
Appeal Decision

Site visit made on 6 February 2017

by A J Mageean BA (Hons) BPI PhD MRTPI

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

Decision date: 6th March 2017

Appeal Ref: APP/R0660/W/16/3163892

2 Gloucester Road, Knutsford, Cheshire WA16 0EJ

- 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 Mrs Jane Cornish against the decision of Cheshire East Council.
 - The application Ref 16/1009M, dated 28 February 2016, was refused by notice dated 26 August 2016.
 - The development proposed is new build house.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring properties, and the future occupiers of the appeal property, with particular reference to privacy, sunlight and outlook.

Background and Planning Policy

3. The appeal site is currently part of the rear garden of No 2 Gloucester Road. The proposal is for a two storey, two bedroomed dwelling¹ with a garage and two parking spaces. This would exit directly onto Malvern Road which runs to the south west of the appeal site. This proposal follows an application for a similarly positioned two storey dwelling on this site which was dismissed at appeal.²
4. The development plan comprises the saved policies of the Macclesfield Borough Local Plan 2004 (the Local Plan). The Council accepts that it cannot demonstrate a five year supply of housing land at this time. As such, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), the relevant policies for the supply of housing cannot be considered up to date. Whilst the Local Plan policies referred to by the Council in this case relate to residential design standards, they nonetheless have the effect of limiting development within existing built up areas and therefore have a connection with housing supply.
5. The Council notes that the Inspector examining the Cheshire East Local Plan Strategy – Proposed Changes Final Version 2016 (the Local Plan Strategy) has endorsed the Council's approach to the allocation of development sites and the

¹ Whilst reference is made to the proposal being a two bedroom dormer bungalow, this dwelling would comprise two floors under a roof, with only the en-suite bathroom having a roof dormer.

² APP/R0660/W/15/3002889

means of addressing the previous shortfall in provision. Whilst the appellant states that the Examination hearings demonstrated the need for further strategic allocations and infrastructure, the evidence presented by the Council suggests that the Local Plan Strategy is at an advanced stage and that the means of addressing the housing land supply shortfall have been identified. As such, I accept that it is appropriate to give a significant amount of weight to the saved Local Plan policies.

6. The reason for refusal in this case refers to Local Plan saved Policy DC41 which relates to housing infill or redevelopment. In considering the relevance of this policy to the present case I have noted the comments of interested parties in relation to the interpretation of the word 'infill', and the fact that the policy includes reference to 'tandem' and 'backland' development. However, as this side of Malvern Road is not developed this site does not conform to the generally understood definition of infill as relating to gaps in existing built frontages. Moreover, it is not backland as it has a frontage onto Malvern Road, nor is it tandem as the proposed dwelling would not share an access with another dwelling. Therefore I agree with the view of the previous Inspector that saved Policy DC41 is not relevant to the determination of this case.³

Reasons

7. The plot would be created in the relatively long rear garden of No 2 Gloucester Road, which slopes down as it adjoins Malvern Road. This would therefore back onto the rear garden of the host property, with its side boundaries adjoining the rear gardens of No 5 Malvern Road, part of No 3 Malvern Road and No 4 Gloucester Road. The dwelling itself would be similar, though marginally smaller in its main dimensions than the previous appeal proposal.⁴ Overall the appellant notes a reduction in 'volume from ground' from 559m³ to 365.3m³. The ground floor of the appeal dwelling would be at the same level as Malvern Road, below that of the host property and those to the west.
8. The rear of the appeal dwelling would face the rear of the host dwelling, though would be sited at a slightly lower level, with a separation distance of around 18m.⁵ This would fall below the standard set out in Core Strategy saved Policy DC38, which requires a separation distance of 25m when buildings are to be back to back. There would be few windows to the rear of the proposed dwelling: a series of five rooflights serving an upper floor corridor and a ground floor window which would be largely screened by the changes in site level. As such, opportunities for overlooking between the properties themselves would be limited. However, the host property would overlook the relatively shallow private garden area of the appeal dwelling, even allowing for a slight change in level between the two.
9. It is clear that the standard set for the provision of space between dwellings would be breached. The appellant states that a degree of overlooking is common in this area, and that similar separation distances are present in the locality, including the gap between No 1 Malvern Road and the host property.

³ I note an interested party's reference to a previous appeal decision (APP/R0660/W/16/3146571) in which Policy DC41 is applied in what is described as an almost identical garden development. However, in this case the access for the proposed dwelling would have been onto an existing road which already contains frontage development.

