

Appeal Decision

Site visit made on 27 June 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2022

Appeal Ref: APP/R2330/W/22/3290967

Land located off Southwood Drive, Waverley Road, Baxenden BB5 2TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Joas Serugga against the decision of Hyndburn Borough Council.
 - The application Ref 11/21/0508, dated 23 August 2021, was refused by notice dated 18 January 2022.
 - The development proposed is outline application: erection of 1 no. dwelling with all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development found on the planning application form refers to the erection of two dwellings, however, the planning application was considered and consulted upon on the basis of the description of development set out in the banner heading above. This reflects the scheme that is before me and I have considered the appeal on this basis.
3. The application was submitted in outline with all matters reserved and I have determined the appeal on this basis. I have regarded all detailed elements of the submitted drawings as indicative only.

Main Issues

4. The main issues in this case are the effect of the development proposed on the existing open space, and whether the proposal provides sufficient information to enable a determination to be made in relation to the practicalities of safely developing the site, the living conditions of neighbouring occupiers, the impact on the character and appearance of the area, flood risk and biodiversity.

Reasons

Existing open space

5. The appeal site is an area of steeply sloping land between Waverley Road and Waltham Close. The site forms part of a larger strip of landscaped public open space which was formed when the estate was developed in the 1980s and 1990s. A public footpath comprising a series of steps which connects Waverley Road to Waltham Close is adjacent to the southern boundary of the site.

6. The appeal site is not readily accessible due to a fence to the side of Waverley Road, a rail to the end of Waltham Close and a retaining wall adjacent to the public footpath. Notwithstanding that, a space does not have to be publicly accessible to qualify as an open space within the ambit of the Framework. Whilst it does not appear to be formally designated as public open space, as part of a larger area of open space, the site acts as a buffer between the built up areas between Waverley Road and Waltham Close and as a transition to the countryside to the north. It contributes positively to the setting of both Waverley Road and Waltham Close and the visual amenity of the area more generally. 9
7. The proposal would effectively sever the appeal site from the larger area of open space. This would result in the loss of part of the open space which makes a significant contribution to the character of the area. While I accept that the site is largely inaccessible, the siting of a new dwelling and its domestic curtilage, combined with its permanent enclosure to provide a garden, would be harmful to the openness and general amenity of the open space.
8. Having regard to Policy DM21 of the Hyndburn Borough Council Local Plan Development Management DPD (2018) (DPD) there is no substantive evidence before me to demonstrate that this part of the open space is surplus to requirements. The objections from neighbouring residents indicate that the open space is of some amenity value. According to the Council the draft findings of the Open Space Audit show that there is a quantitative deficiency in amenity greenspace and natural / semi-natural greenspace in the area. Moreover, the scheme does not propose equivalent or better quality provision elsewhere.
9. For the above reasons, I conclude that the proposed development would result in the loss of an existing open space which provides valuable visual amenity. It would therefore conflict with Policy DM21 of the DPD, which seeks to protect open spaces. It would also be contrary to paragraph 99 of the National Planning Policy Framework (the Framework), which states that existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.

Whether the proposal provides sufficient information

Safely developing the site

10. The site does not currently have any form of access for vehicles. There is no information before me to indicate how construction vehicles would be able to access the site or where the parking of site operatives' vehicles, and the storage, loading and unloading of plant and materials used in constructing the development would take place. Given the constrained and steep nature of the site between existing residential properties at the ends of two cul-de-sacs, it is unclear what impact the construction of the development may have on existing access and parking arrangements on Waverley Road, Waltham Close and surrounding areas. It is unclear whether that part of the site adjacent to Waltham Close would be of sufficient size to cater for all construction vehicles and equipment. 7
11. Moreover, there is no detailed assessment before me of the ground conditions of the site to determine what effects the excavation of the land would have on the

stability of the adjacent highways and safety of neighbouring residents. Nor has it been demonstrated that the existing water and wastewater infrastructure on the site would not be impacted on by the development.

12. I conclude that the appellant has provided insufficient information to establish that the site can be safely developed. The appellant refers to the use of off-site construction techniques. However, there are no details of how such a method of construction would work in practice given the restricted access to the site and proximity to public highways and neighbouring dwellings. Requiring further details by conditions in relation to construction management and ground stability would not be appropriate in this instance as I am not certain that such conditions could be complied with or that they could adequately mitigate any adverse environmental effects arising from the development.

Living conditions

13. The appeal site is on lower ground than 14 Waltham Close. The relationship with that neighbouring property is not dissimilar to that which currently exists between properties on the northern side of Waltham Close. Subject to appropriate scale and layout, it would be possible to deliver a dwelling on the site without causing significant harm to the living conditions of No 14. However, due to the difference in levels between the site and No 9, any dwelling on the site would be likely to lead to overlooking of the garden of No 9 and potentially also towards its windows. Based on the evidence before me, I cannot be certain that the proposal would cause no harm to the living conditions of the occupiers of No 9. The proposal would conflict with Policy Env7 of the Hyndburn Borough Council Core Strategy (2012) (Core Strategy) and DPD Policies DM10 and DM29, which require development to protect the amenity of surrounding residents.

Character and appearance

14. The appeal site sits at a significantly higher level than No 9 which contrasts with the more gradual change in levels between properties on this part of Waverley Road. A two storey dwelling, as indicated by the plans, would be likely to result in an unduly prominent addition in the street scene due to its height relative to No 9. However, the siting and scale of the proposal are reserved for future consideration. Subject to appropriate design a new single storey property would not be unsympathetic to its surroundings. Had I been minded to allow the appeal, a condition could have been imposed to control the scale of any dwelling on the site. Subject to such a condition I consider that the proposal would not be harmful to the character and appearance of the area. The proposal would comply with Policies Env3 and Env6 of the Core Strategy and DPD Policies DM10 and DM26, which, amongst other things, seek to ensure that development is of a high standard of design that conserves and enhances the character and quality of Hyndburn's urban and rural environments.

Flood risk

15. The evidence indicates that the site is within Flood Zone 1, where there is the lowest probability of flood risk. However, I acknowledge that there may be localised flooding during periods of heavy rain. Although the proposal would result in new hard surfaces, those parts of the site that would not be built on, including the garden areas, would allow for some absorption of surface water and some of the new hard surfaces would be likely to be permeable. I see no reason why suitably worded conditions could not be imposed to ensure that

surface water drainage would be provided as part of the development. I note that the Lead Local Flood Authority were consulted on the proposal and did not object to it. Based on the evidence before me, I find that the proposal would not have an unacceptable effect on flood risk. Accordingly, there would be no conflict with Policies DM10 and DM26 of the DPD, which, amongst other things, seek to ensure that proposals do not increase the risk of flooding on the site or elsewhere.

Biodiversity

16. As part of the larger area of landscaped open space which adjoins the area of countryside to the north, the appeal site provides a semi-natural habitat for wildlife. Whilst the proposal would result in the clearance of existing vegetation on the site, there would be sufficient space within the site to provide replacement planting which would mitigate the effect on biodiversity. There is no substantive evidence before me that the proposal would have an adverse effect upon biodiversity or protected species. Subject to the imposition of the conditions recommended by the Council's Ecologist, including a requirement to achieve a biodiversity net gain, I consider that there would be no conflict with Policy Env2 of the Core Strategy or Policies DM18 and DM19, which seek to protect the natural environment, including protected species.

Other Matters

17. I note the range of other concerns raised by interested parties. However, as I am dismissing the appeal for other reasons there is no need for me to consider these matters further. Matters relating to land ownership are not within the remit of this decision. They are civil matters.

Conclusion

18. I have found that harm would arise from the proposed development in respect of the loss of existing open space, the living conditions of the occupiers of 9 Waverley Road, and it has not been demonstrated that the site can be safely developed. On the other hand, I have found no harm in terms of the character and appearance of the area, flood risk and biodiversity subject to the imposition of planning conditions.
19. The proposed development would offer potential benefits in terms of providing a new dwelling in an accessible location in accordance with the aims of Policy H1 of the Core Strategy. The scheme would also have economic benefits through employment opportunities created during the construction phase of the development and spending in the local area by future occupants. However, the weight attributable to these matters is limited given the modest scale of the development proposed and would be outweighed by my findings as to the harm which would be caused.
20. The proposed development would 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. I conclude that the appeal is dismissed.

M Ollerenshaw

INSPECTOR