

<u>APPLICATION NO:</u>	24/00479/FUL	<u>CASE OFFICER:</u>	Reece Black
<u>WARD:</u>	St Gabriels	<u>PARISH:</u>	
<u>LOCATION:</u>	Underground Carpark, Cavendish Walk, Derby Road		
<u>PROPOSAL:</u>	REMOVAL OF CONDITION 16 (UNDERGROUND CAR PARK) ATTACHED TO PLANNING PERMISSION 04/01370/FUL.		

Site Description

The application site is located at Cavendish Walk (with vehicular access taken from the west of Lathom Road). The site is a basement carpark situated underneath the existing B&M commercial premises which fronts Lathom Road comprising one entry and one exit into the facility (currently shuttered).

The application site is located as Town and District Centre within the Development Plan (Huyton Town Centre).

The basement carpark previously provided free customer parking for up to 2 hours (short stay). The previous hours of use were Monday to Friday, 06:00 to 18:00 and Sunday, 06:00 to 18:00.

The carpark has capacity for up to 72 vehicles. It has been closed for approximately 18 months.

Proposal

The application seeks permission for the removal of Condition 16 attached to the Planning Permission 04/01370/FUL.

The application has been submitted under a Section 73.

The permission was granted subject to Conditions on 14 December 2005 for 'demolition of former Asda store, retention of basement car park and erection of 3 No. retail blocks (amendment to previously approved application 03/00289/FUL).

The full Condition states that:

"The existing underground car park as shown on the submitted layout plan (ref 362-205 received on the 22 December 2004) shall be fully operational and provide the 72 spaces indicated prior to the first unit commencing trading unless otherwise first agreed in writing by the Local Planning Authority. The underground car park shall thereafter be made available for vehicle parking and manoeuvring purposed at all times that the development hereby permitted is in use.

Reason: To ensure that adequate on site vehicle parking/manoeuvring facilities are provided in the interests of highway safety and amenity and to comply with Policy T12 of the Knowsley Unitary Development Plan, adopted in June 1998."

The application has been supported by a Transport Technical Note and a Covering

Letter. The Covering Letter outlines that the removal of the Condition is sought as the current occupiers are experiencing significant issues with anti-social behaviour and health and safety issues in maintaining the underground carpark. Whilst exploring solutions to this, one option is to permanently shut the carpark. Therefore, the application is required so as not to conflict with Condition 15.

Consultations

Town Centre Management – No objections received.
Highway Authority – No objections received.

Representations

This application has been publicised by letters sent to 4 neighbours. It has also been advertised by 2 Site Notices, with an expiration date of 12.11.2024. No representations have been received.

Planning History

APP. NO: 03/00289/FUL
PROPOSAL: DEMOLITION OF EXISTING ASDA STORE AND RETENTION OF BASEMENT CAR PARK. TOGETHER WITH ERECTION OF 2 NO. RETAIL BLOCKS AND 1 NO. RETAIL/LEISURE BLOCK.
(DEVELOPMENT BEING IMPLEMENTED UNDER APP. NO. 04/01370/FUL)
DECISION: GRANTED
DECISION DATE: 13 October 2004

APP. NO: 04/01370/FUL
PROPOSAL: DEMOLITION OF FORMER ASDA STORE, RETENTION OF BASEMENT CAR PARK AND ERECTION OF 3 NO. RETAIL BLOCKS
(AMENDMENT TO PREVIOUSLY APPROVED APPLICATION NO. 03/00289/FUL)
DECISION: GRANTED
DECISION DATE: 20 December 2005

The original application (04/01370/FUL) contained 17 Conditions in total and was also subject to a S106 Legal Agreement.

Relevant Policy

Paragraph 11 of the National Planning Policy Framework (NPPF) states that planning decisions should apply a presumption in favour of sustainable development. This means approving development proposals that accord with an up-to-date development plan without delay; or where the development plan is absent, silent or out of date planning permission should be granted unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Paragraph 12 of the NPPF clarifies that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan, permission should not normally be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be

followed.

The development plan in Knowsley comprises the Saved Policies of the Replacement Unitary Development Plan, the Core Strategy Local Plan and the Joint Waste Local Plan. The following policies are relevant to the determination of this application.

KNOWSLEY LOCAL PLAN: CORE STRATEGY

CS1 - Spatial Strategy for Knowsley

CS2 - Development Principles

CS19 - Design Quality and Accessibility in New Development

PLANNING PRACTICE GUIDANCE: FLEXIBLE OPTIONS FOR PLANNING PERMISSIONS

The Huyton Village Masterplan SPD is also a material consideration for this application as it sets out Knowsley Metropolitan Borough Council's strategy for the development of Huyton Village.

The above policies are applicable to the consideration of the proposed removal of condition 16 of planning application 04/00479/FUL. All other policies as noted in the consideration of the original planning application are still relevant to the overall development as approved in accordance with that planning permission (04/01370/FUL).

Article 35 Statement

The Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

Assessment

The application is made under a Section 73 Application.

Planning Practice Guidance for flexible options for planning permissions states that permission granted under section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended (Paragraph 015).

The application seeks to demonstrate that the removal of the requested Condition would not result in adverse impacts on highway safety or an unacceptable demand for parking on-street. The impact on highway safety would be the determining factor for the consideration of this application.

2.4.2 of the Huyton Village Masterplan SPD states that whilst there is a significant amount of car parking in the village, the zoning is confusing with several types of permits and public/staff sections. Whilst the application to remove the Condition would not itself contribute directly to remedying this issue identified from several types of permits and public/staff sections, it is recognised in the SPD that Huyton Village (as a Town Centre) is not evidenced to have recorded deficits of adequate

parking.

The Transport Technical Note outlines that alternative parking provisions within short walking distances from the application site are available and the supporting information stipulates that these would have sufficient capacity available to accommodate any lost parking spaces as a result of the removal of the 72 parking spaces at the application site.

3.1.2. of the submitted note stipulates that on the basis the basement car park provides short-stay car parking only, the review of other car parking provision in Huyton will focus on car parks where short-stay parking is permitted, and are located within a reasonable walking distance

On the basis the basement car park provides short-stay car parking only, the review of other car parking provision in Huyton will focus on car parks where short-stay parking is permitted, and are located within a reasonable walking distance from the Huyton Town Centre – these short-stay car parks include the following:

- Huyton Hey Car Park
- Huyton Multi-Storey Car Park
- Archway Road Car Park
- UKPC Car Park
- Venue Car Park
- Brown / Green / Red Zones – Free Parking (Evenings and Weekends)
- ASDA Car Park
- Club 3000 Bingo Car Park



Figure 3.1: Existing Car Park Locations – Huyton Town Centre contained in the submitted Transport Note demonstrates the proximity of these alternative parking sites.

The summary of the Transport Note succinctly outlines that parking survey data (collected in 2022) shows that there is sufficient remaining parking capacity available in Huyton to mitigate the loss of the spaces provide from the basement parking at Cavendish Walk.

The data collected presented that across Huyton Town Centre there were a total of 1,651 number of parking spaces (excluding the ASDA car park). The survey data furthered that the greatest demand for parking was recorded on weekdays, for long-stay visits. The data shows that parking occupancy peaked at 63% on a weekday and 31% on a Saturday. The 2022 Huyton Parking Study states that “whilst there is a conception that parking in Huyton is near full capacity, sufficient parking provision is available across the whole town centre on any given day of the week.”

It is considered that the supporting information has provided sufficient information to demonstrate that the removal of Condition 16 would not result in any unacceptable highway safety impact or on-street parking.

The Council’s Highway Authority were consulted on the proposals and have not raised any objections or concerns. The consultation response outlined that the basement carpark has been closed for approximately 18 months and no detrimental impacts have been recorded since this or as a result of the closure. The application has been accompanied by a technical note which incorporates information from another application concerning car park provision across the town centre. The note also demonstrates that there is sufficient car parking for the town centre for the foreseeable future, and that in the longer term, the area is expected to undergo significant change, not least to the retail offer and car parking provision.

The NPPF states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Paragraph 115).

Subsequently, it is considered that there would be no severe impacts on highway safety or capacity arising from the development which would warrant a refusal on highway grounds.

Overall, it has been considered that the deletion of the request Condition would not have any significant impact on highway safety or parking on-street. Ample alternative parking capacity, located at multiple sites in close proximity would ensure that the loss of these spaces would otherwise be provided elsewhere, without resulting in highway safety issues, or furthermore, impact the retail offer and attraction to Huyton Town Centre. The proposed removal of Condition would be deemed to comply with CS2 and CS19.

Other Matters

Conditions

Planning Practice Guidance (Paragraph 015) also states that a decision notice describing the new permission should clearly express that is made under Section 73. It should set out all of the conditions imposed on the new permission, and, for the purpose of clarity restate the conditions imposed on earlier permissions that continue to have effect.

As outlined, the original application contained 17 Conditions. Accordingly, the Conditions list can be amended to take account the change in circumstances given

that the original application was granted in 2004.

All relevant Conditions previously imposed where necessary, taking into account any of the Conditions which have been discharged or are no longer applicable etc, will be included on the decision.

Following review of all Conditions of the original permission, there is one Condition which the Local Planning Authority holds no record of any formal discharge.

This pertains to Condition 15 which states that,

“Prior to any retail unit within block A first being brought into use a scheme showing details of any mechanical ventilation, external plant or equipment to be installed (including the steps to be taken to minimise the transmission of noise to the nearest dwellings on Archway Road) shall be submitted to and be approved in writing by the Local Planning Authority. All such equipment shall be installed prior to the first occupation of the respective units and shall thereafter be retained and maintained in accordance with the approved details unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interests of residential amenity and to comply with Policy S1 of the Knowsley Unitary Development Plan, adopted June 1998.”

As outlined within the PPG (Paragraph 015) Conditions which are imposed on earlier permissions should continue to have effect and also be imposed on the new permission.

The LPA have on record correspondence in response to a level of information that was submitted to attempt to discharge Condition 15. The email from KMBC (dated 14 September 2006) states “that Condition 15 relates to individual units and the need to consider noise from any mechanical ventilation/aircon/plant installed there. To date only information relating to the unit closest to Archway Road (unit 8A which it is understood will be Domino’s Pizza) has been received. In noise terms the information provided is satisfactory, but the application is still awaiting approval at Committee on Thursday 14 September. It would not be possible to discharge the condition completely until the individual units have submitted any relevant information. Therefore, this condition remains ongoing.”

Moreover, there is a document on file from Caddick with a Schedule of Planning Conditions with dates other Conditions were discharged and any notes or required information. Next to 15. Mechanical ventilation within block A, under the date submitted sub-heading it states, ‘tenant issue’. The LPA does not appear to hold any further information on any additional information from any other units within block A which evidence that the Condition has been satisfactorily complied or formally discharged.

A letter (dated 11 October 2006) provides an update on any outstanding Conditions. The letter states that “Conditions 15 cannot be discharged until the individual occupiers of block A submit details of mechanical ventilation, external plant or equipment for approval.”

Notwithstanding the above, it is acknowledged that any time for enforcement action to be carried out has passed given that the decision was granted in January 2005. Therefore, due consideration has been given as to whether to include the original Condition to any decision. It has been considered, however, that this would not be

meet the 6 Conditions tests. Following that no Planning Enforcement files hold any records of complaints or issues raised concerning this Condition. Furthermore, several units within block A have been in use consistently and such a timeframe has passed with no recorded issues raised. It is therefore considered that to impose the original Condition would not be reasonable, and given the extent of time that has passed, and the evident absence of issues flagged, enforceable; as the trigger point would not be accurate. To include the Condition as originally (or amended) would not be considered to comply with the Conditions test. Therefore, this will not be imposed on any new permission granted.

Description of development

PPG also states that section 73 cannot be used to change the description of the development.

This is further discussed in a Court of Appeal decision of Finney v Welsh Ministers & Ors [2019] In which a previous inspector's decision which held that section 73 of the Town and Country Planning Act 1990 can be used to obtain planning permission with an amended description of development, as well as conditions differing from those on the original permission.

This case concerned planning permission, granted 2016, for the installation and operation of two wind turbines, stated in the description of development as being of a height of up to 100m. Condition 2 imposed on the decision noticed provided that the development was to be carried out with a number of approved plans, of which one showed a wind turbine with a tip height of 100m.

The applicant applied under section 73 of the TCPA 1990 to vary condition 2 and replace this plan with one that showed tip heights for the turbines up to 125 metres. The reason for application was clearly stated to "enable a taller turbine type to be erected".

It was held in this appeal that changing the description of development was outside the power conferred by section 73. It was considered that section 73 is limited to granting permission for the development of land "without complying with conditions" subject to which a previous planning permission was granted. The planning authority should therefore consider only the question of conditions. The Court of Appeal ruled that to vary the description of development by way of altering conditions is outside the remit of S73 applications. This has significant implications for post permission amendments to developers, particularly where the operational part of the permission makes specific reference to unit types, quantum of development, plan references, dates of submitted plans or building types.