⁴ The appellant notes that the previous proposal had a ridge height of 65.73m, a building width of 13.26m and a floor area of 168.7m², whilst the current proposal would have a ridge height of 65.40m, a building width of 13.00m and a floor area of 157.5m².

⁵ It is not clear whether this figure includes the single storey rear extension on the south eastern portion of the rear elevation of the host property.

However, the rear elevation and garden of No 1 faces the side elevation of the host property, thereby preventing direct overlooking of the rear garden of No 1. Furthermore, the garden of No 1 additionally wraps around to the north, ensuring the occupiers of this property have both additional private space and the degree of spaciousness around their property which is commensurate with the area.

10. Turning to the relationship with No 5 Malvern Road, whilst the parties disagree on the precise measurement between the rear of this property and side elevation of the appeal dwelling, it would be below the separation distance of 14m as set out in saved Policy DC38. Whilst the appellant states that the distance would be 13.9m, this does not include the single storey rear extension to No 5, which is largely complete.
11. The appeal dwelling would not have any windows on the side elevation which would face No 5, however this development would interrupt the currently open outlook over rear gardens enjoyed by the occupiers of this property, as the two storey structure would span most of the width of this garden. Whilst the appellant again points to the similar relationship between No 1 Malvern Road and the host property, as the side garden of No 5 is notably shallower than that of No 1, it does not provide the same degree of spaciousness. In this context the presence of the appeal dwelling would be an unacceptably intrusive and overbearing addition to the rear outlook of the residents of No 5.
12. To the north east of the appeal dwelling, the rear of No 4 Gloucester Road would be diagonally opposite the rear of the appeal site. This property is sited further to the south west than the adjoining host property, and as such whilst the separation distances quoted by the parties vary, it is clear that they would be below the standard set out in saved Policy DC38. The limited number and discrete locations of windows on both the side and rear elevations of the appeal property would mean that there would be little opportunity for overlooking between the properties. However, No 4 would overlook the shallow private garden area of the appeal dwelling, even allowing for the slight change in level between the two.
13. The occupiers of this dwelling enjoy the spacious and open aspect from the rear of their property and its garden. In this respect the presence of this two storey structure, notwithstanding the fact that it would be located at a slightly lower level than No 4, would be a significant and overbearing addition which would be harmful to this aspect of residential amenity.
14. The proposal would breach the separation standards set in saved Policy DC38 in a number of ways. Whilst the appellant notes that these standards are provided for guidance only and can be varied, it is clear that such standards are *commensurate with the degree of light and privacy between buildings* in this area, and as such their application in this case is entirely appropriate.
15. The appellant's evidence relating to sunlight demonstrates that in this respect the appeal dwelling would not be unduly harmful to the occupiers of either No 5 Malvern Road or No 4 Gloucester Road. However this evidence also illustrates that, due to its north west orientation, the shallow rear garden area associated with the appeal dwelling would experience a considerable amount of overshadowing. This would be exacerbated by its recessed position. As this would be the main area of private garden space for the appeal dwelling, in this

respect the living conditions for the future occupants of this property would not be acceptable.

16. To sum up on this matter, I have found that there would be issues associated with some aspects of privacy and sunlight relating to the garden space of the appeal dwelling. Of greater concern is the harm which would be caused in terms of the intrusive and overbearing impact of the development on the rear outlook for the occupiers of the properties which back onto the appeal site.
17. I therefore conclude that this proposal would have a detrimental effect on the living conditions of the occupiers of neighbouring properties, and the future occupiers of the appeal property, with particular reference to privacy, sunlight and outlook. In these respects it would conflict with the Local Plan saved policies DC3 and DC38 which aim to protect the standards of space between buildings, and to prevent injury to the amenity of residential properties in terms of loss of privacy and overbearing effect.

