



Appeal Decision

Hearing Held on 15 October 2019

Site visit made on 15 October 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/V4250/W/19/3231966

Mr Earls Ex British Legion, Earl Street, Higher Ince, Wigan, Greater Manchester WN2 2EN

- 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 Kenneth Holt of Classic Contractors against the decision of Wigan Metropolitan Borough Council.
 - The application Ref A/18/85602/MAJOR, dated 18 May 2018, was refused by notice dated 5 March 2019.
 - The development proposed is 'to demolish an existing part single, part two storey detached vacant and in part derelict building together with a separate enclosed outbuilding, a rear beer garden/smoking area, large car park provision and bowling green facilities, which have fallen into disrepair, and replace with 38 affordable dwelling units comprising of 15 x 2 bed townhouses, 5 x 3 bed townhouses, 8 x 2 bed semi-detached houses and 10 x 3 bed semi-detached houses'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the description the Council has used on the decision notice I have taken the description of the development from the application form, since I have no evidence that this change was agreed by the appellant.
3. The appeal site comprises a social club, car park, bowling green and a gym. It was disputed at the hearing whether the gym building has planning permission, or the use of the gym is lawful. The Council confirmed that the gym facilities have not been investigated to date and that it would be open to the occupant of the site to apply for a certificate of lawfulness. Since I cannot be sure that the gym is lawful, I have considered the appeal on the basis of the remaining facilities, namely the social club and bowling green.
4. Although not identified as a reason for refusal, the Council confirmed within its officer report that the scale of development would normally give rise to financial contributions towards public open space and play facilities and a requirement for 25% of the dwellings to be affordable, matters which would ordinarily be secured by a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990. Two draft planning obligations were submitted to the hearing. The hearing was adjourned following my site visit to allow completed obligations to be submitted. Documentation was received on 23 October 2019 and the hearing was subsequently closed in writing. Since the purpose of the obligation would be to provide the above alleged benefits, I

have identified this as a main issue. The main parties were given the opportunity to comment on this during the hearing.

Main Issues

5. Given the above, the main issues of the appeal are:

- The effect of the proposal on sports and community facility provision in the area; and
- Whether the proposed development would make suitable contribution for affordable housing and open space.

Reasons

Sports and community facility provision

6. The appeal site comprises a social club, car park, bowling green and a gym. As set out above, the gym does not form part of my consideration in this matter. The site is located in a generally residential area and is adjacent to the Ince Rosebridge Sports and Community Club. The site has been subject to an arson attack and, it was evident during my site visit that the main building has been subject to fire damage. Nevertheless, the bowling green appeared in a suitable condition to be playable and the building had power, with certain sections appearing capable of use.
7. Policy CP2 of the Wigan Local Plan Core Strategy Development Plan Document (DPD)(2013) seeks to protect and enhance valuable open spaces, sporting and recreational facilities by determining proposals for development that would result in the loss of open space or land or buildings in use or most recently in use for sport and recreation, in accordance with national planning policy. Criterion 8 of the policy sets out that the Council will maintain and improve other opportunities for sport and recreation activities, notably provision for non pitch sports, including bowls, amongst other things.
8. Policy CP3 of the DPD sets out that the Council will only allow development that would result in the loss of a community facility when either 1) It can be demonstrated that there is no longer a need for the facility; or 2) An alternative facility of equivalent or better standard will be provided, either on-site or elsewhere, in accordance with other provisions of the policy.
9. Paragraph 97 of the National Planning Policy Framework (the 'Framework') (2019) states that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless: a) an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or b) the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
10. Whilst neither the Framework, nor Policies CP2 and CP3 set out in detail what evidence would be required to demonstrate whether a facility is surplus to requirements, given the different types of facility which would fall to be considered by these policies, it is reasonable to consider proposals on a case by case basis.
11. It was confirmed at the hearing that it is the appellant's position that the buildings and land are surplus to requirements and therefore would meet

- criterion a) of the Framework, as well as criterion 1 of Policy CP3. The appellant has drawn my attention to correspondence from Sport England and the Crown Green Bowling Association. I accept that the health of a bowls club can be as important, if not more so, as the number of clubs in an area. However, I have no substantive evidence that the bowling club at Mr Earls is struggling in terms of its playing membership. The club has approximately 40 members and is active in two different leagues.
12. Although the bowling green has suffered damage, I understand that the bowling green is still used. I am also advised that the club has two snooker teams, which the parties agreed at the hearing should be considered against Policy CP2. I note the concerns raised by the appellant regarding the financial position of the operator of the club and acknowledge that the club and grounds appear in a state of disrepair, however, this does not mean that there is no longer a need for the facility. From the evidence before me¹, it would appear that it is intended to repair the damage to the main building.
 13. Furthermore, a petition submitted to the Council opposing the proposed development stated that, amongst other things, Mr Earls is still a fully functional clubhouse and is home to a thriving bowling section. This suggests that there is still demand in the area for the facilities. Given the above, it has not been demonstrated that there is no longer a need for the facility or that the buildings and land are surplus to requirements.
 14. The appellant has drawn my attention to a decision made by the local authority in relation to Higher Ince Social Club, Anderton Street, Higher Ince, application reference A/16/81943/Major. I do not have full details of the application before me and cannot therefore be sure that the two schemes are comparable. Furthermore, part of the justification for the scheme was that alternative provision, which included the appeal site, Mr Earls, was available within 1 mile of the application site. Therefore, the Council was not unreasonable in reaching a different conclusion in this instance.
 15. Notwithstanding the appellant's contention that there is no need for the facilities, the appellant has offered to upgrade facilities at Whelley Labour Club, which is in a different ward to the appeal site. Although access to the appeal site is not restricted to those people who live in the immediate area, given the nature of facilities provided and the availability of facilities elsewhere, I consider it highly likely that users of the facilities are from the local area.
 16. At the hearing the Council raised the importance of the location of the facilities in terms of team identity, a concern that I share, particularly given the physical separation of the two areas by the canal which is likely to reinforce their separate identities. However, while Whelley Labour Club is within approximately 1 mile of the appeal site, I consider it unlikely that people with limited mobility or the elderly would choose to walk to use the facilities. As such, I do not consider Whelley Labour Club is in a suitable location for the purposes of meeting criterion b) of paragraph 97 of the Framework.
 17. Although the bowling green at Whelley Labour Club is not currently used, the Council advise that this is due to an increase in fees rather than the condition of the Green. As such, it has not been demonstrated that the proposed works would increase capacity at the Club and significantly, I have not been provided

¹ Council's Statement of Case: Appendix G and Appendix H: Specification of works

- with a completed obligation which would secure improvements at the Whelley Labour Club.
18. The documents received to date, which are in draft form, set out that 'Bowling Green Works' will be undertaken to the satisfaction of the Council prior to commencement of development; and that the appellant will maintain the Bowling Green at Whelley Labour Club for a period of fourteen (14) years following completion of the 'Bowling Green Works' to ensure that the Bowling Green is of a standard for the team to play and compete upon.
 19. Even if a completed obligation had been provided through the appeal, it has not been demonstrated that it would be possible for the appellant to carry out the improvements proposed since the appellant has no control over the Whelley Labour Club. Furthermore, whilst it may be the appellant's intention to secure an agreement to carry out the works, this has not been provided as part of the appeal submission.
 20. Whilst there may be other social clubs and bowling greens in the area, I have no substantive evidence before me that the provision available has capacity to accommodate demand which would be generated by the loss of the appeal site, that the facilities identified by the appellant would be comparable to the appeal site or would be appropriately located so as to serve the same community as is served by the appeal site. It has therefore not been demonstrated that the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
 21. Thus, for the reasons given above, the appeal would result in the loss of a sports and community facility which would be contrary to Policies CP2 and CP3 of the DPD and Paragraph 97 of the Framework, the requirements of which are set out above.

Affordable Housing and Open Space Contributions

22. Policy CP 18 of the DPD sets out the requirement for development to fund or contribute to off-site works or programmes where required and Policy CP6 of the DPD seeks to secure the provision of 25% affordable housing on all sites consisting of 10 dwellings or more where this is viable. Although the appeal site comprises brownfield land, the appellant has submitted the appeal scheme on the basis of 100% affordable housing provision. The Affordable Housing Supplementary Planning Document (AHSPD)(2013) sets out that the provision of affordable housing will be secured through a section 106 agreement.
23. Policy R1E of the Wigan Replacement Unitary Development Plan (UDP) 2006² identifies the requirement for open space in new housing developments and sets out that where a scheme consists of between 1 and 99 dwellings a financial contribution will be required in lieu of on-site provision. The Open Space in New Housing Supplementary Planning Document (OSSPD) 2013 sets out the methodology that will be used to determine the level of contribution that will be sought.
24. The appellant asserts that the Council did not request that he enter into a legal agreement prior to determination of the application. However, the officer report makes it clear that developer contributions would be required in the event that planning approval were given for the scheme. Furthermore, both local policy

² Remaining Policies

and the Framework set out expectations relating to affordable housing and open space provision.

25. The appellant submitted two draft planning obligations at the hearing, the first, Document 5, to secure a contribution towards open space and the second, Document 6, to transfer the appeal site to a registered provider and to ensure that the housing is allocated as Affordable Housing. The hearing was kept open to enable the appellant to submit a completed obligation.
26. An undated obligation was submitted along with two sheets, one of which is signed by the appellant and the other of which is signed on behalf of the Royal British Legion. Whilst I understand the difficulties in securing the signatures of all those with an interest in the land, particularly Mr Midgley, as not all those party to the agreement have signed, it is incomplete and unenforceable. I am therefore unable to give it weight in my consideration of the appeal scheme.
27. In the absence of a completed obligation, the appeal scheme would fail to make adequate provision for affordable housing or open space, contrary to Policies CP6 and CP18 of the DPD and Policy R1E of the UDP, the requirements of which are set out above, and the Framework.

Conclusion

28. Whilst the government's aim is to significantly boost the supply of homes, the Council is able to demonstrate a 5 year supply of housing. Furthermore, since there is no mechanism before me to ensure the housing provided would be affordable, I am unable to attribute this matter weight. I acknowledge that the appeal site comprises a brownfield site, close to existing facilities and services, however, the loss of the sports and community facility would outweigh the social and economic benefits arising from the proposed housing.
29. Thus, for the reasons given above, and having regard to all matters raised, I conclude that the appeal should be dismissed.

M Savage

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kenneth Holt	Classic Contractors
Chris Wheetman BA (Hons) DMS MRTPI	CW Planning Solutions Ltd

FOR THE LOCAL PLANNING AUTHORITY

Mike Jones: Principal Planning Officer	Wigan Metropolitan Borough Council
Simon Ward: Solicitor	Wigan Metropolitan Borough Council

INTERESTED PARTIES

Glen Moore
Karen Midgley

DOCUMENTS SUBMITTED AT THE HEARING

1. Planning support statement in relation to the application for demolition of Higher Ince Social Club, Anderton Street, Higher Ince. Submitted by the appellant.
2. Email dated 11 October 2019 regarding Mr Earls surveillance. Submitted by the appellant.
3. Series of emails: Email at top of document dated 7 February 2018 regarding Mr Earls. Submitted by the appellant.
4. Series of emails: Email at top of document dated 13 August 2019. Submitted by the appellant.
5. Unsigned and undated Unilateral Undertaking regarding Bowling Green Works and maintenance at Whelley Labour Club and open space with associated plan. Submitted by the appellant.
6. Unsigned and undated Unilateral Undertaking regarding affordable housing with associated plan. Submitted by the appellant.
7. Bat Activity Surveys, September 2018, and email dated 18 September 2018 regarding bat report, planning application A/18/85602/MAJOR British Legion. Submitted by the Council.