



Appeal Decisions

Hearing Held on 5 November 2019

Site visit made on 5 November 2019

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 3 March 2020

Appeal A

Appeal Ref: APP/R0660/W/18/3218817

51 Main Road, Goostrey, Crewe CW4 8LH

- 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 Henderson (Henderson Homes Ltd) against the decision of Cheshire East Council.
 - The application Ref 17/0680N, dated 7 February 2017, was refused by notice dated 8 August 2018.
 - The development proposed is construction of a single dwelling house.
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Appeal B

Appeal Ref: APP/R0660/W/18/3219327

51 Main Road, Goostrey, Crewe CW4 8LH

- 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 Henderson (Henderson Homes Ltd) against the decision of Cheshire East Council
 - The application Ref 17/4451C, dated 30 August 2017, was refused by notice dated 8 August 2018.
 - The development proposed is construction of one detached and two semi-detached houses.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Preliminary and Procedural Matters

3. Although the two applications were submitted at different times in 2017, the Council determined them at the same time. The appellant sets out a detailed chronology and background to the submission of the applications, including reference to an appeal proposal for a 6-house scheme¹ on the appeal site and land adjoining it, to an earlier scheme² for 3 dwellings and a scheme for the two frontage dwellings subsequently constructed³ and situated between Nos. 51 and 61/61a Main Road.
4. Appeal A relates to a proposal for a single dwelling. This, the appellant sets out, was intended to reflect the quantum of development previously provided for by the 3-house scheme but only developed for two dwellings by way of the

¹ APP/R0660/W/16/3166025

² LPA Ref No: 13/4266C

³ LPA Ref No: 15/5517C

later 2-house scheme. Appeal B relates to a 3-house scheme, retaining the detached dwelling proposed in Appeal A and adding an additional spur of land to the appeal site to accommodate a further two dwellings. These two dwellings are proposed to be affordable housing units.

5. Jodrell Bank Observatory (JBO) was awarded UNESCO World Heritage Site (WHS) status on 7 July 2019. This was after the Council had determined the applications but prior to the appeal hearing. Both parties have had the opportunity to consider the implications of confirmation of JBO's WHS status and I have determined the appeal accordingly.
6. The appellant has submitted an executed planning obligation by Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended) in relation to Appeal B. The UU relates to the provision of two dwellings (referred to in the UU as 2/3 of the number of dwellings proposed) as affordable housing dwellings. I will return to this matter separately below.

Application for costs

7. At the Hearing an application for costs was made by Mr Henderson against Cheshire East Council. This application is the subject of a separate Decision.

Main Issue

8. The main issue in respect of both Appeal A and Appeal B is the effect of the proposed development on the efficiency of the Jodrell Bank Observatory Radio Telescopes. In relation to Appeal B only, the matter of affordable housing is also a matter to which I turn attention to below.

Reasons

Jodrell Bank Radio Telescopes

9. The appeal site lies between existing dwellings at 51 and 61 / 61a Main Street, partially behind the former and two more recently constructed street-frontage dwellings. In the case of Appeal A the site is a long thin strip of land running broadly north-south from an existing turning head adjacent to the boundary with Nos. 61 and 61a. Appeal B retains that portion within its boundaries, with an identical detached dwelling within it, but introduces an additional southwestern spur immediately behind the two newer properties and adjacent to the side and rear of No. 51. A pair of semi-detached dwellings would be sited within this spur in the case of Appeal B.
10. Goostrey is a lengthy, largely linear settlement, at least insofar as it is experienced from Goostrey Lane and Main Road as it runs through the village. However, with residential development radiating outwards to the north of these two roads from a mid-point, the Goostrey Neighbourhood Plan's (GNP) description of it as resembling a 'bow-tie' seems particularly appropriate. The appeal site sits just to west of the 'bow-tie's' knot.
11. Goostrey lies to the south west of Jodrell Bank Observatory (JBO) within the Jodrell Bank Radio Telescope (JBRT) Consultation Zone (the consultation zone). Saved policy PS10 of the Congleton Borough Local Plan (CBLP) states that proposals within the consultation zone will not be permitted where they can be shown to impair the efficiency of the Jodrell Bank Radio Telescope. Cheshire

East Local Plan Local Plan Strategy (CELP) policy SE14 repeats this approach, going on to state that conditions may be used to mitigate identified impacts and that proposals should consider their impact upon the elements that contribute to the significance and value of the JBO. Goostrey Neighbourhood Plan (GNP) policy SC2 adopts a similar approach to development that would impair the efficiency of the JBO operations.

12. The consultation zone covers a significant swathe of the Council area in a quadrant lying broadly from the southeast to west of JBO. Within this area lie a number of settlements, including Holmes Chapel, parts of Congleton and Goostrey. Matters relating to the assessment methodology for additional dwellings within the consultation zone relative to JBO have, I understand, been rehearsed regularly and in considerable detail in other instances, including but not restricted to, sites adjacent, or forming part of, the current appeal sites⁴⁵.
13. There is no doubt, and indeed it was agreed as such during the hearing, that the observations of the JBO are of international significance. Explaining the background to Professor Garrington's submissions⁶, I heard from Mr Roddis (on behalf of JBO) at the hearing of the range of observations undertaken from the multiple radio-telescopes at JBO. I heard too that JBO is the UK's primary radio astronomy facility, of which the Lovell telescope is recognised as being internationally significant for the monitoring of pulsars. However, pulsar observation and measurement is often dependent on telescope orientation at low elevations in a broad south to southwest quadrant. This, however, is the aspect in which the appeal sites are located relative to JBO.
14. Of course, it is not just the appeal site which lies in this aspect relative to JBO. The whole of Goostrey does so too. Equipment commonly, although not exclusively, found within residential properties causes radio frequency interference and that interference can disrupt, distort, corrupt and ultimately render unusable pulsar data. Despite the accepted international importance of the pulsar measurements undertaken at JBO, Prof Garrington states that on average approximately 10% of pulsar data is completely discarded⁷, whilst a larger proportion, albeit unquantified, are corrupted in an irrevocable way.
15. The International Telecommunications Union (ITU) defines a level of interference which should be considered as detrimental to radio astronomy measures and is expressed in the form of ITU recommendation ITU-RA-769.2. This is, I understand, the only internationally recognised standard for interference thresholds across the spectral bands used for radio-astronomy.
16. Although JBO's objections to the proposals were couched in generalised terms in respect of the two applications, more detailed calculations setting out the methodology for how they were arrived at were submitted with the appeal submissions. The basis of these calculations and the methodology used has previously been considered at appeal and accepted. Although Whilst the appellant has sought to demonstrate that those calculations can support more than one conclusion, the basis for the calculations has not been disputed in this instance.

⁴ APP/R0660/W/16/3166025; APP/R0660/W/15/3129954

⁵ APP/R0660/W/18/3197429; APP/R0660/W/18/3204248

⁶ Consultation responses to application LPA Ref No: 17/0680N dated 23 February 2017 and LPA Ref No: 17/4451C dated 17 October 2017 and as Appendix 16 of the LPAs submissions in respect of both appeals

⁷ Paragraph 4.5, p. 10 - 'Further Representations from the University of Manchester' provided by Professor S Garrington (LPA Appendix 16)

17. However, Professor Garrington's detailed appeal submissions confirm that existing development in the direction of the appeal site already results in a level of interference which significantly exceeds the ITU threshold by a large factor. The appellant does not seek to challenge this directly, albeit that in challenging the conclusions to be drawn from the level of interference attributable to one and three dwellings, the level of uplift in all interference in the appeal site's direction would be reduced, at least to a small degree.
18. The JBO submissions conclude that the proposals would be expected to produce levels of interference in excess of the ITU threshold for interference harmful to radio astronomy by a factor of 3 for one dwelling⁸ and a factor of 10 for three dwellings⁹. Together with the collective impact of existing development in the south to southwest aspect, the proposals would add to, albeit to a limited degree, existing high levels of radio interference.
19. There is repeated reference to the relative degree of interference arising from the proposals, and the calculations related thereto. Indeed, I heard much during the hearing as to what constitutes 'relatively minor'. However, as noted in the previous 6-house appeal decision, such references refer to the degree of impact relative to other forms of development, not the direct impact of the proposed development. The appellant notes an indicated reassessment of this yardstick, but I have not been presented with any update in this respect and so it remains a case of considering the described 'relatively minor' level of impact with the degree of threat to the operation of JBO.
20. Moreover, the relevant development plan policies do not seek to impose gradations in the way that the appellant has sought to persuade me. Instead, they merely require it to be demonstrated that a proposal would impair the efficiency, or efficient operation, of the telescopes in order for a proposal to be contrary to those policies. In all but two of the eight variations of the appellant's analyses of Professor Garrington's calculations and the methodology used, the proposals would have a negative impact. Of the other two examples, one run shows the proposal to have no impact and another run that any impact would be any improvement.
21. However, whilst I heard conflicting theories as to the extent to which clutter, attenuation and the minimum coupling loss (MCL) should vary from that assessed by Professor Garrington, I am not persuaded that Professor Garrington's calculation and assumptions should be readily discarded in favour of alternatives that lead to a more positive (for the appellant's case) outcome. Crucially, the basis for reaching the only alternative result with a positive outcome was to average out the MCL between general domestic appliances emitting at a broadband level and IT and electronic equipment which tends to emit at a narrower band. Whilst both JBO's and the Council's conclusions fall within the accepted ranges for clutter and attenuation, it was suggested at the hearing that Professor Garrington's findings represented a conservative approach and that the figures, and thus impact, could be greater. Moreover, the range of distances between JBO and other sites varied and would be likely to introduce additional variables into these calculations.
22. Thus, whilst the Keuper gas storage facility referred to was broadly in the same direction from JBO as the appeal site, it is significantly more distant from JBO

⁸ Appeal A

⁹ Appeal B

than the appeal site. Representatives of both JBO and Goostrey Parish Council noted that the Keuper gas storage facility was not directly comparable and, despite the physical relationship of the appeal site with the eastern portion of Goostrey, and JBO beyond, clutter was as reliant on the relative distances between the two points as it was to its immediate surrounds.

23. Whilst the extent to which Professor Garrington's conclusions could be considered to be conservative was not substantiated, therefore limiting the weight that I can give this matter, it nonetheless highlights the extent to which these calculations can, and have been demonstrated to, vary. Thus, given the range of figures provided and the differing interpretations on the values and assumptions therein, I conclude that it is highly likely that the proposals, both for a single dwelling and for three dwellings, would exceed the ITU threshold for harmful interference.
24. As none of the relevant development plan policies introduce gradation to the level of impact, I must conclude that the proposal would, for the reasons set out and on the basis of the calculation submitted and discussed during the hearing, be likely to impair the efficiency of the operation of the JBO. From all that I heard and have read regarding the significance and importance of the research undertaken at JBO, I give the impact of the proposed development on the efficient operation of JBRT significant weight.
25. Unlike the other policies cited in the refusal reason, CELP policy SE14 does consider the use of conditions to mitigate identified impacts, especially via specialised construction techniques. However, I accept the submission that such construction methods have already been factored into the attenuation assumptions made in the calculations set out in submissions and discussed at the hearing. Those mitigation measures can only go so far and cannot be expected to mitigate all interference through escape from door and window openings, the use of outside space. As the levels of interference cumulatively already exceed the ITU thresholds by a significant factor, the additional impacts of the proposals along with the contribution that they would make to other transient sources of interference, are such that I cannot be satisfied that conditions would appropriately mitigate the impacts such that the proposals would avoid impairment to the efficient operation of the JBO.
26. With regard to Appeal A, I acknowledge that the levels of interference would be lower than those associated with the 6-house scheme referred to above. I heard too, how there has been apparent inconsistency in how the Council have applied the comments received from JBO, and indeed the circumstances in which JBO have, or have not, responded to consultation. However, rather than conclude inconsistency, it seems to me from information related to those decisions that I have before me, and from the calculations in the current instance, that they take into account the specific circumstances of each proposal and their locations relative to JBO.
27. I am also comforted that, because of this approach, the effect of JBO is not to place a moratorium on development as the appellant sought to suggest. Rather, as succinctly summed up by the Inspector's in relation to the 6-house scheme, the situation reflects the development pressures within the surrounding area and the challenges of JBO's proximity to existing settlements. However, the significance and importance, on a local level as expressed by the pride with which local residents view JBO, and at national and international

levels of JBO and the efficient operation of its radio-telescopes, cannot be underestimated and it, and the conflict with CBLP policy PS10, CELP policy SE14 and GNP policy SC2, are matters to which I attach great weight and significance.

Other material considerations

28. There is broad agreement, as set out in the agreed Statement of Common Ground, that matters relating to landscaping, trees, ecology, flood risk and drainage, design, highways matters and the amenity of occupiers of existing houses or that of future residents of the proposed dwellings are not in dispute. From all that I have seen and read, including my visit to the site and viewing the surrounding area, I am not persuaded that I should reach a different conclusion in respect of these matters.
29. So too, the appeal site's relationship with Goostrey's settlement zone limits. The location of the appeal site, in both Appeal A and Appeal B iterations, is well related to the existing built extent of the settlement, and I have also noted the Inspector's conclusions in this respect in relation to the 6-house scheme. CELP policies PG1 and PG2 set out the role of Goostrey within the Council's settlement hierarchy, whilst GNP policy HOU1 takes a positive approach to housing development within Goostrey. However, that approach is tempered by the presence of JBO, and the supporting text to GNP policy HOU1 explains in detail the tension between further development and the efficient operation of the JBO.
30. The proposals would contribute towards the housing needs as set out in the development plan. In the case of Appeal B, two of the three dwellings would be secured as affordable units and would therefore contribute towards affordable housing provision within Goostrey. Whilst that weighs in support of the Appeal B proposal, the scheme falls significantly below the threshold above which affordable housing will be sought, as set out by CELP policy SC5. Although the provision of two of the three proposed units would accord with the GNP policy HOU2 requirement of at least 30% affordable dwellings on all sites, as the 'trigger' set out in CELP policy SC5 is not reached, there is no development plan imperative to provide such affordable housing. Nor does the Framework offer particular support for the provision of affordable housing on schemes of less than ten units in locational circumstances such as appeal site B. Thus, whilst two units would provide a boost to affordable housing, something which is not contested by the Council, I am not persuaded that the weight that should be attributed to this matter should be any more than limited, or that I should reach a different conclusion in this respect to that previously reached by the Inspector in the 6-house.
31. That both schemes would provide additional housing to contribute towards Goostrey's and the Council's housing needs in a manner broadly consistent with the spatial development strategy established by CBLP policy PS5 and CELP policies PG1 and PG2, particularly in terms of its physical relationship with Goostrey's settlement zone limit, also carries some weight in support of both proposals. So too with regard to GNP policy HOU1. However, central to this is that the efficient operation of JBO cannot be impaired. CELP policy SE14, CBLP policy PS10 and GNP policies SC2 and HOU1 are quite clear in this respect. Whilst I accord both proposal's broad consistency with the overall spatial development strategy moderate weight, I am satisfied, as has a colleague

Inspector before me, that the importance of the efficient operation of the JBO cannot be understated.

Conclusion

32. Both appeals would provide a boost to the supply of housing within Cheshire East and, in the case of appeal B, would also provide two additional affordable dwellings. Goostrey is identified as an appropriate location for the development of new housing and the appeal sites lie adjacent to the settlement's development limits. However, whilst an appropriate location for new residential development this comes with the strict proviso that proposals should not individually or cumulatively harm the efficient operation of JBO. I heard that the appeal sites lie in a particularly sensitive direction relative to JBO where relevant interference thresholds are already exceeded which has, and does, compromise the observations and data recorded by the radio telescopes at JBO.
33. For the reasons I have set out above, it has not been satisfactorily demonstrated that the proposals would not add further, either individually or cumulatively, to the interference levels already experienced. I am not therefore persuaded that it has been adequately demonstrated that the proposals would avoid harm to the efficient operation of JBO. The harm arising from the single dwelling proposal would be less than that arising from the 3-dwelling scheme, but I give significant weight to the importance of JBO and its global research standing.
34. For the reasons I have set out, and having considered all other matters raised, I conclude that appeal A and appeal B should be dismissed.

Graeme Robbie

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Stephen Harris	Emery Planning
Mr Max Henderson	Henderson Homes
Mr Jonathan Hill	Henderson Homes

FOR THE LOCAL PLANNING AUTHORITY

Mr Nick Hulland	Principal Planning Officer, Cheshire East Council
Ms Catherine Fenghour	Senior Planning Officer, Cheshire East Council
Mr Neil Roddis	Head of Engineering, Jodrell Bank Observatory

INTERESTED PARTIES

Mr Ken Norris	Chair, Goostrey Parish Council
Mr Colin Ross	Goostrey Parish Council
Mr Roger Dyke	Local resident
Mr Roland Hunt	Plumtree Homes

DOCUMENTS SUBMITTED DURING THE HEARING

DOC 1	Record of Attendance
DOC 2	Goostrey – CBLP, CELP and GNP map extracts
DOC 3	Statement of Goostrey Parish Council
DOC 4	Cheshire East Local Plan: Site Allocations and Development Plan Policies Document 'Local Service Centre Spatial Distribution Disaggregation Report [PUB5] June 2019'
DOC 5	Written submission of Mr Dyke