
Appeal Decision

Hearing held on 18 May 2016

Site visits made on 17 and 18 May 2016

by Sarah Colebourne MA, MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 June 2016

Appeal Ref: APP/A0665/W/16/3143305

Land at and off 191 London Road, Northwich, Cheshire, CW9 8AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ainscough Strategic Land against the decision of Cheshire West and Chester Council.
 - The application Ref 15/02379/FUL, dated 5 June 2015, was refused by notice dated 4 December 2015.
 - The development proposed is described as the formation of a new access road from London Road to Northwich Meadows.
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Decision

1. The appeal is allowed and planning permission is granted for the formation of a new access road from London Road to Northwich Meadows at land at and off 191 London Road, Northwich, Cheshire, CW9 8AR in accordance with the terms of the application, Ref 15/02379/FUL, dated 5 June 2015, subject to the conditions attached to the schedule at the end of this decision.

Procedural matter

2. In its appeal statement the Council withdrew its first reason for refusal, the impact on neighbouring residents in terms of noise and disturbance although as this remains a concern of neighbouring residents I shall deal with it under Other Matters.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the Northwich Conservation Area.

Reasons

4. The appeal site lies within the Northwich Conservation Area. In considering proposals for planning permission, the duty imposed by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Paragraph 132 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to its conservation. The paragraph goes on to say that significance can be harmed or lost through alteration or destruction of

the heritage asset or development within its setting and that any harm should require clear and convincing justification.

5. Policy BE10 in the Vale Royal Borough Local Plan First Review Alteration (adopted 2006) seeks to ensure that development preserves or enhances the character or appearance of Conservation Areas. It also states that demolition will not be allowed where the building contributes to the character or appearance of the Conservation Area. Although it reflects the statutory duty the policy does not reflect the Framework's distinctions regarding significance and the degree of harm and scale of benefits and I have therefore given it only limited weight.
6. The Council's appeal statement refers to policy ENV5 in the more recent Cheshire West and Chester Local Plan (Part One) Strategic Policies (LP) which says that development will be required to respect and respond positively to designated heritage assets and their settings, avoiding loss or harm to their significance. This accords with the more balanced test set out in the Framework.
7. LP policy STRAT 10 referred to by the appellant is also relevant and consistent with the Framework in seeking to ensure that transport helps improve quality of life and enhances the local environment.
8. The proposed road would provide vehicle, pedestrian and cycle access into the Northwich Meadows development, which has outline permission for up to 242 dwellings and some 40ha of public urban meadow land. The appellant's intention is that it would replace the previously approved access points on Hollands Road to the north and Langley Road off Kingsley Drive to the south. The appellant considers that it would provide a more attractive, direct and less controversial route. A reserved matters application for a reduced number of 187 dwellings and the access road as proposed in this appeal is currently pending determination by the Council following the outcome of this appeal.
9. The proposed access road would adjoin the existing junction with Kingsmead, which is the main A4533 through Northwich and London Road, a residential through road. It would meet the existing highway via a short entrance road through the existing plot of no 191 which would be subject to a separate application for prior approval for demolition. The existing junction would be remodelled to provide a fourth arm. There would be a two-way carriageway with a shared pedestrian/cycle route or footway on each side and landscaped verges on both sides.
10. The Northwich Conservation Area comprises a large area which extends from north of the town centre to the suburb of Leftwich to the south and comprises several different character areas. The appellant's heritage statement refers to its historic significance for its Roman origins and strong industrial legacy. Of particular architectural significance are the features of canal infrastructure and timber framed buildings. It goes on to describe the area around the appeal site as contributing to the area as a historic approach to the town centre, sections of which contain fine mature trees and notable buildings such as the Verdin School which I saw during my visit make a strong contribution to the attractive character and appearance of the area. I also saw that the siting and design of the existing 1960's dwelling on the appeal site and the other mid to late C20th dwellings in this section of the road to the north west of the appeal site detract

from the fine locally listed terrace of cottages to the south east of the site and the linear character provided by the more traditional buildings in the area.

