

Appeal Decision

Site Visit made on 10 August 2021

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Appeal Ref: APP/W4325/W/21/3270606

Top House Barn, Thingwall Road East, Thingwall CH61 3UZ

- 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 Wanless against the decision of Wirral Council.
 - The application Ref APP/20/00414, dated 10 March 2020, was refused by notice dated 25 February 2021.
 - The development proposed is the erection of 9no. three storey affordable dwellings and one disabled bungalow with associated access, car parking and landscaping works at Top House Farm, Thingwall Road East, Thingwall.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development above is taken from the planning application form. However, the description was amended during the course of the application to that found on the decision notice and part E of the appeal form. I have therefore considered the appeal on the basis that the development proposed is: "The erection of 10 affordable dwellings comprising 5 three-bedroomed houses, 4 two-bedroomed houses and 1 two-bedroomed bungalow, with associated access, parking and landscaping. (Consultation on amended plans and additional supporting information received 07/01/21)."
3. Following the publication of the revised National Planning Policy Framework (the Framework) on 20 July 2021, I provided the main parties with an opportunity to comment on its relevance to the case. I have had regard to the response provided in reaching my decision.
4. A signed and executed Unilateral Undertaking (UU) has been submitted by the appellant which seeks to secure the affordable housing that is proposed. I shall consider the UU as part of my decision, but the Council has confirmed that it addresses its second reason for refusing planning permission.

Main Issues

5. The main issues are:
 - a) whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - b) the effect of the proposal on openness and the purposes of including the land within the Green Belt;
 - c) the effect of the proposed dwellings on plots 1 to 5 on protected trees and

whether future occupiers of these plots would have satisfactory internal and external living conditions having regard to the protected trees;

- d) whether the proposal makes adequate provision to secure the delivery of affordable housing; and
- e) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. The appeal site comprises of a derelict building and large areas of hardstanding with the rear part covered by semi-natural broad-leaved woodland, protected as woodland W1 under Tree Preservation Order (TPO) WR0396. A pond is to the northeast corner. Dwellings to the south of the road are within a Primary Residential Area whereas the appeal site lies within the Green Belt. The houses are of varied style and design but with a common material palette. To the west, beyond a fenced boundary, is the former farmhouse of Top House Farm and its associated barns, now in residential use. To the south, a field gate provides vehicular access to the road.
7. Saved Policy GB2 of the Wirral Unitary Development Plan (UDP) sets out that there is a general presumption against inappropriate development unless it is for the purposes listed within the policy. Although this policy pre-dates the Framework by some time this is not in itself a reason for one of the most important policies in this case to be considered out-of-date.
8. Criterion (iv) of saved UDP Policy GB2 allows for the limited infilling in existing villages, subject to Policy GB6, including limited affordable housing subject to local community needs. The Framework effectively splits criterion (iv) into two, namely through exceptions e) and f) of paragraph 149. I see no reason to disagree with the main parties' assessment that the appeal scheme amounts to limited affordable housing for local community needs based on the evidence before me about this type of housing across the Wirral and locally. However, the site is not within an existing village given that it is next to a residential area which forms part of a wider settlement. Hence, Framework paragraph 149 e) and saved UDP Policy GB2 (iv) cannot be met.
9. The appellant advances a case that saved UDP Policy GB2 (iv) is inconsistent with Framework paragraph 149 f), but the latter requires schemes to accord with policies set out in the development plan in order for the exception to be satisfied. As the appeal scheme would not accord with criterion (iv) the proposal would also not accord with Framework paragraph 149 f).
10. Any inconsistency in the wording of saved UDP Policy GB2 does not necessarily mean that it is out of date. Its wording sets out the Council's approach to how this type of development should come forward in the Green Belt. Sites in the Green Belt are not the only way affordable housing could theoretically be delivered. So, while there seems to be an overall general need for more affordable housing based on the appellant's evidence, equally the evidence before me does not indicate that this need could only be met by sites in the Green Belt or in locations such as this that accord with criterion (iv) of saved

UDP Policy GB2. Thus, saved UDP Policy GB2 is not out of date in my view, but even if it was, the appeal scheme would still be inappropriate development as an out-of-date policy does not mean that it carries no weight at all.

11. The proposal would therefore be inappropriate development whether assessed against saved UDP Policy GB2 or Framework paragraph 149 f). Whilst the proposal would bring the site back into use, the proposal also would conflict with saved UDP Policy URN1 given the protection that sites in the Green Belt are given from inappropriate development.

Openness and purposes

12. The proposed dwellings would be next to Top House Farm and the road. They would be surrounded by a belt of protected trees to the north, east and west which generally define the extent of the site.
13. The proposed dwellings would be contained within this context and thus, in spatial terms, there would not be a significant loss of openness. However, the collective scale, mass and volume of the proposed dwellings would result in a moderate spatial and visual loss of openness that would mainly be appreciated from the road in the vicinity of the site notwithstanding the vegetation along the roadside boundary. In terms of Framework paragraph 138 c), there would not be any encroachment due to the extent of the hardstanding, the building and the site's well-defined boundaries and leafy context.

