



Appeal Decision

Site visit made on 15 November 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2022

Appeal Ref: APP/A0665/W/22/3301050

8 and 10 Birch Heath Road, Tarporley, CW6 9UR

- 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 Jacob Homes against the decision of Cheshire West and Chester Council.
 - The application Ref 21/03535/FUL, dated 20 August 2021, was refused by notice dated 7 March 2022.
 - The development proposed is 'the proposed infill development of six pairs of 3-bed semi-detached dwellings, two 4-bed detached dwellings and three 2-bed affordable dwellings for the elderly'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Following the decision of the Council, the appellant has submitted additional information in relation to protected species and site biodiversity. They suggest that this information should be considered in the appeal decision to address the Council's second reason for refusal.
3. 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 biodiversity interests, the interests of fairness and the comments from the Council following the further consultation with their ecological advisors. Noting the limited concerns of third parties in respect of the matter and the opportunity for the Council to fully respond, I do not consider that any party will be prejudiced if I take that information into account. I have subsequently referred to it in reaching my decision.

Main Issues

4. The main issues are the effect on protected species and biodiversity and whether or not the site would provide a suitable location for housing.

Reasons

Biodiversity

5. The eastern part of the site consists of two extended semi-detached dwellings with various outbuildings set alongside a shared driveway and an area of hardstanding. They lie adjacent to housing development on Birch Heath Road

- and Honeyfields. The remainder of the site is a field area to the west of the houses. It is bordered by established tree lines along the north and west boundaries where the site abuts an access track leading to a range of agricultural buildings to the north.
6. The site access lies between a residential bungalow on the truncated length of Birch Heath Road and an electricity distribution site. The latter has a common boundary with the field and is delineated by a high conifer screen.
 7. For the purpose of the planning application and subsequently the appeal, the appellant has provided ecological survey information, including in relation to bats. As above, the information submitted for the appeal sought to address identified shortfalls in the initial survey work – notably in respect of the potential for trees shown for removal to accommodate bat roosting.
 8. The Council's assessment of the cumulative survey effort concludes that, subject to precautionary working practices in the demolition of the existing buildings, it would be reasonably unlikely that bats would be affected by the development. Having visited the site and considered the information provided, I find no reason to disagree with that determination and I conclude that the likelihood of European Protected Species being present and affected by the proposed development would be negligible.
 9. In addition, a Biodiversity Metric was submitted in support of the scheme. An accompanying report 'Biodiversity Enhancement Measures'¹ identifies the trees on the western boundary to be retained and protected. However, it is clear from the submitted plans that these are proposed for removal. According to the Council, in addition to some trees previously removed from the land, some 41 trees would be removed from that area and towards the north-eastern corner of the site.
 10. Section 197 of the Town and Country Planning Act 1990 places a duty on Local Planning Authorities to ensure, whenever it is appropriate, that in granting planning permission for any development, adequate provision is made, by the imposition of conditions, for the preservation and planting of trees. This applies equally at the appeal stage.
 11. The ecological enhancements extend to some 11 new native trees, the creation of a small lowland meadow bounded by native hedges, and nesting/roosting boxes. Additionally, the ability for hedgehogs to traverse the site would be retained through the provision of fencing gaps.
 12. However, there is little before me to demonstrate how those mitigation measures would be implemented and secured to ensure their continuity. The lowland meadow creation and undefined tree planting would coincide with amenity garden areas immediately adjacent to houses with direct access to them. As a sensitive specialised habitat which is identified as difficult to create, particularly in an urban setting, there is limited evidence to demonstrate how the lowland meadow would be achieved and managed.
 13. The extent of tree removal would be significant against the limited number of new trees proposed. Furthermore, the proximity of the planting to proposed units and existing houses would significantly limit the size of trees capable of realistic retention. The layout of the site would significantly limit the ability to

¹ Biodiversity Enhancement Measures 10276-Tarporley-Biodiversity-V1 03.05.22

accommodate other meaningful tree planting such that I have little doubt that a condition for its requirement would fail the test of reasonableness. In the absence of justification otherwise, I find that adequate provision for compensatory planting would not be met and the duty under s197 of the Act would not be discharged.

14. Moreover, the Council highlights that there is a discrepancy between the assessed and proposed area calculations within the Biodiversity Metric; the latter showing a greater figure. Whilst I recognise that the appellant owns additional land in the vicinity, there is little before me to demonstrate that it is capable of accommodating either replacement trees or other enhancements to offset the identified biodiversity losses on the site.
15. For the reasons above, whilst I am satisfied that protected species would remain unaffected by the development of the site, I find the proposal fails to demonstrate that biodiversity would be preserved or adequately compensated for on the site. It would thereby conflict with Policy ENV4 of the Cheshire West and Chester Council Local Plan (Part 1) Strategic Policies (the LP1) and Policy DM44 of the Cheshire West and Chester Council Local Plan (Part 2) Land Allocations and Detailed Policies (the LP2) as they require no net loss of natural assets and seek to provide net gains.

