



Appeal Decision

Site visit made on 21 December 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 April 2024

Appeal Ref: APP/W4325/W/23/3324876

**Land adjacent to Oak Cottage, Noctorum Road, Noctorum, Wirral
CH43 9HQ**

- 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 Michael Traynor of Kelcrest Developments Limited against the decision of Wirral Metropolitan Borough Council.
- The application Ref is APP/22/01656.
- The development proposed is The erection of a semi-detached villa on land adjacent to Oak Cottage, with associated parking provisions and access (2no. dwellings).

Decision

1. The appeal is allowed and planning permission is granted for the erection of a semi-detached villa on land adjacent to Oak Cottage, with associated parking provisions and access (2no. dwellings), at land adjacent to Oak Cottage, Noctorum Road, Noctorum, Wirral, CH43 9HQ in accordance with the terms of the application, Ref APP/22/01656, dated 14 September 2022, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Applications for costs

2. An application for costs was made by Mr Michael Traynor of Kelcrest Developments Limited against Wirral Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. I have used the description of development from the appeal form in the banner heading and my decision as this more accurately describes the proposal before me.
4. Amended plans were submitted to the Council during the course of the application. These amendments included the removal of a car port to Plot 1, removal of a bedroom from Plot 2 which had no window, and amended planting details. I have considered the appeal based on these amended plans.
5. Since the appeal was lodged, a revised National Planning Policy Framework (the Framework) has been published. Both parties have had an opportunity to comment and so have not been prejudiced by this change. I have thus had regard to the latest version of the Framework in determining this appeal.
6. I am advised that the emerging Wirral Local Plan 2021-2037 (ELP) has been submitted for independent examination by an Inspector, and that public

hearings have commenced. The ELP is therefore at an advanced stage and so some weight can be given to these policies.

7. An undated section 106 agreement by Unilateral Undertaking (UU) was provided during the course of the appeal, outlining a financial contribution towards mitigation measures for recreational pressure on a number of designated European protected sites¹. For the reasons set out below, this UU is not necessary to make the development acceptable. As such, a completed UU has not been requested.

Main Issue

8. As I am aware that the appeal site is within the Zone of Influence of a number of European protected sites, I consider the main issues to be the effect of the proposed development on (a) the character and appearance of the area, and (b) European protected sites.

Reasons

Character and Appearance

9. The appeal site comprises an area of vacant land between two existing dwellings. Mature trees extend along the front and rear boundaries. There are playing fields opposite the site, otherwise, the surrounding area is characterised by large, detached dwellings of differing design, set in substantial plots, often containing mature trees and landscaping. This gives the area a spacious, leafy, and wooded character. Trees within and around the site have been protected by Tree Preservation Order (TPO).
10. The appeal scheme proposes the construction of two dwellings on the site, set back from the road, with a shared access. Parking provision is provided to the front/side along with gardens to the front, side and rear. The two dwellings would be semi-detached, with accommodation over three floors, partly utilising the roof space. Only Plot 2 would be accessed from the front of the building, Plot 1 would be accessed from the side.
11. The drawing 'Proposed Street Scene' demonstrates that the overall size of the proposed building comprising two dwellings would not be dissimilar to neighbouring properties along this part of Noctorum Road, some of which also utilise the roof space to provide additional accommodation. The same drawing also demonstrates that the appeal scheme would be set in from the side boundaries of the plot in a similar manner to other properties, whilst the 'Proposed Site Layout' drawing demonstrates a generous set back distance is achieved. As such, while the proposal would result in the loss of this open plot, adequate spacing would be retained between the proposal and existing development, sufficient to retain the sense of spaciousness that is characteristic of the area.
12. Several trees are proposed for removal, mostly Category C trees of low quality, but also two Category B trees of moderate quality. The plans before me demonstrate that a number of mature trees would be retained, and the originally prepared Arboricultural Impact Assessment advises that the canopies

¹ Mersey Narrows & North Wirral Foreshore Special Protection Area (SPA) and Ramsar, Mersey Estuary SPA and Ramsar, Dee Estuary SPA, Special Area of Conservation (SAC) and Ramsar, Liverpool Bay SPA, Sefton Coast SAC, and Ribble & Alt Estuaries Special Protection Area and Ramsar.

of mature Beech trees T4 and T11 would rapidly close any gap created along the site frontage. Measures are proposed to protect retained trees, along with additional landscaping, including new tree planting to suitably off-set the loss of category B trees. These measures could be secured by the imposition of appropriate conditions. Consequently, the leafy and wooded character of the area would not be materially harmed by the proposed development.

13. Concerns are raised in relation to retained trees and their impact on the living conditions of future occupiers, resulting in pressure for further removal. Existing trees within the site are mature, particularly those along the frontage. However, these trees do not fully enclose the site and so they would not dominate the outlook and setting of these dwellings.
14. Policy HS5 of the Wirral Unitary Development Plan, Adopted February 2000 (UDP), sets a maximum density of housing development at this location of 10 dwellings per hectare. The appeal scheme would exceed this density. Nevertheless, the supporting text to this policy outlines that this approach is a response to development pressure that has threatened the character of the area, which is noted for its large, detached houses with extensive gardens set amongst an abundance of mature trees and shrubs. While the appeal scheme would introduce semi-detached housing at a higher density than is stipulated, this would not be obvious from the design of the scheme itself, which to the passer-by, would have the appearance of a large, detached dwelling, with a single access point, set in spacious grounds, similar to neighbouring dwellings.
15. Albeit two dwellings would likely generate a need for more car parking and a relative increase in comings and goings, the level of parking indicated would not be significant and would not be materially out of character with the level provided at neighbouring properties. I find that the comings and goings associated with two dwellings would not be markedly different to those associated with one.
16. For the above reasons, the proposed development would not cause harm to the character or appearance of the area and would constitute good design. The proposal would comply with UDP Policy HS4, which amongst other matters, requires that new housing development does not result in a detrimental change to the character of the area. Whilst there would be some conflict with the density stipulations of UDP Policy HS5, the character of the area would nevertheless be retained and so I give this conflict little weight. No conflict has been identified with policies of the ELP.
17. Furthermore, the proposed development would meet the requirements of paragraphs 128 and 135 of the Framework, which seek an efficient use of land while taking into account the desirability of maintaining an area's prevailing character, in order to achieve development that is sympathetic to local character, including the surrounding built environment and landscape setting.

European Protected Sites

18. The European protected sites listed above are designated in particular for wintering birds and notable habitat. The Sefton Coast SAC is designated primarily under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations), for Annex I habitats including embryonic dunes, shifting dunes along the shoreline and fixed coastal dunes. Annex II species present as a qualifying feature include Petalwort and Great Crested Newt. The

Dee Estuary SAC is designated primarily for Annex I habitats including mudflats and sandflats, and Atlantic salt meadows. Annex II species present as a qualifying feature include Sea and River Lamprey, and Petalwort. Qualifying features of the listed SPA's, includes an extensive range of bird species, (both breeding and non-breeding). The various justification criteria for each Ramsar designation includes the presence of wetland of international importance, intertidal mud and sand flats with large expanses of saltmarsh, sand dunes, rare species (such as the natterjack toad), and assemblages or species/populations occurring at levels of international importance, such as the waterfowl.

19. The available conservation objectives for these various sites can be summarised as maintaining and restoring the extent and distribution of qualifying natural habitats, as well as their structure and function, the supporting processes on which the qualifying natural habitats rely, the population of each qualifying feature and the distribution of the qualifying feature within the site, to ensure that the integrity of the site is maintained or restored.
20. As part of the preparation of the emerging Wirral Local Plan, a Regulation 19 Habitats Regulations Assessment (HRA) has identified likely significant effects (LSE) on the integrity of European protected sites by way of recreational pressure associated with the future housing requirement for the area, unless avoidance and mitigation measures are in place. The 'Report to Inform HRA 2024' provided with the appeal scheme, recognises that in combination with other residential development, the proposal has the potential for LSE by way of recreational pressure, without mitigation. I have no reason to disagree with this finding.
21. It is therefore necessary for me, as the competent authority under the Regulations, to conduct an Appropriate Assessment in relation to the LSE of the proposal on the integrity of these European Protected Sites.
22. The information before me indicates that the proposal would result in additional residential accommodation within the inner core zone of 5km of a number of European Protected Sites, and cumulatively, it could give rise to increased recreational pressure on these designations.
23. The Council has in place an 'Interim Approach to Avoid and Mitigate Recreation Pressure in Wirral', dated May 2022, (IA). This indicates that mitigation solutions are in place in the form of Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM). The SANG measures focus on increasing the capacity and functionality of Wirral's existing green and open spaces for the purpose of delivering additional recreational capacity, creating an integrated network of SANG through better linkage of smaller green and open spaces, and enhanced accessibility, awareness, and promotion of SANG provision with residents. SAMM measures include raising awareness and encouraging behavioural change of visitors to the coast, and implementing projects to better manage visitors and provide secure habitats for the birds.
24. Within the IA, the Liverpool City Region local authorities have identified that it is overly onerous to use planning obligations for developments of less than 10 net additional units due to practical considerations including administrative and legal issues. Therefore, the IA only seeks financial contributions to deliver

SANG and SAMM measures on sites of 10 or more residential units. This mitigation tariff is weighted to cover the impact of development of less than 10 units by those of 10 or more units.

25. As the competent authority, I need to be certain that the proposal would not cause adverse effects on the integrity of these sites. Having referenced the IA, Natural England has advised that the appeal scheme does not require mitigation, a position which is shared by the Council. Having considered the IA and the means by which SANG and SAMM measures are financed by developments of 10 or more units, I have no reason to disagree and so I conclude that a financial contribution to secure mitigation by way of the SANG and SAMM measures is not necessary in this instance. It is for this reason that I have decided that a completed planning obligation is not necessary to make the proposed development acceptable in planning terms.
26. However, the appellant's Report to Inform HRA, also suggests mitigation of LSE by way of advisory leaflets for new householders. Whilst this mitigation measure forms part of the SAMM, it is unclear from the information before me, who has responsibility for its implementation. As such, I consider that the imposition of a condition to secure this mitigation measure would be necessary.
27. Subject to the imposition of a planning condition, I conclude that the proposal would not have an adverse effect on the integrity of European protected sites, hence there would be no conflict with emerging policies WS5.5 and WD3 (as referenced in the IA), which collectively, seek to ensure that adverse effects should be avoided and/or mitigated to ensure that the integrity of internationally important sites, is protected. Furthermore, the proposal would comply with paragraph 180 of the Framework, which seeks to protect and enhance biodiversity.

Other Matters

28. I have had regard to the representations made by the public, which raise a number of additional issues. The Council has raised no concerns with the principle of additional housing at this location and I see no reason to disagree given that this is a proposal for housing within an established residential area. While the Council may be able to demonstrate a five-year supply of deliverable housing sites, it remains a government objective to significantly boost the supply of homes. In this context, the provision of two additional dwellings would make a small but positive housing supply contribution.
29. The information before me confirms that the Council's parking standards are met and so I have no reason to consider that there would be an unacceptable impact on highway safety, resulting from additional on street parking. Reference is made to flooding of the adjacent highway. However, I have not been provided with any objective evidence to substantiate this point. With regards to the availability of domestic storage, the proposed dwellings would be generously proportioned with ample external space.
30. The appeal scheme has been supported by an Extended Phase 1 Habitat Survey and the recommendations of that report can be secured by the imposition of suitable conditions. Therefore, I am satisfied that the biodiversity of the site has been satisfactorily addressed.

31. There is disagreement as to whether the site is previously developed land, and reference is made to the presence of an air raid shelter. However, there is no information before me to suggest that this has any heritage significance. The Framework recognises that undeveloped land can perform many functions and I have had regard to this in my assessment of the character of the area, before reaching my conclusion on the first main issue.
32. The Council has considered the impact of the proposal on the living conditions of occupiers of neighbouring properties and from my own observations I have no reason to disagree with those findings, which conclude that a condition is necessary to secure obscure glazing of windows in the north facing elevation of the building at first and second floor, to retain the privacy of occupiers of Oak Cottage.
33. Any alternative development proposals for the appeal site would need to be the subject of a separate planning application and are not therefore a matter for this decision.

Conditions

34. I have considered the conditions put forward by the Council with reference to the Framework and Planning Practice Guidance. The appellant has had the opportunity to comment.
35. I have imposed a condition which concerns the statutory time limit. In the interests of certainty, I have also imposed a condition concerning the approved plans.
36. Pre-commencement conditions are proposed requiring a method statement for the control of invasive species in the interest of biodiversity, details of finished floor levels, in the interests of the character and appearance of the area, and a design specification for the access road where it encroaches into the RPA of retained trees, in order to safeguard the health of these trees. This information would be required to inform the early stage of construction, and so pre-commencement conditions are necessary. The appellant has accepted these pre-commencement conditions, as required by Section 100ZA(5) of the Act.
37. Conditions are proposed to control the removal of trees/hedgerow during the bird breeding season and to provide bird boxes, as recommended within the submitted Extended Phase 1 Habitat Survey, dated January 2022. Further conditions are proposed to ensure compliance with the measures of the Arboricultural Method Statement, including those relating to supervision by a suitably qualified person. These conditions are necessary to safeguard the health of trees.
38. Conditions requiring submission and approval of materials and implementation of landscaping details are necessary in the interests of the character and appearance of the area, while a condition to secure the obscure glazing of windows in the north facing elevation of the building at first and second floor is considered to be necessary for the reasons discussed above.
39. Further to my appropriate assessment, a condition is imposed to secure informative leaflets for first-time occupiers relating to the recreational pressures on European protected sites.

40. A condition removing permitted development rights for enclosures forward of the building's principal elevation has been suggested by the Council, in order to retain the appearance of the proposed development as a single property. However, given that a shared pedestrian and vehicular access and driveway is proposed to the frontage, the erection of any enclosure appears impractical in any event, and so I do not consider such a condition to be necessary. Indeed, the Framework states, at paragraph 54, that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Conclusion

41. For the reasons set out above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed.

S Brook

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Drawing No 19175-PJA-S-00-DR-A-0000 Site Plan
 - Drawing No D201.001 Rev C Planting Plan
 - Drawing No 19175-PJA-P4-RF-DR-A-1101-A Proposed Roof Plan
 - Drawing No 19175-PJA-P4-ZZ-DR-A-1100-E Proposed Floor Plans
 - Drawing No 19175-PJA-P4-ZZ-DR-A-2100-B Proposed Elevations
 - Drawing No 19175-PJA-S-00-DR-A-1001-G Proposed Site Layout
 - Drawing No 19175-PJA-S-XX-DR-A-2000-B Proposed Street Scene
- 3) Montbretia and Rhododendron are present within the site boundary. No development shall take place including any site clearance or ground works until a method statement, prepared by a competent person and which includes the following information, has been submitted to and approved in writing by the Local Planning Authority:
 - a) A plan showing the extent of these plants.
 - b) The method(s) that will be used to prevent the plants spreading further, including demarcation.
 - c) The method(s) of control that will be used, including details of post-control monitoring.
 - d) How the plants will be disposed of after treatment/removal.The development shall be carried out in complete accordance with the approved method statement.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development shall take place until full details of a no-dig design specification for the proposed vehicular access which encroaches into the root protection area of a number of retained trees, has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved no-dig design specification.
- 6) No tree, shrub or hedgerow removal is to be carried out on the site between 1 March and 31 August in any year. If it is necessary to undertake their removal during this period, then all trees, shrub and hedgerow shall be checked first by an appropriately experienced ecologist to ensure no breeding birds are present. If breeding birds are present, details of how they will be protected are required to be submitted to and approved in writing by the local planning authority before any such removal takes place. The development shall proceed only in accordance with the approved protection measures.
- 7) The Arboricultural Impact Assessment and Method Statement 22/AIA/WIRR/83, dated January 2023, which includes Drawing No 03 Rev A - Tree Protection Plan 1 - (CONSTRUCTION) and Drawing No 03 Rev A - Tree Protection Plan 2 - (DRIVEWAY), shall be adhered to in full, subject to the pre-arranged tree protection monitoring and site supervision, detailed in Appendix 5, Sequence of Operations and Arboricultural Site Supervision, by a suitably qualified tree specialist.

- 8) No development above damp-proof course level shall take place until details or samples of the materials to be used in the construction of external surfaces of the building have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 9) Plot 1 of the building hereby permitted shall not be occupied until the windows in the north facing elevation at first and second floor level have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before any obscure glazed windows are installed and once installed the obscured glazing shall be retained thereafter.
- 10) The building hereby permitted shall not be occupied until a scheme for the provision of bird nesting boxes within the development has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the number, type and location of bird nesting boxes on an appropriately scaled plan as well as the timing for their installation. The bird nesting boxes shall be installed in accordance with the approved details and shall be retained thereafter.
- 11) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 12) Within 28 days of completion of the development hereby approved, written evidence demonstrating compliance with the requirements of the Arboricultural Impact Assessment and Method Statement 22/AIA/WIRR/83, dated January 2023, for contemporaneous supervision and monitoring of the tree protection measures throughout the construction phase by a suitably qualified and pre-appointed tree specialist (Condition 7) shall be submitted to and approved in writing by the Local Planning Authority.
- 13) The information leaflet for new householders referenced within the 'Report to Inform Habitat Regulations Assessment 2024' highlighting the location of, and promoting the use of, alternative greenspaces within the area and explaining the importance, sensitivities and vulnerabilities of European protected sites to recreational impacts, shall be provided to each first-time occupier of the dwellings hereby approved, within 28 days of occupation.