



Appeal Decision

Site visit made on 6 September 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2022

Appeal Ref: APP/W4325/W/22/3299689 33 Daryl Road, Heswall CH60 5RD

- 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 Malcolm Macaulay against the decision of Wirral Metropolitan Borough Council.
 - The application Ref APP/21/02166, dated 4 November 2021, was refused by notice dated 10 February 2022.
 - The development proposed is described as “demolition of existing building, and erection of a ‘replacement’ two-storey dwelling”.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development in the banner heading above is taken from the Council’s decision notice and the subsequent appeal form. I have used it in preference to the description on the original planning application form as it provides a more accurate description of the proposal.
3. The decision notice referred to adjacent dwellings on “Downham Street”, the officer report to “Downham Road”, and both names were used in the appellant’s statement. In fact, the relevant neighbouring properties are at Nos 23 and 25 Downham Road South, and I have used the correct street name throughout my decision.

Main Issue

4. The main issue is the effect of the proposed development on living conditions for occupiers of neighbouring properties at 23 and 25 Downham Road South, and 31 Daryl Road, with particular regard to outlook and whether or not it would be overbearing.

Reasons

5. The appeal site is currently occupied by a part one-, part two-storey detached building, which is situated towards the rear of the narrow plot. A kitchen fitting business operates from the property, with the front forecourt towards Daryl Road being used for parking, deliveries and collections. The site is very close to Heswall town centre which lies to the south-west, though Daryl Road is almost entirely residential, and the appeal site’s nearest neighbours are the dwellings

at No 31 Daryl Road to the north-west, and Nos 23 and 25 Downham Road South to the south-east.

6. The proposed development is the demolition of the existing building on the site, and its replacement with a two-storey detached dwelling. The new dwelling would occupy a similar amount of land to the existing building, although the built footprint would be set further forward within the plot, closer to the established building line on Daryl Road; this would allow the provision of a rear garden area while still allowing for some off-street parking space at the front.
7. Like the existing building, the new dwelling would be built right up to the plot boundary adjoining No 31 Daryl Road, with a gap of around 4m between side elevations. Windows on a side box dormer at the first-floor level of No 31 serve habitable rooms. On the other side of the appeal site, there would be a space of around 8m between the proposed dwelling and the main rear elevation of Nos 23 and 25 Downham Road South; this has windows serving habitable rooms at both ground floor and first floor levels. The close proximity of the new dwelling to the buildings on either side would limit the outlook from the neighbouring properties, from where it would be seen as an overbearing feature.
8. The submitted drawings show that the proposed new dwelling would have a slightly lower ridge height than the existing building on the site. The windows of the neighbouring upper floor rooms would therefore look onto pitched roofs rather than vertical walls, and the appellant states that the "45-degree rule" would be adhered to vertically (although not laterally)¹. However, given the very small separation distances between the new dwelling and the adjacent properties this would do little to alleviate the intrusive impacts of the development.
9. The siting of the dwelling further forward within the plot would make it much more intrusive in respect of No 31 Daryl Road and No 23 Downham Road South than the existing building. I note that no objections to the proposal were received from the occupiers of those dwellings, but this does not remove my obligation to consider the effect of any harm which might be caused. Although the shifted footprint would improve the position in respect of overbearing when seen from the rear garden of No 25 Downham Road South, the new dwelling would still be directly facing habitable rooms at the rear of No 25, and in fact part of its side elevation would be slightly closer. I therefore consider that the overall effect of the development would not be as positive in respect of that property as the appellant suggests, being essentially neutral at best.
10. The Council referred in its officer report to its guidance which "dictates that two directly facing habitable rooms should be 21m apart" and that "where a sole window to a main habitable room faces a blank wall, minimum of 14m of separation should be achieved". There is no further information before me to explain the source of those figures, but even if they are taken from an up-to-date supplementary planning document, guidance is by definition advisory and so does not "dictate". Nevertheless, the minimum separation distances which the Council seeks to achieve are not in my experience either unusual or unreasonable, and provide acceptable guidelines as a starting point. While

