
Appeal Decision

Site visit made on 17 January 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 15 February 2017

Appeal Ref: APP/R0660/W/16/3160134

12 and 14 Overhill Road, Wilmslow, Cheshire SK9 2BE

- 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 Mr Matthew Gibbons against the decision of Cheshire East Council.
 - The application Ref 15/5026M, dated 4 November 2015, was refused by notice dated 16 August 2016.
 - The development proposed is the demolition of two detached dwellings and the construction of three two-storey detached dwellings with associated accesses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. After my site visit, I wrote to the parties inviting their views on the bat surveys undertaken in 2014 and 2015 respectively. I sought the parties views on whether there a reasonable likelihood that protected species are present on or near the site; whether the ecological surveys for 12 and 14 Overhill Road are considered to be out of date; and given the above, are there any implications for the determination of the appeal? I have had regard to the parties' responses in my decision.
3. Reference has been made by the parties to Policies SE1, SD2, SC4 and GP2 of the Council's emerging Local Plan Strategy. However I understand this is still some way off being adopted. As I am unaware of the extent of any unresolved objections and the Local Plan Strategy is some way off being adopted, I attach the above policies no weight in my decision.

Main Issues

4. The main issues are the effect of the proposed development on: (i) biodiversity, with particular reference to bats, a protected species; (ii) the character and appearance of the area; and (iii) whether the proposal would be sustainable development.

Reasons

5. The appeal site comprises of two existing dwellings on Overhill Road that form part of Wilmslow Park. Wilmslow Park is an area of some size and dwellings are of a variety of type, scale and finish. The immediate area around Overhill Road is strongly characterised by large detached properties that are of various
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type, scale and finish. Their plots contain mature trees and shrubs, which create a secluded environment. Three Sycamore trees, protected under The Wilmslow Urban District Council (Wilmslow Park) Tree Preservation Order 1965, are situated along the front boundary of No 14. In terms of the existing dwellings on the appeal site, No 12 is a bungalow while No 14 is a two storey dwelling. Both properties have garages to the side. A semi-circular in and out vehicular access is to the front of No 12 whereas the driveway serving No 14 extends alongside the boundary with 2 Overhill Drive.

Biodiversity

6. All species of bat are protected by law. The Framework at paragraph 109 explains that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. Paragraph 118 says that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
7. I note the Bat Survey Reports for Nos 12 and 14 were undertaken in September 2014 and September 2015 respectively. With regards to No 14, the survey initially highlighted that the property has a high potential for supporting roosting bats due to the presence of old bat droppings, thought to be of a Pipistrelle bat species, within the loft space. In addition to this, the roof offers a number of suitable bat roosting features, such as slipped or raised roof tiles. Even so, I recognise subsequent activity surveys indicated that no bats were recorded emerging from or re-entering the building and the presence of large quantities of cobwebs in the roof space. These, together suggest that the droppings found in the loft space are from an old bat roost which is no longer present or it was used by an individual bat as a day roost.
8. However, the activity surveys for No 14 recorded the presence of bats foraging along the west side of the building and along Overhill Road. I therefore concur with the appellant's ecologist that the site is an important foraging habitat. The evidence before me does not suggest that the conditions at the appeal site or in the surrounding area have changed since September 2015. Thus, there is a reasonable likelihood that bats are present either on or near to No 14, even if the roof space may not now be used as a roost. As a result there are also implications for No 12, given that it adjoins No 14. Even though the survey for No 12 did not show any evidence of bat activity on the site, it is a year older than the survey for No 14. Although this in itself is not a decisive factor and I recognise both parties' ecologists consider that the survey is up-to-date enough to inform the outcome of this appeal, it remains that there is also a reasonable likelihood of bats being near to No 12, given the activity surveys for No 14.
9. While the appellant suggests that the survey for No 14 should remain valid for 18 months from the 15 September 2015, meaning the findings are valid until 15 March 2017, this conflicts with the recommendations of that survey which states that "*Should the building not be demolished by May 2016, it is recommended that update bat surveys are carried out prior to the start of the works.*" The proposal would clearly involve the demolition of Nos 12 and 14.

Neither property had been demolished at the time of my site visit nor have I been advised that circumstances have changed in this regard since.

