
Appeal Decision

Site visit made on 8 December 2020

by K A Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2021

Appeal Ref: APP/A0665/W/20/3258936

Land South of Louse Street, Chester CH1 4HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Andrew McCready, Homereach Ltd against Cheshire West & Chester Council.
 - The application Ref 20/01508/OUT, is dated 2 April 2020.
 - The development proposed is demolition of existing workshops and construction of three dwellings.
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Decision

1. The appeal is dismissed and planning permission for demolition of existing workshops and construction of three dwellings is refused.

Procedural Issues

2. The application was submitted in outline. The application form indicates that approval was sought for access, appearance, layout and scale, with the matters of landscaping reserved for future approval, the Council dealt with the application on this basis. Limited details of the landscaping were provided within the Planning Statement accompanying the application. I have dealt with the appeal on this basis.
3. The Council have not issued a refusal notice. However, I have had regard to the Council's accompanying statement of case, in so far that it provides clarity in terms of the reasons why the Council would have refused planning permission had it been able to do so.

Main Issues

4. The main issues are (i) the effect of the proposed development on the character and appearance of the area; (ii) whether the proposal would provide acceptable living conditions for future occupants, with regard to private outdoor amenity space; and (ii) the safe and efficient operation of the highway network in the vicinity of the appeal site.

Reasons

Character and Appearance

5. The appeal site falls within the settlement of Chester and, as such, new residential development in principle is supported by Policies STRAT1, STRAT2 and STRAT 3 of the Cheshire West and Chester Local Plan Part One, 2018 (LP1).

6. The appeal site comprises of three buildings, mainly dilapidated and the site appears to have been unmaintained and is overgrown in part. It is located in a predominantly residential area with a mix of dwelling types. Although the majority of dwellings in the immediate area are Victorian terraces of two-storey with similar features, layout, and character. There is a more modern housing development lying to the south that has a rigid layout and comprises of three-storey town houses of varying identical features. Despite some variation in form, the residential properties positively contribute to the character and appearance of the area.
7. Particular views can be seen of the appeal site from points situated around the immediate area including a small walkway between the gables of No.13 and No.15 Louise Street, along Garden Terrace and from the existing residential development at Newton Close towards the south, albeit this is partially blocked by the stark boundary fence separating the site and the Close. Further glancing views across the appeal site can be seen from along Raymond Street and Louise Street.
8. The buildings would be removed, and a row of three terraced properties erected forming back land residential development. There would be a marginal gap between the new dwellings and those already situated along Garden Terrace. However, they would not follow the existing line of development and would provide a staggered building line from those at Garden Terrace. The layout of the site including facilitating parking provision and the orientation of the dwellings would result in a rather complicated, odd and contrived layout. The front entrances and principal elevations would be located to the rear, with restrictive frontage facing towards Newton Close and its high boundary fence. The rear of the properties would almost directly adjoin the vehicular access and directly face the car parking area.
9. Policy DM3 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies, 2019 (LP2) expects development to achieve a high standard of design and sets out the design solutions including that they are in keeping with the prevailing layout and that the layout and detailing contribute to the legibility of the area. Policy ENV6 of the LP1 requires development to respect local character and achieve a sense of place through appropriate layout and design and meet applicable nationally described standards for design and construction.
10. The National Planning Framework (the Framework) places great emphasis on the creation of high-quality buildings and places. Good design is a key aspect of sustainable development and decisions should ensure developments will function well and add to the overall quality of the area, be visually attractive as a result of good architecture and layout.
11. In this case, despite the design and materials of the three-storey dwellings being in keeping with existing properties. The layout for the residential development would not represent good design, it would not function well resulting in an incongruous and contrived form of residential development, thus causing harm to the character and appearance of its immediate residential setting and the area. As a result, it would be contrary to Policies DM3 of the LP2 and ENV6 of the LP1. Which amongst other things, taken together these policies promote sustainable, high quality design and construction, including layout.

Living Conditions

12. The Council are concerned with the amount of private outdoor living space to be provided for future occupiers of the dwellings. Reference has been made to a minimum figure of 64m² being provided for private amenity space. However, this appears to be taken from a superseded supplementary planning document for residential development and therefore carries no weight. The Council has not provided a suitable figure but relies on the explanation text of Policy DM3 of the LP2, at paragraph 10.6 it states, *'The size and shape of outside amenity space must be carefully considered, and it is recommended that rear gardens are at least equal to the ground floor footprint of a dwelling'*.
13. Nevertheless, from the evidence before me it is not clear the extent of any private amenity space for each of the dwellings as there is no indication on the proposed plans for the development layout. I accept that landscaping is reserved for future consideration and the *'Planning Statement'* indicates soft landscaping for resident's amenity areas. However, I cannot be satisfied to the appellant's indication of provision to the south, particularly due to the orientation of the layout. Future occupiers would have to navigate backwards from the front to the rear to access parking facilities, pedestrian access to Louise Street and the vehicular/pedestrian access to Raymond Street.
14. This would likely result in difficulty of providing a suitable amount of private space for occupiers, particularly for the middle terrace as access would be needed to these areas. Furthermore, due to the layout it would likely be difficult to enclose the area to the south frontages, to ensure privacy and suitable provision without resulting in further harm to the living conditions of future occupiers.
15. Moreover, given that the dwellings would be likely to be family homes and are of a substantial size with three bedrooms. I consider the area between the rear of the properties and the parking area access would be limited given the small size between them for utilisation as any suitable private outdoor amenity space. Even if, provision was to be provided as communal space within the site I have no substantive evidence how this would function as a recreational area. I note that the appellant was willing to revise the layout to provide additional amenity space, however this is not the scheme before me.
16. As such, there is insufficient evidence that suitable provision of private outdoor amenity space would be provided to meet the future needs of occupiers of the proposed dwellings. The proposal would therefore cause harm to the living conditions of future occupiers. It would be contrary to Policy DM3 of the LP2 and Policy ENV6 of the LP1. Which together require provision of external storage and amenity space; promote safe, secure environments and access routes.

Highway Safety

17. The appeal site would be accessed from an existing narrow alleyway that is situated between the public house 'Bouverie Arms' and residential properties along Raymond Street. The gap is approx. 2.8m in width.
18. As I observed at the time of my site visit, the proposed access was compromised by a vehicle parking between it, which appeared to be utilised by a member of the public parking a van. There was also a further vehicle parked

at the site entrance at the back of Garden Terrace. The gap between the van and the side elevation walls was almost impassable due to the restrictive width. As such, it would be impossible for two vehicles to utilise this access or pass safely including the provision of inter-visible passing bays. This would likely mean that vehicles would end up waiting and obstructing the flow of traffic and the pedestrian footway along Raymond Street to ingress or egress the access to the site, this would not be in the best interests of highway safety.

19. Furthermore, I have no substantive evidence before me to suggest that the appellant owns the alleyway, who does or indeed whether there is a convincing right of way for vehicle access to the site given its unsuitable narrow width. The plans do not show that this is within the appellant's control or included within the red line. Furthermore, I acknowledge the site may have been in use for a light industrial purpose and commercial use in the past, however I have been provided with limited evidence of its existing lawful use, including the use of the access for vehicles. Therefore, I am not satisfied that this could be secured as a vehicle access leading to the proposed car parking area for future residents of the dwellings.
20. Moreover, given the limited width of the access there would be considerable conflict with the appeal site and suitable provision for accessing waste and recycling collections. It would also appear there is not suitable provision for fire-fighting tender appliances and their equipment with the access point. I acknowledge that other design solutions are required by legislation including building regulations, but I have limited evidence to the contrary that the development would meet or satisfy the Council's requirements for emergency services and other service providers, as required by Policy T5 of the LP1.
21. In terms of parking at the site, the Council require 2 spaces per 3-bedroom dwelling which is supported by the Parking Standards Supplementary Planning Document. The proposal indicates that 4 car parking spaces would be provided. This would leave a shortfall of 2 spaces. The site is located within a sustainable location for access to local services, shops and public transport without having to rely on private motor vehicles.
22. Nonetheless, it would appear and from observations at the time of the site visit there was a demand and shortfall for on-street parking within the immediate vicinity of the site. Mainly due to the majority of properties having no or limited parking and existing on-street restrictions. Therefore, given that the dwellings would be for families, likely to have more than one vehicle and parking is a detailed consideration for the proposed scheme. I consider the proposals fail to provide sufficient provision and would lead to future residents and their visitors having to park outside the site. This would exacerbate the existing on-street parking situation in the area to the detriment of existing residents and the highway network.
23. I note the appellant's comments in regard to offering an alternative site for parking for future residents of the development, however this evidence is limited and I have not been provided with any details or how this mechanism would work or could be secured. Neither am I satisfied that a comparison can be made to a site in West Kirby or the 'Bouverie Arms'. I have been provided with limited evidence, so I cannot be certain that the access is comparable in West Kirby, particularly as the site shown within the photographs is not proposing residential development. In terms of the 'Bouverie Arms' this

appears to relate to the change of use of the car park to a beer garden, I do not know the reasons for the dismissal or how this relates to the appeal site. In any case, the appeal needs to be determined on its own merits on the basis of the evidence before me. As such, I can afford no weight to these scenarios.

24. For the reasons outlined above, I conclude that the appeal proposal would have an unacceptable harmful and significant impact on highway safety. It would be contrary to Policy STRAT10 of the LP1 and Policy T5 of the LP2. These policies taken together require development to demonstrate additional traffic can be accommodated safely and satisfactorily, make safe provision for access to and from the site for all users of the development, including the provision of access to adopted highways; allows for the safe movement within the site, having regard to the requirements of the emergency services and service provides; and provide sufficient parking facilities to serve the needs of the development.

Other Matters

25. The appellant refers to a 'Prior Approval' application, that the Council failed to determine within the period prescribed in the order (GPDO)¹, Class PA and now has deemed consent. This appears to refer to a 'change of use of the workshops from light industrial (Class B1 (c)) to three dwellinghouses (Class C3) at the appeal site. The Council confirm that a decision notice was issued on highway safety grounds but was outside of the prescribed period for determination as an extension of time was not agreed between parties.
26. The appellant's evidence heavily relies on this deemed consent and considers this is a genuine fallback scheme if the appeal were to fail. Nonetheless, where prior approval is deemed to be, a development subsequently undertaken is only lawful if it is carried out in accordance with the submitted plans and it is in fact permitted development. It is not the Inspectors role to determine whether the 'fallback scheme' would be permitted development.
27. However, in this case, I have not been provided with any evidence of this 'fallback' scheme, whether determined or not including that of any decision notice, relevant plans or application details, so I cannot be certain of the precise details of the 'fallback' scheme and whether it would meet the conditions and limitations within Class PA of the GPDO as a real prospect. Neither, can I be satisfied that it would be permitted development, in the absence of a Lawful Development Certificate.
28. Notwithstanding the above, even if I were to accept the appellant's position and afford significant weight to the fallback position, that there is a greater than theoretical possibility that this development might take place for the deemed consent. The appeal buildings would be converted, and it appears from the Council's evidence this would be a smaller development given the limited footprint/scale of the development which would have a lesser impact on the area and access than the appeal proposals before me. Consequently, the fallback position advanced does not outweigh my findings.
29. The appellant refers to the Framework and that it is supportive of positive planning and the redevelopment of a brownfield site. Whilst this may be the case, it is not without caveats, including that developments are of high quality design, sympathetic to local character, provide a high standard of amenity for

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

existing and future users, provide safe and suitable access to the site for all users and refuse development if there would be an unacceptable impact on highway safety.

30. Although the proposed development would be acceptable with the provision of suitable worded conditions in regards to contamination, biodiversity, archaeology, waterways, noise and not cause any harm to the living conditions of neighbouring properties, and I acknowledge the appellant was keen to engage with the Council. These considerations do not outweigh the harm caused by the development.
31. I recognise the appeal proposal would have benefits with regard to the supply of housing in the Borough, be within a sustainable location and the contribution both construction opportunities and any future occupiers would make to the local economy. These matters, however, do not outweigh my findings in respect of the main issues nor the conflict I have found with the development plan read as a whole.

Conclusion

32. For the reasons given above I conclude that the appeal should be dismissed.

K A Taylor

INSPECTOR