



Appeal Decision

Site visit made on 4 October 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2022

Appeal Ref: APP/R0660/W/22/3298807

44 Knutsford Road, Wilmslow SK9 6JB

- 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 Mr Gordon Turner against the decision of Cheshire East Council.
 - The application Ref 21/5074M, dated 29 September 2021, was refused by notice dated 4 March 2022.
 - The development proposed is the erection of one detached dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of one detached dwelling at 44 Knutsford Road, Wilmslow SK9 6JB, in accordance with the terms of application Ref 21/5074M, dated 29 September 2021, subject to the conditions set out in a Schedule to this Decision.

Application for costs

2. An application for costs was made by Mr Gordon Turner against Cheshire East Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For the purposes of the appeal, the appellant provided an assessment of the effects of the scheme on daylight and sunlight in relation to neighbouring properties. It was issued to the Council on 5 May 2022 with the suggestion that the second reason for refusal of planning permission be withdrawn.
4. 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 with the issue of overshadowing 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 all parties were consulted.

Main Issues

5. The main issues are the effect of the proposed development on the living conditions of:
 - prospective occupiers - with particular regard to the distance between the proposed dwelling and a commercial premises to the south-west
 - neighbouring residents - with particular regard to loss of light at the residential properties at 4 and 5 Regent Close.

Reasons

Proximity to commercial premises

6. The proposed dwelling and detached garage would be sited within part of the uncharacteristically large rear garden area associated with 44 Knutsford Road. This is bordered by numerous residential properties in addition to a commercial premises at its south-western extent. The common boundary with the vehicle servicing garage consists of timber panel fencing at various heights. This is backed by hedging and some shrubs within the appeal site. Beyond the fence is an access road with a workshop building containing vehicle service bays.
7. According to the Council, the proposed dwelling would be some 17.8m from the service bay building. This would be below the guideline distance of 25m set out in saved Policy DC38 of the Macclesfield Borough Local Plan [2004] (the MBLP). The policy seeks to achieve adequate space, light and privacy for new and existing residential development.
8. There is no dispute between the main parties that the proposal would fail to meet the guideline. However, in my view, the gap between the dwelling and workshop, which is single storey, would be sufficient to provide adequate space to the rear of the proposed building. In the context of a scheme within a large plot, the proposed dwelling would be sufficiently surrounded by open areas within the site and other garden areas beyond.
9. The spacing about the building would ensure good amounts of natural light to serve the accommodation. Furthermore, the boundary fencing and vegetation would ensure sufficient screening was in place to prevent overlooking of the proposed dwelling from the commercial site.
10. The relationship between the proposal and the service garage would not be significantly different to other houses which border the commercial premises. Elsewhere, there is no dispute that the interface distances to other neighbouring buildings would be sufficient to avoid adverse effects on living conditions of the prospective occupiers.
11. For the above reasons, I find that the failure of the proposal to meet the guideline distance between buildings would not result in harm to the living conditions of prospective occupiers arising from the considerations of space, light and privacy. It would thereby comply with Policy DC38 of the MBLP as it seeks to secure a suitable standard of living conditions for future residents.

Daylight and sunlight

12. The plans show the building to be higher than the detached properties at the head of Regent Close, a residential cul-de-sac to the north-west of the site. The dwelling would be about 4m from the rear boundary of 5 Regent Close, as estimated by the Council. Notwithstanding the proposed hipped roof form of the building, the scale, siting and orientation would result in some overshadowing to the neighbouring garden areas on Regent Close.
13. However, the degree of established vegetation on the north-western boundary of the site is not insignificant. It consists of a dense line of mature bushes and some small trees which provide a screen between the respective sites. This will cause some overshadowing to occur at present.

14. In comparison, the overshadowing arising from the dwelling would be limited both in the extent of the garden areas affected at any particular time, and the duration for which it would last. Although this would be at its greatest during mid to late morning, particularly so in winter months, I find the effect on the living conditions of the neighbouring occupiers would not be so significant to warrant a refusal of planning permission.
15. The distance to the houses on Regent Close would be sufficient to prevent any significant effects caused by the dwelling on daylight or sunlight reaching habitable room windows at the rear of the houses. Effects from the proposed garage building would be negligible given its height, form and position.
16. Some overshadowing of the garden to the rear of 46 Knutsford Road would also occur. This would be later in the evening. However, the duration of the shadowing effect would also be limited to avoid a significant adverse effect on those neighbouring residents.
17. For the above reasons, I find that the proposal would accord with Policy SE1 of the Cheshire East Local Plan Strategy 2010-2030 [2017], saved Policy DC3 of the MBLP and the National Planning Policy Framework (the Framework) as they seek to avoid significant injury to, and preserve the amenities of, adjoining residential property, including through loss of sunlight and daylight.

Other Matters

18. I acknowledge the third-party concerns in relation to the likely effects of noise arising from the commercial site. However, if this was the Council's concern, it was not stated. Whilst I have little doubt that there would be some noise outbreak from the garage experienced at the proposed dwelling, there is little to indicate that noise has been a source of concern to other nearby neighbours, or that the business operates in an unneighbourly manner.
19. I note that there was no objection from the Council's Environmental Health advisors in relation to such concerns. Furthermore, there was little evidence of complaints received by the Council in relation to noise emanating from the garage. At the time of my site visit, albeit a snapshot in time, I experienced nothing that would cause me to disagree with that professional view.
20. The windows serving the proposed dwelling would address the main garden areas to the front and rear. Although some sideways views of gardens and nearby houses would be afforded, these would be little different to those arising from the existing arrangement of development within the principally residential area. Accordingly, any overlooking would not materially affect neighbours' living conditions.
21. Whilst I have little doubt that the use of the access would intensify, this would be a limited increase. Given that the layout of the site includes space for vehicles, including visitor parking and turning, I find the likely effects on highway safety or capacity would not be significant.
22. I note the aspiration for a revised Wilmslow Neighbourhood Plan to seek to prevent future backland development. In retaining much of the site as garden area the Council consider that the proposal aligns with Policy NE6 of the Wilmslow Neighbourhood Plan [2019]. Having visited the site and assessed the proposal, I agree with that view. The proposal would utilise parts of the central grassed area of the site. Any biodiversity loss would be limited and could be

offset or enhanced by requirements to be secured through planning condition. Although the proposal would not be street-fronting, it would make efficient use of a plot which is substantially greater in size than those around it.

23. There is little before me to demonstrate that any subsequent effects in relation to the severance of a green corridor, the green infrastructure value of the site, resultant loss of biodiversity or effects on wildlife would be significant. Although some existing planting to the site peripheries would be removed, opportunities for suitable mitigation would be provided. Accordingly, I find those arguments are of limited weight in the specific circumstances of the case.
24. I also note the frustrations expressed by the appellant in relation to the level of communication from the Council during its consideration of the planning application. However, this is not a matter for the appeal.

Conditions

25. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the National Planning Practice Guidance in terms of the use of planning conditions. Some have been edited for precision and I have re-ordered them in accordance with their implementation requirements. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
26. As part of the site has a history of use as a timber yard, conditions in relation to contamination assessment and remediation are necessary to ensure a safe form of development. To protect and enhance biodiversity interests, conditions avoiding interference with active bird nesting, the implementation of landscaping and biodiversity enhancement measures are reasonable. To ensure assimilation and avoid conflict with surrounding interests, details of site levels, external materials and limited use of obscure glazing are necessary.
27. Although the appellant initially objected to the conditions relating to land contamination and site levels, no objection was registered against a subsequent Regulation 2(4) Notice¹. As conditions necessary to meet development plan requirements these have been imposed despite the appellant's concerns in relation to the timeliness of decisions by the Council in discharging condition requirements.

Conclusion

28. For the reasons given I conclude that the appeal should succeed.

R Hitchcock

INSPECTOR

¹ Town and Country Planning (Pre-commencement Conditions) Regulations 2018

Schedule of Conditions to Planning Permission Ref. 21/5074M

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing No. P1242/01 (Site Location Plan)
Drawing No. P1242/04 (Proposed Site Plan)
Drawing No. P1242/06 (Proposed Floor Plans)
Drawing No. P1242/07 (Proposed Elevations)
Drawing No. P1242/08 (Proposed Elevations)
Drawing No. P1242/09 (Proposed Site Elevation)
Drawing No. P1242/11 (Proposed Site Elevations)
Drawing No. P1242/14 (Proposed Site Plan with Landscape)
- 3) Details of the proposed ground levels and the level of the proposed floor slabs shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The development shall be carried out in accordance with the approved details.
- 4) No development (other than demolition and site clearance works) shall commence until:
 - a) A proportionate risk assessment and (if appropriate) site sampling exercise is undertaken to address the risks posed by land contamination. This should be submitted to and approved in writing by the Local Planning Authority.
 - b) Should the above indicate that remediation is necessary, a Remediation Strategy shall be submitted to and approved in writing by the Local Planning Authority.
The remedial scheme shall be carried out in accordance with the approved Remediation Strategy unless otherwise agreed in writing by the Local Planning Authority.
- 5) 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.
- 6) 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.
- 7) No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year, unless a detailed survey has been carried out to check for

nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone taking place.

- 8) The materials to be used to construct the external surfaces of the development hereby approved 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.
- 9) Prior to the first occupation of the development, detailed proposals for the incorporation of features to enhance the biodiversity value of the site shall be submitted to and approved in writing by the Local Planning Authority. The submitted strategy should include proposals for the provision of features for nesting birds including house sparrow and roosting bats (any external lighting should avoid direct light spill upon bat roost features). The proposals shall be permanently installed in accordance with the approved details.
- 10) Prior to first occupation, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
- 11) The approved landscaping plan shall be completed in accordance with the following:-
 - a) All hard and soft landscaping works shall be completed 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 agreed with the Local Planning Authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification -for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction (Recommendations).
 - d) 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.

e) 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.

- 12) The building hereby permitted shall not be occupied until the first-floor bathroom window has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened in a manner to afford views across the rear garden area of 46 Knutsford Road. Details of the type of obscured glazing and window opening (including any restriction) shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing and opening mechanism shall be retained in accordance with the agreed detail thereafter.

END.