

---

## Appeal Decision

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 Ref: APP/A0665/W/17/3169621**

**29 Brown Heath Road, Chester, Cheshire West and Chester CH3 7PP**

- 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 D Garner (Candover Projects Ltd) against the decision of Cheshire West & Chester Council.
  - The application Ref 15/03670, dated 7 September 2015, was refused by notice dated 18 January 2017.
  - The development proposed is to demolish the existing house and to erect two pairs of semi-detached houses (four dwellings).
- 

### Decision

1. The appeal is allowed and planning permission is granted to demolish the existing house and to erect two pairs of semi-detached houses (four dwellings) at 29 Brown Heath Road, Chester, Cheshire West and Chester CH3 7PP in accordance with the terms of application Ref 15/03670, dated 7 September 2015, subject to the attached schedule of conditions.

### Main Issue

2. The appeal site is in the Green Belt so the main issues are:
  - Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework;
  - The effect of the proposal upon the openness of the Green Belt;
  - If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

### Reasons

3. The appeal site comprises a detached dwelling which is located to the rear of residential properties which front onto Brown Heath Road. The site is washed over by the Green Belt and is accessed from Brown Heath Road by a driveway which is positioned between No 27 and No 31 Brown Heath Road. It is proposed to demolish the existing detached dwelling on the site and to erect two pairs of two storey semi-detached dwellings. Each of the four dwellings would have its own rear garden and car parking spaces, and it is proposed that the access drive would include a passing bay half way down its length.
-

### *Inappropriate Development*

4. Paragraph 89 of the National Planning Policy Framework (the Framework) states that the construction of new buildings in the Green Belt is inappropriate unless it meets specified exceptions. I do not consider that the proposal accords with the last bullet point of paragraph 89 of the Framework in that it relates to development within a garden which falls within a built up area. Therefore, and taking into account the definition of previously developed land in the glossary of the Framework, the appeal site is greenfield.
5. The penultimate bullet point of paragraph 89 of the Framework states that one of the exceptions is "*limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan*". The Framework does not define what is a village, what is infilling or indeed what is limited infilling. I am satisfied that the site does fall within a village. Indeed, it falls within the settlement of Waverton which is defined as a "washed over" village by virtue of saved Policy HO 6 of the Chester District Local Plan 2006 (CDLP). In addition, I was able to see as part of my site visit that this settlement included a reasonable number of day to day facilities and services: therefore, I consider that it is reasonable to conclude that it is a village.
6. Saved Policy HO 4 of the CDLP provides some clarity in terms of what is infill development. It states that it is "*the construction of one or two dwellings in a small gap in an otherwise built up frontage*". Whilst the site does have a frontage, and indeed is surrounded by existing development, the provision of four dwellings rather than one or two dwellings would not accord with Policy HO 4. In other words, the proposal would not meet the definition of infilling as expressed in the CDLP. On this basis, I conclude that the proposal would amount to inappropriate development in the Green Belt. I have considered the proposal against the other criteria in paragraph 89 of the Framework, but it does not meet any of the other exceptions. Indeed, the proposed development would be materially larger than the existing development on the site.
7. The appellant has commented that Waverton may become a Local Service Centre in the forthcoming Local Plan (Part Two) Land Allocations and Detailed Policies Plan and that policies relating to the settlement are likely to be less restrictive. However, such a plan has not been adopted and hence this does not outweigh the aforementioned conflict with saved Policy HO 4 of the adopted CDLP and the Framework.

### *Openness*

8. Openness is a lack of built development. A lack of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt. When compared to the existing dwelling on the site, the proposed development would have a greater impact on the openness of the Green Belt. However, as the two semi-detached buildings would be closely related to each other, and most of the site would remain open, there would only be limited harm to the overall openness of the area.

### *Other Considerations*

9. There remains in place an extant planning permission (Ref 15/00826/REM) for the erection of two dwellings on the site until August 2017. This is a very weighty material planning consideration.

10. Whilst the extant planning permission is only for two dwellings, the appeal buildings are identical to the approved dwellings in terms of height, massing and siting. Other than an additional front door, and some proposed velux roof lights, the proposed buildings would be identical to the approved development in terms of design. Consequently, the overall effect of the proposed buildings upon the openness of the Green Belt when compared to the extant planning permission would be immaterial. I acknowledge that when compared to the extant permission there would be four gardens rather than two. However, with sensitive garden boundary treatments this in itself would not cause significant harm to the openness or visual amenity of the Green Belt.

#### *The Green Belt Balance*

11. The proposal would constitute inappropriate development in the Green Belt. As such, the Framework requires that the harm by reason of inappropriateness be given substantial weight and that inappropriate development should not be approved except in very special circumstances. Very special circumstances will not exist unless the harm to the Green Belt and any other harm is clearly outweighed by other considerations.
12. In this instance, I consider that the existence of the extant planning permission for a development which would be very similar in terms of its scale, siting, massing and design constitutes a very special circumstance which clearly outweighs the harm to the Green Belt by way of inappropriateness and any other harm. Such a material planning consideration is of sufficient magnitude that it outweighs the conflict with the Green Belt aims of Policies H0 4 and H0 6 of the CDLP; Policy STRAT 9 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies 2015 and the Framework.

#### **Other Matters**

13. I have carefully considered the representations made by other interested parties (including from the occupiers of Fircroft, Brown Heath Road). Many of the issues raised were addressed as part of the consideration of the extant planning permission.
14. I have considered the comments made by J10 Planning on behalf of the occupiers of No 19 Sheraton Road. Concerns are raised about the way that the outline and reserved matters applications were considered by the Council and that previous objections and concerns were not fully taken into account. However, this is not a matter for me to consider and, in any event, there remains an extant planning permission for residential development on the site. I note the policy comments made by J10 Planning, but I have reached a view about the proposal in my reasoning above taking into account relevant development plan and national planning policies.
15. As regards concerns raised about the scale and siting of the buildings, and their effect upon the living conditions of the occupiers of surrounding residential properties, taking into account the separation distances involved, I am satisfied that significant harm would not be caused to the living conditions of the occupiers of such dwellings in terms of loss of light, privacy and outlook.
16. A planning condition could be imposed in respect of the side elevation windows being fitted with opaque glass facing the rear garden areas of Brown Heath Road and No 19 Sheraton Road. I acknowledge that the proposed

development would not be consistent with the rear building line of No 19 Sheraton Road. However, the two storey gabled rear projection would be set away from the party boundary and landscaping would help to soften the impact of such development when viewed from the garden / rear windows of No 19 Sheraton Road. I accept that the development would be noticeable from these areas, but given the position and scale of such development, I do not consider that it would lead to a significant loss of light or outlook. I reach this conclusion also in the knowledge that there is an extant planning permission for similar development on the appeal site.

17. I note that a door is proposed into the kitchen and that this would face the party fence / the rear garden area of No 19 Sheraton Road. However, this would not lead to significant levels of noise and activity and so, in this regard, I do not consider that the proposal would have a materially detrimental impact upon the living conditions of the occupiers of No 19 Sheraton Road.
18. I acknowledge that there would be four dwellings on the site rather than the approved two dwellings. However, I do not consider that this would give rise to a material increase in vehicular and pedestrian comings and goings in the area (particularly when considered against the extant planning permission) or lead to significant levels of disturbance or noise for surrounding residents. Significant boundary treatment along the driveway would ensure that car head lights did not shine in the direction of existing ground floor residential accommodation. In addition, the provision of a passing bay half way down the length of the access drive would ensure that vehicular conflicts were minimised.
19. An acceptable level of on-site car parking spaces would be provided and I can see no reason why the proposal would lead to on-street car parking or congestion problems in the locality. I have no reason to disagree with the conclusion reached by the Highway Authority who raised no objection to the proposal.
20. Whilst some trees would be lost to facilitate the development proposal the two walnut trees would be retained. In addition, it would be possible to plant additional trees on the site by means of the imposition of a planning condition. In this respect, I do not consider that the proposal would cause significant harm to the character and appearance of the area. Any loss of hedgerow or other vegetation on land that might be in separate ownership would be a private matter. Loss of hedgerow and vegetation as a result of this proposal would be acceptable in landscape and bio-diversity terms subject to the imposition of planning conditions.
21. Comments have been made that Walverton is not a sustainable location. However, Walverton includes a reasonable number of day to day facilities and services and therefore I do not consider that the site is located in an unsustainable location. Concerns have been raised about the effect of the proposal upon matters of bio-diversity, but I have no reason to depart from the conclusion reached by the Council's Biodiversity Officer who raised no objection to the proposal subject to the imposition of planning conditions.
22. None of the other matters raised outweigh or alter my overall conclusion on the main issue.

## **Conditions**

23. The conditions set out in the accompanying schedule are based on those suggested by the Council and agreed by the appellant. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
24. Planning permission is granted subject to the standard three year time limit condition.
25. 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. I have therefore imposed a condition to this effect.
26. In the interests of the character and appearance of the area, it is necessary to impose planning conditions relating to materials, landscaping and the protection of trees during the period of construction.
27. In the interests of the living conditions of the occupiers of surrounding properties and the appeal dwelling, planning conditions are necessary relating to external lighting, obscure glazing to specified windows and foul and surface water drainage.
28. In the interests of the living conditions of the occupiers of the occupiers of No 19 Sheraton Road, there is exceptional justification for removing specified permitted development rights for the house occupying the residential plot adjacent to No 19 Sheraton Road.
29. In the interests of highway safety and the free movement of vehicles, it is necessary to impose a planning condition relating to the provision of the access and passing bays. In the interests of encouraging use of more sustainable modes of transport than the private motor vehicle, a planning condition relating to the provision of cycle storage facilities is necessary.
30. In the interests of nature conservation, planning conditions are necessary relating to vegetation site clearance, bat/breeding birds facilities and recommended measures in the EVR Ecology Bat Survey Report of May 2015.

## **Conclusion**

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

*Daniel Hartley*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years of the date of this permission.
- 2) The development hereby approved shall be carried out in accordance with the following plans: Proposed floor plans and elevations drawing no. 6582-11 Rev B and Proposed site and location plans drawing no. 6582-04 Rev C.
- 3) Prior to first occupation of the development hereby permitted, the access and passing bays shall be provided in accordance with drawing no. 6582-04 Rev C (proposed site and location plans).
- 4) 2 cycle spaces per dwelling shall be provided prior to each dwelling becoming occupied. Prior to first occupation, details of covered and secure cycle storage facilities including elevations, materials and siting, shall be submitted to and approved in writing by the local planning authority. The cycle storage shall be erected in accordance with the approved details prior to occupation of each dwelling and thereafter retained.
- 5) No building/demolition or vegetation clearance shall be carried out on the site between 1st March and 31st August inclusive in any year, unless approved in writing by the local planning authority.
- 6) All works shall be in accordance with the bat Reasonable Avoidance Measures as detailed within the EVR Ecology Bat Survey Report of May 2015.
- 7) Prior to the commencement of development, the applicant shall submit detailed proposals for the incorporation of features into the scheme suitable for use by bats and breeding birds including house sparrow and other small birds. Such proposals shall be submitted to and approved in writing by the local planning authority, include a timetable for implementation, and shall be installed in accordance with the approved details. The installed bird and bat features shall be retained thereafter.
- 8) Foul and surface water shall be drained on separate systems.
- 9) Prior to the commencement of any development, a surface water drainage scheme (including a timetable for implementation), based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the local planning authority. The surface water drainage scheme shall be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the local planning authority, no surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed, maintained and managed in accordance with the approved details.
- 10) Notwithstanding the submitted details, prior to the commencement of construction, full hard and soft landscaping details shall be submitted to and approved in writing by the local planning authority. The details shall include the following elements as appropriate to the site: planting plans (to incorporate native planting); planting specification (species, plant sizes, proposed numbers/density); implementation programme; levels (including finished floor levels and levels of the adjacent/existing land for comparison; hard surfacing and boundary treatments

(including details of how gaps will be incorporated into the boundary treatment base to facilitate movement of wildlife). The landscaping details shall be implemented in accordance with the approved details. 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.

11) Prior to the commencement of development, a Tree Protection Plan shall be submitted to and approved in writing by the local planning authority. The submitted plans shall confirm the existing trees/hedges to be retained and provide details of the type and position of protective fencing. The tree protection shall be in accordance with BS 5837, measures implemented prior to the commencement of development and retained throughout the construction period.

12) No external facing materials shall be used in the construction of the dwellings hereby permitted until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted (including details of mortar mixes and the provision of a brickwork/mortar sample panel) have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.

13) Notwithstanding the provisions of the Town and Country (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Schedule 2, Part 1 (Classes A, B, and E) shall be carried out without the grant of planning permission on the approved residential plot directly adjacent to 19 Sheraton Road.

14) Prior to the first occupation of the dwellings hereby approved the first floor windows in the east facing elevation (overlooking the rear gardens of the properties along Brown Heath Road) and the west facing elevation (overlooking 19 Sheraton Road) shall be fitted with obscure glazing to a minimum Pilkington Privacy Level 3 or equivalent and shall be non-opening above 1.7 metres above the internal floor level and thereafter shall be retained as such.

15) Prior to first occupation, a scheme detailing all external lighting equipment shall be submitted to and approved in writing by the local planning authority. The scheme shall include full details of the location, size, design of luminaries and fittings, type/output of light sources with lux levels, together with isolux drawings to demonstrate the levels of illumination within the site and the amount of overspill of lighting beyond the site boundaries. The external lighting plan shall be implemented in accordance with the approved details and thereafter retained. No other external lighting equipment may then be used within the development other than as approved by the local planning authority.