



Appeal Decision

Hearing held on 14 June 2022

Site visit made on 14 June 2022

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2022

Appeal Ref: APP/A0665/W/21/3282223

Brookmeadow, Church Lane, Neston, Cheshire CH64 9UT

- 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 McCarthy & Stone Retirement Lifestyles Ltd against the decision of Cheshire West and Chester Council.
 - The application Ref 19/02087/FUL, dated 24 May 2019, was refused by notice dated 15 July 2021.
 - The development proposed is the erection of Retirement Living Accommodation (Category II type) together with communal facilities, landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of Retirement Living Accommodation (Category II type) together with communal facilities, landscaping and car parking at Brookmeadow, Church Lane, Neston, Cheshire CH64 9UT in accordance with the terms of the application, Ref 19/02087/FUL, dated 24 May 2019, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Prior to the commencement of the hearing the main parties submitted a revised Statement of Common Ground (rSoCG) that, amongst other matters, detailed an agreement in respect of the financial contributions to be paid by the appellant regarding the provision of off-site affordable housing and those related to open space. Thus, there is no dispute between the parties in this respect and the relevant reasons for refusal were withdrawn.

Main Issue

3. The main issue is:
 - i. The effect of the proposed development on Highway safety.

Reasons

Highway Safety

4. Policy STRAT10 of the Cheshire West & Chester Council Local Plan (Part one) Strategic Policies (LP1) and Policy T5 of the Cheshire West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (LP2), amongst other matters, requires that additional traffic be accommodated safely and that appropriate provision is made for access and parking.

5. Paragraph 111 of the National Planning Policy Framework (the Framework) details that "Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."
6. The appeal site consists of a two storey detached dwelling and somewhat overgrown grounds that accommodates a number of mature trees. The appeal site is accessed off Church Lane that also serves other properties of a variety of styles, including terraced properties.
7. The road network immediately around the appeal site is narrow, accommodating on street car parking and often without a footpath. Where footpaths are present, that they are narrow, occasionally obstructed by resident's planters, bins and parked cars. Consequently, pedestrians often walk in the carriageway.
8. I saw at the site visit that there are a number of particularly narrow sections and points in the road, often accentuated by on street carparking, including between the access to the appeal site and the junction of Eldon Terrace and Church Lane and where Church Lane narrows further and passes under a narrow bridge towards the town centre.
9. Church Lane serves as a walking and cycling route, including linking to the town centre, the Wirral Way and Burton Marsh Greenway. Furthermore, neighbouring uses, including Neston Primary School and Neston Air Cadets, also effect the use of the surrounding road network.
10. The appellant's 'Hearing Statement on Highways Issues' identifies that traffic surveys undertaken in support of the appeal scheme shows "a range of two-way flows passing the appeal site entrance of between 4 and 9 vehicles per hour".
11. It was discussed at the hearing that vehicle speeds on Church Lane and adjoining streets are low, necessitated by the restricted width of the carriage way and while no accidents have been recorded, there was anecdotal evidence from residents of near misses and low speed collisions resulting in limited damage to vehicles.
12. The existing roads around the appeal site are of a distinct character, reflecting variety of users and the constraints that the infrastructure places upon those users.
13. During the construction phase of the appeal scheme additional traffic, including plant and machinery, would access the site. At the hearing the appellant referred to a Construction Management Plan (CMP) that would seek to limit the effect of construction process on the surrounding highway and residents. I am satisfied that a CMP could be subject of a suitably worded condition attached to a permission resulting from this appeal.
14. At the hearing the appellant identified a construction phase lasting some 63 weeks, initially carrying out ground works on the site before constructing the car park and finally the building. At the hearing the appellant identified that the initial phases of construction would generate an average of some 5 delivery vehicle movements per day, with "surges" for activities such as concrete pouring.

15. I am also aware that, as discussed at the hearing, accessing the site is, and as a result of the proposed development would be, particularly tight for larger vehicles. While the appellant has referred to tracking drawings attesting to the theoretical ability to access the site from Church Lane with, as described by the appellant, "cars parked responsibly". In practice there is the potential for some disruption and inconvenience to residents being asked to move vehicles and potentially in the form of temporary Traffic Regulation Orders to restrict on street parking at particular locations and/or times. Furthermore, I note that some alterations are proposed to the access, the details of which could be adequately controlled by a suitably worded condition.
16. It is clear that the construction phase of the appeal scheme will result in some disruption for local residents, in particular to facilitate larger vehicles accessing the site. Nonetheless, this disruption would be temporary, and the effects on highway safety could be managed by a suitably worded condition requiring a CMP. As such the level of disruption and effect on highway safety is not such that would warrant the dismissal of the appeal on these grounds.
17. The appeal scheme, in occupation, would as detailed in the appellant's highways statement generate "48 pedestrian movements", minimal cycle movements and, in terms of vehicle movements, the appellant predicts "some 70 vehicle movements per 12 hour day" with 2 and 4 vehicle moments during the morning and evening peak hour respectively. I note that the future occupiers of the appeal property will be older persons and therefore more likely than the general population to suffer mobility issues.
18. The submitted plans show a large car parking area, it is not at dispute between the parties that this car parking area can accommodate all of the car parking requirements of the appeal scheme and based on the evidence before me I find no reason to conclude otherwise.
19. Opportunities for improvement of the existing situation and to mitigate the effects of the appeal scheme were discussed at the hearing. This included the formalisation of what residents described as an informal one-way system on part of Church Lane and Eldon Terrace, and the imposition of Traffic Regulation Orders to control on street carparking. The Council and local residents were resistant to such restrictions.
20. While the level of vehicular traffic likely to be generated from the proposal is not significant, these movements nonetheless represent a clear increase in vehicle and in particular pedestrian movements from the appeal site on to Church Lane.
21. In common with the current situation, as a result of the narrow, often obstructed or entirely absent pavement, pedestrians and in particular users of mobility scooters and wheelchairs from the appeal scheme would often have to use the carriageway on Church Lane.
22. Such a situation is far from ideal, however on the basis of the evidence before me I am satisfied that as a result of the limited traffic flow and low speeds of vehicles, the effect of the appeal scheme does not amount to an unacceptable impact on highway safety. Furthermore, I do not find that the cumulative impacts of the appeal scheme and the existing situation are so severe as to justify the dismissal of the appeal on these grounds.

23. As such I find that the appeal scheme is not contrary to Policy STRAT 10 of the LP1 and Policy T5 of the LP2 and the provisions of the Framework.

Other Matters

24. Cheshire West and Chester Council referred to an existing significant housing supply. Nonetheless, it is clear from the evidence before me that there is an identified need for housing for older people and the provision of such is supported by policies of the Local Plan and the Neighbourhood Plan.
25. While it is not at dispute between the main parties, a number of local residents who objected to the appeal scheme referred to, amongst other matters, the scale of the proposed building.
26. I saw at the site visit that the area surrounding the appeal site hosts a varied built form, though generally of a domestic scale. The appeal scheme is shown on the submitted plans as being a substantial building that has nonetheless been designed to appear as several connected units, including changes in height. The proposed building is shown as being set within the site, maintaining good separation distances from the neighbouring properties. Furthermore, existing trees to the boundaries of the site, that are proposed to be largely retained and enhanced effectively with additional planting, effectively screen the site and would soften the appearance of the appeal scheme.

Conditions and Planning Obligation

27. The rSoCG detailed conditions which the parties agreed should be imposed should the appeal be successful. Furthermore, a completed Planning Obligation securing contributions in respect of Affordable Housing and Sports Pitches and other related contributions has been submitted.
28. In considering the conditions that could be applied, I have had regard to the guidance set out in the Framework and the Planning Practice Guidance (PPG), in particular the six tests referred to in paragraphs 56 of the Framework and 21a-003-20190723 of the PPG.
29. In the interests of clarity, I have included conditions to detail the life of the permission and the approved plans, including the tree protection plan, drainage and landscape layout, site levels and restricting the age of occupiers of the appeal scheme to over 55 year olds only.
30. In the interests of highway safety and the living conditions of the occupiers of neighbouring properties I have included conditions relating to a CMP and access. In the interests of the environment I have included a condition relating to a Construction Environmental Management Plan. In the interests of the environment I have also included conditions relating to contamination and sustainable drainage, water voles, reptiles and badgers, the provision of bird boxes, piling and foul water.
31. Also in the interests of the environment I have included conditions relating to water consumption and carbon dioxide emissions.
32. In the interests of the character and appearance of the area, I have included conditions relating to external materials, soft and hard landscaping, boundary treatments, refuse storage and external lighting. In the interests of highway

safety, I have included a condition relating to the provision of the car park as shown on the submitted plans.

33. In the interests of the living conditions of the occupiers of neighbouring properties, I have included a condition controlling the hours of construction, including deliveries to and from the site.
34. Turning to the Planning obligation, regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework details that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation meets the three tests detail in the legislation. On the basis of the evidence before me I am satisfied that the Planning Obligation is necessary to make the development acceptable in planning terms, is directly related to the development and fairly and reasonably related in scale and kind to the development. As such the three tests are met.
35. Furthermore, it is not at dispute between the parties that the Planning Obligation secures appropriate provision for Affordable Housing and other contributions relating to Open Space and based on the evidence before me I find no substantive reason to conclude otherwise.

Conclusion

36. For the reasons given above I conclude that the appeal should be allowed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Giles Cannock QC

Neil Appleton

Chris Butt

Jago Keen

Kenny Brown

FOR THE LOCAL PLANNING AUTHORITY:

Catherine Reay

Tony Lungley

INTERESTED PARTIES:

Councillor Martin Barker

David Reece

Peter Ellison

Mr Moss

Victor Ricketts

Jennifer Ricketts

Brian Jones

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following plans:
 - NW-2572-3.1-AC-01 Rev B Site Location and Context Plan
 - NW-2572-3.1-AC-03-1 Rev E Proposed Site Plan
 - NW-2572-3.1-AC-03-2 Rev A Proposed Site Access
 - NW-2572-3.1-AC-04 Rev B Context Elevations
 - NW-2572-3.1-AC-05 Rev A Site Section
 - NW-2572-3.1-AC-06-1 Rev C Elevations 1
 - NW-2572-3.1-AC-06-2 Rev C Elevations 2
 - NW-2572-3.1-AC-07-01 Rev B Floor Plans 1
 - NW-2572-3.1-AC-07-02 Rev B Floor Plans 2
 - NW-2572-3.1-AC-08 Rev A Boundary Treatment Plan
 - McC&S-ET-N-002 Rev C Proposed Drainage Layout
 - 1138-KC-XX-YTREE-TCP01Rev0 Tree Constraints Plan
 - 1138-KC-XX-YTREE-TPP01RevA Tree Protection Plan
 - NW-2572-03-LA-001 Rev B Landscape Layout
 - NW-2572-03-LA-002 Rev A Planting Plan
3. No development shall commence until a construction management plan has been submitted to and approved in writing by the local planning authority. The construction management plan shall include details of construction traffic, construction vehicle parking, details of construction storage facilities and site compounds, a demolition method statement, a dust control scheme, vehicle cleaning/wheel washing facilities, the management of any deposits of debris on the highway and details of piling or other subsurface ground vibration techniques. The development shall be carried out in accordance with the approved details.
4. No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. The construction management plan shall include appropriate pollution prevention measures as referenced in Section 6.2 of the Preliminary Ecological Appraisal (Biocensus, October 2018). The development shall be carried out in accordance with the approved details.
5. No development shall commence until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved details before development begins.

6. Details of existing and proposed site levels plans, site section plans in relation to neighbouring properties and finished floor levels shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The development shall be implemented only in accordance with the approved details and levels.
7. No development shall commence until full details of a scheme for a sustainable drainage system to serve the site, and method of implementation including arrangements to secure funding and maintenance for the lifetime of the development through an appropriate legally binding agreement have been submitted to and approved by the Local Planning Authority. The approved scheme shall be implemented in accordance with the approved details and timetable. Thereafter the sustainable drainage system shall be managed and maintained in accordance with the approved scheme. Details of a scheme for a sustainable drainage system should be based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development.
8. Details of the proposed changes to the site access including the detailed design of the access, visibility splays and surfacing materials shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The development shall be built in accordance with the approved details.
9. Prior to the commencement of development an up-to-date water vole survey shall be undertaken and method statement detailing any mitigation to avoid harmful impacts to water voles shall be submitted and approved in writing by the local planning authority prior to the commencement of the development. The development shall be carried out in accordance with the approved details.
10. Prior to the commencement of development an up-to-date badger survey shall be undertaken and method statement detailing any mitigation to avoid harmful impacts to badgers shall be submitted and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
11. No above ground development shall commence until samples of the materials to be used in the construction of external surfaces of the building have been submitted to and approved in writing by the local planning authority. The development shall be carried out in complete accordance with the approved materials.
12. Details of hard and soft landscaping and a landscape management plan shall be submitted to and approved in writing by the local planning authority prior to the commencement of above ground development. The planting plan shall include details of native replacement tree planting on a ratio of 2:1 for significant and healthy trees lost as a result of the development. The details as approved shall be carried out in the first available planting season following the approval of the details. Any trees, shrubs or plants that die within a period of five years or are removed and/or become seriously damaged or diseased in that period, shall be replaced in the first available planting season with others of similar size and species.

- 13.No above ground development shall take place until a scheme for the provision of bird boxes within the site has been submitted to and approved in writing by the local planning authority. The bird boxes shall be installed prior to first occupation of the development hereby approved and shall be retained thereafter.
- 14.Prior to the first occupation of the development details of the siting, design and appearance of the boundary treatment shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the first occupation of the development.
- 15.Prior to the first occupation of the development details of the siting, design and appearance of the refuse storage area shall be submitted to and approved in writing by the local planning authority. The details shall be implemented as approved prior to the first occupation of the development. Thereafter, the refuse storage area shall be retained and made available for use by the development hereby permitted at all times thereafter.
- 16.Prior to the first occupation of the development the vehicle turning areas and parking spaces as shown on the approved plans shall be provided and made available for use thereafter.
- 17.The hours of construction, including deliveries to and from the site, shall only be permitted between 08.00 to 18.00 Mondays to Fridays; 08.00 to 13.00 on Saturdays, and no times on Sundays or Bank/Public Holidays.
- 18.Prior to the installation of any external lighting, details shall first be submitted to and approved in writing by the local planning authority. Such details shall include the equipment and supporting structures, together with isolux drawings to demonstrate the levels of illumination within the site and the amount of any overspill of lighting beyond the site boundaries, together with the hours at which such lighting is to be operated. No other external lighting shall be operated other than in accordance with details approved by the local planning authority.
- 19.The development hereby approved shall be designed and constructed to achieve a reduction in carbon dioxide emissions of at least 19% against the Target Emission Rate of the 2013 Building Regulations (Part L).
- 20.The residential flats hereby approved shall meet the National Housing Standard for water consumption of 110 litres per person per day.
- 21.The occupation of the retirement living housing hereby approved shall be restricted to persons aged 55 years or over.
- 22.The development shall be implemented in accordance with the Reasonable Avoidance Measures relating to Badgers within the Biocensus 'Preliminary Ecological Appraisal' Report - section 6.1.5(dated July 2019, version 1.0).
- 23.The development shall be implemented in accordance with the Reasonable Avoidance Measures relating to reptiles within the Biocensus 'Preliminary Ecological Appraisal' Report - section 6.1.4(dated July 2019).

24. Foul water shall be discharge to the foul water sewer system and surface water drainage will include a Polystorm Geo-cell filtering system to prevent pollutants from entering the watercourse in accordance with the approved plans.
25. No operations requiring piling or subsurface vibration ground improvement techniques shall be carried out on the site unless details of the work, monitoring and environmental controls proposed have been submitted to and approved in writing by the Local Planning Authority. All such works shall be undertaken in accordance with the approved scheme.

End of schedule