



Appeal Decision

Site visit made on 2 August 2021

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2021

Appeal Ref: APP/R0660/W/21/3274166

Locoshed, Bollington Lane, Nether Alderley SK10 4TB

- 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 planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Phoenix Build & Developments Ltd against the decision of Cheshire East Council.
 - The application Ref 20/5659M is dated 14 December 2020.
 - The application sought planning permission for the proposed demolition of existing industrial unit and construction of 2 detached dwellings with detached garages with associated parking and landscaping without complying with a condition attached to planning permission Ref 20/2000M, dated 21 July 2020.
 - The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in total accordance with the proposed drawings referenced 4256/101N, 4256/110M, 4256/110N and the Location Plan received by the LPA on the 15th May 2020.
 - The reason given for the condition is: For the avoidance of doubt and to specify the plans to which the permission relates.
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Decision

1. The appeal is allowed and planning permission is granted for the proposed demolition of existing industrial unit and construction of 2 detached dwellings with detached garages with associated parking and landscaping at Locoshed, Bollington Lane, Nether Alderley SK10 4TB in accordance with the application Ref 20/5659M dated 14 December 2020, without compliance with condition number 2 previously imposed on planning permission Ref 20/2000M dated 21 July 2020 and subject to the conditions set out in the schedule of this decision.

Procedural Matters

2. The appeal is against the non-determination of an application which seeks to vary a condition in relation to the approved plans. I note the Council's statement sets out that they would have refused planning permission for reasons relating to the impact on the openness of the Green Belt.
3. Notwithstanding the alterations to the garages' height, I understand that amended plans were submitted to the Council, showing the removal of rooflights to the garages, before the appeal was submitted. It is not clear whether the Council made the amended plans publicly available or took them into consideration. The removal of the rooflights are a minor change and both the Council and interested parties have had the opportunity to comment on

them through the appeal process. Having regard to the Wheatcroft Principles, I therefore do not consider that any party would be prejudiced by my acceptance of them and I have determined the appeal based on the revised plans.

4. At the time of my site visit construction work was underway and the dwellings, as well as the garages, were partially built but it did not appear that the condition had been breached.
5. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the 'Framework') has been published. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. The main parties did not have any comments on this matter.

Background

6. Based on the evidence submitted, I understand that the appeal site was historically a locoshed and depot for the storage and maintenance of locomotives and there was a railway extending through the site. Planning permission was originally granted in 2016 for two detached dwellings¹ and various Section 73 applications have been approved since². This appeal seeks to vary condition 2 of the latest Section 73 application so that the height of the approved garages can be increased.

Main Issue

7. The main issue is the effect of varying the condition on the openness of the Green Belt.

Reasons

8. The proposal seeks to increase the height of the two garages by approximately 1 metre. The footprint, siting, design and fenestration of the garages would remain the same as approved.
9. I understand from the evidence before me that the original application was assessed against the Framework and Policy PG 3 of the Cheshire East Local Plan Strategy 2010-2030 (2017) (CELPS). Both the Framework and Policy PG 3 are broadly consistent in that they allow for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development³.
10. Given the fallback position of the previously approved applications on the appeal site and the principle of redevelopment of previously developed land has already been established, I have to consider the impact of the proposal on the openness of the Green Belt within that context.
11. The site history is of relevance as there have been several Section 73 applications. Based on the evidence before me, those applications have incrementally increased the mass and footprint of the dwellings/garages. The Council also highlight that certain permitted development rights have been

¹ 16/1378M

² 19/2201M, 19/4864M and 20/2000M

³ Paragraph 149g) of the Framework

removed as the original approval allowed for a fairly significant increase in built development on the site and any further increase would threaten the openness of the Green Belt.

12. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness is capable of having both spatial and visual aspects⁴.
13. The appellant has drawn my attention to High Court judgements which I have had regard to⁵. In summary these judgements highlight that rather than treating any change as having a greater impact on the openness of the Green Belt, the correct approach is to consider the impact or harm, if any, wrought by the change. Whether or not any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications. In addition, the effect that the word openness is open textured and a number of factors are capable of being relevant when it comes to applying it to the particular facts of a specific case. However, how to take account of the visual effects is a matter of planning judgement rather than one of legal principle.
14. I observed on my site visit that this section of Bollington Lane contains a group of large dwellings set within generous plots which impact the openness of the Green Belt. Although this does to a degree result in the surrounding area being characterised by residential properties it is also characterised by woodland and open fields.
15. The garages would remain subservient to the dwellings and would be set back from Bollington Lane. I noted on my site visit that the appeal site is well screened when travelling in a westerly direction due to the tall trees and vegetation. The appeal site is more visible from its frontage and when viewed from the north and west.
16. It appears, from the evidence submitted, that some of the existing vegetation, including hedges, are to be removed which could result in the development being more visible⁶. However, the approved, extensive landscape planting, including a 1.8-2 metre high Yew hedgerow, 2m high native hedgerow and trees, would help to screen the garages. Nonetheless, I recognise that given the height of the proposed garages the planting would be unlikely to screen the proposed increase in height, particularly when first planted.
17. Although the proposal does not increase the footprint of the garages, it would result in the garages having a greater volume than the approved garages due to the increase in height. The increase in height and volume would not be substantial. Furthermore, the increased height of the garages would not be conspicuous from Bollington Lane. This is as a result of the existing built development within the surrounding area, siting of the new dwellings, new planting, existing vegetation, set back from the highway and the garages would appear modest compared to the size of the dwellings.

⁴Planning Practice Guidance- Paragraph: 001 Reference ID: 64-001-20190722

⁵ Euro Garages Ltd v SSCLG & Anor [2018] EWHC 1753 (Admin), Samuel Smith Old Brewery (Tadcaster), Oxton Farm v North Yorkshire CC & Darrington Quarries Ltd [2018] EWCA Civ 489 and Samuel Smith Old Brewery (Tadcaster) and others (Respondents) v North Yorkshire County Council (Appellant) [2020] UKSC 3

⁶ M2866-PA-01-V5

18. Given the scale of the proposal and the context of the appeal site, the scheme would not have a detrimental effect or have a materially greater impact on the openness of the Green Belt than that approved. As such, the proposal would not conflict with the fundamental aim of Green Belt policy, as stated in the Framework, to keep land permanently open. The development would therefore preserve the openness of the Green Belt and would not conflict with the purposes of including land within it.
19. Even if the proposal should be considered under paragraph 149c) of the Framework, having regard to the scale of the proposal, the development would not result in a disproportionate addition over and above the size of the original building and would comply with this exception.
20. For the reasons given above, varying the condition would not adversely impact the openness of the Green Belt and the proposal would not have a greater impact on the openness of the Green Belt than that approved. Consequently, the scheme would not conflict with Policy PG 3 of the CELPS or the Framework. As such the amended drawings would not result in inappropriate development within the Green Belt and on that basis there is no need for me to consider whether there are very special circumstances to justify the development.

Other Matters

21. Nether Alderley Parish Council commented on the appeal with regards to the concerns of the occupiers of Foxhills. The appellant has removed the rooflights from the proposal and as set out in my procedural matters section above, I have accepted the revised drawings. I note the occupiers of Foxhills also requested, in the interests of privacy, a condition to ensure that the office is not turned into a bedroom and the garage cannot be re-purposed at a later date into a separate guest dwelling or annex. However, given the removal of the rooflights and distance of the garages to Foxhills I consider such a condition to be unreasonable.

Conditions

22. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also restate the conditions imposed on earlier permissions that continue to have effect.
23. I have amended the Council's suggested approved plans condition to reflect the drawings lodged with the Council in April 2021. I have imposed all the other conditions as they reflect those listed on the decision notice of 20/2000M and appear still to be relevant.

Conclusion

24. For the reasons given above, I allow the appeal and vary condition 2 of planning permission 20/2000M. Accordingly, planning permission is granted subject to the conditions set out below.

L M Wilson

INSPECTOR

Schedule of Conditions

- 1) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 2) The development hereby approved shall be carried out in total accordance with the proposed drawings referenced 4256/001F (Location Plan), 4256/101N, 4256/110R, and 4256/111P.
- 3) The demolition / construction phase shall be implemented in accordance with the approved dust control scheme submitted under 16/5245D, with the approved dust suppression measures being maintained in a fully functional condition for the duration of the demolition / construction phase.
- 4) (a) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to site.
(b) Prior to occupation, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the LPA.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A-H of Part 1 Schedule 2 of the Order shall be carried out.
- 6) The piling work shall be undertaken in accordance with the approved piling method statement submitted under 19/2239D.
- 7) The domestic curtilage of the dwellings hereby approved shall be limited to the formal lawn area as defined on plans RLS/100a and RLS 101 received by the Local Planning Authority on the 14th September 2016.
- 8) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation should be provided to the LPA that no such contamination was found, and if so what remedial measures were agreed and implemented.
- 9) All arboricultural works shall be carried out in accordance with Mulberry Arboricultural Method Statement ref TRE/RLSBL dated 7th March 2016 received by the Local Authority on the 21st March 2016 and the Plan numbers RLS/MS/01(A) and Fencing Plan approved under 19/2239D.
- 10) No part of the development hereby approved shall be occupied or in use prior to submission and approval in writing of a Verification Report prepared in accordance with the approved Remediation Strategy that covers that part of the development to be occupied or used.

11) The landscaping plan labelled M2866-PA-01-V5 shall be implemented in full accordance with the approved scheme within the first planting season following completion of the development hereby approved, or in accordance with a programme first agreed in writing with the Local Planning Authority. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

12) Prior to occupation Electric Vehicle Infrastructure to the following specification shall be provided:

- Overnight EVP for each dwelling with dedicated off road parking (30A independent circuit preferred to allow fast charging capability)

The infrastructure shall be maintained and operational in perpetuity.