¹ I have not been directed to any policy or guidance which specifically seeks to apply the "45 degree rule" in this case, but it is a widely-used and commonly understood approach which helps to assess the effect of development on outlook, and I have no reason to dispute the appellant's assertion on this point.

there will of course be instances where some flexibility is necessary to suit specific site circumstances, the proposal before me falls short of the ideal by a considerable amount, and for the reasons I have set out in the preceding paragraphs goes beyond what would I consider to be an appropriate degree of leeway in this case.

11. I conclude that the proposed development would be overbearing and detrimental to the outlook of adjoining dwellings, and so would be harmful to living conditions for the occupiers of neighbouring properties at 23 and 25 Downham Road South and 31 Daryl Road. The development would therefore conflict with Policy HS4 of the 2000 Wirral Unitary Development Plan ("the UDP") which sets out criteria for new housing development and, among other things seeks to protect residents' quality of life by ensuring that adequate separation between adjoining dwellings is achieved.
12. The proposal also conflicts with the provisions of the National Planning Policy Framework ("the Framework") which seek to achieve well-designed places, notably Paragraph 130 which requires that development functions well and provides a high standard of amenity for existing and future users.
13. The decision notice also referred to conflict with Policy HS8 of the UDP. That policy deals with the development of nursing homes and residential care homes; the proposal is not for that type of development, and I agree with the appellant's assumption that the reference to HS8 in the Council's decision notice is an error. I find no conflict with Policy HS8, although this does not alter my overall conclusion.

Other matters

14. The appeal site is in an area defined by the UDP as "primarily residential", and the council did not raise any "in principle" objections to the redevelopment of the site for residential use. The Council also considered that the proposal would be acceptable in terms of its impact on the demand for car parking and highway safety. None of the evidence before me leads me to a different conclusion on these matters.
15. Apart from relocating the built footprint within the site, the proposed new dwelling would be similar in scale and form to the existing building on the site, and the proposed materials would be acceptable. Notwithstanding the disparity of it being a commercial property in a predominantly residential setting, the appearance of the existing building on the site is not incongruous in its surroundings, nor does it have a negative impact on the wider streetscene. Nevertheless, I accept the Council's assessment that "bringing the built form forward within the plot would arguably represent a visual improvement to the streetscene".
16. I also largely accept the appellant's description of the surrounding area as one where "properties are in close and direct proximity to each other", though with the caveats that this does not apply to all properties, and it largely refers to side-to-side relationships. I agree that the scale, siting and detailed design of the proposed dwelling would be acceptable in terms of its effect on the character and appearance of the area. However, this does not outweigh the harm to neighbours' living conditions which would result from its very close proximity to habitable rooms of adjoining properties.

Planning Balance and Conclusion

17. The appellant has asserted that the Council is only able to demonstrate a housing land supply of 3.61 years, and so cannot demonstrate a five-year housing land supply. This has not been disputed by the Council, which did not submit an appeal statement, and I therefore consider that the presumption in favour of sustainable development set out in paragraph 11d) of the Framework therefore applies. This indicates that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. The proposed development would provide a single new dwelling, in an area which is well-located for access to shops, other services and transport links. There would be some additional benefits in terms of employment and use of local businesses during the construction phase, and Council Tax payments would be due to the Council from the new dwelling, although given the small scale of the scheme these would represent in total a very limited social and economic benefit. However, I have found that the development would cause significant harm to the living conditions of neighbouring residents; it would therefore conflict with the requirements of the Framework which seek to achieve well-designed places, in particular Paragraph 130, for the reasons which I have set out above.
19. Overall, I conclude that the harm from the development would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. The proposal would not amount to sustainable development in the terms set out in the Framework. The appeal is therefore dismissed.

M Cryan

Inspector