
Appeal Decision

Site visit made on 27 April 2017

by Caroline Jones BA (Hons) DipTP MTP MRTPI

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

Decision date: 16th May 2017

Appeal Ref: APP/R0660/W/16/3166200

Woodlands House, 61B London Road, Stapeley CW5 7JL

- 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 and Mrs Clarke against the decision of Cheshire East Council.
 - The application Ref 16/2016N, dated 24 April 2016, was refused by notice dated 1 August 2016.
 - The development proposed is a single dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for a single dwelling at Woodlands House, 61B London Road, Stapeley CW5 7JL in accordance with the terms of the application, Ref 16/2016N, dated 24 April 2016, , subject to the conditions in the attached schedule.

Procedural Matters

2. The Council has raised concerns regarding discrepancies in the information submitted with respect to the proposed access. Whilst the submitted block plan Ref 1b shows an access almost perpendicular to London Road, it is clear from the information on the application form and from the appellants' appeal statement that the existing point of access at the site is to remain unaltered. The Council have confirmed in their appeal statement that the application was considered on this basis. Therefore, notwithstanding the access shown on the submitted block plan, I have considered the appeal on the basis that the proposed point of access will remain as existing.
3. In seeking to address the Council's reason for refusal, the appellant submitted further information with their appeal statement and with their final comments. A 'Highways Report' dated October 2016 and a plan Ref WLH-JCT004 which were prepared for a subsequent planning application¹, were submitted in support of the appeal with the appellants' statement. A topographical survey and plan Ref 5e were submitted at the final comments stage.
4. I have had regard to the concerns expressed by the Council that the further submissions were not considered as part of the original application. In the interests of fairness it is important that what is considered at appeal is essentially what was considered by the Council. There were a number of third party representations received to the application who would have an interest in the outcome of the appeal with whom no consultation has been undertaken in

¹ Planning application ref: 16/4926N

respect of the further submissions. Having regard to the Wheatcroft principles and the nature of the representations received, these parties could be prejudiced if I were to take the further reports and plans into account. I shall therefore determine the appeal on the basis of the plans and information that were submitted at the application stage.

5. In their appeal statement, the Council refer to Policy SD1 of the emerging Cheshire East Local Plan Strategy (CELP). This plan is now at an advanced stage with consultation on the main modifications having commenced on 6th February 2017. The Council have indicated that the Inspector has only recommended minor changes to the wording of the relevant policies and supporting text and the policies will be adopted largely in their current format. In light of this and in accordance with paragraph 216 of the National Planning Policy Framework (the Framework), I consider that substantial weight can be given to this policy.
6. The Supreme Court handed down judgement on the *Suffolk Coastal District Council v Hopkins Homes Ltd and SSLG, Richborough Estates Partnership LLP and SSLG v Cheshire East Borough Council* case on 10 May 2017. Having regard to the judgement I am not persuaded it has any direct implications for the cases of the respective parties and I am satisfied there was no necessity to seek further views on this matter.

Main Issue

7. The main issue is the effect of the proposal on highway safety.

Reasons

8. The proposed dwelling would be located to the rear of a dwelling currently under construction which has been the subject of numerous planning applications, the most recent of which was submitted in 2016. At the time of my site visit construction appeared to be almost complete. The existing approved access for this dwelling exits the site in the southern corner at the junction of London Road and Wybunbury Lane. The access would remain unaltered and would be shared by the two properties.
9. I acknowledge that the existing approved access is not ideal given its location on a junction. However, whilst noting the presence of a telegraph pole to the north of the access, I do not consider that visibility is unduly restricted, particularly as the adjacent hedge has been cut back. I note the Council's concerns regarding the hedge growing back however I am satisfied that as a roadside hedge this could be controlled by the Highway Authority under separate legislation. From my observations on site, I am satisfied that the existing arrangements allow vehicles to pull out with some visibility and that oncoming vehicles would have sufficient visibility of cars exiting the site to proceed with sufficient caution.
10. Notwithstanding the objections raised by the Highway Authority, I am also mindful that the existing access was considered acceptable by the Council for the construction of one dwelling at the site. I have not been provided with any compelling evidence, for example in the form of accident data, to indicate as to why the increase in use of the access by one further dwelling would have an unacceptable impact on highway safety. Having regard to the existing volume of traffic using the access, I do not consider that the additional movements

generated by a three bedroom dwelling would have any material effect on highway safety.

11. I therefore conclude that the proposal would not have a significant impact on highway safety and find no conflict with Policy BE.3 of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (2005) (CNLP) and emerging Policy SD1 of the CELP which seek to ensure, amongst other things, that safe vehicular access and egress arrangements are provided. I also find no conflict with paragraph 32 of the Framework which states that safe and suitable access should be achieved.

Other Matters

12. I have had regard to the concerns expressed by local residents and the Parish Council. Those which relate to the access have been taken into account in reaching my conclusions above. In respect of those which relate to the impact on the living conditions of neighbouring properties, I note that in view of the separation distances, orientation and intervening structures, the Council has concluded that there would be no significant amenity issues in terms of overlooking, overshadowing or outlook. I have seen nothing which would lead me to conclude otherwise. I am satisfied that any increase in levels of noise and disturbance by one three bedroom dwelling would not be unduly significant. Details of levels on the site can be secured by condition.
13. I concur with the Council that despite its 'backland' location, the presence of other buildings in and around the appeal site ensures the proposed dwelling would be read as part of the cluster of buildings in the vicinity, in keeping with the pattern of development. Given the variety of house types and styles in the locality I do not consider that the proposed dwelling would have an adverse impact on the character and appearance of the area. Tree protection can be secured by condition.
14. There is no robust evidence before me which would indicate that the proposals would materially affect drainage, flooding, access for emergency vehicles, pedestrians, wheelchair users or wildlife. As such, I do not consider that these provide sufficient grounds to refuse planning permission in this instance. Any disturbance from construction traffic would be for a temporary period only. With regard to the site being unlit, I noted at my site visit that a street light was located in proximity to the appeal site.
15. I note the concerns expressed by the residents regarding the previous application and those regarding the subsequent refused application. However, I am constrained to dealing with the appeal before me only and in any case, each application must be assessed on its own merits.
16. My attention has been drawn to the proposal's conflict with Policy NE.2 of the CNLP. The Council does not dispute this conflict and have addressed this matter in their officer report. I have no reason to take a different view.

Conditions

17. Having regard to the Framework, I have considered the conditions suggested by the Council. The conditions I shall impose are based on those suggested by the Council but with some variation in wording in the interests of precision and clarity.

18. In order to provide certainty I have specified the approved plans as well as the use of the existing access only. I have imposed conditions requiring the submission of materials and hard and soft landscaping details to ensure a satisfactory appearance. In order to protect the amenity of adjacent residents a condition requiring details of levels on the site is necessary. Conditions relating to the protection of trees are necessary in the interests of the visual amenity of the area.
19. The Council has suggested a condition is required to remove development rights permitted by Classes A-F of Part 1 of Schedule 2 and Classes A and B of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015. Paragraph 200 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The National Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. No exceptional circumstances have been put to me to justify restricting the proper operation of the General Permitted Development Order and consequently the suggested condition does not meet the test of necessity.

Conclusion

20. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Caroline Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1b, 2a, 3a and 4a except in respect of the access shown on plan 1b.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5)
 - (a) Prior to the commencement of development or other operations being undertaken on site, a scheme for the protection of the retained trees produced in accordance with British Standard BS5837: 2012 Trees in Relation to Design, Demolition Construction: Recommendations which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the local planning authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
 - (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
 - (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
 - (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
- 6) Prior to the commencement of development, a scheme for the landscaping of the site shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of hard landscaping, boundary treatments, planting plans, written specifications (including cultivation and other operations associated with tree, shrub hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.

- 7) The proposed hard landscaping and boundary treatment shall be provided prior to first occupation of the development hereby permitted and thereafter be retained. Any soft landscaping plan shall be implemented in full accordance with the approved scheme within the first planting season following completion of the development hereby permitted or in accordance with a programme first agreed in writing with the local planning authority. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die become severely damaged or seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of a similar size and species to those originally required to be planted.
- 8) Means of vehicular access to the permitted building shall be from the existing access to the site at the junction of London Road and Wybunbury Lane only and shall be retained thereafter.