
Appeal Decision

Site visit made on 20 August 2019

by Brendan Lyons BArch MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10th October 2019

Appeal Ref: APP/A0665/W/19/3228895

Land adjoining Three Stumps, Old Chester Road, Helsby, Frodsham, Cheshire WA6 9PL

- 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 S Hughes against the decision of Cheshire West & Chester Council.
 - The application Ref 18/00103/FUL, dated 10 January 2018, was refused by notice dated 21 November 2018.
 - The development proposed is the construction of a detached house.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached house at Land adjoining Three Stumps, Old Chester Road, Helsby, Frodsham, Cheshire WA6 9PL, in accordance with the terms of the application Ref 18/00103/FUL, dated 10 January 2018, subject to the conditions set out in the schedule annexed to this decision.

Preliminary matters

2. The description of development in the heading above is taken from the planning application form. The appellant states that the amendment to the description on the Council's decision notice was made without her agreement. I have reverted to the original description, which is sufficiently clear.
3. When the planning application was refused, the development plan consisted of the Cheshire West and Chester Council Local Plan ('LP') Part One adopted in 2015, together with saved policies of the Vale Royal Borough Local Plan ('VRBLP') adopted in 2006 and with the Helsby Neighbourhood Plan ('NP'), which was formally 'made' in 2016. Since the appeal was submitted, Part Two of the LP has been adopted by the Council in July 2019. This has superseded the former VRBLP, whose policies are no longer saved. The Council has provided copies of relevant new policies but has not sought to amend its case in the light of the new component of the LP. The appeal decision must be based on the development plan as it currently stands. I have taken account of the additional submissions made by the appellant on the implications of the newly adopted policies.
4. The Council has chosen not to submit a statement for this appeal, but to rely on its officer report on the planning application. Although the application was refused in November 2018, the report refers throughout to the original 2012

version of the National Planning Policy Framework ('NPPF'), which was superseded by a revised edition in July 2018. The appellant's statement cites the more up-to-date February 2019 edition, which effectively carried forward the 2018 text, and did not alter the policy provisions most relevant to this case. These policies have not been affected by the further minor changes in June 2019 to provide the current NPPF, to which the appeal decision has regard.

5. An application for costs was made by the appellant against the Council. That application is to be the subject of a separate Decision.

Main Issues

6. The main issues in the appeal are:

- Whether the proposal would constitute inappropriate development, harmful to the Green Belt;
- The effect on the character and appearance of the area, including the setting of the locally listed Fir Bank Cottage;
- The effect on highway safety.

Reasons

7. The appeal site lies at the outskirts of Helsby, which is a large village designated by Policy STRAT 8 of the LP Part One as a 'key service centre'. The village sits below Helsby Hill, a tall rocky outcrop well covered by woods. The site is on the northern side of Helsby Hill, within an Area of Special County Value ('ASCV') for landscape quality and a Regionally Important Geological Site ('RIGS').
8. Old Chester Road skirts around Helsby Hill. The appeal site has a relatively narrow frontage to the road, from which it slopes steeply upwards to reach one of the public footpaths that circle the hill. Some halfway up the slope is a building containing a double garage with a studio above, which was built to serve the adjoining house to the east, called Three Stumps. The Council confirm that the building, although built without planning permission, is now considered lawful. On the other side, the site is adjoined by Fir Bank Cottage, which is an extended two-storey house standing next to the road. It is said to date from at least the mid-nineteenth century and is included on the Council's local list of buildings of heritage value.
9. Permission is now sought to demolish the existing garage block and to cut into the hillside to allow the erection of a new house, with a three-storey front elevation facing the road and a two-storey rear elevation opening onto a terrace. The ground floor of the house would be mainly taken up by two single garages, to open off a paved forecourt reached by a new access onto the road in the centre of the site frontage.

Inappropriate development in the Green Belt

10. The LP seeks to locate most development in the borough's four largest settlements. Outside these, the vitality and viability of the rural area is to be maintained by allowing an appropriate level of development, to be focused on the key service centres such as Helsby. A minimum target for new housing in the village is set by LP Part One Policy STRAT 8.

11. However, the appeal site lies immediately outside the settlement boundary defined by the LP, and is therefore within the area designated as open countryside, which in this location also forms part of the Green Belt. Policy STRAT 9 seeks to limit development in the countryside to essential needs, and refers to the stringent criteria set by the NPPF for development in the Green Belt. The fundamental aim of national policy is to prevent urban sprawl by keeping land permanently open, and inappropriate development, by definition harmful to the Green Belt, is not to be approved except in very special circumstances¹.
12. The construction of new buildings is regarded as inappropriate, subject to certain defined exceptions, which include limited infilling in villages². The appellant's case is that the appeal proposal would comply with this exception. In support, it is argued that the site is visually and functionally within the village and that reduced weight should be given to the settlement boundary defined by the LP Policies Map, which is said to have been unchanged since the first adoption of the VRBLP.
13. Although no supporting evidence has been provided, I have no reason to doubt the Council's statement that the extents of the relevant designations have been reviewed in the preparation of both Part One and Part Two of the LP. However, the Courts have accepted that the boundary line shown by the LP is not to be determinative in deciding whether a site lies within a village, but that the decision should be based on an assessment of conditions on the ground³.
14. Old Chester Road lies at the edge of the village, with the main body of the settlement to the north and along this stretch only a single line of individual houses to the south, backing onto Helsby Hill. The Council, with the support of the Parish Council, argues that there is a distinct change of character to the west of the narrowed section of the road in front of Three Stumps, and a perception of leaving the village and entering the countryside, with Fir Bank Cottage as an isolated outlying dwelling.
15. I agree with the appellant that this misinterprets the situation on the ground today. In my assessment, there is a perception of an unbroken line of development to the south of Old Chester Road, from at least No.63 up to and including Fir Bank Cottage, and this is integral with the more densely built housing to the north. The construction of the garage block at Three Stumps, since the boundary line was first drawn, has served to reinforce the sense of continuity, while the more recent removal of vegetation from the site has made the building more apparent. When passing through the narrow section of road there is an awareness of the continuity of development to the north, and on emerging from the constriction, one is immediately faced by the well-maintained ornamental garden of No.94, opposite the elevated garage block and the adjoining Fir Bank Cottage. There is little or no sense of having passed beyond the edge of the village. Further to the west of Fir Bank Cottage, where the wooded hillside comes down, there is a stronger sense of the road forming an edge, but even here there is considerable continuity of development on the north side of the road. The narrow section of road at the appeal site thus forms a punctuation of the route rather than a gateway. A similar effect, if less pronounced, is found at other enclosed sections of the road further to the east,

¹ NPPF paragraphs 133, 143

² NPPF paragraph 145 (e)

³ Julian Wood v SSCLG and Gravesham Borough Council [2015] EWCA Civ 195

near the junction with Portland Place. For these reasons, I find that visually and functionally the appeal site does appear as part of the village.

16. Referring to the supporting text to LP Part One Policy STRAT 8, the Council suggests that the proposed dwelling would not amount to infill development. However, as outlined above, I find that the row of dwellings on this part of the south side of Old Chester Road does amount to a continuous built-up frontage, even if the houses are generally well spaced. Despite the difference in levels between the houses to each side, the site clearly provides a narrow plot between adjoining houses. Its development with a single dwelling would therefore comply with the Policy STRAT 8 definition. The Council also refer to the generally large size of plots on the south side of the road, but this appears to introduce a criterion without any defined basis in policy. On a fair reading, the proposal would comprise limited infilling in the village, and would therefore not be inappropriate development in the Green Belt. Its effect on the openness and purposes of the Green Belt are therefore acceptable in principle.
17. Those purposes include the safeguarding of the countryside from encroachment. As I have found that the appeal site would be visually and functionally part of the village, it follows that it does not form part of the open countryside, notwithstanding the designation on the LP Policies Map. The site has already been developed for residential purposes. When the existing building on the site was more obscured by vegetation, the site may have appeared as a more integral part of the wooded hillside above, but at present the building is prominently visible. The replacement of the building with a separate dwelling would not represent a significant change in overall character. Replacement of buildings is one of the forms of development envisaged by Policy STRAT 9, subject to general criteria on scale and design, to which I turn below.
18. I conclude on this issue that the proposal would not constitute inappropriate development in the Green Belt and that, notwithstanding the technical conflict arising from the Policies Map, the proposal would therefore comply with LP Part One Policy STRAT 9. There would be no conflict with LP Part Two Policy R1, which refers back to Policy STRAT 9 on countryside issues, or with NP Policy HNP ENV1, which defers to the LP and national policy.

Character and appearance

19. The Council's concern about the proposal's effect on character and appearance is predicated on a view that the area surrounding the appeal site is essentially rural in character. But, as outlined above, the site lies within the village's visual envelope. Like the appellant, I find its character best described as 'village fringe', where built development is beginning to thin out but is still perceptibly part of the settlement. By creating a separate plot with an extra dwelling, the proposal would marginally intensify the pattern of development, but not to a harmful degree.
20. The new house would be more visible in the street scene than the existing building on the site, being further forward on the site but with a slightly lower ridge height. However, it would be seen from the road against the green background of Helsby Hill, and would have no impact on the skyline or on distant views of the landscape feature. From above, the views of its roof from the public footpath would be very similar in effect to those of the existing building.

21. The proposal would involve very significant excavation into the hillside. There are several examples of houses along this stretch of Old Chester Road that adopt a split-level approach with some excavation to accommodate development. The proposal would be more radical than some of the existing examples, but not necessarily harmful. Much would depend on the proposed form of construction, for which limited detail has been given. The facing and possible planting of any necessary retaining wall could be specified to ensure that it would tone with the local natural context. It appears that there would also be potential to expose new sandstone surfaces, which has been supported by the RIGS adviser. High quality hard and soft landscaping of the proposed forecourt would also help to avoid any adverse impact of the change from a formerly green frontage.
22. The houses along this stretch of Old Chester Road are of different ages, sizes and styles, ranging from nineteenth century cottages to modern suburban-style houses and bungalows. In this context, the simple gabled form of the proposed dwelling and its regular, if not fully symmetrical, pattern of window openings would not appear out of place. The final approval of materials could be secured by a planning condition, but the proposed use of dark red brick with a tile or slate roof should allow a suitable blend with the surroundings.
23. The house would squarely address the road in a similar way to other nearby houses of different ages. Although of three storeys, its scale would be domestic and not out of keeping with other houses on this side of the road, such as No.63 which is of three-storey height and located quite close to the road. Views of the house from the east would be well screened by the land and boundaries to the front of Three Stumps and from the west by Fir Bank Cottage. The house would not appear unduly prominent.
24. Because of its set back location, the house would also not interfere with views of Fir Bank Cottage, and its height would not appear unduly dominant in relation to the older house. The buildings would be closer together than many other houses nearby, but would be separated by the cottage's single-storey extension and a planted bank, so that their relationship would not appear cramped. From the information proved by the NP, the heritage significance of Fir Bank Cottage lies in its perhaps earlier origin than its apparent mid-nineteenth century form, its sometime use as a school, and in its distinctive ornamental treatment, particularly of its windows and their hooded surrounds. The appeal site forms part of the cottage's setting. Before the erection of the existing garage building, there might have been some sense of the cottage as a relatively isolated dwelling, despite the suburban-style development opposite it. However, the garage building and the unkempt vegetation on the appeal site make little contribution to the cottage's heritage attributes. The proposal would represent a change to the setting but not one harmful to significance.
25. For the reasons set out above, I find that the proposal would not result in harm to the quality of the landscape or its designation as ASCV and RIGS, and would not conflict with LP Part One Policies ENV 2 and ENV 6, as outlined in the second reason for refusal. There would also be no conflict with LP Part Two Policies GBC2 and DM3 or with NP Policies HNP H1, H5 and ENV7. The lack of adverse effect on heritage significance would accord with LP Part One Policy ENV 5 and also with LP Part Two Policy DM48 and NP Policy HNP ENV5.

Highway safety

26. The Council accepts that the traffic generated by the proposed dwelling would have no overall adverse impact on the safety and operation of the wider highway network. Despite some lack of clarity, it appears also to be accepted that the parking provision provided by the proposed two garages and forecourt would meet local standards. I have found no reason to disagree on these points.
27. The Council endorses the concern raised by its highway specialist, and supported by other interested parties, on a perceived safety risk in and around the proposed access onto Old Chester Road.
28. The proposed house would be served by a new access mid-way along the site frontage. Visibility would be limited to each side by adjoining land. I agree with the appellant that the appropriate guidance on access points to a relatively lightly trafficked road with an essentially residential character is to be found in the Manual for Streets ('MfS') Parts 1 and 2, rather than the Design Manual for Roads and Bridges. MfS recognises the merits of direct frontage access onto such roads and is based on empirical evidence of driver behaviour.
29. However, the distinctive circumstances of this location suggest that published standards need to be applied with discretion. Old Chester Road is very narrow for most of its length, other than one section to the east of Hale View Road. Despite the lack of fully conclusive evidence, owing to difficulties in data collection, I accept that vehicle speeds are likely to be considerably lower than the 30mph limit in force. Drivers travelling in either direction should be well aware of the need to proceed with caution owing to the carriageway width and alignment. They should also be conscious of the number of confined access points along the route. The evidence of the lack of accidents suggests that the road has been used safely up to now.
30. The evidence also shows that many of the existing accesses onto the road have greatly restricted visibility in at least one direction. In that context, the addition of a further restricted access point would be unlikely to result in a significantly increased safety risk. The constricted stretch of road at the appeal site is one where particular caution is likely to be exercised. The visibility at the proposed access would be very similar to that available at the access to parking for Fir Bank Cottage.
31. No details have been given of vehicle tracking within the site, but it appears there would be some likelihood of vehicles sometimes reversing out onto the road. But given that such movements would be encountered along the length of Old Chester road, I agree with the appellant that would be little justification to insist on forward travel in this instance. Installation of a turntable, whose long-term use would in any event be difficult to enforce, would not be justified.
32. For these reasons, I find that the proposal would not have an unacceptable impact on highway safety and would not conflict with LP Part One Policy STRAT 10.

Other matters

33. I recognise the concerns expressed by neighbours about the difficulty of access for construction and of disruption that could arise during excavation. However, such adverse effects would be time-limited, and could be mitigated as far as

possible by a well-framed Construction Management Plan, secured by a planning condition.

34. On completion, there should be no adverse effect on living conditions at neighbouring properties in terms of light and outlook. With regard to privacy, there would be no habitable room windows facing Fir Bank Cottage, and the site sections suggest that any views from outdoor areas would be contained by the altered land form.
35. The Council accepts that the appeal site is suitably located in terms of access to the services and facilities found in Helsby and to public transport links with larger centres. It is also accepted that, subject to necessary conditions, the effects on wildlife and biodiversity would be acceptable. Notwithstanding views expressed by other interested parties, I have found no grounds to oppose the development for these or any other reasons.

Conditions

36. The Council has put forward a number of conditions to be imposed in the event of the appeal being allowed. I have had regard to the appellant's detailed comments in response.
37. In addition to the standard limitation of commencement time, a condition is necessary to identify and require compliance with the approved plans, in order to confirm the approved form of development. I accept that the plans provide sufficient details of site levels and heights of the proposed building, so that a separate condition on this point is not necessary.
38. Approval of materials is necessary to ensure satisfactory effects on the character and appearance of the area. I agree with the appellant that the condition need not specify the submission of samples in all cases. Approval of details of drainage is necessary to minimise the risk of flooding, and this must be before commencement of development to avoid the risk of abortive work requiring alteration later.
39. The provision of bird and bat boxes is necessary to mitigate potential adverse impacts on wildlife, but I agree that the details need not be approved before development commences. The approval of measures to avoid harm to badgers during construction is necessary for the same reason, as is the need for a survey of breeding birds if work is to be undertaken during the nesting season. Other legislation is not sufficient to address all potential impacts on this site, and the survey need not be an onerous requirement. However, I accept that with these three conditions, a separate condition on implementing the recommendations of the ecological appraisal report is not necessary.
40. The submitted plans do not provide sufficient detail on the form and dimensions of the proposed access, so that a condition requiring approval of details before building work commences is necessary in the interests of highway safety. This condition and the linked conditions on the provision of visibility splays and the provision of parking within the site, which are necessary for the same reason, have been amended to reflect the appellant's suggested wording.
41. As outlined above, the approval and implementation of a Construction Management Plan are necessary to avoid adverse effects on neighbours' living

conditions and on highway safety. The form proposed by the appellant is more comprehensive and precise.

Conclusion

42. For the reasons set out above, I have found that the proposal would comply with relevant national and development plan policies. I have found no other material considerations that would suggest an outcome other than in accordance with the plan. I therefore conclude that the appeal should be allowed and planning permission granted subject to conditions.

Brendan Lyons

INSPECTOR

Appeal Ref: APP/A0665/W/19/3228895

**Land adjoining Three Stumps, Old Chester Road, Helsby, Frodsham,
Cheshire WA6 9PL**

Schedule of Conditions Nos. 1-11

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
JN/4220/101 Plans, elevations and site plan
JN/4220/102 Location plan and cross section.
3. No development shall commence above ground level until details of the materials to be used in the construction of external surfaces of the building 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. Prior to the commencement of development, a detailed drainage scheme for the site, showing how foul water and surface water will be dealt with, shall be submitted to and approved in writing by the local planning authority. No part of the development shall be brought into use until the approved drainage systems have been constructed and completed in accordance with the approved plans.
5. The dwelling hereby permitted shall not be occupied until a scheme for the provision of bird boxes and bat boxes within the site has been submitted to and approved in writing by the local planning authority and the boxes have been installed in accordance with the approved scheme. The approved boxes shall be retained thereafter.
6. No vegetation clearance or construction works shall be carried out on the site between the 1st March and 31st August inclusive in any year, unless the site has been surveyed for breeding birds, and a scheme to protect breeding birds has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved scheme.
7. Prior to the commencement of development, a detailed 'Statement of Reasonable Avoidance Measures' for the avoidance of harm to badgers during implementation of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved Statement.
8. No development shall commence above ground level until details of vehicular access to the site have been submitted to and approved in writing by the local planning authority. The building hereby permitted shall not be occupied until the access has been constructed in accordance with the approved details.
9. The approved access shall not be brought into use until visibility splays have been provided at each side of the point of access in accordance with the approved plans. The splays shall be kept clear of any object, vegetation or other obstruction of a height exceeding 1.0m above the level of the adjacent carriageway at all times thereafter.
10. The building hereby permitted shall not be occupied until turning areas and parking for cars, cycles and powered two-wheelers have been provided

within the site as shown on the approved plans. The turning and parking facilities shall then be retained and kept available for this use thereafter.

11. No development shall take place until a Construction Management Plan (CMP) has been submitted to and approved in writing by the Local Planning Authority. The CMP shall include:

- details for the management of all impacts on the adjacent highway including any temporary closure of the road, any temporary control over traffic flow and any temporary vehicle and pedestrian diversions, and a method statement for the monitoring and removal of any waste and construction debris from the highway within 50 metres of the site;
- days and hours of working (including deliveries and taking away of any waste material);
- locations for off-site parking of all staff, contractor and operational vehicles.

The development shall not be carried out other than in accordance with the approved CMP.
