
Appeal Decision

Inquiry held from 18 to 21 August 2015

Site visit made on 20 August 2015

by Jonathan Bore BA(Hons) DipUD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 September 2015

Appeal Ref: APP/M4320/A/14/2224988

Former Birkdale School for Hearing Impaired Children, 40 Lancaster Road, Birkdale, Southport

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Centremodel Projects Ltd against Sefton Metropolitan Borough Council.
 - The application, Ref S2013/0890, is dated 10 July 2013.
 - The development proposed is the conversion of the former school building to form 27 apartments (including internal and external restoration and alteration), the erection of 30 dwellings, new and revised access, parking, landscaping and public open space.
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Decision

1. The appeal is dismissed and planning permission refused.

Main Issues

2. The main issues in this appeal are:
 - (a) The effect of the proposal on the character and appearance of West Birkdale Conservation Area and on the Grade II listed former Birkdale School and its setting.
 - (b) Whether the scheme should provide affordable housing having regard to the relevant policies in the development plan and in the Framework.

Reasons

(a) The effect of the proposal on the character and appearance of West Birkdale Conservation Area and on the listed former Birkdale School and its setting.

3. Policy HC1 of the adopted Sefton MBC Unitary Development Plan 2006 and Policy NH11 of the Local Plan for Sefton Submission Document, July 2015 (which does not yet carry full weight as it has not been subject to examination) aim to ensure that development within conservation areas preserves or enhances their character or appearance. The National Planning Policy Framework ('the Framework') points out that the significance of a heritage asset can be harmed or lost through development within its setting; Policy HC4 of the UDP and Policy NH10 of the Local Plan Submission Document seek to protect the setting of listed buildings. In addition, Policies CS3 and DQ1 of the UDP attach significant weight to the quality of building, site design and layout, and

- seek to ensure that development relates positively to the character of its surroundings and achieves a high quality of design.
4. With its fine mid 19th to early 20th Century houses set in generous plots behind strong front boundary walls and gateposts, facing broad, straight or gently curving streets, West Birkdale Conservation Area has a spacious quality. There are some tighter modern developments but these are relatively few and do not conform to, or have much influence over, the character of the conservation area as a whole. The former Birkdale School for Hearing Impaired Children is by far the largest building in the conservation area and, with its grounds, occupies a substantial segment of the southern part of the conservation area.
 5. The school is a critical part of the conservation area by virtue of its detailing, its strong south-facing elevation, gabled roofline, crenellated tower and slightly elevated position above its flat former playing field. Its façade would be still more striking if the fire damaged part were returned to its former state. It is readily apparent that the former school field close to the school, particularly to its south, forms an important part of the setting of the building. The school was evidently designed to look out over this part of the field and it is from this area that its elevation is best appreciated. However, the school's visual influence noticeably diminishes towards the south western part of its field owing to distance and the school's angled siting relative to its grounds. With the closure of the school, the functional relationship with the field is also diminished. The more south westerly parts of its grounds are therefore less critical to its setting.
 6. Outside the site, the position is similar; the strong facade is best seen directly from the south through the gaps between the rather patchy planting along Lancaster Road, but further south west along that road its visual influence is much diminished because of distance, the angle of the school, and the fact that the site is fairly well enclosed. From Granville Road, apart from one close-up side view, views of the school are mostly obstructed by newish houses. And whilst the field itself is obviously free of buildings and visible from upper floor windows, it is relatively well enclosed when seen from public viewpoints.
 7. For all the above reasons, I consider that the key part of the setting of the school (insofar as it concerns this appeal) is the area running broadly southwards from the main façade towards Lancaster Road, and that the most important views from outside the site are also those looking more or less northwards towards its south elevation.
 8. Whilst the scheme before me would preserve a swathe of open land to the south of the school, I consider that the proposed development would be harmful to the character and appearance of the conservation area and the setting of the listed building. There are a number of reasons for this.
 9. Firstly, the shared surface access loop entered from Lancaster Road would not be of a form characteristic of the conservation area and would not sit comfortably within its surroundings. The scheme with its narrow drives, informal bends and minor variations in building lines would have very little in common with the formal straight and gently curving streets of the conservation area. I appreciate that the design approach that has been adopted would avoid having to break through the attractive boundary wall to create accesses, but this would be at the expense of creating strong frontage development that would help to preserve the conservation area.

10. Secondly, whilst some of the plot widths of the houses would be similar to those in the vicinity, plot sizes as a whole would be considerably less, leading to the relatively close grouping of rather substantial houses and garages. The Appellants argue that the site, being enclosed and separate, is capable of taking development with a different grain from the surrounding area. However, the contrast with the area's character would be particularly noticeable from the proposed open space, from Lancaster Road, where views would be opened up, and from within and adjacent to the site itself. Whilst acknowledging that the scheme makes reference to the materials and architectural detail from some of its surroundings, I consider that it would appear as something of a huddle of buildings around an inappropriate estate-type layout, which would be in unfortunate contrast to the surrounding conservation area, and indeed to the spacious residential areas near the site but outside the conservation area. The few tighter modern developments in the area do not set an appropriate example for this much larger site.
11. Thirdly, in the immediate setting of the listed building and visible from the open space would be front, side and rear house elevations at various angles, together with front garden spaces, back garden boundaries, detached garages, a range of house designs, and part of a shared surface drive, with little or no attempt to address either the open space or the listed building itself. Even accounting for planting, I consider that this would appear as an incoherent set of estate-like elements in very unfortunate juxtaposition to the listed building.
12. I therefore consider that the scheme would fail to preserve the character of the conservation area or the setting of the listed building. Having regard to Paragraph 134 of the Framework, the degree of harm would be less than substantial, so I have considered the potential public benefits that would be provided by the scheme.
13. The first of these is the refurbishment of the building. The field is overgrown and the listed building is in a dreadful condition, with a good part of the school having been demolished after fire damage, and both have a harmful effect on the character and appearance of the conservation area and are listed as 'at risk' by Historic England. The scheme is not being promoted as enabling development, but it is acknowledged by both parties that the scheme would fund the restoration of the school, and a condition is proposed which would require phasing to ensure that such works were fully implemented. I have no doubt that it will have been very difficult to keep such an extensive vacant site secure and free from deterioration since the school became vacant. Restoration would secure, preserve and restore the heritage asset and reduce its blighting effect on the conservation area.
14. The second potential public benefit is the provision of market housing in circumstances where there is an acute shortfall in the 5 year housing land supply. It is agreed that substantial new housing allocations will be needed in Sefton through the development plan process, including a review of the Green Belt. I acknowledge that this scheme would make a modest contribution towards reducing the shortfall.
15. Both these benefits would be considerable. However, they are overridden by the harm that this particular scheme would cause to the building's setting and the character of the conservation area. There may be other opportunities in the future to restore the building, whereas the scheme before me would create an

unacceptable setting for the listed building and an inappropriate development in the conservation area in perpetuity, and this I believe is an overriding consideration.

16. To conclude on this issue, I consider that the scheme would harm both the character and appearance of the conservation area and the setting of the listed building and would be contrary to Policies HC1 and HC4 of the adopted UDP and Policies NH10 and NH11 of the Local Plan for Sefton Submission Document, as well as the more general UDP design policies CS3 and DQ1. In coming to this conclusion I have had regard to the Historic England guidance on listed buildings and their settings and have considered the terms of its representation to the planning authority on this scheme, but I consider the scheme unacceptable for the reasons given. I do not consider the public benefits of the building restoration and the provision of housing in circumstances of insufficient supply, even taken together, to outweigh these objections to the scheme.

(b) Whether the scheme should provide affordable housing having regard to the relevant policies in the development plan and in the Framework.

17. Policy H2 of the UDP seeks affordable housing in new developments as part of proposals for 25 dwellings or more. The Council's negotiating position now seeks 30% affordable housing defined by bed spaces on sites of 15 or more dwellings, subject to economic viability, and this approach is reflected in Policy HC1 of the Local Plan for Sefton Submission Document. The Framework seeks significantly to boost the supply of housing, and indicates that where the need for affordable housing has been identified, policies should seek to meet this need on site unless off site provision or financial contributions can be robustly justified. Both parties agree that there is a significant need for affordable housing in Southport, which represents 47% of the whole borough's need, with the November 2014 SHMA indicating a need for 203 dpa. However, the scheme does not provide for any affordable housing.
18. The Appellants' argument is that development costs reduce viability to the extent that affordable housing cannot be provided. These costs, according to the Appellants, include the cost of lifting covenants restricting the number of dwellings that can be built, and an overage agreement concerning the uplift in land value arising from development.
19. Given the development plan policy on affordable housing and the notable shortage of affordable housing in the area, I would expect to see evidence that the provision of affordable housing had been taken into account as an integral part of the scheme. Land value and other costs including overage and the releasing of covenants should then be considered in that context. I do not consider that the payments for overage and covenants should be regarded as separately calculated items apparently independent of the planning context, to be added to overall development costs. To do so would in effect prioritise those payments over the provision of affordable housing. I consider that this is the wrong approach given the policy requirement and the clear evidence of need for affordable housing in the locality.
20. I therefore consider that the Council have taken the right approach towards land value in respect of the viability calculation. Taking the legal constraints into account as land costs akin to remediation rather than development costs suggests a land value closer to the Council's figure, which results in a larger

residual figure available for affordable housing. I have taken note of the values for comparable sites submitted in evidence but it does not seem to me that they share all the characteristics or constraints of the appeal site in terms of size or constraints.

21. The Appellants expressed concern about the potential for affordable housing to reduce land value to a point which would not provide insufficient incentive for the landowner to release the site, especially given the uncertainty and risk inherent in the development. But the costs of conversion and new build in the viability exercise included an enhanced contingency of 7.5% and this was fully agreed by the parties. So whilst a scheme of this sort inevitably brings risks, I consider that the agreed position on build costs, including the contingency, provides a robust position and it is not necessary to build in flexibility for risk in other elements of the viability calculation. It is noteworthy that even on the Appellants' figures the residual amount is above the agreed 20% figure for developer profit, and thus capable of making some contribution to affordable housing. Despite its physical and legal constraints, the appeal site is in one of the most valuable parts of Southport and I can see no reason from the evidence why a developer and landowner could not settle on appropriate values that would encourage the bringing forward of the site as well as allowing for an adequate amount of affordable housing.
22. The Appellants argued that the provision of affordable housing on site would depress the value of the market housing, again reducing the incentive to develop. However, no design approaches appear to have been investigated which would enable both market and affordable housing to be developed on site so I do not consider this argument to be soundly based. I give very little weight to the suggestion contained in two developers' letters that the upmarket nature of the development would preclude on site affordable housing: such an approach would seem to me to run counter to the Framework's objective to create sustainable, inclusive and mixed communities.
23. The Appellants' unilateral undertaking dated 14 August 2015 and signed on 3 September 2015 would provide a mechanism for a contribution towards affordable housing of 50% of the difference between the final covenant cost and the specified maximum covenant cost of £1,831,749 where the latter is higher. However, the final cost would be dependent on negotiation between leaseholder and owner, or on court order, tribunal or adjudication, with no input from the local authority other than the ability to see the documentation. This again leaves the negotiation of the covenant as a separate process which could well reflect the commercial objectives of those involved in the negotiation, whilst relegating the provision of affordable housing, a requirement of development plan policy, to the residual end of the process. There is no guarantee that any affordable housing contribution would actually be made as a result of the undertaking, and moreover, it would not deliver any affordable housing on site. I therefore consider that it would not make the development acceptable in planning terms, and I give it very little weight.
24. I conclude that the absence of any affordable housing in the scheme is unacceptable and contrary to the objectives of the Framework, to Policy H2 of the UDP and to Policy HC1 of the Local Plan for Sefton Submission Document.

Other matters

25. The school field is designated urban greenspace. Policies CS2 and G1 of the UDP aim to protect such space. However, the Council indicated at the inquiry that, given the absence of a 5 year supply of housing land, it considered the greenspace policies out of date as regards this site. Paragraph 74 of the Framework also indicates that existing open space should not be built on unless, among other things, the land is surplus to requirements. I am aware that the site was used for sport by outside bodies while the school was in operation, and indeed there is still a planning obligation in place that requires it to be allowed to be used in this way. There has been some interest in using the site for sports, and this was affirmed at the inquiry by Southport and Birkdale Sports Club. However, no expression of interest has been taken forward and there is no ongoing requirement for the owner to maintain the grounds or apparently any willingness of an outside body to do so. I was not presented with convincing evidence of need or of a shortage of open space to convince me that the whole of the space should be retained for sports or recreation. This however does not alter my view that the scheme is unacceptable.

Conclusion

26. The scheme would harm both the character of the conservation area and the setting of the listed building and would fail to provide any affordable housing. For these reasons I consider that the appeal should be dismissed and planning permission refused. I have considered all the other matters raised but they do not alter the balance of my conclusions.

Jonathan Bore

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr John Barrett, of Counsel

Instructed by Sefton Council

He called

Mr A G Massey BSc
(Hons) MRICS IRRV
MCI Arb

Keppie Massie

Mr A Young BA (Hons)
Master of Civic Design
MRTPI

Strategic Planning Manager, Sefton Council

Mr Steve Faulkner BA
(Hons), Dip TP

Team Leader, Development Management, Sefton
Council

FOR THE APPELLANT:

Mr David Manley QC

Instructed by Mr Paul Sedgwick

He called

Mr P J Kelly FRICS

Eddisons

Kathryn Sather BA MSc

Kathryn Sather & Associates

Mr Paul Sedgwick DipTP
MRTPI

Sedgwick Associates

INTERESTED PERSONS:

Cllr Tony Dawson

Mr Michael Nash

Mr W B Legget

Mr Neil McQuaid

DOCUMENTS

General inquiry documents

- Doc 1 Attendance list
- Doc 2 Letter of notification and list of persons notified
- Doc 3 Letters of representation
- Doc 4 Proof and appendices of Mr Massie
- Doc 5 Proof of Mr Young
- Doc 6 Proof of Mr Faulkner
- Doc 7 Proof of Mr Kelly
- Doc 8 Proof and appendices of Kathryn Sather
- Doc 9 Proof and appendices of Mr Sedgwick
- Doc 10 Unilateral Undertaking dated 14 August 2015
- Doc 11 Planning appeal decisions APP/P3420/A/14/2219380 and APP/P3420/E/14/2219712 dated 20 July 2015 regarding The Hawthorns and Keele University Campus
- Doc 12 Suggested planning conditions
- Doc 13 Letter from Wainhomes (North West) Ltd dated 19 November 2013
- Doc 14 Letter from Redrow Homes Lancashire dated 18 November 2013
- Doc 15 Correspondence between Yates Barnes Solicitors and Sefton Council dated 15 January and 15 February 2013
- Doc 16 Letter from Humphrey Johnson FCA dated 11 August 2015
- Doc 17 Extract from committee report of 9 March 2011
- Doc 18 Determination dated 6 June 2012 regarding a s106 agreement dated 22 May 2000
- Doc 19 5 year housing land supply position, submitted by Mr Young
- Doc 20 Letter from Yates Barnes Solicitors, dated 17 August 2015
- Doc 21 Letter from Fisher German LLP, dated 4 August 2015

Core Documents

- CD01 Site Location Plan (also at CD15)
- CD02 Sefton Unitary Development Plan (June 2006)
- CD03 National Planning Policy Framework (March 2012)
- CD04 Planning Practice Guidance – Design
- CD05 Planning Practice Guidance – Planning Obligations
- CD06 Supplementary Planning Guidance Document ‘Greenspace, Trees and Development’
- CD07 English Heritage - Enabling Development and the Conservation of Significant Places (2008 and 2012 NPPF addendum)
- CD08 Historic England – Historic Environment Good Practice in Planning Note 2: Managing Significance in Decision-Taking in the Historic Environment (July 2015)
- CD09 Historic England – Historic Environment Good Practice in Planning Note 3: Setting of Heritage Assets (July 2015)
- CD10 English Heritage – Seeing the History in the View (June 2012)
- CD11 English Heritage – Conservation Principles – Policy and Guidance (June 2008)
- CD12 English Heritage - Stopping The Rot - A guide to Enforcement Action to save historic buildings (2011)
- CD13 West Birkdale Conservation Area Appraisal Adopted March 2008
- CD14 Section 106 Agreement dated 22 May 2000 between Sefton MBC and Birkdale School for Hearing Impaired Children Limited
- CD15 Planning Application Drawings (schedule below)
- CD16 Planning Application Drawing 10-018-1010 Rev D submitted alongside planning application S/2010/1671
- CD17 Consultation Responses (including those from English Heritage and Sport England)
- CD18 Representations made on Planning Application
- CD19 Reports to Planning Committee/Minute of meeting

