

## Appeals Received and Decisions Made

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Please note that copies of all appeal decisions are available on our website:

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Appeals received and decisions made between [24 March 2022](#) and [13 May 2022](#)

## Appeal Decisions

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### [Site Of Former Royal British Legion 326 Liverpool Road South Maghull L31 7DJ](#)

**Reference:** DC/2020/00418 (APP/M4320/W/21/3284528)

Erection of Retirement Living Housing of 44 residential units (Category II type accommodation) with associated communal facilities, landscaping and car parking following the demolition of the existing building

**Procedure:** Written Representations

**Start Date:** 17/03/2022

**Decision:** Withdrawn

**Decision Date:** 19/04/2022

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### [42 Station Road Ainsdale Southport PR8 3HW](#)

**Reference:** DC/2021/00696 (APP/M4320/W/21/3283843)

Extension to existing external dining area and retention of timber canopy over including side panels and planters.

**Procedure:** Written Representations

**Start Date:** 21/12/2021

**Decision:** Allowed

**Decision Date:** 13/04/2022

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### [9 Argarmeols Road Formby Liverpool L37 7BU](#)

**Reference:** DC/2021/00644 (APP/M4320/D/21/3284311)

Alterations to existing boundary wall to front of dwellinghouse.

**Procedure:** Householder Appeal

**Start Date:** 16/12/2021

**Decision:** Dismissed

**Decision Date:** 13/04/2022

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### [2 Argyle Road Southport PR9 9LH](#)

**Reference:** DC/2021/00732 (APP/M4320/W/21/3278769)

Alterations to the side elevation at lower ground/ ground floor level, and the erection of a detached outbuilding at the rear to replace the existing garage (part retrospective).

**Procedure:** Written Representations

**Start Date:** 20/09/2021

**Decision:** Allowed

**Decision Date:** 28/03/2022

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### [12 Kew Road Formby Liverpool L37 2HB](#)

**Reference:** DC/2021/00270 (APP/M4320/W/21/3278550)

Variation of condition 2 pursuant to planning permission DC/2020/00847 to allow changes to the approved drawings.

**Procedure:** Written Representations

**Start Date:** 20/09/2021

**Decision:** Allowed

**Decision Date:** 24/03/2022

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## New Appeals

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### [Land At St Mary's Complex Waverley Street Bootle L20 4AP](#)

**Reference:** DC/2020/00705 (APP/M4320/W/21/3281083)

Application for hybrid planning permission for three phased development of SAFE St Mary's complex building, vacant land to the South and East bounded by railway line and canal basin; full planning permission is sought for phases one and two as follows; phase one included the demolition of the existing buildings on site and the development of a three storey arts hub building comprising accommodation for SAFE, flexible office/studio/meeting spaces, day nursery and multipurpose hall space alongside the erection of canal side pods for community use (Use Class E), the remodelling and extension of the existing Lock and Quay public house to create bed and breakfast facility, serviced apartments and commercial/training unit (Use Class E) relocated from existing SAFE complex and associated parking. Phase two includes the development of mixed tenure housing including 41 No. 2 and 3 bedroom, two and three storey townhouses and a four-storey apartment block consisting of 66 No. 1 and 2 bedroomed self-contained apartments with associated parking and public realm works and the erection of a substation. Phase three seeks outline permission in respect of means of access, layout and scale for the development of four storey 80-bed extra care facility (Use Class C2) including community hairdressing salon and cafe with appearance and landscaping reserved for future consideration.

**Procedure:** Informal Hearing

**Start Date:** 05/04/2022

**Decision:**

**Decision Date:**

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## [The Doric 146 Rawson Road Seaforth Liverpool L21 1HR](#)

**Reference:** DC/2021/02531 (APP/M4320/W/22/3290162)

Change of use from Public House (A4) to a House in Multiple Occupation (HMO) (Sui Generis) (12 Units) after demolition of existing attached outbuildings to the rear

**Procedure:** Written Representations

**Start Date:** 06/04/2022

**Decision:**

**Decision Date:**

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## [77 Scarisbrick New Road Southport PR8 6LJ](#)

**Reference:** EN/2022/00021 (APP/M4320/C/22/3293859)

Appeal against Construction of an outdoor swimming pool and retractable enclosure which is being used to provide swimming lessons which constitutes a material change of use and is not incidental to the enjoyment of the dwellinghouse

**Procedure:** Written Representations

**Start Date:** 24/03/2022

**Decision:**

**Decision Date:**

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## [459 Lord Street Southport PR9 0AQ](#)

**Reference:** DC/2021/02736 (APP/M4320/W/22/3293755)

Variation of Condition 3 pursuant to planning permission DC/2017/00968 approved 12/10/2017, to change hours of business to 07:00 - 02:00 hrs

**Procedure:** Written Representations

**Start Date:** 14/04/2022

**Decision:**

**Decision Date:**



# The Planning Inspectorate

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Ms Carla Fulgoni  
The Planning Bureau Ltd  
100 Holdenhurst Road  
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Dorset  
BH8 8AQ

Your Ref: CF/fc/Maghull  
Our Ref: APP/M4320/W/21/3284528

19 April 2022

Dear Ms Fulgoni,

Town and Country Planning Act 1990  
Appeal by McCarthy and Stone Retirement Lifestyles Ltd  
Site Address: Site of Former Royal British Legion, 326 Liverpool Road South,  
Maghull, L31 7DJ

Thank you for your letter withdrawing the above appeal.

I confirm no further action will be taken.

A copy of this letter has been sent to the local planning authority.

Yours sincerely,

***Vicky Williams***

Vicky Williams

*Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through the Planning Portal. The address of our search page is - [www.planningportal.gov.uk/planning/appeals/online/search](http://www.planningportal.gov.uk/planning/appeals/online/search)*



## Appeal Decision

Site visit made on 7 February 2022

**by M Ollerenshaw BSc (Hons) MTPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 April 2022**

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**Appeal Ref: APP/M4320/W/21/3283843**

**42 Station Road, Ainsdale PR8 3HW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Ken Tilley against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2021/00696, dated 12 March 2021, was refused by notice dated 23 July 2021.
  - The development proposed is described on the application form as 'erection of canopy, outdoor seating with planter demarcation'.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of canopy, outdoor seating with planter demarcation at 42 Station Road, Ainsdale PR8 3HW in accordance with the terms of the application, Ref DC/2021/00696, dated 12 March 2021, and subject to the conditions below.

### Applications for costs

2. An application for costs was made by Mr Ken Tilley against Sefton Metropolitan Borough Council which is the subject of a separate decision.

### Preliminary Matters

3. The development proposed has already been carried out. I have therefore dealt with the appeal scheme as seeking retrospective planning permission.

### Main Issues

4. The main issues are the effect of the development on the character and appearance of the area, and the effect on the living conditions of the neighbouring occupiers, with particular regard to noise and disturbance.

### Reasons

#### *Character and appearance*

5. 42 Station Road is a two storey building which is currently used as a drinking establishment. It is located in a short parade of commercial premises on the corner of Station Road and Fairfield Road within a designated Local Centre. The appeal site includes areas of the pavement to the front and side of the premises, where an associated external seating area has been created and is already in use.

6. Station Road is the main commercial road running through Ainsdale. The surrounding area is of mixed character with a variety of building sizes and styles, including two storey detached, semi-detached and terraced properties. There are a range of different uses nearby, including residential, retail premises, restaurants, cafes and bars. Most properties are set back from the highway with small front gardens behind low boundary walls and hedges. This creates a characteristic sense of openness which in combination with the mature street trees contributes positively to a spacious and verdant character.
7. The proposal relates to an extension to the external seating area with associated glazed screens and planters, and a timber canopy to the side of the building facing Fairfield Road. The premises already benefits from planning permission for an external seating area to the front and side of the building, and the extension to that area is to the Fairfield Road side. The canopy is formed by a timber frame bounded by screens and planters and is covered by a laminated glazed roof.
8. The pavements around the front and side of the building are relatively wide such that the extended external seating area sits comfortably around the building, leaving sufficient width to the remaining pavement to allow pedestrians to pass along it. While the screens, planters and canopy create a sense of enclosure around the building, these do not appear at odds with the prevailing character of the area as described above, where the frontages of properties are generally enclosed by low boundary treatments adjacent to the footway. Due to the generous width of the pavements here, the proposal does not unduly impinge on the sense of openness.
9. Whilst the canopy appears to be the only structure of its type in the immediate locality, its modest height together with its position to the side of the building and lightweight appearance means that it is not unduly prominent. The design of the canopy, screens and planters reflect the building in terms of materials and colour scheme, and consequently do not detract from the appearance of the property or the surrounding area.
10. For the above reasons, I conclude that the development does not have a harmful impact on the character and appearance of the area. Accordingly, there is no conflict with Policy EQ2 of A Local Plan for Sefton (2017) (Local Plan), which, amongst other things, seeks to ensure that development responds positively to the character, local distinctiveness and form of its surroundings.

*Living conditions of neighbouring occupiers*

11. There are a number of residential properties located close to the appeal site, including those on the same and opposite sides of Station Road and also to the rear (north) and eastern side of Fairfield Road. During my site visit I observed that Station Road is a busy highway which includes a number of restaurants, bars and retail premises which are open at night. As such, a degree of noise from traffic and from the patrons of other premises nearby would be expected in this area later into the evening.
12. The external seating area as previously approved allows for up to 40 covers which could be used for serving food and drink, without the need for further permissions. The submitted plan indicates that with the addition of the extended seating area, which relates principally to that area to the side of the

building, there would be a total of about 68 covers. The seating area is proposed to be used up until 22:00 hrs, as with the approved seating area. The addition of the canopy and the more permanent nature of the extended seating area means that it is a more attractive outside space for customers to use, which has led to concerns about additional noise and disturbance to nearby residents, particularly in the evening and during warmer weather. In this regard, I have taken careful account of the representations of those nearby.

13. The extended seating area is partly contained by the laminated glazed covering, screens and planters to the canopy which is likely in my view to reduce noise to some extent. Moreover, I note that the Council's Environmental Health Officer did not raise any objections to the proposal on grounds of noise and disturbance. The appellant states that no complaints have been made to the Environmental Health Department regarding this property, which is not refuted by the Council.
14. In support of the appeal, the appellant has submitted a Noise Impact Assessment (NIA) to identify and comment on the potential noise impacts arising from the use of the external seating area. The NIA included noise measurements taken during a Friday evening. Noise levels were measured from public footpaths immediately outside two locations representative of the nearest dwellings on Station Road and Fairfield Road.
15. At the time of the noise survey the external seating area was not at full capacity with occupation levels of around 10-20 per cent. The noise measurements were also paused for reasons beyond the control of the surveyors. However, the NIA also includes computerised noise modelling and concludes that noise from worse case use of the extended seating area is not significantly different outside the most exposed dwellings to that associated with the approved seating area. It also finds that the noise from the external seating area is well within the existing residual noise climate of the area.
16. That reflects my own observations during a site visit at around 11:00 hrs on a Monday morning, when noise from customers using the seating area was not readily audible from various points along both Station Road and Fairfield Road. Therefore, although the noise survey and my own observations are only snapshots in time, from the evidence before me I have no good reason to doubt the conclusion of the NIA that the noise impacts from the extended seating area are not a significant contributor to the overall noise levels in the area.
17. Measures to manage the operation of the extended seating area, such as limiting the playing of music/amplified sound and the hours during which it may be used, can be controlled by condition to mitigate any potential negative impacts on local residents.
18. For the above reasons, I conclude that the proposal is unlikely to result in any significant increase in noise and disturbance to an extent that would unacceptably affect the living conditions of nearby residents. In this respect, there is no conflict with Policies EQ4 and EQ10 of the Local Plan, where these seek to protect the amenity of neighbouring properties, including in respect of noise.

