



Appeal Decision

Site visit made on 29 May 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2024

Appeal Ref: APP/W4325/W/24/3336327

18 Oak Avenue, Upton CH49 4NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Neil Maher against the decision of Wirral Metropolitan Borough Council.
 - The application Ref is APP/21/00989.
 - The development proposed is 5No four bed detached houses with construction of new access to highway.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for an award of costs was made by Mr Neil Maher against Wirral Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The principle of residential development on this site was established in the previous appeal for outline planning permission with all matters reserved, which was allowed on 6 August 2019.¹ In this case the Council were concerned about living conditions of the occupiers of 8 Oak Avenue with particular regard to noise. There is no evidence before me that this consent has been implemented and due to the passage of time can no longer be implemented. However, I have had regard to it as a material consideration.
4. Both parties have referred to Policy HS10 of the Wirral Unitary Development Plan (UDP), and I have been provided with a copy of the policy and associated Supplementary Planning Guidance Note 10 (SPG). The policy sets out criteria for assessing proposals for backland development. As discussed in the previous appeal decision, Policy HS10 and the SPG relate specifically to proposals of between one and three dwellings, so do not apply to the appeal scheme. I have therefore not afforded weight to any conflict with the provisions of Policy HS10 or the accompanying guidance. In addition, the Council have not referred to this policy in their reason for refusal.
5. There is disagreement between the parties on the use of several terms used by the Council, including 'subservient' and 'backland'. I have also been directed to the Supreme Court judgment *Tesco Stores Limited verses Dundee City Council*

¹ APP/W4325/W/19/3225344

with regard to the interpretation of policy. I have had regard to the context the words were used to describe the development and I do not consider that the Council have conflated the description with the policy text as neither word was used in the reason for refusal. As indicated earlier I have not given weight to the policy in my assessment as the specifics of it do not relate to this case.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area; and
- the effect of the proposal on the biodiversity of the site and surroundings with particular regard to protected species and trees.

Reasons

Character and appearance

7. 18 Oak Avenue is a detached dwelling in a predominantly residential area. The appeal site is an area of land behind the dwelling, which lies between the rear boundaries of dwellings on Kingfisher Way and Sycamore Avenue and the Arroe Brook with open fields beyond. The surrounding dwellings are predominantly detached and semi-detached, single and two storey dwellings with a mix of styles and materials. The appeal site provides an open area between the rear boundaries of the surrounding dwellings which has historically contained small single storey, low buildings such as sheds and outbuildings. The open space is an important characteristic of the area.
8. The appeal site has been cleared of any outbuildings and some of the trees. The access to the site would be from the side of 18 Oak Avenue with acoustic fencing panels between the access road and neighbouring dwellings.
9. The proposal would be five two-storey four-bedroom dwellings with a single storey attached garage to the side. Whilst the proposed dwellings would be sufficient distance from the existing dwellings to prevent issues of privacy and overlooking, the height, scale and footprint of them would mean that they would be dominant in views from the existing dwellings. In addition, due to the orientation, at 90 degrees to the predominant layout, current occupiers would be faced with the gable ends of the dwellings which would add to the perception of height and dominance. As a consequence, they would erode the openness of the area which would harm the characteristic gap between Kingfisher Way and Sycamore Avenue.
10. The previous outline consent established that up to five dwellings could be accommodated on the site. It did not however grant consent for the type of houses or layout of them. I have not had sight of the indicative plans which accompanied the outline application, so cannot be certain whether the current proposed dwellings are higher or not, although the appellant advises that the plans indicated dormer bungalows. In any event, I have established that the current proposed dwellings would be dominant in views from the locality.
11. I conclude that the proposal would harm the character and appearance of the area. It would conflict with Policy HS4 of the Wirral Unitary Development Plan (UDP) which amongst other matters seeks to ensure that development is of a

scale which relates well to surrounding property and does not result in a detrimental change to the character of the area. It would also conflict with the design aims of the National Planning Policy Framework (the Framework) and the National Design Guide.

Biodiversity

12. The appeal site has previously been cleared of vegetation and a number of trees and the ancillary buildings removed. A Phase 1 Ecological Survey was submitted with the application. Merseyside Environmental Advisory Service (MEAS) advised that a biodiversity metric would be necessary to show whether there had been, or would be, a net loss of priority habitat. Although a revised landscaping scheme was submitted by the appellant it did not quantify the biodiversity net change to establish that there would be no net loss of priority habitat and protected species.
13. From the information before me I cannot be certain of the effect of the proposed development on protected species. It would therefore conflict with Policy NC7 of the UDP which does not permit development that would have an adverse effect on wildlife species.
14. The submitted Arboricultural report indicated that a number of trees were to be removed. There is however insufficient information to establish where and how any replacement trees would be planted.
15. I cannot be certain that the proposal would not harm the biodiversity of the site and surroundings with particular regard to trees. It would therefore conflict with Policy GR7 of the UDP which amongst other matters seeks to ensure that trees are protected on development sites and if there is a loss of trees replacement planting is required to protect or preserve local amenity. It would also conflict with section 15 of the Framework.

Other Matters

16. The site is located within the 2.6km Zone of Influence of the Mersey Narrows and North Wirral Foreshore Special Protection Area and Mersey Narrows and North Wirral Foreshore Ramsar Site. It is also 1.8 km from Meols Meadows Site of Special Scientific Interest and within the Zone of Influence of the North Wirral Foreshore Site of Special Scientific Interest. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposed development. Therefore, given my overall conclusion on the main issues, it is not necessary for me to consider this matter further.
17. The Council does not respond to the appellant's position that the authority has consistently failed to deliver the required housing numbers during the plan period. The evidence presented does not enable me to reach a definitive finding on the housing land supply position. The proposed development would create five additional family dwellings adding to the Council's housing stock and supporting the Government's objective of boosting the supply of homes which carries moderate weight in favour of the proposal. However, even if I were to take the appellant's position that there has been a significant under delivery of housing, the adverse impacts identified in my reasoning in respect of character

and appearance and the biodiversity of the area would significantly and demonstrably outweigh the benefits of delivering five dwellings.

18. The appellant refers to emerging Policy WS3.4 of the Local Plan Submission Draft referring to housing mix and the development of larger dwellings of three or more bedrooms. However, I have little information to suggest when the plan is likely to be adopted, if any policies have been modified, or if there are any unresolved objections. In any event, even if the relevant policy in the emerging plan was adopted and the proposal increased the number of larger homes in the locality, those benefits would not overcome the harm I have found in respect of the main issues.

Conclusion

19. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

H Senior

INSPECTOR