
Appeal Decision

Site visit made on 21 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 14 March 2017

Appeal Ref: APP/W4325/W/16/3164383

**Land behind 1-6 Wellington Court, Wellington Road, Oxton, Wirral
CH43 2JT**

- 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 Stuart Sampson, Mrs Alison Sampson & Mrs Cynthia Sampson against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/00450, dated 29 February 2016, was refused by notice dated 8 July 2016.
 - The development proposed is demolition of 12no. lock-up garages and redevelopment of the site to provide 1no. dormer bungalow with two car parking spaces and landscaping.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Stuart Sampson, Mrs Alison Sampson & Mrs Cynthia Sampson against Wirral Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appellant as part of the appeal submission has provided additional plans (drawing nos. L(02) 003 P01 & L(02) 004 P01) which consist of site plans with the ground floor and first floor of the proposed dwelling denoted respectively, together with annotated dimensions. The Council and interested parties have had an opportunity to comment on the appeal submission and I am satisfied that consideration of the additional plans would not prejudice interested parties. I, therefore, determine the appeal on the basis of the proposal as set out in the application and upon which the Council made its decision, together with the additional plans.

Main Issues

4. The main issues are:
 - whether the development would provide for a satisfactory living environment for its future residents, and;
 - the effect on the living conditions of occupiers of neighbouring properties, with particular regard to Wellington Court and 40 Wellington Road in terms of outlook and privacy.
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Reasons

Background

5. The appeal site consists of a rectangular shaped plot of land within a primarily residential area as identified by the Unitary Development Plan for Wirral (UDP) Proposals Map, adopted February 2000. The site is currently in use as lock up garages located to the rear of a three storey block of flats known as Wellington Court and accessed from Wellington Road via a shared driveway which adjoins the side boundary of 44 Wellington Road (No 44). The side boundary of No 44 forms the boundary of the Oxton Village Conservation Area, which does not include the site. Within the Conservation Area, in close proximity to the south of the site, is the Church of St Saviour, a Grade II* listed building.
6. The significance of Oxton Village Conservation Area is reflected its historic value as an example of a rural hamlet that was subsequently expanded as a Victorian commuter settlement and enclosed within an urban area. The Grade II* listed Church of St Saviour is a key landmark within the Conservation Area. It is common ground between the main parties, that the proposal would not have an adverse impact upon the character and appearance of the site or the setting and significance of Oxton Village Conservation Area and the Church of St Saviour.
7. Based on the evidence before me and my observations of the site and its surroundings, the modest scale of the proposed dormer bungalow would assimilate with the varied scale and character of properties within the Conservation Area and its immediate surroundings. In reaching that view I have taken into account that the site currently consists of garage blocks and areas of hardstanding. Furthermore, the site is screened from public vantage points by its position to the rear of Wellington Court and would not influence the street scene along Wellington Road. In addition, the development would not be a prominent feature within the setting of the Church of St Saviour, including from public vantage points at the junction of Bidston Road and Gerald Road, due to the presence of existing trees on the northern and eastern boundaries of the Grade II* listed building and differences in land levels. The proposal would, therefore, preserve the setting and significance of the Grade II* listed building and Oxton Village Conservation Area.

Living environment for future residents

8. Policy HS4 of the UDP, states that new housing development is permitted in primarily residential areas, subject to the proposal fulfilling all of its listed criteria. Amongst other things, the criteria, includes the proposal being of a scale which relates well to surrounding property. In addition, the policy requires that for all proposals whose main elevations are parallel, or nearly so, an adequate distance should be kept between habitable rooms in separate dwellings. An adequate separation distance is also required where the gable end of one property fronts the rear elevation of another. In terms of proposals for backland development of between one to three dwellings behind existing dwellings and accessed by a dedicated private drive, Policy HS10 of the UDP is also relevant.
9. Policies HS4 and HS10 of the UDP significantly pre-date the publication of the National Planning Policy Framework (the Framework). However, I am satisfied that the relevant policies in this case are consistent with the aims of the

Framework, including the requirements of section 7 with regard to design and the core planning principle that a good standard of amenity should be provided for all existing and future occupants of land and buildings.

10. The interpretation of Policies HS4 and HS10 of the UDP is supplemented by the Wirral Supplementary Planning Guidance Note 10 Backland Development (SPG), July 1994, despite its publication preceding the adoption of the UDP. The guidance within the SPG includes a requirement that all development should abide by the minimum distances of 21m between overlooking windows and 14m between windows and 2 storey blank gables. There is no evidence before me as to what, if any, public consultation occurred prior to the adoption of the SPG which limits the weight I can afford to the guidance. Nevertheless, to my mind, the distances specified are a reasonable starting point for a more specific assessment relating to Policies HS4 and HS10 of the UDP and the Framework taking account of the particular circumstances of the site and the relationship of the development as proposed to its surroundings.
11. The elevation of the dwelling facing Wellington Court would be sited approximately 14m from the rear elevation of the 3 storey block of flats, with the distance reduced to around 12m by a porch. The separation distance would not conform to the distances specified in the SPG. Furthermore, to achieve appropriate outlook and privacy for occupiers of the development it is reasonable that the presence of a neighbouring 3 storey building would generally necessitate an increase in recommended separation distances above those specified for 2 storey developments. Land levels gently rise from the rear of Wellington Court and within the site in a south western direction. Nevertheless, the difference in land levels would not offset the close relationship of the development to Wellington Court and the direct overlooking of the site by first and second floor windows of the existing flats.
12. With regard to the above, the internal layout of the dwelling has been carefully designed to avoid habitable windows in the elevation which faces Wellington Court in an attempt to offset privacy concerns, with the windows on the facing elevation serving only a landing and utility room. However, the direct overlooking of the gardens and parking areas of the dwelling by upper floor windows of Wellington Court would be an unacceptable and harmful relationship. The proposal would not provide appropriate levels of privacy for future residents of the development, as there would be a continual perception of being overlooked.
13. In reaching the above findings, I have taken into account that the submitted plans indicate landscape planting along the boundary with Wellington Court and adjacent to the other garden area. Mature planting in those locations could provide a degree of screening to the garden areas which could improve the privacy afforded to the site. However, a significant height of planting would be required to prevent direct overlooking from the upper floor windows of Wellington Court. To my mind, the required height of such planting would have a considerable overbearing and overshadowing effect on the site and its surroundings. This would result in an unsatisfactory outlook from habitable rooms on the south eastern elevation and reduced levels of daylight and sunlight to the dwelling and garden areas, when taken in cumulative with the close proximity to the boundary and nearby tall trees within the curtilage of the Church of St Saviour. Consequently, landscape mitigation would not be suitable to overcome the harm identified.

14. Having taken all of the above into account, I conclude that the development would not provide for a satisfactory living environment for its future residents. The proposal would, therefore, conflict with Policies HS4 and HS10 of the UDP and the Framework in that respect.

Living conditions of occupiers of neighbouring properties

15. The requirements of Policy HS4 of the UDP in terms of the separation distance requirements to achieve adequate outlook and privacy are also relevant to the living conditions of occupiers of neighbouring properties. In addition, amongst other things, Policy HS10 requires that the proposed development including its access should not result in undue noise, disturbance, loss of privacy or sense of enclosure affecting adjoining residents.
16. As per my reasoning relating to the other main issue, the separation distance between the dwelling and Wellington Court would not meet the guidance in the SPG in terms of recommended separation distances between overlooking windows. However, as referred to previously the internal layout of the dwelling omits windows serving habitable rooms in the elevation facing Wellington Court. The upper floor window serving the landing could be obscure glazed in the interest of privacy of neighbouring properties. Furthermore, although the ground floor and rear garden of Wellington Court are sited on lower land levels, the ground floor windows serving the porch and utility room of the dwelling would not directly overlook those areas. This would be due to the screening provided by a high boundary wall that currently forms the rear of a garage block and would be retained. Consequently, the effect of the dwelling upon Wellington Court would be similar to a relationship of habitable windows to 2 storey blank gables. The SPG recommends a separation distance of 14m for such relationships and the submitted plans indicate that only the porch would be located closer than 14m to Wellington Court.
17. Having regard to the above, I consider that, on balance, the dwelling would not have a detrimental impact on the living conditions of occupiers of Wellington Court. Notwithstanding the increased land levels within the site, the separation distance and boundary screening would be sufficient to prevent any direct overlooking and loss of privacy. Furthermore, the set back position of the dwelling within the site and the limited scale, bulk and massing of its dormer bungalow design, would prevent an overbearing or overshadowing effect on Wellington Court and its rear garden when taking account of the presence of an existing tall boundary wall.
18. Although not included in the reason for refusal on the decision notice, the Council have expressed additional concern with respect to the relationship of the development to 40 Wellington Road (No 40). Taking account of the set forward position of No 40 relative to Wellington Court, there would be adequate separation distance from the proposal to the rear elevation of No 40 to ensure no adverse effect in terms of overbearing or overshadowing upon its outlook.
19. The development would result in a limited overbearing and overshadowing effect upon the long rear garden of No 40 at its furthest extent where it also widens as it wraps around the rear boundary No 38. However, given the extent of rear garden available to No 40 and the greater influence of Wellington Court upon its enjoyment, I do not consider that the relationship would have an unacceptable impact upon the existing living conditions of No 40. There would be some relief from built form due to the set back of the dwelling from

the boundary and the separation distance to Wellington Court which would prevent an undue sense of enclosure along the side boundary of No 40. Furthermore, the screening afforded by the proposed boundary fencing would prevent direct overlooking of the rear garden from the ground floor window, whilst the facing first floor window serves an en-suite bathroom and could be fitted with obscure glass in the interest of privacy.

20. The siting of the dwelling is located away from the shared boundary with No 44 and consequently, there would be adequate separation distance to ensure no overbearing or overshadowing effect on that property. The different orientations of the properties would ensure that there would be only an oblique relationship between the elevation of the dwelling facing towards No 44 and the rear elevation of that neighbouring property, which would not result in a harmful loss of privacy. The furthest extent of the rear garden of No 44 would be visible from a first floor bedroom window of the dwelling. However, the set back position of the dwelling from the boundary would prevent harmful overlooking or a significant loss of privacy, given that the section of rear garden affected is already overlooked by 46 Wellington Road. All other surrounding properties are unaffected by the proposal due to the greater separation distances involved.
21. The use of the proposed access, driveway and parking areas would not be harmful to the living conditions of Wellington Court or No 44 in terms of noise and disturbance associated to vehicles and pedestrians. The existing access is in use to serve the existing lock up garages and a small rear parking area associated to Wellington Court. It is reasonable that the vehicular activity associated with a single dwelling would be less than associated with the use of the lock up garages. Undue noise and disturbance during construction could be mitigated by a construction method statement which could be secured by condition if the appeal were to be allowed.
22. Having taken all of the above into account, I conclude that the proposal would not have an unacceptable impact upon the living conditions of occupiers of neighbouring properties. The proposal would not, therefore, conflict with Policies HS4 and HS10 of the UDP and the Framework in that respect.

Other Matters

23. The development would make a positive contribution to housing supply and choice and would re-use a previously developed site in an accessible location. There would also be associated benefits including support for local services, temporary economic benefits during construction and additional landscaping. However, the benefits associated with the replacement of garage blocks of a modest height with a single dwelling are limited. Little weight is given to the effect on crime prevention and surveillance given that the site and driveway access are already overlooked.
24. The existing access provides comparable visibility to surrounding driveways. Furthermore, I am satisfied that appropriate turning and parking areas would be capable of being provided within the appeal site. The driveway does not meet the requirements of Policy HS10 of the UDP in terms of a 3m width with amenity strips along its length and does not have passing places. However, that limited conflict with Policy HS10 is not decisive on the outcome of the appeal, given that the vehicle activity associated with a single dwelling would reasonably be less than an access serving 12 lock up garages. Furthermore,

there is no substantive evidence that the loss of the garages would cause undue pressure on parking provision. Although there are some on-street parking restrictions in the vicinity between 7am and 7pm on Mondays to Saturdays, at the time of my visit there was significant availability of space for on-street parking along Wellington Road. The proposal would have no adverse effect on highway and pedestrian safety.

25. The appellant has drawn my attention to pre application discussions having taken place with the Council. However, informal advice provided before an application is offered without prejudice to the outcome of any subsequent application or appeal.

Conclusion

26. I have found no harm to the living conditions of occupiers of neighbouring properties. The proposal also would not harm the character and appearance of the area and would preserve the setting and significance of the Grade II* listed building and Oxton Village Conservation Area. There would also be limited benefits associated to the provision of a single dwelling and no adverse effect on highway and pedestrian safety. However, the absence of harm and limited benefits in those respects does not outweigh the harm arising from the unsatisfactory living environment for future residents which reflects conflict with the development plan and the Framework which is significant and overriding. Consequently, the proposal is not sustainable development as defined by the Framework.
27. For the reasons given above and taking all other matters into consideration, I conclude that this appeal should be dismissed.

Gareth Wildgoose

INSPECTOR