Effect on protected trees and the living conditions of future occupiers of plots 1 to 5

14. W1 is of valuable importance to the character and appearance of the area, and it affords a robust visual boundary to Arrowe Park and nearby residential development. The trees are also of ecological value with Arrowe Park designated as a Site of Biological Importance. Framework paragraph 131 explains that trees make an important contribution to the character and quality of urban environments and can also help mitigate and adapt to climate change.
15. The two Ash trees within W1 which have been granted permission to fell¹, since the planning permission was refused, are situated to the rear of proposed plots 1 to 5. They have not yet been felled, but my decision takes into account the permission granted by the Council to do so.
16. The rear elevations of plots 1 to 5 would face in a northerly direction and towards the woodland. Each of these houses would have a kitchen/dining room on the ground floor, with a second bedroom on the first floor. Plots 1, 3 and 5 would have a third bedroom in the roof space with a dormer window providing the sole opening to the room. The considerable woodland canopy would be close to the rear elevations of plots 1 to 5 which would mean that future occupants of these dwellings would not have satisfactory internal living conditions in respect of sun and natural light. The greatest effect would be felt during the winter months when the sun is lower in the sky and daylight typically at its lowest level. The orientation of the front elevations of these plots does not change my view as the internal layout would affect light penetration to the rear facing rooms which are likely to be used by the occupants for good periods of the day. Nor is the proposed layout similar to the relationship of Top House Farm to the trees to its rear as they are set back from its rear elevation.
17. The size of the proposed rear gardens to plots 1 to 5 would be adequate for

¹ Council Ref: T/21/0092

future occupiers use. The retention of trees within or close to the rear gardens of plots 1 to 5 would also provide a pleasant visual amenity for the occupants, but they would heavily shade those gardens for good periods of the day. This would not make for a high standard of amenity for future occupiers who are likely to involve families given the mix of dwellings proposed.

18. A balance would not therefore be struck between retaining the trees, providing amenity space and laying out the site in the manner proposed. Future applications for works to the protected trees could be made and considered on their own merits. However, saved UDP Policy G7 (iv) seeks to avoid this scenario from arising in the first place by requiring buildings to be sited in order to prevent their removal to obtain reasonable sunlight to habitable rooms, secure an open unshaded garden area or to remove perceived dangers to life and property. The proposal would not achieve this. Hence, it is likely that pressure would be forthcoming in the future which could affect whether the wooded character of the site and the surrounding area, which is of valuable importance, could be substantially preserved.
19. I conclude, on this issue, that the proposed development of plots 1 to 5 would lead to significant harm to the protected trees and future occupiers would not have satisfactory internal and external living conditions due to the relationship that would be formed with the protected trees. The proposal would not accord with saved UDP Policies GRE1, GR7 and HS4 and Framework paragraphs 130 f) and 131. Among other things these jointly seek development to protect areas of visual importance to the locality or wider area from inappropriate development, ensure a high standard of amenity for future users and the provision of adequate individual private garden space to each dwelling; and prevent the removal of trees by occupiers to obtain reasonable sunlight to habitable rooms or secure an open unshaded garden area.

Affordable housing

20. Saved UDP Policy HSG2 and HS6 encourage the provision of affordable housing on sites not allocated but which come forward for development. The appeal scheme would provide affordable units and therefore respond to the identified mix and contribute positively to helping address the need and demand for affordable housing in the local area and across the Wirral. The UU would secure the units as affordable homes for the lifetime of the development.
21. Framework paragraph 57 and Regulation 122(2) of the Community Infrastructure Levy Regulations (CIL) outline planning obligations must meet the three tests. Having regard to these tests, I agree with the Council that the UU is necessary to make the development acceptable in planning terms, it is directly related to the development and it is fairly and reasonably related in scale and kind to the development. I therefore conclude, on this issue, that the proposal would accord with saved UDP Policies HSG2 and HS6 as the proposal would deliver affordable homes that are required on the Wirral.

Other considerations

22. The Council accept that it can only currently demonstrate around 3.1 years of deliverable housing. The proposal would make a moderate contribution to the overall supply of housing on the Wirral, but the provision of these homes as affordable units attracts substantial weight in favour of the proposal given the need and demand for this type of housing.

23. The proposal would bring the site back into use and the proposed dwellings would be located on the edge of Thingwall. Future occupants would be able to make use of the site's accessibility to a range of facilities and services while each dwelling would have its own off-street parking provision. The design of the dwellings would respond to the general palette of architecture and finishes, and the site would be laid out to incorporate the pond. These matters all attract limited positive weight.
24. There would also be time limited modest benefits associated with the proposal in the form of job creation, training opportunities and spending within the local supply chain. There would also be modest longer-term contributions from future occupiers spending in the local economy.

Conclusion

25. While the Council is not able to demonstrate a five-year supply of deliverable housing sites, the proposal would be inappropriate development in the Green Belt, result in a moderate loss of openness. By definition these are harmful effects and I attach them substantial weight as required by Framework paragraph 148. Although there would not be any encroachment into the countryside, the application of Green Belt policies in the Framework provides a clear reason for refusing the development proposed. I have also found significant harm in respect of the protected trees and future occupants living conditions.
26. I have considered matters put before me in favour of the scheme by the appellant, however I conclude that these other considerations taken together do not clearly outweigh the harm that I have identified. As a result, the very special circumstances necessary to justify the development do not exist.
27. The proposal does not accord with the Development Plan as a whole and there are no other considerations, including the Framework, that indicate that I should take a different decision other than in accordance with this.
28. For the reasons given above I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR