



Appeal Decision

Site Visit made on 7 September 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/M4320/W/21/3276681

Lathom Club, Lathom Avenue, Seaforth, Merseyside L21 1EB

- 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 Brian Corrigan against the decision of Sefton Council.
 - The application Ref DC/2020/01200, dated 1 July 2020, was refused by notice dated 3 June 2021.
 - The development proposed is an '*outline planning application for the erection of a two storey block of up to 12 flats with associated parking following demolition of The Lathom and adjacent garages*'.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for the erection of a two storey block of up to 12 flats with associated parking following demolition of The Lathom and adjacent garages at Lathom Club, Lathom Avenue, Seaforth, Merseyside L21 1EB in accordance with the terms of the application, Ref DC/2020/01200, dated 1 July 2020, subject to the conditions in the attached schedule.

Preliminary Matters

2. I have utilised the description of development from the decision notice as this better focuses on the development involved. I have taken the postcode of the appeal site from the appeal form.
3. A revised National Planning Policy Framework was published in July 2021 (the Framework). Whilst the paragraph numbers have changed in regard to those relevant to the main issue of this case, the substance thereof remains the same as the 2019 iteration. I have sought comments from the main parties and taken any comments made into consideration.
4. An outline planning permission is sought with access, layout and scale to be considered. I have determined the appeal on this basis.

Main Issue

5. The main issue is whether the proposed development would provide for a satisfactory standard of accommodation for its future occupiers with particular regard to air quality.

Reasons

6. The appeal site is a former social club which is situated on the junction of Lathom Avenue and Chatham Close. Immediately beyond Lathom Avenue is Princess Way (A5036), a dual carriageway which meets Crosby Road South

- (A565) a short distance to the west of the site. The appeal site is located within an Air Quality Management Area, with the Council identifying the main source of air pollution to be from road traffic on the A5036, with this being the main route that connects the Port of Liverpool to the motorway network.
7. Monitoring data has been provided by the Council in a number of locations and the main parties have set out differing views on the trends that can be drawn from it, making reference to the time periods and the distance of monitoring sites from the appeal site. The general trend does show a reduction in Nitrogen Dioxide (NO₂) levels between 2015 and 2017, but I do acknowledge that in location 'EY-Lathom Avenue', that NO₂ levels in 2018 and 2019 were above the National Air Quality Standard objective (national NO₂ standard). The appellant states that this exceedance is due to the roadside location of the monitoring site and that at the proposed façade of the proposal, which is set back from the road, the NO₂ levels would be lower at around 38ug/m³. This is also reflected in the data from the monitoring site at 'ES-Chatham Close', which is situated further away from Princess Way (A5036) and shows consistently lower NO₂ levels than location 'EY-Lathom Avenue' over the 2015-2019 period that data has been provided for. My attention has also been drawn to the Council's 2019 Air Quality Annual Status Report (July 2019), that shows that at the nearest receptor, the levels of NO₂ were lower than the national NO₂ standard.
 8. The Council has raised concerns on the increasing levels of traffic and in particular the significant increase that is envisaged in Heavy Goods Vehicles (HGV) using the A5036 passing the appeal site due to expansion of the Port of Liverpool and a future new road. The Council's own traffic count data show HGV traffic growth at higher levels than a number of referenced documents which contain growth forecasts, one of which is produced by the Department for Transport. The appellant however considers that an increase in air pollution does not follow from an increase in traffic. To support this position, I have been provided with details of the Sefton Clean Air Zone Feasibility Study (May 2019), which expects emissions to fall between 2020 and 2025 due to the uptake of newer vehicles and alternative technologies. The Council itself has also referenced the efforts they are taking to bring about reductions in traffic related emissions such as the potential implementation of a Clean Air Zone.
 9. I therefore consider the modelling provided by the appellant within the Air Quality Assessment (26 June 2020), which is based on a worst case scenario, albeit using national government growth rates on traffic rather than estimated levels from the Council's data, to be robust. The NO₂ level would be at or below the national NO₂ standard. Although the appellant does not consider it necessary for mitigation, the development, whilst being below the national NO₂ standard, would nevertheless be in an area where there are high levels of existing pollution.
 10. Mechanical ventilation has been suggested as an essential mitigation measure, although concerns have been expressed that not being able to open windows would result in a poor standard of living for future occupiers. My attention has been drawn to an appeal¹ where an Inspector found that this arrangement would create an oppressive internal living environment for occupiers. It is evident however that the circumstances of that case differed, which was

¹ Ref: APP/T2215/W/16/3165435

subject to higher levels of NO₂, above the national NO₂ standard as well as other concerns beyond air quality relating to noise levels. In this case, whilst I consider mechanical ventilation would be necessary to avoid prolonged exposure to NO₂ emissions, because these NO₂ levels are lower than the national NO₂ standard, windows would not have to be non-openable, and it would be possible to open them for purge ventilation. Details of the mitigation could be secured by condition, including the maintenance measures.

11. For the reasons given above, I conclude that the development would provide satisfactory accommodation for future occupiers with regard to air quality. As such, there would be no conflict with Policy EQ4 of the Local Plan for Sefton, which seeks, amongst other matters, to minimise the risks of adverse impacts including on amenity and damage to health and wellbeing. It would also not be contrary to Paragraph 130 of the Framework, which seeks, amongst other matters, a high standard of amenity for existing and future users.

Other Matters

12. The Council have set out that the appeal site is a non-designated heritage asset and reference has been made to its association with the Beatles and its architectural interest. Although the building has some significance, it is clear from the evidence before me that the building has been substantially altered and that in terms of cultural significance, the Beatles played at many venues and this site does not have a special relevance. The proposal would result in the demolition of the building and the loss of a non-designated heritage asset, albeit it having low significance. The re-use of a date stone and the potential for a blue plaque to be erected would assist in mitigating this harm. I also note the benefits of the proposal, including making a modest contribution to local housing need. Taken together, I consider the harm that would be caused to this non-designated heritage asset would be outweighed by the benefits.
13. The appeal proposal would result in the erection of a two storey block of apartments following the demolition of the Club and the garages. The building would have an L shaped layout with a longer frontage to Chatham Close than Lathom Avenue, with car parking accessed from Lathom Close. The Council has not raised any concerns in relation to access, layout or scale although I note the various concerns from interested parties relating to overdevelopment. The layout of the scheme broadly reflects the positioning of the existing Club building and a generously sized garden area is also provided between the building and the parking areas proposed. I do not therefore consider the proposal would have an unacceptable impact on the character and appearance of the area.
14. I further note concerns in relation to traffic on the narrow roads and on parking. The proposal would provide 15 parking spaces, and although Chatham Close is narrow, there is sufficient space for vehicles to pass and I do not consider this scale of development would be detrimental to highway safety.
15. Due to the layout of the site and the distances to neighbouring properties, the proposal would not lead to any significant loss of privacy or light for the occupants of neighbouring occupants. There is no firm evidence that the development would lead to increased crime or anti-social behaviour, cause fly tipping or vandalism, adversely impact on drainage or give rise to noise disturbance, particularly given the current lawful use of the site as a social

club. Any disturbance during construction would be for a temporary period only, and can be mitigated by requiring the proper management of such.

16. I have no reason to consider the pedestrian accesses to either side of the building would necessarily give rise to disturbance. The presence of any asbestos on the site is a technical matter which would need to be addressed separately as part of the construction process. Given all of the above, other than in relation to air quality, I agree with the Council that there are no other reasons to withhold permission.

Conditions

17. I have considered the conditions suggested by the Council and other parties, having regard to the six tests set out in the Framework. For the sake of clarity and enforceability, I have amended the wording of the Council's conditions as appropriate.
18. I have imposed a condition specifying the relevant drawings in relation to access, layout and scale as this provides certainty. Standard conditions relating to the submission and timing of reserved applications and the commencement of development are necessary.
19. Conditions are also necessary in relation to the provision of a Construction Management Statement, details of highway works as well as contamination investigations required to ensure there are no adverse effects on living conditions, in the interests of highway safety and to minimise risks for land contamination respectively. A separate landscaping condition to the reserved matters condition is required in the interests of the character and appearance of the area and to ensure that any trees or planting that are damaged, diseased or removed within 5 years are replaced. It is essential for details relating to these conditions to be approved before any works commence to ensure there are no unacceptable impacts arising to existing surrounding and future occupiers and for highway safety reasons.
20. A condition is also necessary to ensure adequate drainage of the site, in the interest of flood prevention and to control demolition works during the main bird breeding season to prevent harm to protected species. Conditions are necessary requiring the parking, access and turning areas to be constructed, the provision of cycle storage and electric vehicle charging points to provide parking and to enable the use of electric vehicles and reduce emissions.
21. A condition requiring the submission of materials is necessary in the interests of the character and appearance of the area as are details of a date stone and potential blue plaque to mitigate against the loss of a non-designated heritage asset. Conditions relating to obscure glazing, acoustic glazing, acoustic barrier and acoustically treated and filtered ventilation as well as the construction of bedroom ceilings are required in the interests of ensuring satisfactory living conditions.
22. I have considered a suggested condition relating to the provision of full fibre broadband connections. However, I have not been provided with any particular justification for this condition. The appeal site is situated in the urban area where there is likely to be the availability of such infrastructure in the vicinity of the site to allow for the development to be connected. In any event, it is the norm on new build residential development, for a broadband internet

connection to be made available for future occupants. Accordingly, I have not imposed such a condition.

Conclusion

23. For the reasons given above, having considered the development plan as a whole, the approach in the Framework and all other relevant material considerations, the appeal is allowed

F Rafiq

INSPECTOR

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 appearance and landscaping, (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 (only in respect of those matters not reserved for later approval): Proposed Site Plan at Scale 1 to 500 (Plan No: LATH/06/20/08), Existing Site Plan (Plan No: 06/20/09), Proposed Site Plan at Scale 1 to 200 (Plan No: LATH/06/20/10), Proposed Ground Floor Plan (Plan No: LATH/06/20/05), Proposed First Floor Plan (Plan No: LATH/06/20/06), Proposed Main Front Elevation (Plan No: LATH/06/20/01/A), Proposed Rear Main Elevation (Plan No: LATH/06/20/02/A), Proposed Small Front / Rear Elevations (Plan No: LATH/06/20/03/A) and Plan Section Boundary Wall Plan (Plan No: LATH/06/20/12).
- 5) 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 Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 6) No development shall commence until details have been submitted to and approved in writing by the Local Planning Authority of a scheme of landscaping. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development; any trees or plants

which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced.

- 7) No development shall take place until a detailed scheme of highway works, including a programme for their completion shall have been submitted to and approved in writing by the local planning authority. The scheme shall include details of the proposed vehicular and pedestrian access onto Lathom Avenue and on Chatham Close where the existing access is to be closed. No part of the development shall be occupied until the works have been constructed in accordance with the approved details.
- 8) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 9) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before any part of the development is occupied.
- 10) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried

out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

- 11) No demolition works shall take place during the main bird breeding season between 1 March and 31 August inclusive unless a licensed ecologist has undertaken a nesting bird check immediately before any works start and submitted a report to the Local Planning Authority and received approval in writing from them. The report shall contain details confirming that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. The measures, where relevant, shall be adhered to through the period of demolition.
- 12) No part of the development hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall: provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 13) No above ground works shall take place until samples of all external facing materials have been submitted to, and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 14) Details of a scheme to incorporate the existing date stone and a commemorative blue plaque within the development which outlines the social history of the site must be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before any part of the development is occupied.
- 15) No part of the development hereby permitted shall be occupied until the means of access/turning area and vehicular parking shall have been constructed in accordance with the approved plans. The access/turning area and parking shall be retained thereafter.
- 16) Details of a minimum of two electric vehicle charging points shall be submitted to and approved in writing by the local planning authority before any part of the building is occupied. Development shall be carried out in accordance with the approved details and shall be retained thereafter.

- 17) Details of a secure cycle storage space for 12 bicycles shall be submitted to and approved in writing by the Council. The development hereby permitted shall not be occupied until the approved cycle store has been provided in accordance with the approved details and the cycle store shall thereafter be kept available for the parking of bicycles.
- 18) The development hereby permitted shall not be occupied until all first floor windows facing the boundaries of 7 Lathom Avenue and 9 Chatham Close at a distance of 10.5m or less have been fitted with obscured glazing, and no part of those windows that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the approved details shall be retained thereafter.
- 19) No part of the development hereby permitted shall be occupied until a scheme of acoustic glazing for all habitable rooms, with a minimum performance standard as shown in Section 8 of the Environmental Noise Impact Report (Ref: 14068 Version 1) has been submitted to and approved in writing by the Council. The approved scheme shall be installed before any part of the development is occupied and be retained thereafter.
- 20) No part of the development hereby permitted shall be occupied until a scheme for an acoustic barrier to protect the garden area of the proposed building and gardens of neighbouring properties around the proposed car park from noise, has been submitted to and approved in writing by the Council. All works which form part of the scheme shall be completed before any part of the development is occupied and shall be retained thereafter.
- 21) No part of the development hereby permitted shall be occupied until all bedroom ceilings have been constructed to the standard states in Section 8.3 of the submitted Environmental Noise Impact Report (Ref: 14068 Version 1). The bedroom ceilings shall be constructed before any part of the development is occupied and shall be retained thereafter.
- 22) No part of the development hereby permitted shall be occupied until a scheme for acoustically treated and filtered ventilation for all habitable rooms, including details of the maintenance, has been submitted to and approved in writing by the Council. The approved scheme shall be installed before any part of the development is occupied and be retained thereafter.