

Planning Committee

18 July 2019

Reference:
APP/19/00446

**Area Team:
Development
Management Team**

Case Officer:
Mr A Siddall

Ward:
Heswall

Location:

WHISTLING SANDS, 15 DALESWAY, HESWALL

Proposal:

Retrospective application for engineering operations comprising land grading works and construction of retaining structures.

Applicant:

Mr Lewis

Agent :

The Planning Consultancy

Qualifying Petition: No

Site Plan:



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Development Plan designation:
Primarily Residential Area

Planning History:

Location: Whistling Sands, 15 DALESWAY, HESWALL, CH60 4RU
Application Type: Full Planning Permission
Proposal: Demolition of existing dwelling and outbuildings and construction of new two-storey detached dwelling with detached double garage/store
Application No: APP/17/01600
Decision Date: 22/03/2018
Decision Type: Approve

Summary Of Representations and Consultations Received:

1.0 WARD MEMBER COMMENTS

1.1 Councillor Andrew Hodson removes this application from delegation and refers it up to Planning Committee on the basis that the scheme is in conflict with saved UDP policy HS4. Cllr Hodson considers that the development does not relate well to surrounding property having regard to the existing density and form of development, and that the proposal results in a detrimental change in the character of the area. The Ward Member applies this judgement to 'both the specific limited works that are the result of this retrospective application and to the whole scheme [of construction of a replacement dwelling] of which these works are an integral part.' Cllr Hodson also notes that these works impact on the Heswall Dales.

2.0 SUMMARY OF REPRESENTATIONS

2.1 Having regard to the Council's Guidance on Publicity for Planning Applications, notifications were sent to four neighbouring occupiers.

REPRESENTATIONS

At the time of writing one representation in objection has been received from the neighbouring dwellings to the north, Herons Ghyll, 17 Queens Drive. The matters raised can be summarised as follows:

1. The application seeks to legalise a situation that would never have been allowed had it been correctly shown in the original application for the demolition and replacement of the existing dwelling. That application showed the garden level being maintained but instead a retaining wall has been constructed creating a new area of land at a higher level, that was not there before.
2. There is no section showing the depth of the works, nor the height, nor the relationship to the adjacent property which is only three metres away;
3. No engineering drawings have been submitted for this construction which is built on land which is slowly slipping down the slope. The combined weight of the gabions, the backfill and the new dwelling could be undermined in bad weather and cause the whole structure to slip, potentially taking our garden with it.
4. Permission should be refused as it is potentially dangerous and, together with the original application, makes a mockery of the planning requirements and regulations.

CONSULTATIONS

Merseyside Environmental Advice Service - Having considered the application we have no technical comments to raise, however as the application site backs onto Heswall Dales SSSI the LPA may wish to consult with Natural England.

Natural England - Natural England has no comments to make on this application. The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature sites or landscapes. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

Reason for Committee Referral

This application has been removed from delegation and called-in for consideration at Planning Committee by Councillor Andrew Hodson for the reasons outlined in paragraph 1.1.

3.1 Site and Surroundings

- 3.1.1 The application site comprises land last in use as a domestic garden within the curtilage of 15 Dalesway, a dwelling demolished in 2018. The land is now being re-developed for a single detached dwelling under the terms of planning permission APP/17/01600 granted in March 2018, and the land will form the domestic garden of this new dwelling. The dwelling itself is located on an area of generally flat land with the garden stretching to the north west, falling gently and then very steeply towards the Heswall Dales Site of Special Scientific Interest (SSSI). The new dwelling and its garden abuts the domestic garden of 17 Queens Drive to the north east, a detached dwelling situated at a higher ground level. To the south west is the land and domestic garden of the adjacent detached dwelling of 13 Dalesway, situated at a lower ground level. Given the sharp drop in ground levels to the north west, all dwellings have an upper area of garden adjacent to the house, beyond which are a variety of retaining walls and terracing arrangements in differing forms and materials to navigate the fall in ground level.

3.2 Proposed Development

- 3.2.1 Full planning permission is sought on a retrospective basis for engineering works that have taken place within the domestic garden of 15 Dalesway, associated with the redevelopment of the dwelling. These comprise the formation of a retaining wall in the form of gabion baskets of a height ranging from 1.6 to 2 metres when measured from lower terrace level, and land grading works comprising the excavation of existing banking to accommodate the gabions and backfilling behind them to create a larger level area adjacent to the dwelling.

3.3 Development Plan

- 3.3.1 The development comprises land grading and retaining operations associated with the landscaping of this site which benefits from an extant consent for a replacement dwelling. Saved UDP Policy HS4 governs proposals for new housing development within primarily residential areas and their associated works and requires amongst other matters that the proposal should relate well to surrounding property, in particular with regard to existing densities and form of development; should not result in a detrimental change to the character of the area; and should include the provision of appropriate landscaping and boundary treatment which relates the proposed development to its surroundings.
- 3.3.2 Saved UDP Policy GR5 requires applicant to submit full landscaping proposals before full planning permission is granted, which include areas of new ground modelling and be appropriate in terms of the nature and location of the development proposed, the visual prominence of the site, the potential visual impact of the development, and the character of the surrounding area.
- 3.3.3 Saved UDP Policy PO7 states that where development proposals are on, or near land which is suspected of being unstable, additional information will be required to assess whether the land is suitable for the development proposed and whether any instability can be adequately overcome. Applications will be refused where the LPA considers that the development would be 'at serious risk from continued instability,' or where the development proposed would cause instability to occur on adjacent land despite any remedial measures proposed.
- 3.3.4 Saved UDP Policy NC3 advises that, where development proposals are likely to affect directly or indirectly sites of national importance for nature conservation, the LPA will need to be satisfied that the development is sited and designed in such a way as to conserve the integrity of the site, amongst other matters.

3.4 Other Material Planning Considerations

- 3.4.1 Paragraph 127 of the National Planning Policy Framework 2019 requires planning decisions to ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; are sympathetic to local character and history

including the surrounding built environment and landscape setting (whilst not preventing appropriate innovation or change); and to create places that are safe, inclusive and accessible with a high standard of amenity for existing and future users.

3.4.2 Paragraph 175b advises that development on land within or outside of a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments) should not normally be permitted.

3.4.3 Paragraph 178 requires that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. Paragraph 179 makes clear however that where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

3.5 Assessment

3.5.1 The main issues pertinent in the assessment of the proposal are;

- The Principle of Development;
- Land Stability;
- Visual Amenity;
- Residential Amenity;
- Nature Conservation.

3.6 Principle of Development:

3.6.1 The development comprises land retaining and grading works in association with the site landscaping for an approved replacement dwelling, construction of which is well underway. Therefore the principle of development for the associated landscaping works is acceptable, subject to compliance with the requirements of policies and other material considerations outlined in sections 3.3 and 3.4 above.

3.6.2 Members are advised that this application relates solely to the engineering works comprising the formation of the retaining wall and associated land grading and the assessment of the application relates only to these works. Construction of the associated replacement dwelling, which gained approval in 2018 is currently proceeding in accordance with the approved plans and does not form part of the application before you.

3.7 Land Stability:

3.7.1 The application is accompanied by a design and access statement which acknowledges that the steeply sloping land is not completely stable as there are signs of land breaking away, particularly in relation to the property immediately to the north of the application site. Consequently it can be considered land 'suspected' of being unstable under the terms of saved UDP Policy PO7 In order to address this problem, householders have undertaken terracing and the construction of retaining structures to arrest any erosion. The application site had previously been treated in this fashion with a lower retaining structure (which is still in place) consisting of sandstone and concrete blockwork, and an upper retaining structure set behind a terrace which was approximately 1m in height and formed of a sandstone wall. Above this, land banked up towards the upper garden level. The statement notes that this upper wall was failing due to the weight of earth behind it, causing it to bow out. In light of the redevelopment of the site, the applicant was of the view that this wall required replacement to ensure the continued stability of the land.

3.7.2 The failing upper sandstone wall has been replaced by the gabion baskets filled with basalt rock which are considered to have greater structural integrity than the original wall as the baskets are much deeper, whilst they have been sited on land excavated back from the original lower terrace to provide a solid base. This has resulted in a wider lower terrace level, particularly at the northern end of the site. The gabions are taller than the earlier stone wall in order to remove the 'battered' edge of the garden where the land sloped steeply away behind the original wall, which was alleged to be a contributory factor in relation to the structural

issues. The upper garden remains at its original level, except for a small area immediately behind the gabions which has been backfilled to provide a level area where previously the land sloped down towards the former wall.

- 3.7.3 It is clear to officers that the works have been carried out to overcome any possible future instability of this land and risk of slippage. There is no evidence before Officers (including from any third party) that as a result of the engineering works the land remains at 'serious risk from continued instability' or that the engineering works would cause neighbouring land to be at any greater risk of instability than it already is. On the contrary, it appears to Officers that the works have been carried out to reduce the risk of instability of this land. In light of this, whilst the concerns of the immediate neighbour are noted, Officers do not believe they should be upheld. Sufficient information has been provided to Officers to allow them to fully understand the land use planning aspects of the works, whilst there is no requirement for detailed engineering drawings to be submitted. As noted at paragraph 179 of the NPPF, the ultimate responsibility for ensuring the safety of development on land at risk of instability rests with the developer and landowner and it is up to them to satisfy themselves that the engineering solution chosen ensures that any risk to their property or that of any neighbours is adequately managed. On this basis Officers do not consider the works to conflict with saved UDP policy PO7 or the relevant sections of the NPPF.

3.8 Visual Amenity:

- 3.8.1 Given the steeply sloping ground within the lower part of gardens to properties along Dalesway, the principle of constructing retaining structures and the terracing of the gardens is entirely appropriate. The materials used to construct these retaining structures also vary, as does the complexity of the design. In visual amenity terms the gabion baskets will be seen amongst this variety, and are not significant in the overall view. Visibility is in any event restricted. From the front of the site the rear garden is not visible, whilst any public views from within the Heswall Dales are likely to be at distance and filtered by trees. It is also likely that, as the development completes and the soft landscaping of the garden takes place, the gabion baskets would become increasingly recessive through planting, however even if this were not to take place, the structures would not be prominent in wider views. In visual amenity terms, Officers are satisfied that the retaining structures and land grading comprise appropriate landscaping works given the topographical circumstances of the site.

3.9 Residential Amenity:

- 3.9.1 With changes in ground levels comes the potential for changes in the ability to overlook neighbouring property and gardens. In this case the gardens of neighbouring properties are visible from both the upper and lower levels of the terracing however this overlooking is not considered to be significant given that the steeply sloping ground in this neighbourhood allows mutual overlooking of gardens between dwellings. The engineering operations are not considered to have resulted in a detrimental change in the character of the area in relation to neighbouring residential amenity.

3.10 Nature Conservation:

- 3.10.1 Having regard to the proximity of the engineering works to the Heswall Dales SSSI, whilst noting that no part of the works fall within that designated area, Officers consulted both the Merseyside Environmental Advice Service and Natural England, who provide ecological advice on behalf of the Council. Neither of these advisory bodies found it necessary to offer comments on the application, and on this basis Officers are satisfied that the scheme will have no significant effect on the SSSI or the interest features for which it is designated.

Summary of Decision:

Having regards to the individual merits of this application the decision to grant Planning Permission has been taken having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national policy advice. In reaching this decision the Local Planning Authority has considered the following:-

The engineering and land grading works carried out at this site do not cause any harm to visual or residential amenity and have no adverse effect on the interest features of the

nearby Heswall Dales SSSI. There is no evidence before Officers to suggest that, as a result of the work, that the land is at serious risk of continued instability. As such the application is considered to comply with the relevant requirements of the development plan and comprises sustainable development.

Recommended Decision: **Approve**

Recommended Conditions and Reasons:

1. The development hereby permitted shall be carried out in accordance with the approved plans received by the local planning authority on 13 May 2019 and listed as follows:

L(91)001 Revision E (Proposed Site Section) dated May 19

L(91)002 Revision F (Proposed Elevations) dated May 19

L(91)003 Revision A (Proposed Site Section - Current Site Levels) dated May 2019

Reason: For the avoidance of doubt and to define the permission.

Last Comments By: 19/06/2019

Expiry Date: 08/07/2019