



Appeal Decision

Site visit made on 24 November 2021

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/R0660/W/21/3274612

Nobanno, Astbury Mere, Newcastle Road, Astbury CW12 4HL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Walton House Trading Limited against the decision of Cheshire East Council.
 - The application Ref 19/5793C, dated 10 November 2019, was refused by notice dated 1 April 2021.
 - The development proposed is redevelopment of site comprising demolition of existing building and followed by erection of 7 no. detached dwellings with associated gardens, access, and external works (outline application with all matters reserved, except access).
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Walton House Trading Limited against Cheshire East Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The planning application was in outline, with all matters reserved except for access. I have had regard to all the submitted plans but have treated all detailed elements of these drawings as indicative apart from the access.
4. An updated Tree Survey Report (TSR) and Tree Protection Plan was submitted as part of the appeal to reflect a revised indicative layout plan submitted to the Council during the application. The Council and third parties have had the opportunity to comment on these documents as part of the appeal process. As such, no party has been prejudiced by their submission at this stage.

Main Issues

5. The main issues are the effect of the proposal on:
 - The character and appearance of the surrounding area; and
 - Biodiversity.

Reasons

Character and appearance

6. The appeal site is positioned in a prominent position near Astbury Mere (the mere). The mere has a footpath that traverses around it and provides an

- attractive recreational area. Despite the location of the mere within the settlement, houses are generally set back from it, with the land sloping from the mere out and areas of trees and grass providing a picturesque setting.
7. The appeal site contains a restaurant building of little architectural interest but with a low-key form, set back into the site away from the mere. A small part of the site to the rear falls within a designated Local Wildlife Site (LWS), however most of the site falls outside of this ecological designation.
 8. The site contains numerous trees, has a sloping undeveloped embankment and vegetation immediately adjacent to the circular route. This combination of features makes a positive contribution to the setting of the mere at this point along the circular route, which also comprises of an access road leading to the water sports centre.
 9. The indicative plan shows how a scheme could be developed for seven detached dwellings, which would result in the embankment given way to gardens with houses on the slope running parallel to the circular route. This would have the effect of residential development being a visually imposing feature from the circular route and the domestication of the embankment, which would encroach into the natural picturesque setting of the mere.
 10. The species rich hedgerow indicated would be an improvement to alternative domestic boundary treatments in this location giving a soft edge to the site. However, it would not be sufficient to mitigate against the domestication of the embankment from individual gardens and the domestic paraphernalia that would ensue, along with the presence of buildings on an elevated ground level in such close proximity to the mere.
 11. There is a housing development adjacent to the site, previously allowed at appeal, and in this regard the proposed housing would not be seen in isolation. However, the adjacent housing is orientated such that the housing runs away from the mere and is positioned further from the mere than the indicative housing would be. Moreover, I saw how it had been designed with the private rear garden of the nearest dwelling to the access road set behind a more open landscaped embankment. Similarly, the single dwelling approved by the Council (Ref: 19/1924C) is also set further back from the mere and the circular footpath.
 12. In this regard, the proposal would contrast from these other schemes and would result in unacceptable encroachment eroding the natural and scenic setting of the mere when viewed from the circular route passing the site.
 13. Although there maybe alternative arrangements to the site layout and the plans are indicative, I have no firm details of how a scheme for seven detached dwellings could be accommodated on this site without such harm.
 14. Although some distant views of the housing would be possible, it would be largely seen against the backdrop of the existing housing to the west of the site. In this regard, I agree with the findings of the appellant's Landscape and Visual Impact Assessment. Instead, the harm I have identified would be localised to the stretch of the circular route passing the site. Given its positioning immediately adjacent to the route and the high sensitivity of the mere, due to its recreational values, the resulting harm would be significant.

15. I therefore find that the proposal would result in a significantly harmful effect on the character and appearance of the surrounding area. I therefore find conflict with the requirements of Policies SE4 and SE5 of the Cheshire East Local Plan Strategy 2010 - 2030 (CELPS). These stipulate, amongst other things, that all development should conserve the landscape character and quality.

Biodiversity

16. The appeal site contains a mixture of natural habitats comprising of scattered trees and amenity grassland and shrubs. Based on the evidence before me the grassland has a low ecological value. Nonetheless, in combination with the trees and the connectivity with the LWS there is ecological value associated with the natural habitats within the site.
17. The indicative layout plan shows how the site could be developed with a small section of the LWS being encompassed within the rear gardens of Plot 6 and 7 but no dwelling built within it. The updated TSR demonstrates that the proposed indicative layout would result in the loss of 7 trees within the appeal site but none within the LWS. The retained trees within the LWS in the appeal site would fall within the garden of plot 7 and are protected by a broader Tree Preservation Order (TPO).
18. The presence of the TPO, the potential use of conditions and the design of a future reserved matters layout could ensure that the LWS would be left undisturbed from buildings. However, irrespective of the ownership of the land within the LWS, the severance with individual gardens from the wider LWS would have a degree of impact on the ecological linkages. Moreover, the use of the LWS as part of the private rear gardens would result in a degree of disturbance from activity of occupiers in the garden including, for example pets or from artificial light. This is difficult to quantify but has the potential to erode the ecological contribution it makes to the wider LWS.
19. At present there is no adopted policy or SPD that specifically requires a biodiversity net gain for this size of development. Although it is encouraged in the National Planning Policy Framework (the Framework) and in Policy SE3 of the CELPS. Nonetheless, the appellant indicates that there would be a net gain in biodiversity on site without the need for a financial contribution, primarily through replacement tree planting, hedgerow planting and bird and bat boxes. However, a previous Biological Impact Assessment was undertaken based on a superseded indicative layout and no update has been provided.
20. The indicative layout shows the site given way to a shared access road, housing, and their respective gardens. Whilst numerically replacement trees could be incorporated in any future reserved matters layout, the use, activity, lighting, and landscaping of individual private gardens would inevitably evolve over time with different occupiers. Whilst gardens can have the potential to provide beneficial habitats, equally they also have the potential to provide little in the way of meaningful habitats. This subsequently has the potential to undermine the biodiversity aspirations of the appellant.
21. In any case, I do not have sufficient evidence before me to reach a conclusion that the proposal would achieve the biodiversity net gain that the proposal aspires to, or a level of mitigation that would offset any harm.

22. Reference has been made to an appeal in Nottinghamshire (Ref: 3263882) which was concerned with, amongst other things, the effects on a LWS and biodiversity net gain. I also agree with that Inspector that there is no specific requirement in this instance to undertake a biodiversity metric exercise. However, in that instance the LWS lie outside of the appeal site and the identified issues were, amongst other things, with the relationship between the adjacent LWS and the proposed housing. This contrasts with the appeal proposal, which includes a section of the LWS within the gardens of the indicative housing.
23. Each case has its own unique circumstances in terms of the proposal submitted, the ecological value of the site and associated effects. I have subsequently reached my own conclusion on the effects of the proposal in this particular location, based on the evidence before me.
24. Drawing the above together, I cannot be satisfied that the proposal would not have a harmful effect on biodiversity. The proposal would therefore conflict with Policies SE3, SE4 and SE5 of the CELPS which stipulate, amongst other things that development will be expected to protect and/or conserve the ecological qualities of an area.

Other Matters

25. There is no dispute that the Council can currently demonstrate a 5-year supply of housing and I have no firm details from either party as to the extent of supply. Moreover, I have no substantive evidence of any shortfall in the delivery of windfall sites in the settlement. As such, the so-called 'tilted balance', as established in paragraph 11d) of the Framework, is not engaged.
26. Nonetheless, the government places considerable importance on making effective use of land, including specifically on previously developed land to boost the supply of housing. This includes from smaller developments in sustainable locations. The proposal would therefore contribute to the supply of housing. The proposal would deliver economic and social benefits from the construction and occupation of the dwellings, aiding the economic recovery from the pandemic. However, as seven dwellings, the extent of these benefits would be modest and, as such, I attach modest weight to them.
27. There is no substantive evidence as to why areas of land could not be managed or maintained if they did not fall within or were not enclosed by individual gardens. I recognise that the pandemic has had a significant impact on the hospitality sector. However, I have no firm evidence that there is a realistic likelihood that the appeal site would fall into a state of disrepair. Moreover, my concerns do not relate to the principle of development, but to the associated effects from the amount of development proposed.
28. The proposal would not have a detrimental impact on the open space provision within the Astbury Mere green infrastructure area. However, the absence of harm in relation to this or other considerations are neutral matters and would not outweigh the harm I have identified to the character and appearance of the area and my concerns in relation to biodiversity.
29. Concerns regarding the processing of the application, including matters relating to communication are not matters that I can assess as part of this appeal and do not affect the merits of the case before me.

Conclusion

30. The proposed development would not represent an acceptable form of development as it would result in significant harm to the character and appearance of the surrounding area. Moreover, based on the evidence before me I can not be satisfied that the proposal would not have a harmful effect on biodiversity. As such, for the reasons set out above, the proposal would conflict with the development plan when read as a whole.
31. Overall, I find there to be no material considerations that would indicate that the appeal decision should be taken other than in accordance with the development plan.
32. The appeal is therefore dismissed.

Mr R Walker

INSPECTOR