



Appeal Decision

Site visit made on 1 March 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2022

Appeal Ref: APP/W4325/W/21/3286984

Land to the rear of 34 Caldý Road, West Kirby CH48 2HQ

- 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 Ross Quibell against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/20/01767, dated 19 November 2020, was refused by notice dated 25 August 2021.
 - The development proposed is to construct a new detached two storey dwelling with 4 bedrooms.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The principle of a dwelling on this backland site was established by a previous planning permission, Ref APP/17/01134, for a single storey dwelling. This included access via a dedicated driveway from Caldý Road. At the time of my site inspection, some works beyond the scope of the existing permission, but which would be incorporated into the proposed scheme, had taken place. Accordingly, the proposals are in part considered under the scope of s73A of the Act for development already carried out.
3. During the course of the Council's consideration of the planning application, revised plans were submitted by the appellant. The Council reconsulted on the changes and I have also taken them into account. The relevant plans are: 7055/01 Rev E, 7055/02 Rev E, 7055/03 Rev E, 7055/04 Rev E, 7055/05 Rev A.
4. There are some discrepancies between the detail shown on the floorplans, elevations and roof plans, particularly in regard to the number of rooflights proposed and the positions and sizes of some windows. For the purposes of the appeal, I have considered the higher number of rooflights indicated on the floor plans and the detail of apertures shown on the elevations as this represents the greatest potential effects that might be experienced from outside of the site.

Main Issue

5. The main issue is the effect of the proposed development on the living conditions of nearby residents with particular regard to outlook and privacy.

Reasons

6. The site is a backland site within a primarily residential area. It is located between the rear garden of 34 Caldý Road, a detached 2-storey dwelling, and

bungalows fronting on to York Avenue, a series of cul-de-sacs to the north and west. A deep garden to 34A Caldry Road borders the site to the south.

7. The scheme includes the erection of a 2-storey detached dwelling of contemporary design. The building would have a modular appearance consisting of a dual form upper floor over a largely brick finished ground floor. The upper part would consist of a box-form, flat-roofed, timber clad section incorporating a slightly higher stairwell element. The westernmost part would be wider and deeper with zinc-clad elevations and asymmetric, low-pitched zinc roof.
8. A linked single garage to the rear corner of the dwelling is proposed close to the end of the driveway. A garden area would be provided to the west of the building.
9. Development in the locality is on a hillside such that the land lies several metres below the level of No34 but higher than bungalow properties to the west fronting York Avenue. At my site visit, I saw that a large part of the plot has been dug out to lower the level of the main area of the site. According to the submitted plans, this is in the order of 1.6m from the garden level at the rear boundary of No34. The effect would be to reduce the overall height of the proposed dwelling to one similar to that approved under the previous scheme.
10. Although there would be little difference in those heights, the effect of providing a large area of accommodation at first floor level would introduce window openings higher than those of the previous scheme. In order to limit or avoid overlooking of neighbouring private amenity spaces the scheme resolves to restrict the outlook of prospective occupiers through the use of high-level windows, obscure glazing or reliance on rooflights. An oriel window is proposed to the western-facing elevation to restrict the direction of outlook from bedroom 3.
11. Notwithstanding those measures, side windows serving bedroom 4 and a first-floor landing would address the boundary with 25 York Avenue at close quarters. Although that boundary benefits from some existing trees and vegetation cover, this lies outside of the site and beyond the control of the appellant. As a permanent form of development, the proposal is likely to outlast the vegetation and there is little to guarantee any mitigation to the effects of overlooking. The excavation of the driveway would prevent opportunities for screen planting within the site. Furthermore, notwithstanding the change in levels that has occurred, a requirement to seek domestic scale boundary treatments would be of insufficient height to prevent overlooking of the private amenity space benefitting No25.
12. The imposition of a condition to require the use of obscure glazing to the windows of bedroom 4 would result in a habitable room with no outlook except for a single rooflight. In my view, this would not deliver a high standard of accommodation for users of that part of the development. Such a requirement would therefore fail the test of reasonableness, as set out in the National Planning Policy Framework (the Framework) and the National Planning Practice Guidance in relation to the use of conditions.
13. A proposal for a combination of obscure-glazed and high-level windows to bedroom 1 would prevent overlooking of the adjacent garden area to No34A. Clear-glazed windows serving bedroom 2 would be at sufficient distance from

the common boundary with 29 York Avenue to avoid undue overlooking of that property.

14. As a 2-storey dwelling the building would have considerably greater massing and bulk compared to the previously approved bungalow with gabled roofs. The shallow and flat roof design would have significantly greater eaves levels and would result in much larger and expansive elevations.
15. In the context of an area of varied building forms and scales, the massing of the building would not appear excessive. Although it would be conspicuous by virtue of the bespoke form and proposed materials, views to the building would largely be restricted to the immediate surrounding properties.
16. Despite its location hard up to the boundary with No34, the effects of the scale of the building would be moderated by the existing high fence, the length of the garden and the subordinate land level. Although it would feature as a prominent element in the outlook from that site, those mitigating factors would ensure it would not overbear on residents of that property. Overshadowing would be restricted to a limited part of the garden only such that living conditions at the site would not be materially harmed. For similar reasons, the effect on the occupiers at 34A, to the south of the site, would not be significantly affected.
17. The upper parts of the building would be visible from the conservatory and side garden area of 29 York Avenue and the rear of 31 York Avenue. However, the intervening distance and change in levels would limit the effects of the development such that they would be comparable to those found in any residential estate setting.
18. The building would be visible from the rear outlook and garden of No25. From this aspect, the perception of scale and massing would be tempered by the articulation of the upper elevation and the variation in form and materials. Taken with the distance from the common boundary, any effects arising from the scale and massing would not unduly harm the living conditions of occupiers of that property.
19. For the above reasons, I find that the proposal would cause significant harm to the living conditions of neighbouring residents through overlooking of private amenity space. It would conflict with Policies HS4 and HS10 of the Wirral Unitary development Plan [2000] as they require development to relate well to surrounding property and avoid undue loss of privacy to adjoining residents.

Other Matters

20. I recognise the appellant's efforts to engage with the Council and address the concerns of neighbouring residents, including the protection of trees about the site and avoidance of light nuisance through provision of a garage. However, as the protection of trees and avoidance of adverse effects on neighbouring amenity are requirements of the development plan, they are not benefits in favour of the development. Accordingly, these matters do not outweigh the harm identified.
21. I also note the height constraints imposed on any development on the site through the land sale. However, any such restriction imposed by agreement or

covenant, are a separate matter and they are not a material planning consideration in this appeal.

22. I acknowledge the other concerns raised by nearby residents in relation to the proposed development. The effects of an additional housing unit on the highway have previously been accepted. Having viewed the site, I find no reason to conclude that the proposal would unduly affect highway safety or capacity. This is a view shared by the Council's highway advisors.
23. The use of a gravel driveway is unlikely to give rise to any significant adverse effect on living conditions in normal domestic use. The loss of greenery on the site could be compensated through landscaping or biodiversity enhancements and could be secured through planning condition/s. Concerns in relation to the effects of construction activities at the site would occur for a relatively short-term and could be mitigated by careful construction management, which could also be conditioned.

Conclusion

24. Whilst I have found that the proposal would not cause harm to the living conditions of neighbouring residents through its massing and scale, significant harm would be caused as a consequence of overlooking of an adjacent property. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR