Sefton Council

Appeals Received and Decisions Made

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Please note that copies of all appeal decisions are available on our website:
http://pa.sefton.gov.uk/online-applications/

Appeals received and decisions made between 26 February 2024 and 21 March 2024

Appeal Decisions

5 Hillcrest Road Crosby Liverpool L23 9XS

Reference: EN/2023/00275 (APP/M4320/C/23/3327621)

Appeal against without planning permission, the erection of a single storey extension to the rear of the dwellinghouse.

Procedure: Written Representations
Start Date: 19/10/2023
Decision: Quashed
Decision Date: 18/03/2024

12A Carlisle Road Birkdale Southport PR8 4DJ

Reference: DC/2023/00700 (APP/M4320/W/23/3332483)

Change of use from dwellinghouse to children's home, to provide care for up to 3 No. children, with the erection of a single storey and dormer extension to the rear.

Procedure: Written Representations
Start Date: 24/01/2024
Decision: Withdrawn
Decision Date: 14/03/2024

79 Scarisbrick New Road Southport PR8 6LJ

Reference: EN/2022/00597 (APP/M4320/C/23/3315793)

Appeal against unauthorised change of use of a residential dwellinghouse and outbuilding to commercial offices and for the storage and distribution of goods associated with the business operating from the property.

Procedure: Written Representations
Start Date: 14/02/2023
Decision: Allowed
Decision Date: 12/03/2024

38 Blundell Road Hightown Liverpool L38 9EQ

Reference: EN/2023/00135 (APP/M4320/C/23/3326344)

Appeal against without planning permission, the installation of seven (7) no. air conditioning units to the side of the dwellinghouse.

Procedure: Written Representations
Start Date: 04/10/2023
Decision: Dismissed
Decision Date: 12/03/2024

Land To The Rear Of 10 Queens Road Southport PR9 9HN

Reference: DC/2022/01349 (APP/M4320/W/23/3326362)

Erection of 3 number dwellings with the construction of a new vehicular access fronting onto Hawkshead Street with associated parking and upgrading of 2 coach houses

Procedure: Written Representations
Start Date: 23/11/2023
Decision: Dismissed
Decision Date: 04/03/2024

102 The Serpentine North Blundellsands L23 6TJ

Reference: DC/2023/01326 (APP/M4320/X/23/3332059)

Procedure: Written Representations

Certificate of lawfulness for the proposed erection of a single storey garden room to the rear of the dwellinghouse.

Start Date: 02/01/2024
Decision: Dismissed
Decision Date: 04/03/2024

New Appeals

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65 Scarisbrick New Road Southport PR8 6LF

Reference: DC/2023/01092 (APP/M4320/W/23/3335615)

Creation of a new driveway, vehicular access to Curzon Road, a new external door and reconfiguration of fire escape.

Procedure: Written Representations
Start Date: 27/02/2024
Decision:
Decision Date:

Proposed Telecommunications Site Slaidburn Crescent Southport

Reference: DC/2023/01727 (APP/M4320/W/24/3336617)

Prior notification procedure for the erection of 1 No. 20m monopole with 6 No. apertures mounted at 18.65m, 4 No. 600mm dishes at 14.65m, the installation of 5 No. cabinets and ancillary apparatus.

Procedure: Written Representations
Start Date: 14/03/2024
Decision:
Decision Date:

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90 Gores Lane Formby Liverpool L37 7DF

Reference: DC/2021/01383 (APP/M4320/W/23/3332119)

Erection of one padel court with floodlights (Alternative to DC/2021/00304 withdrawn 27/04/21).

Procedure: Written Representations
Start Date: 13/03/2024
Decision:
Decision Date:

Land At The Junction Of Derby Road And Strand Road Bootle Liverpool L20 8EE

Reference: DC/2023/01407 (APP/M4320/Z/24/3337440)

Advertising consent to display a freestanding internally illuminated 48 sheet digital LED advertisement display sign to replace the existing sign.

Procedure: Householder Appeal
Start Date: 07/03/2024
Decision:
Decision Date:

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27 Scarisbrick Street Southport PR9 0TU

Reference: DC/2023/01726 (APP/M4320/X/24/3339953)

Certificate of lawfulness for the continuation of use as a 6 bed HMO

Procedure: Written Representations
Start Date: 14/03/2024
Decision:
Decision Date:

The Planning Inspectorate

Appeal Decision

Site visit made on 19 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/M4320/C/23/3327621
5 Hillcrest Road, Crosby, Liverpool L23 9XS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Adam Ramsey against an enforcement notice issued by The Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 13 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey extension to the rear of the dwellinghouse, in the approximate position shown cross-hatched on the attached plan.
- The requirements of the notice are: You must demolish the single storey rear extension and remove all materials arising as a result of the demolition works.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, following correction, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

1. The issue date on the enforcement notice (the notice) is 13 July 2023. However, notwithstanding the ground (e) appeal, the notice was served on 6 July 2023. Therefore, the issue date on the notice is clearly incorrect. As there is no statutory requirement to include the date the notice was issued, I will delete the date from the notice. The parties have been given the opportunity to comment on this and have not raised any objection.

2. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeal in light of the revised Framework. As there is no change in the revised Framework relevant to the appeal, it has not been necessary to seek comments from the parties on the revised version.

The ground (e) appeal

3. An appeal on ground (e) is whether copies of the notice were served as required by section 172 of the Town and Country Planning Act 1990 Act (the Act). Section 172(2) states '*A copy of an enforcement notice shall be served— (a) on the owner and on the occupier of the land to which it relates; and (b) 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*'.

4. The appellant contends that the notice was not served at the appellant's place of residence at the time and was left with someone who was not authorised to accept service on their behalf.

5. Section 329(1)(b) of the Act states that any notice or other document required or authorised to be served or given under this Act may be served or given…by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address.

6. The Council carried out a land registry search prior to the notice being issued, which showed the appellant as being the owner of the appeal property. However, this does not prove it was their place of abode or an address for service. Nevertheless, the Council confirms the application form for planning application reference DC/2023/00244 had 5 Hillcrest Road as the appellant's address.

7. The appellant contends they did not become aware of the notice until a later date, after it was issued. However, the Council disputes this, stating the appellant was informed via telephone on the morning of 6 July 2023, prior to the copies of the notice being served at 5 Hillcrest Road. The appellant did not advise the Council that there was an alternative address for service. Moreover, the Council also confirm that during the telephone conversation with the appellant later that day they confirmed they had received the copies of the notice. A copy of the notice was also emailed to the appellant on the same day.

8. Given the above, the Council could have done more to confirm the correct address on which to serve the notice. However, the appellant had sufficient opportunity to request it be served at a different address prior to copies of the notice being served. The appellant had used the address of 5 Hillcrest Road on the planning application form as their address and the Council had sent previous correspondence to there. Therefore, on this basis, I consider the Council fulfilled the statutory requirements for the service of the notice.

9. Even if the Council did not correctly serve the notice, section 176(5) of the Act states that 'Where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.' The appellant clearly received a copy of the notice to have made this appeal. Consequently, they have not been prejudiced by a copy of the notice not being served at their correct home address.

10. The ground (e) appeal therefore fails.

The ground (a) appeal and the deemed planning application

Main issue

11. The main issue is the effect of the development on the living conditions of the occupants of 3 Hillcrest Road, with regard to outlook and daylight.

Reasons

12. The appeal property is a two-storey, semi-detached dwelling. The single-storey extension the subject of this appeal is located on the rear elevation of the dwelling. The rear garden boundary treatment with the adjoining property, 3 Hillcrest Road, is a close boarded timber fence with high, evergreen hedging along part of the boundary.

13. The Sefton Council House Extensions Supplementary Planning Document 2023 (SPD) states that the 45 degree guideline will establish whether the single-storey extension will have a significant effect on neighbouring properties, with regard to outlook. If the extension breaks the 45 degree line by more than 3m then the extension will be considered unacceptable unless it can be demonstrated that the proposal will not result in unacceptable harm to residential amenity. Examples of mitigating factors include the width of the window on the neighbouring property (for example large patio doors which span the entire rear elevation).

14. No 3 has French doors with side lights either side in the rear elevation that serve a habitable room, within proximity of the boundary fence. There is no evidence before me of any other windows serving this room. The extension projects approximately 4.7m beyond the ground floor rear elevation of No 3, which itself projects approximately 0.7m beyond the original rear elevation of the appeal property. Taking the 45 degree measurement from these French doors, the extension breaches the guide.

15. The appellant has provided a drawing[1] indicating that approximately 1.6m of the extension would be in breach of the 45 degree guide. However, the drawing indicates the extension projecting approximately 5.4m from the rear elevation of no 3. This does not appear to factor in the rear elevation of No 3 projecting approximately 0.7m from the rear elevation of the appeal property. If it did then it would indicate the breach being reduced by approximately 0.7m, to less than 1m.

16. The examples of mitigating factors for breaching the 45 degree guide in the SPD is not a closed list. Other factors can be considered. The French doors with side lights do not span the entire length of the rear elevation of No 3. Nevertheless, they span a large part of the elevation, providing a significant outlook from the habitable room they serve. The extension would clearly be visible from the room and, due to it rising above the boundary fence and projecting along the boundary, it would reduce the outlook to some extent. However, the size of the fenestration serving the room would ensure the outlook is not reduced to such an extent that it would materially harm the living conditions of the room by creating an undue sense of enclosure, even taking into account the existing outrigger on No 3.

17. Moreover, the extension replaces a conservatory that was set on the boundary as opposed to the extension, which is set back slightly from it. The conservatory did not project out as far as the extension and its flank wall was not as high. However, the set back position of the extension from the boundary and the fact it is only slightly longer in depth overall results in it only having a moderately greater effect on the outlook of No 3.

[1] Dwg no. 23-079-120 revision B

18. Overall, although the extension breaches the 45 degree guide, I am satisfied there are mitigating factors that result in it not having an unacceptable harmful effect on the outlook of No 3.

19. With regard to daylight, although the extension will have reduced the amount of daylight serving the habitable room, the French doors and sidelights provide a significant surface area to ensure adequate daylight serves the room. I do not find the loss of daylight to be so significant that it creates a gloomy residential environment that would materially affect the living conditions of its occupants.

20. I find therefore, the extension does not unacceptably harm the living conditions of the occupants of 3 Hillcrest Road, with regard to outlook and daylight. As such, it complies with Policy HC4 of the Sefton Local Plan 2017, which seeks to ensure development causes no significant reduction in the living conditions of the occupiers of neighbouring properties. It also complies with the SPD.

Conditions

21. I have not been presented with any suggested conditions to impose, in the event I allow the ground (a) appeal. Given the development has already been carried out and I find it causes no unacceptable harm, I am satisfied that conditions are not necessary.

Conclusion on the ground (a) appeal and the deemed planning application

22. For the reasons given above, having considered the development plan as a whole and all material considerations, the ground (a) appeal and the deemed planning application should succeed and planning permission will be granted for the development described in the notice. The enforcement notice will be quashed.

23. Given the success on the ground (a) appeal there is no need to go on to consider the ground (f) and (g) appeals.

Formal Decision

24. It is directed that the enforcement notice is corrected by the deletion of "Dated 13 July 2023".

25. Subject to the correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a single-storey rear extension at 5 Hillcrest Road, Crosby, Liverpool L23 9XS as shown on the plan attached to the notice.

A Walker

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site Visit made on 27 February 2024

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 12th March 2024

Appeal Ref: APP/M4320/C/23/3315793
79 Scarisbrick New Road, Southport, PR8 6LJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Vincent Luke, ife - audio against an enforcement notice issued by Sefton Metropolitan Borough Council (the LPA).
- The enforcement notice was issued on 10 January 2023.
- The breach of planning control as alleged in the notice is – unauthorised change of use of a residential dwellinghouse and outbuilding to commercial offices and for the storage and distribution of goods associated with the business operating from the property.
- The requirements of the notice are:
  1. Cease the use of the residential dwellinghouse and outbuilding as commercial offices and for the storage and distribution of goods associated with the business operating from the property.
  2. Only use the dwellinghouse and outbuilding for residential purposes.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Costs

1. An application for costs was made by Mr Vincent Luke, ife – audio, against Sefton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

2. The LPA's statement refers to an appeal on ground (e) of S174(2) of the Act. No ground (e) appeal has been made, however. Nonetheless, the appellant has made submissions regarding defects in the notice in respect of the list of persons served. Those submissions go to the validity of the notice rather than a ground (e) appeal. I have dealt with them accordingly.

The Enforcement Notice

3. An enforcement notice is a nullity if it is defective on its face, usually by missing some vital element that a notice should include under S173 of the Act. It is a fundamental error in the notice which renders it a nullity as there is, in effect, no enforcement notice as such.

4. S173 of the Act sets out the content that an enforcement notice shall include. S173(10) states that a notice shall specify such additional matters as may be prescribed. Regulations may require every copy of an enforcement notice served under S172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under S174 of the Act.

5. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR) sets out those additional matters. Regulation 5 sets out that every enforcement notice served under S172(2) of the Act shall be accompanied by an explanatory note.

6. ENAR5(a) says the note shall include a copy or summary of S171A, S171B and S172-S177 of the Act. ENAR5(a)(iii) states the note shall include the grounds under S174 on which an appeal can be brought. ENAR5(b) states the notice shall include the requirement on appeal to give the Secretary of State a statement in writing specifying the grounds on which a person is appealing and the facts on which they rely. ENAR5(c) states that a notice shall include a list of names and addresses of the persons on whom a copy of the enforcement notice has been served.

7. The enforcement notice here contains some form of an explanatory note, including that there is a right of appeal, that it shall be made to the Secretary of State, the date by which it shall be made and the fee.

8. However, the notice does not contain a copy or summary of the relevant sections of the Act specified by ENAR5(a) nor does it contain the grounds of appeal under S174. Likewise, it does not contain a note explaining the need to provide a written statement to the Secretary of State on appeal in accordance with ENAR5(b). Finally, there is no list of the names and addresses of those on who the enforcement notice was served.

9. The notice is thus flawed. Nonetheless, I do not consider the omission of the requirements of ENAR 5(a), ENAR 5(a)(iii), ENAR 5(b) and ENAR 5(c) to be a fundamental error which renders the notice null. Nor is it flawed sufficient to render the notice invalid. Ultimately, an appeal has been validly made and the appellant has not thus suffered injustice or prejudice by the omission of the information. Moreover, the LPA has provided the list of persons on which the notice was served which was simply omitted from the notice. Since an appeal has been made, there is no need to correct the notice to include the relevant parts of the explanatory note.

10. The appellant also argues that the notice is defective because it is said planning permission has previously been granted for the alleged use of the outbuilding. However, such a point does not go to the validity of the notice. Rather, it is an argument that what is alleged to constitute a breach of planning control, is not a breach of planning control. Whilst ground (c) was not selected on the appeal form, the appellant's submissions on this matter effectively pertain to an appeal on ground (c) and I will deal with them accordingly.

11. There are two further defects in the notice which the parties have not identified. Firstly, the heading of the notice states it relates to operational development. However, the alleged breach is a material change of use. It is clear from the four corners of the notice that it is directed against a material change of use. I can therefore correct the notice to replace the words in the heading without injustice to the appellant or the LPA.

12. Secondly, the notice is directed against a change of use. However, it is a material change of use which is defined as development in the Act. The alleged breach should refer to it as such to reflect the terminology in statute. I can correct the notice to insert the word "material" without injustice to the appellant or the LPA.

The appeal on ground (c)

13. An appeal on ground (c) is made on the basis that those matters stated in the notice as constituting a breach of planning control, do not constitute a breach of planning control.

14. The appellant submits that the alleged use of the outbuilding does not constitute a breach of planning control, since planning permission was granted for it in 2021[1]. The 2021 permission granted approval for the erection of a detached workshop to the rear of the dwellinghouse, following the demolition of existing workshop. The planning permission does not specify the use of the workshop, either expressly or by condition. The LPA's statement indicates that the previous workshop was demolished. The notice is directed against the use of the new detached workshop for which planning permission was granted.

15. The LPA argue, however, that, at the time the planning permission was granted, the Land was a single planning unit in residential use and thus, the planning permission was granted for a detached workshop which is incidental to the enjoyment of the dwellinghouse.

16. The appellant argues that, if the planning permission was for a building incidental to the primary residential use of the planning unit, then it would have stated so. It is said that there is a long history of commercial activity on the footprint of the former workshop. The LPA indicates that a previous workshop existed for which a lawful development certificate was granted for the manufacture of garden and household furniture in 1996.

17. For the 2021 permission to have granted the workshop for commercial use, then that part of the Land would have had to have been in lawful commercial use, either as a separate planning unit to the dwelling, or within a single planning unit put to a mixed use comprising residential and commercial.

18. However, beyond the aforementioned statements from the appellant and the LPA, no further evidence of the historic use of this part of the Land is offered by the parties. The evidence is thus not sufficiently precise or unambiguous to determine, on the balance of probabilities, whether the 2021 permission granted planning permission for the erection of a workshop with lawful commercial use as opposed to residential use.

19. In any event, even if the 2021 permission was granted for a commercial workshop in accordance with the previous lawful use for the manufacture of furniture, that could be materially different from the alleged use of the workshop as a commercial office with associated storage and distribution.

20. Ultimately, the onus is on the appellant to prove their case, on the balance of probabilities. In this instance, the evidence is not sufficiently precise or unambiguous to conclude that the alleged material change of use of the

[1] LPA Ref: DC/2022/01587

outbuilding to a use for commercial offices and storage and distribution of goods does not amount to a breach of planning control.

21. The appeal on ground (c) therefore fails.

The appeal on ground (a)

22. An appeal on ground (a) is brought on the grounds that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Where an appeal is brought on ground (a), an application for planning permission is deemed to have been made. Planning permission may only be granted for the matters stated in the alleged breach, in whole or in part.

Main Issue

23. The main issue is the effect of the material change of use to offices and storage and distribution on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

24. The Land comprises a detached building between two detached properties in residential use, 77 and 81 Scarisbrick Road. The adjacent properties contain front and rear gardens which adjoin those of the Land.

25. The LPA's reason for issuing the notice is that the use of the Land as an office would give rise to unacceptable impacts on the living conditions of the occupiers of the neighbouring properties. The notice was issued following the refusal on planning permission on 5 December 2022 for the change of use of the dwellinghouse and outbuilding to an office[2]. At the time the notice was issued and consideration of the previous application, no noise assessment report was before the LPA. A noise survey and additional information in relation to the outbuilding and parking provision was subsequently submitted in support of this appeal.

26. In response the LPA states that the noise assessment uses inappropriate criteria, standards and methodology on which to base its conclusion that the development does not cause noise pollution.

27. However, the LPA does state that, subject to conditions restricting the use of the Land to an office use within Class E(g)(i) and (ii) of Part A of Schedule 2 of the Town and Country Planning (Use Classes) Order 1987 and restricting the hours the use can operate to between 0800 and 1830 Mondays to Fridays, the development would be acceptable. Both on the evidence before me and from what I was able to observe on my site visit, I see no reason to disagree.

28. Ultimately, the conditions would ensure that the use would solely be for the office and storage use specified in the breach and could not be changed under S55(2)(f) to another potentially more harmful use in Class E of the UCO. They would also ensure that adjacent residents would not be subject to noise from the property on weekends, early mornings or an evening, when occupiers would have reasonable expectations for quieter background noise levels.

[2] LPA Ref: DC/2022/01587

29. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring occupiers with particular regard to noise. Consequently, the development complies with Policy HC3 of the Local Plan for Sefton April 2017 (the LP) which states that non-residential development will be permitted in Primarily Residential Areas where it will not have an unacceptable impact on the living conditions of neighbouring properties. It will also comply with Policy EQ4 of the LP which states that development should demonstrate that risks of adverse impacts in terms of noise have been evaluated and appropriate measures taken to minimise those impacts.

Conditions

30. As set out above, the LPA has suggested a condition is imposed to restrict the hours of use of the property between 0800 and 1830 Mondays to Fridays. I agree such a condition is necessary to prevent harm to the living conditions of neighbouring residents. Likewise, a condition restricting the use of the Land to a use within Class E(g)(i) and (ii) is necessary to prevent harmful noise impacts on neighbouring residents.

31. The appellant also submits that a condition restricting noise levels to the rear of the building to 55db is necessary. However, the submitted noise assessment indicates that noise levels recorded to the rear at no time exceeded recommended thresholds to maintain living conditions of neighbours. Moreover, the LPA indicate that such a restriction would be unnecessary as the 55db level would potentially be harmful. In any event, the hours and use restrictions imposed would prevent harmful noise levels on neighbouring residents. On that basis, a condition restricting noise levels would not be necessary.

Conclusions

32. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the use as described in the notice as corrected.

33. The appeal on ground (f) does not fall to be considered.

Formal Decision

34. It is directed that the enforcement notice is corrected by:

- deleting the words, "operational development" from the header of the notice and substituting them with the words, "material change of use"; and,
- inserting the word, "material" between the words, "unauthorised" and "change", in section 3 of the notice.

35. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under S177(5) of the 1990 Act as amended for the development already carried out, namely the material change of use of a residential dwellinghouse and outbuilding to commercial offices and for the storage and distribution of goods associated with the business operating from the property at 79 Scarisbrick New Road, Southport, PR8 6LJ as shown on the plan attached to the notice and subject to the following conditions:

1) The use hereby permitted shall only take place between the following hours: 0800 to 1830 on Mondays to Fridays.

2) The premises shall be used for Class E(g)(i) and Class E(g)(ii) use only and for no other purpose (including any other purpose in Class E of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification)).

J Whitfield

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Site visit made on 19 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal A Ref: APP/M4320/C/23/3326344
38 Blundell Road, Hightown, Liverpool L38 9EQ

- The appeal is made by Mr Matt Agrimi against an enforcement notice issued by The Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 4 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of seven (7) no. air conditioning units to the side of the dwellinghouse.
- The requirements of the notice are: You must remove the seven (7) no. air conditioning units to the side of the dwellinghouse as shown cross hatched on the attached plan.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/M4320/C/23/3326345
38 Blundell Road, Hightown, Liverpool L38 9EQ

- The appeal is made by Mrs Stephanie Amanda Agrimi against an enforcement notice issued by The Sefton Metropolitan Borough Council.
- The enforcement notice was issued on 4 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the installation of seven (7) no. air conditioning units to the side of the dwellinghouse.
- The requirements of the notice are: You must remove the seven (7) no. air conditioning units to the side of the dwellinghouse as shown cross hatched on the attached plan.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

1. Since the appeals were submitted, a revised version of the National Planning Policy Framework (the Framework) has been published and this is a material consideration which should be taken into account from the date of its publication. I have therefore determined the appeals in light of the revised Framework. As there is no change in the revised Framework relevant to the appeals, it has not been necessary to seek comments from the parties on the revised version.

The ground (a) appeals and the deemed planning application

Main issue

2. The main issue is the effect of the development on the living conditions of the occupants of the neighbouring residential properties, in particular 36 Blundell Road, with regard to noise.

Reasons

3. The air conditioning units are situated adjacent to the boundary timber fence with 36 Blundell Road. Although No 36 is set back from the boundary fence, it has several windows in the elevation facing it, which serve habitable rooms.

4. At the time of my site visit, none of the air conditioning units appeared to be in active use. Although the Council has provided me with details of the make and model of the units (5 x Daikin RXM 35R9 units and 2 Daikin RXM60R units) there is no evidence before me of how much sound the units generate. The Council confirm their Environmental Health team reviewed a noise report submitted with the planning application for the units[1] and found there to be a number of inadequacies and shortcomings with the report such that it failed to demonstrate the units would not cause unacceptable harm to neighbouring residents. Although I have not been presented with this noise report, the appellants do not dispute the Environmental Health team's findings.

5. Given the number of units, the fact they are clustered together and their proximity to No 36, it is reasonable to conclude that they would generate a level of noise that would be discernible to the occupants of No 36. The noise generated would likely be particularly discernible at night and during the summer months when the units are used more frequently and the neighbouring occupants may have their windows open. Such noise could unduly disrupt their sleep during the night.

6. The appellants state they are designing an acoustic enclosure to go around the units. However, there is no evidence of such an enclosure before me to consider whether or not it would adequately mitigate any unacceptable noise generated by the air conditioning units.

7. Although not advanced by the appellant, I have nevertheless considered the imposition of a condition requiring an enclosure to be installed to reduce noise. However, in the absence of any evidence regarding the level of noise generated by the units, or a possible enclosure design, I am not sufficiently satisfied that such an enclosure would adequately mitigate the harm.