11. I agree with the appellant that the existing junction is already overly prominent in the street scene with existing traffic and pedestrian lights. Its footprint would not be significantly enlarged as a result of this proposal and the addition of a fourth arm and an additional set of traffic and pedestrian lights would not have a materially harmful impact. The formation of the new access road would enlarge the gap in the street frontage. However, as there is already a gap between the dwelling on the appeal site and the dwelling at no 195 and an area of hardstanding in front of the appeal dwelling, the replacement of the existing dwelling by the access road and the resultant enlargement of the gap would not be visually harmful in the street scene.
12. However, I noted that the two large trees, a purple beech and a lime, in the frontage of the appeal site make a positive contribution to the area due to their height and prominence in the street scene and their contrasting foliage, despite some unsympathetic pruning works to the purple beech. Although at the site visit there was some discussion regarding the possibility of retention of the trees as part of the Section 278 highways works to the junction, the submitted plans show that both trees would be lost as a result of the proposal and I have based my findings on those.
13. The appellant's tree survey in Appendix 2 found that both of these trees are in good physiological and structural condition and therefore have more than 40 years of estimated remaining contribution (ie good longevity potential). Nonetheless it concluded that their quality fell into B1/C1, moderate to low value with at least 10 or 20 years remaining for the purple beech, due to its impaired visual appearance and possibly condition caused by previous pruning works and B1, moderate value with at least 20 years remaining for the lime. Whilst I agree that the purple beech has lost some of its shape and structure, from what I have seen, it seems to me that the quality and longevity of the lime has been underplayed in the conclusions of the survey given that no major health issues were noted for this tree other than canopy conflicts due to the close proximity of the trees. The loss of the trees, in particular the lime, would cause significant harm to the character and appearance of the immediate street scene given that there are few other such large trees (whilst there are a number of trees in the southern part of London Road those are not dominant within the context of the junction) and that the lime appears to be in good condition with good longevity potential.
14. The Council's Trees Officer considered that a reasonable and suitably engineered mitigation scheme of replacement tree planting could provide wider long term landscape benefits but despite the appellant's indicative photomontage submitted at the hearing (which forms part of the pending reserved matters application and is not part of this proposal) showing tree planting within the verges and given the concerns expressed by the Council at the hearing, it is unclear to me whether there would be sufficient space for suitable replacement trees. I am therefore unable to agree with the appellant that new landscaping would provide a visual benefit although as there is clearly space for some new planting it could provide some mitigation.
15. Whilst the loss of the trees would cause significant harm to the character and appearance of the immediate street scene and this part of the Conservation Area contrary to policy BE10, it would not result in substantial harm to the

overall architectural and historic significance of the Conservation Area.

Although the harm I have identified would be less than substantial, it gives rise to a statutory presumption against permission and I must give it considerable importance and weight. I must now weigh this harm against the public benefits of the proposal as required by paragraphs 132 and 134 of the Framework.

16. I have noted that the approved access arrangements were not found by the Council to cause significant harm in terms of accessibility or residential amenity. However, it is clear to me, on the basis of what I saw during my visit, the condition on the approved permission that would restrict the number of dwellings using the Langley Road access, the many letters of support for this proposal from residents in the Kingsley Drive and Langley Road area and the positive comments from the Highways Officer, that the removal of traffic from Kingsley Road and Langley Drive would provide clear and significant public benefits in those terms. Kingsley Road is a long, narrow, winding residential access road through a large housing estate off which there are a number of culs-de-sac. Traffic would also be removed from London Road, a residential through road of more traditional dwellings which has a traffic-calmed section and a recently reduced speed limit of 20mph. By effectively removing a significant number of vehicles and the associated noise and disturbance from those roads and providing direct access onto the main primary route network to and from both Northwich town centre to the north and routes to the south, access would be improved for residents of the new development and living conditions for the many existing residents in that area would also be improved.
17. The Council and other residents consider that this benefit would be negated by the limited harm arising from increased waiting times at the junction where there would be an additional set of traffic and pedestrian lights that would result in a neutral overall impact. However, the appellant's Transport Statement (which was based on the approved number of dwellings) shows that although the numbers of additional vehicles to and from the residential development will be concentrated at one access point rather than spread across the two approved accesses and will inevitably increase the number of vehicles using the junction, the junction is predicted to operate within capacity with no material queuing as a consequence of the proposed development even within peak hours. From what I have seen and heard and despite the concerns of some local residents, the survey was carried out by suitably qualified transport consultants and I have no reason to doubt its findings.
18. The other approved access at Hollands Road passes through a mixed industrial and residential area. Both my site visit impressions and the conditions for off street parking and parking restrictions attached to the approved scheme indicate a high level of on street parking there. The removal of traffic from that access would therefore provide moderate benefits in terms of highways access and a more attractive approach to the new housing development in terms of townscape.
19. At the hearing the appellant suggested that a Section 106 agreement in the form of a unilateral undertaking could be provided after the hearing to secure the non-implementation of the approved accesses under the existing outline permission and the Council agreed that would be appropriate. Notwithstanding that none was provided in accordance with the relevant timescale before the hearing, it seems to me that it is not necessary and would not, therefore, fulfil

the tests in the Framework. This is because even if the approved accesses were implemented, and given the appellant's strong preference for this scheme that seems unlikely in view of the cost implications of providing three accesses, the effect would be to spread traffic across the area thereby reducing the number of vehicles using any one of the accesses. There would, therefore, still be significant, if reduced, benefits in terms of accessibility and residential amenity.

20. Other small highways benefits that would arise over the approved scheme result from a more direct connection to existing cycle routes and shorter walking distances to bus stops.
21. The other benefits cited by the appellant, in terms of flood risk by reason of the inclusion of a freeboard and biodiversity through the provision of bat boxes are mitigation measures rather than benefits although the character and appearance of the wider landscape as a result of a reduced length of access road within the Dane Valley would be a moderate benefit that would add to the significant accessibility and residential amenity benefits.
22. I conclude then that whilst the proposed access is not essential for the delivery of the residential development, there would be significant public benefits in total that would outweigh the less than substantial harm to the significance of the Conservation Area from the loss of the trees. It would, therefore, would accord with LP policies ENV5 and STRAT 10.

Other matters

23. Local residents have referred to a number of other matters that the Council raised no objection to and I shall deal with those here.
24. The Framework encourages safe and suitable access for all people but advises that development should only be refused on transport grounds where the residual cumulative impacts would be severe and LP policy STRAT 10 accords with this in seeking to ensure that additional traffic can be accommodated safely and satisfactorily within the existing or proposed highway network. I am satisfied that emergency access would be safe and acceptable and no concerns were raised by the Highways Officer in this respect. The appellant's Transport Statement concluded that the proposal would have no material implications on the operation of the highway network and that was also the view of the Highways Officer. Despite the concerns of some local residents, I see no reason why the existing restriction on heavy goods vehicles use of London Road could not be retained as part of the new highways works. Residents have also referred to the nearby college, schools and residential parking, the Council's safe routes to school and cycling strategies and provided photographs of vehicles queuing at the junction but I have no compelling evidence that would lead me to a different conclusion from the appellant's transport evidence. My site visit impressions taken over two days during peak times in which I did not see excessive queuing at the junction would support that.
25. The proposal would cut across an existing access track which provides vehicular access to the rear of dwellings on either side of the appeal site on London Road. Whilst private rights of access are a legal matter outside the scope of this appeal, the amended plans considered by the Council show that a turning head would be provided on both sides to allow the continuation of parking by neighbouring occupiers and provide a forward means of exit.

Concerns have also been raised on behalf of one resident regarding public rights of way over the track and rights to use the land for lawful sports and pastimes under The Commons Act 2006. Whilst these are also legal matters outside the scope of this appeal, the Framework seeks to ensure that development does not adversely affect users of rights of way. However, the Council confirmed that the track is currently in its ownership with an option agreement to sell to the appellant and I have insufficient evidence to conclude that it constitutes a public right of way or that the proposal would adversely affect users of any rights of way.

26. The Framework aims to prevent unacceptable risks from pollution. I have not been told that the appeal site lies in an Air Quality Management Area and no objection was raised by the Council's Environmental Protection Officer. The appellant's noise assessment concluded that with the implementation of recommended mitigation measures, which could take the form of a close boarded fence, along the southern and eastern boundaries of the garden of 189 London Road, the impacts from the proposed development would be of minor significance to the nearest affected property at 189 and negligible significance to no 195. I have taken into account the height and proximity of the proposed road and am satisfied that the assessment was carried out by suitably qualified consultants. I have no compelling evidence to indicate that the recommended mitigation measures would not be achievable by means of a condition or that there would be unacceptable impacts from noise or air pollution.
27. Although the site lies partly within Flood Zone 3 which places it at high risk of flooding as supported by residents photographs and anecdotal evidence, the Environment Agency (EA) classifies transport infrastructure as essential for the purposes of determining the vulnerability of development and states that this form of development is appropriate within flood zones. The planning officer's committee report says that the EA raised no objection. The appellant's addendum to the Flood Risk Assessment which was considered as part of the approved scheme considers that the flood risk has not altered significantly and that the proposal represents an overall reduction in the area of the road that would be liable to flooding. For these reasons I am satisfied that the scheme would be acceptable in terms of flood risk.
28. I have taken into account all other matters raised but none is sufficient to alter the outcome of my decision.

Conditions

29. The Authority has suggested a number of conditions should the appeal be allowed. In addition to the standard time limit and accordance with the plans conditions, conditions are necessary in the interests of highways safety for full details of all highway works and works to the rear access road. In the interests of the character and appearance of the area, conditions for tree planting, landscaping and boundary treatment are necessary. Conditions for an updated badger survey if development is not started within one year of the submitted survey and for no vegetation removal during the bird breeding season are necessary in the interests of those protected species. Compliance with the Flood Risk Assessment and addendum is necessary to alleviate flood risk. Approval of a scheme of archaeological investigation is necessary to protect potential features of archaeological interest. A construction management plan is necessary to protect the living conditions of nearby residents and for highway safety reasons. To protect the living conditions of the occupiers of no

189 London Road, a condition for noise mitigation as recommended in the Noise Impact Assessment is necessary.

Conclusion

30. I conclude that, for the reasons given above, the proposed development would accord with the development plan and with the Framework as a whole in meeting the economic, social and environmental dimensions of sustainable development. The appeal should be allowed.

Sarah Colebourne

Inspector

APPEARANCES

FOR THE APPELLANT:

David Manley, QC	Kings
Richard Woodford	HOW Planning
Alistair Baxter	Royal Haskoning DHV
Katy Lightbody	Turley Heritage
Mike Hibbert	TTHC Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Steven Holmes	Senior Planning Officer
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INTERESTED PERSONS:

Councillor Paul Dolan	District Council
Councillor Helen Weltman	District Council
Councillor Boden	Town Council
Chris Hart	Local resident
Roger Parslow	Local resident
Frances Findlay	Local resident
Judith McGann	rep Alan Redley, local resident
Edward Philips	Local resident
Lorraine Blundell	Local resident

DOCUMENTS

1. Track layout plan PL1237-AB-003
2. TTHC Access Comparison Note May 2016
3. Photomontage
4. Residents summary and photographs

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL1237-VW-002-01, M11055-A-013, PL1237-AB-003.
- 3) Prior to the commencement of the construction of the access road details and plans of all works which shall form part of the highway shall be submitted to and approved in writing by the local planning authority. The access road shall not be brought into use except by construction traffic in connection with its construction until it has been constructed in complete accordance with the approved details.
- 4) The vehicle turning areas on the rear access track shown on approved drawings M11055-A-013 and PL1237-AB-003 shall be constructed and made available for use prior to the physical severance of the rear access track. The turning areas shall be kept free from obstruction and retained for their stated purposes permanently thereafter.
- 5) The access road hereby approved shall not be brought into use (except for the purposes of construction) until details of a scheme of landscaping, which shall include details of proposed tree planting and details of any proposed underground servicing are submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full in the first planting season following the completion of the development or otherwise in accordance with a timetable which shall have been agreed in writing by the local planning authority. If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.
- 6) The access road hereby approved shall not be brought into use (except for the purposes of construction) until details of all boundary treatment are submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with those details prior to the occupation of the development or otherwise in accordance with a timetable for implementation which shall have been previously agreed in writing by the local planning authority.
- 7) If the development hereby approved has not been commenced by September 2016 then an updated badger survey and details of any appropriate mitigation measures shall be submitted to and approved in writing by the local planning authority prior to the commencement of any works on the site. The development shall be carried out wholly in accordance with any approved mitigation measures.
- 8) No vegetation clearance shall be carried out on the site between 1st March and 31st August ('bird breeding season') inclusive unless the site is subject to a breeding bird survey carried out by a suitably qualified ecologist and the survey and an appropriate scheme of mitigation is submitted to and approved in writing by the local planning authority. Any vegetation clearance which takes place shall then be carried out during the season to which the survey relates only and the development shall be carried out wholly in accordance with the agreed scheme of mitigation. Further surveys and mitigation measures shall be submitted to the local planning authority for approval for any vegetation removal carried out in subsequent bird breeding seasons and the development shall be carried out in accordance with the agreed mitigation.

- 9) The development hereby approved shall be carried out wholly in accordance with the recommendations outlined in the Flood Risk Assessment dated August 2013 produced by AECOM and updated by the Flood Risk Assessment Addendum Report version 2 dated November 2015 produced by Amber Planning.
- 10) The development hereby approved shall not be commenced until a programme of archaeological work, which shall include a timetable for implementation, in accordance with a written scheme of investigation has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full and in accordance with the approved timetable.
- 11) The development hereby approved shall not be commenced until a construction management plan which shall include full details of the phasing of the demolition and construction traffic for the development (including temporary highway vehicle and pedestrian routings, times and days of large vehicle movements to/from the site, suitable off-highway parking for all construction related vehicles and suitable vehicle cleaning facilities) and hours of construction has been submitted to and approved in writing by the local planning authority prior to the commencement of the development. The development shall be constructed wholly in accordance with the approved construction management plan.
- 12) No development shall take place until details of the noise mitigation measures as recommended in the Royal Haskoning DHV Noise Impact Assessment report dated 22 October 2015 have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

End of conditions.