Locations for housing

16. As a Key Service Centre within the Rural Area, Policy STRAT8 of the LP1 sets out that Tarporley will be a focus for new development. It states that it will accommodate at least 300 dwellings over the plan period to 2030 as one of the larger rural centres.
17. According to the Council, the site is divided by the Tarporley settlement boundary as defined in the LP2. The areas containing the access, houses and outbuildings lie within the settlement. The majority undeveloped part of the site lies within the Rural Area and countryside.
18. The supporting text to STRAT8 identifies the approach to housing delivery aims to support thriving rural communities and protect the intrinsic character of the countryside. This follows from Policy STRAT2's aim to maintain the vitality and viability of rural areas with priority for housing to be directed to the most sustainable locations. It is also consistent with the aims of STRAT9 as it seeks to protect the intrinsic character of the countryside.
19. The site extends from the settlement towards the A49 road corridor, a significant linear feature in the locality. It is bordered by housing to the east and electricity supply facility to the south. A range of agricultural buildings lies to the north which create a spur of development between the built-up area of the settlement and the road corridor.
20. The site benefits from a well-defined northern boundary consisting of established trees which are largely shown for retention. Similarly, to the south and west are lines of trees which provide a strong sense of enclosure. Although most of the trees along the western boundary would be removed, there are successive tree lines beyond the site – notably along the A49. Accordingly, the site is largely enclaved by other development and landscaping.
21. The Council describe the western part of the site as an area of open countryside. However, its enclosure and containment are distinct from the

gently undulating open fields bordered by hedging which lie beyond the buildings to the north, and to the west of the main road. It contributes little to the wider character of the countryside and, significantly, as a visually landlocked site it pertains more to the settlement area than the wider characteristic rural landscape.

22. Accordingly, notwithstanding that the site straddles the settlement boundary, I find there would be little sense of intrusion on the rural landscape in the particular circumstances of the case. Furthermore, given the proximity of the A49 and other development lying close to it nearby, I find the site's development for housing would not result in any notable adverse effect on the settlement's character or setting.
23. There is little before me to demonstrate that the proposal would result in any harmful impacts in relation to the other stated aims of the strategic housing policies. I recognise that planning permissions and housing commitments to date have resulted in much of the identified housing need for Tarporley being met despite several years left to run within the plan period up to 2030. However, the LP1 is clear that the figures provided within Policy STRAT8 are a minimum. This is acknowledged in the Tarporley Neighbourhood Plan 2010-2030 [2016] and is consistent with the National Planning Policy Framework's (the Framework) approach to delivering a sufficient supply of housing.
24. The proposal would deliver housing at a density similar to that found in the immediate locality. The layout would provide sufficient parking for prospective residents and would generate an amount of traffic that could be accommodated without significant impact on the local highway network.
25. Moreover, as a site located within walking and cycling distance of a range of local services and facilities, including access to public transport, it is located where travel needs would be limited and not necessarily reliant on the use of private motor vehicles. The proposed use could therefore support local businesses and assist in maintaining the vitality and viability of the local rural community. This is not disputed by the Council.
26. There is little evidence to suggest that there would be a notable adverse effect from the delivery of 17 houses on the Council's strategic housing aims or the implementation of its spatial strategy to achieve sustainable housing delivery. Furthermore, whilst the LP2 has introduced the settlement boundary, there is little before me to demonstrate that the primary aims for housing delivery and protection of the countryside are varied by it. Accordingly, whilst there is a minor conflict with Policy DM19 of the LP2, the proposal is consistent with most of the criteria listed within it.
27. For the above reasons, I find that the development of the physically and visually contained site would align with the stated aims of Policies STRAT1, STRAT2, STRAT8 and STRAT9 in the LP1 as they seek to direct housing to sustainable rural locations without harm to the intrinsic character and beauty of the Cheshire countryside. Although there would be a minor conflict with Policy DM19 of the LP2 in relation to development beyond the identified settlement limit, in the absence of demonstrated conflict with the reasons for imposing it, I find this would be outweighed by the benefits of housing delivery, including a policy compliant proportion of affordable units and housing designed for an ageing population.

Other Matters

28. I note the concerns of the Parish Council that the proposal would not contribute to village infrastructure. However, such contributions would arise from any due Community Infrastructure Levy. Additionally, the development of the site for housing would attract commitments in relation to public open space. This is a matter which could be secured through a planning obligation under s106 of the Act.
29. The site would require a sustainable drainage strategy to avoid flood risk on the site or elsewhere. This could be addressed through planning conditions. Any effects from the construction period would be short-term and could be mitigated by careful construction management, which could also be conditioned.
30. Concerns have been raised by third parties as to the potential effects of the site's development on their living conditions. The siting of units addressing the rear-side boundary of 7 Honeyfields would provide a sufficient offset to ensure the extent of overlooking of the rear garden and conservatory of that property would be limited. It would be no greater than that normally experienced in a residential estate setting. It would not, therefore, warrant a refusal of planning permission on that basis.

Planning Balance and Conclusion

31. I have found in favour of the appellant with respect to the location for housing and the protection of the countryside and European protected species. However, even accounting for the benefits of a policy compliant amount of affordable and elderly accommodation housing, I do not consider these matters outweigh the identified harm in relation to the site biodiversity value – particularly in relation to trees. Consequently, the appeal conflicts with the development plan taken as a whole and there are no other considerations, including the Framework, that outweigh this conflict. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR