Sefton Council

Appeals Received and Decisions Made

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Appeals received and decisions made between 23 December 2021 and 27 January 2022

Appeal Decisions

51 Sandhurst Drive Aintree Liverpool L10 6LU

Reference: DC/2021/00943 (APP/M4320/X/21/3277991)

Certificate of Lawfulness for the proposed detached outbuilding in the rear garden.

Procedure: Written Representations
Start Date: 02/08/2021
Decision: Dismissed
Decision Date: 21/01/2022

1 Heather Close Formby Liverpool L37 7HN

Reference: EN/2021/00083 (APP/M4320/C/21/3283819)

Without planning permission and within the last four years, the erection of a brick wall with pillars in excess of 1 metre in height to the front boundary of the land.

Procedure: Written Representations
Start Date: 18/10/2021
Decision: Dismissed
Decision Date: 06/01/2022

Kirkstone Road North Litherland Liverpool L21 7NT

Reference: DC/2021/01290 (APP/M4320/W/21/3279863)

Prior notification application for 18.0m Phase 8 Monopole C/W wraproud Cabinet at base and associated ancillary works.

Procedure: Written Representations
Start Date: 24/09/2021
Decision: Dismissed
Decision Date: 23/12/2021

New Appeals

27 Fell View Southport PR9 8JX

Reference: DC/2021/01858 (APP/M4320/D/21/3289692)

Erection of a fence in the rear garden (retrospective completed 27/04/2021).

Procedure: Householder Appeal
Start Date: 21/01/2022
Decision:
Decision Date:

31 Harbord Road Waterloo Liverpool L22 8QG

Reference: DC/2021/01455 (APP/M4320/D/21/3288465)

Erection of a single storey extension to the rear of the dwellinghouse, after demolition of existing conservatory

Procedure: Householder Appeal
Start Date: 17/01/2022
Decision:
Decision Date:

Orrell Hill Farm House Orrell Hill Lane Ince Blundell Liverpool L38 5DA

Appeals received and decisions made between 23 December 2021 and 27 January 2022

Reference: EN/2021/00648 (APP/M4320/C/21/3289208)

Appeal against use of land for the storage of buses, caravans and other vehicles without planning permission

Procedure: Written Representations

Start Date: 17/01/2022

Decision:

Decision Date:

The Planning Inspectorate

Appeal Decision

Site visit made on 14 December 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/M4320/X/21/3277991
51 Sandhurst Drive, Aintree, Liverpool, Merseyside L10 6LU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Brian and Maria Gerrard against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2021/00943, dated 7 April 2021, was refused by notice dated 16 June 2021.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a detached building located in the rear garden.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

3. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

4. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

5. Permitted development rights for the erection of a single storey building at the rear of the dwellinghouse to form a games room are said to have been confirmed by the Council on 6 August 1984. However, this relates to a building which has now been removed. It is not disputed that the host dwelling benefits from permitted development rights, what is in dispute is whether the appeal scheme comprises accommodation that is for a purpose which is incidental to the enjoyment of the dwellinghouse.

6. In consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

7. The main house is a two-storey semi-detached building and garage, with a combined footprint of around 85 square metres (sqm). Although the entrance to the main dwelling is located off Sandhurst Drive, there is a second vehicular access to the rear of the property, from Kempton Park Road. The access is gated, with a drop kerb and hardstanding within the rear of the garden, presumably for the parking of vehicles.

8. The proposed building would have a footprint of approximately 82sqm and would comprise a garden room/games room, with a toilet, basin and shower and a room which is identified as a 'store'. The games room area would measure approximately 10.5m x 6.5m. A standard full sized snooker table is stated to measure 3.66m x 1.89m, with the minimum room size that is required for comfortable cueing 6.7m x 4.9m. I accept that a games room to accommodate such a table could be incidental to the enjoyment of the dwellinghouse, however, there would be significant space remaining. While the appellants state they are not exclusively interested in snooker, it is not clear what else they intend to use the games room for.

9. The appellants assert that the building would not provide primary living accommodation such as bedrooms and/or a kitchen, however, it would provide a bathroom. The Permitted development rights for householders: Technical Guidance (2019) advises that a purpose incidental to a house would not cover normal uses, such as a bathroom. Although there may be instances where a shower is reasonably required as part of an incidental use, snooker, in my view, is unlikely to generate the need to shower. Consequently, the bathroom proposed would duplicate accommodation provided in the main dwelling.

10. While the appeal building would be single storey and would comply with the size limitations set out in the GPDO, the floor space provided would be significant compared with the floor space provided by the main dwelling. Though size is not a conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse, the word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.

11. The main door to the outbuilding faces towards Kempton Park Road and whilst bifold doors are shown, they face towards the rear garden of No 53, rather than the host dwelling. The building appears to be laid out to function separately to the main dwelling, with its own bin storage, garden area, parking and access from Kempton Park Road. The layout of the building, its size and orientation away from the main dwelling and the inclusion of a bathroom suggests the building would not be used for purposes which are incidental to the enjoyment of the dwellinghouse.

12. Thus, for the reasons above, I am not persuaded, on the balance of probabilities, that the proposed outbuilding would be for a purpose incidental to the enjoyment of the dwellinghouse and as such, it is not development which is permitted by Class E of Part 1 of the GPDO.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a detached building located in the rear garden was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Savage

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2021

by D Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 06 January 2022

Appeal Ref: APP/M4320/C/21/3283819
1 Heather Close, Formby, Liverpool L37 7HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Miss Suzanne Deary against an enforcement notice issued by Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 3 September 2021.
- The breach of planning control as alleged in the notice is without planning permission and within the last four years, the erection of a brick wall with pillars in excess of 1 metre in height to the front boundary of the land as shown on the attached plan entitled "wall plan" between points A and B.
- The requirements of the notice are to remove the wall and pillars from the property OR lower the height of the wall and pillars to no higher than 1 metre in order to comply with permitted development rights.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(e), (f) and (g) of the 1990 Act as amended.

Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Background

2. The enforcement notice concerns a boundary wall with pillars. The appellant sought planning permission, retrospectively, for the wall but the application was refused by the Council[1]. The subsequent appeal was dismissed[2]. The appellant argues that there are numerous other examples of higher fences and walls in the local area, including the immediate vicinity, and there have been no objections to the unauthorised development. Further, it is suggested that the landscaping, which has been planted adjacent to the wall, will become established within 12 months and would provide suitable screening. Also, it is explained that the construction of the wall is such that it would not be possible to lower it, as required, without damaging that part which would remain under permitted development rights. The resulting wall would become an eyesore.

3. These arguments all concern the merits of the development, which are its impact on the character and appearance of the area and how any impact may be mitigated. These matters all relate to a ground (a) appeal, that planning permission should be granted for the matters alleged. However, ground (a) has not been pleaded and I am unable to take these considerations into account.

[1] Ref DC/2020/02369.
[2] Ref APP/M4320/D/21/3269181 dated 18 May 2021.

4. I understand that a previous enforcement notice was withdrawn as it contained errors relating to the extent of the unauthorised wall, and there was no location plan. Those errors were resolved when the second notice was issued. There is no evidence before me that the current notice is invalid.

The ground (e) appeal

5. The main issue to consider is whether the appellant has shown, on the balance of probability, that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, there has been substantial prejudice. The appellant argues that the paperwork served by the Council was incorrect and incomplete.

6. Section 172(2) requires that a copy of an enforcement notice shall be served on the owner and on the occupier of the land to which it relates and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.

7. The Council has provided a completed copy of the Planning Contravention Notice, dated 18 June 2021, which lists the names of the occupiers and owners of the appeal property. This information was cross referenced against the Land Register and Council Tax records. The Council has confirmed that the notice was served on all the owners and occupiers identified through this process. In the absence of any evidence to the contrary, I am satisfied that the notice was served as required. The appeal on ground (e) fails, therefore.

The ground (f) appeal

8. The ground (f) appeals are that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. While the connection is not explicit, the wording of Section 174(2)(f) of the 1990 Act links back to Section 173 which provides that an enforcement notice shall specify the steps to be taken, or activities to cease, in order to achieve, wholly or partly, remedying the breach or remedying any injury to amenity. In this case, the notice requires the removal or alteration of the wall so that it conforms with the relevant permitted development limitations. Hence, its purpose is to remedy the breach of planning control. I must consider whether the requirements exceed what is necessary to achieve that purpose.

9. Deemed planning permission is granted by virtue of Article 3 and Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns gates, fences and walls. Under A.1. development is not permitted by Class A - *if (a) the height of any gate, fence, wall or means of enclosure erected or constructed adjacent to a highway used by vehicular traffic would, after the carrying out of the development, exceed— (i) for a school, 2 metres above ground level, provided that any part of the gate, fence, wall or means of enclosure which is more than 1 metre above ground level does not create an obstruction to the view of persons using the highway as to be likely to cause danger to such persons; (ii) in any other case, 1 metre above ground level.* The appeal site is not a school and the limitation is 1 metre.

10. The wall has been constructed adjacent to a highway without planning permission and parts of it exceed 1 metre in height. This constitutes a breach of planning control. In order to remedy the breach, the unauthorised development must be removed or altered so that it would fall within the limitations of development permitted under the GPDO. This is what the requirement sets out, which is not excessive.

11. The appellant indicates that the injury to amenity could be remedied through landscaping. If I were to accept this argument, I would need to grant planning permission for the wall, as built, and impose a condition to ensure the landscaping is maintained. However, as explained, there is no ground (a) appeal and no mechanism for me to grant planning permission. In any event, this would not achieve the statutory purpose behind the notice, which is to remedy the breach of planning control.

12. I conclude on this matter that the steps required by the notice are not excessive to achieve its statutory purpose and the appeal on ground (f) must fail.

The ground (g) appeal

13. The ground (g) appeal is that the time required for compliance with the notice falls short of what should reasonably be allowed. The appellant is seeking 12 months to allow the landscaping to grow, which it claimed would screen the wall.

14. I understand the appellant's intentions. However, if I were to allow 12 months for the landscaping to become established, the breach of planning control would remain and the notice would still have to be complied with. This would not achieve the appellant's aim, which is to retain the wall as built. The issue of whether or not the development would be adequately screened by planting concerns the planning merits, which have been previously considered and are not relevant to this appeal.

15. I conclude, therefore, that the two months allowed for compliance with the notice is reasonable and proportionate and the appeal on ground (g) fails.

Conclusion

16. For the reasons given above, I consider that the appeal should not succeed.

D Moore

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 16 November 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2021

Appeal Ref: APP/M4320/W/21/3279863
Kirkstone Road North, Ford, Litherland L21 7NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of The Town & Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by Hutchison UK Ltd against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2021/01290, dated 7 May 2021, was refused by notice dated 1 July 2021.
- The development proposed is an 18.0m Phase 8 Monopole C/W wrapround Cabinet at base and associated ancillary works.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The name of the appellant company is spelt differently on the Application Form and Appeal Form. I have used the name as spelt on the former in this decision.

3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) require the proposed development to be assessed solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on this basis.

4. The principle of development is established by the GPDO and the provisions of the Schedule 2, Part 16, Class A of the GPDO do not require regard to be had to the development plan. I have, though, had regard to the policies of the Local Plan for Sefton (Local Plan) and the National Planning Policy Framework (Framework) insofar as they are a material consideration relevant to matters of siting and appearance.

Main Issue

5. I consider the main issue is the effect of the proposed development's siting and appearance upon the character and appearance of the surrounding area.

Reasons

6. The appeal site is situated on the north-eastern side of Kirkstone Road North close to the junction with Anderson Way. It is on an area of pavement that is positioned away from the edge of the vehicular carriageway and is adjacent to a grassed area of land. Along Kirkstone Road North in the vicinity of the site

are three storey terraced blocks which contain a mix of retail and other commercial uses on the ground floor, and residential above. The wider area is however predominantly residential, formed mainly of two storey dwellings interspersed with larger areas of green space such as Kirkstone Park on the opposite side of Kirkstone Road North. These open spaces, some of which contain trees and other planting, as well as the wide pavement and vehicular carriageway, gives the area a spacious, suburban character.

7. The proposed mast would be positioned close to an existing streetlight which is situated close to the edge of the vehicular carriageway on Kirkstone Road North. There are also other street furniture items in the area, such as a telegraph pole further to the rear along Anderson Way. Despite the proximity to these vertical features, the proposed mast, at 18m in height, would be more than double the height of the telegraph pole and also that of the streetlight. It would also be significantly taller than any of the nearby properties and would thereby appear as a visually intrusive feature in the streetscene. I was able to see the location of nearby mature trees, but these are within Kirkstone Park on the opposite side of Kirkstone Road North and would not provide any roadside screening of the monopole. In any event, in other views where the trees and proposed mast would be seen together, the latter would appear conspicuously tall and be higher than any built or natural features in the area.

8. I appreciate the efforts that have been made to minimise visual intrusion, including the slim line pole design and the avoidance of more bulky and intrusive support structures. The appellant has also set out that there is an opportunity to select the colour of the pole. I also appreciate that in a built-up area, telecommunication installations do not in themselves appear unusual. However, in this particular instance, the excessive height of the mast and its intended positioning, would result in it appearing as an incongruous feature that would be harmful to the character of the area.

9. The appellant states that there would only be limited opportunity for a negative impact on residential amenity and that there are no residential properties that directly overlook the site. The mast would, however, be clearly seen from a number of residential properties, including the upper floor flats along Kirkstone Road North and the end property at No 1 Anderson Way. I do not consider as the appellant states, that these would be suitably distanced, and the proximity to these properties and the height of the mast would cause significant harm to the outlook of the residents within neighbouring properties.

10. A number of cabinets are also proposed which the Council are concerned would give rise to a sense of clutter. However, as the cabinets would be low level structures positioned in a linear arrangement close to existing bollards, they would not unduly add to street clutter. As such, I do not find that this element of the proposal would unacceptably harm the character and appearance of the area.

11. The Framework sets out that advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being and in this respect there is a need to support the expansion of electronic communications networks, including next generation mobile technology. The proposed mast would provide 5G coverage and a number of potential benefits have been set out by the appellant. Reference has also been made to the Government's Future Telecoms Infrastructure Review (2018) and 'Planning for

Growth' (31 March 2011). These are said to support the proposal and the appellant has also made reference to another appeal decision in this respect[1]. The Council acknowledge the substantial benefit to the area in terms of facilitating next generation mobile technology and improving existing coverage. I see no reason to take a different stance. The Council have however commented that the appellant has not properly addressed other potential sites in the area referencing, in particular, the area towards the junction of Church Road and Netherton Way.

12. The appellant states that the proposal is in a highly constrained cell search area and is influenced by various factors, such as the separation required from other equipment and the presence of underground services. Within the search area, a number of sites were considered and discounted, including some in the general vicinity of Church Road and Netherton Way which were discounted for reasons citing the 'location of a cycle lane' and in the case of one site, additionally citing obstruction from overhead tree canopies. I recognise that there is a need to ensure sufficient space for cyclists and to avoid natural features such as trees, but there is no persuasive evidence before me that explains how these factors led to the discounting of these sites. From my observations, the area around that junction includes areas of grass verge and wider areas of pavement, including areas that are not obstructed by tree canopies. These locations could potentially accommodate the proposal and I find the analysis of discounted options by the appellant is too generalised to eliminate other options.

13. I appreciate the need for this installation is to address the provision of 5G coverage in the area. It would provide benefit in terms of access and speed to a multitude of users and this weighs in favour of the appeal as does the potential of this proposal to facilitate future site sharing and use for future technologies. I have also no reason to question the need for a new site for this proposal and the adherence by the appellant to the sequential approach in considering existing base stations/structures, site sharing or installing on an existing building or tall structure. The proposal would, however, for the reasons set out above, be harmful to the character and appearance of the area. I note that a mast with a height of 18m is the minimum required. On the evidence before me though I am not convinced that less harmful alternatives have been properly explored and it is my overall view that the need for the proposal does not in this case, outweigh the harm.

14. Given my findings, the proposed development conflicts with paragraph 115 of the Framework and also the aims of policies EQ2 and HC3 of the Local Plan, which seek, amongst other matters, development that is sympathetically designed and makes a positive contribution to its surroundings.

Other Matters

15. Although the appellant considers that other locations would place the mast closer to more sensitive receptors or require an increase in height, I am not persuaded from the available evidence that this would necessarily be the case.

16. The proposal would not result in an obstruction to the free flow of pedestrians and there have not been any objections from statutory consultees. I note the concerns in relation to the potential effects on health but the appellant has

[1] Appeal Ref: APP/G4240/W/20/3263529

provided a certificate to confirm that the proposal has been designed to comply with the guidelines published by the International Commission on Non-Ionizing Radiation Protection (ICNIRP). A lack of harm in these areas are neutral matters and do not weigh in favour of the proposal.

17. I note the appellant sought pre-application discussions with the Council who did not provide a response. This appeal follows the Council's formal decision, and I can confirm that I have assessed the development on both its merits and impacts.

Conclusion

18. For the above reasons and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR