

Appeal Decisions

Site visit made on 23 May 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 02 June 2017

Appeal A Ref: APP/A0665/W/17/3170295

Land adjacent to 19 School Lane, Childer Thornton, Ellesmere Port CH66 5PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ian Lyons (Lyons Estates) against the decision of Cheshire West & Chester Council.
 - The application Ref 16/02576/S73, dated 6 July 2016, was refused by notice dated 13 October 2016.
 - The application sought planning permission for approval of reserved matters following outline application 15/01810/OUT without complying with a condition attached to planning permission Ref 16/01376/REM, dated 27 May 2016.
 - The condition in dispute is No 2 which states that: "*The development hereby approved shall be carried out in accordance with the plans submitted with the application*".
 - The reason given for the condition is: "*For the avoidance of doubt and in the interests of proper planning*".
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Appeal B Ref: APP/A0665/W/17/3170301

Land adjacent to 19 School Lane, Childer Thornton, Ellesmere Port CH66 5PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ian Lyons (Lyons Estates) against the decision of Cheshire West & Chester Council.
 - The application Ref 16/04863/S73, dated 3 November 2016, was refused by notice dated 17 January 2017.
 - The application sought planning permission for approval of reserved matters following outline application 15/01810/OUT without complying with a condition attached to planning permission Ref 16/01376/REM, dated 27 May 2016.
 - The condition in dispute is No 2 which states that: "*The development hereby approved shall be carried out in accordance with the plans submitted with the application*".
 - The reason given for the condition is: "*For the avoidance of doubt and in the interests of proper planning*".
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Decision

Appeal A

1. The appeal is dismissed.
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Appeal B

2. The appeal is allowed and reserved matters consent is approved following outline application 15/01810/OUT in accordance with the application Ref 16/04863/S73 dated 3 November 2016, without compliance with condition number 02 previously imposed on reserved matters consent Ref 16/01376/REM dated 27 May 2016 at Land adjacent to 19 School Lane, Childer Thornton, Ellesmere Port CH66 5PH and subject to the attached schedule of conditions.

Applications for costs

3. Two applications for costs were made by Mr Ian Lyons against Cheshire West and Chester Council. These applications will be the subject of a separate Decision.

Background and Main Issues

4. Reserved matters consent (all details applied for) was granted for the erection of a detached house on the site on 27 May 2016 (Ref 16/01376). However, the dwelling that has been erected on the site has not built in accordance with the approved plans. Appeal A relates to the dwelling that has been built on site and seeks to vary condition No 02 of 16/01376 which relates to the approved drawings. Appeal B relates to an alternative proposal for the erection of a dwelling on the site and also seeks to vary condition No 02 of 16/01376.
5. The appeal site falls within land defined as Green Belt. I obtained further comments about this matter from the main parties prior to determining this appeal as I did not consider that this issue had been fully considered in the respective planning appeal statements.
6. Outline planning permission was approved on 24 June 2015 for the erection of a dwelling on this site (15/01810/OUT) and the Council considered that such development would not be inappropriate in the Green Belt as it would amount to limited infilling in a village having regard to Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies 2015 (LP) and paragraph 89 of the National Planning Policy Framework (the Framework). In respect of the development proposed for Appeal A and Appeal B, I consider that this amounts to limiting infilling within a village. Hence, the proposals do not amount to inappropriate development in the Green Belt.
7. Whilst the dwelling on the site has not been built in accordance with the plans approved by condition No 02 of 16/01376, the reserved matters consent still remains extant. The Council does not raise any policy/sustainability concerns about the principle of erecting a dwelling on this site. In any event, the extant planning permission remains a very weighty material planning consideration when determining this appeal.
8. Given the above, it is necessary for me to outline how the respective appeal developments compare to the development as approved under 16/01376. In considering such changes, I have taken into account plan No L008-03 "Combined Planning" provided by the appellants.
9. The Appeal A proposal differs from the extant planning permission in so far that the dwelling is 660 mm closer to 1 Croft Cottages (now known as Oakley) at the rear corner and 410 mm closer at the front corner. However, the dwelling has been sited so that it is 420 mm further away from No 19 School Lane at

the rear corner and 130mm further away at the front corner. In addition, the internal configuration of the dwelling has changed resulting in a number of minor changes to the external appearance of the house including a rooflight to the front elevation, the re-positioning of a door on side elevation, the use of the approved garage as habitable accommodation and the provision of a front window instead of an approved garage door. There are no material changes proposed to the overall scale and massing of the approved dwelling.