## Other Matters

19. The appellant has submitted a draft unilateral undertaking with the appeal, the purpose of which is to secure firstly, a Traffic Regulation Order (TRO) to implement double yellow lines along part of Fairfield Road to deter customers from parking here whilst visiting the premises, which can obstruct pedestrians, as shown in Plan 1-Annex 1 of the draft unilateral undertaking; and secondly, a Stopping Up Order (SUO) for that part of the public highway which is obstructed by the development, as detailed in Plan 2-Annex 2. On the basis of the evidence before me, I am satisfied that such orders are necessary in the long term for the safe and efficient operation of the highway network and pedestrian routes, however in the short term the implications of their absence are not so significant to justify withholding permission.
20. The copy of the undertaking before me has not been executed, being both undated and unsigned. The Planning Practice Guidance (PPG) sets out that 'Grampian conditions', i.e. conditions which prevent development from occurring until a specific action has been taken, may be imposed under certain circumstances. It establishes that Grampian conditions should not be used where there are 'no prospects at all of the action in question being performed within the time-limit imposed by the permission'<sup>1</sup>.
21. Given the appellant's willingness to enter into an agreement, as evidenced by their submission of a draft unilateral undertaking, and in view of the Council's no in principle objection to it, it is highly likely that the TRO and SUO could be secured in practice. I am therefore satisfied that a condition to secure the TRO and SUO is necessary to make the development acceptable in planning terms.

## Conditions

22. I have had regard to the conditions suggested by the Council in their statement. As the development has already taken place, a condition relating to the standard implementation period is unnecessary. I have however, for clarity and enforceability, set out the approved plans.
23. A condition specifying the hours of use and a further condition preventing the playing of live or amplified music, insofar as it relates to the external seating area only, are necessary to protect the living conditions of neighbouring occupiers.
24. Following my reasoning in paragraphs 19 to 21 above, I have also imposed a condition requiring the appellant to enter into an agreement with the Council to secure the necessary TRO and SUO in the interests of highway and pedestrian safety.
25. In imposing conditions, I have had regard to the relevant tests in the National Planning Policy Framework, PPG and of statute. In that context I have modified the wording of some of the conditions proposed by the Council without altering their fundamental aims.

## Conclusion

26. For the above reasons, having considered the development plan as a whole, the approach in the National Planning Policy Framework, and all other relevant

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<sup>1</sup> Paragraph: 009 Reference ID: 21a-009-20140306

material considerations, the appeal is allowed subject to the conditions specified below.

*M Ollerenshaw*

INSPECTOR

### **SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall be in accordance with the following approved plans: Location Plan and drawing nos 0207896-G01, 0207896-G02 and 0207896-G03.
- 2) The external seating area hereby permitted shall not be used by customers outside the hours of 09:00 and 22:00 on any day.
- 3) No amplified or other music shall be played in the external seating area hereby permitted at any time.
- 4) Within three months of the date of this decision a scheme securing the implementation of a Traffic Regulation Order (TRO) to secure the implementation of double yellow lines along the part of Fairfield Road as shown by the black line on Plan 1-Annex 1 of the unilateral undertaking supporting this appeal, and a Stopping Up Order (SUO) for that part of Fairfield Road shown within black hatching in Plan 2-Annex 2 of the same, shall have been submitted to and agreed in writing by the local planning authority. The agreed scheme shall contain a timetable for its implementation, which shall be adhered to. If, within a period of a year from the date of this decision, either TRO or SUO is not made, the use of the outdoor seating area hereby approved shall permanently cease.



## Appeal Decision

Site visit made on 7 February 2022

by **M Ollerenshaw BSc(Hons) MTPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **13 April 2022**

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**Appeal Ref: APP/M4320/D/21/3284311**

**9 Argarmeols Road, Freshfield, Formby, Nr. Liverpool L37 7BU**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Tom Handley against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2021/00644, dated 5 March 2021, was refused by notice dated 10 September 2021.
  - The development proposed is described on the application form as 'alterations to existing boundary wall to frontage'.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. At appeal the appellant submitted further information regarding the potential security implication of the proposal, via correspondence dated 8 February 2022. Whilst an appeal should not be used to evolve a proposal, the information contained therein is nevertheless relevant to the rationale for the scheme. The Council had the opportunity to comment on it, albeit their response sets out how it does not alter their position. The Council's response contains reference to an appeal decision relating to a similar proposal at 14 Argarmeols Road<sup>1</sup>, on which the appellant also had the opportunity to comment at appeal. I have therefore taken account of all the foregoing representations in determining the appeal, an approach which I consider is both necessary and fair to all parties.

### Main Issue

3. The main issue is the effect of the development proposed on the character and appearance of the area.

### Reasons

4. The appeal site comprises a substantial detached dwelling with a long frontage onto Argarmeols Road, which is within a residential area featuring large properties of varied age and style. In common with other properties on this road, the appeal property is set back from the road with a front garden and driveway. Properties in the area are generally set within large plots with mature trees and street trees contributing positively to a spacious, verdant character. Front boundary treatments predominantly comprise low brick walls, some with railings or fencing above, and planting behind.

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<sup>1</sup> Appeal ref APP/M4320/D/20/3246270

5. Permission has been granted for the erection of a 1.8m high rendered wall with open railings between piers and entrance gates on the site frontage, however this consent has not been implemented<sup>2</sup>. Instead, the front boundary currently consists of a rendered wall to a height of around 1.7m with piers and gates. The appeal proposal seeks to lower part of the existing wall and to insert solid fence panels between the piers.
6. The combination of the proposed wall and fence panels would, by reason of its height and substantial length adjacent to the pavement, create a stark and dominant barrier to the site frontage, which would not reflect the more modest front boundary treatments generally found along Argarmeols Road.
7. The previously approved scheme for a 1.8m high wall with piers and railings would also increase the sense of enclosure to the front of the property. However, the railings between the piers would inherently retain a more open character to the site frontage. In contrast, the appeal scheme would create a solid barrier which would be at odds with prevailing open character of the area and would detract from the established street scene. I note that the Inspector for the appeal at No 14 concluded similarly in respect of a proposal for a 2m high wall and gates to the frontage of that property.
8. During my site visit I observed other examples of high front walls and fences within the locality. However, I do not have the details of the planning history of these before me, and their design and specific contexts are not identical to the appeal proposal. Accordingly, I have assessed the appeal scheme on its own merits and the other examples do not justify the harm I have found.
9. For these reasons, the proposal would be harmful to the character and appearance of the area, and would therefore be contrary to Policy EQ2 of A Local Plan for Sefton (2017), which, amongst other things, seeks to ensure that development responds positively to the character, local distinctiveness and form of its surroundings. The proposal would also be contrary to paragraph 130 of the National Planning Policy Framework, where it requires development to add to the overall quality of the area and be sympathetic to local character.

### **Other Matters**

10. I sympathise with the appellant's desire to increase security and privacy to their property. However, in the manner proposed this would be at the expense of the character and appearance of the area. Moreover, there is no robust evidence before me to demonstrate that the appeal proposal is the only approach to achieving improved security and privacy levels. Therefore, although I have had full regard to the evidence before me, this consideration does not outweigh the harm that I have identified.

### **Conclusion**

11. For the reasons given above, having considered the development plan as a whole and all other relevant material considerations, the appeal is dismissed.

*M Ollerenshaw*

INSPECTOR

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<sup>2</sup> Council ref. DC/2020/00268



## Appeal Decision

Site Visit made on 1 March 2022

**by Mark Caine BSc (Hons) MTPL MRTPI LSRA**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 March 2022**

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**Appeal Ref: APP/M4320/W/21/3278769**

**2 Argyle Road, Southport PR9 9LH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
  - The appeal is made by Mr David Black against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2021/00732, dated 16 March 2021, was approved on 13 May 2021 and planning permission was granted subject to conditions.
  - The development permitted is alterations to the side elevation at lower ground/ ground floor level, and the erection of a detached outbuilding at the rear to replace the existing garage (part retrospective).
  - The condition in dispute is No 2 which states that:
    - 'a) The new window to the side elevation shall be fitted with obscured glazing to a specification of no less than level 3 of the Pilkington Glass Scale and any part of the window that is less than 1.7m above the floor of the room in which it is installed shall be non-opening.*
    - b) The windows shall be permanently retained in that condition thereafter.'*
  - The reason given for the condition is:
    - 'To ensure that the privacy of neighbouring occupiers is retained at all times.'*
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### Decision

1. The appeal is allowed and planning permission Ref DC/2021/00732 for alterations to the side elevation at lower/ground floor level and the erection of a detached outbuilding at the rear to replace the existing garage (part retrospective) at 2 Argyle Road, Southport, PR9 9LH, granted on 13 May 2021 by Sefton Metropolitan Borough Council, is varied, by deleting condition 2.

