



## Appeal Decision

Site visit made on 2 July 2019

**by Sarah Manchester BSc MSc PhD MEnvSc**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> September 2019**

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**Appeal Ref: APP/D2320/W/19/3226059**

**45 New Street, Ecclestone, Chorley PR7 5TW**

- 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 Sam Leach against the decision of Chorley Borough Council.
  - The application Ref 18/00759/FUL, dated 31 July 2018, was refused by notice dated 20 December 2018.
  - The development proposed is 2 storey side extension and incorporation of a section of vacant land into the garden curtilage.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application sought permission for an extension on land which was originally designated as public open space but has now been incorporated into the garden of No 45. I have therefore determined the appeal on the basis that retrospective permission is sought for the change of use of the land which has already been implemented in order to undertake the proposed extension to the dwelling.
3. The appellant has submitted a Preliminary Ecological Appraisal report with the appeal. This was not before the Council during the time that the application was being considered. However, I am satisfied that the Council had the opportunity to comment on the report through the appeal process and therefore no party will be prejudiced by my taking it into account in reaching my decision.

### Main Issue

4. The main issue is the effect of the change of use of the land and the proposed extension on the ecological network.

### Reasons

5. No 45 New Street is a 2 storey semi-detached property adjacent to an area of undeveloped semi-natural greenspace which functions as an ecological network. This is an L-shaped and continuous area of habitat that links the pond to the south of No 71 New Street with the open fields to the front of No 45. It includes the vegetated strip of land between the field hedgerow and the residential access road to the front of No 45.

6. The ecological network formed part of the original layout of the residential development of the area<sup>1</sup>. It is referred to as Public Open Space, and its extent identified, in the associated Section 106 agreement between Chorley Borough Council and Metacre Limited dated 12 January 2006. The evidence before me indicates that it was in fact retained as multi-functional greenspace, to continue to provide wildlife habitat and habitat connectivity for species included the European protected Great Crested Newt. While there is currently no public access to the area, its importance for wildlife is acknowledged by signage adjacent to No 45 which advises that the land is both private and a sensitive habitat and important wildlife management area.
7. Policy BNE9 of the Chorley Local Plan 2012-2026 Site Allocations and Development Management Policies Development Plan Document Adopted July 2015 (the Local Plan) sets out that ecological networks will be protected, conserved, restored and enhanced. This is consistent with the approach set out in the National Planning Policy Framework (the Framework) which states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and futures pressures.
8. Policy BNE9 goes on to define what constitutes damage to environmental assets, including the loss of the undeveloped open character of part or all of the ecological network, or the reduction in the width of any part of the network, and the degradation of its ecological functions.
9. In this case, part of the ecological network has been fenced into the garden of No 45 and converted in large part to amenity lawn. There has thus been a loss of undeveloped open character and a reduction in the width of part of the ecological network.
10. The Preliminary Ecological Appraisal<sup>2</sup> concludes that the appeal site currently provides no habitat for, and is in any case inaccessible to, protected and priority species such as hedgehogs, badgers and great crested newts. However, the remaining ecological network is acknowledged to provide a range of habitats for wildlife including good quality, albeit species-poor, terrestrial habitat for amphibians and hedgehogs. The evidence therefore indicates that the extension of the garden has resulted in a loss of habitat for breeding birds, hedgehogs and amphibians including great crested newt and common toad. Although the Ecological Appraisal is retrospective, it nevertheless confirms that the extension of the garden has damaged and degraded the ecological function of part of the ecological network.
11. Policy BNE9 requires development to produce a net gain in biodiversity where possible by designing in wildlife and by ensuring that any adverse impacts are avoided or if unavoidable are reduced, mitigated or compensated. In this respect, the Ecological Appraisal makes a number of recommendations including the planting of native woody species, sensitive external lighting, bat roosting and bird nesting boxes and the creation of gaps in the garden fence for hedgehogs. However, these are generic measures for building in biodiversity that would not compensate for the loss of part of the ecological network or for the loss of habitat

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<sup>1</sup> Ref 05/00073/FULMAJ

<sup>2</sup> Tyrer Ecological Consultants Ltd, 26<sup>th</sup> March 2019. Extension of Land and House (part-retrospective). Preliminary Ecological Appraisal.

for protected and priority species at this site. The proposed measures would not contribute to a resilient ecological network, as required by the Framework.

12. I accept that the area that has been damaged by the development is relatively small in the context of the ecological network as a whole. However, the protection afforded to the ecological network by Policy BNE9 is not restricted only to those situations where there would be significant harm. The Policy specifically refers to the need for any adverse impacts to be avoided, mitigated or compensated.
13. I therefore find that the change of use of the land has caused unacceptable harm to the ecological network. The erection of the proposed extension would cause further harm which would be permanent. It has not been demonstrated that these adverse impacts would be adequately compensated. I therefore conclude that the development as a whole is in conflict with the ecological network protection aims of Policy BNE9 of the Local Plan.
14. The Council is also concerned that the development would set a precedent for similar schemes coming forward that could adversely affect the ecological network. However, there is nothing before me to suggest that the occupiers of other residential properties in the area are proposing to extend into the ecological network. In any event, the Council retains the right to assess any future scheme on its individual merits, as I have done in this case. In this respect, Policy BNE9 is clear that there would need to be exceptional reasons for allowing a scheme that harmed the ecological network and even then only if satisfactory mitigation or compensation could be provided. In this case, there are no exceptional circumstances or any compelling justification to allow a scheme that would result in harm in the absence of satisfactory mitigation or compensation measures.

#### *Other Matters*

15. The Council has confirmed that it has no concerns in respect of the proposed extension, either in terms of its effects on the character and appearance of the host property and the area or on the living conditions of neighbouring residential occupiers. I see no reason to disagree. However, while these aspects of the scheme are acceptable, they do not diminish the harm that I have identified to the ecological network.
16. Several trees adjacent to the appeal site are protected by a Tree Preservation Order (TPO no.3 (Eccleston) 2004). On the basis of the evidence before me, I am satisfied that if I had been minded to allow the appeal the trees could have been adequately protected through the imposition of appropriate planning conditions.
17. The Preliminary Ecological Appraisal includes mitigation measures to minimise potential harm to protected species during construction. I am satisfied that, if I had been minded to allow the appeal, appropriate mitigation could have been secured by planning condition.

#### **Conclusion**

18. For the reasons set out above, and having regard to all other matters, the appeal should therefore be dismissed.

*Sarah Manchester*

INSPECTOR