
Appeal Decision

Site visit made on 16 July 2019

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/W4325/W/19/3225539

Land to rear of 5 Arno Road, Oxton CH43 5SL

- 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 O'Hara against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/18/00957, dated 20 July 2018, was refused by notice dated 30 January 2019.
 - The development proposed is the erection of a single storey new build residential unit.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The names provided on the planning application and appeal forms differ, but the appellant has confirmed that the appeal has been made by the person named above. For completeness, I have used the appellant's full name.

Main Issues

3. The main issues are the effect of the proposed development on: (i) the character and appearance of the area; (ii) the living conditions of the occupants of 40 and 40a Nursery Close, with regards to overbearingness; (iii) the public right of way network; and (iv) the living conditions of future occupants of the dwelling, with regards to outlook.

Reasons

Character and appearance

4. The appeal site is within a Primary Residential Area. The site is predominately grassed, but there is a tarmac footpath which extends through its centre. The path provides a link between the residential streets of Arno Road and Nursery Close. Grass, vegetation and mature trees are to either side of the path; the latter are covered by a Tree Preservation Order. As such, the site provides a degree of separation between the residential dwellings on Nursery Close, Arno Road and Woodchurch Road which border the site. They are generally two storeys high with a pitched roof and set within landscaped plots with gardens to the front and rear. Timber fencing and brick walls line the east and west boundaries of the site.
5. A contemporary single storey design with a flat roof is proposed in response to the site's irregular shape and its specific circumstances. That said, the site is

constrained in its size and shape. The proposed dwelling would be sited towards the properties on Nursery Close where the plot is at its widest. Even so, the dwelling would be close to both flank boundaries and the rear boundary of No 5. The proposed rear garden and driveway would, in themselves, relate to the pattern of development found on Arno Road. However, even with the modest front garden/terrace, the siting of the proposed dwelling would bear no relationship with the pattern of development found on Arno Road or Nursery Close. While the proposed dwelling would be set back from both roads, and fairly well concealed from them, glimpsed views of the proposal would be available from both roads. I recognise the appellant's efforts to provide landscaping and appropriate boundary treatments, but the proposed dwelling, even of the scale proposed, would result in a cramped form of development that would appear to be an overdevelopment of the plot. Hence, there would be a detrimental change in the character of the area.

6. Whilst an appeal has previously been dismissed for a new dwelling on the site¹. I have considered the appeal scheme on its own planning merits. Despite the proposed modern construction techniques, use of materials and potential to achieve high levels of energy efficiency, I conclude, on this issue, that the proposed development would have a substantial effect on the character and appearance of the area. The proposal would not therefore accord with saved policies HS4 and HS10 of the Wirral Unitary Development Plan (UDP); which jointly seek, among other matters, development to not result in a detrimental change in the character of the area.

Living conditions of neighbouring occupants

7. To the south-west of the site are the flats of Nos 40 and 40a, whilst on the other side of the path is Nos 38/38a. Each flat is part of a building which has the appearance of a semi-detached pairing. The flank elevation of No 40/40a has a ground floor kitchen window (No 40) and a first-floor window (No 40a) directly above. Despite the hedge in front of the kitchen, both windows have an outlook across the rear of the site.
8. The proposed dwelling would be around 2.5 metres from the rear garden and No 40's kitchen window. Changes have been made to the scale of the proposal, but the dwelling would rise above the height of the hedge and wall. The built form would be close to the kitchen window, which is the sole source of outlook from this room. Consequently, the proposal would lead to an overbearing relationship as it would lead to a sense of enclosure, which would harm the living conditions of the occupants in respect of the kitchen window. Conversely no harm would arise in respect of the first-floor window as the occupants would peer above the proposed dwelling and its green roof.
9. I conclude, on this issue, that the proposed development would result in significant harm to the living conditions of the occupants of No 40, with regards to overbearingness. The proposal would not accord with saved UDP policies HS4 and HS10; which jointly seek, among other things, backland development to not result in an undue sense of enclosure and proposal's to be of a scale which relates well to surrounding property.

Public right of way

10. I acknowledge that the site may be privately owned. Nevertheless, the Council

¹ Appeal Decision Ref: APP/W4235/A/13/2194158

say that the path extending through the middle of the site is a public right of way due to its use over a considerable period of time. Between the Council and residents, the path is said to have been used by the public for around 30 years. The Council's evidence may not be extensive, but the appellant has not produced any substantive evidence to dispute this. As such, I have considered the appeal based on the path being a public right of way.

11. The appeal scheme would result in the loss of this public right of way, which I understand to be well used by the local community as it provides a convenient lit route between Arno Road and Nursery Close. There is no information before me showing how this footpath would be diverted. Therefore, its loss would be a detrimental change to the character and function of the area. I note the appellant's points about maintenance responsibilities and liability, but these are matters outside the scope of this appeal.
12. I conclude, on this issue, that the loss of the public right of way would lead to a detrimental change in the character of the area which would be contrary to saved UDP policies HS4 and HS10 for this reason.

Living conditions of future occupants

13. Due to the bespoke design proposed, the appellant submits that the layout, elevations and fenestration pattern have been carefully considered so that each habitable room enjoys sufficient natural daylight and ventilation whilst preserving the privacy of neighbouring occupants.
14. The proposed bedrooms, living room and the kitchen/dining room would be served by tall windows that would provide an outlook of the proposed front and rear gardens. The Council say that this outlook would be limited and mainly of other parts of the proposed dwelling.
15. The kitchen/dining room would have an outlook into the long rear garden. This would not be any different to the outlook experienced by adjoining occupants. The outlook from the second bedroom would be more constrained due to the proposed layout, and the main bedroom and living room would have windows that face each other. Nevertheless, the living room would have a further window which would provide an outlook into the front garden. Nor would the outlook from the main bedroom be oppressive given that the proposed layout would allow adequate views into the front garden, which would be of a fair size.
16. On this issue, I conclude, that the proposal would not harm the living conditions of future occupants of the dwelling. Hence, the proposal would, in this regard, accord with saved UDP Policy HS4 as an adequate separation would be achieved. The Council refer to saved UDP Policy HS10 on this issue, but this policy is only concerned with the effect of development on adjoining residents living conditions and not future occupants. Thus, it is not relevant.

Other matters

17. Reference is made to the site being subject to littering, being overgrown and anti-social behaviour, but there is no substantive evidence of these before me. There was no evidence of littering on the site during my visit and I noted that the site appeared to be managed, with the grass recently cut. I also note concerns about public safety and the ability of individuals to potentially gain unlawful access to neighbouring properties from the site, but there is no substantive evidence before me to suggest that this is an issue. I also

observed that there is a lighting column next to the path.

18. I recognise that the appellant has made efforts to engage with the Council with a view to overcoming their concerns about developing the site. While, the appellant may not have received the response that they were expecting and they are willing to amend their proposal, this does not alter or outweigh my findings on the proposal before me, which I have considered on its merits.

Conclusion

19. The proposal would contribute towards the provision of housing in an accessible location which would be ideal for different groups in the community. However, this does not, along with my findings about future occupants living conditions, outweigh my findings in respect of character and appearance, the living conditions of neighbouring occupants and the public right of way.
20. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR