
Appeal Decision

Site visit made on 16 July 2024

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2024

Appeal Ref: APP/W4325/W/24/3343766

15 Grosvenor Avenue, West Kirby, Wirral CH48 7HA

- 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 Male against the decision of Wirral Metropolitan Borough Council.
 - The application Ref is APP/23/01471.
 - The development proposed is demolition of existing dwellinghouse and outbuildings with the erection of four semi-detached houses with associated hard landscaping including new access from Grosvenor Avenue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Wirral Unitary Development Plan 2000 (UDP) is the adopted development plan for the area. However, the emerging Wirral Local Plan (eLP) has been submitted for examination, with public hearings having taken place. The examining Inspectors have issued a post-hearing note. In accordance with the requirements of paragraph 48 of the National Planning Policy Framework (the Framework) relevant policies in the eLP are capable of carrying weight in the determination of this appeal.
3. On 30 July 2024, the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. On the same date, the Secretary of State made a written ministerial statement (WMS) entitled 'Building the homes we need'. Both parties have had the opportunity to comment on any implications for the appeal and I have taken comments received into account. I have also had appropriate regard to these documents as material considerations in determining this appeal.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living condition of neighbouring occupiers with regard to privacy, daylight and outlook.

Reasons

Character and appearance

5. The appeal site consists of a bungalow set within a spacious garden in an attractive, predominantly residential area, at the corner of Grosvenor Avenue and Cholmondeley Road. Grosvenor Avenue generally consists of semi-detached properties, although there is a lack of uniformity with regards to specific design features. The appeal site lies at the top of Grosvenor Avenue, which rises uphill from Carpenter's Lane. It sits slightly lower than Cholmondeley Road, which has a more elevated position and a more diverse range of house types.
6. The proposed development would see the demolition of the existing property, and the construction of two-pairs of semi-detached properties.
7. There is no objection in principle to the demolition of the existing dwelling and the construction of new residential development. Indeed, in April 2024¹ subsequent to the refusal of the appeal scheme, permission for the erection of two semi-detached houses and one detached house was granted on the site.
8. Whilst there is a general lack of uniformity between the existing residential dwellings, and indeed the existing bungalow on the appeal site contrasts with the surrounding taller buildings, there are some consistent features which provide a pleasant degree of cohesiveness which adds to the character of the area. Neighbouring 2.5 storey dwellings tend to have dormer windows or rooflights set into pitched roofs. In contrast, the proposed 2.5 storey dwellings would feature large windows which would extend to the top of the gables. The extent and height of the glass in the proposed gables would look incongruous and discordant in relation to surrounding properties.
9. The width of the proposed plots would be smaller than those of surrounding properties on Grosvenor Road and Cholmondeley Road. This would give the proposed dwellings an untypically cramped appearance in relation to the prevailing pattern of development. Properties on Cholmondeley Road are more generously spaced than those on Grosvenor Road, but gaps do generally exist between the properties on Grosvenor Road at first floor level. These gaps enhance the feeling of openness in the street scene and provide a pleasing rhythm of development. There would be a small gap separating the two pairs of semi-detached properties, but the proposal would present a more continuous form of development at odds with the surrounding character. The narrow width of the plots coupled with the impression of a continuous frontage would exacerbate the proposal's bulk and mass, intensified by the imposing fenestration.
10. Policies within the UDP were adopted before the publication of the Framework. However, this in itself does not result in the policies being out-of-date. Insofar as the reason for refusal relates to character and appearance, UDP Policy HS4 is consistent with the current Framework, which, at paragraph 135, highlights that development should be sympathetic to local character, including the surrounding built environment.
11. However, the emerging Wirral Local Plan (eLP) has been submitted for examination, with public hearings having taken place. In accordance with the requirements of paragraph 48 of the Framework relevant policies in the eLP are capable of carrying weight in the determination of this appeal.

¹ Council Planning ref: APP/24/00122

12. Policy WS3.2 of the eLP indicates that a minimum density of 50 dwellings per hectare should be provided in the location of the appeal site. Whilst there is disagreement between the parties as to how much weight the eLP should be afforded, it is undisputed that the eLP is at an advanced stage of preparation. The Inspectors' Post Hearing Note did not specifically mention concerns with Policy WS3.2, which relates to density, and which is consistent with the current Framework. Emerging policies are, however, still subject to change. Without prejudice to the examining Inspectors' report, I therefore give eLP Policy WS3.2 moderate weight.
13. The proposed density would be 46 units per hectare, which would be less than the minimum density proposed in the emerging policy. However, the emerging policy highlights that residential development should be provided at this minimum density unless it can be demonstrated that the minimum density would not be appropriate having regard to site characteristics.
14. I have also taken into account the consultation on proposed reforms to the Framework and the WMS. The draft framework is not adopted and is subject to change, and therefore I have afforded it only limited weight. As the WMS is an expression of government policy, it is a material consideration and I have therefore afforded it moderate weight in determining the appeal. The WMS states that the government are reversing the changes that allow local character to be used in some instances as a reason to reduce densities. Furthermore, the WMS states that the default answer to brownfield development should be yes. I recognise that only part of the proposal would be on the footprint of the existing dwelling, whilst part would be built on garden land which is excluded from the definition of previously developed land in the Framework. Nonetheless, the WMS is clear that there should be an uplift in density in urban areas.
15. However, the focus on bringing forward such sites is not at the expense of ensuring that development is well designed, with the proposed reforms continuing to focus on ensuring good quality development. The WMS is clear that whilst strengthening the general presumption in favour of sustainable development its application cannot justify poor quality development.
16. Despite the benefits of the increased density of the proposal than that of the permitted scheme, in this instance the uplift in density would not outweigh the harm to the character and appearance of the area.
17. I therefore conclude that the proposal would harm the character and appearance of the area. The proposed development would conflict with Policy HS4 of the UDP which seeks to ensure that proposals do not result in a detrimental change in the character of the area.
18. The Council referenced Supplementary Planning Document 2 (SPD) – Designing for Self-Contained Flat Development and Conversions (2006) in their reason for refusal. However, as the proposal is for 4 new dwellings, I do not consider that this SPD is directly relevant to the proposal with regard to character and appearance.

Living conditions

19. The proposal would be near to the boundary with No 11 Grosvenor Avenue (No 11), which has windows facing the appeal site at ground and first floor level.

Whilst a boundary wall would restrict visibility at ground floor level, the evidence indicates that one of the first-floor habitable rooms of No 11 would be only 6.8m away from the proposed new building and would face a sizeable flank wall. The sloping topography means that the first floor of No 11 would be lower than the first floor of the proposed development, which would accentuate the proposal's dominating and overbearing impact in relation to No 11.

20. Supplementary Planning Guidance 11 – House Extensions (SPG11) (2004) whilst only guidance and relating to house extensions rather than new developments, provides a useful point of reference as to appropriate separation distances between properties. The SPG seeks a distance of 14m between habitable rooms and flank walls. The proposed distance of 6.8m is therefore noticeably less than would usually be considered acceptable. The outlook from the window of the first floor habitable room of No 11 would be dominated by the mass of built form.
21. Whilst an element of overshadowing is sometimes to be expected in built up areas, and separation distances cannot always be achieved, even when factoring in the tight nature of the urban environment I consider that the proximity of the first floor of the nearest dwelling of the appeal proposal to No 11 would be overbearing and would lead to an oppressive sense of enclosure. It would also reduce the levels of daylight received within the room served by this window at No 11, to the detriment of the occupiers living conditions, with the evidence indicating that a 25 degree line, the test for daylight, would be dissected.
22. The appeal site is at approximate right angles to No 1 Cholmondeley Road (No 1) and as such the impact of the proposal on most of the windows would be acceptable. However, No 1 has corner bay windows at ground and first floor which wrap around its front and side elevations. The advice within SPG11 is that windows serving habitable rooms directly facing each other should be at least 21 metres apart. The evidence before me indicates that the distance between the existing bay windows at No 1 and the nearest proposed windows would be approximately 14.7m. Due to their distinctive design which allow for views out in a number of directions, the windows of No 1 would face the windows of the proposal, although the windows of the proposal would not directly face the windows of No 1.
23. Due to the design of the windows of No 1, an element of overlooking between No 1 and any property on the appeal site is likely to be inevitable. Furthermore, my attention has been drawn to the fact that the separation distance between the properties on the approved scheme is less than that of the appeal scheme. However, whilst not meeting the suggested 21m separation distance, the relevant property on the approved scheme is orientated at a slightly different angle in order to alleviate overlooking. Whilst the separation distance on the appeal scheme would be slightly greater, the angle between the properties is such that a larger and more unacceptable degree of overlooking between the two properties would occur.
24. I acknowledge that there are existing views between the corner bay windows of No 1 and the existing bungalow, but I consider that the increased height of the proposal along with an increased number of windows would lead to a greater degree of overlooking and a resultant increased loss of privacy for the occupiers of No 1.

25. In reaching the above conclusion, I have born in mind that there are similar and smaller separation distances between neighbouring properties, the effects of which are likely to be similar to the appeal proposal. Nonetheless, this does not persuade me that the harm to the living conditions of neighbouring occupiers would be acceptable nor persuade me to alter my findings.
26. As such, I find that the proposal would harm the living conditions of the occupiers of No 11 with regard to outlook and daylight and would harm the living conditions of No 1 with regard to privacy. The proposed development would therefore conflict with Policy HS4 of the UDP, and guidance contained within the SPG, which seek to achieve adequate separation distances between properties.

Other Matters

27. I have noted the concerns raised by interested parties. However, as I have found the proposal to be unacceptable on the main issues, it is not necessary for me to explore these matters further.

Planning Balance

28. The Government is seeking to significantly boost the supply of housing. The Framework encourages and supports the effective and efficient use of land and recognises that small sites can make an important contribution to the Council's housing supply. The proposal would provide an additional dwelling over and above the approved scheme for three dwellings, contributing positively to the Council's housing supply.
29. The proposed development would provide social benefits in terms of an additional dwelling in a sustainable and accessible location. Furthermore, the development would generate economic activity, providing an additional home to residents who would contribute to the local economy. The development would be near facilities and public transport links which may encourage future occupants to use sustainable forms of transport, benefitting the environment. There would therefore be economic, social and environmental benefits to the scheme.
30. I nevertheless find that in this case the single extra dwelling of the appeal scheme would make a limited contribution to housing supply such that I give these benefits limited weight.
31. Whilst acknowledging the strong support for higher density development in the draft Framework, WMS and emerging Policy WS3.2, I have found that the proposal would be harmful to the character and appearance of the area. This harm would be long lasting and would be contrary to the design aims of the Framework. I have also found that the proposal would harm the living conditions of the occupants of No 11 with regard to outlook and daylight and the living conditions of No 1 with regard to privacy. I ascribe these matters substantial weight.
32. As such, and bringing matters together, the adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole.

Conclusion

33. The proposal would conflict with the development plan as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it.

34. Therefore, for the reasons given, the appeal is dismissed.

L C Hughes

INSPECTOR