle upon Tyne Development and Allocations Plan 2015-2030, adopted June 2020 (DAP) which seeks a good standard of residential amenity for future occupants of land and dwellings, whilst ensuring development will maintain a good standard of daylight for all future occupants of buildings, amongst other things.

Heritage

The Appeal site

14. The appeal site is located on the western side of Lime Street, which is irregular in shape and follows the line of Lime Street in its northern/southern direction. The topography of the site rises to the west from street level on the eastern boundary. Further east and beyond Lime Street, the land levels fall in the direction of the river, which the site overlooks.
15. There are a number of buildings present on the site, which are commercial in nature. The buildings on site, comprise a terrace of fairly modern 2/3-storey former MOT Centre, single storey commercial buildings and a disused Pigeon Cree which is locally listed¹. The commercial building and the warehouse both have frontages on Lime Street, while the Pigeon Cree is set back further into the site. Currently the site is vacant and in a poor state of repair.
16. The Appeal site forms part of the Conservation Area. Consequently, in accordance with Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I will pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
17. Listed Buildings have been identified within the Conservation Area by the parties. However, no harm has been identified or attributed from the proposed development by the Council in this regard. Given the distances maintained between the site and the Listed Buildings, and the intervening structures/features, I do not find harm would occur from the proposed development. Consequently, there would be no conflict with Section 66(1) of the Act.

¹ ID:180

The Conservation Area

18. The Conservation Area was designated in October 2000. The Council has produced a Character Statement² for the Conservation Area, which identifies 5no. Sub Areas. The site is located within Sub Area 3, where most of this area is characterised by commercial buildings and hard landscaping. It is noted that the west of Lime Street becomes disjointed, where the buildings on the site are recognised. The single storey commercial buildings are of lesser quality and interest, which do not contribute to the character or appearance of the Conservation Area.
19. When the Character Statement was undertaken the former MOT Centre was considered to be visually interesting, lifting the streetscene through their coloured render, relating well to the west bank of the valley. Consequently, it was considered that this terrace related well to the character and appearance of Lime Street, despite its commercial nature. This view is reinforced through comments in the Management Plan³, which considers the former MOT Centre to be a good example of new build within a conservation area as it contributes positively to the character and appearance of the Valley. The Pigeon Cree was also identified, as located adjacent to the steps up the west bank of the valley, and of little architectural interest, but not detracting from the character of the area. Whilst Sub Area 3 is recognised for relatively little greenery, to the west of the site is dense tree shrub growth.
20. Given the nature of the development that has occurred in Sub Area 3 and the wider Conservation Area, the area has many 20th century features. Whilst historic maps and images demonstrate how Lower Ouseburn has developed over time, the distinction between the historic and later development can clearly be seen on Lime Street. I observed that the significance of the Conservation Area as a whole, lies in its industrial past and the functional relationship between the river and associated warehouses and industrial buildings, originally associated mainly with the establishment of glasshouses and mills.
21. Whilst the Character Statement and the Management Plan both positively reference the former MOT Centre, this is no longer the case, due to the colour change of the building(s) and now its overall poor condition. The other buildings located on the site are also of poor condition. Given the limited reference to the Pigeon Cree in both the Character Statement and Management Plan, particularly given that it is not identified as an unlisted buildings of merit, lessens its contribution to the Conservation Area. The significance of the Pigeon Cree primarily derives from the historical development of the Conservation Area. Overall, the site does not currently contribute positively to the significance of the Conservation Area.

Impact of the Appeal Scheme

22. The proposed development would involve the demolition of all of the buildings on the site, including the locally listed Pigeon Cree. The Council has specifically expressed its concerns regarding the views of the proposed development from Byker Bridge and the fact that it would exceed the height of Steenberg's

² Lower Ouseburn Valley Conservation Area Character Statement, adopted 27 October 2000 (revised 24 September 2004)

³ Lower Ouseburn Valley Management Plan – adopted September 2004

Warehouse. In reaching its conclusion the Council references the Ouseburn Design Framework⁴ that seeks scale and form of development to reflect and enhance the local topography within the valley.

23. Comments have been received from Historic England (HE), dated 8 February 2023, during the assessment of the planning application. Within these comments HE raises no objections to the proposed development and only offers comments on brick colour for consideration.
24. However, HE in its response advises that the proposed development '*follows the pattern of use, scale and contemporary design delivered by recent developments on the other, southern side of the Byker Bank Bridge*', and then '*The breadth and height of the proposal would produce a conspicuously large mass. The sense of this mass is broken up by the varied planes of the building's main elevation and the recessed varied roofline of the top story. The elevational design is honestly residential and commercial but arranged in a way that is organised but not formal, reflective of an industrial aesthetic*'.
25. With regard to the external materials, HE notes that '*the use of a grey brick, variously textured and detailed, references the patina of historic sandstone in the area, most notably on the Cluny Warehouse*'. This is considered '*an interesting change compared to the use of red brick and helps to reinforce the range of tone and materials of the area*'. At the event, the Council agreed verbally that the response from HE is a material consideration of significant weight.
26. In terms of the proposed development, it would not detract from the history and evolution of the Conservation Area. It has been demonstrated that the urban design and architectural qualities in the proposed development would be high quality, using design elements that would reflect the industrial heritage of the site and the wider Conservation Area. Whilst it would be considerably taller and larger than the existing buildings that occupy the site, given the separation distance between the site and Steenberg's Warehouse and the surrounding topography, particularly the elevated west bank, it would relate appropriately to them and the wider Conservation Area. I have no doubt that the proposed development would visually improve this section of Lime Street, through an appropriately designed frontage, public access into the appeal site and animation of the street. Generally, the height of new development would reflect that of more recent development in the Conservation Area and therefore would be appropriate.
27. Nonetheless, whilst the Council has been relatively silent on the matter, there remains the issue of the demolition of the Pigeon Cree as part of the proposed development. The listing states '*The two pigeon crees on either side of Lime Street greatly add to the aesthetic character of the Lower Ouseburn Valley*'. The other Pigeon Cree referenced in the listing is located between Lime Street and the river.
28. As the Pigeon Cree on site is a locally listed building, it comprises a non-designated heritage asset. Even if I were to accept it had a high local significance (and this will be something I explore below), it is not subject to the statutory requirements in the Act that are given to nationally listed buildings, and indeed I have no basis to consider it should be afforded the same level of protection. Due to the demolition of the Pigeon Cree as part of the proposed

⁴ Ouseburn Valley Urban Design Framework – adopted 2005

development, there would be a total loss of significance of this locally listed building, and its removal would fail to preserve the character of the Conservation Area, causing harm to its significance. There will also be a notable number of trees removed, as part of the scheme.

Heritage Conclusion

29. Overall, and putting aside the demolition of a locally listed building, I consider the erection of the proposed development would not be of a design or presence that would harm the character or appearance of the Conservation Area and would not harm its significance as a designated heritage asset. However, when the removal of the Pigeon Cree from the site is taken into account, along with a significant loss of trees, the proposed development would fail to preserve the character of the Conservation Area and would cause less than substantial harm, albeit at the extreme lowest end of that scale, to its significance as a designated heritage asset. This would be contrary to Policy CS15 2. of Planning for the Future, Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-2030, adopted March 2015 (CS and UCP).
30. In relation to designated heritage assets, the Framework states that any harm to their significance should require clear and convincing justification. In addition, if less than substantial harm is caused to the significance of any such asset, that harm should be weighed against the public benefits. Concerning the effect on the significance of non-designated heritage assets, the Framework requires a balanced judgement, having regard to the scale of any harm and the significance of the asset. With regard to locally listed buildings, no specific advice is given.
31. In my opinion, the poor condition of the Pigeon Cree with its limited significance, a limited likelihood of it being repaired, restored and re-used in conjunction with the proposed development in its place, justifies the loss of significance of the locally listed building in this instance. Accordingly, I consider the public benefits identified by the appellant outweigh the less than substantial harm that would be caused to the significance of the Conservation Area and to its character and appearance, particularly as I have found the level of harm would be at the lowest end of that scale. Consequently, the proposed development would comply with the statutory duty in the Act.
32. In this instance, I am satisfied that the public benefits associated with the proposed development would significantly outweigh the identified less than substantial harm to the heritage asset. Therefore, the Framework in this instance is a material consideration, which means on this main issue, the proposed development could be determined other than in accordance with the development plan.
33. However, there would have been a requirement for a mechanism to be secured to ensure that the loss of a heritage asset (the Pigeon Cree) would not be permitted without taking 'reasonable steps' to ensure the new development would proceed after the loss had occurred⁵. I am satisfied that this matter could have been secured by condition following a written process that would allow otherwise unacceptable development to be made acceptable.
34. DAP Policy DM16 has been referenced in relation to this main issue. However, it specifically refers to setting of a heritage asset, where in this instance, the site is

⁵ Paragraph 217 of the Framework

within the Conservation Area. On this basis, I do not consider this DAP Policy to be directly applicable to the case before me.

Other Matters

35. An executed unilateral undertaking (UU), made under the provisions of section 106 of the Town and Country Planning Act 1990, has been submitted in support of this appeal by the appellant. However, whilst the terms of the UU generally reflect the requirements set out in the Officer Report, the appellant raises concerns over a number of elements, which include the cost of the car club bay and monitoring costs for sustainable drainage systems, biodiversity net gain and employment and training plan. However, whilst I have taken the UU and wider viability issues into consideration in reaching my decision, as I am dismissing the appeal for other reasons, I do not need to consider these matters any further.
36. I have had regard to the number of representations received in support of the proposed development from a local resident, local businesses and the Ouseburn Trust. I have also taken into consideration the comments received during the assessment of the planning application. However, whilst these comments, particularly those in support of the proposed development represent material considerations, they do not alter my findings in respect of living conditions of future occupiers. I have considered this appeal proposal on its own particular merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

37. I accept the lack of harm in respect of heritage matters and to an enhancement of the Conservation Area through the re-development of the site. There is also an absence of other harm arising from the proposed development. There would also be a reasonable contribution to the Council's supply of homes; various financial contributions, including towards affordable housing and other general economic and social benefits through the construction phase and subsequent occupation of the scheme, amongst other things.
38. Nonetheless, these factors do not outweigh my assessment on living conditions of future residents, which would result in significant harm. Given my findings above, the proposed development conflicts with the development plan when taken as a whole, and there are no other material considerations that indicate otherwise. It is also at odds with the requirements of the Framework.
39. For the reasons given above, I conclude that the appeal should be dismissed.

W Johnson

INSPECTOR

APPEARANCES

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