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## Appeal Decisions

Site visit made on 5 February 2026

by **D Hartley BA (Hons) MTP MBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

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### **Appeal A Ref: APP/M4320/C/25/3360887**

#### **131-133 South Road, Waterloo, Liverpool, L22 0LT**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Jason Barton against an enforcement notice issued by Sefton Metropolitan Borough Council.
  - The notice was issued on 6 February 2025.
  - The breach of planning control as alleged in the notice is without planning permission, and within the last 4 years change of use of the first and second floors to four (4) self-contained flats in the approximate position shown cross-hatched on the attached plan 2.
  - The requirement of the notice is to cease the use of the first and second floors as self-contained flats to the property known as 131-133 South Road, Waterloo, Liverpool, L22 0LT as shown cross-hatched on the attached plan.
  - The period for compliance with the requirement is three months from the date the notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 (as amended).
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### **Appeal B Ref: APP/M4320/W/25/3359445**

#### **131-133 South Road, Waterloo, Liverpool, L22 0LT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission.
  - The appeal is made by Mr Jason Barton against the decision of Sefton Metropolitan Borough Council.
  - The application Ref is DC/2024/01685.
  - The development proposed is described as a retrospective planning application to regularise the creation of 4no. separate self-contained 1-bedroom flats at 1st and 2nd floor level.
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## Decisions

### **Appeal A Ref: APP/M4320/C/25/3360887**

1. It is directed that the enforcement notice is varied by the deletion of the words *"The period for compliance with the steps set out in paragraph 5 are: three (3) months from the date this notice takes effect"*, and their substitution with the words *"The period for compliance with the steps set out in paragraph 5 are: nine (9) months from the date this notice takes effect"*. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld.

### **Appeal B Ref: APP/M4320/W/25/3359445**

2. The appeal is allowed and planning permission is granted for the creation of 4no. separate self-contained 1-bedroom flats at 1st and 2nd floor level at 131-133 South Road, Waterloo, Liverpool, L22 0LT in accordance with the terms of the application, Ref DC/2024/01685, subject to the conditions in the attached schedule.

### **Preliminary Matter**

3. A draft National Planning Policy Framework 'Plan-making and national decision-making policies' was issued by the Government for consultation on 16 December 2025 (Consultation Draft Framework). The Consultation Draft Framework has limited weight as a material planning consideration. In respect of the main issue which is pertinent to the consideration of the appeal made under section 78 of the Act, I have continued to afford full weight to the published National Planning Policy Framework 2024 (as amended) (the Framework) and the adopted development plan as a whole from the point of view of determining this appeal. In this case, the Consultation Draft Framework does not alter or outweigh my conclusion below for Appeal B.

### **Appeal A – ground (f) appeal**

4. The appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.
5. The ground (f) claim made by the appellant relates to planning merits. A ground (a) appeal and deemed planning application has not been lodged in this case. Consequently, it is not possible for me to consider the ground (f) appeal based on an associated ground (a) appeal.
6. The purpose of the notice is to remedy the breach of planning control by ceasing the use of the first and second floors as self-contained flats. This is not an excessive requirement as such a requirement remedies the breach of planning control. Therefore, the ground (f) appeal fails.

### **Appeal A – ground (g) appeal**

7. The appeal on ground (g) is made on the basis that the period specified in the notice in accordance with section 173(9) of the Act falls short of what should reasonably be allowed.
8. The period for compliance with the requirement of the notice is three months. The appellant requests nine months because the four flats are tenanted and the occupiers would need more time to find alternative accommodation. Compliance with the requirement of the notice would mean that the occupiers of the flats were in effect made homeless. Consequently, it is necessary that I consider the rights of the occupiers of the flats in terms of Article 8 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998 (HRA), which states that everyone has a right to respect for private and family life, their home and correspondence. This a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.
9. I find that it is proportionate that I extend that compliance period from three months to nine months in this case. This is a legitimate and proportionate response to addressing the breach of planning control in the public interest while also considering the rights of the occupiers of the flats under Article 8 of the HRA. Put simply, it would give the occupiers of the flats reasonable time to find alternative residential accommodation.

10. To the extent that the compliance period is increased from three months to nine months, I conclude that the ground (g) appeal succeeds.

## **Appeal B – s.78 planning appeal**

### *Main Issue*

11. The main issue is the effect of the development on the living conditions of the occupiers of the flats in respect of the absence of outside amenity space.

### *Reasons*

12. In this case, there is no outside amenity space for the four flats. The Council's Conversion to Flats and Houses in Multiple Occupation Supplementary Planning Documents 2023 (SPD), which supports the living conditions aims of policy HC4 of the Council's adopted 2017 'A Local Plan for Sefton' (LP), states that it is important that residents have access to an area of private outdoor amenity space. The SPD requires a minimum of 20 square metres per flat of outside amenity space. It indicates that this space should not be accessible to the public and that for flats it is usually provided as a communal area that is available for all residents of the flats to use. It states that this space should be designed to provide an area for residents for informal recreation, gardening, drying clothes and socialising.
13. The SPD goes on to state that the Council '*will not permit insufficient amenity space if all opportunities to maximise the amount of space have not been taken.... Furthermore, if the required amount of amenity space cannot be met the Council would expect the applicant to reduce the number of units provided within the proposal.... If the proposal is not providing the full outdoor private amenity open space standard, it is the responsibility of the applicant to clearly demonstrate why a lower standard should be accepted addressing the points in the flowchart at Appendix B.... It should not be assumed that the Council will accept a shortfall in the amount of amenity space, and it is the responsibility of an applicant to demonstrate to the Council's satisfaction that a shortfall of amenity space would, on balance, still achieve in a high quality and sustainable development*'.
14. In addition to the above, paragraph 3.28 of the SPD states that '*notwithstanding the flexibility we may apply in the circumstances set out in the flowchart at Appendix B, we will not accept no outdoor amenity space as all residents need at least some outdoor space, for example to dry clothes. We will not accept the argument that having a tumble dryer negates the need for external space to dry clothes, particularly given issues with fuel poverty*'.
15. In this case, the ground floor of the property is used for commercial purposes, and the evidence indicates that the Council would not support the loss of this space having regard to the vitality and viability of the District Centre. The property as a whole does not have any existing outside space that could be utilised for amenity purposes. I have considered whether it would be reasonably possible or practical to provide balconies and or other outside amenity roof space.
16. Even if it were possible for some of the flats to be configured in such a way that balconies could be provided to some of the windows or perhaps new or altered openings, I find that this would likely lead to other planning harms such as overlooking or a loss of outlook for surrounding occupiers of buildings. Moreover, the appeal property is prominent in view when considered from both Willoughby

Road and South Road. In my judgement, the provision of balconies and/or a possible roof terrace would cause harm to the character and appearance of the host property and the way that it is experienced in the surrounding street-scene where there is a consistency to the otherwise flat and utilitarian brick-built elevations. To this extent, and, in this case, I find that *'reasonable opportunities to minimise the shortfall to the outside amenity space'* have been considered in so far that the evidence indicates that any such opportunities were not reasonably available to the appellant.

17. Notwithstanding the above, if I strictly apply the flow chart in appendix B of the SPD, the flats are not provided with at least 80% of the outdoor amenity space requirement, they are not social/affordable rented properties, the evidence does not indicate that the property is a heritage asset or in an identified regeneration area, there is no evidence of a fallback position, and the flats are not within 200 metres of a main park. In this regard, the SPD indicates that the development is *'unacceptable'*. To this extent, I conclude that there is conflict with the SPD from the point of view that the occupiers of the flats do not have access to at least some private outside amenity space. The exceptional circumstances for justifying a relaxation of the required outside amenity space floorspace are not therefore met.
18. The conflict with the SPD weighs against granting planning permission. The absence of private outside amenity space for the occupiers of the flats where they may be able to dry washing, relax or socialise weighs against granting planning permission. Nonetheless, it is important that I emphasise that there is public outside amenity space within reasonable walking distance of the appeal property such as that at Rimrose Country Valley Park, Marine Lake and Crosby Coastal Park, and Victoria Park. It is not disputed by the Council that these are respectively about 460 metres, 600 metres, and 550 metres from the appeal site.
19. I acknowledge that the SPD refers to *'200 metres from a main park'*, but I do not find that the above distances to the named parks would constitute a barrier to regular use of these outside areas by occupiers of the flats. I do nonetheless accept that in the absence of any outside amenity space associated with the flats, it would not be possible for the occupiers to dry clothes outside, or to enjoy the kind of private space for relaxing (even if the space was communal) when compared to attending a public park where there are likely to be many visiting members of the public.
20. Despite the technical conflict with the SPD, it is also necessary that I reach a view in terms of whether the absence of outside amenity space has caused *'significant'* harm to the living conditions of occupiers of the flats as outlined in policy HC4 of the LP. It is a moot point as to whether the lack of outside amenity space has caused significant harm to the existing and future occupiers of the flats. Those that live in the flats now, and have made representations, are content with existing living arrangements. However, to the extent that the SPD informs policy HC4 of the LP, and there is conflict with it, I conclude that significant harm has been caused in living conditions terms.
21. I do not agree with the appellant that policy HC4 of the LP and the associated SPD are inconsistent with the living conditions aims of the National Planning Policy Framework 2024 (the Framework). In this regard, policy HC4 of the LP (and hence the associated SPD) are not out of date with reference to paragraph 232 of the Framework.

### *Other Considerations*

22. The undisputed evidence is that the local planning authority (LPA) cannot demonstrate a deliverable five-year supply of housing sites. According to the LPA, it can demonstrate 3.5 years supply against its housing requirement. In this regard, paragraph 11(d) of the Framework is engaged and hence this decision should apply a '*presumption in favour of sustainable development*'.
23. Given the housing undersupply position, the four flats make a very positive contribution to boosting the supply of homes in the area. I afford this matter substantial positive weight in the overall planning balance.
24. Moreover, the four flats are located within a highly sustainable and accessible location, make efficient use of an existing building, and exceed the minimum internal national space standards. These are matters which also add positively in favour of granting planning permission.
25. The continued use of the upper floors of the building as four self-contained flats is also beneficial in so far that it ensures that the building remains in use. There is no doubt that the works carried out to both the ground floor and the upper floors of the appeal building have collectively given the property a more certain future. In this regard, I find that the development has added positively in terms of contributing to the overall vitality and viability of the district centre.
26. I also note the supportive comments made by the occupiers of each of the flats. I do not doubt that they were attracted to rent the flats so that they could enjoy the accessible location and where they could make use of the nearby parks as well as to take advantage of the district centre amenities and services for relaxation and leisure purposes. In fact, and, in this case, while there is some conflict with the Council's SPD, and hence policy HD4 of the LP, it is noteworthy that there are several parks within close walking distance of the appeal property. I accept that public parks are different to private outside amenity spaces, but, in this case, it is not the case that the occupiers of the flats are forced to be confined to inside living at all times of the day.
27. I also note the comments made by the occupier of the commercial property on the ground floor. I afford some weight to the fact that use of the upper floors is likely to provide a degree of natural surveillance from the point of view of the security of the ground floor commercial use. Moreover, both the occupiers of the flats, and their visitors, do increase footfall in the district centre. There are clearly some economic benefits associated with this.
28. Collectively, I afford the above benefits very substantial weight in favour of granting planning permission.

### *Planning Balance and Conclusion*

29. I conclude that there is some conflict with the Council's SPD and hence policy HD4 of the LP. However, policy HD4 of the LP (i.e., a housing related policy) is out of date because the LPA cannot demonstrate a deliverable five-year supply of housing sites. Consequently, the weight that I afford to the conflict with policy HD4 of the LP (and hence the SPD) is reduced. I afford the conflict with such a policy (and associated SPD) moderate weight in this case.



30. As paragraph 11(d) of the Framework is engaged, it is necessary that I consider whether the harm caused to the occupiers of the flats, as a result of the absence of outside amenity space, is significantly and demonstrably outweighed by the benefits identified in the other considerations section above, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
31. In this case, I conclude that the living conditions harm caused owing to the absence of any private outside amenity space, and including the conflict with policy HD4 of the LP (and the associated SPD), is significantly and demonstrably outweighed by the above identified benefits when assessed against the Framework taken as a whole. It is also noteworthy that in concluding on this matter, the flats are in a sustainable location and make effective use of land.

### Conditions

32. The Council has suggested that three conditions be imposed if planning permission is approved. These relate to compliance with the submitted drawings, the submission of a scheme of sound insulation, acoustic glazing and acoustic ventilation, and the implementation of the secure cycle storage shown on drawing No. 23-014 (04)004 rev P03. Where necessary, I have amended the conditions in the interests of precision and enforceability. The conditions are respectively necessary in the interests of certainty, the living conditions of existing/future occupiers of the flats, and to ensure that the occupiers of the flats are encouraged to use sustainable modes of travel.

### Conclusions

#### Appeal A Ref: APP/M4320/C/25/3360887

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the varied enforcement notice.
34. In reaching the above conclusion, I emphasise that planning permission has been approved in respect of Appeal B. Consequently, I draw the main parties' attention to section 180(1) of the Act which states that '*where, after the service of— (a) a copy of an enforcement notice; or (b) a breach of condition notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission*'. If the appellant complies with the requirements of the planning permission approved as part of Appeal B, and such a decision is not subsequently quashed by a Court for whatever reason, then section s.180 of the Act would be applicable in this case and the occupiers of the flats would not have to cease use/occupation.

#### Appeal B Ref: APP/M4320/W/25/3359445

35. For the reasons given above, the appeal should be allowed.

D Hartley

INSPECTOR

**Appeal B Ref: APP/M4320/W/25/3359445 – Schedule of Conditions**

1)The development is hereby permitted in accordance with the following approved plans and documents: Drawing No. 23-014 (01)001 rev P01 Site Location Plan at 1:1250; Drawing No. 23-014 (04)004 rev P03 Proposed Ground Floor GA Plan at 1:50; Drawing No. 23-014 (04)010 rev P01 Existing Ground Floor GA Plan at 1:50; Drawing No. 23-014 (04)011 rev P01 Existing and Proposed First Floor GA Plan at 1:50; Drawing No. 23-014 (04)012 rev P01 Existing and Proposed Second Floor GA Plan at 1:50; Drawing No. 23-014 (05)001 rev P01 Existing Elevations; Drawing No. 23-014 (05)002 rev P01 Proposed Elevations.

2)The use of the building as flats hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i)Within 2 months of the date of this decision a scheme for sound insulation, acoustic glazing, and acoustic ventilation of the flats shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii)If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii)If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv)The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained in accordance with approved details. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined

3)Within two months of the date of this decision, the facilities for the secure storage of cycles shown on drawing number 23-014 (04)004 rev P03 shall be provided and shall thereafter be retained as such for the duration of the development.