10. The Appeal B proposal differs from the extant planning permission in so far that the dwelling would be sited so that it is 420 mm further away from No 19 School Lane at the rear corner and 130mm further away at the front corner. The two storey side wall of the dwelling which faces Oakley would be 5mm further away at its rear corner and 255mm further away at its front corner. In addition, the side elevation would be different in terms of design as it would incorporate a single storey porch. There would be a roof light to the front elevation, the use of the approved garage as habitable accommodation and the provision of a front window instead of an approved garage door. In addition, there would no longer be a ground floor window to part of the rear elevation and car parking would be relocated to the previously approved hardstanding occupying the front part of the site.
11. Given the above, I consider that the main issue in both appeals is the effect of the proposed development upon (i) the living conditions of the occupiers of neighbouring residential properties in respect of outlook, privacy and light and (ii) the character and appearance of the area.

Reasons

Living conditions – Appeal A

12. In the context of the extant planning permission for the site, the side elevation of the appeal dwelling is respectively 660 mm and 410 mm closer to the side elevation of Oakley. This results in the side extension of the appeal dwelling being less than 5 metres from the windows of Oakley. As part of my site visit, I was able to view the appeal site from Oakley. There are windows on the ground floor and the second floor side elevation of Oakley which serve living spaces and bedrooms. When viewed from these windows, I consider that the “as built” dwelling has an enclosing and dominating impact. Therefore, any opportunity to move the development further away from these windows would improve the living conditions of the occupiers of such a property, even if it is by a relatively modest amount.
13. I accept that the extant planning permission is a weighty material planning consideration, but in terms of the living conditions of the occupiers of Oakley, I consider that such an approval was on the margins of acceptability. I reach this conclusion also taking into account the Council’s Supplementary Planning Document: Infill Plots 2003 (SPD) which refers to a separation distance of 12 metres. I do not consider that there is any reasonable justification for allowing, in relative terms, a dwelling to be built closer to habitable room windows and which would have a significantly harmful overbearing impact upon the occupiers of Oakley. I am satisfied that matters relating to privacy could be dealt with by planning condition. In addition, I do not consider that the proposal would lead to a material loss of light to Oakley when compared to the extant planning permission. However, the significant effect of the development upon the outlook afforded to the occupiers of Oakley is an overriding concern.

14. I have considered the effect of the development upon the living conditions of occupiers of all other surrounding residential properties including No 19 School Lane and 4 Hope Cottages. The dwelling has been positioned further away from these properties and so in relative terms, and in this regard, the proposal is acceptable in terms of its effect upon outlook, privacy and light. However, this does not overcome the identified significant harm that would be caused to the occupiers of Oakley. For this reason, I conclude that the proposal would not accord with the amenity aims of Policies SOC5 and ENV6 of the LP, the SPD and the Framework.

Living conditions – Appeal B

15. In the main, the proposed dwelling would be narrower and positioned further away from surrounding residential properties than the approved dwelling. I acknowledge that it is proposed to erect a porch/shelter on the side elevation of the property (adjacent to Oakley), but given the height of this structure, its relatively modest depth, and the height of the party fence, I do not consider that it would have a significantly harmful impact upon the outlook enjoyed by the occupiers of the neighbouring property.
16. In addition to the above, I do not consider that the provision of a door on the side elevation of the house and into the shelter/porch would result in significant levels of activity or noise for the occupiers of the neighbouring property. Furthermore, I do not consider that any “upward overlooking” from the porch/shelter into neighbouring first floor windows could reasonably be considered to be harmful. In any event, I doubt that the door would be used all the time as there would continue to be a main entrance door on the front elevation of the proposed dwelling.
17. Whilst the proposal would not necessarily accord with the Council’s separation distance standards, this is outweighed by the fact that overall the proposal would represent an improvement in living conditions terms when considered against the extant planning permission. Overall, and taking into account the extant planning permission for the site, the proposal would be acceptable in terms of its effect upon the living conditions of the occupiers of surrounding residential properties in respect of light, privacy and outlook.
18. For the above reasons, I conclude that the proposal would not materially conflict with the amenity aims of Policies SOC5 and ENV6 of the LP, the SPD and the Framework.

Character and appearance – Appeals A and B

19. When compared to the extant planning permission, the Appeal B proposal includes more space between the properties at first floor level. Taking into account the extant planning permission for the site, this proposal is acceptable both in terms of the design of the dwelling and its overall effect upon the character and appearance of the area. I acknowledge that a porch/shelter is proposed to the side elevation facing Oakley, but owing to its height and depth this would not, in relative terms, significantly depart from the sense of space between properties.
20. In the context of the extant planning permission for the site, the Appeal A proposal would be acceptable in design terms. The dwelling has been built so that it is further away from No 19 School Lane, but is marginally closer to

Oakley by 660 mm and 410 mm when measured from the front and rear corners. This is not a significant deviation from the approved plans and such a change is not discernible to the passer-by. This proposal is acceptable both in terms of the design of the dwelling and its overall effect upon the character and appearance of the area.

21. For the collective reasons outlined above, I conclude that the proposed development for Appeal A and Appeal B would not have a detrimental impact upon the character and appearance of the area. Therefore, both proposals would accord with the design aims of Policies SOC5 and ENV6 of the LP and the Framework.

Other Matters

22. I have taken into account representations made by other interested parties.
23. I note the comments made a number of parties who state that a dwelling has been partly erected on the site and that it does not accord with the approved plans. However, this is not a matter that is relevant to this appeal. It is a matter to be investigated by the Council who have the power to take planning enforcement action where it is expedient to do so: I understand that the Council has served an enforcement notice requiring the demolition of the part built dwelling on the site.
24. Comments have been made about foul drainage and that condition No 07 of 15/01810/OUT has not been complied with. I do not have enough information to determine whether or not such a condition has been complied with. This is a matter for the Council to look into as part of its planning enforcement investigations. In any event, and notwithstanding any possible current unauthorised development on the appeal site, the planning permission for the erection of a dwelling on the site remains extant until 27 May 2018.
25. The occupiers of No 4 Hope Cottages say that in order to comply with condition 07 of 15/01810/OUT it will require access over their land. The grant of planning permission would not override private property rights. I am aware that there is a boundary dispute between the appellant and the occupier of No 4 Hope Cottages. I do not have full details relating to this matter and, in any event, this is a private/civil matter to be dealt with separately between the two parties. I acknowledge the concerns raised by the occupiers of No 4 Hope Cottages about the impact of the development upon their outlook (including from the recently built extension), but the proposals would be no worse than have already been approved by the Council.
26. Comments have been made about building works being carried out during unsociable hours: this is a matter that could be separately investigated by the Council's Environmental Services team.
27. For the reasons outlined in this decision, I do not consider that the Appeal B proposal would be any worse than the development approved under the extant planning permission. In this context, such a proposal would not result in a relative and material loss of light, privacy or outlook for any of the occupiers of neighbouring residential properties.
28. I acknowledge the comments made by some interested parties about the accurate position of boundaries and that some consider that planning permission should not have been approved for a dwelling on the site.

However, I have been able to consider the position of both the approved dwelling and the Appeal A and the Appeal B proposals and their respective relationships with surrounding neighbouring properties.

29. Representations have been made about the use of School Lane and New Road. However, I do not have any objective evidence before me to indicate that the traffic associated with the erection of one dwelling would result in significant congestion or highway safety issues on local roads. In any event, planning permission has already been approved for the erection of a dwelling on the appeal site.
30. None of the other matters raised outweigh my overall conclusion on the main issues.

Conditions

31. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
32. As a dwelling has been partly constructed on the site, it is necessary that it is modified and accords with the plans which are the subject of this appeal. It is therefore necessary to impose a planning condition requiring the modifications to take place within a reasonable timescale. The Local Planning Authority has suggested that the development should be completed by 27 May 2018 and the appellant does not object to this date. I have therefore imposed a condition to this effect.
33. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In the interests of the living conditions of the occupiers of neighbouring residential properties, I therefore impose a planning condition relating to the first floor bedroom windows on the rear elevation of the dwelling being obscure glazed.
34. In the interests of the character and appearance of the area, it is necessary to impose a planning condition relating to hard and soft landscaping. In the interests of the living conditions of the occupiers of the proposed dwelling in respect of light, it is necessary to impose a planning condition requiring a roof light to be installed over Bedroom No 4.

Conclusion

35. For the reasons outlined above, and taking into account all other matters raised, I conclude that Appeal A should be dismissed and that Appeal B should be allowed.

Daniel Hartley

INSPECTOR

Schedule of Conditions - APP/A0665/W/17/3170301

- 1) The development hereby approved shall be completed by 27 May 2018.
- 2) The development hereby approved shall be carried out in accordance with the following plans: L008-01; L008-02 ("proposed dwelling" only) and L008-03 (proposed "new dwelling" only).
- 3) Notwithstanding condition No 2 of this permission, prior to the first occupation of the dwelling, a roof light shall be installed over bedroom No 4. The roof light shall thereafter be retained.
- 4) The dwelling hereby approved shall not be occupied until such time as full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority. The approved hard and soft landscape works shall be carried out as approved and thereafter retained. Soft landscape works shall include planting plans, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant sizes and proposed numbers/densities where appropriate and an implementation programme.
- 5) The rear-facing first floor Bedroom 3 and Bedroom 4 windows shall be obscure glazed to a height of 1.7 metres above finished floor level and this screening must be maintained in perpetuity to the satisfaction of the Local Planning Authority unless with the prior written consent of the Local Planning Authority.