



Appeal Decision

Site visits made on 14 and 22 August 2017

by Alison Partington BA (Hons) MA MRTPI

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

Decision date: 6th September 2017

Appeal Ref: APP/W4325/W/17/3175718

Land at the end of Pipistrelle Rise, Noctorum Dell, Birkenhead CH43 9UL

- 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 Stephen Vaughan (Vaughan Promotions Ltd) against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/16/01205, dated 2 September 2016, was refused by notice dated 15 December 2016.
 - The development proposed is the erection of 3 no. dwellings and associated hard and soft landscaping with access from Pipistrelle Rise.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 no. dwellings and associated hard and soft landscaping with access from Pipistrelle Rise at land at the end of Pipistrelle Rise, Noctorum Dell, Birkenhead CH43 9UL in accordance with the terms of the application, Ref APP/16/01205, dated 2 September 2016, subject to the conditions set out in Annex A.

Procedural Matters

2. A site visit was carried out on 14 August 2017 but due to overgrown vegetation it was not possible to access the lower part of the site where it is proposed to build the houses. As a result a further site visit was carried out on 22 August 2017 after a path to this part of the site had been cleared.
3. It has been suggested that there are legal restrictions that require this ridge of land to be preserved in its current state. Whilst this may have implications for the implementation of any scheme, I have made my decision based only on the planning merits of the case.

Main Issues

4. The main issues in the appeal are the effect of the proposed development on the:
 - Character and appearance of the area; and
 - Living conditions of nearby residents with particular regard to outlook, and noise and disturbance.

Reasons

Character and appearance

5. The appeal site is an area of vacant land within a predominantly residential area. It has an existing access from Pipistrelle Rise, and drops steeply down from this, before levelling off to the rear of the dwellings on Wernbrook Close. The site contains a number of mature trees, located mainly on the sloping land, many of which are protected. When seen from Wernbrook Close in particular the trees provide an attractive backdrop rising above the surrounding houses.
6. It is proposed to construct three detached houses on the lower part of the site closest to Wernbrook Close. These would be cut into the slope so would appear as single storey dwellings from the front, but two storey from the rear which would be visible from Wernbrook Close. The proposal would retain the majority of the trees on the site, with the trees that are to be removed being poor quality ones. Additional planting and a management plan for the retained woodland is also proposed and can be secured by condition.
7. Due to the difference of levels the houses would not be visible from Pipistrelle Rise. Whilst they would be visible from Wernbrook Close, they would appear as a natural extension to the existing stepped ridge line of dwellings on this road, and in the area generally, that results from the local topography. Moreover, as the trees are located on the higher land, these would still be clearly visible above the proposed houses. As such, the contribution the trees make to the character and appearance of the area would not be significantly altered.
8. Whilst the access drive to the houses would drop down the hill side, the tree cover is sufficient to ensure that it would not be an unduly dominant feature. In addition, the parking and turning area for the houses would largely be screened from view by the houses themselves, thus limiting their visual impact. The Arboricultural Impact Assessment concludes that, subject to various protective measures that can be secured by condition, the development would be able to take place without having a detrimental impact on the trees being retained.
9. The appeal site lies within the area covered by *Supplementary Planning Guidance Note 2 Design and Density Control Guidelines : Noctorum Ridge* (SPG). It is disputed by the parties whether the site lies within Zone 1, where density is restricted to 10 dwellings per hectare, or in an unnumbered zone which is not subject to specific controls. Whilst it would appear from the plan accompanying the SPG that the site is within an unnumbered zone, even if within Zone 1, the density of the development would be within the guidelines.
10. Furthermore, as the houses would be provided with open space both to the sides and the rear, the development would not appear unduly cramped or out of keeping with the surrounding residential area.
11. All in all, I consider that the proposed development would not have an unacceptable impact on the character and appearance of the area. Consequently, it would not conflict with Policies HS4 and GR7 of the *Unitary Development Plan for Wirral (adopted February 2000)* (UDP) which, amongst other things, seek to ensure that new housing development is not detrimental to the character of the area, and relates well to surrounding properties, and

that development preserves the wooded character of sites, and provides protection to the trees of greatest visual or wildlife value.

Living Conditions

12. Due to the topography the appeal site is slightly higher than the nearest properties on Wernbrook Close. The Council have indicated that although Policy HS4 of the UDP does not set out separation distances they generally expect 21m between facing habitable room windows, and 14m between a habitable room window and a blank gable wall. However, where there is a difference in levels, for every 1m difference in ridge height the separation distance should be increased by 2m.
13. Whilst the Council have highlighted the difference in levels between the appeal site and the adjacent houses on Wernbrook Close, they have not indicated the minimum separation distances they would expect to be provided in this case. In addition, I have been provided with various slightly differing figures for the distances of the proposed dwellings to the common boundary with Nos 15 and 18 Wernbrook Close and the rear elevations of these bungalows. Given this, I have determined the appeal on the basis of the plans before me, and what I observed on my site visits.
14. The proposed properties would be L – shaped, with a blank gable wall being closest to the boundaries of Nos 15 and 18 Wernbrook Close. Due to the rising topography, the outlook from the main windows on the rear elevations of these dwellings is largely that of their own rear gardens which step up from the building. The proposed houses would be visible from the rear windows and gardens of these bungalows. However, I am satisfied that the distance they would maintain to the common boundary and the fact that they are orientated such that they do not directly face the existing dwellings on Wernbrook Close, would be sufficient to ensure that they do not have an overbearing impact on, or create an unneighbourly sense of enclosure to, the occupiers of Nos 15 and 18.
15. Although the windows at first floor level would not face towards the dwellings on Wernbrook Close, there are some at ground floor that do. However these are on the part of the rear elevation furthest away from the adjacent bungalows. Given the separation distance and the existing and proposed boundary treatments, they would not cause a loss of privacy to these neighbouring dwellings.
16. The proposed houses would be accessed from Pipistrelle Rise. Whilst this would increase traffic movements along this road, I am satisfied that the additional traffic movements associated with three dwellings would be limited, and would not cause undue noise and disturbance for occupiers of houses along this road. In addition, as the parking and turning areas would be located to the front of the dwellings, some distance from any of the immediately surrounding houses, the use of this area would not cause unacceptable noise and disturbance to the occupiers of these houses either.
17. Whilst at night headlights of cars may be glimpsed when cars are using the access road, the orientation of the access road, and the associated parking areas, and the distance to other houses would ensure the lights would not adversely impact the living conditions of nearby residents.

18. Overall, I consider that the proposed development would not adversely affect the living conditions of nearby residents with particular regard to outlook, and noise and disturbance. Accordingly, it would not be contrary to Policy HS4 of the UDP which, amongst other things, requires that new housing developments maintain adequate distances to other dwellings.

Other Matters

19. Whilst I note the concerns raised by local residents regarding flooding and drainage issues, the Lead Local Flood Authority have indicated that the Drainage Design Statement submitted with the proposal is acceptable. Given this, I am satisfied that the proposed development would not have any detrimental impact on flooding or drainage in the area. In addition, although in parts the site is steeply sloping, there is no persuasive evidence to indicate that the site cannot be safely accessed or developed.
20. It has been argued that the proposal would be detrimental to wildlife. However, the Preliminary Ecological Appraisal submitted with the application indicates that subject to various mitigation measures, the development would be unlikely to have a detrimental impact on wildlife in the area. A conclusion with which the Council's specialist advisors agree. In the light of this, and my own observations on site, I am satisfied that the appeal scheme would not have a negative impact on wildlife.
21. Concerns have been raised regarding the adequacy of Pipistrelle Rise as the access to the site. However, I note that, subject to conditions, there is no objection to the proposed development from the Highway Engineer. In the light of this, and observations made during my site visit, I am satisfied that the proposed scheme would not have an unacceptable impact on highway and pedestrian safety in the area. Moreover, any disturbance during construction would only be for a temporary period.

Conclusion and Conditions

22. For the reasons set out above, I conclude the appeal should be allowed.
23. In addition to the standard implementation condition it is necessary, for the avoidance of doubt, to define the plans with which the scheme should accord. In the interests of the character and appearance of the area conditions are required to control the external appearance of the dwelling, the landscaping of the site, a woodland management plan and the protection of the trees to be retained on the site. For the same reason, and also to protect the living conditions of nearby residents conditions are required to control the finished floor levels and height of the dwellings, to remove certain permitted development rights, and to control the means of enclosure to be used on the site. However, I have amended the wording of the conditions suggested by the Council relating to the protection of the retained trees, as they were unnecessarily prescriptive and difficult to enforce.
24. For ecological reasons conditions are required to protect and ensure adequate mitigation is carried out for protected species, and to ensure any Japanese Knotweed on the site is adequately dealt with. In the interests of highway and pedestrian safety a condition controlling the means of access is necessary. To ensure the adequate drainage of the site a condition is required to secure the provision and long term maintenance of the sustainable drainage system,

although I have altered the Council' suggested wording, as the precise mechanism to secure the arrangements do not need to be specified in the condition.

Alison Partington

INSPECTOR

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three 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 Drawing No 12-113-01 Rev B; Proposed Pipistrelle Rise Site Entrance Drawing No 12-113-01 Rev A; Existing Site Plan Drawing No 12-113-02 Rev *; Existing and Proposed Site Sections Drawing No 12-113-05 Rev C; Proposed Site Plan Drawing No 12-113-100 Rev C; House Type A Proposed Plans and Elevations Drawing No 12-113-120 Rev A; House Type B proposed Plans and Elevations Drawing No 12-113-121 Rev X; Topographical Survey Drawing No SSL:16848:200:1:1; Drainage Layout Drawing No 1070-501 Rev P2; Drainage Layout Network Only Drawing No 1070-501 Rev P2; and Drainage Layout Impermeable Areas Drawing No 1070-502 Rev P2.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces (including roofing and windows) of the development hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved samples.
- 4) No development shall commence until a Site Waste Management Plan, confirming how demolition and construction waste will be recovered and reused on the site or at other sites, has been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved plan.
- 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor, eaves and ridge of the proposed buildings, in relation to existing ground levels and the existing ground levels, eaves and ridge height of a neighbouring property have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no garages, outbuildings or enclosure shall be erected other than those expressly authorised by this permission.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwellings hereby permitted, including any additions or alterations to the roof.
- 8) No development shall commence until a scheme of landscaping has been submitted to, and approved in writing by, the local planning authority. The scheme shall include suitable landscaping incorporating species that provide shelter. The landscaping shall be completed in the first available planting season following the completion of the development of the hereby approved, or the occupation of the first dwelling, whichever is

sooner, and shall thereafter be maintained for a period of 5 years from the date of planting. During this period any trees or shrubs which die, or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted.

- 9) Notwithstanding the details provided, no development shall take place until full details of all fencing, gateways and means of enclosure have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved details and completed prior to the occupation of the first dwelling.
- 10) In order to protect habitats of special local importance for nature conservation:
 - construction work shall only take place between 8am and 6pm;
 - any holes or trenches left open overnight must have a means of escape provided;
 - all construction materials, especially those containing lime, must be stored so that badgers cannot access them, and to the front of the house, not the rear; and
 - when fencing to the garden is installed, access shall be left for the badgers to move around between gardens.
- 11) No development shall take place until a woodland management for a minimum of 5 years and that includes long term objectives, management responsibilities and maintenance schedules, has been submitted to, and approved in writing by, the local planning authority. Thereafter the woodland management plan shall be carried out in accordance as approved on commencement of the development hereby permitted.
- 12) No tree, shrub or hedgerow felling, or any vegetation management and/or cutting operations should take place during the period 1st March to 31st August inclusive.
- 13) No development shall take place until a scheme for the provision of bird and bat boxes within the development has been submitted to, and approved in writing by, the local planning authority. The boxes shall be provided in accordance with a timetable that shall be included within the agreed scheme.
- 14) Prior to the occupation of the first dwelling hereby permitted, a "lighting design strategy for biodiversity" for the developed area shall be submitted to, and approved in writing by, the local planning authority. The strategy shall:
 - identify those areas/features on site that are particularly sensitive for bats, and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and
 - show how and where external lighting will be installed (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.All external lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be

maintained thereafter in accordance with the strategy. Under no circumstances should any other external lighting be installed.

- 15) No development shall take place until a scheme for the eradication of Japanese Knotweed on the site has been submitted to, and approved in writing by, the local planning authority. The scheme shall include a timetable for the implementation, and clearly identify the extent of Japanese Knotweed on the site on a scaled plan. Prior to the commencement of development the approved scheme shall be completed and a validation report confirming the remediation treatment has been carried out and that the site is free of Knotweed shall be submitted to, and approved in writing by, the local planning authority.
- 16) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to, and approved in writing by, the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

[In this and condition 18 "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

The tree protection plan shall include:

- a. the details of each retained tree as required at section. 4.4 of BS5837 in a separate schedule;
- b. a plan or relevant drawings, including proposed site layout plans, to a scale and level of accuracy appropriate to the proposal that shows constraints posed by existing trees (section 5.2 BS 5837), the position, crown spread and Root Protection Area (section 4.6 of BS5837) of every retained tree on site and on neighbouring or nearby ground to the site in relation to the approved plans and particulars. The positions of all trees to be removed shall be indicated on this plan;
- c. a schedule of tree works for all the retained trees in paragraphs (a) and (b) above, specifying pruning and other remedial or preventative work, whether for physiological, hazard abatement, aesthetic or operational reasons. All tree works shall be carried out in accordance with BS3998, 2010, Tree work- Recommendations; and
- d. written proof of the credentials of the arboricultural contractor authorised to carry out the scheduled tree works.

The Arboricultural Method Statement shall include:

- a. the details and positions (shown on the plan at paragraph (a) above) of the Tree Protection Barriers (section 6.2 of BS5837), identified separately where required for different phases of construction work (e.g. demolition, construction, hard landscaping). The Tree Protection Barriers must be erected prior to each construction phase commencing and remain in place, and undamaged for the duration of that phase. No works shall take place on the next phase until the Tree Protection Barriers are repositioned for that phase;

- b. the details and positions (shown on the plan at paragraph (a) above) of the Ground Protection Zones (para 6.2.3 of BS5837);
 - c. the details and positions (shown on the plan at paragraph (a) above) of the Construction Exclusion Zones (section 6 of BS5837);
 - d. the details and positions (shown on the plan at paragraph (a) above) of the underground service runs (para 5.5.6 of BS5837);
 - e. the details of any changes in levels or the position of any proposed excavations within 5 metres of the Root Protection Area (para. 5.5.6 of BS5837) of any retained tree, including those on neighbouring or nearby ground;
 - f. the details of any special engineering required to accommodate the protection of retained trees (section 7 of BS5837), (e.g. in connection with foundations, bridging, water features, surfacing);
 - g. the details of the working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the RPAs of retained trees (section 7 BS 5837);
 - h. the details of the working methods to be employed for the installation of drives and paths within the RPAs of retained trees in accordance with the principles of "No-Dig" construction (section 7.4 BS 5837);
 - i. the details of the working methods to be employed with regard to the access for and use of heavy, large, difficult to manoeuvre plant (including cranes and their loads, dredging machinery, concrete pumps, piling rigs, etc) on site;
 - j. the details of the working methods to be employed with regard to site logistics and storage, including an allowance for slopes, water courses and enclosures, with particular regard to ground compaction and phytotoxicity;
 - k. the details of the method to be employed for the stationing, use and removal of site cabins within any RPA (para. 6.2.2.3 of BS5837); and
 - l. the details of tree protection measures for site works, landscaping operations and management (section 8 of BS5837);
 - m. the timing of the various phases of the works or development in the context of the tree protection measures;
- 17) No works or development shall take place until a scheme of supervision for the arboricultural protection measures required by condition 16 has been submitted to, and approved in writing by, the local planning authority. This scheme shall be appropriate to the scale and duration of the works and shall include details of:
- a. induction of staff in awareness of arboricultural matters;
 - b. identification of individuals and their responsibilities;
 - c. statement of delegated powers;
 - d. timing and methods of site visiting and record keeping, including updates;
 - e. procedures for dealing with variations and incidents;
 - f. the scheme of supervision will be administered by a qualified arboriculturist instructed by the applicant and approved in writing by the local planning authority.
- The scheme of supervision shall be implemented as approved.
- 18) The following activities must not be carried out under any circumstances:
- a. No shall fires shall be lit within 20metres of the nearest point of the canopy of any retained tree;

- b. Storage of removed topsoil should not take place within the Root Protection Area of any retained tree or those parts of the site allocated for soft landscaping;
 - c. No equipment, signage, machinery or structure shall be attached to or supported by a retained tree;
 - d. Storage of builders debris or other materials within the Root Protection Area of any retained tree;
 - e. No mixing of cement or use of other contaminating materials or substances shall take place within 10 metres of the nearest point of the canopy of any retained tree;
 - f. No excavations, trenches, stripping, cultivation with a rotavator or changes in surface level shall occur within the Root Protection Area of any retained tree; and
 - g. No alterations or variations to the approved works or tree protection schemes shall be made without prior written consent of the local planning authority
- 19) No development shall take place until details of the means of access to the site from Pipistrelle Rise, including dropped kerbs and a scheme of works to secure the relocation of the streetlight has been submitted to, and approved in writing by, the local planning authority. The works shall be completed in full in accordance with the approved details prior the first occupation of any dwelling hereby permitted, and shall be retained as such thereafter.
- 20) Prior to the first occupation of any dwelling hereby permitted, details of the sheds shown on Drawing No 12-113-100 Rev C shall be submitted to, and approved in writing by, the local planning authority.
- 21) No development shall take place until details of the implementation, maintenance, and management of the sustainable drainage scheme have been submitted to, and approved in writing by, the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. Those details shall include:
- a timetable for its implementation; and
 - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.