



# Appeal Decision

Site visit made on 16 March 2023

by **S Brook BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 09 June 2023

---

**Appeal Ref: APP/P2365/W/22/3309626**

**Land To The Rear Of 126-160 Ormskirk Road, UpHolland WN8 0AF**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission.
  - The appeal is made by Mr Daniel Pollock of Premier Builders Ltd against the decision of West Lancashire Borough Council.
  - The application Ref 2022/0273/FUL, dated 8 March 2022, was refused by notice dated 21 October 2022.
  - The development proposed is described as 'planning application for the development of residential dwellings with associated highway works, accesses and landscaping'.
- 

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. The Council's Decision Notice refers to properties on Dorchester Avenue, however, the road to the west of the appeal site is Dorchester Road as confirmed in the Officer Report and at my site visit.

## Main Issues

3. The main issues are the effect of the proposed development upon (a) the character and appearance of the area, (b) the living conditions of occupiers of neighbouring properties on Carlton Avenue, Dorchester Road and No 124 Ormskirk Road, with particular regard to privacy and outlook, and (c) highway safety.

## Reasons

### *Character and appearance*

4. The appeal site consists of an unfenced area of grass, with some mature trees towards its western edge, located to the rear of housing on Ormskirk Road, Dorchester Road and Carlton Avenue. Access to the site is presently provided by unmade private roads. Land levels fall to the north, towards Carlton Avenue. Surrounding properties are predominantly two storey terraced or semi-detached houses, arranged with front and rear gardens. The spacing between existing housing allows some views through the built form, providing a degree of openness and relief, whilst a combination of street trees and landscaping to private front gardens, soften the built form.
5. The proposal would require the removal of two substantially sized and moderate quality (Category B) trees from the southern boundary of the site, along with 3 lower quality (Category C) trees to the western edge. It would

introduce a courtyard arrangement of terraced housing and flats around a central parking area. Plots 11-20 would be formed from one continuous block, whilst only narrow spacing would be provided between plots 3/4, 6/7 and 10/11. Whilst private gardens would be provided to the rear, none of the plots would benefit from front gardens. Within the courtyard, an enclosed refuse collection area would be positioned next to the entrance, and the landscaping plan indicates a small, landscaped area to the front of plots 4-6 only. Otherwise, soft landscaping measures within this courtyard are limited to narrow strips of shrubs and trees, mainly to the southern boundary.

6. As a result of this layout, the proposed development would appear as a continuous block of development. A lack of any notable spacing between the buildings would result in limited openness or relief. The limited amount of landscaping to the frontage area would fail to soften the impact of the buildings or the courtyard, which would be dominated by parking provision. The resulting layout and form of the development would be a marked contrast to, and would be at odds with, the prevailing character and appearance of the area, which has a greater sense of openness, space and greenery. Therefore, the proposal fails to respond to its context or reinforce the local characteristics of the area.
7. A landscaped amenity space of a good size would be provided, along with compensatory tree planting, positioned to the side of plots 3 and 4, where it is flanked by two side elevations. However, this space is poorly integrated into the development overall, and it would not assist in softening the appearance of the proposal, nor relieve the large hardstanding that would dominate the central area. Accordingly, the amenity space responds poorly to its surroundings, and imposing a condition to secure soft landscaping details would not overcome my concerns.
8. I appreciate that Policy RS1 of the West Lancashire Local Plan 2012 – 2027 Development Plan Document, October 2013, (DPD) seeks a minimum density for residential development of 30 dwellings per hectare, with higher densities expected on accessible sites. However, this is subject to the specific context of the site. Lower densities require special circumstances, whilst higher densities should not be at the expense of good design or the amenity of occupiers of the proposed or existing neighbouring properties.
9. The proposal would meet the density requirements of this policy and it would make an effective use of land in meeting the need for homes as required by paragraph 119 of the National Planning Policy Framework (the NPPF). However, for the reasons outlined above, this would be at the expense of good design, because the proposal would not be compatible with the context of the site.
10. For the reasons outlined above, the proposal would result in harm to the character and appearance of the area. The proposal would therefore conflict with DPD Policies GN3 and EN2 and advice within the SPD, which collectively and amongst other matters, require new development to complement the attractive attributes and local distinctiveness within its surroundings, through sensitive design, siting, scale and appropriate landscaping.
11. Further, the proposal would not meet the requirements of paragraph 130 of the NPPF which requires new development to add to the overall quality of an area, be visually attractive, including as a result of layout and soft landscaping, and be sympathetic to local character and distinctiveness, with an appropriate amount and mix of development, including green and other public space.

*Living conditions*

12. The Council's SPD provides guidance on suitable separation distances in relation to privacy. However, these are for guidance and are not appropriate where there is a change in ground or floor levels, which is relevant in this case. Whilst the appellant has referred to a general 'rule of thumb' relating to increased separation distances where there is a level change, this is not set down in national or local policy or guidance and so where level changes exist, I have come to my own view.
13. No 124 Ormskirk Road sits to the eastern boundary of the site, with its rear elevation and private rear garden facing towards it. There is no marked level change between the appeal site and this property. It has low fencing to its side and rear boundaries. Whilst rear door and window openings and the rear garden can be overlooked at present, this would largely be limited to the occasional passer-by, or neighbours accessing rear gardens and parking areas, rather than directly from neighbouring properties.
14. Plot 3 of the proposal would back onto this property, albeit slightly offset. The open space to the north of Plot 3 would prevent this relationship from being overbearing for the occupiers of No 124. However, the SPD suggests a minimum separation distance of 21m in such circumstances and from my site visit and consideration of the plans, the relationship appears to fall short of this separation distance, to the extent that the proposal would result in an unacceptable loss of privacy to the rear of No 124. There would be increased levels of surveillance of its rear door and window openings and rear garden, resulting in harm to the living conditions of occupiers of this existing property.
15. In their relationship with properties on Carlton Avenue and Dorchester Road, the finished floor levels of the proposed houses do not step down in acknowledgement of the change in levels across the site. Rather, the section drawings show a consistent floor level through plots 4-20 which extends onto outdoor decking, requiring a void below most plots, which increases in height from east to west.
16. Separation distances between the proposal and off-site housing have been increased in recognition of the change in levels. I am satisfied that the separation distances proposed, would be adequate to prevent overlooking between the dwellings themselves. However, at plot 4, the raised decking would be in close proximity to the shared boundary with the rear gardens serving properties on Carlton Avenue. I have not been provided with a cross section of this relationship, but from the evidence available, it appears that the proposal would allow users of this raised decking area to look over into the rear gardens of the nearest properties on Carlton Avenue at a relatively short distance, resulting in an unacceptable loss of privacy for residents of Carlton Avenue.
17. Some other plots would have raised decking areas up to 2.0m above ground level, plot 13 for example. Whilst these decking areas would be situated further from the site boundary, they would be elevated in relation to the private gardens on Carlton Avenue and Dorchester Road. Those standing on the decking would be able to look over any boundary fencing, into the gardens of neighbouring properties, resulting in a loss of privacy and a strong sense of being overlooked.

18. I have considered the appellant's comments relating to garden depth and the additional rear alleyways which would provide access for bin storage and cycles, in relation to the dimensions provided in the SPD. However, I have set out above why the minimum dimensions are not sufficient in this case. I also note the example case referred to by the appellant at Burscough where garden depths below the SPD standard were accepted by Council. However, I have been provided with limited information or layout plans relating to this alternative scheme, in particular, whether there were any level changes or raised decking areas as proposed in this case, sufficient to allow any comparison between the two.
19. With regard to outlook for properties on Carlton Avenue and Dorchester Road, Plots 4-20 form a row of terraces with only a narrow break between plots 6/7, with modest rear gardens. Finished floor levels would be notably higher. These properties would provide a solid block of built form in an elevated position, with little relief or feeling of space between them. This would have an oppressive and overbearing effect, resulting in harm to the outlook for the occupants of these neighbouring properties.
20. For these reasons, the proposal would result in harm to the living conditions of occupiers of neighbouring properties. The proposal would conflict with DPD Policy GN3 and advice contained within the Council's SPD, insofar as they seek to ensure new development retains reasonable levels of privacy and amenity for occupiers of neighbouring properties. Further, it would not meet the requirements of NPPF paragraph 130, in terms of achieving a high standard of amenity for existing and future users.

#### *Highway safety*

21. The consultation responses I have been provided with from the Highways Authority (HA) dated April and July 2022 indicate outstanding concerns with the appeal scheme. The submissions indicate that the appellant subsequently attempted to provide further information and amended plans, to address the outstanding points, prior to determination of the planning application. However, there is no further consultation response before me from the HA, confirming that they have reviewed this information. Given that the scheme would involve physical alterations to the adopted highway to provide the right turn lane and pedestrian refuge, formal agreement of the HA is required for me to be satisfied that this arrangement would be appropriate.
22. Further, I am not satisfied from the information before me that other matters raised by the HA have been addressed. For example, the tracking plan for cars accessing existing garages to the rear of No's 126-136 Ormskirk Road does not clearly delineate the rear garden and fencing of proposed plot 1, sufficiently to establish that access would be achievable to the garage of No 136 Ormskirk Road without encroaching onto this plot. The tracking plan suggests that access to the garages of other properties would be achievable, but that this would be tight and no doubt difficult. Additionally, the swept path analysis for a refuse vehicle indicates some cross over with a parking bay to the north of the refuse collection enclosure. I have not been provided with any explanation for this, and I am not satisfied that turning would be achievable, if this parking bay were in use.
23. In these circumstances, I am unable to conclude that the amended plans would be satisfactory in terms of highway safety. The proposal therefore conflicts with

DPD Policy GN3, which amongst other matters, seeks to ensure that new developments incorporate suitable and safe access and road layout design. Further, the proposal would conflict with the requirements of the NPPF in terms of ensuring that the development would not have an unacceptable impact on highway safety.

### **Other Matters**

24. There is agreement between the main parties as to the delivery of a proportion of affordable housing within the scheme, yet there is no agreement before me under section 106 of the Act, that would secure this. However, as I have found conflict with the development plan in relation to the main issues, I have not addressed this matter further.
25. The proposal would be located within an accessible location in relation to public transport and local services and amenities. The provision of twenty additional dwellings, a proportion of which are indicated to be affordable and accessible (to Building Regulations M4(2) standard), would make a positive contribution towards boosting housing supply, along with the associated economic and employment benefits from the construction phase. The proposal would generate spending within the area and increase tax revenues. Electric vehicle charging points would be provided. I afford these benefits moderate weight.
26. The site is not located within a sensitive area in relation to heritage assets or landscape designations. This is a neutral matter that bears no weight for or against the proposal.
27. Reference is made to increased educational spending by the appellant, as a result of the proposal, however, the County Council confirm no financial contribution is necessary in this respect. Reference is also made to the environmental credentials of the proposal with regards to use of materials, waste disposal and soft landscaping etc. However, I have little detail about the overall environmental benefits of this, particularly any biodiversity enhancement over and above the existing situation. The appellant considers that an increased need to release Green Belt and greenfield land on the urban boundary would result from the refusal of proposals such as this. However, I have been provided with no evidence in this regard either.
28. The benefits of the proposal do not outweigh the harm that would result from the proposal, as set out in my conclusions on the main issues.

### **Conclusion**

29. The proposed development conflicts with the development plan when taken as a whole and there are no other material considerations worthy of sufficient weight to suggest the decision should be made other than in accordance with the development plan. The appeal should therefore be dismissed.

*S Brook*

INSPECTOR