
Appeal Decision

Site visit made on 22 August 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 30 August 2017

Appeal Ref: APP/R0660/W/17/3174780

Land adjacent 11 Walthall Street, Crewe CW2 7JZ

- 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 Dr D Fyles against the decision of Cheshire East Council.
 - The application Ref 17/0388N, dated 24 January 2017, was refused by notice dated 30 March 2017.
 - The application sought planning permission for the resubmission of the proposed construction of apartments and associated parking, bin storage, cycle storage and access arrangements without complying with a condition attached to planning permission Ref 16/478N, dated 22 December 2016.
 - The condition in dispute is No 2 which states that: *"The development hereby approved shall be carried out in total accordance with the approved plans numbered N/33/1A/re sub, N/33/2/re sub, N/33/3/re sub, N/33/4/re sub, N/33/5/re sub, N33/9/re sub and N33/10/re sub received by the Local Planning Authority on 30 September 2016"*.
 - The reason given for the condition is: *"For the avoidance of doubt and to specify the plans to which the permission/consent relates"*.
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Decision

1. The appeal is allowed and planning permission is granted for the resubmission of the proposed construction of apartments and associated parking, bin storage, cycle storage and access arrangements in accordance with the application Ref 17/0388N dated 24 January 2017, without compliance with condition number 2 previously imposed on planning permission Ref 16/478N dated 22 December 2016 and subject to the attached schedule of conditions.

Procedural Matters

2. The appellant has confirmed that the drawing numbers referred to in the planning application form are incorrect. They state that the correct drawing numbers are as listed in the Council's refusal notice. For the avoidance of doubt, I have determined this appeal based on the plans listed in Council's refusal notice.
 3. Notwithstanding the above, and as part of the appeal, the appellant submitted some amended plans on 6 July 2017. Such plans rectify errors shown on the planning application plans (i.e. column of windows on the western side elevation of the apartment block) and include annotations showing which of the windows would be obscure glazed (Drawing Nos N/33/3A/XF and N/33/2A/XF). The site layout plan (N33/5A/XF) has also been amended to show the proposed
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area for the storage of skips, site huts and construction parking at construction stage. The above amendments do not fundamentally alter the proposal and seek to add clarity and accuracy to the proposed plans. I have therefore taken these amended plans into account as part of the determination of the appeal.

4. Since the appeal was lodged the Cheshire East Local Plan Strategy (CELPS) has been adopted. It was adopted by a full meeting of the Council on 27 July 2017. Consequently, Policy BE.2 (Design Standards) of the Borough of Crewe and Nantwich Replacement Local Plan 2011 (LP) has been deleted. Policy BE.1 (Amenity) of the LP is still a saved policy. I have been provided with copies of Policies SD1 (Sustainable Development in Cheshire East), SD2 (Sustainable Development), SE1 (Design) and SE2 (Efficient Use of Land) of the CELPS and I have determined the appeal against such policies.

Background and Main Issues

5. The appeal relates to the construction of a detached building to accommodate flats. Planning permission was approved in December 2016 to erect a building comprising 12 one bedroom apartments (Ref 16/478N) subject to a number of planning conditions including condition No 02 which listed the approved drawing numbers. Development has commenced in respect of planning permission Ref 16/478N.
6. The appeal proposal seeks to make changes to the external appearance of the building in respect of window openings and materials details, to provide two additional two bedroom apartments in the approved roof space, thereby increasing the total number of apartments to 14, and to provide an additional two car parking spaces, thereby increasing the total number of on-site car parking spaces to 14.
7. The appeal relates to an application to vary condition No 02 of 16/478N by means of the submission of new drawings to accommodate the above proposed changes.
8. The Council's refusal notice states that *"the proposals are of a layout and design which would represent an overdevelopment of the site, and fail to achieve a high standard of design or acceptable level of amenity for existing and future occupants of the scheme. The proposals are therefore in conflict with the provisions of Policies BE.1 and BE.2 of the Borough of Crewe and Nantwich Replacement Local Plan 2011"*. Consequently, and notwithstanding the adoption of the CELPS, I consider the main issues to be the effect of the proposal upon (i) the character and appearance of the area and (ii) the living conditions of the occupiers of existing and future occupiers of the appeal property and surrounding properties in respect of light, privacy and outlook and (iii) whether or not there would be an acceptable amount of outside amenity space for occupiers of the proposed flats.

Reasons

Character and appearance

9. In respect of layout, the only change relative to the extant planning permission includes the provision of an additional two car parking spaces for the two additional flats. This would be provided on land which was shown as a hardstanding area in respect of planning permission 16/478/N. I do not consider that this represents a significant change in layout terms or that the

parking of two vehicles would cause harm to the character and appearance of the area.

10. The position and height of the proposed apartment building would be the same as that approved for the extant planning permission. The proposed changes to the materials to be used for the window cills and heads would be acceptable and would suitably reflect such treatment used for the adjoining development. The additional window openings would be in proportion and alignment with those already approved and the dormer windows and velux roof lights would not dominate the associated roof slopes.
11. In design terms, I am satisfied that the proposals would result in a building which assimilates well into the surrounding urban landscape. The Council has commented that the "*building comprises over development in the area*", but other than referring to an increase in the number of residential units, it has not provided any other evidence to substantiate why this would be the case or what harm would be caused.
12. In conclusion, I do not consider that the proposals would have a detrimental impact upon the character and appearance of the area. Therefore, the proposals would accord with the design aims of Policy SE1 of the CELPS; Policy BE.1 of the LP and the National Planning Policy Framework (the Framework).

Living conditions

13. The Borough of Crewe and Nantwich Local Development Framework Extensions and Householder Development Supplementary Planning Document 2008 (SPD) states that "*as a general indication, to protect the privacy and living conditions of neighbouring properties, a distance of 21 metres should be achieved between any proposed principal window (a principal window is one which serves a habitable room e.g. living room, dining room or bedroom) and a directly opposing principal window in a neighbouring dwelling, unless the proposed window is fitted with obscured glazing and no opening lights, or has a minimum sill height 1.5m above the internal floor level, or, in the case of a ground floor window appropriate boundary treatment can be provided to offer some degree of screening*".
14. The proposal includes the provision of habitable room windows on the north elevation of the apartment building at a distance of about 21 metres from the windows belonging to the adjacent apartments on Wistaston Road. In this regard, and taking into account land levels, the proposal is acceptable in terms of the effect on levels of privacy for the occupiers of the host building and the adjacent apartments.
15. Notwithstanding the above, there is an apartment building to the east known as Valley House which includes a number of habitable room windows in the side elevation. Such windows would face the appeal building at a distance of about 14 metres. Whilst the respective windows would not directly oppose each other, it would nonetheless still be possible to overlook properties at a relatively short distance. Planning permission has already been approved for habitable room windows on the side elevation of the proposed building at ground, first and second floor levels. The Council raises no objection to the insertion of habitable room windows in these areas despite the fact that the separation distances are below normal standards. In these areas, and given the planning history relating to the site, I consider that there is reasonable

justification for departing from the 21 metre separation distance standard as outlined in the SPD.

16. Notwithstanding the above, I do consider that it is necessary for the proposed windows in the roof space (side elevation) facing Valley House to be obscure glazed: such development has not been approved previously. I am satisfied that as the impacted flats in the appeal building would have other clear glass windows, the requirement for obscure glazed windows could be achieved without it having an overall detrimental impact upon levels of outlook for the occupiers of such properties. In this regard, the proposal would not therefore conflict with the amenity aims of the SPD.
17. I have taken into account the height, position and bulk of the approved building and the proposed changes which are the subject of this appeal. I consider that the proposed changes are relatively minor and that the proposals would not result in a material loss of light or outlook for the occupiers of surrounding properties.
18. Subject to the imposition of a planning condition relating to obscure glazed windows, I conclude that the proposal would not have a significantly detrimental impact upon the occupiers of the proposed flats or surrounding properties in terms of privacy, light and outlook. Therefore, the proposal would accord with the residential amenity aims of Policy SE1 of the CELPS; Policy BE.1 of the LP; the SPD and the Framework.

Outside amenity space

19. The Council has not referred me to any policies which prescribe the amount of communal outside amenity space that should be provided for apartment schemes. Whilst the proposal would increase the overall number of occupants on the appeal site, owing to the provision of an additional two apartments, I am satisfied that the amount of outside amenity space would be acceptable and proportionate for the number of people that would reside on the site. In reaching this view, I have also taken into account the very close proximity of public open spaces to the appeal site, including Valley Park. Consequently, I consider that the occupiers of the development would have a reasonable choice of both private and public amenity space.
20. For the reasons outlined above, I conclude that the amount and position of proposed outside amenity space would be acceptable and that in this regard the proposal would accord with the residential amenity aims of Policy SE1 of the CELPS; Policy BE.1 of the LP; the SPD and the Framework.

Other Matters

21. I am aware that planning permission was previously refused by the Council for 14 apartments on the site (Ref 16/2158N). However, I have no reason to doubt the comments made by the appellant who states that this proposal addresses the Council's previous concerns about the use of only velux roof lights for accommodation in the roof space and the amount of outside amenity space. In any event, I have determined this appeal on its individual planning merits.
22. The appellant has suggested that the Council cannot demonstrate a deliverable five year supply of housing sites. The CELPS has now been adopted and hence I am satisfied that the local planning authority can demonstrate a deliverable

five year supply of housing sites. There is no doubt that the proposal would assist in boosting the supply of housing in the area. The development would be on a previously developed site and in a location where the Council state that *"it is considered that the principle of development is acceptable and the development would be appropriate in this location"*. I consider that the proposal would accord with the sustainability aims of policies SD1, SD2 and SE2 of the CELPS and in particular would seek to make efficient use of land without material harm being caused to matters of public importance.

23. I have taken into account representations made by other interested parties. A number of the comments made have already been addressed in my reasoning above. I have not been provided with any evidence to indicate that the parking of vehicles on land which includes a sewer would lead to problems. Concerns have been raised about fire escape routes, but this would be a matter to be considered separately as part of a Building Regulations application. On the evidence that is before me, I do not consider that the refuse storage facilities would be inadequate. The parking of vehicles close to the appeal building, including bedroom windows, would not lead to significant levels of noise and disturbance.
24. There are no other matters raised which alter or outweigh my conclusions on the main issues.

Conditions

25. 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. The appellant has put forward a number of suggested conditions which are very similar to those imposed in respect of planning permission No 16/4784N. As I have no information before me about the exact status of the other conditions imposed on the original planning permission (in particular the materials planning condition), I shall use the same wording for such conditions. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
26. Planning permission is granted subject to the standard three year time limit condition. 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.
27. In the interests of sustainability and ensuring adequate on-site car parking provision, planning conditions are necessary relating to the provision and retention of car parking spaces and the installation of an electric vehicle charging point.
28. In the interests of the character and appearance of the area, planning conditions are necessary relating to materials, trees and landscaping.
29. In the interests of the living conditions of the occupiers of the appeal building and surrounding properties, planning conditions are necessary in respect of contaminated land, refuse storage, construction management and obscure glazed windows.

Conclusion

30. For the reasons outlined above, and subject to the imposition of planning conditions, the proposal would deliver a sustainable form of development in accordance with development plan policies and the Framework. I therefore allow the appeal.

Daniel Hartley

INSPECTOR

Schedule of Conditions

1. The development hereby approved shall commence within three years of the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: N/33/1/XF, N/33/2A/XF, N/33/3A/XF, N33/4/XF, N33/5A/XF, N33/6/XF and SK01.
3. No development involving the use of any facing or roofing materials shall take place until details of all such materials 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. The submitted tree protection measures shown on drawing number N/33/1A/re sub shall be implemented in full.
5. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation shall be provided to the LPA that no such contamination was found, and if so what remedial measures were agreed and implemented.
6. Bins shall be stored only within "Bin Store Area" except on collection day.
7. The parking spaces shown on drawing number N/33/1A/re sub shall be provided prior to first occupation of the development and retained thereafter.
8. Prior to first occupation of any of the units hereby approved, one electric vehicle charging point shall be provided, made available for use and maintained and retained thereafter.
9. The approved landscaping scheme shown on drawing number N/33/1A/re sub shall be implemented in full unless any variation is agreed in writing by the Local Planning Authority.
10. The submitted Construction Management Plan shall be implemented in full.
11. The existing car parking spaces serving the adjoining residential development to the east shall be retained and shall be kept clear for the construction period.
12. The third storey windows in the east facing elevation of the development hereby permitted and identified on Drawings N/33/2A/XF and N/33/3A/XF shall be glazed using obscured glass complying to no lower than level 5 of the "Pilkington" glass scale of obscuration. The windows shall be non-opening unless the parts of the windows which can be opened are more than 1.7 metres above the floor of the room in which they are installed. The windows referred to in this condition shall

remain glazed with glass of the same level of obscurity. For the avoidance of doubt, the application of translucent film to clear glazed windows does not satisfy the requirements of this condition.