Other Matters

18. Interested parties raise concerns about the effect of the proposal on the character and appearance of this area. However, the proposal has been designed to reflect the characteristics of this 1970's estate. Furthermore, I note that the Council considers that the plot configuration proposed, though smaller than those in the surrounding area, would be acceptable. I have no reason to take a different view on this matter.
19. Whilst the Council states that the previous scheme was dismissed primarily on grounds of character, the previous Inspector also had significant concerns relating to the impact on the living conditions of the occupiers of neighbouring properties, which, as my preceding analysis has demonstrated, have not been overcome in the present case.
20. Turning to highway safety matters, it is clear that there has been considerable contention and disagreement between the parties. This was a main issue in the previous appeal, with the Inspector concluding that *given the existing low levels of trips that are and could be generated and the low vehicle speeds on this stretch of road.....the level of visibility proposed would be acceptable and would not result in a material risk to highway safety.*
21. In broad terms there is no material difference between the proposal before me and that considered by the previous Inspector: in both cases the proposal is for a two bedroom dwelling which would exit onto Malvern Road in the same manner. Nonetheless, I have considered the additional evidence presented by local objectors in the context of policy and guidance on this matter.
22. A fundamental disagreement between the parties relates to the relevance of the guidance found in Manual for Streets⁶ (MfS1) and Manual for Streets 2⁷ (MfS2). Whilst MfS1 focuses on lightly trafficked roads, MfS2 is more up to date and builds on the advice contained on MfS1, exploring in greater detail how and where its key principles can be applied to busier streets and roads. Of specific relevance is the guidance on how to calculate the Y distance of visibility splays: MfS1 states *for simplicity it is measured along the nearside kerb line of*

⁶ Manual for Streets (2007) Department for Transport

⁷ Manual for Streets 2 (2010) Chartered Institute of Highways and Transportation

*the main arm,*⁸ whilst MfS2 further states that *a more accurate assessment of visibility splay is made by measuring to the nearside edge of the vehicle track.*⁹ This element of the guidance incorporates and builds on the earlier guidance set out in MfS1: it clearly applies to all roads including residential.

23. In the present case I consider the MfS2 approach to be of greater relevance, particularly given the configuration of this short cul-de-sac. I accept that the visibility of the proposed entrance point is screened by the slight bend in the road and the presence of the large evergreen hedge to the north. However, when entering from the west, the combined effects of the large hedge, the lack of northern pavement and the visibility of the end of the cul-de-sac to the east mean that vehicles are more likely to follow a central path than to hug the northern kerb. In this respect my view is that the extended visibility splay of up to 18.1m presented by the appellant¹⁰ reflects this position and represents a more accurate assessment of the driver experience.
24. The additional evidence presented includes details of an independent traffic survey undertaken over 7 days in March 2016. This demonstrates that the speeds within the cul-de-sac are higher than the 15mph average (85th percentile 15.223mph) previously presented by the appellant, with average speeds of up to 18.2mph (85th percentile 20.1mph). As such it is suggested that the stopping sight distance should be increased and a visibility splay of 2m x 22.8m provided. Reference is also made to the fact that the pedestrian exit from the driveway would be within the Y distances given.
25. I accept that the available stopping sight distances fall below those set out in the guidance for streets with average speeds of around 20mph. I also accept that, unusually for this area, there is no pavement along the side of the road from which the appeal site would exit, and that the road is used by both local residents and visitors to the area.
26. However, the guidance is aimed at all junctions, including much busier residential and other roads, and so should be considered in relation to site specific circumstances. Furthermore, MfS2 notes that *unless there is local evidence to the contrary, a reduction in visibility below recommended levels will not necessarily lead to a significant problem.*¹¹ Finally, it is also important to note that this guidance is provided as advice and not as policy or as a legal requirement.
27. My view is therefore that on this lightly trafficked and short cul-de-sac the risks posed by the introduction of an additional residential access at this point would not be significant. In this respect the proposal would not conflict with the Local Plan saved Policy DC3 which seeks to ensure that development will not significantly injure the amenity of adjoining or nearby residential properties in terms of traffic generation, access and car parking, nor the Framework which requires that *safe and suitable access to the site*¹² be provided. Therefore there is no objection to the proposal on highway safety grounds.

⁸ 7.7.3

⁹ 10.5.3

¹⁰ Drawing 8411-001 A

¹¹ 10.5.9

¹² Paragraph 32

Conclusions

28. I have found harm and conflict with the development plan in relation to the main issue. I noted at the outset that in the absence of a five year housing land supply in this area Local Plan policies are out-of-date but, as progress has been made in addressing this matter I find that significant weight should be attached to them.
29. However, the current absence of a five year supply of housing land also means that, in accordance with paragraph 14 of the Framework, planning permission should be granted *unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits*. In this case the benefit would be the provision of one unit of accommodation in a reasonably sustainable location, which would make a small contribution to addressing housing supply issues in this area. The protection of residential amenity accords with the provisions of the Framework.¹³ Indeed, the harm I have found in relation to the living conditions of current and future occupiers is such that it would significantly and demonstrably outweigh the benefit when assessed against the policies in the Framework taken as a whole. Consequently there are no other material considerations that outweigh the conflict with the development plan.
30. For these reasons the appeal is dismissed.

AJ Mageean

INSPECTOR

¹³ Paragraph 17