



Appeal Decision

Site visit made on 6 September 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 December 2022

Appeal Ref: APP/R0660/W/22/3295580

Fox Hollow, 1 Leek Road, Congleton CW12 3HS

- 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 Mr & Mrs Paul Evans against the decision of Cheshire East Council.
 - The application Ref 20/1614C, dated 15 April 2020, was refused by notice dated 18 January 2022.
 - The development proposed is a 3 bedroom detached dormer style bungalow, within the garden of 01 Leek Road, Congleton.
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Decision

1. The appeal is allowed and outline planning permission is granted for a 3 bedroom detached dormer bungalow within the garden of 01 Leek Road at Fox Hollow, 1 Leek Road, Congleton CW12 3HS in accordance with the terms of the application, Ref 20/1614C, dated 15 April 2020, subject to the conditions in the attached schedule.

Procedural Matters

2. The application is made in outline with landscaping reserved for future consideration. I have therefore treated the minimal landscaping details shown on the plans as indicative.
3. The Council's second reason for refusal states that insufficient information had been submitted with the application to show that noise impact from the adjacent railway line on residential amenity and quality of life of future occupants had not been adequately assessed. In order to address this reason for refusal the appellant has submitted additional information in the form of a Noise Impact Assessment (NIA). I am satisfied that no party, including the Council who have had opportunity to formally comment on the additional information, would be prejudiced by my assessment of the scheme with regard to it and I have taken it into account in reaching my decision.
4. The Council's decision notice lists the plans which it considered during the determination of the application. Although these plans included a drawing detailing the proposed front elevation of the dwelling, no plans detailing the proposed side or rear elevations were included. Despite this omission, floor plans were submitted which clearly identified the location of any openings on the side and rear elevations. On that basis, I am satisfied that I have enough information before me to determine the appeal.

Main Issues

5. The main issues are:

- the effect of the proposed development on the living conditions of occupiers of 3 Leek Road, with particular regard to noise and disturbance; and
- whether the development would provide acceptable living conditions for future occupants in relation to noise.

Reasons

Living Conditions of Occupiers of 3 Leek Road

6. The appeal site is located within a predominately residential area and forms part of the front garden of 1 Leek Road. No 1 is a split-level detached dwelling which sits within a generously sized plot, with the majority of its amenity space located to the front of the dwelling. The site is accessed from Leek Road via an existing shared private drive which passes in front of 3 Leek Road.
7. The proposed detached dwelling would utilise the existing vehicular access and private drive which is currently shared by No's 1 and 3. Although the driveway runs in front of No 3 and through its front garden, due to the positioning of No 3 which is set towards the rear of the plot, the driveway does not run directly in front of the front elevation of the dwelling and is separated by a generous section of private garden. Additionally, close boarded timber fencing has been erected along the edge of the shared private driveway resulting in any passing vehicles being largely screened from views from No 3 and its garden space.
8. Any vehicles travelling to or from No 1 will utilise the existing access and shared driveway and will pass in front of No 3. This arrangement has been in place since both dwellings were constructed and is one which I do not consider to be uncommon in residential areas. Concerns however have been raised that the proposed development would result in increased vehicle movements along the shared driveway.
9. I acknowledge that the provision of an additional dwelling would result in an increase in vehicle movements along the shared driveway, however there is no evidence before me which would suggest that this increase would be significant or result in an unacceptable increase in noise and disturbance to occupiers of No 3. Furthermore, I find that the provision of one additional moderately sized dwelling would not give rise to a significant increase in vehicle movements and would therefore not result in harm being caused to the living conditions of occupiers of No 3.
10. As detailed above, No 3 is set towards the rear of the plot and therefore a large amount of its garden area is located to the front. Although the shared driveway effectively splits the front garden, the majority is an enclosed area located immediately in front of the dwelling. A small section of garden land is located to the south of the driveway, which at the time of my site visit contained a small number of children's toys, a small tractor, and timber structures housing chickens. Although any person accessing this part of the garden would have to cross the existing driveway, given my finding in relation to vehicle movements I do not consider it would significantly alter the existing position or give rise to any undue disturbance.

11. For the reasons given above, the proposed development would not result in harm being caused to the living conditions of occupiers of No 3. The development would therefore accord with saved Policy GR6 of the Congleton Borough Local Plan First Review (adopted January 2005) (LP) which seeks, among other matters, to ensure that new developments near will not have an unduly detrimental effect on the amenity of existing residential properties including traffic generation and environmental disturbance or pollution.

Living Conditions of Future Occupiers

12. Immediately to the west of the appeal site is a railway line which sees trains run between Congleton and Manchester Piccadilly to the north and Stoke-on-Trent to the south. The Council's concerns in relation to the proximity of the railway line to the proposed dwelling was that insufficient information had been submitted with the application, and therefore it had not been demonstrated that noise from passing trains would not adversely impact upon the quality of life of future occupants.
13. The Noise Impact Assessment (NIA) submitted by the appellant established that the primary noise source that would affect the development would be noise from the surrounding roads, as well as from trains passing on the adjacent railway line. The NIA concluded that it was anticipated that noise levels in external amenity areas would be over the upper guideline set out by BS8233:2014¹ by 2 dB, whereas a glazing and ventilation scheme would be capable of ensuring that noise levels within habitable rooms of the proposed dwelling remained within the guidelines.
14. With regards to the external amenity areas, noise from passing trains is typically of limited duration and infrequent. During my mid-afternoon site visit I heard only 2 trains pass the site, which is presumably usual for that time of day. Given that the noise caused by passing trains is brief and infrequent, it is far more tolerable than if it was constant. The noise generated by passing vehicles on nearby roads was far more frequent, albeit at a much lower level.
15. The proposed development however would take place on land which currently forms part of the front garden of No 1, and therefore already serves as private outdoor amenity space. In this regard the level of exposure to noise from passing trains and vehicles would not be any different to its current level of exposure. Furthermore, the external amenity space for the proposed dwelling would be located a similar distance from both the railway line and nearby roads as the external amenity space at other properties in the vicinity. The exposure of the proposed amenity spaces to noise would not therefore be unusual within the local context.
16. The Planning Practice Guidance (PPG)² states that external amenity spaces are an intrinsic part of the overall design, and that the acoustic environment of those spaces should be considered so that they can be enjoyed as intended. Given my findings above, noise from the nearby railway line or highway would not cause the proposed outdoor amenity space to be unsuitable or unacceptable.
17. In terms of internal noise levels within the proposed dwelling, the NIA provides a suggested glazing and ventilation scheme which would ensure that noise

¹ BS 8233:2014 *Guidance on sound insulation and noise reduction for buildings*

² PPG Paragraph: 006 Reference ID: 30-006-20190722

levels within habitable rooms of the proposed dwelling would remain within the guidance. This conclusion has not been disputed by the Council. The details of such a scheme could be secured by planning condition to ensure that the living conditions of future occupiers would not be unduly harmed were planning permission to be granted.

18. For the reasons given above, I conclude that the proposed development would provide acceptable living conditions for future occupants in relation to noise. It would therefore accord with the relevant paragraphs of the National Planning Policy Framework, including paragraph 130 which, among other matters, seeks to achieve well-designed places including ensuring that developments provide a high standard of amenity for existing and future users. The Council has cited saved Policy GR6 of the LP, however this is not directly applicable as provisions concerning amenity relate to nearby properties rather than to future occupants.

Other Matters

19. Natural England has recently updated its advice for development proposals that have the potential to affect water quality in such a way that adverse nutrient impacts on designated habitat sites cannot be ruled out. However, from the responses received it has been established that the site does not fall within an area where the proposal would have an adverse nutrient impact on Rostherne Mere Ramsar and West Midlands Mosses SAC which are the closest European sites identified for nutrient neutrality. Consequently, I am satisfied that the appeal proposal would not result in a likely significant effect and or effects on the integrity of the Rostherne Mere Ramsar and West Midlands Mosses SAC (only catchments of Wynbunbury Moss SSSI).
20. An objection has been raised by the adjacent neighbour in relation to various aspects of the proposed development, including that the scheme would be out of character with the area. The Council though concluded that the proposed dwelling would not unduly harm the character and appearance of the area. I noted during my site visit that the surrounding area comprised a variety of different house types, styles and materials with a number of properties enhanced and partially screened by mature trees and vegetation. The style and size of the proposed dwelling would relate to the host dwelling, and due to the dense vegetation and trees along the site's boundary external views of the proposed detached dwelling would be limited. I therefore find no reason to disagree with the Council's conclusion on this matter.
21. Concerns were also raised in relation to the loss of trees and the subsequent effect upon wildlife. The submitted plans indicate that a small number of trees, including one large weeping willow, are to be removed either to facilitate the development or due to their poor condition. Whilst landscaping details including any proposed additional planting are reserved for future consideration, I note that subject to a condition requiring adherence with the tree protection plan, the Council's Nature Conservation Officer and Forestry Officer did not raise any objection to the proposal.
22. Despite the loss of a small number of existing trees, the site would retain a significant amount of vegetation and trees and consequently any impact upon visual amenity would be limited. With regards to any impacts upon wildlife, further protection is afforded to several species including nesting birds under the Wildlife and Countryside Act 1981. I am further satisfied that any initial loss or disturbance to either amenity or wildlife could be adequately mitigated

through a landscaping scheme to be submitted in any subsequent application for approval of reserved matters.

23. The existence of conditions attached to a previous planning permission from 1974 for the erection of the two dwellings now known as No's 1 and 3 was also raised, in particular those conditions relating to the provision of a turning head and the width of the vehicular access. The access and shared driveway would remain as existing, which does not include any passing places. Although there is not a turning head specified on the proposed plan, I am satisfied that the proposed driveway and parking area would be sufficient to allow vehicles to manoeuvre so to exit in a forward gear or to allow other vehicles to enter the site.
24. As detailed above it is not considered that the appeal proposal would result in a significant increase in vehicle movements above the existing use. Additionally, the Council also confirmed that they had no concerns in relation to highway access, safety or parking provision. Accordingly, the presence of these conditions does not justify the dismissal of the appeal.
25. Finally, it was raised that the shared access and driveway is owned and maintained by the owners of No 3. These matters however, including any issues relating to deeds or covenants, fall outside the scope of this appeal.

Conditions

26. I have had regard to the conditions suggested by the Council and have assessed them against the tests set out in paragraph 56 of the National Planning Policy Framework. As a result, in the interests of clarity I have made some amendments, including amalgamating and omitting some of the suggested conditions. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.
27. In addition to those conditions suggested by the Council, I have also included two additional conditions (Nos 5 and 10) which require the submission of further details concerning the external appearance of the proposed dwelling and the provision of a sound insulation scheme. Both parties were provided opportunity to comment on the additional conditions, with the appellant subsequently providing written agreement to their inclusion.
28. I have imposed conditions relating to the commencement of the development, the submission of reserved matters and the time limits associated with this. I have also included a condition which specifies the approved plans as this provides certainty as to the extent of the development approved.
29. Due to the lack of proposed side and rear elevational drawings originally submitted with the application, in order for clarity and to ensure the appropriate design and appearance of the proposed dwelling I have included an additional condition requiring the submission and approval of these details prior to any above ground works taking place.
30. In the interests of the living conditions of neighbouring occupiers and given the location and nature of the site, a condition has been imposed requiring the submission and approval of a Construction Method Statement. Additionally, to ensure any future developments do not adversely affect the safety and integrity of the adjacent railway a condition has been imposed removing

- permitted development rights under Classes A and E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
31. Due to the sloping nature of the site and the I have imposed a condition which requires details of the existing ground levels and proposed ground levels and floor slab levels to be submitted and approved prior to any development taking place. Similarly, to ensure that the external appearance of the dwelling is appropriate a further condition has been included which requires samples of all materials to be used in the construction of the external surfaces of the dwelling to be submitted and approved prior to any work above ground level taking place.
 32. In the interests of the living conditions of future occupiers of the proposed dwelling I have attached a condition requiring the submission and approval of a sound insulation scheme. These details shall be submitted and approved prior to any above ground works taking place.
 33. In the interests of the character and appearance of the area and to ensure the protection of the retained trees on site, I have included a condition requiring compliance with the approved tree protection measures, including no operations taking place until the protection measures are in place and that all protective fencing shall be retained intact for the full duration of the development.
 34. Network Rail requested the inclusion of several separate conditions all of which sought to protect the adjacent railway and its boundary. I have therefore imposed a single condition which requires the submission and approval of a method statement and risk assessment which will incorporate all of these matters. In order to ensure that any contamination found on the site is adequately dealt with, I have attached a condition requiring that should any contamination be identified, it shall be reported as soon as reasonably practicable, and the necessary assessments and remediation agreed and undertaken.
 35. Three further conditions were suggested by the Council, including a condition which required the approved access to be constructed in accordance with the approved plans and formed and graded to the specification of the local planning authority, as well as providing the required visibility splays. Given that no alterations to the existing access were proposed and as no harm to highway safety was identified, such a condition would not be reasonable or necessary.
 36. The Council also suggested a condition to secure the provision of Electric Vehicle Infrastructure, including a single Mode 3 compliant Electric Vehicle Charging Point (EVCP). The amended Building Regulations, which came into force on 15 June 2022, require the installation of an EVCP. Planning decisions should not duplicate the function of other regulatory bodies or controls, and therefore as the development would be subject to the amended Building Regulations, and as I have not been provided with any evidence to suggest that the provision of an EVCP is a requirement of the LP, it is not necessary to impose such a planning condition.
 37. Similarly, the Council suggested a condition requiring the submission of information confirming that all installed gas-fired boilers shall be in accordance with EN15502 Part 1 2015 Class 6. Again, there is no evidence before me that indicates that such provision is a requirement of the LP, and in any event such

matters will be controlled by Building Regulations. The inclusion of such a condition is therefore not necessary or reasonable.

Conclusion

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

David Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the landscaping (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this decision.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Block Plan – 170320-001-P1, Location Plan – 170320-002-P0, Proposed Plans and Elevations – 170320-003-P1.
- 5) Prior to any above ground works taking place, details of the proposed side and rear elevations of the proposed dwelling shall be submitted to and approved by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - The parking of vehicles and site operatives and visitors;
 - Loading and unloading of plant and materials;
 - Storage of plant and materials used in constructing the development;
 - Measure to control the emission of dust and dirt during construction; and
 - Delivery, demolition, and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may

otherwise be permitted by virtue of Classes A and E of Part 1, Schedule 2 of that Order shall be carried out.

- 8) No development shall take place until details of the existing ground levels, proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 9) No development above ground level shall take place until samples of all materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) Prior to any above ground works taking place, full details of a sound insulation scheme shall be submitted to and approved in writing by the local planning authority. These details shall include a glazing and ventilation scheme which demonstrates that internal noise levels will be within the design criteria set out in BS8233:2014. Development shall be carried out in accordance with the approved details.
- 11) (a) No development or other operations shall take place except in complete accordance with the tree protection measures and methodology identified in the Arboricultural Impact Assessment and Method Statement and Tree Protection Plan 6466.02 received on 19/3/2021 with measures to be implemented under Arboricultural supervision in accordance with BS5837:2012 Trees in relation to design, demolition and construction – Recommendations.

(b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.

(c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

(d) Protective fencing shall be retained intact for the full duration of the construction of the development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.
- 12) No development shall take place until a method statement and risk assessment regarding the safety and integrity of the adjacent railway has been submitted to and approved in writing by the local planning authority. The method statement and risk assessment should include details of:
 - Appropriate vehicle safety protection measures along the site boundary with the railway
 - Any scaffolding works within 10m of the railway boundary

- Any earthworks and excavations to be carried out within 10m of the railway boundary
- A suitable trespass proof fence adjacent to the boundary with the railway
- The disposal of surface water and foul water drainage from the proposed development

Development shall be carried out in accordance with the approved details.

- 13) 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.