
Appeal Decision

Site visit made on 28 July 2020

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2020

Appeal Ref: APP/W4325/W/20/3253026

Street Record, Park Road, Eastham CH62 8AH

- 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 Steve Pilgrim against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/19/01641, dated 9 October 2019, was refused by notice dated 5 March 2020.
 - The development proposed is the erection of six detached dwelling houses.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of six detached dwelling houses at land adjacent to Eastham Home Guard Club, Park Road, Eastham CH62 8AH in accordance with the terms of the application, Ref APP/19/01641, dated 9 October 2019, subject to the conditions in the attached schedule.

Procedural Matter

2. I have, for completeness, used the appellant's full name which is set out on the appeal form in my decision.
3. For clarity, I have used the address stated on the appellant's appeal form in my formal decision which refers to "Land adjacent to Eastham Home Guard Club".
4. Since the Council refused planning permission and in response to the second reason for refusing planning permission, the appellant has prepared and submitted a Preliminary Ecological Appraisal (PEA), dated 25 April 2020 as part of their appeal documents. While the appeal process should not be used to evolve a scheme, the PEA does not do so. I recognise that the Council rely on either Wirral Wildlife or Merseyside Environmental Advisory Service (MEAS) for advice and guidance on ecological matters and that the Council has not sought their comments on the PEA. That said, the Council has had the opportunity to do so if they wished and I do not consider that the Council would be prejudiced if I were to take the PEA into account in reaching my decision.

Main Issues

5. The main issues are the effect of the proposed development on: (i) the living conditions of the occupants of 40 Harrison Close and 20 Park Road, with particular regard to privacy; and (ii) ecology.

Reasons

Living conditions

6. The appeal site comprises of a grassed area and an area of hardstanding which forms part of the car park associated with the Eastham Home Guard Club. An unmade footpath runs through the grassed area into Plymyard Fields to the north of the site.
7. Park Road runs east to west from New Chester Road into the site. Park Road is lined with traditional semi-detached dwellings with landscaped front and rear gardens. A timber fence lines the site's north-eastern boundary with 20 Park Road and its long linear rear garden. To the west of the site is a modern two storey housing development on Harrison Close. A number of these dwellings back onto the appeal site. They have windows in their ground and first floors. This includes No 40 which has bedroom windows and a bathroom window at first floor and ground floor openings in a single storey projection. Detached garages, set back from each dwelling, serve a handful of properties. A timber fence lines the boundary with the site.
8. As the site lies within a Primary Residential Area (PRA), saved Policy HS4 of the Unitary Development Plan (UDP) permits proposals subject to fulfilling all of the listed criteria. The Council do not raise issue with criteria (i) to (vi). I note the various objections submitted in relation to the proposal but based on the evidence before me and my own observations that I made during my site visit, I agree with the Council's assessment. In terms of criterion (vii), each of the proposed dwellings would be served by an adequate private garden area which would not be dissimilar to those serving properties on Harrison Close.
9. The policy goes onto say that all proposals whose main elevations are parallel, or nearly so, an adequate distance should be kept between habitable rooms in separate dwellings. The term 'an adequate distance' is not defined by the policy. In support of their stance, the Council refer to Supplementary Planning Document SPD2 – Designing for Self Contained Flat Development and Conversions (SPD 2) insofar as development's affect on the privacy of neighbouring occupiers. However, as the appeal scheme is not a flatted development or a conversion, it does not strictly apply to the proposal. At best SPD 2 offers general guidance about the Council's approach to interface distances between neighbouring properties. However, it remains the case that the wording of saved UDP Policy HS4 necessitates a judgement to be reached.
10. Neither of the proposed dwellings in the north-western and north-eastern corners of the site could be described to be 'parallel' to Nos 20 and 40 respectively. However, both would have what I consider to be habitable rooms in the ground and first-floor rear elevations of each dwelling, and the proposed layout would allow for views from those windows towards the rear garden of No 20 or the garden and rear elevation of No 40.
11. The distance between the two dwellings and the rear gardens of Nos 20 and 40 may be tight, but saved Policy HS4 only considers the relationship to habitable rooms. Locally, a degree of overlooking into neighbouring gardens is common and the proposal would be no different in this regard.
12. Although the interface distance would vary between the north-western dwelling and No 40, the existing boundary fence would ensure the privacy of the occupants of both dwellings from a ground floor perspective. Based on the

distances found on the annotated plan submitted by the Council, the proposed first floor bedrooms would be roughly 15.5 metres to 21 metres away from No 40. Bedroom 2 would have an interface at the higher end of that range, with the larger of the two proposed windows around 21 metres from No 40. The relationship between bedroom 4 and No 40 would be below the 21 metres advocated in SPD 2, but this distance is for 'directly facing' windows. The north-west dwelling would not be directly facing No 40. Hence, views would be at an angle. The proposed development would change the existing open aspect behind No 40, however, in my view, an adequate distance would be formed so that the occupants of No 40 and the future occupants of the north-western dwelling would have the high standard of amenity that paragraph 127 of the National Planning Policy Framework (the Framework) requires.

13. I have noted other resident's privacy concerns, yet adequate distances are proposed between other directly facing dwellings or the layout proposed would not result in harm to existing occupants' privacy.
14. Two other appeal decisions have been cited by the main parties. I agree with the Council that I do not have the full details of the Heswall case before me to assess whether it is directly comparable. The Blundellsands decision is not directly comparable given the different ground levels and other mitigating factors, which are not present or proposed in this case.
15. I therefore conclude, on this issue, that the proposed development would accord with saved UDP Policy HS4 and Framework paragraph 127 which jointly seek developments to provide a high standard of amenity for existing and future users by keeping an adequate distance between habitable rooms in separate dwellings.

Ecology

16. The site is less than 2 km of the Mersey Estuary, which is labelled as a Site of Special Scientific Interest, Special Protection Area, and a Ramsar site due to its ecological importance in the conservation of wetland habitats and species.
17. Despite this and the potential for the site to support a broad range of animal species, the PEA confirms that: there is no evidence of nesting birds, bats or hedgehogs on site; very unlikely that badgers use of the site due to the lack of suitable foraging; and a low probability of Great Crested Newts. As such, I have no reason to disagree with the PEA's assessment of the potential minor impact that the development could have on nearby designated sites. This view is subject to a Construction Execution Plan to cover the delivery of materials and the safe removal of waste and excavated materials to mitigate potential impacts. A planning condition could be imposed to secure this.
18. On this basis, I conclude, that the proposed development would, on this issue, accord with saved UDP Policy NC7 which does not permit development which would have an adverse effect on wildlife species protected by law unless the Local Planning Authority is satisfied that the protection of the species can be secured through the use of planning conditions and/or planning obligations.

Other matters

19. The appeal scheme has attracted both objections and comments in favour. In terms of the loss of trees, there were none of any note on the site at the time of my site visit. The site would be laid out with each of the proposed dwellings

- having their own off-street parking facilities. These would be commensurate with the potential number of occupants. Extra comings and goings would arise, but due to the site's residential context and the existing use of the Club these would not be out of character or lead to unacceptable noise or light pollution.
20. The proposed access to/from Park Road would be adequate to ensure the access and safety of vehicles and other road users. There is no substantive evidence to indicate that the proposal would result in an unacceptable impact on highway safety on Park Road or at the junction of the road and New Chester Road. I understand that the existing car park is used by people enjoying Plymyard Fields and that the proposal may result in a reduction in the parking facilities available at the Club. Hence, the proposal could displace vehicles to nearby roads. Despite the representations about parking on other roads when the playing fields are being used for football, there is no substantive evidence before me demonstrating the extent of any existing issues experienced or whether they are harmful to highway safety. Notably the Highway Authority has not commented on these matters. As such, the proposal would not cause an unacceptable impact on highway safety in the wider area.
21. Concerns have been raised by residents about sun and daylight, but this is not a view that I share given the orientation of existing and proposed properties, the variable scale and layout of development proposed, and the open aspect provided by Plymyard Fields which could continue to be accessed directly from Park Road. This path would be subject to natural surveillance from nearby dwellings, but details of hard and soft landscaping works could be subject to a planning condition to ensure that its design, layout and luminance during the hours of darkness does not give rise to crime or the fear of crime.
22. I note the points raised about a precedent and the erosion of green space, but the site is in a PRA and I am not aware of any directly comparable sites that the appeal scheme could be used to justify the development of other sites. The courts also have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property could not be relevant consideration. Any disruption or disturbance felt during the construction phase would also be temporary.

Conditions

23. I have had regard to the planning conditions suggested by the Council. I have imposed a plans condition in the interests of certainty. Conditions are also necessary in respect of external materials, and hard and soft landscaping. Were appropriate I have amalgamated and amended the conditions so that they accord with the tests. I have also imposed a pre-commencement condition in respect of ecology based on the recommendations of the PEA to avoid potential ecological impacts on nearby designated sites.
24. A condition so that the bathroom windows are obscure glazed is not necessary to make the development acceptable in planning terms, though it is common practice for bathroom windows to be glazed in this manner in any event.

Conclusion

25. The Council does not dispute the appellant's point that it is currently unable to demonstrate a five-year supply of deliverable housing sites as required by Framework paragraph 73. I also agree with the main parties that the proposal

would deliver benefits through the provision of housing on an accessible site, and that these could be realised relatively quickly due to the scale of the scheme. Moreover, the proposal would represent an efficient use of land. However, as I have not found harm in relation to the two main issues this leads me to a conclusion that the appeal is allowed.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2018 025 001 Revision 02; 2018 025 003 Revision 03; 2018 025 004 Revision 04; and 2018 025 002 Revision 004.
- 3) No development shall take place, including any works of demolition, until a Construction Execution Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) Precautions to be taken to avoid contamination from waste materials, ground contamination and to avoid disturbance to any nesting birds;
 - ii) arrangements for the disposal for all waste materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) measures to control the emission of dust, dirt and noise during construction;
 - v) measures to prevent the entry of terrestrial mammals to exposed pipework and trenches, and to provide a means of escape; and
 - vi) delivery, demolition and construction working hours.

The approved Construction Execution Plan shall be adhered to throughout the construction period for the development

- 4) Insofar as this hereby permission relates to the construction of the new dwelling houses, approval of samples or specifications of the facing materials including all doors and windows shall be submitted to and approved by the Local Planning Authority prior to any development above ground level. The development shall be carried out in accordance with the approved details.
- 5) Prior to any development above ground level, a scheme of landscape proposals shall be submitted to and approved in writing by the Local Planning Authority. The proposals shall include full plans and specifications for all hard and soft landscape works. The scheme shall include: indications of all existing landscape features on the land, identification of those to be retained and set out measures for their protection throughout the course of development; and full details of all fencing, walls, gateways, means of enclosure and lighting. The approved works shall be completed during the first available planting season following completion of the development hereby permitted. Any trees, shrubs, hedges or plants which within a period of five years from the completion of development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. All hard landscaping comprised in the approved details of landscaping shall be carried out before the completion or first occupation of the development, whichever is the sooner.

END OF SCHEDULE