- CD20 Financial Viability Report submitted to SMBC (David Gray, 2014)
- CD21 Response to David Gray Financial Viability Report (Keppie Massie, September 2014)
- CD22 Cabinet report 13th July 2006, 2005 Sefton Housing Needs Assessment Update
- CD23 Sefton Strategic Housing Market Assessment 2008, published June 2009
- CD24 Housing Need in Sefton - further details on the figures in the Sefton Strategic Housing Market Assessment 2008, published August 2010
- CD25 Sefton Strategic Housing Market Assessment 2008' report to Planning Committee and Cabinet, August - September 2009
- CD26 Regulating the Supply of Residential Land Update and Affordable Housing policy update', report to Planning Committee and Cabinet, November 2008
- CD27 Further Fordham Research Advice about Housing Matters in Sefton, report to Planning Committee, Cabinet Member-Regeneration and Cabinet, September 2010
- CD28 Cabinet report 2nd September 2010, An Informed Assessment of the Economic Viability of Affordable Housing in Sefton
- CD29 Council letter to the applicants agent, Mr Sedgwick, dated 11th December 2013
- CD30 2014 Strategic Housing Market Assessment for Sefton, published November 2014
- CD31 2014 Strategic Housing Market Assessment for Sefton, report to Planning Committee, Cabinet and Council, January 2015
- CD32 Financial Viability In Planning (1st Edition) – RICS Guidance Note
- CD33 Valuation Information Paper No 12 – RICS
- CD34 Lease dated 29 October 1903
- CD35 Lease dated 28 July 1926
- CD36 Lease dated 27 May 1898
- CD37 Deed dated 9 March 2004
- CD38 Deed of covenant dated 9 March 2004

- CD39 Report dated 25 February 2015 prepared by Mr Phillip Kelly, Eddisons
- CD40 Appeal decision (Appeal Reference APP/D3505 /A/A3/2209058) at Russettes, Hadley Road, Ipswich
- CD41 Appeal decision 14 November 2013 (Appeal Reference APP/M4320/A/13/2198626) 38 Westbourne Road, Birkdale)
- CD42 Extract from Design and Access Statement submitted alongside planning application S/2010/1671
- CD43 Photographs of buildings/grounds
- CD44 Letter to Appellant's representatives dated 1 October 2010
- CD45 Memorandum from Council's Conservation Officer 23 September 2013
- CD46 Submissions of Appellant in relation to affordable dwellings on-site May 2014
- CD47 Historic England - Understanding Place: Conservation Area Designation, Appraisal and Management
- CD48 LUC - Evaluating the impact of housing development on the historic environment
- CD49 English Heritage - Heritage At Risk 2014 / North West
- CD50 S/2010/1672 Listed Building Consent 26/01/2012 - 40 Lancaster Road, Birkdale
- CD51 Bundle of application documents including:
 - Arboricultural Report February 2010
 - Conservation Management Plan (Post-fire)
 - Ecological Survey (Revised August 2013)
 - Flood Risk Assessment April 2013
 - Transport Statement April 2013
 - Residential Travel Plan April 2013
 - Preliminary Risk Assessment June 2013
 - Utilities Statement July 2013

PLANS

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| Location Plan | 10-018 0006 |
| Proposed Site Plan | S-1000 Revision B |
| Elevations (new dwellings) | A-01, A-03, B-01, C-01, D-01, E-01, F-01,G-01 |
| Floor Plans (new dwellings) | A-02, A-04, B-02, C-02, D-02, E-02, F-02, G-02 |
| Existing block plan | 10/018 1043 |
| Existing floor plans (listed building pre-fire) | 10/018 0001, 0002, 0003, 0004 |
| Existing floor plans (listed building post-fire) | 10/018 1031, 1032, 1033 |
| Proposed floor plans (listed building) | 10/018 1034 Revision A, 1035 Revision A, 1036 Revision A |
| Proposed elevations (listed building) | 10/018 1037 Revision A, 1038 Revision A |
| Roof plan (listed building post-fire) | 10/018 1041 |
| Proposed Roof plan (listed building) | 10/018 1042, 1059 |
| Proposed window schedule (listed building) | 10/018 1046 Revision B, 1047 Revision B, 1048 Revision B, 1049 Revision B |
| Proposed window detail (listed building) | 10/018 1050 Revision A, 1051 Revision A, 1052 Revision A |
| Cycle/bin stores and guarding to terrace | 10/018 0027 Revision A |
| Existing elevations (listed building post fire) | 10/018 1030 |
| Street Scene Drawing | SS01 Revision B |
| Parking Layout | S-1001 |
| Landscaping Plans | S-1002, S-1003 |
| Topographical Survey Plan | MCK (BIRK) 1100.000E |