8. I find therefore, based on the evidence before me, it has not been sufficiently demonstrated that the air conditioning units would not have an unacceptably harmful effect on the living conditions of the occupants of neighbouring residential properties, particularly No 36, with regard to noise. As such, the development is contrary to Policies HC3 and EQ4 of the Sefton Council Local Plan 2017, which, amongst other matters, seek to ensure development protects the living conditions of residents from significant noise impacts. It would also fail to comply with paragraph 135 (f) of the Framework, which seeks to promote a high standard of amenity for existing users.

[1] Council reference DC/2022/02397

Other Matters

9. The appellants contend that the air conditioning units were only noted by the Council officers during a site visit for something else and that they assume no neighbours have complained about the noise. Even if that is the case, I have considered the effect of the development on existing and future occupants of neighbouring properties.

Conclusion on the ground (a) appeals and the deemed planning application

10. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to either the ground (a) appeals against the enforcement notice and the deemed application. Therefore, the ground (a) appeals fail.

The ground (g) appeals

11. This ground of appeal is that the period for compliance is unreasonably short. The appellants argue that two months is not sufficient time to arrange for an engineer to remove the air conditioning units as they are too busy installing them during the summer months. However, whilst that may have been the case when the enforcement notice (the notice) was issued in July, this argument holds very limited weight now. As it is no longer summer, I consider two months to be a reasonable period of time to comply with the requirements of the notice.

12. The ground (g) appeal fails.

Conclusion

13. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

A Walker

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 15 February 2024

by J D Westbrook BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4TH March 2024

Appeal Ref: APP/M4320/W/23/3326362
Land To The Rear Of 10 Queens Road, Southport, PR9 9HN

- 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 Simon Levene against the decision of Sefton Metropolitan Borough council.
- The application Ref DC/2022/01349, dated 30 June 2022, was refused by notice dated 23 January 2023.
- The development proposed is the construction of three dwellings, and the upgrading of two coach houses on land to the rear of 10 Queens Road.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council has made reference to a Supplementary Planning Document on New Housing. This has apparently been revoked. There is also reference to a more recent Supplementary Planning Document on New Build Homes, and I have referred to this document in my consideration.

3. The submitted 'Existing and Proposed Site Plan' shows the outline of a car port for three vehicles near the entrance to the site. There would not appear to be any plans to show the elevations of this building.

Main Issues

4. The main issues in this case are the effects of the proposed development on:

   - The safety and security of the current and future occupiers of the development by way of surveillance, access and movement, and

   - The living conditions and residential amenities of the occupiers of the proposed new dwellings by way of amenity space, outlook and privacy.

Reasons

5. The appeal site includes an unused parcel of land to the rear of Nos 1-7 Hawkshead Street, with access from a pathway to the side of No 10b Queen Street. The appeal site also includes the existing dwellings at Nos 10a and 10b Queen Street, and the existing access and parking areas associated with those houses. Vehicular and pedestrian access is obtained from Hawkshead Street.

The proposal is for the construction of 3 dwellings on the portion of unused land, minor alterations to Nos 10a and 10b, and the demolition of a number of small buildings currently around those houses.

6. Policy EQ2 of the Council's Local Plan (LP) indicates that development will only be permitted where the proposal responds positively to the character, local distinctiveness and form of its surroundings. In addition it should ensure safe and easy movement into, out of, and within the site for everyone; protect the amenity of those within and adjacent to the site; and ensure the safety and security of those within through natural surveillance. Policy EQ3 indicates that new development should ensure that the needs of all residents and users of buildings, including those with limited mobility, are met.

7. The Council's Supplementary Planning Document on New Build Homes (SPD) indicates that, amongst other things, new dwellings should avoid overshadowing, being over-dominant, and causing a poor outlook for neighbouring properties; provide a 12 metre interface distance between a ground-floor habitable room window and a two-storey blank wall (or a two-storey wall that only includes non-habitable room windows); provide a minimum of 50 sq metres of amenity space per unit, generally in the form of a private garden at the rear of the property. It also indicates that backland development may be acceptable but, if so, should respect the living conditions of future residents in the new properties.

8. The Council contends that the proposal would fail to ensure the needs of all residents and users of the dwellings, including those with limited mobility, are met; would not provide safe and easy movement into, out of and within the site for everyone; and would fail to provide safety and security for those within and outside of the development through natural surveillance. In addition, the proposal would fail to provide an adequate level of private amenity space for future occupiers.

9. The appellants contend that security measures would be put in place, including video cameras, to ensure safe access; that a minimum of 50 sq metres of amenity space would be provided for each unit; and that the proposal would not result in any of the harm to residential amenities raised by neighbouring objectors.

Safety and security by way of surveillance, access and movement

10. The development would involve the upgrading and use of an existing passageway to the side of No 10b to provide access to the three new dwellings proposed on the unused part of the site. Beyond the passageway, there would be a path running along the side of the three dwellings providing access to each property. The passageway would have a security door within a new front entrance and the appellants indicate that further security would be provided by video cameras and lighting of the passageway and access path.

11. The Council contends that the security matters could not be enforced by way of condition or by the developers. The appellant has noted the existence of an appeal decision from 2014 that relates to conversion of a four-storey House in Multiple Occupation (HMO) into two separate HMOs. In her decision letter, the inspector indicated that measures, including video entry, could be secured by condition. However, in that case, it would appear that the developer would have retained control over the property, whereas in this case, it would appear

that the developer may not retain control of the dwellings and I have concerns that such a condition may not, therefore, be enforceable.

12. The passageway to the side of No 10b would be long, narrow and covered. It would also provide access to the rear of No 10b, and would therefore be used in conjunction with 4 dwellings. Despite the existence of lighting, I do not consider that it would be an attractive entry point to the houses, although a locked entrance would provide some degree of safety to the occupants. The path alongside the new houses would be around 2 metres wide and would also be lit. By virtue of the amount of built structure associated with the houses within a constrained space, there would be some parts of the pathway that would not be overlooked by habitable room windows. However, given that there would be only three houses and most of the path would be visible, I do not consider that surveillance of this path would necessarily be inadequate.

13. I have significant concerns regarding the proposed parking provision for cars and cycles. The proposal would involve the demolition of three outbuildings in order to create car parking spaces, cycle parking provision, and a footpath from the road access to the entrance passageway. There would be two car parking spaces, provided in tandem formation, for each of Nos 10a and 10b to the northern side of the houses. There would also be three further spaces provided for occupants of the new houses in a car port on the site of an existing garage/outbuilding. Finally, there would be 8 cycle parking racks sited in the rear portion of the car port behind the car parking spaces.

14. From the submitted 'Existing and Proposed Site Plan', which shows selected large vehicle tracking movements, it would appear that it would not be possible for certain cars to manoeuvre into or out of car parking bays within the spaces available. In addition, the cycle parking spaces would not be readily accessible if cars were to be parked in the bays in front of them.

15. The appellant has subsequently provided further diagrams showing entry and egress swept path analyses for each car parking space. I note that certain manoeuvres would seemingly require a car to barely miss, or effectively touch, hard surfaces or other parked cars in order to get into or out of a space (eg those from 10a and 10b). Moreover, from the positions of the cars shown, it would appear that in certain spaces (eg P1 and P3) they would need to change position within the parking space between entry and egress, in one case potentially using space taken up by an electric charging point. Such complex manoeuvring would highly likely lead to the rear parking spaces at 10a and 10b being unsuitable or unattractive, while even the relatively more usable spaces would experience significant difficulties. Finally, I note that the large car dimensions used for the analysis would still be narrower than many modern SUV vehicles, which would therefore render allocated spaces unusable.

16. The overall impression gained from the plans and diagrams submitted with the planning application and with the appeal statement, is that the parking area is too constricted and cramped to allow for convenient and safe manoeuvring. Even if cars were to attempt to use allocated spaces, many of the turning movements would be in very close proximity to the fronts of the houses, especially No 10b, raising potential noise and disturbance issues. In addition, although there would be a separate footpath to the side of the vehicle access and parking areas, pedestrian movements could still be compromised by the likelihood of vehicles transgressing onto the footpath in error, and also by

vehicular movements outside of, and in close proximity to, the entrances to Nos 10a and 10b.

17. In conclusion on this issue, I find that the proposal would have a harmful impact with regard to the safety and security of the current and future occupiers of the development by way of access and movement, although any negative impacts relating to surveillance issues would be, at most, minor. In consequence, the proposal would conflict with policy EQ2 of the LP.

Living conditions and residential amenity

18. Each of the three new dwellings proposed would be constructed in a U-shape, with a two-storey element at the northern end of the plot, a single-storey element at the southern end, and a linking single-storey corridor along the western side. They would effectively be link-detached houses. Plots 2 and 3 would have an amenity space of around 50 sq metres, while Plot 1 would have an amenity space of around 56 sq metres. The overall site for the three houses would have the nature of backland, being located between existing residential properties immediately to both the north-east and south-west.

19. Whilst each house would have at least the minimum amount of amenity space required by the SPD, I have concerns regarding the quality of that space. Each amenity area would face north-east and would have two-storey buildings at either end. The distance between the ground-floor habitable room windows in the two-storey elements of the houses on Plots 2 and 3 and the rear of the two-storey element of the house immediately to the south, would be significantly less than the 12 metre interface requirement. On this basis, with the exception of Plot 1, there would be two-storey buildings to the south-east of each property and in close proximity, which would result in an oppressive outlook and potentially a degree of overshadowing.

20. In addition, the two-storey element of the house on Plot 3 would appear to encroach to a small degree across the rear elevation of No 10b such that it would likely result in a degree of overshadowing to that neighbouring property, and adversely affect the outlook from the rear of the house and its garden.

21. I note that the distance between the first-floor habitable room windows in the proposed houses would also fail to meet the requirement in the SPD for a 10.5 metre interface with the rear gardens of neighbouring gardens. However, in this case, it would not affect those parts of the gardens close to the rear elevations of the neighbouring dwellings and would not, in my opinion, result in any significant harm to privacy.

22. The submitted plans show the boundary of the plots adjacent to the access pathway as comprising horizontal panels with gaps. This would slightly reduce the oppressive outlook from the amenity space that would otherwise result from a solid fourth side to the Plot. However, it also reduces privacy, albeit by only a small amount given the few likely passers-by. Nevertheless, the SPD indicates that the 50 sq metres requirement relates to provision in the form of a private garden at the rear of the property, which would not be the case here.

23. The appellant has made reference to the RIBA response to the Letwin report, "Places where People want to Live." This relates primarily to a context of much larger developments, but the appellant contends that certain principles are applicable to this case. I accept this point, but I also note that one of the

principles relates to enclosed private gardens which, amongst other things, optimise solar orientation and are productive gardens for growing. By virtue of the orientation and limited size and nature of the amenity spaces I do not consider that the proposal would be likely to comply with this particular principle.

24. In conclusion on this issue, I find that the orientation of the proposed houses and the effect of the design and siting of the houses on their plots would result in inadequate private amenity space for the occupiers of Plots 2 and 3, in qualitative terms if not quantity, with concomitant adverse effects on outlook and overshadowing. These effects would also apply to the relationship between the house on Plot 3 and the neighbouring No 10b. In general terms, and for the reasons outlined above, I consider that development would be cramped on the site, resulting in harm to the living conditions and residential amenities of the occupiers of the proposed houses by way of space, outlook and privacy. Moreover, as backland development, it would not respect the living conditions of future residents. On this basis, the proposal would conflict with Policy EQ2 of the LP and with guidance in the SPD.

Conclusion

25. I find that the proposal would have a harmful impact with regard to the safety and security of the current and future occupiers of the development by way of access and movement through the site, both with regard to pedestrian and vehicular movements. In addition, I find that the development would be cramped on the site, resulting in harm to the living conditions and residential amenities of the occupiers of the proposed houses by way of space, outlook and privacy. Accordingly, I dismiss the appeal.

J D Westbrook

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 19 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2023

Appeal Ref: APP/M4320/X/23/3332059
102 The Serpentine North, Blundellsands, Crosby, Liverpool L23 6TJ

- 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 P Finnegan against the decision of Sefton Metropolitan Borough Council.
- The application ref DC/2023/01326, dated 27 July 2023, was refused by notice dated 23 October 2023.
- 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 the erection of a single storey garden room to the rear of the dwellinghouse.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of the proposed development as set out in the Council's Decision Notice as it is more concise than that set out in the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

4. Planning permission was granted in October 2022[1] for various works to the appeal property. The permission was subject to a number of conditions. Condition 12 states 'Notwithstanding the 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), no extensions shall be erected other than those expressly authorised by this permission and shown on the plans listed within Condition 2.'

5. The National Planning Policy Guidance (NPPG) states that when imposing conditions restricting the future use of permitted development, 'the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited

[1] Council Reference DC/2022/01269

or withdrawn.'[2] I have no power to vary or remove condition 12 under this section 195 appeal. I can only determine whether or not the proposed development would contravene it.

6. Condition 12 does not specify which class of permitted development it restricts the use of; it simply states 'no extensions'. The Council contends that the reference to 'extensions' also includes outbuildings. On the face of it, and on its ordinary reading, it is reasonable to infer that 'no extensions' means extensions physically attached to the dwellinghouse. I have been referred to the case of *Warwick District Council v Secretary of State for Levelling Up, Housing And Communities* [2022] EWHC 2145 (Admin). However, this case focused on whether an outbuilding could be considered as an extension for the purposes of Green Belt policy. In the appeal before me, there is no consideration of such policy. Moreover, the judgement found that 'an extension can be detached from the building which it is an extension.' That does not mean an outbuilding is always to be considered an extension.

7. For the purposes of condition 12, if 'extensions' includes outbuildings, and by inference restricts permitted development under Schedule 2, Part 1, Class E of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO) then it fails to precisely define what development the condition seeks to restrict. If the condition did indeed restrict the use of Class E permitted development rights then this would be precisely defined as, at the very least, 'no extensions or outbuildings'. However, that is not what it says. Accordingly, I do not find that the proposed outbuilding would contravene condition 12.

8. Notwithstanding the above, Class E.1.(f) states that development is not permitted by Class E if the height of the eaves of the building would exceed 2.5 metres. The permitted development rights for householders: Technical Guidance 2019 states that for a flat roof, 'Eaves height is measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof - the overhang and the parapet wall should be ignored for the purposes of measurement.'[3]

9. The appellant confirms the outbuilding would have a flat roof and be at a height of 3m. Therefore, the eaves would exceed 2.5m and as such it would fail to comply with Class E.1.(f) and would not be permitted development.

Conclusion

10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a pool annex ancillary to the existing dwelling is 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.

A Walker

INSPECTOR

[2] Paragraph: 017 Reference ID: 21a-017-20190723
[3] Page 12