



Appeal Decision

Site visit made on 23 July 2025

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2025

Appeal Ref: APP/W4325/W/25/3358924

84 Upton Road, Birkenhead, CH41 0DH

- 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 Andrew Merebrook against the decision of Wirral Metropolitan Borough Council.
 - The application Ref is APP/24/00064.
 - The development proposed is for the erection of a 3-bedroom dwelling to the rear of the property at 84 Upton Road.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Andrew Merebrook against Wirral Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the submission of the appeal, on 14 January 2025, the Wirral Local Plan 2022-2040 (LP) was adopted on 31 March 2025. Consequently, the policies contained within the Wirral Unitary Development Plan (2020) (the UDP) have been superseded. I am required to determine this appeal on the basis of the development plan which is in force at the time of my decision. Both parties have acknowledged this situation, with the Council providing additional comments on 7 May 2025, where the Appellant was also given an opportunity to provide their views on the relevance of the new policies. Consequently, I am satisfied that no party has been prejudiced by the change in development plan policy. This appeal has therefore been determined in relation to the policies contained within the LP.

4. The Council have referenced a number of LP Policies in its submissions. However, it has not explicitly stated which LP Policy should be considered instead of UDP Policy GR7, which was cited on the Council's decision notice. Therefore, I have compared the LP Policies referenced to UDP Policy GR7 and consider that LP Policy WD1 – Landscaping, to be the most comparable under the circumstances. Given LP Policy WD1 has been referenced in the evidence, including the Officer Report for the determination of the planning application, I will not prejudice any party by taking this approach.

Main Issues

5. The application was refused on one ground, in relation to trees. However, the Council have advised that had the application been determined under the LP then they would have required financial contributions towards open space and outdoor sports

provision.

6. Therefore, the main issues of this appeal are:

- whether the development would deliver an appropriate level of open space and outdoor sports provision; and,
- whether the proposed development would result in the unacceptable loss of trees.

Reasons

Open Space and Outdoor Sports Provision

7. LP Policy WD24 requires that new residential development contributes to the improvement and enhancement of open space. LP Policy WD24 sets out the requirements for how this would be achieved and the standards which ought to be met. Improvements to open space provision will be delivered through a mix of on-site provision and/or financial contributions in lieu (where on-site provision is not feasible). In addition, LP Policy WD24 confirms that new residential development should also make provision for outdoor sports and recreation. This, again, would be achieved through delivery on-site or, where not feasible, by a financial contribution in lieu.

8. The justification to the policy¹ is very clear that the policy requirements relate to all development where there is a net increase in dwellings. The proposed development would result in a net increase of one dwelling, therefore engaging LP Policy WD24. It is obvious that the proposed development could not deliver the required provision for open space or outdoor sports on-site. Therefore, financial contributions sought in lieu are necessary as indicated by the Council. The Appellant has raised concerns, particularly surrounding the amount, and where and what the money will be spent on. An Appeal Decision (the Liverpool decision)² has been referenced in support of these views. Whilst there are some similarities between the Liverpool decision with the proposed development in this regard, there are clear policy differences, due to the different Local Planning Authorities involved. Therefore, the cases are not comparable.

9. Having examined the financial contributions sought³ I am satisfied that they are reasonable and proportionate to the development proposed, and also that these contributions are justified by appropriate evidence⁴. Consequently, in the absence of any evidence of a financial contribution being paid directly to the Council, or the provision of a suitable mechanism, such as a legal agreement that would deliver the required financial contributions, there is nothing to ensure the necessary payments. I have given consideration to the imposition of a planning condition in this regard, but given the Appellant's comments, amongst other matters, I am not satisfied that unacceptable development can be made acceptable in this instance. Therefore, in the absence of a legal agreement to support the appeal, or any other mechanism available to secure the required financial contributions, the development could not deliver the necessary open space or outdoor sports provision.

10. For the above reasons, I conclude, in the absence of secured financial contributions

¹ LP Paragraphs 6.140 to 6.147

² APP/Z4310/W/24/3349514

³ £4040.00 towards the provision of Open Space and £459.20 towards the provision of Outdoor Sports

⁴ LP Appendix 10.1 Open Space and Appendix 10.2 Sports Provision

in lieu of no on-site provision, the proposed development would fail to deliver an appropriate level of open space and outdoor sports provision. Therefore, the development conflicts with LP Policy WD24, which requires development to provide improved and enhanced open space and appropriate facilities for outdoor sport and recreation, amongst other matters.

Trees

11. The appeal site currently comprises the rear garden area for No 84, which is bound by 3no. roads. The existing dwelling fronts Upton Road, whilst the east facing side elevation faces Foxglove Road, with Speedwell Road situated to the rear of the site. There is no dispute surrounding the number of trees to be removed to facilitate the proposed development or the details contained within the Appellant's Tree Reports⁵.

12. I acknowledge the findings in the tree reports, including the conclusion that the trees comprising group G2 should be felled, with groups G1 and G3 retained. The Council's Tree Preservation Officer (Development Management) (the Tree Officer) does not consider the trees in G2 to be 'particularly significant in the landscape, although they do confer some amenity'. In the absence of evidence to the contrary and from my own observations on site, I agree with these comments.

13. The Council's Tree, Hedgerow and Woodland Strategy 2020-2030 revised 2024 (the Strategy) has been referenced on its decision notice and within the wider evidence. In the Officer Report, it states that 'the impracticality of replacement mitigation planting aside, the removal of all trees on this site to make way for development is fundamentally against the core principles of the strategy'. However, the Tree Officer recognises that the site cannot accommodate a minimum of 6no. tree replacements as required by the Strategy due to overall size constraints, yet still raises no objections, subject to the proposed development being carried out in accordance with the Tree Reports. Although, I do not consider all tree planting is or should be ruled out and that some tree planting on a reduced scale is possible and could be undertaken as part of a carefully considered landscaping scheme, using suitable species. Overall, I find the comments of the Tree Officer to form a material planning consideration of significant weight. I also note the wording of LP Policy WD1H, where in my opinion, the use of 'normally' in the text, allows for a degree of judgment and the views of specialists to be taken into consideration, such as the Tree Officer on this occasion.

14. In considering the proposed development, I am also mindful of a similar development that has been approved by the Council at 86 Upton Road⁶, which is adjacent to the appeal site. Nonetheless, I appreciate that whilst some of the trees, subject of this appeal may have been considered as part of this neighbouring planning application, the overall numbers of trees to be felled are different. Overall, I am satisfied that the retention of trees identified as G1 and G3 in the Tree Reports will be sufficient to preserve the visual amenity in this urban area. Whilst some concern has been raised surrounding the location of trees comprising G1 and their proximity to the boundary wall, there is no evidence to suggest that any failure or requirement to fell these trees is imminent.

15. For the above reasons, I conclude that the felling of the trees comprising group G2 to facilitate the proposed development would not have an unacceptable effect on the visual amenity of the surrounding area. Therefore, whilst there may be conflict with the

⁵ Arboricultural Implications Assessment and Arboricultural Method Statement, both dated 16 February 2024 and by Mulberry

⁶ APP/24/00061

Council's Strategy, it is limited and the proposed development complies with LP Policy WD1, which requires the Local Planning Authority to consider the general health, structure, size and life expectancy of trees, their visual value within the locality and their value for nature conservation, amongst other things.

Other Matters

16. The Council have suggested that the development should comply with nationally described space standards as required by LP Policy WD23. However, the Officer Report does not raise any issues with the living conditions of future occupiers during the assessment of the planning application and were therefore satisfied with this aspect of the proposed development. Additionally, there is no evidence before me to suggest that these standards would not be met.

17. The Council have also indicated that the development ought to comply with Part M4(2) of Building Regulations, as required by LP Policy WD23. Similarly, the Council have suggested the implementation of the energy hierarchy, as required by LP Policy WS8, and the delivery of communications infrastructure, as required by LP Policy WS10. However, I am satisfied that all of these matters could be secured through suitably worded conditions if I were minded to allow the appeal.

18. I have also had regard to the concerns raised by the Appellant about the way that the Council handled the application, but this does not affect the planning merits of the case. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out above.

Planning Balance and Conclusion

19. It is a requirement for this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. I accept the lack of harm in respect of trees and the absence of other harm arising from the proposed development. The proposed development would deliver one additional unit to the Council's supply of housing in an accessible location. There would also be some general economic and social benefits resultant from the construction phase and subsequent occupation of the scheme. Collectively, these matters attract moderate weight in my decision.

20. Nonetheless, these factors do not outweigh my assessment on open space and outdoor sports provision, which would result in significant harm. Given my findings above, the proposed development would not comply with the development plan when taken as a whole, and there are no other considerations which outweigh this finding.

21. For the reasons given above, I conclude the appeal should be dismissed.

W Johnson

INSPECTOR