10. Even if Natural England do accept survey results up to 18 months old, given the findings of the survey for No 14, this does not change my view that there is a reasonable likelihood of bats being on or near to the appeal site. Nor does it alter the time lapse from May 2016 to now which leads me to consider that there is a need for an updated bat survey to be undertaken.
11. Circular 06/2005¹ explains that it is essential that the presence of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. I note the suggestion that a planning condition is attached to secure this prior to demolition works starting. But, Circular 06/2005 is clear that the need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances.
12. Although I appreciate the appellant has appealed the Council's decision which has lengthened the time period since the survey was undertaken, the passage of time is considerable and the circumstances on site could well have changed, which could include the dwellings being used by bats as a roost. I am also mindful of the delay and costs involved, however there is a reasonable likelihood of bats being present and I do not therefore consider that there are exceptional circumstances in this instance. The full impacts of the proposal are not therefore understood at this stage.
13. As the proposal entails the demolition of both existing dwellings and up-to-date surveys are not before me, there is insufficient information available to demonstrate that the proposal would not harm or disturb protected species. For these reasons, I conclude that the proposal could have a potentially adverse impact on biodiversity, with particular reference to bats, a protected species. The proposal therefore does not accord with paragraphs 109 and 118 of the Framework; which together aim to minimise impacts on biodiversity and if significant harm resulting from a development cannot be avoided, then planning permission should be refused.

Character and appearance

14. The plot widths of dwellings on Overhill Road approximately range between 19.5 metres and 24.5 metres. The appeal site also abuts a number of dwellings on Overhill Drive and Overhill Lane that are either roughly within the same range or in more generously sized plots, with a number of plots ranging up to 35 metres in width. Dwellings closest to the appeal site, including 1 and 2 Overhill Drive, together, form a small pocket of wide spacious plots amongst the more varied array of plot widths elsewhere in Wilmslow Park. While this may be the case, regard should also be given to Manor Gardens in particular, given its proximity to the appeal site even if it was constructed at a later date.
15. Manor Gardens is a cul de sac development of detached dwellings off Overhill Road. In this regard dwellings here differ to the linear pattern of development evident on Overhill Road. Still, those plots do vary in their width and they are not always uniform or as wide as the appeal site or those which neighbour it.

¹ Government Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system

16. The appeal scheme would, in terms of the proposed plot widths, be smaller than those plots adjacent. It would not therefore wholly reflect the immediate area and some harm would stem from this. While the Council's Supplementary Planning Guidance *Development in Established Residential Areas, The Three Wilmslow Parks* (SPG) seeks to ensure any proposed development should reflect the characteristics of the specific area, there is no definition of the size or remit of the specific area. In my opinion, I also consider that the proposal should be assessed in the context of a wider area that includes Manor Gardens, the junction of Overhill Road and Wilmslow Park North, Overhill Road, Overhill Drive and Overhill Lane. This would not, however alter my view that some harm would arise from the smaller plot width of the appeal scheme. However, the proposed plot widths, would in the wider context, not be unusually small and I note that the depth of the gardens would be retained in any event.
17. As a consequence of the proposed additional dwelling on the combined site, in simple terms, it would result in a form of development that has a higher density than the existing two dwellings. The appellant puts this at roughly 16.8 dwellings per hectare. By their own admission this is higher than properties on Overhill Road. While there are no specific density standards to uphold, the Framework in paragraph 60 is clear that it is proper to seek to promote or reinforce local distinctiveness. With this in mind, I am conscious of the SPG which acknowledges the density in Wilmslow Park does vary. This variation is evident near to the appeal site, not only on the 'Overhills', but also Manor Gardens and the section of Wilmslow Park North nearest to Overhill Road. While the proposal would be a denser form of development, and the existing garden areas would be reduced in size, it would reflect the variety of the area.
18. Turning now to the front building line. In this regard, each of the proposed dwellings would be sited forward of properties on Overhill Road due to their bay windows and front gables. However the disparity is not vast in a building line that does display some minor variation owing to the assorted type and style of each property. Moreover, the dwellings would be set back from Overhill Road and the flank elevation of the garage serving No 2. This would allow for a landscaped frontage to be formed which would assist in softening the built form, reducing its prominence so that it reflects the local area.
19. I recognise the three dwellings would result a different form of development that contains additional built form than Nos 12 and 14, and that each property would be closer to each other than the existing dwellings. However, the proposed gaps are reasonable considering No 12 does currently sprawl across most of the available plot width and the single storey garages of Nos 12 and 14 do extend closer to the respective boundaries than the main body of each dwelling. The proposal would in this regard seek to replicate this arrangement for plot 12, except the existing pitched roof would be replaced by a flat roof construction. This would, together with the flat roof construction of the garage for plot 14, allow visual gaps to be maintained between the proposed dwellings and to those which neighbour them.
20. Concerns are raised about the position of the garages for plots 12a and 14 as well as the long driveways or large area of hardstanding that are proposed. However, the appeal scheme seems to me to be relatively consistent with locality, which does contain large areas of hardstanding and driveways to the side of existing dwellings as well as garages.

21. Insofar as the scale of each dwelling, I note that each property is individually designed and was amended several times during the course of the application. While, the existing bungalows either side are much lower than each of the dwellings, and the ground would be excavated to achieve the planned ridge heights, the street scene and height of dwellings locally are not uniform. I appreciate plot 14 and its massing would be closer to No 2, but it would be sited adjacent to the garage and driveway of No 2 at the front. I also note that each dwelling would be no higher than the existing ridge height of No 14.
22. While the Framework in paragraph 60 advises that decisions should not attempt to impose architectural styles or particular tastes, I note the design together with use of brick, render and large panels of glazing do differentiate the dwellings from one another. Even so, the proposal would result in a more regimented form of development due to the width of each dwelling. This is a matter that weighs against the proposal.
23. In drawing these matters together, I consider some harm would arise in respect of the proposed plot widths in comparison to existing properties on Overhill Road and in terms of the regimented width of each dwelling. However, having regard to the wider area, I consider that these matters are outweighed by the proposal's broad reflection of the character and appearance of the area. It would form a visually attractive, quality form of development. It would not be a cramped, discordant, intrusive or prominent form of development, nor do I consider that my findings on this issue would set a precedent which would lead to the piecemeal erosion of the areas character and appearance. Even though I have been directed to a planning permission granted on Overhill Lane² and the appeal decision relating to Harefield Drive³, I have, like other decision-makers would need to do, considered this appeal on its own planning merits having regard to the specific circumstances presented.
24. For these reasons, on this issue I therefore conclude that the proposed development would have an acceptable effect on the character and appearance of the area. As such, the proposed development would comply with saved Policies BE1 and DC1 of the Macclesfield Borough Local Plan, the SPG and paragraphs 17, 47, 50, 58 and 60 of the Framework. Together, these seek to ensure development proposals reflect and respect the local character, form, layout, siting, scale, design and use of materials of the local environment.

Whether the proposal would be sustainable development

25. The Council accepts that they are, for the purposes of paragraph 49 of the Framework currently unable to identify a five year supply of deliverable housing sites. In such circumstances, relevant housing supply policies should be considered out of date. Paragraph 49 of the Framework requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out at paragraph 14 of the Framework, which for decision-making purposes this means: where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

² Council Ref: 14/4937M

³ Appeal Decision Ref: APP/R0660/W/16/3143976

26. In the second indent of bullet point 4 in paragraph 14, footnote 9 indicates that sites protected under the Birds and Habitats Directive can be such a policy. Paragraph 119 of the Framework sets out that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directive is being considered, planned or determined.
27. Nevertheless, taking the appellants points, in terms economic and social terms, the proposal would positively contribute to the economy through construction jobs associated with the dwellings. The proposal would also result in a single extra dwelling in Wilmslow by re-using the existing site in a sustainable location. This attracts a limited weight given the scale of the contribution. Occupants of the dwellings would also spend money and support the facilities and services on offer locally. However, the contribution would be modest given the single net gain. Thus these factors attract a limited positive weight.
28. Despite tensions regarding the character and appearance of the area, the proposal would create, on balance, a high quality built environment that attracts a neutral weight, given the local and national policy objectives. Similarly, a neutral weight is attached to the development's potential compliance with Building Regulations. As facilities and services are accessible by various modes of transport, the proposal would reduce reliance on the private car and assist with moving to a low carbon economy. This attracts a very limited positive weight, as two of the dwellings would be replacements. However, a significant adverse weight is attached to the potential harm to the natural environment, in terms of bats that are a protected species.

Conclusion

29. As I set out earlier in this decision, bullet point four of paragraph 14 of the Framework applies. In such cases, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.
30. I have found no harm from the appeal scheme in relation to character and appearance. However there would be a potentially adverse impact on biodiversity, with regards to bats. Although the proposal would fulfil the economic and social roles of sustainable development, I do not consider that the proposal would fulfil the environmental role of sustainable development. I acknowledge the proposal creates a tension between the roles. Still, the significant adverse weight that I consider applicable to biodiversity matters in the environmental role leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits which would arise from the proposal, when assessed against the policies in the Framework taken as a whole. The proposal does not therefore represent a sustainable form of development.
31. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR