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## Appeal Decisions

Site visit made on 18 August 2021

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

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

**Decision date: 20 September 2021**

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### **Appeal A: Ref: APP/M4320/W/21/3269994**

#### **Liverpool Ramblers Football Club, Moor Lane, Thornton, Crosby L23 4TW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Power, Liverpool Ramblers Football Club against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2019/02088, dated 4 November 2019, was refused by notice dated 2 September 2020.
  - The development proposed is the provision of 6 No. new build semi-detached dwelling houses with associated gardens, car parking and access.
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### **Appeal B: Ref: APP/M4320/W/21/3269995**

#### **Liverpool Ramblers Football Club, Moor Lane, Thornton, Crosby L23 4TW**

- 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 Power, Liverpool Ramblers Football Club against the decision of Sefton Metropolitan Borough Council.
  - The application Ref DC/2020/00423, dated 4 March 2020, was refused by notice dated 2 September 2020.
  - The development proposed is the layout of a car park on former tennis courts in replacement of existing parking facilities serving Liverpool Ramblers Football Club, layout of accessible bays adjacent to the clubhouse and alterations to the access track.
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## **Decision**

### **Appeal A**

1. The appeal is allowed, and planning permission is granted for the provision of 6 No. new build semi-detached dwelling houses with associated gardens, car parking and access at Liverpool Ramblers Football Club, Moor Lane, Thornton, Crosby L23 4TW in accordance with the terms of the application, Ref DC/2019/02088, dated 4 November 2019, subject to the conditions set out in the attached schedule.

### **Appeal B**

2. The appeal is allowed, and planning permission is granted for the layout of a car park on former tennis courts in replacement of existing parking facilities serving Liverpool Ramblers Football Club, layout of accessible bays adjacent to the clubhouse and alterations to the access track at Liverpool Ramblers Football Club, Moor Lane, Thornton, Crosby L23 4TW in accordance with the

terms of the application, Ref DC/2020/00423, dated 4 March 2020, subject to the conditions set out in the attached schedule.

### **Application for costs**

3. An application for costs was made by Mr Power, Liverpool Ramblers Football Club against Sefton Borough Council. This application is the subject of a separate decision.

### **Procedural matters**

4. The application was submitted in outline with all matters reserved for future consideration. The submitted site plan showing the position of 6 dwellings on the site is indicative and I have considered it on this basis in my determination of this appeal.
5. The two appeals are interlinked in that the proposed housing is dependent on replacement car parking being provided. I have therefore dealt with both appeals in one decision letter to avoid duplication.
6. The Council changed the description of development from that stated on the original planning application in Appeal B. I have used this form of wording in my decision as it better reflects the development proposed.
7. During the appeal, a revised National Planning Policy Framework was published in July 2021. Both main parties were asked for comments on the implications of this new guidance for their individual cases. I have taken account of the amended document and comments received in my decision.

### **Main Issues**

8. The main issues are as follows:
  - the effect of the proposal on the character and appearance of the area and public views (Appeal A).
  - whether the loss of a sports facility is justified having regard to national and local planning policy (Appeal B).

### **Reasons**

9. The appeal relates to the site of the Liverpool Ramblers Football Club, located on Moor Lane in Thornton. The site comprises an area of hardstanding close to the road, a clubhouse, playing pitch and former tennis courts, now vacant and overgrown. It is proposed to construct 6 semi-detached dwellings on the area of the existing car parking and provide a replacement 45 space car park on the site of the vacant tennis courts to the rear of the site.
10. I deal with the issues raised in relation to each appeal in turn below.

### **Appeal A**

#### *Character and appearance*

11. The Council argues that the proposal would introduce built form into a contextually open setting, reducing the extent of Moor Lane's only open frontage, impacting negatively on open views.

12. The appeal site comprises an area of hardstanding used for car parking with a single storey pavilion building to the rear, a storage shed and electricity substation to the southern corner. Whilst buildings are set back from the road, so that the part of the site adjacent to the highway has an open character, the pavilion and other buildings prevent unrestricted views across the site as a whole. The presence of built development results in a degree of urbanisation. The associated tree cover to the northern boundary and the area of trees around the substation also contribute to the more enclosed nature of the site. I acknowledge that open views can be obtained when looking down the site access, however it is proposed that the access would be retained and improved, allowing such views to continue.
13. The appeal site is distinctly different in character to the school playing fields to the north. The playing fields extend for approximately 200 metres along Moor Lane and allow open unrestricted views to the countryside beyond, albeit through the ball stop fencing.
14. Having regard to the nature of the appeal site and taking account of the contribution of the neighbouring playing fields to local character and the open setting of Moor Lane, I conclude that the proposed development would not be detrimental to the character and appearance of the area.
15. The Council's reason for refusal suggests that the proposal could put pressure on existing trees. The indicative layout shows that a scheme can be implemented with existing trees being retained. I recognise that there is the potential for damage to root systems or the need to undertake pruning during construction of the dwellings. However suitable mitigation could be required through the imposition of appropriate planning conditions to secure their protection.
16. Clearly any new built development will have some affect in changing the character of an area, however having regard to the sites context, the proposal would not in my view result in an adverse impact. Accordingly, I find that the appeal scheme would comply with Policy EQ2 of the Sefton Local Plan which seeks to ensure that new development responds positively to the character, local distinctiveness and form of its surroundings.

## **Appeal B**

### *Justification for the loss of a sport facility*

17. The appeal site is located in an area designated as Open Space in the Sefton Local Plan. Consistent with the Framework, Policy NH5 seeks to protect such spaces but allows development subject to certain criteria being met. These include where an assessment has been undertaken to clearly show the public open space or sports facility is surplus to requirements.
18. It was clear from my site visit that the tennis courts are in a poor state of repair. They are dangerous to those entering and have been subject to frequent anti-social behaviour. I am advised that they have not been used for tennis for over 12 years, previously being used by Moor Park Tennis Club.
19. The Sefton Playing Pitch Strategy and Action Plan (2016) states that the tennis courts are of poor quality and that at that time, tennis club membership across the borough was static with adequate provision provided in existing facilities. I

acknowledge that this assessment is around 5 years old and in need of further review, so that the weight given to it must be tempered accordingly.

20. I note that Sports England raised concern that there was insufficient evidence to demonstrate that the tennis courts were surplus and suggested that the Lawn Tennis Association (LTA) be consulted to better understand the demand and supply of courts in the Crosby area. The LTA confirmed that the courts were not needed.
21. On a local level, the Blundellsands Lawn Tennis Club have confirmed that they have vacancies and have not benefited from full membership since the late 1980's/early 1990's. Champion Lawn Tennis Club, the largest club in the area with 7 artificial grass courts, have confirmed that they have capacity for new members and no waiting list. Furthermore, I understand that the tennis courts granted planning permission at the Northern Club have not been built, also indicating a lack of demand. I have also taken account of the fact that a vacant tennis court and a tennis pavilion would remain on the site. Whilst this needs refurbishment, it could potentially be brought back into use if required in the future.
22. Given the above, I am satisfied that there is adequate evidence to demonstrate that there is no current need for the tennis facility, and it can be considered to be surplus to requirements. Its loss and redevelopment as a car park would therefore comply with the Framework and Policy NH5 of the Local Plan.

### **Other matters**

23. A number of local residents have commented that the residential development the subject of Appeal A, cannot take place because of a covenant on the land restricting its use for sport and recreation. This covenant does not extend to the tennis courts, which is in the ownership of the Council.
24. The Council, in its capacity as landowner, given the costs of maintaining the tennis court site and lack of interest from the property market, has reached agreement to sell the tennis courts to the Football Club, in return for a partial release of the restricted covenant. This enables the proposed residential development to take place. The financial return for the construction of the houses would be reinvested in the existing pitch and facilities.
25. Whilst legal restrictions are not a material planning consideration, I note that the necessary steps to release the covenant are in place.

### **Planning obligation and conditions**

26. The appellant has submitted a Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 to the effect that the replacement car park would be laid out and brought into use before the implementation of the development the subject of Appeal A. This would ensure that replacement car parking is provided on the site. I am satisfied that such an obligation is necessary in this case to make the development acceptable in planning terms, is directly related to the development and fairly and reasonably related in scale and kind to the development. It meets the tests within paragraph 57 of the Framework and Regulation 122 of the CIL Regulations. I therefore take account of it in my decision.

27. The Council has submitted a number of suggested conditions should the appeals be allowed. I have assessed these in light of the requirements of the national Planning Practice Guidance and the Framework and have amended the wording where I consider it is necessary.

#### Appeal A

28. In the interests of good planning, it is necessary to impose conditions setting out time limits for development and the submission of reserved matters (conditions 1-3). For the avoidance of doubt a condition requiring implementation in accordance with the approved plans is necessary (condition 4).
29. In order to protect the character and appearance of the area, conditions are necessary to require that no building shall exceed two storeys in height and that an appropriate landscaping scheme is submitted at reserved matters stage together with an arboricultural assessment and method statement (conditions 5 and 6).
30. I impose conditions 18, 19, 20 and 21 to ensure the site has an appropriate vehicular and pedestrian access and that car parking is provided before the dwellings are occupied. Condition 7 is required to ensure the submission of a Construction Traffic Management Plan safeguarding all highway users during the construction phase. A condition requiring the provision of electric vehicle charging is necessary to reduce air pollution and carbon emissions (condition 22).
31. As the site comprises made ground and there is a risk of contamination, conditions requiring an investigation to be undertaken, a mitigation strategy and verification report to be prepared are necessary (conditions 9, 10, 11 and 12). Condition 13 is also necessary should unexpected contamination be found to ensure appropriate remediation measures are taken. In order to minimise waste, a condition is required to ensure a scheme for the recycling and disposal of site clearance and construction waste is implemented. (condition 14)
32. In order to ensure the site is properly drained, condition 8 requires details of surface water drainage to be submitted. I impose conditions 15, 16 and 17 regarding tree protection measures during construction, the control of tree felling in the bird nesting season and the provision of bird/bat boxes in the interests of preventing harm to biodiversity.
33. Condition 23 is required to ensure that the new dwellings have full fibre broadband infrastructure. I also impose a condition with regard to acoustic glazing, ventilation and fencing in order to safeguard the living conditions of future residents from traffic noise and the noise from sports activities (condition 24).
34. The Council suggested that conditions regarding landscape maintenance and materials to be used in the construction of the dwellings be imposed. However as this is an outline planning application, with all matters reserved for later approval, I do not consider these to be necessary at this stage.

#### Appeal B

35. In addition to the standard timeframe condition, I impose a condition requiring

the development to be carried out in accordance with the submitted plans for the avoidance of doubt (condition 2).

36. In the interests of protecting biodiversity and protected species, condition 3 is necessary requiring measures for their protection during construction to be submitted for approval by the local planning authority. I impose a condition requiring the submission of a surface water drainage scheme to ensure the site is properly drained (condition 4).
37. Conditions 5 and 8 are necessary to ensure the implementation and maintenance of a suitable hard and soft landscaping scheme, to safeguard the character and appearance of the site and encourage biodiversity.
38. In order to prevent light pollution and protect the character of the area, condition 6 is required for the submission of a lighting scheme. Finally, to ensure that adequate car parking is provided, condition 7 is necessary to require its implementation including drainage and landscaping in accordance with the approved plans.

### **Conclusion**

39. I have found that the development proposed in Appeal A would not cause harm to the character and appearance of the area and that the loss of a sports facility in Appeal B is justified. Accordingly, both proposals comply with the relevant local plan policies. There are no material considerations in either case which indicate that the proposals should be determined other than in accordance with the development plan.
40. For the reasons set out above and having had regard to all other matters raised, I allow both appeals.

*Helen Hockenhull*

INSPECTOR

## **APPEAL A : SCHEDULE OF CONDITIONS**

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved
- 3) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Drawing Number P261.1\_200C), Proposed Site Plan (P261.1\_204C) and Proposed Overall Site Plan (P261.1\_203C).
- 5) The landscaping detail submitted pursuant to any reserved matters application must be accompanied by both an Arboricultural Impact Assessment and Method Statement. The landscaping scheme shall include:
  - i) Existing and proposed levels or contours
  - ii) Details of boundary treatments and hard surfaces
  - iii) The location, size and species of all trees to be planted which mitigates any proposed to be felled
  - iv) The location, size, species and density of all shrub and ground cover planting
  - v) A schedule of implementation.
- 6) No building on any part of the development shall exceed two storeys in height.
- 7) No development shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan must include a programme of works, days and hours of working, a site layout during the construction phase, relevant contact details, routes to be taken by delivery vehicles, methods for traffic management including directional signage and full details of the proposed measures to ensure that mud and other loose materials are not carried on the wheels and chassis of any vehicles leaving the site and measures to minimise dust nuisance. The provisions of the approved Construction Traffic Management Plan shall be implemented in full during the period of construction.
- 8) Prior to commencement of development full details of a surface water sustainable drainage system to serve the site, timetable and method of implementation including arrangements to secure funding and maintenance for the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the drainage system maintained and managed thereafter as such.



- 9) No development shall commence until a preliminary investigation report has been submitted to and approved in writing with the Local Planning Authority. The report must include: - Desk study - Site reconnaissance - Data assessment and reporting - Formulation of initial conceptual model - Preliminary risk assessment. If the Preliminary Risk Assessment identifies there are potentially unacceptable risks a detailed scope of works for an intrusive investigation, including details of the risk assessment methodologies, must be prepared by a competent person (as defined in the DCLG National Planning Policy Framework, March 2012). The contents of the scheme and scope of works are subject to the approval in writing of the Local Planning Authority. This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.
- 10) No development shall commence until the approved scope of works for the investigation and assessment must be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority. The report shall include an appraisal of remedial options and identification of the most appropriate remediation option(s) for each relevant pollutant linkage. Remediation shall proceed in accordance with the approved details.
- 11) No development shall commence until a 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, has been submitted to and approved in writing by the Local Planning Authority. 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. The remediation strategy must be carried out in accordance with the approved details at all times.
- 12) Before any part of the development hereby permitted is brought into use a verification report that demonstrates compliance with the agreed remediation objectives and criteria shall be submitted to and approved in writing by the Local Planning Authority.
- 13) 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 shall be submitted to and approved in writing by the Local Planning Authority. Following completion of the remedial works identified in the approved remediation strategy, verification of the works must be included in the verification report required by condition 12.
- 14) No development shall commence until details of a scheme for the recycling or disposal of waste resulting from site clearance and construction works have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme at all times.



- 15) No equipment, machinery or materials shall be brought onto the site for the purposes of the development until details of all fencing for the protection of trees, hedges and other landscape features, including its location and type have been submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made at any time.
- 16) No tree felling is to take place during the period 1 March to 31 August inclusive. If it is necessary to undertake works during the bird breeding season, then all trees are to be checked first by an appropriately experienced ecologist to ensure no breeding birds are present. If present, details of how they will be protected are required to be submitted to and approved in writing by the Local Planning Authority.
- 17) No dwelling shall be occupied until details of bat and/or bird boxes to be installed on a basis of one per dwelling have been submitted to and approved in writing by the Local Planning Authority. The boxes shall be installed in accordance with the approved details prior to occupation of any dwelling and be retained thereafter in perpetuity.
- 18) No development shall commence above slab level until a detailed scheme of highway works together with a programme for their completion has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include alterations to the existing highway on Moor Lane to provide a 6m wide access into the site, including alterations to the bus layby and the provision of dropped kerbs and tactile paving. No part of the development shall be brought into use until the required highway works have been constructed in accordance with the approved details.
- 19) A scheme of works for the proposed vehicular and pedestrian access shall be submitted to and approved in writing by the Local Planning Authority. No part of the development shall be brought into use until a means of access to the site been constructed in accordance with the approved scheme.
- 20) No part of the development shall be brought into use until visibility splays of 2 metres by 43 metres at the proposed junction with Moor Lane have been provided clear of obstruction to visibility at or above a height of 1 metre above the adjacent footway level. Once created, these visibility splays shall be maintained clear of any obstruction and retained for their intended purpose at all times.
- 21) No dwelling shall be occupied until areas for vehicle parking, turning and manoeuvring have been laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and these areas shall be retained thereafter for that specific use.
- 22) No dwelling shall be occupied unless and until an electric vehicle charging point for that dwelling has been installed and is operational in accordance with details that shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved infrastructure shall be permanently retained thereafter.

- 23) No dwelling shall be occupied until details of full fibre broadband connections to all proposed dwellings within the development have been submitted to and approved in writing by the Local Planning Authority. The infrastructure shall be installed prior to occupation and made available for use immediately on occupation of any dwelling in accordance with the approved details.
- 24) No dwelling shall be occupied until acoustic glazing, ventilation and boundary fencing have been installed in accordance with a scheme submitted to and approved in writing by the Local Planning Authority. The scheme shall mitigate against external noise sources including sports activities and vehicular traffic, and the approved mitigation measures installed prior to occupation being retained thereafter in perpetuity.

## **APPEAL B: SCHEDULE OF CONDITIONS**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan (Drawing number P261.3\_200) and Proposed Site Plan (P261.3\_202B).
- 3) Prior to commencement of development full details of how terrestrial mammals including badger and hedgehog, and birds (should works be undertaken within breeding season March-August inclusive) are to be protected during the construction phase shall be submitted to and approved in writing by the Local Planning Authority. The approved details and any necessary reasonable avoidance measures shall be implemented throughout the construction phase.
- 4) Prior to commencement of development full details of a surface water sustainable drainage system to serve the site, timetable and method of implementation including arrangements to secure funding and maintenance for the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the drainage system maintained and managed thereafter as such.
- 5) No part of the development shall be brought into use until a landscaping scheme covering the land subject of this application including the car park, access track and remaining overgrown tennis courts has been submitted to and approved in writing by the Local Planning Authority, including:
  - i. Existing and proposed levels or contours
  - ii. Details of boundary treatments and hard surfaces
  - iii. The location, size and species of all trees to be planted
  - iv. The location, size, species and density of all shrub and ground cover planting
- 6) No part of the development shall be brought into use until a detailed scheme of external lighting has been submitted and approved in writing by the Local Planning Authority. Lighting shall be installed on site only in

accordance with the approved scheme and a timetable to be agreed with the Local Planning Authority.

- 7) No part of the development shall be brought into use until areas for vehicle parking, turning and manoeuvring have been laid out, demarcated, levelled, surfaced and drained in accordance with the approved Site Plan, drainage system and landscaping scheme and these areas shall be retained thereafter for that specific use.
- 8) The hard and soft landscaping scheme hereby approved under condition 5 must be carried out in full within the first available planting season following first occupation of development. Any trees or plants that within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective shall be replaced with others of a species, size and number as originally approved in the first available planting season.