

Appeal Decision

Site visit made on 8 May 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 23rd May 2017

Appeal Ref: APP/W4325/W/17/3168876

Ashton Court, Banks Road, West Kirby CH48 0RJ

- 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 Simon Woodward (Starfish Commercial Ltd) against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/00823, dated 8 June 2016, was refused by notice dated 10 November 2016.
 - The development proposed is 14 No new build residential properties.
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Decision

1. The appeal is dismissed.

Procedural matters

2. A number of concerns have been raised regarding the closure of Ashton Court, the consequent loss of affordable homes for the elderly in the area, and regarding the organisation that was responsible for Ashton Court. However, these are not matters that are before me in this appeal, and in determining the appeal I have only had regard to the planning merits of the case.

Main Issues

3. The main issues in the appeal are:
 - The effect of the proposed development on the living conditions of Nos 3 and 4 Ashton Drive with particular regard to outlook and privacy; and
 - Whether the proposed development would provide adequate living conditions for the future occupiers of plot 14 with particular regard to outlook and security.
 - Whether the proposed development makes adequate provision for affordable housing.

Reasons

Living Conditions – adjacent occupiers

4. The appeal site comprises two plots of land on Banks Road that are either side of the junction with Ashton Drive. Each plot is currently occupied by a 2 storey block of flats with a small grass area surrounding the blocks on all sides. The blocks of flats are vacant and falling into disrepair. The surrounding area is largely residential, although there are a number of commercial uses along
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Banks Road, and the area is close to West Kirby town centre. The proposed development would consist of 13 3-storey houses fronting onto Banks Road, and a 2 storey detached dwelling at the rear of the site.

5. The rear of the sites share a boundary with the rear gardens of No 3 and No 4 Ashton Drive. The existing buildings are located towards the rear of the site, in relatively close proximity to the boundary. Although the proposed dwellings would be 3-storey rather than 2-storey they would be situated towards the front of the site, and so would be considerably further from the common boundary with the adjacent properties. Given this, I am satisfied that they would not have an overbearing impact on these properties, create an unneighbourly sense of enclosure to their rear gardens, or lead to an unacceptable loss of light to the houses or gardens.
6. The main windows on both these adjacent properties are on the front and rear elevations, with the windows on the side elevations facing the site being obscure glazed. Whilst the proposed dwellings would be visible from the windows on the rear elevations of both Nos 3 and 4, and from those on the front elevation of No 3, these views would only be possible at an acute angle, and the proposal would not dominate the outlook from them.
7. The existing buildings had a number of habitable room windows on the rear elevations that overlooked the rear gardens of the adjacent properties. As the windows in the rear elevations of the proposed dwellings would be further away from the common boundary, the overlooking of neighbouring properties would be reduced. Plots 6-9 would have rear facing balconies at second floor level, but these overlook the side elevations, and front gardens of Nos 3 and 4, rather than the more private rear garden area. In addition, whilst the rear windows on the dwelling on plot 7 would be able to see the front elevation of No 3, the distance and acute angle of any views would be sufficient to prevent any unacceptable loss of privacy.
8. Therefore, I consider that the proposed development would not significantly affect the living conditions of the occupiers of Nos 3 and 4 Ashton Drive with particular regard to outlook and privacy. As a result there would be no conflict with policy HS4 of the *Unitary Development Plan for Wirral (adopted February 2000)* (WUDP) which seeks to ensure that, amongst other things, the scale and form of development relates well to surrounding properties, and that adequate separation distances are maintained.
9. I note that there are residential properties above the retail units on the other side on Banks Road. Whilst the proposed dwellings would be closer to these than the existing flats, the distance maintained between these would be the same, and in some cases slightly greater than currently exists between other properties that face each other on this road. As such, I am satisfied that the proposal would not be unacceptable in this regard.
10. Concerns have been raised that the house on plot 14 would lead to the loss of sunlight to No 6 Ashton Drive. Whilst the proposed dwelling would be located to the south of No 6, the separation distance maintained from its blank side elevation and the rear elevation of No 6 would be sufficient to ensure that no unacceptable loss of sunlight would occur, and that it would not have an overbearing impact on the house or garden.

Living Conditions – future occupiers of plot 14

11. Plot 14 is located to the rear of the site behind the rest of the houses that face Banks Road, and would be accessed via the shared access and parking area at the rear of these houses. It would also be behind a sub-station that is situated at the rear of the existing block of flats. The dwelling would be provided with open space to all sides, and a parking space to the front, and as such it would not appear unduly cramped. Whilst some windows on the front elevation would face towards the sub-station, these rooms are all dual aspect and so would have windows on the rear elevation as well. Given this, and the planting proposed around the sub-station, I consider that these rooms would have an adequate outlook.
12. The rear elevations of the dwellings on plots 8-13 all contain a number of habitable room windows that overlook the access and parking area. In the light of this I consider that good natural surveillance of this area would be provided, especially since the main living area of these dwellings would be on the second floor. As a result, although plot 14 itself would not be seen from all the other dwellings, I am satisfied that it would be provided with a safe and secure environment.
13. Consequently, I consider that the proposed development would provide adequate living conditions for the future occupiers of plot 14 with particular regard to outlook and security. Thus it would not be contrary to policy HS4 of the WUDP which, amongst other things, requires that new housing development creates a secure environment and has adequate space for each dwelling.

Affordable Housing

14. The Council have highlighted that in order to accord with Policies HSG2 and HS6 of the WUDP, a contribution of 20% affordable housing is required. The appellant does not dispute that this is appropriate, and has indicated that 3 of the units on the development could be provided as affordable housing for occupation in liaison with a Registered Social Landlord. The Officer's Report indicated that a Section 106 agreement would be needed to secure this. Nevertheless, no executed Section 106 agreement or unilateral undertaken has been put before me to secure this provision. Paragraph 3.3.1 of the *Procedural Guidance - Planning Appeals – England (August 2016)* is clear that any form of planning obligation should be submitted with the appeal documentation.
15. The policies in the WUDP set out the Council's approach to affordable housing and the need for such housing within the borough, and this has been updated with more recent information on need in the local area in the Council's evidence. In the light of this I consider the affordable housing contribution sought by the Council is necessary to the acceptability of the development, is directly related to it, and is fairly related in scale and kind. As such, had a suitable obligation been provided, it would have accorded with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010, and the tests for planning obligations set out in the *National Planning Policy Framework* (the Framework).
16. The appellant has suggested that a condition could be used to secure affordable housing rather than a planning obligation. This could only take the form of a negatively worded condition requiring the later approval of an

arrangement for the necessary provision. The *Planning Practice Guidance* (PPG) advises that negatively worded conditions to secure a Section 106 agreement are unlikely to be appropriate in the vast majority of cases and should only be used in exceptional circumstances, such as more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. This would not apply in the case of this modest development.

17. As highlighted above, the Officer's Report indicated that an obligation should be provided to secure the provision of the affordable housing and in my opinion this would provide the necessary certainty about the tenure, occupancy and timing of the provision. In the light of a recent appeal¹ decision, the Council have indicated that they would be willing to accept the use of a condition. However, that case was different as it was for a scheme that comprised solely affordable housing, including one designed for a disabled resident, and hence may have been seen as exceptional in nature.
18. Consequently, in the absence of an executed Section 106 agreement or a Unilateral Undertaking, I am not satisfied that the proposed development would make adequate provision for affordable housing in accordance with Policies HSG2 and HS6 of the WUDP.

Other Matters

19. Buildings along Banks Road vary greatly in terms of their type, design, scale and materials. However, they generally have a significant scale and mass, and are situated close, or at the back of the pavement, giving a sense of enclosure to the road. In being located close to the front of the site, the proposed development would be much more in keeping than the existing buildings on the site, and given that there are other 3 and 4 storey buildings in the vicinity they would be of an appropriate scale, despite the dwellings on Ashton Drive being 2-storey. Architectural detailing, and variation in materials on the front elevations and also the side elevations of plot 7 and 8, would ensure the development would make a positive contribution to the street scene.
20. In addition, whilst I note the concern about the loss of green space around the development, and about the site being over-developed, the Council have indicated that the footprint of the proposed development is actually smaller than the existing buildings. In addition, green space will still be provided on the site, albeit largely at the rear of the site and in the form of private gardens.
21. A number of concerns have been raised regarding parking and highway safety issues. Due to the proximity of the site to local shops, the sea-front, and the fact that many of the houses in the wider area have no or limited off-road parking, demand for on-street parking in the area is high. In contrast to the current situation which has very little space for parking, the proposal would provide an off-road parking space for each dwelling, and I note that there is no objection to the scheme from the highways authority. In the light of this, and my own observations, I am satisfied that the proposed scheme would not harm highway safety in the area.
22. I note the concern that the development would result in noise disturbance from the parking areas and people, especially as a result of the balconies. Whilst

¹ Appeal Reference APP/W4325/W/15/3004022

noise levels would be increased by some degree by the proposal, given that adequate distances would be maintained between the proposed dwellings and surrounding properties, I consider that the noise levels would continue to be well within the levels normally considered acceptable.

23. It has been put to me that it would be better to retain the existing buildings and bring them back into use, and that there is no need for more housing as there are plenty of empty houses. However, I have not been provided with any firm evidence to show there is an oversupply of housing in the area, and the Framework aims to significantly boost the supply of housing. As a result, I have determined the appeal on the basis of the scheme before me. In addition, there is no persuasive evidence that the proposal would lead to a loss of property values. Whilst the proposal may affect the views from some properties, I have already concluded that the scheme would not be overbearing or be detrimental to the outlook from surrounding properties.
24. It has been suggested that there are not enough school places in the locality. However, I have not been given any detailed evidence which quantifies the extent of any local shortage, or the need for new facilities. As such, this does not represent sufficient reason to refuse the proposal.
25. Whilst I note the concerns regarding the information provided by the Council on the publically available files, this is a matter that would need to be taken up with the Council in the first instance. However, I am satisfied that these matters, and the fact that the evidence does not mention the investigations regarding asbestos in the buildings, have not unduly affected the determination of the application or the appeal in any way.

Conclusion

26. I have found that the proposed development would not harm the living conditions of nearby residents and would provide adequate living conditions for the future occupiers of plot 14, but this does not outweigh the adverse effect that would be caused by not making adequate provision for affordable housing.
27. Consequently, for the reasons set out above, I consider the appeal should be dismissed.

Alison Partington

INSPECTOR