



Appeal Decision

Site visit made on 7 January 2020

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2020

Appeal Ref: APP/M0655/W/19/3239427

16 Pool Lane, Lymm, Warrington WA13 9BJ

- 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 Messrs B & T Thorns of Living Smart Property Limited against the decision of Warrington Borough Council.
 - The application Ref 2019/35054, dated 22 May 2019, was refused by notice dated 19 August 2019.
 - The development proposed is described as: 'Construction of 2 dwellings and associated works (re-submission of 2018/33957)'.
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Decision

1. The appeal is allowed, and planning permission is granted for the construction of 2no. dwellings and associated works at 16 Pool Lane, Lymm, Warrington WA13 9BJ in accordance with the terms of the application, Ref 2019/35054 dated 22 May 2019, subject to the conditions in the attached schedule.

Procedural Matters

2. For clarity and precision, I have taken the title of the appellants from the appeal form.
3. The Council has provided a copy of Policy QE4 of the Warrington Borough Council Local Plan Core Strategy 2014 (CS) and the Council's Standards for Parking in New Development Supplementary Planning Document 2015 (the SPD) with its Questionnaire. Although, this policy and SPD was not cited on the Council's decision notice, I will not prejudice any party in taking into account these documents in the determination of this appeal.

Application for costs

4. An application for costs was made by Messrs B & T Thorns of Living Smart Property Limited against Warrington Borough Council. This application is the subject of a separate Decision.

Main Issues

5. The main issues of this appeal are the effects of the proposed development on:
 - the living conditions of future residents with particular regard to matters of flood risk;

- the living conditions of existing neighbouring residents with particular regard to the demand for car parking and during the construction phase of the development;
- the effect of the proposed development on the character and appearance of the appeal site and surrounding area; and,
- the effect of the proposed development on biodiversity.

Reasons

Living conditions of future residents

6. The Framework sets out a sequential, risk-based approach to the location of development. The Planning Practice Guidance (PPG) indicates that the aim of this approach is to keep development out of medium and high flood risk areas (Flood Zones 2 and 3) where possible. It is not disputed by the main parties that majority of the site is situated within Flood Zone 2¹ and is consequently at a medium risk of fluvial flooding, with a 1 in 100 and 1 in 1,000 annual probability of river flooding; or land having between a 1 in 200 and 1 in 1,000 annual probability of sea flooding. However, a section of the site would also be situated within Flood Zone 3, where the primary flood risk would be from Statham Pools Brook and the Manchester Ship Canal. Consequently, a section of 'House A' would be located within Flood Zone 3, where the proposed development is classed as Highly Vulnerable².
7. Given its location in an area with a medium / high probability of flooding from rivers or the sea, the planning application was accompanied by a Sequential Test that indicated no alternative sites with a lower risk from flooding was reasonably available within Lymm. In accordance with the requirements of paragraph 159 of the National Planning Policy Framework (the Framework), the application of an exception test is required. Policy QE4 of the Council's Core Strategy 2014 (CS) requires all proposals within Flood Zones 2 and 3 to be accompanied with a site-specific Flood Risk Assessment (FRA). A revised FRA³ was submitted during the course of the assessment following comments received from the Environment Agency (EA).
8. I note that the EA does not object to the proposed development confirming that the exception test would be met and the development would be safe for its lifetime taking account of the vulnerability of its users. Additionally, the Council's Asset and Flood Risk Team (AFRT) do not object to the proposed development, providing that the recommendations set out in the revised FRA are implemented.
9. I note that the proposed development has resulted from a previous submission⁴ being re-designed to ensure that all habitable rooms are situated at a raised level. Thus, in the event of a flood the only floorspace within the proposed development would be affected, would be non-habitable floorspace located on the ground floor. I consider the lack of objections to the proposed development from the EA and AFRT to be material considerations of significant weight in the determination of this appeal. In the absence of any substantive evidence to the

¹ Planning Practice Guidance (PPG) - Paragraph: 065 Reference ID: 7-065-20140306 Revision date: 06 03 2014

² PPG - Paragraph: 066 Reference ID: 7-066-20140306 Revision date: 06 03 2014

³ Flood Risk Assessment submitted by Flood Risk Consultancy Ltd report no 2018-024 Rev H dated 21 May 2019

⁴ 2018/33957

contrary, I find that the details within the revised FRA could be satisfactorily secured by a suitably worded condition, which would ensure the satisfactory living conditions for future occupiers of the proposed development.

10. For all of these reasons, I therefore conclude that the proposed development would not result in an unacceptable risk of flooding to the detriment of the living conditions of future occupiers. Thus, the proposal would accord with the flood risk and living condition aims of CS Policies CS1, QE4, QE6 and the Framework.

Living conditions of existing neighbouring residents

11. The SPD sets out in Appendix A the required level of parking for each use class, considered appropriate and reasonable, according to location and type of use. The proposed development is for 2no. three-bedroom houses⁵ outside of the town centre. The level of off-road parking required for the proposed development is therefore 2no. allocated spaces per dwelling and one visitor space for the development. The proposed development complies with this requirement.
12. I noted during my mid-morning weekday visit that on-street parking along Brookside Avenue and the surrounding streets was abundant and not at or very near to capacity. I also observed that Brookside Avenue is not the subject of any kerbside traffic restrictions. I consider the appeal site to be sustainably located, with access close to a variety of shops, services and alternative methods of transport, including bus services, as well as opportunities for walking and cycling. The existing car parking situation on Brookside Avenue and the surrounding network currently suggests that there are no existing pressures and that this will be the case for the foreseeable future.
13. Therefore, whilst the proposed development could generate additional vehicles, it is unlikely, given the level of off-road parking in the proposed development that unacceptable parking demands on Brookside Avenue and the surrounding network would occur. Furthermore, the proposal would not result in any unacceptable effects, inconvenience or implications to the detriment of the living conditions of occupiers of neighbouring dwellings in the surrounding area, particularly on Brookside Avenue. Additionally, I do not consider that future occupiers would experience any adverse effects either.
14. I note that the Council has raised concerns with regard to potential disturbance to existing occupiers in the locality of the site from construction traffic, which it considers could not be mitigated through the submission of a Construction Environmental Management Plan⁶ (CEMP). I acknowledge the number of residential properties surrounding the road network in proximity of the site that form the built environment, and the distances of these properties from the highway. Furthermore, I note that no concerns have been raised on this issue from either the Council's Highway Officer or Environment & Public Protection, which in the absence of any substantive evidence to the contrary, I consider forms a material consideration of significant weight.
15. Additionally, I find that the duration of construction is unlikely to be excessive as the proposal is for 2no. dwellings. Consequently, given my findings on the details before me, including the CEMP submitted by the appellant, which is not

⁵ Use Class C3 as The Town and Country Planning (Use Classes) Order 1987 (as amended)

⁶ Construction Management Plan by Living Smart

disputed by the Council, additional mitigation could be secured to protect the living conditions of existing occupiers. Accordingly, I consider that the measures identified in the CEMP should be incorporated within the proposed development and could be secured through a suitably worded planning condition.

16. For all of these reasons, I therefore conclude that the proposed development would not significantly harm the living conditions of existing neighbouring residents through the construction phase of the development. Thus, the proposal would accord with the living condition aims of CS Policy QE6 and the Framework.

Character and appearance

17. The site used to form part of the rear garden to No 16 before it was subdivided. The site is located adjacent to Brookside Avenue and is currently separated by a mature hedgerow. Access to the proposed scheme would be taken from Brookside Avenue, which is a cul-de-sac and comprises of a mixture of 2-storey detached and semi-detached dormer styled properties.
18. I note that the design of the proposed development differs from the existing dwellings on Brookside Avenue. However, I find that there are mitigating factors that would ensure that the scheme would not adversely affect the site or the surrounding area. I consider as the scheme will be sited on a lower ground level to No's 8 and 23 Brookside Avenue, the resultant increase in ridge height would be marginal. Furthermore, whilst the proposed development would be 3-storeys in height, this would not itself form an incongruous feature in the street scene due to its location off the turning head. I find that the location of the site enables the principle of developing a dwelling different in design to those currently on Brookside Avenue to be constructed without forming a strident feature in the street scene.
19. Furthermore, I consider that the scheme represents good design, which has had to address a variety of constraints to ensure satisfactory living conditions for future occupiers and compliance with other requirements, such as flood risk and highways. Nonetheless, the proposed development would be visually attractive, adding to the overall quality of the area. The proposed scheme would therefore not constitute an inappropriate form of development, as it would be of an appropriate scale and design in its location.
20. For all of these reasons, I therefore conclude that the proposed development would not have a significant harmful effect on the character and appearance of the appeal site and surrounding area. Thus, the proposal would accord with the design, character and appearance aims of CS Policy QE7 and the Framework.

Biodiversity

21. The planning application benefitted from an accompanying Ecological Appraisal⁷ (EcoApp) in accordance with requirements of CS Policy QE5. Majority of the site comprises of a grassed lawn, with a mature hedgerow's on majority of its shared boundaries. To the rear of the site where 'House A' would be located is an area of open space that contains a number of pools, which the EcoApp asserts are used in connection with fishing.

⁷ Ecological Appraisal September 2018, undertaken by Dunelm Ecology Consultant Ecologists

22. The EcoApp concluded that the proposed development is unlikely to have any particularly adverse impacts on habitats or notable species although the scheme may result in the loss of breeding bird habitat through the removal of some of the hedgerow. The EcoApp was reviewed by the Greater Manchester Ecology Unit (GMEU), where it concluded that, the development would not harm any habitats or protected species and suggested a number of conditions regarding Great Crested Newts (GCN's), Himalayan Balsam (HB) and nesting birds. However, in the EcoApp, I note that no evidence of protected species was found on the maintained grass, and that the last recording of HB was minor in 2017 and then not present in 2018.
23. The Council have not suggested the imposition of these conditions, and I am not satisfied that the additional conditions suggested by the GMEU are necessary in this instance, given the findings in the EcoApp and the residential nature of the site. Furthermore, GCN's and nesting birds are afforded protection under separate legislation⁸, as too is the control of HB. I also note that neighbouring occupiers have referred to the presence of Badgers in the locality, which has not been raised by the Council, including the response form the GMEU. In any event, even if badgers are present in the locality, they are afforded protection under the Act.
24. Additionally, whilst not specifically cited on the Council's decision notice, I also note that an Arboricultural Assessment⁹ (the AA) has been provided with the application. The AA advises that several trees would be removed as part of the scheme, but all of these trees are categorised as 'C' and are deemed to have little impact on the landscape character of the area. From the findings during my site visit and on the evidence before me and in the absence of any substantive details to the contrary, I have little reason to disagree with the conclusion and recommendations contained within the AA.
25. The recommendations within the AA suggest that an Arboricultural Method Statement with a tree protection plan would be required to protect the remaining trees during the construction phase. Consequently, I consider that these matters and compensatory measures, such as hedgerow planting, could be secured through the use of a suitably worded planning condition. Although there is reference to character and appearance on the Council's decision notice, there is a limited explanation how this would be affected. Nonetheless, I have found that there would be no harm to biodiversity and thus, nor do I consider any associated harm would arise to character and appearance in this respect.
26. For all of these reasons, I therefore conclude that the proposed development would not have a significant harmful effect on biodiversity. Thus, the proposal would accord with the ecological aims of CS Policies QE5, QE6 and the Framework.

Other Matters

27. Local residents and Lymm Parish Council have also expressed a wide range of concerns including, but not limited to the following; principle of development, loss of privacy / light; implications on home insurance, damage to property during construction, highway safety; impact on a street light; drainage and

⁸ Wildlife & Countryside Act 1981, as amended (the Act)

⁹ Arboricultural Statement Ref: CW/9276-AS-1 dated 26 April 2019 by Cheshire Woodlands Arboricultural Consultancy

sewerage systems, amongst other things. However, I note that these matters were considered where relevant by the Council at the application stage and did not form part of the reasons for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents and Lymm Parish Council, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

28. Both parties acknowledge that the local planning authority is not able to demonstrate a 5-year supply of deliverable housing sites. This represents a housing shortfall. Additionally, I note that the delivery of housing identified in the Housing Delivery Test is below the necessary requirement. In these circumstances, paragraph 11 of the Framework indicates that the policies that are most important for determining the application should be regarded as out of date.
29. However, my findings in this case, indicate that there is no identified harm to the living conditions of existing or future occupiers, character and appearance of the appeal site and the surrounding area or biodiversity. Thus, whilst the presumption in favour of sustainable development is a material consideration of sufficient weight to indicate that planning permission should be granted, I have not found any conflict with the development plan in this instance.
30. The provision of what is likely to be family homes would generate additional social benefits, as well as a modest contribution to the housing undersupply / delivery position. In addition, there would be economic benefits for the locality, both during construction and occupation of the dwellings. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.

Conditions

31. The Council has suggested conditions in its Officer Report, which I have considered, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 55 of the Framework and the PPG. A condition regarding a time limit is required by statute.
32. For reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans is necessary. Pre-commencement conditions relating to the external materials of the proposed houses and finished floor levels are necessary for the character and appearance of the site and its surroundings.
33. A condition for surface water drainage and driveway materials is necessary in the interest of highway safety. A pre-commencement condition relating to contamination, and a condition for ventilation in bedroom windows are necessary to ensure satisfactory living conditions for future occupiers. A condition relation to the submission of a hard and soft landscaping scheme is necessary to ensure satisfactory living conditions for future occupiers, the character an appearance of the appeal site and surrounding area, and in the interest of biodiversity.
34. A condition requiring the development to be constructed in accordance with the submitted CEMP is necessary to ensure that the living conditions of

neighbouring occupiers are not harmed through the construction phase of the development.

Conclusion

35. For the reasons given above, I conclude that the appeal should succeed.

W Johnson

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: House Type B Proposed Floor Plans (PL) 001 Rev B; House Type B Proposed Elevations (PL) 002 Rev C; Location and Site Plan (PL)003 Rev C; House Type A Proposed Floor Plans (PL)004 Rev B; House Type A Proposed Elevations (PL)005 Rev C and the recommendations of the FRA; the EcoApp and the AA.
 - 3) No development shall commence until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall then be carried out, fully in accordance with the approved details.
 - 4) No development shall commence until written and photographic details of the external roofing and facing materials (including manufacturer's details) shall be submitted to the local planning authority for approval. Materials samples shall be made available to view on site and shall NOT be deposited with the Local Planning Authority. The development shall then be constructed, fully in accordance with the approved details/samples.
 - 5) Any surface water run-off from within the curtilage of the private dwellings must not discharge onto the highway or into the highway drainage system.
 - 6) Before the development is brought into use, the first 5m of the shared private drive shall be laid out, but shall not be surfaced in granular or loose material.
 - 7) No development shall commence until the following conditions have been satisfied and agreed by the Local Planning Authority (LPA) and written approval to commence development works has been issued by the LPA. All requirements to be completed in accordance with the following guidance references: CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).
- A: CHARACTERISATION: With specific consideration to human health, controlled waters and wider environmental factors, the following must be provided (as required) to fully characterise the site in terms of potential risk to sensitive receptors:

- Preliminary Risk Assessment (PRA or Desk Study)
- Intrusive Site Investigation
- Generic Quantitative Risk Assessment (GQRA)
- Detailed Quantitative Risk Assessment (DQRA)
- Remedial Options Appraisal

PRA is the minimum requirement. DQRA only to be submitted if GQRA findings require it. The investigation(s) and risk assessment(s) must be undertaken by competent persons and all findings must form the subject of a written report.

B: SUBMISSION OF A REMEDIATION & VERIFICATION SCHEME: If required by Section A, a remediation scheme must be agreed with the LPA to ensure the site is suitable for the intended use and mitigate risks to human health, controlled waters and environmental receptors. Proposals should be derived from the Remedial Options Appraisal and form the subject of a written Remediation & Verification Strategy Report, detailing proposed remediation measures/objectives and how proposed remedial measures are to be verified/validated. All must be agreed in writing with the LPA.

8) The development shall not be brought into use until the following requirements have been met and required information submitted to and approved by the LPA:

A: REMEDIATION & VERIFICATION: Remediation and verification shall be carried out in accordance with an approved strategy. Following completion of all remediation and verification measures, a Verification Report must be submitted to the LPA for approval.

B: REPORTING OF UNEXPECTED CONTAMINATION: All unexpected or previously unidentified contamination encountered during development works must be reported immediately to the LPA and works halted within the affected area(s). Prior to site works recommencing in the affected area(s), the contamination must be characterised by intrusive investigation, risk assessed (with remediation/verification measures proposed as necessary) and a revised remediation and verification strategy submitted in writing and agreed by the LPA.

C: LONG-TERM MONITORING & MAINTENANCE: If required in the agreed remediation or verification strategy, all monitoring and/or maintenance of remedial measures shall be carried out in accordance with the approved details.

The actions required to be carried out in Sections A to C above shall adhere to the following guidance: CLR11 (Environment Agency/DEFRA, 2004); BS10175 (British Standards Institution, 2011); C665 (CIRIA, 2007).

9) Within the proposed development all bedroom windows shall be fitted with trickle vents and retained thereafter for the life of the development.

10) Prior to first occupation of any buildings hereby approved, a programmed landscaping scheme, shall be first submitted to the Local Planning Authority for approval, and shall include details of hard surfacing, means of enclosure, planting of the development, indications of all existing trees and hedgerows on

the land and details of any to be retained, together with measures for their protection in the course of the development. The content of the plan should also include elements to mitigate for loss of hedgerow and bird nesting habitat. The approved scheme shall then be fully implemented during the first planting season following the completion of development and any tree or shrub planted which dies or is felled, uprooted, wilfully damaged or destroyed in the first five year period commencing with the date of planting shall be replaced by the applicants or their successors in title.

11) The proposed development shall be constructed fully in accordance with the submitted CEMP.

End of Schedule