The original description of development relates to 'DEMOLITION OF FORMER ASDA SOTRE, RETENTION OF BASEMENT CAR PARK AND ERECTION OF 3 NO. RETAIL BLOCKS'.

The proposed removal of Condition would not result in a change of the description as the basement car park would continue to retain the application site (basement car park), albeit its permanent closure. However, it would still comply with the original planning permissions description of development and not alter or amend this.

It would be salient to acknowledge this point. Should the application site be considered to be used for any alternative use which would not fall within the operational description of the development and granted Planning Permission (it

would be considered to be outside of the parameters of a S73 application, as evidenced by the case law referenced) that a fresh, separate application for full Planning Permission be submitted to the Local Planning Authority.

This will be highlighted by means of an Informative of a Decision Notice should Planning Permission be granted.

Conclusion

In conclusion, the application has provided sufficient evidence to highlight that the removal of Condition 16 would not result in detrimental ramifications. The information submitted demonstrates that parking would be available and given the review of both the evidence submitted and the information contained within the Council's adopted documents, a shortfall of parking would not appear to be a salient issue which affects Huyton Town Centre. As the underground car park has remained permanently closed for circa 18 months and following the lack of objections or concerns expressed by Highways, it is considered that the loss of these 72 parking spaces would not have any detrimental impact on highway safety or parking on-street which would warrant a refusal. It would not be deemed to conflict with any current and adopted Local Plan policies.

The drawings and documents contained within the original granted Planning Permission as approved are still relevant **and** applicable.

It is recommended that the application for the removal of Condition 16 be approved.

Recommendation

That Planning Permission be granted subject to the following Condition(s):-

- 1) The pedestrian link from Lathom Road to Derby Road, previously discharged on 13.10.2006 shall be retained at all times.

Reason: For the avoidance of doubt and to accord with 04/01370/FUL.

- 2) The external facing materials to be used on walls and roofs and details of any external doors and windows (including any roller shutters) shall remain as those previously approved and discharged on 19.07.2006.

Reason: In the interests of visual amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 3) No tree within the site shall be cut-down, up-rooted, topped, destroyed or in any other way damaged, (nor any hedge within the site cut-down or grubbed out), without the prior approval in writing of the Local Planning Authority.

Reason: In the interests of visual amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 4) The details of surface treatment of the areas not covered by buildings shall remain as those previously approved and discharged on 19.07.2007.

Reason: In the interests of visual amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 5) The details relating to any scheme of external lighting for the development, including the type, design, siting, intensity and direction of illumination along with the hours of operation of the lights, shall remain as those previously approved and discharged on 14.10.2006.

Reason: In the interests of visual and residential amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 6) The details relating to any scheme for the control of noise arising from use of the site shall remain as those previously approved and discharged on 14.09.2006. These works and/or measure forming part of the agreed scheme shall be maintained/operated at all times.

Reason: In the interests of residential amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 7) Deliveries shall not take place to units within block A outside the hours of 07:00 and 23:00 on any day, without the prior written permission of the Local Planning Authority.

Reason: In the interests of visual and residential amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 8) The details relating to any refuse storage arrangements for each of the proposed blocks shall remain as those previously approved and discharged on 19.07.2006. These works which form part of the agreed scheme shall be maintained/operated at all times.

Reason: In the interests of residential amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

- 9) The details relating to the trading space within the site as shown on the approved plan (Drawing No 362-212 received on the 22 December 2004) for the loading, unloading and parking of vehicles, this space shall remain as that previously approved from the submitted plan. This space shall be retained in accordance with the approved details at all times that the proposed development is in use.

Reason: In the interests of residential amenity, for the avoidance of doubt and to accord with 04/01370/FUL.

Signed Case Officer¹: **Reece Black**

Signed Authorising Officer²: **K Foster**

Date: **20 November 2024**

¹ I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

² I confirm that I do not have a personal relationship with the applicant, agent or other interested parties; I also confirm that I do not have a financial interest in the site or the development proposed

Informatives

1

The Planning Permission hereby granted is only for the removal of Condition 16 of 24/01370/FUL, however, this does not amend or alter the original description of development and the use of the underground car park shall remain as a use which accords with the original description of development. This Planning Permission does not permit any material change of use to the application site and should any alternative use be considered a new, separate application for full planning permission will be required as this would alter the operational use of the application site contained within the description of development.

2

The Planning Permission hereby granted shall continue to accord with any previously approved plans and documents in relation to the original Planning Permission.