### Background and Main Issue

2. Planning permission has been granted for alterations to the side elevation of 2 Argyle Road and for the erection of a detached outbuilding. This was subject to condition 2, which requires obscure glazing to be installed in the new window in the altered side elevation of No 2, and that any part of this window that is less than 1.7 metres in height above the floor of the room it is installed in is non-opening. On my site visit I saw that the development has already been carried out without obscure glazing or these non-opening restrictions.
3. The main issue is whether the condition is reasonable or necessary in the interests of the living conditions of the occupiers of 4 Argyle Road, with particular regard to privacy.

## Reasons

4. The appeal relates to a large detached property that is located in a predominantly residential area that is characterised by similar sized properties and apartment blocks that have long back garden spaces.
5. The side window in question faces an approximate 1.8 metre high boundary wall and a small portion of 4 Argyle Road's garden area that is located in between this neighbouring property's side elevation and a prefabricated garage. The topography of the site is such that the side window is in an elevated position.
6. Nonetheless, the submitted plans indicate that it is only around 1.5 metres closer to the shared boundary with No 4 than a comparably sized window that was previously positioned in a similar location in the original side elevation of the property. In addition, there is an intervening driveway and gap more than 2 metres between this window and the shared boundary wall.
7. On my site visit I saw that the majority of the indirect views of the small cellar window within the side elevation of No 4 from the side window are obscured by the boundary wall. Whilst I acknowledge that the level of overlooking of No 4's rear garden area has increased by the development, the window in No 2's side elevation is positioned at an oblique angle and a substantial distance away from the main area of garden closer to the rear house which would usually be the more private area.
8. In any event, views of the neighbouring garden are already obtained from within No 2, through other gable windows at a higher level on the first and second floors. I am also mindful that a degree of mutual overlooking of garden areas is a common feature in this residential area, with a number of windows positioned within the side elevations of neighbouring properties.
9. In this context, I consider that although clear glazing gives rise to limited overlooking of No 4's rear garden area, it is within acceptable limits. Furthermore, although other windows serving No 2 may be capable of providing a means of escape, there is little substantive evidence before me to demonstrate that the opening restrictions are required. I therefore conclude that the disputed condition is not reasonable or necessary in the interests of the living conditions of the occupiers of No 4 Argyle Road, with particular regard to privacy.
10. As such, the development without the disputed condition does not conflict with Policy HC4 of A Local Plan for Sefton 2017. Amongst other matters, this requires house extensions and alterations to be designed so that there shall be no significant reduction in the living conditions of the occupiers of neighbouring properties, including through a significant loss of privacy for neighbouring residents.

## Other Matters

11. I appreciate that there are other windows that serve the kitchen of No 2, and that obscure glazing would not cause harm to the living conditions of its occupiers through loss of light. However, the lack of harm in this respect would be a neutral factor that does not justify withholding planning permission in this case.

12. I have also had regard to the local resident's concerns about the quality of the building work that has taken place. Nonetheless, this has had no bearing on the outcome of this appeal as I have assessed the case based on its planning merits.

**Conclusion**

13. For the reasons given above, I shall therefore allow the appeal and vary the original permission by deleting the disputed condition.

