



Appeal Decision

Site visit made on 11 June 2019

by J Williamson BSc (Hons), MPlan, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/W4325/W/19/3225344

18 Oak Avenue, Upton CH49 4NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs Anthony Oakley against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/18/01574, dated 20 November 2018, was refused by notice dated 25 January 2019.
 - The development proposed is erection of 5 detached dwellings.
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Decision

1. The appeal is allowed. Outline planning permission, with all matters reserved, is granted for the erection of 5 detached dwellings, at 18 Oak Avenue, Upton CH49 4NL, in accordance with the terms of the application, Ref: OUT/18/01574, dated 20 November 2018, subject to the following conditions:
 - i) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - ii) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
 - iii) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
 - iv) The development hereby permitted relates to the site identified on the Location Plan on approved drawing number 2018 05 2001 Rev 04.
 - v) Prior to commencement of development details of a noise mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be confined to mitigating against noise that would affect habitable room windows located on the elevation of the host property, ie 18 Oak Avenue, that the access road passes. The approved details shall be fully implemented prior to the dwellings hereby permitted being occupied and retained thereafter for the lifetime of the development.

Application for costs

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

Procedural Matters

3. The planning application was submitted in outline with all detailed matters reserved for a subsequent approval. Existing and proposed site plans and elevation and floor plans of typical house types accompanied the outline planning application. I have taken these into account in so far as establishing whether it would be possible, in principle, to erect 5 dwellings on the site.
4. The Council was asked to provide a copy of the saving direction for policies in the Wirral Metropolitan Borough Council Unitary Development Plan (UDP) and evidence of a formal consultation/adoption process having been undertaken in respect of Supplementary Planning Guidance Note 10 – Backland Development (SPG Note 10). The Council provided details of the saving direction. However, it has not been able to provide evidence of any consultation/adoption process of SPG Note 10. The SPG is dated 7/94, 6 years before the adoption of the 2000 UDP, and it refers to policy HS7 of the UDP, a policy that pre-dates the 2000 UDP.

Main Issue

5. The appellant maintains that the reason for refusal is not clear or precise; however, upon reading the Officer report, it appears that the Council is concerned about the potential effect of the proposed development on the living conditions of occupiers of the host dwelling, 18 Oak Avenue, in terms of noise. Therefore, I consider the main issue to be the effect of the proposed development on the living conditions of the occupiers of No. 18 Oak Avenue with particular regard to noise disturbance resulting from traffic generated from the proposal.

Reasons

6. The appeal site is a rectangular piece of land with a two-storey detached dwelling and numerous outbuildings within it. The dwelling is located at one end of the site, the outbuildings extend into it. There is a brook and fields beyond the boundary at the other end of the site. The site sits between 2 rows of residential properties, the rear elevations of which face the site and their garden boundaries abut it. There are 2 existing access points off Oak Avenue serving the host property. The site is located within a residential area, characterised by detached properties of varying sizes, a mix of single-storey, one-and-a-half-storey and two-storey properties, of varying architectural styles and constructed of a mixed pallet of external materials.
7. The indicative plans illustrate where an access could be taken from (ie one of the existing access points) and where 5 dwellings could potentially be sited. A porch extension on the side of the host dwelling and all existing outbuildings within the site would be demolished to create a route to the development site.
8. Policy HS10 of the UDP outlines the criteria which is to be satisfied for backland development proposals of between 1 and 3 dwellings. As the proposal is for 5 dwellings, I consider that Policy HS10 is not applicable. For the same reason

and reasons outlined above, I attach little weight to the SPG Note. Policy HS4 of the UDP outlines criteria to be satisfied for new housing development in primarily residential areas. The site is within a primary residential area and is therefore acceptable in principle.

9. Bullet point 'f' of paragraph 127 of the Framework requires, amongst other things, developments to create places that provide a high standard of amenity for existing and future users. Whilst the Council has offered no evidence in the form of noise surveys, given the close proximity of the indicative access route to habitable room windows on the northern facing elevation of the property I recognise that the number of vehicle trips likely to be associated with the proposed development would be likely to generate additional noise levels that would have the potential to unacceptably harm living conditions of occupiers.
10. I acknowledge that the indicative plans show a 1.8m acoustic fence at the side of the access, close to the northern facing elevation of No. 18. Given that there are habitable room windows at ground and first-floor levels on the property, there is no evidence to confirm that an acoustic fence alone, as indicated, would satisfactorily overcome the harm I have identified. However, I consider it possible that unacceptable harm from noise disturbance could be overcome with an appropriate noise mitigation scheme, which may simply be an acoustic fence, or it may include additional measures, that could be secured via a condition. As such, I conclude that the proposal would accord with the Framework.

Other Matters

11. I note concerns raised by third parties regarding the effect of the proposal on the living conditions of occupants of surrounding properties, highway safety and refuse storage and collection. However, the Council has not raised any concerns regarding these matters, and I have no reason to disagree with the Council in this regard.

Conditions

12. The Council was asked to provide suggested conditions, should the appeal be allowed. Some suggested conditions were provided, and the appellant was given the opportunity to comment on them.
13. The conditions suggested by the Council dealt with timescale of a reserved matters application & commencement of development and a request for details of an acoustic fence to be submitted for approval. I have attached appropriate conditions pertaining to the timing of reserved matters applications and subsequent implementation of development in order to define the reserved matters details that are required and to ensure a reserved matters application and commencement of development are undertaken in a timely manner.
14. I have attached a condition referring to the site location plan to specify the site to which the permission relates to provide certainty.
15. The noise mitigation condition attached is broader than the condition suggested by the Council. The Council and the appellant were given the opportunity to comment on this condition. The Council expressed concerns due to a) not being clear what other noise mitigation measures could be implemented (as it is understood 18 Oak Avenue already has double-glazed windows), b) the

enforceability of such a condition and c) the possibility of the condition affecting the deliverability of the scheme.

16. The condition as worded has been attached taking account of the following: i) the application is outline with all matters reserved, and although an access is indicated passing the northern side of 18 Oak Avenue, the developer could submit access details that differ to those indicated, which may result in the acoustic fence as illustrated not being relevant; ii) the condition suggested by the Council seeks to protect the living conditions of the occupants of the host dwelling, the condition attached achieves this whilst also not fettering the decision-making of a future reserved matters application iii) the appellant has stated that he is happy to accept the condition and hasn't expressed any concerns regarding deliverability of the scheme; iv) if potential harm is identified from a proposed development consideration has to be given to the possibility of such harm being overcome by a condition(s); harm has been identified and I consider the harm could be overcome with the condition attached, which I consider satisfies the 6 tests identified in the Planning Practice Guidance, which includes it being reasonable, necessary and enforceable.

Planning Balance and Conclusion

17. The proposal would not have a material effect on the living conditions of adjacent residents. It would comply with the development plan policies that have been drawn to my attention and the Framework. For the reasons outlined above I conclude the appeal should be allowed, subject to the conditions listed above.

J Williamson
INSPECTOR