



Appeal Decision

Site visit made on 21 December 2021

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2022

Appeal Ref: APP/W4325/W/21/3281802

238 Holmlands Drive, Oxtou CH43 0UU

- 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 Adam Bisset against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/21/00358, dated 22 February 2021, was refused by notice dated 27 July 2021.
 - The development proposed is the change of use of land to the side to residential, demolition of existing detached garage and erection of a single storey side extension.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. It was clear from both my site visit and from the photographs provided as part of the appellant's statement of case that the land to the side of the property had already been cleared, and its use changed to a residential garden. A timber fence with concrete posts and gravel boards have been erected in order to delineate the new boundary and to incorporate this land into the existing residential curtilage. I have therefore dealt with the appeal on that basis.

Main Issues

3. The main issues are the effect of the proposal on the Urban Greenspace, and on ecology and wildlife.

Reasons

Effect of the proposal on the Urban Greenspace

4. 238 Holmlands Drive is a two storey semi-detached dwelling constructed in red brick and located within a predominately residential area. Due its orientation and the curvature in the road the property does not front directly onto the highway and is accessed over a wide pavement and onto a small private driveway. The property has also recently been extended with the erection of a two storey side extension.
5. The appeal site is bound to the side and rear by a fairly dense wooded area which forms part of Solly Recreation Ground. Within this wooded area and to the rear of the appeal site is an existing pond. All of Solly Recreation Ground, including the wooded area, is designated as Urban Greenspace within the Wirral Unitary Development Plan (adopted February 2000) (UDP).

6. The proposal seeks planning permission for the change of use of a section of land recently acquired by the appellant and located within the Urban Greenspace to residential garden land. A single storey side extension with mono pitched roof and housing a garage/workshop is also proposed to be built off the gable end of the property. Although the appellant disputes that the proposed single storey side extension would encroach into the Urban Greenspace, given that the previously approved and now constructed two storey side extension (Ref APP/19/01410) abuts the original garden boundary it is readily apparent that the proposed extension would encroach onto this land.
7. The UDP designated a number of sites as Urban Greenspace, with any development within these sites controlled by Policy GR1. The appellant contends that policy GR1 is not relevant in this instance, as it solely relates to facilities for visitors and sport.
8. Whilst the first paragraph of Policy GR1 refers to facilities for visitors, sport or play, the second paragraph quite clearly references 'development for other purposes' which would include the proposal subject of this appeal. The Policy states that with the exception of the re-use of existing buildings, other development will normally not be permitted on Urban Greenspace land unless alternative provision of equivalent community benefit is made available.
9. Although only a relatively small section of the Urban Greenspace, as outlined above the proposal would result in the introduction of built development onto the land. I acknowledge that the trees on this land had already been felled and were not subject of a Tree Preservation Order or any other planning controls, however the enclosing of this land and introduction of built development would represent the permanent loss of this land from the Urban Greenspace.
10. Despite only representing a small percentage of the overall wooded area, the loss of these trees and the introduction of built development within it would have a negative impact on the visual amenity and landscape character of the Urban Greenspace. Whilst this negative impact may not be substantial, the permanent loss of this part of the Urban Greenspace has not been satisfactorily justified or an adequate alternative provision provided.
11. I therefore conclude that the proposal would have a negative impact upon the landscape character of the land designated as Urban Greenspace. As a result, the development would not accord with Saved Policy GR1 of the UDP, which amongst other things, seeks to protect Urban Greenspace land from inappropriate development which would prejudice visual amenity and landscape character, and I give significant weight to the conflict with this policy.

Effect of the proposal on ecology and wildlife

12. In order to facilitate both the change of use of the land and the proposed single storey side extension, a number of trees were required to be removed. Whilst I acknowledge that the trees may have been felled prior to the submission of the planning application, and that their removal may not have breached any planning laws, it remains the case that the land concerned and the woodland which they formed part of is classed as a Priority Habitat.
13. As outlined in Paragraph 5 of the consultation response submitted by Merseyside Environmental Advisory Service (MEAS), the clearance of the trees has resulted in the loss of bird breeding habitat. Given that the clearance had

already taken place, MEAS recommended that should permission be granted three trees and details of bird nesting boxes should be provided in order to mitigate against this loss.

14. Whilst I acknowledge that in the event of the proposal coming to fruition, the planting of three trees and provision of bird nesting boxes would provide some mitigation against the loss of the trees and bird breeding habitat, I do not consider that this would satisfactorily compensate for the adverse effect that the permanent loss of the land from the Urban Greenspace and Priority Habitat would have on wildlife species.
15. I am aware that even in the event of the proposed development not coming to fruition, it is highly unlikely that a full replacement of the trees removed from the land would be achieved. Nevertheless, I consider that even if left abandoned the land overtime would gradually vegetate which would bring about its own ecological and wildlife benefits.
16. The appellant's ecological assessment was silent in respect of the removal of trees and any ecological impacts arising and related solely to the potential presence of Great Crested Newts (GCN). This assessment concluded that it was highly unlikely that GCN would be present within the pond to the rear, although other wildlife and amphibians may be present. MEAS also concur with this finding and there is no dispute between the parties in respect of GCN.
17. Despite the presence of GCN being highly unlikely, and that reasonable avoidance measures during the construction phase could be secured via a planning condition, this does not outweigh the other ecological harm I have identified would be caused by the development.
18. I therefore conclude that the proposal would result in undue and permanent harm being caused to the sites ecology and wildlife, as well as having an adverse effect on protected species. As a result, the development would not accord with Saved Policy NC7 of the UDP which seeks to ensure developments do not have an adverse effect on wildlife and protected species, and I give significant weight to the conflict with this policy.

Other Matters

19. I have considered whether the most important policies in the development plan are out of date due to their age. I am particularly mindful that paragraph 219 of the National Planning Policy Framework (the Framework) states that existing policies should not be considered out of date simply because they were adopted or made prior to the publication of the Framework.
20. In reviewing their degree of consistency with the Framework, I find that policies GR1 and NC7 continue to serve their purpose in seeking to protect public open space from harmful development and ensuring that proposals do not have an adverse effect on wildlife habitats and biodiversity. These policies are broadly consistent with the aims of the Framework. Consequently, notwithstanding the age of the plan I do not consider them to be out of date.
21. The appellant has drawn reference to a planning appeal decision (APP/A06665/W/18/3204451) relating to the change of use of open space to garden at a site in Willaston, Cheshire. The appellant considers that this appeal decision supports their case, however there seems to be very few similarities that can be drawn between the two appeals. The referenced appeal does not

include the erection of an extension or any structure on the land, nor does it appear to relate to a Priority Habitat or involve ecological and wildlife concerns. As a result, I have given this consideration limited weight in this appeal.

22. My attention was also drawn to the previously unkempt nature of the appeal site, including the claim of fly-tipping. However, this does not alter my view on the harm that would arise from the proposal.
23. I note that the Council has raised no objection to the design and appearance of the single storey extension itself, and I see no reason to form an alternative view. However, this does not outweigh the harm caused by the change of use of the land necessary to accommodate the extension.

Conclusion

24. The proposal would conflict with the development plan and there are no material considerations which would outweigh this finding. For the reasons given above the appeal is dismissed.

David Jones

INSPECTOR