



Appeal Decision

Site visit made on 14 June 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2022

Appeal Ref: APP/W4325/W/22/3291997

Birkenhead School Noctorum Field, Noctorum Road, Noctorum CH43 9UQ, (328997, 388355)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Birkenhead School against Wirral Metropolitan Borough Council.
 - The application Ref OUT/21/01516, is dated 14 July 2021.
 - The development proposed is the demolition of the existing pavilion and erection of up to 33 dwellings and associated infrastructure. All matters are reserved with the exception of access.
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Decision

1. The appeal is dismissed and outline planning permission is refused.

Applications for costs

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

Procedural Matters

3. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for outline planning permission on four grounds. I have had regard to this statement for the residential development of the site in framing the main issues. The Council have confirmed that an initial drainage concern has since fallen away and is no longer contested by them.
4. The application was submitted in outline with all matters reserved save for the details of access and I have determined the appeal on that basis. The appellant has submitted plans showing the positions of proposed access points and a potential layout of the site for housing. Whilst I have had regard to the detail of the access points, the plans are otherwise considered as indicative only as all other matters are reserved.
5. Since the appeal was registered, the Council have published the Submission Draft Wirral Local Plan for consultation. However, given its stage of preparation and that it remains subject to further scrutiny for soundness, I find it is of limited weight in the context of this appeal.

6. The appellant submitted the housing scheme alongside a separate proposal for an extension to indoor sports facilities at the Birkenhead School campus on Beresford Road, Oxton. It seeks the housing development as a means to provide funding for the sports hall extension. As distinct proposals on separate sites I have considered this appeal on its own merits. However, I have had regard to the sports hall proposals¹ insofar as they are pertinent to relevant matters in this case.
7. The appellant has provided a completed unilateral undertaking (the UU) as a planning obligation under s106 of the Town and Country Planning Act 1990 to secure some aspects of the scheme. I refer to this in the relevant sections below.
8. I note that the appeal site is located approximately 4.5km from sites protected by the Conservation of Habitats & Species Regulations 2017, where ordinarily a competent authority such as myself would potentially need to carry out an Appropriate Assessment. However, as I have found against the appellant on the balance of the main issues, and therefore planning permission is to be refused, this matter need not be considered any further in this case.

Main Issues

9. The main issues are:

- the effect of the loss of the existing playing fields with regard to local provision
- the effect of the proposal on the character and appearance of the locality
- whether or not the proposal would include adequate provision for affordable housing
- whether or not the site would provide a safe and accessible form of development.

Reasons

Playing fields

10. The site is a sports field belonging to Birkenhead School. The planning appeal form indicates that it is some 2.2ha. in area. It accommodates the expanse of a gently inclined grassed field bordered by an established belt of mixed tree species at various stages of maturity. The land is accessed from Noctorum Road where the gated entrance leads to a gravelled hardstanding area alongside a single-storey pavilion.
11. According to the appellant, the Noctorum field is used once a fortnight for rugby during the winter and once a week during the summer for junior cricket. The playing pitch provision on the site, is in addition to facilities provided on the school campus on Beresford Road, and a facility at McAllester Memorial Playing Fields.
12. To ensure that adequate land is reserved for organised sport, saved Policy RE6 of the Unitary Development Plan for Wirral [2000] (the UDP) states that Birkenhead School Playing Fields, Noctorum will be protected from

¹ Appeal Ref. APP/W4325/W/22/3291438

development subject to Policy RE5. Whilst Policy RE5 is no longer valid, the aim of Policy RE6 can be afforded full weight on account of its consistency with the National Planning Policy Framework (the Framework). Paragraph 99 of the Framework is clear that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless a specified justification applies.

13. The exceptions include where an assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements, or, the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location.
14. As part of the evidence base to inform the development of its emerging local plan, the Council has undertaken a review of existing playing pitch provision across its area. The Council confirms that this has been ratified for its intended purpose. The Wirral Playing Pitch and Outdoor Sports Strategy [July 2021] (the PPOSS) identifies a significant increase in shortfall in outdoor playing pitches since the last assessment in 2016. Notwithstanding that it post-dates the submission of the planning application, as a recent study intended to assist in the formulation of emerging policies, and in the absence of any detailed assessment otherwise, I find the PPOSS is entitled to considerable weight as a measure of current and anticipated playing field provision and demand.
15. According to the appellant, due to its distance from the Birkenhead School, the use of the Noctorum field has reduced and is now limited. It is no longer required to deliver the school's sporting education. Whilst substantially surplus to the school's requirements, in the light of the PPOSS findings, there is no dispute between the main parties that a wider demand for pitches exists. Theoretically, the site could assist in meeting that demand. In the context of the need across the Borough, the exception at Paragraph 99 a) of the Framework does not therefore apply.
16. The exception at Paragraph 99 b) relates to instances where the loss of playing fields and facilities resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location. In support of the proposal, the appellant has provided details of assessments carried out to upgrade areas of the existing facilities at Prenton Rugby Union Football Club and the rugby pitch at the Old Parkonians Club. Additionally, the cricket pitch use has been reverted to the McAllester site where enhancements have been provided to meet the school's needs.
17. At the Old Parkonians site, it is proposed to improve the existing rugby pitch through enhanced drainage and additional floodlighting. This would prevent overuse accounting for the current ground conditions and restricted usable area under current floodlight conditions. This qualitative improvement would increase its ability to accommodate more training and match hours. The pitch would also be available to the school.
18. At the Prenton site, it is proposed to level a seasonally limited training area and adjacent unused scrubland within the site to provide a new floodlit senior pitch capable of year-round use. This would increase match playing and facilitate outdoor training capacities at the site throughout the year. Although utilising existing land within the Prenton site, there would effectively be a qualitative and a quantitative enhancement of playing pitch provision here.

19. The assessments provided in support of the proposed enhancements to the existing areas of playing fields present a number of uncertainties. At Prenton RUFC, the achievable area of the pitch remains unconfirmed. The ability to provide an outfall for the proposed drainage improvements is also unverified. Furthermore, its use may require the erection of ball-stop fencing to avoid damage, disturbance or safety concerns to nearby residents. These works, and the costed floodlighting proposals at both rugby sites, would likely require the benefit of planning permission.
20. There is little evidence to suggest that such permissions have been sought or would not be required. Such permissions might be problematical to achieve or be subject to requirements that would restrict the beneficial use of the proposals. Whilst I recognise that the improvements of those sites are likely greater than mere theoretical aspirations, their delivery cannot therefore currently be assured.
21. Moreover, the proposed improvements would require the consent for the use of third-party land. Although the submitted UU includes reference to the sites, those with interests in the land are not party to its requirements. As such, it does not guarantee that the specified works would be secured and, as a necessity to make the proposed development acceptable in planning terms, it fails to meet the test set out in Paragraph 57 of the Framework.
22. As any requirement to secure similar benefits would be subject of the granting of further planning permissions to deliver them, which could potentially nullify the benefit of any planning permission it was attached to, a condition requiring the same would not pass the test of reasonableness set out in Paragraph 56 of the Framework.
23. I recognise that the proposal is forwarded to fund the improvement of indoor facilities at the Birkenhead School campus. This could provide alternative sport and recreational use opportunities at the school, and to a more limited degree, the wider community. However, it would not provide for replacement of, or address the latent demand for grassed outdoor pitches or the associated loss of the pavilion alongside them. As a finite resource difficult to replace in urban settings, I find that the benefit of the sports hall extension is a matter of limited weight against the loss of the sports ground. This is a view shared by Sport England.
24. Whilst I acknowledge the appellant's contention that qualitative enhancements are capable of offsetting quantitative losses, in the light of the above, even if I found that the proposed qualitative improvements outweighed the loss of the existing facilities there is no mechanism to secure them. Accordingly, I find that the exception in Paragraph 99 b) has not been met.
25. The appellant's contention that the existing site is not currently accessible by third parties is noted. However, as a strategic approach to protect difficult to replace resources for the benefit of future generations, I consider this a matter of limited weight. This stance is supported by the anticipated increase in future pitch demand identified in the PPOSS.
26. I acknowledge the appellant's assertion that the facilities are surplus to the requirements of the local community pursuant to its engagement with cricket and rugby clubs within the PPOSS analysis area. However, there is little substantive evidence to support that claim. Furthermore, there is little to

suggest that a wider approach, which includes the consideration of the use of the site for other outdoor sports, has taken place.

27. In support of the proposal, the appellant has referred me to a number of planning decisions where housing has been permitted on designated playing fields. A scheme at Anselmians Rugby Club saw the retention and enhancement of sporting facilities on that site. It is therefore distinct from the case before me. Given my findings in relation to the limited evidence in relation to advertising the site for club or wider community use, the proposal is not consistent with a scheme at a field determined to be surplus to requirements due to the closing of a school and lack of interest by other users.
28. A development providing a high number of affordable houses alongside diverse improvements to a number of school facilities in the locality was considered on a planning balance. Those circumstances are different to the case before me, a case I have considered on its own merits.
29. Taking all of the above together, I find that the proposal would not meet the Framework's requirement to provide equivalent or better provision for the loss of the existing sports field. Whilst the proposals for improvements at alternative sites are noted, there is no legitimate mechanism before me to ensure their delivery. Accordingly, on the balance of the potential of the existing site against the uncertain delivery of improvement to sites elsewhere, the proposals fall short of the requirements in the Framework and the aim of Policy RE6 of the UDP as they seek to protect existing open space, sports and recreational buildings and land, including playing fields from development.

Character and appearance

30. The site is located immediately to the west of the open course area of Wirral Golf Club. The remaining boundaries are contiguous with detached residential houses within large plots. The existing dwellings are generally set behind enclosed front gardens with private amenity spaces to the rear. The majority front on to Noctorum Road save for a property to the south of the site. This fronts on to Noctorum Lane, close to the point where the road changes from a metalled surface to an informal avenue running between the site and the golf course.
31. Alongside the mature landscaped gardens of the houses, the treed boundaries of the site and the golf course provide a spacious, verdant character to the locality. Policy HS5 of the UDP identifies the area as part of Zone 1 of the Noctorum Ridge. The policy seeks to protect the environmental quality arising from the existing lower density housing arrangement, the large gardens and mature trees. It seeks to restrict housing density to no greater than 10 dwellings per hectare.
32. The proposal would allow for up to 33 dwellings on the site. According to the Council, this would equate to a density of about 15 dwellings per hectare. However, whilst due consideration must be had to the effect on the existing character and appearance of development, the more recent Framework is clear that planning decisions should support development that makes efficient use of land.
33. Notwithstanding that the proposals are in outline and could be developed at less than the maximum figure suggested, as an almost fully enclosed site with

a singular vehicle access point, the site would remain largely enclosed. Distinct from the surrounding properties, which are road-fronting with dedicated access points on to the roadway, the scheme would be more visually contained and effectively 'inward-looking'.

34. Whilst the development of a greenfield site would inevitably change its character, subject to the retention and/or enhancement of the boundary tree belt, it would appear as a separate entity in the context of the surrounding development.
35. As an enclaved and a clearly distinct phase of development of potentially large houses in ample plots, it would maintain a degree of spaciousness and retain a verdant character through retention of the border trees and additional planting. It would make more effective use of the land consistent with examples of infill and redeveloped sites found locally. Accordingly, I find the proposal would have little adverse effect on the recognised pattern of the surrounding development. The effect on the character and appearance of existing local development would therefore be negligible.
36. For those reasons, I find the site could deliver housing development which preserves the existing character of development in the locality. It would align with the requirements of Policies HS4 and HS6 of the UDP through the preservation of the existing boundary treatments and meet the Framework's requirement to make efficient use of the land taking into account the area's character and setting.

Affordable housing

37. The Framework requires that the extent of need and type of affordable housing should be specified in planning policies within the development plan. Given the date of the UDP, there are no such up-to-date requirements set out in the plan. Notwithstanding, according to the Council, there is a current demand for the provision of 20% of new housing to be affordable. This is not disputed by the appellant.
38. The Framework is clear that any identified need should be met on site unless robustly justified otherwise. Since the appellant's initial contention that site circumstances and local sensitivities would better see affordable units delivered by a commuted sum, the submitted UU provides for the on-site provision of up to 7 affordable units. This would meet the extent of current demand.
39. The UU provides scope for agreement with the Council as to the final make-up and terms of the affordable homes. It also provides flexibility in the event that management by a Registered Provider could not be secured. At that point, it would be open to the main parties to agree an appropriate financial contribution in lieu of on-site provision. In those circumstances, subject to the requirement of contributing to the objective of creating mixed and balanced communities, I find that the proposal would be consistent with the Framework's objective of meeting the needs of groups with specific housing requirements. The proposal would thereby align with Policies HSG2 and HS6 of the UDP and the Framework as they seek on-site affordable housing provision.

Accessibility and highway safety

40. The proposed access lies on the inside of a bend in Noctorum Road. The designed junction would allow 2-way traffic movements flanked by pedestrian

crossings. Visibility at the proposed junction would be subject to removal of some of the existing trees and undergrowth either side of the junction. However, these areas lie within the extent of the site and therefore could be conditioned for their provision and retention. This could equally provide for pedestrian visibility about the main access point to facilitate safe crossing to the footway on the opposite side of Noctorum Road.

41. Similarly, suitable visibility could be achieved at the southern and northern extents of the site in conjunction with proposed pedestrian entrances and a single private driveway respectively. I am therefore satisfied that access and egress from the site could be provided without a detrimental effect on highway safety.
42. In terms of wider accessibility, the area has limited public transport penetration and some local services lie over 1km away. Although there are safe walking routes to the services, the route to the nearest bus stops would require pedestrians to navigate lengths of the northern section of Noctorum Lane with only intermittent footpaths. More distant bus stops are available via unmade pathways which would be restrictive for some users.
43. According to the appellant, the northern point of the site is some 400m from the nearest bus stops on Upton Road. This is the acceptable guideline distance adopted by the Chartered Institution of Highways and Transportation referenced by the Council. Accounting for the distance from individual properties within the site, residents would therefore have to walk a greater distance than the guideline. However, this distance could be minimised within the site through ensuring the layout was permeable to footpath users. The corresponding distances would be within the preferred maximum specified by the Institution.
44. The absence of footways along much of the northern length of Noctorum Lane would require pavement users travelling between the site and bus stops to rely on the main carriageway. At my site visit, albeit only a snapshot in time, the road was lightly trafficked. I also saw that the linking road is relatively straight with good forward visibility. The properties along it generally benefit from off-street parking such that there were few instances of parked vehicles within the carriageway causing obstruction. The road is lit and is subject to a 30mph speed limit. Existing walkers rely on the route and, according to the appellant, there has been no recent highway incidents involving pedestrians. This is not contested by the Council.
45. Although this arrangement would not provide high standards for non-vehicular traffic, it would nevertheless, provide accessibility equivalent to existing residential development in a locality identified as suitable for housing. Moreover, the main parties report that they have also discussed in-highway warning signage of pedestrians and a contribution to streetlight upgrades. The Council has not indicated that such benefits could not be incorporated to enhance road safety. Accordingly, these are measures that could be secured through a Grampian condition providing a benefit to existing users alongside the prospective occupiers of the proposed development.
46. In addition, the appellant has proposed a number of measures which would seek to enhance accessibility and more sustainable forms of transport. These include cycle storage and electric vehicle charging points.

47. Within the site, there would be significant opportunity to prioritise the movement of non-vehicle users over vehicle users by design. This is a matter to be considered at the detailed layout stage. As an outline planning application, there is little before me to suggest that the scheme would conflict with Policy TR9 of the UDP relating to Requirements for Off-Street Parking.
48. Taking the above matters together, I find the proposals would provide safe vehicular and pedestrian access from Noctorum Road. It would result in a minor conflict with the Framework's requirements to prioritise pedestrian movements within the neighbouring area, however, in the context of the existing predominantly residential area, this would be outweighed by potential improvements to the length of Noctorum Lane to the north of the site. This would benefit existing highway users and assist in promoting use of the existing bus services.
49. For the above reasons, I find that the proposals would provide for a safe means of access to the public highway network and make adequate provision for accessibility, including to public transport services. It would align with Policy TRT1 of the UDP and the aims of the Framework to promote sustainable forms of transport.

Other Matters

50. I note the concerns of third parties in relation to the potential effects of development on wildlife using the site and other environmental impacts such as noise, disturbance and pollution. The appellant has demonstrated that the site could be developed in a manner to preserve existing ecological interests and could provide biodiversity gains. Although some disturbance would be likely as a consequence of the construction phase of the development, this could be regulated to minimise its effects over the temporary period. These are matters that could be secured through planning conditions.
51. I note the appellant's frustrations in engaging with the Council and Sport England in the run up to the planning application and with regard to the availability of the study results of the PPOSS at pre-application stage. However, this is not a matter of weight in this appeal.

Planning Balance and Conclusion

52. According to the appellant, the Council can only demonstrate 3.1 years supply of housing land. This is not contested by the Council. Consequently footnote 8 of the Framework applies which engages Paragraph 11 d). As the site is not formally designated as a Local Green Space, there are no policies in the Framework that protect areas or assets of particular importance, and which provide a clear reason for refusing the development as set out in para 11d) i). Therefore, consideration must be had as to whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (Paragraph 11 d) ii of the Framework).
53. The proposal would result in the loss of an existing playing field. As a facility capable of meeting current or future unmet demand and which is afforded significant protection, this is a matter to which I attach substantial weight.
54. I now turn to the benefits of the scheme. These include the provision of housing, including affordable homes, in an area of a significant shortage of

housing land supply. Whilst this would deliver up to 33 new units it would only make a small contribution to helping to address the scale of overall housing supply shortfall. Nevertheless, I find it is a matter of moderate weight in favour of the development.

55. The development would potentially assist the delivery of a new sports hall extension to improve the educational offer at Birkenhead School. Such a new facility could be made available for use by the wider public. This would meet the Framework's aims of widening choice in education and promoting healthy communities. However, in the context of that proposal as an extension of an existing facility, and one that would displace alternative sporting facilities in identified shortfall, I find the benefits therein are limited to moderate weight in favour of the proposal.
56. As schemes that have not been demonstrated as deliverable, I am unable to attribute positive weight to off-setting proposals on third-party sites.
57. I have found in favour of the appellant with regard to the matters of the effect on character and appearance, affordable housing provision and safe accessibility. However, as requirements of the development plan these or the neutral effects in relation to the proposal's likely ecological impacts, effect on trees or heritage interests, and limited risk of flooding, for example, are not benefits in favour of the proposed development.
58. Taking the above points together, I find that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development does not therefore apply. The proposal would conflict with the development plan taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR