



Appeal Decision

Site visit made on 17 May 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/R0660/W/21/3284028

**Land adjacent to 51 Main Road, Goostrey, Cheshire CW4 8LH
(376692, 370094)**

- 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 Henderson Homes against the decision of Cheshire East Council.
 - The application Ref 20/5783C, dated 18 December 2020, was refused by notice dated 1 April 2021.
 - The development proposed is the erection of 2 office (Use Class B1) buildings with associated servicing and carparking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the date of the Council's decision, the Revised Publication Draft of the Cheshire East Local Plan Site Allocations and Development Plan Policies Document (the SADPD) have undergone independent examination. Some policies contained therein are referred to by the main parties.
3. Although the plan remains subject to modifications and has not yet been adopted by the Council, the relevant policies within it are entitled to some weight given its stage of preparation and according to their consistency with the National Planning Policy Framework (the Framework) and any outstanding objections. I have had regard and referred to these policies and associated weighting in my decision.
4. Following the decision of the Council, the appellant has submitted additional information at the final comments stage of the appeal. This included new technical information relating to the mitigation of radio emissions from the proposed buildings which was not previously provided to the Council. The appellant suggests that this should be considered and be made the subject of a planning condition.
5. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles, the degree of engagement of all parties in relation to the issue of the mitigation, and the interests of fairness. I have therefore determined the appeal on the basis of the information that was before the Council when it made its decision and on which parties were consulted.

Main Issues

6. The main issues are the effect of the proposed development on:

- the Jodrell Bank Observatory (JBO)
- existing trees and hedgerows, and
- whether or not the site is a suitable location for the proposed development.

Reasons

Jodrell Bank Observatory

7. The JBO is a designated World Heritage Site (WHS) on account of its contribution to radioastronomy. Its ground-breaking accomplishments following its initial construction and continued operational research providing real-time data on 'pathfinder' projects by listening for patterns in specific areas of the radio spectrum are recognised as having exceptional importance. This benefit is to both present and future generations and transcends international boundaries. The Framework recognises WHSs as irreplaceable assets of the highest significance which must be conserved in a manner appropriate to their significance.
8. The ability to continue to provide accurate search and measurement functions at the JBO is fundamental to its status as a WHS and to securing future viability through project funding. Its success and status is, in part, dependent on a radio-quiet location with limited or managed levels of interference. The degradation of data quality through radio interference is a threat to the function of the facility, its research projects and the associated investments.
9. The proposal would provide modern accommodation in 2 single-storey blocks with a contemporary design. The units would be laid out with workstations, meeting rooms and welfare facilities. As a modern facility, I have little doubt that the offices would be heavily dependent on the use of electronic technology and communications, including monitors, computers and mobile phones. In addition, lighting, heating, ventilation and kitchen appliances would be necessary to support the proposed use. According to the Council, these and other electrical components are capable of the radio interference that can impair the efficient operation of the radio telescopes at the JBO.
10. There is no dispute between the main parties as to the appropriate methodology to assess the potential impacts of a proposal on the ability of the JBO to perform its functions. This has been researched in detail by relevant authorities and acceptably rehearsed in previous appeals, to which the parties have referred. Whilst this is substantially predicated on housing development, the University of Manchester, as the Council's specialist advisor on the effects of radio frequency interference associated with the JBO, have assessed the proposal as 1.8 dwellings equivalent.
11. However, this is considered as a conservative estimate by the advisor, relying on the assumption that up to 43 users of the site would use the equivalent of 5.4 electrical devices between them. It would not account for the more intensive use of the site should the layout be changed; nor would it account for greater use of devices or outdoor apparatus.

12. The appellant has provided an assessment of the likely effects of a residential development which includes allowances for dissipation, existing (building/tree) clutter and an enhanced shielded building. It concludes that an attenuation of 25dB could be delivered through specific building techniques verified by specialist testing. This would result in interference at the JBO at a level consistent with the relevant ITU¹ standard.
13. However, according to the Council's advisor, this does not equate to a zero effect on the JBO. Whilst it could meet a standard set by the ITU, it would add to the cumulative effects of development in the Jodrell Bank Consultation Zone.
14. Moreover, it is notable that, in the scope of the JBOs observations, the appeal site lies at an azimuth where observations at a low altitude above the horizon are frequently taken. The particularly sensitive location is modelled as one having particularly high cumulative effects. Goostrey is identified as a major contribution to interference and significantly above (potentially by a factor of >1000) the ITU standard according to the University of Manchester.
15. As a WHS, significance is placed on future ability to serve the qualifying outstanding universal value and function of the asset. There is no dispute between the main parties that mitigation measures are capable through control measures and the bespoke construction of buildings. This is reflected in Policy SE14 of the Cheshire East Local Plan Strategy 2010-2030 [2017] (the CELPS). However, whilst I have little doubt that increased measures could be incorporated, there is little before me to demonstrate the practical implications of those measures on the proposed use of the building or how they would be secured in perpetuity, including through monitoring and remediation should they become damaged, be replaced or otherwise reduced in their effectiveness.
16. There is little evidence to demonstrate how, or if, the integrity of a higher specification of building insulation could be retained during the ad-hoc lettings envisaged by the appellant. In buildings designed with large areas of glazing and which include several large bi-fold doorways addressing outdoor amenity spaces, for example, there would be inevitable pressure to utilise those designed elements of the buildings. Accordingly, I find that there is some question as to whether the particular design of the buildings would be conducive to the aim of minimising interference outbreak. Furthermore, given the low estimated use of electronic equipment, the effects of any practical or viable limitation on the number, type or restrictions to the use of certain electronic devices might not be a reasonable requirement if necessary to achieve a compliant form of development.
17. Given the sensitivity of the locality and the requirement for highly specialised knowledge to calibrate and use equipment capable of monitoring emissions (which cannot be observed otherwise), I find a condition requiring the long-term preservation of the integrity of the buildings' insulation would be largely unenforceable. It would not therefore pass the tests outlined in Paragraph 56 of the Framework in the particular circumstances of the case. As a burdensome and potentially costly exercise, monitoring by a local planning authority would not be a practical or reasonable alternative.

¹ International Telecommunications Union

18. In the absence of the detail of increased levels of insulation and or undertaking to guarantee any such measures' long-term integrity for the duration of the operation of the JBO, I find the proposal would cause significant harm to the integrity of the radio telescopes at the JBO.
19. In support of the proposal, the appellant refers me to a number of instances where the matter of mitigation has been reserved by condition. Whilst the majority of those cases appear to relate to the re-use of existing buildings, they appear to have been made without the benefit of input from the JBO. A case involving a small-scale domestic outbuilding is distinct from the scale and use of proposal before me.
20. The conversion of a single storey building to B1 use elsewhere, which was opposed by the JBO benefitted from fuel tank storage mounds such that the effect was considered minor. Moreover, that site also benefitted from a fall-back position where uncontrolled development could otherwise take place. Another case was subject to condition and s106 agreement requiring identification of the relevant interference levels and agreement of attenuation. In the absence of such an agreement or fallback position, the circumstances of those proposals are therefore distinct from the case before me. Furthermore, I do not find that decisions which depart from the advice of the relevant consultee to be a strong argument in favour of a development that would cause harm through potential individual and cumulative effects.
21. I acknowledge that a scheme for 3 dwellings was previously found acceptable on the site and the adjacent land. However, as 2 dwellings have subsequently been built out on part of that area, I have little doubt that the cumulative number of items potentially causing interference such as monitors, computers, lighting and welfare facilities, when compared to a residual single domestic unit, would, have a larger effect. Accordingly, I am not persuaded that this provides sufficient justification for the proposed development.
22. I also acknowledge the appellant's frustration with the level of engagement by the JBO in the run up to this appeal, however, this does not change the requirements of the development plan to demonstrate that the proposal in itself or in conjunction with other development would not cause further harm.
23. Taking all of the above together, I find the information provided by the Council's advisor demonstrates that the proposed development would cause harm to the integrity of the JBO. Accordingly, it could jeopardise the integrity of the outstanding universal value of the radio telescopes.
24. Whilst this harm would be no greater than less than substantial within the context of Paragraph 202 of the Framework, less than substantial harm does not equate to a less than substantial planning objection. Paragraph 202 of the Framework advises that such harm should be weighed against the public benefits of the proposals including securing optimal viable use. I undertake this assessment within the overall conclusion of this decision. Nonetheless, at this stage it is important to recognise that the proposal would be contrary to saved Policy PS10 of the Congleton Borough Local Plan First Review 2005, Policy SE14 of the CELPS, Policies SC2 and EB2 of the Goostrey Neighbourhood Plan (the GNP) and emerging Policy HER9 of the SADPD (of moderate weight) which seek to protect the efficiency of the JBO for its own recognised purposes of outstanding universal value.

Trees and hedges

25. There are a number of trees and hedges on or close to the site boundaries which are at various stages of maturity and contribute positively to the local landscape character. These include an impressive Oak tree almost central in the rear (northern) boundary which is identified as having a high amenity value and is subject to a Tree Preservation Order. The canopy of this and other trees overhang parts of the site. Additionally, hedges along the northern and eastern boundary are noted as important landscape features in the GNP.
26. In addition to the buildings, the proposal includes an access road and hardstanding areas. The location of the internal access road, within a short distance of the site's common boundary with 61a Main Road, would be in close proximity to the trunks of several trees within the neighbouring site and the noted hedgerow.
27. The proposed location of the northern building would sit close to the extent of the canopy of the protected tree and another boundary tree further west in the northern boundary. The associated hard standings north of the building would result in some encroachment into the canopy areas.
28. Subject to considered working practices, there would be potentially minimal threat to the noted hedgerows. However, there is little information before me to clearly show the juxtaposition of the proposed development with the boundary trees. In the absence of a development-specific arboricultural impact assessment, it is not possible to ascertain the effect on the health and long-term viability of those trees, or to conclude that the proposal would not result in a loss of, or threat to the existing trees, or that such impacts would be unavoidable.
29. I note the appellant's contention that previous development proposals were accompanied by arboricultural assessments without concerns, and that one was not requested in conjunction with the appeal proposal. Nevertheless, the previous submissions do not show development in such close proximity to the northern boundary, nor do they show the same extent of development close to the eastern boundary. Furthermore, some of the larger trees on the eastern boundary are not accounted for within those assessments. Accordingly, I am not persuaded that those circumstances provide sufficient confidence that the existing trees could be suitably retained alongside the current proposals.
30. I acknowledge that the appellant considers that such matters could be dealt with through the use of planning conditions. However, in the event that adverse effects or threats were identified, there is little to assure me that the scheme could be delivered without amendment beyond revisions that could be described as minor. In those circumstances, it would not be reasonable to impose a condition that may require an appellant to revert to seeking a further planning permission to implement the proposed development.
31. As there are no clear overriding reasons for allowing a development which could adversely impact trees with amenity value, for the above reasons, I find that the proposal would conflict with the requirements in Policy SE5 of the CELPS, Policy VDLC3 of the GNP and emerging Policy ENV6 of the SADPD (of considerable weight) as they require the retention and continued health and life expectancy of existing trees with amenity value and that contribute to the local landscape character.

Locations for development

32. The largely undeveloped, gently sloping site lies behind road-fronting dwellings on Main Road. It is bordered by residential plots on 3 sides and an open arable field to the north. The site includes a limited area of hardstanding and is otherwise covered with uneven grass, pioneer vegetation and some sapling trees. The site boundaries are a mix of timber panel fencing and the established hedges and trees.
33. The site lies outside but adjacent to the settlement boundary of Goostrey. Consequently, it lies within an area of Open Countryside as defined by the CELPS and the GNP. The land designation is proposed to remain unchanged under the terms of Policy PG9 of the SADPD.
34. Policy PG6 of the CELPS relating to the open countryside seeks to preserve the countryside for its scenic, recreational, aesthetic and productive qualities. It restricts development in those areas to that essentially linked to uses appropriate in the rural area. This is reiterated in Policy RUR10 of the SADPD.
35. The development of the currently unused site would inevitably change its predominantly open undeveloped character, which pertains more to the surrounding countryside than the built-up area of the settlement. The introduction of buildings, surface infrastructure, landscaping and vehicles would cause a significant urbanising effect on the site.
36. In the context of an enclaved site bordered by residential properties on 3 sides, enclosed by a mature vegetated northern boundary which continues the line of the existing settlement limit to the west, the effect on the qualities of the countryside would be less than sites isolated from the built-up area. Nevertheless, as a proposal falling outside of the types of development appropriate to the countryside or exceptions listed in Policy PG6 of the CELPS, there would be a conflict with its requirements.
37. However, there is support for rural economic development beyond land-based rural businesses that would sustain the vitality of rural settlements. Policy EG2 of the CELPS permits development opportunities for local rural employment outside settlements (including local service centres), subject to meeting specified sustainability and other local plan objectives. This follows the principles in Policy EG1 of the CELPS which seeks to achieve an appropriate balance between jobs, services, facilities and homes to create sustainable patterns of development.
38. The appellant refers me to the finding in the GNP which identifies limited opportunities for employment in Goostrey and a consequential high proportion of commuting with a significant reliance on private motor vehicles. Even accounting for the trend for increased home working since the onset of the Covid-19 pandemic, the proposal would provide some opportunity to reduce work-associated travel and enhance local employment opportunities.
39. There is no dispute between the main parties that the site is in an accessible and sustainable location in the context of the Goostrey settlement area. As a site relatively central to the main built-up areas it could be readily accessed by the majority of residents. In addition to providing new opportunities for business, users of the site would have access to local services and facilities within the village to assist in maintaining their viability and ongoing

contribution to the vitality of the settlement. Accordingly, I find it would be consistent with Policies SD1 and SD2 of the CELPS as they seek sustainable forms of development.

40. I note the representations received in respect of vacant office space available elsewhere and that the development could be delivered on brownfield land within the settlement boundary. However, there is little substantive evidence to demonstrate those arguments or that alternative sites are currently available. Accordingly, they are of limited weight in the appeal.
41. In balancing the adverse effect of the development on the character of the locality against the potential benefits of the proposal, I am mindful that the Council has previously seen fit to permit development on the site. Although the relevant permission has now expired, in that context, I find that the delivery of opportunities for local employment, provision of a better balance of land uses and the potential to reduce travel demand, would outweigh the harm to the countryside character.
42. For the above reasons, the proposal would conflict with Policy PG6 of the CELPS and the (considerable) weight afforded to emerging Policy RUR10 of the SADPD as they seek to protect the character of the countryside. However, I find the identified harm to the countryside would be outweighed by the benefits arising from greater provision and potential diversity of employment opportunities within the village, and the attendant potential to reduce the use of private motor vehicles which a high proportion of local commuters are dependent upon. Although subject to compliance with other requirements of the development plan, the location would therefore find support, in principle, under the terms of Policies EG1 and EG2 of the CELPS as they seek to deliver sustainable settlements through the promotion of economic development.

Other Matters

43. A number of objections were received in respect of the proposed highway and parking arrangements. As identified above, as a scheme aimed at providing local opportunities for employment, the proposal has some capacity to limit travel distances and enhance accessibility by means other than by private motor vehicle. The layout shows the provision of 15 spaces and sufficient access width for the majority of opposing vehicles to pass. The Council accept that there is opportunity for an additional 2 spaces to be provided on the site such that the development parking requirements could be met. As a matter which could be secured through planning condition, I find the level of parking could be made acceptable as advocated in Paragraph 55 of the Framework.
44. Subject to this provision and secure on-site cycle parking, I consider that any out-spill of vehicles from the site would be limited. Although I recognise that any out-spill would potentially impede traffic on Main Road, or the visibility of those emerging from entrance points nearby, the effect on highway safety or capacity is, in my opinion, unlikely to be significant. This is a view shared by the Council's highway advisors.
45. As requirements of the development plan, the lack of objections on matters including access, ecology, flood risk, drainage and design are not benefits of the development.

46. I acknowledge that the proposal would make effective use of the land, however, this is not depended on the specific nature or detail of the development proposed. It is therefore a matter of limited weight in the appeal.
47. Whilst I have some sympathy with the appellant's frustrations in the lack of communication by the JBO prior to and during the course of the planning application, and the difficulties that this might cause, this is not a matter for this appeal. I also note the pre-application advice provided by the Council in relation to the development of the site. Whilst relevant, those views are not binding. They do not outweigh the Council's formal finding with regard to the specific detail of the case and alongside the views drawn from wider consultation.

Planning Balance and Conclusion

48. The development would prejudice the function of the JBO and thereby cause harm to a heritage asset of the highest significance. Consistent with the requirements of the Framework, this is a matter to which I must attach great weight.
49. I have also found that the proposal would harm the character and appearance of the countryside. It would potentially harm the health and long-term retention of trees close to the boundaries of the site, including one with recognised high amenity value. These are matters to which I attribute significant weight.
50. The proposal would provide general employment opportunities in an area of limited provision, and which would have potential to reduce travel demands in the locality. These are benefits of considerable weight.
51. Taking all of the above together, I find the demonstrated harm and weight of protection afforded to a designated heritage asset of the highest significance would not be outweighed in the particular circumstances of the case. The benefits of the proposal would not outweigh the totality of the harm identified. Therefore, I conclude that it would conflict with the development plan taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. For the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR