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## Appeal Decision

Site visit made on 14 June 2022

**by R Hitchcock BSc(Hons) DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 July 2022**

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**Appeal Ref: APP/W4325/W/22/3291438**

**Birkenhead School, 58 Beresford Road, Oxtown CH43 2JD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Birkenhead School against Wirral Metropolitan Borough Council.
  - The application Ref APP/21/01552, is dated 20 July 2021.
  - The development proposed is the erection of an extension to the existing Sports Hall and associated infrastructure and landscaping.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of an extension to the existing Sports Hall and associated infrastructure and landscaping at Birkenhead School, 58 Beresford Road, Oxtown CH43 2JD, in accordance with the terms of application Ref APP/21/01552, dated 20 July 2021, subject to the conditions set out in a Schedule attached to this Decision.

### Preliminary Matter

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council did not make representation for the purposes of the appeal. I have had regard to the representations submitted by third parties, consultees and the relevant statutory duties in framing the main issues.
3. The appeal was submitted in conjunction with an appeal at another site owned by the appellant. That proposal sought outline planning permission for a housing development. According to the appellant, receipts arising from that proposal would be directed to the development proposed in this appeal. In this regard the appellant has submitted a draft planning obligation linking the developments. I return to this matter below.

### Main Issues

4. The main issues are the effects of the proposed development on:
  - trees
  - heritage assets
  - highway safety
  - the living conditions of nearby residents.

## Reasons

5. The site includes an existing sports hall and bordering landscaped gardens. It is located within enclosed school grounds with buildings set on 3 sides of a gently inclined sports field. The wider site includes original school buildings, open sports/play areas, converted villas and modern purpose-built classroom blocks.
6. The proposal seeks the provision of an extension to the existing sports hall facility. The extension would provide a new multi-use hall area, stores, informal teaching area, multipurpose studio, conference room, internal street (between the existing and proposed buildings) and a climbing area. Additionally, it would facilitate the internal remodelling of the ancillary elements of the existing sports hall as part of a strategy to improve educational provision on the site.

## Trees

7. The area for the proposed extension contains, and is bordered by, a number of trees of various species and at different stages of maturity. The majority of these are ornamental and their visual amenity value is of most benefit within the school grounds. However, within a total of 19 trees proposed to be removed to accommodate the extension, 3 are mature Category A<sup>1</sup> trees. This includes a significant mature Corsican Pine located to the rear of a modern classroom block (K-Block) which fronts on to Kingsmead Road South. This tree is protected under a Tree Preservation Order (No.407). Additionally, 12 category B trees would be included in those requiring removal.
8. The National Planning Policy Framework (the Framework) states that existing trees should be retained where possible. The appellant's Design and Access Statement refers to a number of considered iterations of the proposed development before arriving at the submitted scheme. However, there is little reference to the consideration of preserving existing trees of value within that process. It is therefore unclear whether an alternative arrangement could have provided for their retention.
9. Despite their position behind the frontage buildings, several of the trees are visible from Kingsmead Road South. The significant height of the protected pine tree means it is prominent over the top of K-Block. It twins with another protected pine in front of the building. Alongside 2 mature Category A Sycamores, which are visible between the frontage buildings, the 3 trees contribute to a verdant backdrop to the school buildings when viewed from the road. They must also be clearly visible from the upper floors of several houses bordering the site along Beresford Road.
10. The effect of the loss of the existing trees would be retrograde to the setting of the buildings fronting the road and significantly reduce the sense of a treed landscape beyond them. Their replacement by the large mass of the sports hall extension would create a harsher setting with a reduced sense of spaciousness, particularly about K-Block.
11. To compensate for the loss of trees, it is proposed to plant new trees on the wider site and at the McAllester Playing Field, another site used by the school. This would be on a 2 for 1 basis and include extra heavy-standard trees with a variety of species and sizes on maturity.

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<sup>1</sup> As defined by BS5837:2012

12. Notably, some new trees would be included along the frontage boundary of Kingsmead Road South. This would assist in enhancing the tree cover along the site's frontage and provide some benefit to the Kingsmead Road South streetscene. Additional trees planted along the western fringes of the playing field would also provide some offset to the losses. These could be glimpsed between buildings on maturing. Other planting would assist in maintaining tree cover on the site.
13. Nevertheless, even accounting for the diversity and stock size of the proposed planting, the replacement of both the amenity and wider environmental value of the existing Category A trees would unlikely be offset for some considerable time.
14. It is recognised that, as a new sports hall facility, the standard of the space and associated facilities is largely predetermined. Alongside the benefits of siting the building adjacent to the existing sports hall, there are significant constraints due to the position of existing surrounding buildings and the adjacent sports field and other outdoor courts.
15. I also acknowledge that trees are one of many considerations and a balance must be reached when considering matters such as accessibility, management, cumulative service delivery, practicality and educational value, for example. However, in the substantial absence of evidence to demonstrate otherwise, it seems to me that limited weight has been attributed to the potential retention of the highest quality trees on and adjacent to the site.
16. For the above reasons, and despite the proposals for mitigation, I find that the appellant has failed to adequately demonstrate that existing trees with amenity value cannot be retained. The proposed development would thereby conflict with Policy GR7 of the Unitary Development Plan for Wirral [2000] (the UDP) as it seeks to provide for the protection of trees of greatest visual or wildlife value and other vigorous healthy trees, and the Framework's requirement to retain existing trees wherever possible.

#### *Heritage assets*

17. There are a number of listed buildings and non-designated heritage assets in the locality, both within and about the wider school grounds. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires a decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
18. The proposal would be distant from the designated and non-designated heritage assets such that no direct effects would arise from the constructed proposal. Of the identified assets, the Grade II Listed Building at 37 Bidston Road and the non-designated asset at Overdale, Bidston Road would be difficult to view in tandem with the proposed development due to the intervening distance and buildings. No effect would arise on their settings.

19. According to the appellant, the Grade II Listed Buildings at the Roman Catholic Church of Holy Name of Jesus and 59 Shrewsbury Road would be over 100m distant from the proposed sports hall. From within the grounds of the school and some nearby residential properties, these buildings could be seen in tandem with the proposed extension. However, those views would be in the context of a much wider group of buildings and limited to glimpsed views only. As the listed buildings are orientated to present to the surrounding road frontages and have strongly defined boundaries, I find their historical and architectural integrity would be retained, and their settings preserved.
20. The proposal would lie within the contemporary setting of Birkenhead Preparatory School, a series of Grade II Listed Buildings of consecutive phases dating from 1860 onwards. The buildings are located in the south-eastern corner of the school grounds, close to the junction of Beresford Road and Shrewsbury Road. They extend along the Shrewsbury Road frontage. The buildings include a boarding school block, hall (with tower), chapel and headmaster's house. They are recognised for their architectural detailing and historic status associated with Birkenhead Boys School.
21. The proposed development would lie beyond the limit of the historic school grounds. Over time, this has been extended to incorporate later development, including the buildings fronting Kingsmead Road South and Bidston Road. The existing consolidated school includes buildings of varied ages set about the open area of the sports field. As part of the original school grounds, the field provides an open setting to the rear aspects of the Listed Buildings.
22. The proposal would be seen from and in conjunction with the designated assets. However, in the context of the various phases of development fringing the original field area and the building designs of limited interrelationship, the proposal would appear as distinct secondary infill in much the same way as the existing sports hall does. It would not affect the interpretation of the original cluster of buildings or the extent of the original grounds. Accordingly, I find it would have a neutral effect on the setting of those Listed Buildings. Their significance, by way of historic importance and architectural detailing, would be preserved.
23. For the above reasons, I find the proposal would be consistent with the requirements of saved Policies CHO1 and CH1 of the UDP and the Framework as they seek to protect heritage assets, including their settings.

#### *Highway Safety*

24. There is little before me to indicate that the proposed facility would directly lead to an increase in the number of pupils attending the school. Whilst I have little doubt that the scheme would improve the school's offer and therefore its attractiveness to prospective pupils, I find that the proposal would be unlikely, in itself, to lead to a material change in attendance. Any traffic implications as a consequence of its use as an educational facility would therefore be negligible.
25. It is proposed to allow the public use of the facility during weekday evenings. The plans indicate off-street parking provision for some 43 spaces in the area fronting Kingsmead Road South. This is in addition to parking fronting Bidston Road, to where vehicle users are directed.

26. The degree of extension would approximately double the capacity for indoor court uses on the site. According to the appellant, community use of the existing facility is typically up to 30 visitors. Some additional use might be attracted through the inclusion of a climbing wall and studio, however, given their size, I find that these are unlikely to draw significant additional numbers of visitors.
27. Accounting for the likelihood for shared trips, drop-offs and visits by users relying on other forms of transport than private motor vehicles, I am satisfied that the extent of existing off-street parking would cater for any potential increase in the number of visitors.
28. According to the appellant's Design and Access Statement, the existing pedestrian access point for community users is on Kingsmead Road South. In the event that capacity was reached within the car parks, this is the most likely location affected by out-spill parking. Here, the road benefits from a wide carriageway and pavements on both sides. The nearby houses are generally large properties set in ample plots which contain off-street parking.
29. Subject to considerate parking, I see little reason why on-street parking would cause concerns to highway safety or capacity. Unlike drop-off and pick-up times for the school, when parents/guardians might be competing for space close to the school entrance points, I find the more limited times of use outside of school operating times would avoid significant cumulative impacts. They would be unlikely to affect accessibility to private properties or impede traffic flows along the road.
30. For those reasons, I find that the proposal would be consistent with the requirements of Policies TRT3 and TR9 of the UDP and the Framework as they require inclusive and safe accessibility, and sufficient availability of parking.

#### *Living conditions*

31. Given the location of the proposed facility behind existing buildings fronting Kingsmead Road South and the distance to nearest residential properties, the outbreak of noise from users of the sports hall would be unlikely to cause a significant adverse impact on the living conditions of nearby residents.
32. Although there would be some activity associated with comings and goings, including the use of the parking areas or on the street close to the entrance point, there is little reason to anticipate that this would give rise to significantly noisy events or regular disturbance to nearby occupiers during normal use. Restriction of the early or late use of the building would avoid any adverse effects arising during quieter times of the day or during unsociable hours. This could be secured through a planning condition.
33. I acknowledge that some disturbance might be anticipated as a consequence of the construction phase of the development. However, as any effects would be short-term, they would not be so significant to justify a refusal of planning permission on that basis.
34. For those reasons, the proposal would be consistent with the Framework as it requires new development to be appropriate in its location and promote high standards of amenity.

## **Other Matters**

35. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development. A Preliminary Ecological Appraisal<sup>2</sup> of the site identifies that the trees proposed for removal have negligible potential for roosting bats. Subject to avoidance of night time working and inappropriate lighting, which could influence bat foraging and/or commuting, no adverse impact on bats are anticipated. Precautionary approaches and restricted timings of works will adequately protect potential nesting birds and hedgehogs.
36. In addition to the benefits of the proposal providing extended and inclusive learning opportunities for the school, there would be tangible benefits to community users. A draft obligation under s106 of the Town and Country Planning Act 1990 has been submitted by the appellant. It would provide a mechanism to secure the terms of any community use of the sports hall and other sports facilities on the site in agreement with Wirral Borough Council. This would be triggered by a proposed housing development elsewhere, through which the appellant intends to fund the sports hall extension.
37. Whilst the community use of the proposal would be a significant benefit of the development, it would not be functionally dependent on the proposed housing scheme. As a free-standing proposal that could be delivered through funding by other means, the proposed terms of the agreement would be unreasonably onerous. Moreover, it would potentially nullify the benefit of the permission it was attached to. It would not therefore meet the tests set out in Paragraph 57 of the Framework. As the terms of community use is capable of being secured through a planning condition, I find the obligation is not necessary to make the development acceptable in planning terms.
38. I note that the proposed extension could be constructed to provide high efficiency and durable insulation, heating, cooling and lighting mechanisms. It could include renewable energy technologies. In planning for meeting the challenge of climate change, this is a benefit of some weight.
39. Concerns raised by third parties in relation to the proposed development for housing elsewhere are not a matter for this appeal, which has been considered on its own merits against the development plan and with regard to all other material considerations.

## **Planning Balance**

40. The proposal would require the removal of existing high-quality trees, including one with recognised amenity value in the locality. Although the removal would be partly mitigated by replacement tree planting, I find the level of justification provided by the appellant to be limited. This is a matter to which I attach considerable weight.
41. The proposed development would deliver a number of benefits to the efficient operation of the school's sporting education aims and improve the wellbeing of its users. It would better meet the broader educational needs since becoming a co-educational mixed school by offering a more inclusive and diverse range of sports and activities.

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<sup>2</sup> RSK Environmental Ltd.



42. The scheme would concentrate facilities on the campus to aid logistic demands and improve safeguarding. It would offer greater opportunities for junior and infant aged pupils and assist in teaching continuity during periods of adverse weather. It would provide improved changing facilities and include new teaching opportunities associated with sport education. Furthermore, it could be offered for use by the wider community. These matters would contribute to promoting healthy and safe communities which are an aim of the Framework. In the context of the appeal proposal these are significant benefits of the scheme.
43. The proposal would have neutral impacts on heritage assets in the locality and could be used without harm to the living conditions of nearby residents. Any increase in visitor parking demand at the site would be unlikely, in my view, to cause significant harm to highway safety or capacity in the locality.
44. Taking all of the above matters together, I find that the harm arising from the loss of existing trees with amenity and wider environmental value would be outweighed by the benefits arising from the proposal. The improvements to the educational offer at the school, the opportunities for physical activity and sport, including to the benefit of the wider community would outweigh the identified harm in the particular circumstances of the case. Accordingly, I find the proposal would comply with the development plan and the Framework when read as a whole.

### **Conditions**

45. I have considered the suggested conditions from both the Council and the appellant and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
46. Conditions to compensate for the loss of trees and to protect and enhance ecological interests on the site are necessary in the interests of biodiversity net gain. In the interests of making efficient use of finite resources, a waste management plan is necessary to ensure minimisation of the use and/or disposal of materials associated with the construction of the extension. To ensure continuity in the protection of ecological interests and ensure proper planning of the development, these conditions are, of necessity, pre-commencement conditions.
47. In the interests of protecting the local environment and amenity, a construction management plan and details of drainage are necessary. These are also necessarily pre-commencement requirements to ensure effectiveness at all stages of construction and in implementing the early installation of surface/sub-surface drainage infrastructure. To achieve a high standard of development fitting of its location, agreement of the external finishes to the extension is required.
48. To secure the balance of the beneficial use of the building to the wider community, a condition requiring the agreement of the terms of community use is necessary and reasonable.

49. A condition requiring further site investigation for the safe development of the land is unnecessary pursuant to the findings of the RSK Phase 1 Preliminary Risk Assessment Report (11473-01(00)). This reflects the conclusion of the Council's Environmental Health advisors.

**Conclusion**

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

*R Hitchcock*

INSPECTOR



### **Schedule of Conditions to Planning Permission Ref APP/21/01552**

- 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 2577\_19002 Rev.P2  
Proposed Site Plan 2577\_19001 Rev.P0  
Block 11 Demolition Plans 2577\_00410 Rev.P0  
Proposed Ground Floor Plan 2577\_10400 Rev.P0  
Proposed First Floor Plan 2577\_10401 Rev.P0  
Proposed Roof Plan 2577\_10403 Rev.P0  
Proposed Elevations 2577\_10501 Rev.P0  
Proposed Elevations 2577\_10502 Rev.P0  
Proposed Sections 2577\_10601 Rev.P0  
Landscape Masterplan 2577\_79001 Rev P1  
Tree Strategy 2577\_79002 Rev P2
- 3). No tree felling, scrub clearance or building works are 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 relevant buildings, trees and scrub 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 shall be submitted to an approved in writing by the local planning authority. The approved measures shall be implemented for the duration of construction works taking place in the specified restricted period.
- 4). No development shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The provisions of the Construction Management Plan shall be implemented in full during the periods of demolition and construction and shall not be varied at any time unless previously agreed in writing with the local planning authority.
- 5). No development shall take place, including any works of demolition, until details of avoidance measures to ensure there are no adverse effects on hedgehogs on the site have been submitted to and agreed in writing with the local planning authority. This shall include, as a minimum, that:
  - All trenches and excavations should have a means of escape (e.g. a ramp);
  - Any exposed open pipe systems should be capped to prevent mammals gaining access; and
  - Appropriate storage of materials to ensure that mammals do not use them.The development shall be carried out in accordance with the agreed details.

- 6). No development shall take place until a method statement for the eradication of plant species listed in Schedule 9 of the Wildlife and Countryside Act / Schedule 2 of the Invasive Alien Species (Enforcement and Permitting) Order 2019 present on the site, prepared by a competent person, and which includes the following information:
- a plan showing the extent of the plants
  - the methods that will be used to prevent the plant/s spreading further, including demarcation
  - the methods of control that will be used, including details of post-control monitoring
  - how the plants will be disposed of after treatment/removal
- has been submitted to and agreed in writing with the local planning authority. The approved method statement shall be implemented in accordance with its approved terms and timescales.
- 7). No development shall take place until a site waste management plan has been submitted and agreed in writing with the local planning authority. This shall demonstrate how the minimisation of waste production will be achieved and the measures to achieve efficient use of resources, including designing out waste and minimisation of off-site disposal. The approved scheme shall be implemented as an integral part of the development.
- 8). No site clearance, preparatory work or development shall take place until the protection measures for the trees shown to be retained on the site, as detailed in the Arboricultural Planning Statement Birkenhead School – New Sports Hall, dated January 2021, have been installed in accordance with its full requirements. The tree protection measures shall be retained in the identified locations for the duration of the construction phase of the development. 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, without the prior written consent of the local planning authority.
- 9). No works or development shall commence until a full specification of all proposed tree planting has been submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species, and positions or density of all trees to be planted, how they will be planted and protected and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification.
- If, within a period of 5 years from the date of planting, the tree (or any tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.
- 10). No development shall take place until details of the foul and surface water drainage works serving the extension, based on sustainable

drainage principles, have been submitted to and approved in writing by the local planning authority. The development shall be completed, maintained and managed in accordance with the approved drainage details.

- 11). No development shall take place until details of ecological compensatory and enhancement measures to be implemented at the site to provide biodiversity net gain have been submitted to and approved in writing by the local planning authority. Details shall include the numbers, species, types, locations and the timing of their installation/provision. The approved ecological enhancement measures shall be implemented on the site in accordance with the approved timing and details. The ecological enhancement measures shall remain for the duration of the development.
- 12). Before their installation, details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 13). Prior to first use of the development, a Community Use Agreement for the sports hall shall be submitted to and approved in writing by the local planning authority. The agreement shall include details of pricing policy, hours of use, access by non-educational establishment users (including associated parking provisions), management responsibilities and a mechanism for review. The development shall be used in accordance with the approved agreement for the duration of the development.

END.