*Mark Caine*

INSPECTOR



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# Appeal Decision

Site Visit made on 1 March 2022

**by Mark Caine BSc (Hons) MTPL MRTPI LSRA**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 March 2022**

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**Appeal Ref: APP/M4320/W/21/3278550**

**12 Kew Road, Formby, Liverpool L37 2HB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Neal Roberts against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2021/00270, dated 29 January 2021, was approved on 15 April 2021 and planning permission was granted subject to conditions.
- The development permitted is the variation of condition 2 pursuant to planning permission DC/2020/00847 to allow changes to the approved drawings.
- The condition in dispute is No 3 which states that:  
*'All provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification) that are applicable to a dwellinghouse are removed from this property.'*
- The reason given for the condition is: *'In the interests of amenity.'*

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## Decision

1. The appeal is allowed and planning permission Ref DC/2021/00270 for the variation of condition 2 pursuant to planning permission DC/2020/00847 to allow changes to approved drawings at 12 Kew Road, Formby, Liverpool L37 2HB granted on 15 April 2021 by Sefton Metropolitan Borough Council is varied by deleting condition 3.

## Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 20 July 2021. The content of the revised Framework has been considered but in light of the facts in this case it does not alter my conclusion.

## Background and Main Issue

3. Planning permission was originally granted in July 2020 for the erection of a two storey extension to the side and rear incorporating a garage, a single storey to the opposite side and a two storey extension including a porch to the front of the dwelling house following the demolition of the existing conservatory (Ref: DC/2020/00847).
4. Following this, a further application (Ref: DC/2021/00270) was submitted and permission was granted for the variation of condition 2 pursuant to planning permission DC/2020/00847 to allow changes to the approved drawings. This included a condition removing permitted development rights for all provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order with or without modification) (GPDO) that are applicable to a dwelling house. Although

the decision notice gives the reason for this condition to be in the interests of the amenity, the Council's statement of case indicates that this is necessary to protect the privacy levels of the residents of neighbouring properties.

5. The main issue is therefore whether the condition is reasonable or necessary in the interests of the living conditions of the occupiers of neighbouring properties, with particular regard to privacy.

## **Reasons**

6. Paragraph 56 of the Framework states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
7. The Planning Practice Guidance (PPG)<sup>1</sup> also advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It states that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. This paragraph goes on to advise that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
8. The Council has put forward that Members of the Planning Committee expressed concerns about the potential impacts arising from further development on the site and that they may not have granted permission without its imposition. The Council also argue that the condition would act as a break and allow them to retain some control of the impacts arising from any future development on the site.
9. However, little further justification for imposing this condition, in respect of how it would safeguard the living conditions including the privacy levels of neighbouring occupiers, as required by the policy set out in the Framework, has been provided by the Council in its statement of case.
10. Many of the permitted development rights withdrawn via disputed condition 3 relate to minor development that would have no appreciable effect on privacy. There are also GPDO limits in terms of heights, window opening restrictions and obscure glazing, and set backs from boundaries such that any permitted development with a potential to affect living conditions is subject to controls in any event. In light of the above, and given the nature of the approved scheme and its separation distances from neighbouring properties it is unclear how the disputed condition is required to protect the privacy levels of neighbouring residents.
11. I am also mindful that the PPG<sup>2</sup> states that 'In deciding an application under section 73, the local planning authority must only consider the disputed condition/s that are the subject of the application – it is not a complete re-consideration of the application.'

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<sup>1</sup> Planning Practice Guidance ID: 21a-017-20190723

<sup>2</sup> Planning Practice Guidance ID 21a-031-20180615

12. Based on the evidence before me, I therefore find, having regard to the tests set out in paragraph 56 of the Framework, that condition 3 is not reasonable or necessary in the interests of the living conditions of the occupiers of neighbouring properties, with particular regard to privacy.
13. As such, the development without the disputed condition would comply with Policy HC4 of A Local Plan for Sefton 2017. Amongst other matters, this requires that house extensions and alterations are designed so that there shall be no significant reduction in the living conditions of the occupiers of neighbouring properties, including the significant loss of privacy.

### **Other Matters**

14. I have had careful regard to the representations of local residents. These refer to previous mistakes made by the Council when dealing with the original planning application, which has been reported to the Ombudsman, and the potential future legal action in regard to the right to light. It has also been put to me that the applicant is a developer. However, these factors 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.

### **Conclusion**

15. I shall therefore allow the appeal and vary the original permission by deleting the disputed condition.

*Mark Caine*

INSPECTOR