



Appeal Decision

Site visit made on 2 October 2019

by G J Fort BA PGDip LLM MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2019

Appeal Ref: APP/X3405/W/19/3231228

71 Old Penkridge Road, Cannock WS11 1HY

- 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 John Salmon against the decision of Cannock Chase District Council.
 - The application Ref CH/19/015, dated 10 January 2019, was refused by notice dated 10 April 2019.
 - The development proposed is the demolition of the existing two-storey house and erection of 2 No. houses and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the interests of clarity, in the banner heading above I have used a truncated version of the description of development that appears on the application form¹.
3. In its submitted material the Council indicated that the proposed development is anticipated to be a self-build project. I sought the relevant documentation² from the Council to confirm that this is the case, which was duly provided. As the relevant documentation was submitted with the original application, and signed on behalf of the appellant, no prejudice would occur as a result of my consideration of this material in my assessment of the appeal's planning merits.
4. Whilst not cited by the Council as a reason for refusal, I note reference to the Cannock Chase Special Area of Conservation (SAC), which is an area defined by the Conservation of Habitats and Species Regulations 2017 (the Regulations) and has been given special protection as a nature conservation site. I have also been supplied with Policy CP13 of the Cannock Chase Local Plan Part 1 (adopted 2014) (the Local Plan) which relates to the SAC. Due to these considerations, taken together with the scope of the proposal and the location of the appeal site, I consulted with Natural England in accordance with s.63(3) of the Regulations, and sought the comments of the parties on Natural England's response. On this basis, I consider that the interests of parties

¹ Which is "Demolition of existing two storey house and erection of 2No. houses and associated works. (Previous planning application number CH/17/234)"

² *Community Infrastructure Levy (CIL)- Determining whether a development may be CIL liable planning application additional information form* dated 8 January 2019

would not be prejudiced either as a result of taking this material into account in my consideration of the appeal, or as a consequence of my dealing with the proposed development's effects on the SAC as a main issue.

Main Issues

5. I consider the main issues to be firstly, the effect of the proposed development on the Cannock Chase SAC; and secondly, the effects of the proposed development on the living conditions of the occupants of neighbouring dwellings with particular regard to privacy, outlook, noise and disturbance.

Reasons

Site, surroundings and proposed development

6. Set within broadly residential environs, the appeal site comprises a detached house and its large rear garden. The proposed development, as described above would see the demolition of the dwelling near the front of the site, and its replacement by another house. This demolition would also facilitate extending the existing access to the rear of the site where a detached dwelling would be developed, incorporating accommodation at its ground floor and in its roof-space.

Cannock Chase SAC

7. Cannock Chase SAC is principally an area of lowland heathland, one of twelve European dry heaths in Britain, and the most extensive such habitat in the Midlands. The SAC contains the main British population of the hybrid bilberry, a plant of restricted occurrence; and important populations of butterflies and beetles. Also found within the SAC are the European Nightjar and five species of bats. As the appeal site is in close proximity to the SAC, and residential development is of a type that is likely to result in recreational visits to the protected habitat, it is necessary for me, as the competent authority for the purposes of the Regulations, to conduct an appropriate assessment in relation to the effect of the development on the integrity of the SAC.
8. The appeal site is situated close to Cannock Chase SAC, and its residential development both of itself, and in combination with other developments in the area is likely to give rise to additional recreational activity within the SAC, which would materially increase the risk of disturbance to the protected habitat. Such disturbance could include the creation of new paths, path widening, erosion and nutrient enrichment. As a result, the proposal would be likely to cause significant adverse impacts to the integrity of the SAC.
9. Policy CP13 of the Local Plan sets out that all development within the District that leads to a net increase in dwellings would be required to mitigate adverse effects on the integrity of the SAC. Whilst the Council usually collects contributions to mitigate adverse effects by means of the Community Infrastructure Levy (CIL), the proposed development would be a 'self-build' project and thus exempt from payment of CIL.
10. In such a circumstance mitigation could be secured by means of a planning obligation pursuant to s.106 of the Town and Country Planning Act 1990 (as amended). An obligation that sought mitigation would be directly related to the adverse effect that the appeal scheme would cause to the SAC and would be proportionate to the scale of the development proposed. Consequently, I

consider that such an obligation would be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to it, and thus meet the requirements of the Community Infrastructure Levy Regulations 2010 (as amended)³ in these regards. However, no such obligation has been entered into in the current case.

11. Moreover, the Government's Planning Practice Guidance⁴ (PPG) sets out that planning conditions limiting development that can take place until a planning obligation has been entered into are unlikely to be appropriate in the majority of cases. Although the PPG advises that such a condition may be appropriate in exceptional circumstances, it sets out that such exceptions may apply in the case of particularly complex development schemes- which due to the limited extent of the appeal proposal is clearly not the case in this instance. For these reasons, I consider that the imposition of a condition requiring a planning obligation would run contrary to the advice of the PPG. Furthermore, even if I were to conclude otherwise, I have been supplied with no details of agreed heads of terms or principal terms for an obligation which the PPG advises would be required, in the interests of transparency, before the grant of any planning permission bound by such a condition.
12. Consequently, there is no legally enforceable mechanism associated with the proposal which would secure the mitigation measures necessary to address its adverse effects to the SAC. For these reasons, I conclude on this main issue that the proposed development would be likely to have a significant effect on the integrity of the Cannock Chase SAC. It would therefore conflict with Policy CP13 of the Local Plan insofar as, amongst other matters, it seeks to ensure that the integrity of Cannock Chase SAC is retained.

Living Conditions

13. Although I saw the variations in ground levels between the rear of the appeal site and adjacent properties and plots, the area is generally well-vegetated with mature trees and hedges present particularly along and adjacent to boundaries. Moreover, the front and rear elevations of the dwelling that would be located to the rear of the appeal site would be set well in from the plot's boundaries- and even further from surrounding dwellings which are all situated in reasonably generous plots. Furthermore, due to the proposed dwelling's orientation combined with the positioning of existing trees and hedges in its surroundings, its windows would avoid direct inter-visibility with those of adjacent dwellings, and would only facilitate limited and partial views of portions of adjacent gardens. In combination, these aspects of the proposed development lead me to the conclusion that it would neither infringe the privacy of the occupants of adjacent dwellings, nor unduly restrict the outlook available to them from their houses or gardens.
14. Although noise and disturbance considerations did not form part of the Council's reason for refusal on living conditions grounds, I have taken into account the comments of the occupants of neighbouring properties on these matters in my overall assessment. The proposed development would introduce additional vehicle movement along the boundary with No 73, and close to the boundary with No 75a. Although from time-to-time the sounds of vehicular

³ At Regulation 122(2)

⁴ Use of Planning Conditions Paragraph: 010 Reference ID: 21a-010-20190723 Revision date: 23 07 2019

activity and the visual implications of car headlights could be noticable from those adjacent properties, existing planting would serve to soften and screen these effects to some extent. Moreover, were other aspects of the proposal to be acceptable in planning terms, conditions could be attached requiring any further planting or boundary treatments necessary to mitigate fully any adverse effects in these regards. On this basis, the proposed development would not cause any material harm in noise and disturbance terms to the occupants of Nos 73 and 75a.

15. Accordingly, these considerations taken together lead me to the conclusion on this main issue that the proposed development would not cause material harm to the living conditions of the occupants of neighbouring dwellings. The proposed development would not therefore conflict with Policy CP3 of the Cannock Chase Local Plan or the National Planning Policy Framework (the Framework) insofar as they require, amongst other things, developments to protect the amenity enjoyed by existing properties and create places with a high standard of amenity for existing users.

Other Matters

16. The appellant considers that the proposed development would be one that secures a high standard of amenity for its future occupants. This weighs in favour of the appeal scheme, however, due to its limited extent, does so only to a modest degree. I note that the appellant considers the appeal scheme would be in keeping with the streetscene. However, a lack of harm in this respect is not a positive benefit and therefore weighs neither in favour of nor against the proposed development.

Planning Balance and Conclusion

17. I have found that the proposed development would result in no material harm to the living conditions of the occupants of neighbouring dwellings- nevertheless this is not a positive benefit of the scheme and has only a neutral effect on the overall planning balance. Moreover, the standard of living conditions afforded to the future occupants of the proposed development is a matter that attracts only modest weight in its favour. Consequently, the overall planning balance is tipped firmly against the proposal by the great weight I attach to the adverse effects it would cause to the integrity of the Cannock Chase SAC. In these terms the proposed development would clearly conflict with the Framework, which sets out⁵ that if significant harm to biodiversity resulting from a development cannot be mitigated then planning permission should be refused. Moreover, no material considerations advanced in the appeal scheme's favour would justify a decision other than in accordance with the development plan, with which, in terms of its effects to the SAC the appeal scheme would conflict.
18. Accordingly, for the reasons set out above, and taking fully into account all other matters raised, I conclude that the appeal should be dismissed.

G J Fort

INSPECTOR

⁵ At paragraph 175(a)