



Appeal Decision

Site visit made on 28 October 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2019

Appeal Ref: APP/M4320/W/19/3235711

Trinity Park, Land at Orrell Lane, Bootle L20 6PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms C Houghton on behalf of J H Tanks against the decision of Sefton Metropolitan Borough Council.
 - The application Ref DC/2019/00311, dated 14 February 2019, was refused by notice dated 1st August 2019.
 - The application sought planning permission for Change of use for the repair, maintenance and cleaning of tank containers and a general haulage depot, to include the erection of detached building (Retrospective Application) without complying with conditions attached to planning permission Ref DC/2018/01311, dated 14 December 2018.
 - The conditions in dispute are Nos 1 and 7 which state that:
 - 1) The development hereby granted must be carried out strictly in accordance with the following details and plans:- Amended Location Plan received by the Council on 21st August 2018, Building Elevations received on 6th July 2018 and amended Proposed Site Plan received on 7th December 2018.
 - 7) Storage containers of any kind shall not be stacked or deposited above a height of three (3 No.) containers high measured from ground level at any time with the exception of the hashed areas of the Proposed Site Plan received on 7th December 2018 where containers shall not be stacked or deposited above a height of two (2 no.).
 - The reasons given for the conditions are:
 - 1) To ensure a satisfactory development.
 - 7) In the interest of visual amenity and to protect the outlook of neighbouring residents.
-

Decision

1. The appeal is allowed and planning permission is granted for change of use for the repair, maintenance and cleaning of tank containers and a general haulage depot, to include the erection of detached building (Retrospective Application) at Trinity Park, Land at Orrell Lane, Bootle L20 6PB in accordance with the application Ref DC/2019/00311 made on the 14 February 2019 without complying with conditions Nos 1 and 7 set out in planning permission No DC/2018/01311 granted on 14 December 2018 by Sefton Metropolitan Council, but otherwise subject to the conditions set out in the attached schedule.

Main Issue

2. The Framework requires planning conditions to be kept to a minimum and only applied where they satisfy the six tests of necessity, relevance to planning,

relevance to the development permitted, are enforceable, precise and reasonable in other respects. The planning conditions forming the subject of the appeal are demonstrably relevant to planning and the development, and precise in their wording and are enforceable under planning law.

3. In light of the remaining two tests of necessity and reasonableness, the main issue is the effect of the stacking of containers to a height of 3 within the area proposed on the living conditions of the occupiers of houses in Woodbrook Avenue.

Reasons

4. The site is used by the appellant company (the appellant) for the storage of tanks and containers as part of its business. The site is broadly rectangular in shape, and on its southern and eastern boundaries is adjacent to modern housing estates. The focal point of the dispute is the maximum height at which containers may be stored within an area adjoining houses to the south at Woodbrook Avenue.
5. Planning permission was granted in December 2018 for the current use of the site, bringing together a number of earlier planning permissions. An amended Proposed Site Plan was submitted, defining the area to be used for the storage of containers, and setting out the areas where containers would be limited to stacks of two. In respect of the land close to the southern boundary, all of the land backs onto the rear of properties at 48 – 54 and 47 – 53 Woodbrook Avenue. The area is approximately 20m wide at the western end and approximately 15m wide at the east end. Around half the depth of the approved area is a belt of semi mature trees. The land rises steeply from the yard area of the site to the level of the rear gardens on Woodbrook Avenue. The tree planting is dense and contains a mix of both coniferous and deciduous trees, although most are the latter.
6. On 8 July 2019 the Council confirmed a Tree Preservation Area covering the whole area of the tree belt bordering the south side of the industrial estate. Effectively this means that the area which can now be used for the storage of containers is limited to the area outside the tree belt.
7. The appellant has suggested 2 possible approaches to the layout of the storage area. The first, described as Option 1, would allow containers to be stored 3 high, but only in the area outside of the tree belt. The second approach, Option 2, proposes that the height would be limited to 2 containers but using the whole of the land within approved area by removing most of the tree belt. Plans and sections have been submitted to show the 2 arrangements. Given that the trees are now protected by a TPO, I have based my decision on the first approach, as Option 2 would not be possible unless the Council was to grant consent for the removal of the trees. The Council determined the application on the same basis.
8. On my site visit I viewed the situation from both within the site, where containers were being stored 3 high, and from within Woodbrook Avenue. I did not go into the rear gardens of the houses, but was able to look over the fences between some houses to gain an understanding of the visual impact of the containers. Trees were still in leaf and I have taken into account that during winter months the screening afforded by the trees will be reduced. I

have also considered the photograph taken from within the rear garden of one of the houses on Woodbrook Avenue¹.

