The Planning Inspectorate

Appeal Decision

Site visit made on 21 February 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/M4320/W/16/3164074
8a Myers Road West, Crosby L23 0RU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Andrew Towell against the decision of Sefton Metropolitan Borough Council.
- The application Ref DC/2016/01702, dated 15 August 2016, was refused by notice dated 22 November 2016.
- The application sought planning permission for conversion of a barn to single family dwelling without complying with conditions attached to planning permission Ref: DC/2016/00901, dated 6 July 2016.
- The conditions in dispute are Nos 3, 4, 5 and 6 which state that: (3) Prior to commencement of development a detailed remediation strategy to bring the site to a condition suitable for the intended use by removing unacceptable risks and the relevant pollutant linkages identified in the approved investigation and risk assessment, must be prepared and is subject to the approval of the Local Planning Authority. a) The strategy must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works, site management procedures and roles and responsibilities. The strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 on completion of the development and commencement of its use. b) In the event that the proposed remediation scheme involves the provision of a ground cover system a plan indicating the existing and proposed external ground levels on the application site shall be submitted for approval to the Local Planning Authority. c) The development shall proceed in accordance with the external ground levels approved under b) unless the Local Planning Authority gives its prior written approval to any variation; (4) a) The approved remediation strategy must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation. b) Following completion of the remedial works identified in the approved remediation strategy, a verification report that demonstrates compliance with the agreed remediation objectives and criteria must be produced, and is subject to the approval in writing of the Local Planning Authority, prior to commencement of use of the development; (5) a) In the event that previously unidentified contamination is found at any time when carrying out the approved development immediate contact must be made with the Local Planning Authority and works must cease in that area. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the Local Planning Authority. b) Following completion of the remediation works identified in the approved remediation strategy, verification of the works must be including in the verification report required by Condition 4; (6) The north facing first floor window shall not be glazed otherwise than with non-opening secured glass and thereafter be permanently retained as such.
- The reasons given for the conditions are: (3), (4) and (5) To ensure that risks from land

contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, ecological systems, property and residential amenity and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors in accordance with policy CS3 & EP3 of the Sefton Unitary Development Plan; and (6) To safeguard the amenities of occupiers of adjoining properties and to comply with policies CS3 and DQ1 of the Sefton Unitary Development Plan.

Decision

1. The appeal is dismissed.

Procedural Matters

2. There is a discrepancy between the plans submitted by the appellant to be determined by the Council at the application stage and those which have been submitted as part of the appeal process. The primary difference between the drawings is that the first floor windows in the north elevation of the appeal building, as considered by the Council, are shown as being clear glazed, rather than fully frosted.

3. Annexe M of the Planning Inspectorate Procedural Guide – Planning Appeals England (August 2016) (the Procedural Guide) states that if an applicant believes that amending the proposed development will overcome the local planning authorities reasons for refusal they should normally make a fresh planning application.

4. Notwithstanding the differences identified between the plans, having regard to the Procedural Guide, it would not be appropriate or fair to consider the alternative plans submitted to the appeal which were not considered by the Council, particularly where there has been little or no opportunity for all interested parties to submit comments. Therefore, I have determined the appeal on the basis of the evidence submitted and upon which the Council based its decision.

5. At the time of my visit, the development on site was partially constructed and the openings for the first floor windows in the north elevation of the building were in place. As a result, I was able to assess the appeal in that context.

Main Issues

6. The main issues are:

- whether varying conditions 3, 4 and 5 would be necessary and reasonable, having regard to the risks from possible land contamination; and
- the effect that varying condition 6 would have on the living conditions of neighbouring occupiers, with particular regard to privacy.

Reasons

Conditions 3, 4 and 5

7. Conditions 3, 4 and 5 attached to planning approval DC/2016/01702 relate to land contamination matters. The appellant seeks to vary these conditions in relation to the timing of their requirements. However, I have seen no

substantive supporting information, including a remediation strategy or specific details as to how these conditions should be varied has been provided.

8. The Council's Contaminated Land Team have advised that a detailed remediation strategy must be provided, as recommended in the Phase 2 Environmental Ground Investigation Works report which was submitted with the previous planning application reference DC/2016/00901. I appreciate that the appellant has produced a Construction Environmental Plan (CEP) which, I am led to understand, suggests that the removal of waste is sufficient to remediate the site. However, I do not have the CEP before me and I note that the Council considers this to be inadequate in dealing with the contamination issues identified on the site.

9. I have had regard to the appellant's circumstances in terms of the existing construction on the site, particularly relating to land contamination measures. The appellant's proposed approach with regard to completing the roof of the building prior to undertaking the required measures seems to me to be sensible and pragmatic. Condition 4a states that any remediation must be carried out in accordance with the approved remediation strategy prior to the commencement of the development other than that required to carry out the remediation measures. In my view, the approach sought by the appellant would, in this case, constitute development which would be required to carry out the remediation. As a result, I find that this would not necessitate any variation of the relevant conditions, as imposed.

10. Consequently, having considered the above and all other relevant matters relating to land contamination, I conclude that Conditions 3, 4 and 5, as imposed and attached to planning permission Ref: DC/2016/01702, are necessary and reasonable for the reasons stated by the Council. Furthermore, I conclude that variations to these conditions would likely result in there being unacceptable risks from potential land contamination. Therefore, this would render the scheme contrary to Policies CS3 and EP3 of the Sefton Unitary Development Plan (UDP) and Policies EQ4 and EQ6 of the emerging Local Plan for Sefton (Local Plan).

Condition 6

11. The Council's New Housing Supplementary Planning Document (SPD) requires a distance of 21 metres between facing windows to prevent an unacceptable level of overlooking. Whilst I acknowledge that the SPD is not part of the development plan, it is a material consideration in this appeal to which I attach moderate weight.

12. The appellant seeks to vary Condition 6 so that the north facing first floor windows would have clear glazing and top hung restricted openings. However, the distance between the subject windows and the nearest windows in the rear elevation of properties to the north of the site is 14 metres.

13. The appellant states that the boundary wall between the site and the rear gardens of the adjacent properties on Myers Road West is between 2.6 metres and 3 metres in height. Having regard to this and the position of the proposed first floor windows in the scheme, it is argued that overlooking into much of the rear garden areas would not be possible. From the submitted drawings and my observations, I agree that overlooking in this regard would be limited.

14. In addition, the appellant argues that a tree located on adjacent property would have a screening effect between the proposed first floor windows and those on the rear elevations of the adjacent properties on Myers Road West. Moreover, it is stated that new trees would result in further screening and reduce overlooking. However, from what I have read and seen and at the time of my visit, there is very little screening provided by the existing tree. Therefore, I find that this and the lengthy growing period of any new trees would have little impact in mitigating the loss of privacy of future and neighbouring occupiers.

15. Furthermore, from the evidence before me, I note that the lowest part of the proposed first floor windows is 0.8 metres above the internal floor level of the building and the highest part of the window is 1.9 metres above floor level. Therefore, the windows would not be high level and would allow future occupiers to see out easily.

16. In these circumstances, the clear glazed windows would have a significant detrimental impact on the privacy of neighbouring occupiers of properties to the north of the appeal site. This harm would only be exacerbated by the fact that the windows in the rear elevations of the properties on Myers Road West serve habitable rooms. This was confirmed during my visit when I viewed the appeal site from the rear bedroom of No 2 Myers Road West. Furthermore, I note from the evidence provided that the appellant agrees that clear glazing of the windows would have an adverse effect on privacy.

17. The submitted plans indicate top hung restricted openings to the windows. The Council states that such restricted openings would be difficult to enforce or monitor. Moreover, it is stated by the appellant that the local building control service has expressed dissatisfaction with there being no opening windows on the first floor. However, I have no reason before me to indicate why monitoring and enforcement would be difficult nor have I seen any substantive evidence to support the appellant's statement regarding building control. Notwithstanding this, due to the relatively short distance between the appeal building and the windows of the nearby properties, I find that any openings of the windows, either with clear or obscured glazing, in these circumstances, would allow occupiers to view neighbouring properties. This would therefore have a significant detrimental impact on privacy.

18. Consequently, I conclude that the proposed variations to Condition 6 would be significantly harmful to the privacy of neighbouring occupiers in the nearby properties on Myers Road West. Therefore, the proposal would not comply with Policies CS3 and DQ1 of the UDP and Policy EQ2 of the emerging Local Plan. As a result, I conclude that Condition 6, as imposed and attached to planning permission Ref: DC/2016/01702, is necessary and reasonable for the reason stated by the Council.

Conclusion

19. For all of the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR