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## Appeal Decision

Site visit made on 1 June 2021

**by Patrick Hanna MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 July 2021**

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**Appeal Ref: APP/W4325/W/21/3266888**

**Land off Carr Lane, Hoylake**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Mr Graeme McGaffney against Wirral Metropolitan Borough Council.
  - The application Ref OUT/20/01414 is dated 30 September 2020.
  - The development proposed is erection of up to 61 assisted living apartments and up to 30 care bungalows and associated infrastructure works.
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### Decision

1. The appeal is dismissed and outline planning permission is refused.

### Application for costs

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

### Procedural Matters

3. The appeal is against the non-determination of an outline application with all matters reserved except access. The Council resolved that it would have refused the planning application and provided two putative reasons for refusal relating to, firstly, harm arising from inappropriate development in the Green Belt and, secondly, unsustainable development by reason of location, indicative siting, design and layout to the detriment of the character of the area.
4. The site is within one kilometre of the Mersey Narrows and North Wirral Foreshore Special Protection Area and Ramsar, the Dee Estuary Special Area of Conservation and the North Wirral Foreshore Site of Special Scientific Interest. Natural England (NE) advise that the proposal could have potentially significant effects on the sites. The appellant indicates further information was submitted to address this. However, no subsequent correspondence from NE has been submitted to me, no putative reasons for refusal on these grounds have been suggested, and the Council's Statement of Case does not address the issue. I return to this matter later in this decision.
5. The main parties agree that the proposal would represent inappropriate development in the Green Belt as described in the Framework and that the development would cause harm to the Green Belt by way of inappropriateness, even though a small part of the site comprises previously developed land. I see no reason to disagree with that position.

## **Main Issues**

6. In light of the above, the main issues are:

- the effect of the development on the openness of the Green Belt and the purposes of designating land within the Green Belt;
- the effect of the proposal on the character and appearance of the area;
- whether or not the site is a suitable location for development in light of policies dealing with sustainability; and
- would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

## **Reasons**

7. The appeal site is approximately rectangular, extends to some 3.15 hectares, and is comprised mostly of overgrown grassland with a hardstanding within a smaller area to the east. The site is located adjacent to an established residential area, which is in itself separated from Hoylake town centre by a predominantly industrial area and the railway line. Open countryside lies beyond the other three sides of the site, with some mature boundary landscaping, and a public footpath along the southwest boundary.
8. The description of this outline proposal is expanded upon by the appellant as being for specialist one and two bedroom housing in the form of affordable assisted living apartments and open market and affordable care semi-detached bungalows, under use class C2. Such care is defined as personal care by reason of old age, amongst other things. 24-hour on-site care provision is proposed.

## ***Openness and the purposes of the Green Belt***

9. Saved policy GB2 of the Wirral Unitary Development Plan (2000)(UDP) and the National Planning Policy Framework (the Framework) together seek to prevent inappropriate development in the Green Belt unless very special circumstances can be demonstrated. Saved policy URN1 of the UDP also seeks to protect the Green Belt as part of wider development and urban regeneration considerations. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that inappropriate development is harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence, as set out in paragraph 133 of the Framework.
10. The parties agree that the proposal would have a greater impact on the openness of the Green Belt by virtue of introducing built form. Nevertheless, it still remains necessary for me to quantify the degree of harm to openness and the purposes of including land in the Green Belt.
11. The openness of the Green Belt has a spatial aspect as well as a visual aspect. In spatial terms, the appeal site is largely level. Although hardstandings remain on part of the site, associated with a now demolished sports club, these have become broken up over time and overrun with self-seeded plants and grasses. As such, the existing spatial aspect to the site is negligible; its openness in this respect is equivalent to that of the surrounding open countryside. The very presence of permanent buildings, in the form of a 61-unit apartment block and

- 30 bungalows, would have a negative effect on the openness and permanence of the Green Belt.
12. The visual dimension of the Green Belt is an important part of the purposes of designating land as Green Belt. The existing built-up area of Hoylake to the south of the railway line, along and off Carr Lane, currently forms a projection of urban development, surrounded on all other sides by the Green Belt. The south eastern edge of this built-up area is clearly defined by dwellings and gardens along George Road and Yeoman Cottages.
  13. The proposal would significantly extend this projection of urban development further out into the open countryside. In doing so, it would conflict with the Green Belt purposes to safeguard the countryside from encroachment and check unrestricted sprawl. That the proposal would not extend beyond the landscaped envelope of the appeal site does not affect the concept of openness.
  14. The appeal site has an open and semi-natural appearance, and relates visually to the open countryside that surrounds it on three sides more than it does to the adjacent built-up area on one side. Indeed, the Council's Green Belt Review (2019) concludes that the parcel of land that includes the appeal site and its surrounds makes a strong overall contribution to the Green Belt<sup>1</sup>. This is contested on the basis that a potential methodology exception of 'rounding off' has not been considered; and that doing so would reduce that contribution to moderate-weak; or weak-none for the appeal site itself.
  15. However, I have already found that the site relates more readily to the open countryside than it does to the existing built-up area, even when landscaped boundaries and additional landscaping mitigation is considered. The appeal site does not, to my mind in assessing this s78 appeal, represent a suitable rounding off opportunity.
  16. I find that in both spatial and visual aspects the proposal would have an adverse effect on the openness of the Green Belt and the purposes of designating land within the Green Belt, contrary to saved policies GB2 and URN1 of the UDP and the Framework.

### ***Character and appearance***

17. The key characteristics of the Birket River Floodplain Landscape Character Area<sup>2</sup> are described, amongst others, as its large-scale open character with increasing tranquillity away from the settlement edges, with development on exposed urban edges and overhead power lines being discordant features.
18. From my observations, whilst some urban influences on the site are apparent, the site relates more readily to, forms part of, and is therefore more heavily influenced by the surrounding open countryside. The existing projection of urban development into the countryside is already discordant, and the effect of the proposal would be to extend that projection further into the open countryside. This would, in effect, create an extended finger of development.
19. In visual terms, this discordant effect would be particularly evident as experienced from the public footpath, represented by Landscape and Visual

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<sup>1</sup> As set out in the appellant's Green Belt Statement, DEP Landscape Ltd, March 2020 (GBS)

<sup>2</sup> Defined in the Wirral Landscape Character Assessment (2019), as set out in the appellant's GBS

- Impact Assessment (LVIA) viewpoint (VP) 3. This considers the effect from the path at a distance of some 120 metres from the site itself. From my observations at this location, the proposal would appear as a projecting urban area, extending into the open countryside, and with open countryside to the foreground and on either side, even with the existing boundary landscaping providing an element of screening. It would further reduce the sense of tranquillity as experienced from within the surrounding countryside.
20. The public footpath directly adjacent to the site would also experience adverse effects, given its proximity to the site. This path is pleasantly tree lined but it nonetheless offers regular glimpses into the site. Whilst the path has urban influences at the edge of the settlement, immediately beyond that, the open character of the surrounding countryside becomes increasingly prominent on all sides.
21. At present, the crumbling concrete posts and fallen wire fencing at the site entrance, along with the prominent 'keep out' signage, contribute to a somewhat run-down and derelict appearance on the eastern corner of the site. This can be seen from the end of Carr Lane and from the start of the public footpath, as represented by VP1. Even so, this appearance is limited to the site entrance and, beyond that, the views across the site are open and only interrupted by trees. Although the remaining hardstandings can be seen, they are largely obscured by natural regeneration and self-seeded plants.
22. This open view experienced from the edge of the built-up area would be lost due to the siting of the development. That experience of openness is shown in the LVIA as partially restricted by a wide tree overhanging the site entrance. At my site visit, this tree was no longer there, thereby widening the view across the site to its full extent. The George Road residential properties, represented by VP2, would also experience similarly discordant visual impacts.
23. Overall, I find that the appellant's conclusions on the effects of the proposal on landscape character and the above three viewpoints<sup>3</sup> as set out in the LVIA are somewhat understated. The proposal would be of detriment to the character of the site and the wider countryside.
24. The proposal is in outline and an indicative layout and parameters plan has been provided. There is nothing before me to indicate that an acceptable scheme could not be designed at reserved matters stage, in terms of layout and design, including density. However, the siting of the proposal in this location on the urban fringe would be visually intrusive and would cause harm to the open character of the site and its surroundings. The indicative proposed landscaping would offer some mitigation but is anticipated to take 15 years to establish. It would not in my view adequately reduce the harm I have found; the proposal would still be seen as a projecting finger of development.
25. The illustrative open space shown adjacent to an existing landscaping gap intends to limit views of the indicative built forms as seen from the open countryside. However, the open space would still read visually as being part of the overall parcel of development projecting into the open countryside.
26. Accordingly, the proposal would have an adverse effect on the character and appearance of the area, contrary to saved policies GB2, LAN1, LA7 and HS8 of

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<sup>3</sup> The LVIA assess the pre-mitigation effects on VPs 1 & 2 as moderate-substantial, and on VP3 as moderate.

the UDP, and the Framework. Together, these policies seek to not damage the visual amenities of the Green Belt including by virtue of siting; to prevent inappropriate visual impact on character, appearance and landscape setting; to pay special regard to the visual impact of development at the urban fringe; and ensure residential care homes are of a scale which relate well to surrounding property and the character of the area.

27. Saved policy HS4 of the UDP and H1 of the Hoylake Neighbourhood Plan are referred to in the reason for refusal. These relate to new housing development on allocated sites and identified primarily residential areas, and development within the existing built-up area, respectively. The appeal site is not within any of these areas, and these policies are therefore not relevant to this proposal.

### ***Sustainability of location***

28. The site is located some 700 metres from the train station and some 800 metres from the edge of the town centre. An adequate pedestrian footpath with street lighting extends along Carr Lane, even though there is a lack of active frontages and a railway crossing to negotiate.
29. A previous appeal decision<sup>4</sup> in 2013 concluded that the appeal site was in an accessible location in part because of a bus service along Carr Lane, together with provisions in a unilateral undertaking for bus stop improvements. By the time of a subsequent appeal decision in 2014<sup>5</sup> that bus service was said to be no longer operating, reducing the site's credentials as an accessible and sustainable location to some extent, thereby attracting limited weight as a consideration in favour of that proposal.
30. To address this, a private minibus service is proposed once a day on weekdays between the proposed facility and the town. Given the intended occupancy and the opportunity for residents to undertake journeys other than by private car, this weighs in favour of the proposal. Notwithstanding a degree of conflict with the recommended walking distances contained within the Wirral Supplementary Planning Document SPD2 – Designing for Self Contained Flat Developments and Conversions (2006), I see no reason to disagree that, overall, the site is in a reasonably accessible location.
31. I conclude that the site is in a suitable location for development in light of policies dealing with sustainability. Whilst no development plan policies have been referred to me in this respect, no conflict arises with the Framework.

### ***Other considerations***

#### ***Housing land supply***

32. The Council cannot demonstrate a deliverable five-year housing land supply as required by paragraph 73 of the Framework, with both the Monitoring Report (April 2019) and Strategic Housing Land Availability Assessment (SLAA) (January 2020) said to indicate 3.1 years supply. Whilst the Council refer to an unpublished position (April 2020) of 4.6 years, this is unsubstantiated. Either way, the Council accept that it has not identified a five year supply.
33. The Council is undertaking some steps to address housing need. The emerging Wirral Local Plan (eWLP) passed through Regulation 18 consultation in January

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<sup>4</sup> Appeal decision APP/W4325/A/12/2184753 dated 18 March 2013

<sup>5</sup> Appeal decision APP/W4325/A/14/2220745 dated 24 November 2014

2020, identifying a potential urban supply of up to 14,800 dwellings to 2035. However, the Regulation 19 consultation on the submission version of the eWLP has not yet commenced, indicating that only limited weight can be attached to it at this stage. The 2020 Housing Delivery Test indicates that 96% of the number of homes required have been delivered such that a 20% buffer is no longer required. Nonetheless, this cannot be taken as a reliable indicator for future delivery.

*Specialist housing need*

34. The description of the proposal is for residential care in the broad terms of class C2. Nonetheless, the appellant has submitted a considerable amount of evidence in respect of the need for specialised accommodation for older people in the borough, emphasising that the needs of older people are diverse. Indeed, Planning Practice Guidance (PPG) indicates that there is a significant amount in variability in the types of specialist housing for older people.
35. The draft Strategic Housing Market Assessment (SMHA) prepared in January 2020 as part of the evidence base for the eWLP indicates that there are some 2,719 existing class 2 units, and a need for some 1,330 units by 2035, or some 89 units per year, across the borough. In addition, there is a demand for smaller residential units. Whilst this document is only a draft, it represents the latest and most accurate assessment of housing need currently available, given the age of the UDP. In light of this, the main parties agree that the borough has a need for residential care units.
36. The Council has some provision for extra care units in the period to 2024 across the borough. The Council's Appendix C Planned Extra Care Schemes document indicates that some 101 units (over five sites) have been completed since 2017, and some 180 units (two sites) are currently under construction or close to completion. Whilst some further 167 units (three sites) are anticipated to commence this year, 80 of these (one site) still require planning permission.
37. Taken at face value, these figures suggest that the Council could potentially be on track in delivering against the identified need for the borough in the short-term, despite asserted inconsistencies between these figures and other published information. Even so, there is no cap on delivery. There is also nothing before me to suggest that the current proposal is not deliverable in a short time frame. As such, the proposal would further contribute to that existing need across the borough.
38. On a more local level, the Council do not challenge the appellant's assertions that the Hoylake and Meols and Greater Meols area has a significantly higher age profile than the Wirral average; that sixty-five year olds will make up approaching a third of that population by 2035, an additional 893 people; or that no specialist extra-care provision is available for either sale or rent in Hoylake. I see no reason to disagree and therefore these matters weigh in support of the proposal.
39. The appellant's Assessment of Alternative Sites also concludes that, within the Hoylake, West Kirby and Meols local area, there are no other sequentially preferable and reasonably available alternative sites for the proposed 91 units, particularly when flooding and other planning constraints are accounted for. The conclusions about the sites are not in themselves disputed by the Council, Instead the Council consider that the strategic delivery of specialist needs



housing alongside any strategic release of Green Belt land should be addressed through the eWLP. The counter argument is that, on the basis of consultation already undertaken, the eWLP will not be allocating sites for specialist housing and will not contain any strategy to meet these identified needs.

40. However, it is for the local authority to decide whether or not to allocate sites for specialist housing for older people and I have already found that the eWLP only attracts limited weight as the plan is still a considerable way off being adopted. Whilst the plan-led approach is clearly the most suitable mechanism for addressing strategic matters, including release of Green Belt land, there is nothing to prevent an identified need being addressed, or very special circumstances being put forward, by means of a planning application or through the appeals process.
41. Three cited appeal decisions<sup>6</sup> give significant or very significant weight and importance to meeting specialist housing need. In this respect, these decisions are broadly consistent with my below conclusions, albeit that, as a matter of planning judgement, they differ in the final planning balance. That the proposal could free up larger family sized homes is also accepted in those decisions, but in this case I have not been referred to substantive evidence as to what level of contribution this knock-on effect would make to housing need in the area, or the extent to which it would enable people to access homes to meet their housing needs in locations which are not too far from their existing families and support networks.
42. Although the care package aspect of the proposal would reduce pressure on existing local community services and healthcare facilities and deliver an environment that supports the physical and mental well-being of residents, such benefits are only likely to be modest given the minimum 1.5 hour care package proposed. The superseded SLAA and the withdrawn interim housing policy are of very limited relevance to the current proposal.
43. Drawing all these points together, the appeal proposal for a total of 91 residential care units would make a positive and considerable contribution to the identified need for specialist housing.

#### *Affordable housing*

44. There is a significant need for affordable housing in the borough, with the draft SHMA identifying a need for 705 units a year. This is not disputed by the Council. The appellant indicates that they would be prepared to accept a planning condition that meets the six tests to secure 85% affordable housing provision and retention in perpetuity, that is, up to 61 apartments and 16 bungalows. No wording for the condition is suggested by the appellant, and no such condition is proposed by the Council. Nonetheless, a condition that meets the tests would be a consideration in favour of the proposal.

#### *Planning obligation*

45. A signed unilateral undertaking (UU) pursuant to S106 of the Town and Country Planning Act 1990 has been submitted. This contains obligations that, firstly, the owner enters into a planning obligation to restrict occupancy to that falling within class C2 and to primary residents who are over 55 years old and are in need of at least 1.5 hours of personal care per week, based on an annual

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<sup>6</sup> Appeal decisions 3202040 (West Mallings), 3203413 (Great Broughton) and 3241644 (Albourne)

health assessment. Secondly, it secures the above described bus service. These provisions seek to either define or mitigate the development. Given that there is no putative reason for refusal relating to the obligations, and I am dismissing the appeal on other substantive grounds, it is not necessary for me to reach a finding in respect of Regulation 122 of the Community Infrastructure Levy Regulations 2010.

#### *Economic and other benefits*

46. The proposal is anticipated to generate some 8 full time jobs and, although associated construction jobs would only be temporary, there would be both direct and indirect expenditure and economic benefits. This would make a positive contribution to the economy. Enhancement of habitats for roosting bats and nesting birds is also proposed. Whilst development of previously developed land could be a potential benefit, I must consider the proposal as a whole, which relates to a larger area of undeveloped land.
47. The site is identified as being at low risk of flooding, as not being of high-quality agricultural value, and with no nearby heritage assets. The proposal could provide a high-quality environment, achieve Secured by Design, be suitably accessed and serviced, and address ground contamination, noise and air pollution. That the proposal may reduce any anti-social behaviour at the site is not substantiated by evidence. These matters are of neutral consequence in the planning balance or are necessary to achieve policy compliance.

#### **Other matters**

48. Having regard to my duties as the competent authority in respect of the Conservation of Habitats and Species Regulations 2017, there is no need for me to consider the implications of the proposal on the above designated sites, as I have found that the scheme is unacceptable for other reasons.

#### **Conclusion**

49. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In ascribing weight, I have used the following scale; limited, moderate, significant and substantial.
50. The proposal would make a significant contribution towards the identified future need for specialist housing with care, including any knock-on effects from down-sizing. Whilst the proposed affordable housing condition has not been provided in full, for the purpose of this planning balance, I give significant weight to that provision. The contribution towards addressing the current shortfall in housing land supply would also attract significant weight. Moderate weight is attached to the economic benefits. Limited weight is given to the accessibility and sustainability of the location, enhanced landscaping and open space provision, and ecological enhancements.
51. On the other hand, however, substantial weight should be given to the harm to the Green Belt. In addition, there are significant adverse impacts on openness, the Green Belt purpose of safeguarding the countryside from encroachment



and protection from urban sprawl, and significant adverse impacts on the character and appearance of the area.

52. Overall, I find that the harm caused to the Green Belt by reason of inappropriateness, and the other identified harm, would not be clearly outweighed by the other considerations, either separately or cumulatively. Consequently, the very special circumstances necessary to justify the development do not exist. Given that the policies of the Framework provide a clear reason for refusal, with regard to Footnote 6 of the Framework, the provisions of paragraph 11(d) are not engaged. The proposal would conflict with the above identified policies of the UDP and the development plan as a whole. There are no other considerations which outweigh this finding.
53. Therefore, for the reasons given and having had regard to all other matters raised, the appeal is dismissed and outline planning permission is refused.

*Patrick Hanna*

INSPECTOR