9. Were the height of the storage to be limited to 2 containers, very little would be visible above the height of the rear fences to the houses when viewed from within the gardens. Given the depth of the tree belt, and the overall distances between the rear elevations of the houses, I saw from my visit that only the uppermost containers were visible. Shipping containers are not attractive, however the continued impact on living conditions from the storage at 3 containers high would not be so great as to be overbearing, or oppressive and bleak. In addition, the impact is significantly mitigated by the presence of the trees. Whilst there may be some effect on the outlook from first floor bedrooms, these views are into the industrial area and therefore unlikely to contribute great value to the living conditions of residents. Some residents are also concerned about loss of daylight, but given the presence of the trees any effect would be very limited.
10. The houses towards the west side of Woodbrook Avenue are significantly closer to the nearest containers than those at the east end of the street. The Council suggests that it would not object were I to redraw the boundary of the storage area so that it runs parallel to the rear gardens in Woodbrook Avenue. I do not see particular merit in the suggestion in terms of the impact on residents and in any event must determine the appeal on the basis of the submitted plans.
11. It is suggested that the storage of the containers may help to contain noise levels from the site. However, I have no evidence before me to substantiate this point and therefore it forms no part of my reasoning.
12. For the reasons given I therefore conclude that on the main issue of the effect on living conditions the relevant planning conditions are necessary and reasonable, and the proposed deletion and variation in planning conditions 1 and 7 conditions are acceptable. They therefore comply with Policies EQ2 part 2 (c) and ED3 part 2 (a) of the Sefton Local Plan (2017) which require that activity within employment area must not significantly harm the amenity of residents or the local environment

Conditions

13. New Condition 1 is attached to relate the consent to the variation sought in the appeal, and specifically the Option 1 plan March 2019, permitting storage to a height of 3 containers within the blue hatched area, in order to protect the living conditions of the occupiers of the houses in Woodbrook Avenue. Condition 1 also references the approval of details of soundproofing of buildings and the positioning of CCTV cameras, formerly subject to conditions 8 and 10 of the December 2018 planning permission.
14. New Condition 7 is attached for the same purpose. The condition makes clear that whilst containers may be stacked to a height of 3 within the blue hatched area, within the other specific storage area, hatched green on the plan, the height of storage permitted remains limited to 2 containers. The condition, together with no 1, is necessary because to permit the storage of containers at heights above those approved would cause harm to the living conditions of residents living near to the site.

¹ The Council says the photograph is from the Rightmove website and the property is no 53.

15. Conditions 2, 3, 4, 5, 6, 8, 9 and 10 are attached as per the previous planning permission. These conditions are necessary in order to protect the living conditions of nearby residents.

Conclusion

16. For the reasons given above, I conclude that the appeal should be allowed.

Tim Wheeler

INSPECTOR

Schedule of Conditions

- 1) The development hereby granted must be carried out strictly in accordance with the following details and plans:- Amended Location Plan received by the Council on 21st August 2018, Building Elevations received on 6th July 2018, Option 1 – Container Storage Site Location March 2019; Option 1 Site Location Plan with Section Line May 2019; Section across the site April 2019 - Option 1; and the details and plans approved on 29th May 2019 under application DC/2019/00290.
- 2) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the hours of 08:00-18:00 Monday to Friday and 08:00-13:00 Saturday. There shall be no working on Sunday or Bank Holidays except in emergencies. Emergencies are defined as not more than 10 occasions per year and not outside the hours of 08:00 - 12:00. The Local Planning Authority shall be notified of such emergencies within 48 hours.
- 3) No containers shall be moved, lowered or raised on site at any time outside the hours of 08:00-18:00 Monday to Friday and 08:00-13:00 Saturday. There shall be no movements of containers on Sunday or Bank Holidays except in emergencies. Emergencies are defined as not more than 10 occasions per year, there shall be no more than 2 No. container movements on any such occasion and this should not occur outside the hours of 08:00 - 12:00. The Local Planning Authority shall be notified of such emergencies within 48 hours.
- 4) The idling of stationary vehicles at the site shall not be permitted at any time except for starting from cold which shall be limited to that which enables vehicles to drive from the site safely.
- 5) No servicing or maintenance of vehicles shall take place outdoors at any time.
- 6) No external lighting shall be positioned on site, whether of temporary or permanent siting or construction, at any time.
- 7) Storage containers of any kind shall not be stacked or deposited above a height of three (3 no) containers high measured from ground level at any time within the blue hatched area shown on drawing 'Option 1 - Container Storage Site Location' dated March 2019 with the exception of the green hatched area on the same plan where containers shall not be stacked above a height of two (2no.) and the buffer marked 'Existing Trees' where no containers shall be stacked.
- 8) All doors to the detached building must be closed when maintenance and repair operations are taking place internally.
- 9) Activity records of CCTV over a 48h hour period must be kept and made available to the Local Planning Authority on request.

ENDS