



Appeal Decision

Site visit made on 18 February 2025

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/M4320/W/24/3353822

Land at northwest of Lynton Drive, Lynton Drive, Hillside, Southport, PR8 4QQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Marina Robinson against the decision of Sefton Metropolitan Borough Council.
 - The application Ref is DC/2024/00855.
 - The development proposed is a one bedroom detached house and solar car port.
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Decision

1. The appeal is dismissed.

Procedural matter

2. The original application was refused by the Council on 9 September 2024. The appellant has included an amended plan dated 23 September 2024 in the appeal submission to amend window positions and address privacy issues raised by the occupiers of the neighbouring property. This plan was not before the Council when it determined the application and has not been the subject of consultation with statutory consultees and adjoining neighbours. I am therefore unable to take it into account as to do so could prejudice these interested parties.

Main Issues

3. The main issues in this case are:
 - the effect of the development on protected species, in particular sand lizards
 - whether the development would provide acceptable living conditions for future occupiers with regard to noise.
 - the effect of the development on nearby trees

Reasons

4. The appeal site forms a vacant piece of land located immediately west of No. 2 Lynton Drive and east of Hillside Railway Station. The railway line runs parallel to the site's western boundary.
5. It is proposed to construct a two storey one bedroom dwelling, accessed by an existing shared use private driveway running between Nos 12 and 14 Lynton Drive.

Protected Species

6. The appeal site lies directly adjacent to the Ainsdale Station to Hillside Station Local Wildlife Site (LWS) and the Sefton Coast Site of Special Scientific Interest (SSSI). These are both designated due to the presence of sand lizard populations, a protected species, and sand dune habitats.
7. The original application was submitted without an ecological appraisal to determine if the proposed development would cause harm to sand lizards and other reptiles.
8. Local Plan Policy NH2 sets out that development which may affect a local or nationally designated nature conservation site will be permitted where it can be demonstrated that there is no significant harm. The policy goes on to require an ecological appraisal which includes details of avoidance, mitigation, compensation and management where appropriate.
9. The appellant argues that the appeal site forms an area of cleared grassland and does not comprise sand dune habitat or heathland suitable for sand lizards or reptiles. I also understand that it has been disturbed, dug over and parts overlaid with imported soil in the recent past. I accept it is unlikely that sand lizards are present in these circumstances. Nevertheless, without a survey it is not possible to establish whether they are present or absent.
10. The appellant questions the proximity of the appeal site to the Sefton Coast SSSI and the Ainsdale to Hillside LWS. In relation to the SSSI, the mapped area finishes at the back of the railway platform so that the appeal site is not directly adjacent to it. The railway platform, the rail tracks and rail infrastructure are within the designated area. The appellant argues that it is therefore very unlikely that sand lizards will be present. However, the SSSI boundary extends the length of the railway line for some distance to the rear of Lynton Drive and Lynton Road. There is therefore the potential for protected species to travel along this corridor.
11. In terms of the LWS, the appeal site lies next to its mapped boundary. The appellant considers the neighbouring railway land is not suitable habitat being formed of an open weeded area with a dense patch of sycamore trees to its southern end. It is again argued that this area of land is not an appropriate habitat for sand lizards. Nevertheless, again there is potential for protected species. Applying a precautionary principle, it is appropriate to undertake a survey to determine the presence or absence of protected species.
12. Given the above, in the absence of an ecological survey, it has not been demonstrated that the proposal would cause no significant harm to protected species. Therefore, the proposal fails to comply with Sefton Local Plan Policy NH2 which seeks to protect and enhance Sefton's designated nature sites.

Living conditions

13. The appeal site lies next to Hillside Railway Station and associated rail line. There is therefore the potential for noise and vibration to adversely affect the living conditions of future occupiers of the proposed development. There is also the potential for noise from vehicles using the gravel access track, car engines, doors shutting etc affecting the amenity of future occupants.

14. It is notable that the Council's reason for refusal only concerns noise affecting the occupants of the appeal dwelling. It does not address increased noise from vehicle movements generated by the proposed dwelling affecting the living conditions of the occupants of other neighbouring properties. The appellant addresses noise to the occupants of neighbouring properties in their statement but as it was not raised by the Council, I concentrate on the noise affecting future occupants of the appeal dwelling.
15. The Council requires a noise impact assessment to assess the potential noise and recommend mitigation measures as appropriate to maintain the amenity of the occupants of the proposed property. I agree that this is necessary bearing in mind the sites' location next to the railway line. I acknowledge that the line operates between 5.45am and 12 midnight and not 24 hours. However, as trains are running late at night and early morning, when it is much quieter, there is the potential for noise nuisance. I appreciate that the line is electric, and trains may be slowing down to pass through or stop at the station reducing noise levels. I listened to the noise from a train stopping at the station on my site visit. While this may be acceptable during the day when ambient noise and traffic on Waterloo Road would be higher, it would, in my view, be much more intrusive in the evening and early morning.
16. Consequently, a noise assessment is required to ensure that the noise levels do not exceed accepted levels set out in BS 8233:2014. Appropriate mitigation measures may be required over and above the noise reduction effects of the fabric and insulation of the proposed dwelling.
17. With regard to noise from vehicles on the access road, the Council's Environmental Protection Officer suggests that an acoustic barrier could be installed along the access road and parking areas and a smooth surface provided. The shared private access serves only two other dwellings and together with the proposed dwelling, the level of traffic would be very low. I consider that the potential for noise would be minimal and would not cause harm to the living conditions of the occupants of the proposed dwelling.
18. All parties agree that the access is in a poor condition. The appellant indicates that should planning permission be granted, they would arrange for the track between Nos 12 and 14 Lynton Drive to be resurfaced. This could be the subject of a planning condition on any approval. The remainder of the access could also be upgraded. In light of the ownership and access rights, this would be a matter for the appellant to secure with the agreement of the other users of the track and would not be a suitable matter to be required through the imposition of a planning condition.
19. Whilst I have found that the noise from additional vehicles using the access track would not be sufficient to cause harm to living conditions, I find that noise from the railway line and station could do so. A noise impact assessment has not been provided to determine the extent of any harm in this regard and propose any necessary mitigation measures. It has therefore not been demonstrated that the occupiers of the proposal would have acceptable living conditions. Accordingly, the development fails to comply with Policy EQ4 of the Local Plan which states that development will be permitted when it can be demonstrated that the impact of noise/vibration will not be significant and can be reduced to an acceptable level.

Trees

20. The appeal site itself has no trees, however there is a mature tree in the front garden of No.2 Lynton Drive and a newly planted tree within the railway land to the west of the site.
21. I noted on my site visit that the tree in the garden of the neighbouring property extends over the property boundary. This means that the roots of the tree will extend into the appeal site. The application is not accompanied by a tree survey to assess the potential impacts on existing trees on adjoining land. Whilst the footprint of the dwelling may be outside the root protection area, there is still the possibility of harm to the tree due to construction works, ground compaction and the external finishes to the garden area. In light of the above a tree survey is required. I agree with the appellant that it is unlikely that the small tree on the adjoining railway land would be affected but nevertheless it is prudent for an assessment to be undertaken.
22. Accordingly in the absence of a tree survey to ensure the protection of nearby trees, the appeal proposal would fail to comply with Sefton Local Plan Policy EQ9 which seeks to prevent damage to and loss of existing trees or woodland.

Other matters

23. A number of local residents have raised various concerns about the proposal. The access and its condition have been discussed above. Any outstanding issues with the shared access and its maintenance are a matter for the appellant to resolve with the other users of the driveway. Disturbance to adjoining residents during construction works could be the subject of a planning condition requiring a construction management plan to be submitted for approval which would include access for construction vehicles, storage of materials and hours of work.
24. Concern has been raised about the effect of the property on the living conditions of the occupiers of No 2 Lynton Drive in respect to privacy and light. The Council Officer report states that amendments to the scheme are required to address these matters. It does not appear that any were requested during the consideration of the application as it was going to be refused on other grounds. Whilst the appellant has provided an amended plan as part of this appeal, as I have explained above, I can only determine this appeal on the plans before the Council when they made their decision.

Conclusion

25. I have found that the appeal proposal fails to demonstrate that there would be no harm to protected species, that there would be acceptable living conditions for future occupiers and that there would be no harm to nearby trees.
26. The proposed development conflicts with the development plan and there are no other material considerations that indicate the appeal should be determined other than in accordance with it.
27. For the reasons given above and having had regard to all other matters raised, I dismiss this appeal.

Helen Hockenhull INSPECTOR