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## Appeal Decision

Hearing held on 20 May 2015

Site visit made on 20 May 2015

**by Elaine Worthington BA (Hons) MTP MUED MRTPI**

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

Decision date: 29<sup>th</sup> June 2015

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**Appeal Ref: APP/Z4310/W/15/3006792**

**Former St Malachy's School, Beaufort Street, Toxteth, Liverpool, L8 6XJ**

- 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 Edward Rooney, Gleeson Developments against the decision of Liverpool City Council.
  - The application Ref 13F/2765, dated 12 November 2013, was refused by notice dated 16 December 2014.
  - The development proposed is the development of 57 dwellings upon the former St Malachy's School, Beaufort Street, Toxteth, Liverpool. Dwellings proposed to be two and three bedroom semi-detached houses and four bed detached houses.
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### Decision

1. The appeal is allowed and planning permission is granted for the development of 57 dwellings upon the former St Malachy's School, Beaufort Street, Toxteth, Liverpool. Dwellings proposed to be two and three bedroom semi-detached houses and four bed detached houses at Former St Malachy's School, Beaufort Street, Toxteth, Liverpool, L8 6XJ in accordance with the terms of the application, Ref 13F/2765, dated 12 November 2013, subject to the conditions in Annex A.

### Application for costs

2. An application for costs was made by Mr Edward Rooney, Gleeson Developments against Liverpool City Council. This application is the subject of a separate Decision.

### Main Issue

3. The main issue in this case is whether the requirement for the proposed dwellings to be accessible and adaptable is reasonable and realistic, having particular regard to viability.

### Reasons

#### *National and Local Planning Policy*

4. The Lifetime Homes (LTH) standard is a set of 16 design criteria that provide a model for building accessible and adaptable homes. Saved Policy HD19 of the Liverpool Unitary Development Plan (UDP) concerns access for all. Paragraph 7.154 of the supporting text advises that the Council wishes to encourage the provision of houses constructed to Lifetime Homes Standards wherever this is

reasonable and realistic. The Council's Design for Access for All Supplementary Planning Document (SPD) goes further to require that all new housing, affordable and private, should be designed to LTH standards.

5. The Equality Act 2010 provides a legal framework that protects disabled people from discrimination. The Council has a duty to promote equality and pay due regard to the requirements of disabled people. In pursuing the LTH standards in the general housing stock the Council aims to allow older people to stay in their homes for longer, reduce the need for home adaptations and provide better choice to disabled people who cannot achieve independent living due to a lack of suitable housing. Building to LTH standards can save future residents and local authorities' expense when the needs of a disabled resident have to be accommodated. They can also allow houses to be accessible to disabled visitors.
6. The Written Ministerial Statement (WMS) of 25 March 2015 indicates that new homes need to be high quality, accessible and sustainable. To achieve this, the government has created a new approach for the setting of technical standards for new housing. This rationalises the many differing existing standards into a simpler, streamlined system which will reduce burdens and help bring forward much needed homes. Planning permission should not be granted requiring (or subject to conditions requiring) compliance with technical housing standards other than for those where authorities have existing policies on access, or internal space. Planning permission may still be granted on the basis of existing Local Plan policies on access, internal space, and water efficiency even though they may have a degree of conflict with the new national technical standards.
7. The glossary at Annex 2 of the National Planning Policy Framework (the Framework) explains that supplementary planning documents add further detail to the policies in the development plan, but are not part of the development plan. Whilst the SPD is a material consideration, the Council's requirement for all new housing to be designed to LTH standards is not an existing Local Plan policy. Furthermore, in my view the SPD requirement is inconsistent with the advice set out at paragraph 173 of the Framework in relation to viability. This states that pursuing sustainable development requires careful attention to viability and costs in decision-taking. This further limits the weight I afford the SPD. However, in seeking to encourage LTH standards wherever this is reasonable and realistic, the supporting text of UDP Policy H19 generally accords with the thrust of the Framework in this regard.
8. The Council considers that the LTH standards sought are consistent with the new national additional optional levels to Document M of the Building Regulations in relation to access (level 2). The appellant does not disagree. As such, I am satisfied that the Council has an existing Local Plan policy relating to access, and have seen nothing to suggest that it conflicts with the corresponding new national technical standards. The need for accessible new homes remains a priority in the WMS, and I understand that the Council intends to demonstrate the need for such homes and apply a viability assessment in order to update the SPD for use after 1 October 2015 (as set out in the WMS). Furthermore, the underlying principles of LTH align with the aims of the Framework to deliver a wide choice of high quality homes and require good design.

9. In particular paragraph 50 of the Framework indicates that to create sustainable, inclusive and mixed communities local authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community, such as older people and people with disabilities (amongst others). Paragraph 57 also acknowledges that it is important to plan positively for the achievement of high quality and inclusive design. Planning Practice Guidance (the Guidance) advises that an inclusive environment is one that can be accessed and used by everyone.

*Accessibility and Adaptability – the LTH criteria in dispute*

10. The appeal proposal is for 56 dwellings and includes 11 house types. The Council has considered the scheme against the LTH standards and raises concerns in relation to a number of the criteria.
11. LTH criterion 10 concerns the entrance level WC and shower drainage. It explains that providing drainage for a future shower here means that accessible washing facilities for the household, should they need it, is a simple and low-cost adaptation. Although the Council indicates that the 13 two bedroom dwellings fall outside the spatial requirements of criterion 10, the other three and four bedroom houses would not provide an adequate sized entrance level WC with the potential for a shower to be installed. As such, this room would need to be larger in the case of these 43 dwellings.
12. Criterion 14 relates to the accessibility of the upstairs bathrooms. The Council's committee report advises that none of the house types comply with this criterion. On this basis the appellant has taken the approach that larger bathrooms would be required. However, the Council's statement indicates that house types 301, 309 and 406 (a total of 9 units) would be LTH compliant subject to minor internal bathroom suite re-arrangement without being enlarged. It also states that all of the bathrooms would spatially satisfy the requirements of LTH once converted to include shower facilities instead of a bath, when required.
13. The appellant indicates that the provision of baths in the bathrooms (and not just showers) is essential to the housing offer and the ability to sell the dwellings. I have some sympathy with this view and can see that the lack of a bath may be likely to limit the attractiveness of the properties to family buyers. Thus I consider it reasonable of the appellant to seek to retain them. Whilst the Council suggested at the hearing that the bathrooms could in fact be reconfigured to meet the standards and still retain the baths, I have seen nothing to demonstrate that this would be the case. On this basis, it seems to me that the bathrooms would need to be enlarged.
14. With regard to criterion 6 the Council considers that 23 of the houses do not have the requisite internal space provision (doorways/hallways/landings) to allow ease of movement for the mobility impaired. Although the appellant's Quantity Surveying Report and Estimate on the Likely Costs (Revision 2) by Bernard Williams Associates (BWA report) indicates that this could be addressed via the provision of wider doorways, the BWA report also highlights the scheme's non compliance with criterion 4c which concerns entrances. It indicates that for house types 202, 303 and 304 the creation of door nibs adjacent to external doors would add area to the houses.

15. Additionally, none of the houses would give the potential for a through floor lift as required by criterion 12. Whilst the Council indicates this provision would entail additional work to the joists only, the appellant considers that any future installation of a lift would require a clear space of round 1 metre by 1.5 metres in the rooms in which it would be located.

*Would the houses need to be enlarged?*

16. There is disagreement between the parties as to whether the measures required to meet these identified LTH deficiencies could be accommodated internally, or whether the houses would need to be bigger. The appellant indicates it would be necessary to increase the size of the dwellings and has produced a set of amended floor plans which add to the houses externally.
17. The Council considers that a different internal layout could accommodate the required amendments, and has provided an example of a typical 3 bedroom house with a different internal layout that is LTH compliant. Although the Council considers this example to be of a similar size to the appellant's 3 bedroom house (type 301), since it is based on internal floor space measurements (as opposed to the external measurements utilised for house type 301) the example given is in fact a larger dwelling (by some 13 square metres). Whilst the Council still considers revised internal layouts could accommodate the required amendments, I have seen no evidence to support this view.
18. In practical terms, the houses as proposed are not spacious. For example, the minimum internal floor space standard set out in the SPD for 3 bedroom dwellings is 96 square metres. At the hearing the appellant confirmed that the 3 bedroom Gleeson properties have a floor space of around 75 square metres. As such these would fall well short of the Council's standards. They would also fail to meet the minimum floor area for a two storey 3 bedroom dwelling of 84 square metres as set out in the Government's technical housing standards (nationally described space standard).
19. Even on the basis of only some of the upstairs bathrooms having to be enlarged as described, the increased space required for the downstairs WCs along with the changes to the doorways and entrances, and the circulation spaces would not be insignificant in this context. Should they be installed, the floor to ceiling lifts would further intrude into the useable space that would be available within the already modest sized rooms. The additional space would need to be found across a number of the house types and would affect a good proportion of the overall number of dwellings.
20. The Council has not demonstrated how these space requirements would be accommodated internally without giving rise to unsatisfactory knock on effects to the size of the other main habitable rooms. In my view they would have the potential to unduly compromise the already somewhat constrained size of the living accommodation that would be provided. As such, in order to provide acceptable living conditions for future occupiers it is likely that the dwellings would need to be enlarged.

*Would the number of units be reduced?*

21. The Council also estimates that 30 of the 56 dwellings fail to comply with LTH criterion 1 in respect of on-plot parking, as the parking space proposed would not have the capacity to be widened by 900 mm to 3300mm in the future should the need arise. Furthermore, it considers that 3 houses would have an approach with a 1:15 gradient which would not accord with criterion 3 or the SPD. Whilst the appellant confirms that the gradients of the approaches could be addressed without any space implications, in order to meet criterion 1 larger plot sizes would need to be provided.
22. Coupled with the increase in the sizes of the dwellings that would be required (as discussed above), the appellant estimates that 8 units would be lost from the scheme. The submitted red sketch plan shows an increased 3m drive width and increased house area. The second sketch plan shows a 2.75m drive width and increased house area. Both result in the site accommodating 48 rather than 56 dwellings.
23. On the other hand, the Council considers that the alteration of internal layouts, or minor footprint increases but with the loss of some garages (and a car port used instead) but the provision of enlarged on-plot parking, could achieve LTH compliance without significantly affecting the number of units. Even in the event that the houses and drives would need to be made bigger, the Council indicates that the spatial standards set out in its New Residential Development Supplementary Planning Guidance (SPG10) could be relaxed in the interests of delivering LTH.
24. The Council has not made particular reference to the scale of the enlargements that the appellant regards would be necessary to the houses as shown on the amended floor plans. These increases do not seem excessive to me, and I have seen nothing to suggest that they are not a reasonable interpretation of the extent to which the homes would need to be enlarged.
25. In terms of achieving enlarged on-plot parking, the appellant's experience suggests that the buyers of 3 and 4 bedroom homes in particular expect a secure garage, and their absence would affect the saleability of these properties. Should garages be required the Council suggests that future occupiers could apply for planning permission at a later date. However, this would mean that the benefits of having achieved LTH status (and the occupiers ability to widen their driveway should the need arise) would be short lived. Thus, whilst the loss of some garages may help to achieve LTH standards with less impact on the proposed layout of the scheme, it would not necessarily help to achieve accessible and adaptable homes for the future. As such, in my view, the capacity for the on-plot parking space to be widened would be better provided for without deleting the garages.
26. The submitted scheme does not meet the SPG10 standards in all respects. The officer's report advises that the interface distances within the site between the proposed dwellings, are in some cases slightly sub-standard. It is clear from the plans that the layout of the scheme maximises the site area and as a result the houses are not at great distances from each other. A further relaxation of the standards to accommodate larger houses and bigger plot sizes would be likely to bring the houses in to closer proximity to each other, with resultant impacts on privacy and outlook.

27. Although the committee report states that the Council is disappointed that the scheme fails to achieve 100% LTH compliance, I appreciate that the Council would have liked to have explored potential areas of compromise with the appellant and seen fully worked up alternative plans. We discussed at the hearing that those LTH criteria that relate to factors which are essential for day to day living are considered to be the most important, and I understand that others could be open to negotiation. For example the Council indicates that it may have accepted a small number of homes with non LTH compliant parking bays.
28. Nevertheless, for the reasons given, in my view there is little scope within the submitted scheme for enlargements to the houses and their plots to be accommodated as part of the existing layout. Whilst I note the Council's view that the scheme could achieve LTH compliance without significantly affecting the number of units, it has not been demonstrated how the scheme's already sub-standard interface distances could be reduced to accommodate any increases in house and/or plot sizes. Therefore, I cannot be satisfied that the changes that would need to be made to the proposal to achieve the LTH standard, would result in a satisfactory scheme in terms of the standard of accommodation that would be provided for future occupants. Thus, even if not on the scale anticipated by the appellant, it seems likely to me that some units would be lost as a result of making the scheme LTH compliant.

#### *Viability*

29. Gleeson concentrate on secondary locations and provide low cost homes for people on low incomes. They consider themselves to be a niche provider rather than a mainstream house builder. Whilst none of Gleeson's current house type range complies with the LTH standards, the appellant nevertheless considers that the proposed development would be inclusive and accessible to wheelchair users and meet the requirements of the Building Regulations. Additionally the appellant advises that alterations can be made free of charge to customers with needs due to a disability, and stair lifts can make upper floor bathrooms accessible.
30. That said, alterations are made on the basis of a one off offer to the original buyer. Whilst adaptations can be made a later stage, the cost of these would fall to the occupiers (or the Council if the occupiers are on low incomes). It has been put to me that a high proportion of people on low incomes are disabled, and the cost of adaptations can be prohibitive and can also lead to people seeking residential care. Moving house to more suitable accommodation is not always an option given the lack of accessible and adaptable properties, particularly in the lower price ranges.
31. I have seen nothing to suggest that the LTH standards and issues of accessibility and adaptability should be limited to providers of social housing, and not market house builders such as the appellant. I also have some sympathy with the concerns raised as to the appellant's reluctance to review standard house designs, and appreciate that LTH standards should be incorporated into a flexible approach to house design rather than retrofitted to a standard house type. Additionally I note the example of a housing scheme elsewhere in the city referred to by the Council where affordable homes were able to achieve the LTH standard.

32. Even so, paragraph 173 of the Framework is clear that pursuing sustainable development requires careful attention to viability and costs in decision-taking. To ensure viability, the costs of any requirements likely to be applied to development, such as standards, should, when taking into account the normal cost of development and mitigation, provide competitive returns to a willing land owner and willing developer to enable the development to be deliverable. The Guidance advises that where the viability of a development is in question, local planning authorities should look to be flexible in applying policy requirements wherever possible. The spirit of UDP Policy HD19, which seeks to encourage LTH standards wherever this is reasonable and realistic, aligns with this approach.

*The costs associated with LTH per unit*

33. The Council considers that the construction costs associated with achieving LTH compliance is between £800 and £1,500 per dwelling. This is based on estimations made by EC Harris in the Housing Standards Review Document. When applied to the 56 properties proposed, it represents a total cost of some £45,000 to £84,000.
34. The appellant's BWA report estimates an overall cost of complying with the LTH standards of £336,161. This is specific to the appeal scheme and restricted to build costs only. The BWA report acknowledges that the largest element of this cost increase is attributable to the change in area needed to each house type, which themselves reflect the relatively small size of the Gleeson standard house types.
35. The Council is concerned that the BWA report summarises the effects of achieving criteria 4c, 7, 10 and 14 into one cost and regards the lack of a detailed breakdown of these costs to prohibit a through review of the BWA report. Notwithstanding this, as discussed above the Council indicates that subject to minor bathroom suite rearrangement, house types 301, 309 and 406 comply with criterion 14 without being enlarged. Thus the Council argues that the additional cost of making these 9 units compliant (estimated to be £140,763) should not be included in the summary costs.
36. Whilst concerns are also raised by the Council in relation to house types 201 and 202 falling outside the spatial requirement of criterion 10, the appellant clarified at the hearing that this is reflected in the figures and as such no area costs have been attributed to these house types.
37. Even accepting the Council's arguments in relation to the bathrooms (criterion 14), the discounted overall LTH cost figure of £195,398 estimated by the appellant is significantly higher than the upper end of the Council's costs range. Whilst I acknowledge the Council's point that the appellant has sought to resolve other LTH deficiencies which were not specifically raised as issues (rear lighting and level rear access for example), I have seen nothing to suggest that these elements are not also included in the estimated LTH costs relied on by the Council.
38. Since I have found that the houses would be likely to have to be enlarged to accommodate the required changes, and in the absence of any compelling evidence to the contrary, I see no reason to doubt that the costs of achieving LTH compliance for the appeal scheme would be in the region of those estimated by the appellant (as discounted).

*Fees and contingencies and the withdrawal of the open space contribution requirement*

39. A developer profit figure of 20% of the anticipated value of the completed development (a combination of 5% overhead costs and 15% profit margin) is agreed between the parties. The originally submitted development appraisal identified total costs £6,746,938 (which includes a developer profit of £1,325,108 at 20%). The anticipated value of the completed development is £6,625,542 (which equates to a developer profit of £1,204,108) or a project deficit of £121,396. The Council regards this to be the starting point for what the appellant is prepared to accept financially to develop the site, and I consider this to be a reasonable stance to take.
40. The Council has identified a number of areas within the appellant's development appraisal where adjustments could be made to the project's finances. These could go to offsetting some or all of the costs associated with building to LTH standards.
41. Although initially requiring a contribution for open space of £56,000, and despite the submission of a planning obligation in this regard, the Council has confirmed that it is unable to justify this requirement and no longer seeks the payment. Since this payment is identified as a cost in the appellant's appraisal, I accept that its removal results in a saving of £56,000 to the appellant. Additionally by lowering the % costs in relation to site acquisition (agents/surveyor) fees, construction and design contingencies, and sales and marketing fees the Council considers that savings of some £132,000 could be made to the scheme. As such the Council has identified approximately £188,000 that could go towards offsetting the LTH costs. This would turn the project's overall deficiency of £121,396 into a surplus of £71,000.
42. The appellant confirms that the 3% site acquisition fee is specific to the transaction. Whilst I note the Council's view that this could have been brought down to 2% by further negotiation, since I have no reason to doubt that it is what was agreed, I have some sympathy with the appellant's view that this cost cannot now be altered. The construction and design contingencies are set at 5% (of the value of the construction work). I note the Council's view that as a volume house builder with off the shelf products the construction costs should be well established such that the contingencies could be 2.5%. However, I see no reason why the appellant would not experience unforeseen changes through the construction phase, or would be so significantly less susceptible to fluctuations in the materials or labour supply market to the extent that these contingencies could be halved.
43. The appellant has combined sales and marketing fees at 4% (of the anticipated value of the completed development). The Council argues that it normally expects 2% earmarked for sale agent fees and around £1,500 per unit marketing costs. The appellant advises that this figure also covers the legal fees involved in sales transactions, and experience drawn from the last financial year indicates that the appellant actually achieved 7%. On this basis I am content that the 4% indicated is not unreasonable.
44. In any case, even if I were to accept that the savings on fees and contingencies identified could all be made, the savings of £188,000 identified by the Council would not meet the LTH costs estimated by the appellant. This would be so even discounting the costs associated with the upper floor bathrooms

highlighted by the Council (whereby the LTH cost estimated by the appellant would be £195,398). As such, the appellant's originally stated position in terms of the profit amount and project deficit would not be maintained. The developer would be worse off, and the deliverability of the scheme that is already considered to be of marginal viability, would be likely to be compromised.

45. Moreover, this would be the case even if the scheme's layout did not have to be revised to accommodate fewer units. Since I have seen nothing to demonstrate that 56 LTH compliant homes could be provided on the site, I have found that units would be likely to be lost. Even if this would not be on the scale anticipated by the appellant, the loss of any units would further add to the cost of meeting the LTH standards. This is explained in the appellant's further revised viability appraisals submitted at the hearing. These cover scenarios that allow for both build costs and for the loss of units.
46. The Council questions whether any loss of units could be reflected in the price of the land. The appellant considers that the low price paid for the land is evident by comparison to other land sales nearby and means there is already a limited incentive for the landowner to part with the land. The Council does not disagree that the price paid for the land is low. Thus it is likely any increase in costs would not be borne by the landowner. Therefore, the land would not be sold and the development would not come forward.
47. The appellant has also considered whether increased costs could be passed on to the customer, but estimates that the higher selling prices would result in some 7% of the working population no longer being able to afford the houses. In any case, even if people were willing to pay a higher price, on the basis of the appellant's experience in relation to the development of a nearby site, it is probable that mortgage providers would not back such valuations and sales would be prohibited.
48. Overall, the costs of meeting LTH standards would mean that the value generated by the development of the site, would not exceed the cost of developing it, nor would it provide sufficient incentive for the land to come forward and for the development to be undertaken. This being so, I consider that the burden of meeting the LTH standards would be such that the ability of the scheme to be developed viably would be threatened.

#### *Other schemes and precedent*

49. A number of other housing developments are referred to by both parties to support their cases. At the hearing we discussed in particular a development by Bellway Homes known as Rocket Park. The Council considers this scheme, permitted in 2013 to have achieved 100% LTH status after negotiations with the developer. There is disagreement between the parties as to whether the finally approved plans for this scheme were in fact LTH compliant. Be that as it may, I understand that the Rocket Park permission was seen as the tipping point after which the Council has sought to seek full LTH compliance on all housing schemes. I also appreciate that there is an aspiration for all new homes to meet the standards to provide a level playing field (as set out in the SPD) and do not doubt that other developers in the city have met the standards.

50. However, I am not aware of the full circumstances that led to those approvals and so cannot be sure that they are the same as those in the case of the appeal scheme. I confirm in any event, that I have considered the proposal before me on its own individual merits having regard to the development plan and all other material considerations including national guidance.
51. I have also considered the Council's concern that the grant of planning permission would set a precedent for similar developments seeking not to comply with the LTH standards. However, no directly comparable sites to which this might apply have been identified. Each application and appeal must be determined on its individual merits. Although I have accepted the particular viability arguments put forward by the appellant in this instance, given that they are specific to the appeal site and scheme, I see no reason why they would necessarily be repeated. As such I am content that to allow this appeal would not make it more difficult for the Council to resist other proposals for similar development.

### *Conclusion*

52. Bringing matters together, I have found that the principle of accessible and adaptable homes is supported by the UDP, the SPD and the Framework. However, in this instance in order to meet LTH standards (but also to provide acceptable living conditions for future occupiers) it is probable that the proposed dwellings and their plots would need to be enlarged. As a consequence, it is likely that some units would need to be omitted from the proposed development. I see no reason to doubt that the costs of achieving LTH compliance for the appeal scheme would be in the region of those estimated by the appellant (as discounted). On this basis (even taking into account the removal of the requirement for an open space contribution and the possibility of the savings being made on fees and contingencies) the proposal would fail to provide competitive returns to a willing developer to enable the development to be deliverable, and so would not be viable.
53. I therefore conclude on the main issue in this case that the requirement for the proposed dwellings to be accessible and adaptable is not reasonable or realistic, having particular regard to viability. Whilst there would be conflict with the guidance in the SPD, the proposal would not be at odds with UDP Policy HD19, and to permit the scheme would accord with the aims of paragraph 173 of the Framework with regard to viability.

### *Other matters*

54. Whilst it advises that the shortfall is not great, the Council accepts that it cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer). As such, paragraph 49 of the Framework indicates that policies for the supply of housing should be considered to be out of date and housing applications should be considered in the context of the presumption in favour of sustainable development. Regardless of the housing land supply situation, I have found in this case that the proposal would accord with the development plan, and am also satisfied that it would support the policies in the Framework taken as a whole. Thus, I consider that the proposal is the type of development that the Framework indicates should be approved without delay.

## Overall Conclusion and Conditions

55. For the reasons set out above, I conclude that the appeal should be allowed.
56. The Council has suggested a number of conditions which it considers would be appropriate. These were discussed at the Hearing and I have considered them in the light of the Guidance and amended some of the Council's suggested wording for the sake of clarity.
57. A condition requiring development in accordance with the submitted plans is necessary for the avoidance of doubt and in the interests of proper planning. A condition requiring the submission of materials is required in the interests of the character and appearance of the surrounding area. A condition is needed to ensure the protection of the health of the future occupiers of the dwellings from the possible effects of contaminated land. Details of surfacing and boundary treatments are necessary in the interests of the character and appearance of the area. A condition regarding alterations to the highway is necessary in the interests of highway and pedestrian safety. A construction method statement is needed in the interests of the living conditions of nearby residents and highway safety. A condition to secure the approved landscaping scheme and to ensure replacement planting is required in the interests of the character and appearance of the area. A condition relating to surface and foul water drainage is required in order to secure adequate drainage arrangements, reduce flood risk and to prevent pollution.
58. The Council has also suggested a condition to remove permitted development rights. However, the Guidance indicates that conditions restricting the future use of permitted development rights will rarely pass the tests of necessity and should only be used in exceptional circumstances. Area wide or blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. Since no exceptional circumstances have been advanced in this case, I do not regard such a condition to be justified.

*Elaine Worthington*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|                                                                   |                             |
|-------------------------------------------------------------------|-----------------------------|
| Peter Wood, DipTP MRTPI                                           | Peacock and Smith           |
| Sarah Worthington, MPhil MA MRTPI                                 | Peacock and Smith           |
| Jolyon Harrison, Fellow of the Chartered<br>Institute of Building | Gleeson                     |
| Matthew Smith                                                     | Gleeson                     |
| Nick Uttley                                                       | Gleeson                     |
| Andrew Gaunt, BSc(Hons)MRICS                                      | Bernard Williams Associates |

### FOR THE LOCAL PLANNING AUTHORITY:

|                |                        |
|----------------|------------------------|
| Mo Mohammad    | Liverpool City Council |
| Stuart Clark   | Liverpool City Council |
| Nik Puttnam    | Liverpool City Council |
| Caroline Maher | Liverpool City Council |

### INTERESTED PERSONS:

|                       |            |
|-----------------------|------------|
| Sir Bert Massie       |            |
| Cllr Dr Pam Thomas    | Councillor |
| Cllr Richard McLinden | Councillor |

### DOCUMENTS SUBMITTED AT THE HEARING

- 1 Viability with no POS contributions  
Covering summary sheet and 5 x Appraisals.

## Annex A

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: D201/1F, 202/1F, 301/1G, 302/1G, 303/1E, 304/1E, 309/1D, 310/1D, 400/1D, 401/1G, 406/1H, 2581-1-00 Site location plan, 2581-0-002 N Site layout, 2581-0-003 D Proposed street scenes sheet 1 of 2, 2581-0-004 Proposed street scenes sheet 2 of 2, ELL-327-GH-009-1 Rev A External works layout sheet 1 of 2, ELL-327-GH-009-2 Rev A External works layout sheet 2 of 2, Drawing 4610.01 Tree survey and root protection areas, and Drawing 4610.02 Rev B Landscape proposals.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. The dwellings shall not be occupied until a verification report including details of the approved remedial/ground works undertaken has been submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 5) No development shall take place until full details of treatment of ground surfaces and means of enclosure have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of the dwellings.
- 6) No development shall take place until a scheme of works for the proposed alterations to the highway (and a timetable for their implementation) has been submitted to and approved in writing by the local planning authority. The scheme shall include; a minimum 2 metre wide footway to the site's boundary, dropped kerbs to the vehicle crossovers and the reinstatement of redundant access points to the site, tactile paving at crossing points including road junctions and site access junctions adjacent to the site, and the removal of the road markings,

guard railing and traffic signs associated with the former school use of the site. Additionally the scheme shall include an assessment of the existing street lighting, highway drainage and traffic regulation orders adjacent to the site and make provision for any necessary improvements or alterations identified. Development shall be carried out in accordance with the approved scheme prior to the occupation of the dwellings.

- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - i) commencement and completion dates
  - ii) the hours of operation of the construction works
  - iii) the parking of vehicles of site operatives and visitors
  - iv) temporary highway works or closures
  - v) access for construction traffic including the loading and unloading of plant and materials
  - vi) storage of plant and materials used in constructing the development
  - vii) wheel washing facilities
  - viii) measures to control the emission of noise, dust and dirt during construction
  - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works
- 8) All landscape works shall be carried out in accordance with the approved Landscape proposals plan 4610.02 Rev B. The works shall be carried out no later than the first planting season following the completion of the development or in accordance with a programme agreed with the local planning authority. Any trees or plants which within a period of 3 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 9) No development shall take place until a scheme of works for the disposal of surface and foul water (including details of how the risk of flooding from the overland flow of surface water will be managed) has been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved prior to the occupation of the dwellings.