The Planning Inspectorate

Appeal Decision

Hearing held on 8 November 2022

Site visit made on 9 November 2022

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2022

Appeal Ref: APP/A0665/W/22/3293862
Hills Garden Centre, London Road, Allostock, Northwich WA16 9LU

- 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 Altin Homes against the decision of Cheshire West and Chester Council.
- The application Ref 21/00683/FUL, dated 16 February 2021, was refused by notice dated 31 August 2021.
- The development proposed is erection of 16 dwellings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Statement of Common Grounds (SOCG) confirms that the description of the development is as set out in the appellant's appeal form. I have used this description in the heading above and determined the appeal accordingly.

3. As agreed at the Hearing, the parties submitted a completed version of the Section 106 agreement under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended) after the close of the Hearing. I consider its provisions below.

Site History and Fallback Position

4. The appeal site is 2.67ha of land, formerly a garden centre, located adjacent to the village of Allostock. The garden centre has been closed since 2016. There are a range of buildings on the appeal site comprising main garden centre retail building including café area, outbuildings, portacabins, polytunnels and greenhouses. There is also a hard surfaced car parking area and a miniature railway with 'station' building.

5. In 2019 a certificate of lawful development was granted which confirmed that the lawful use of the appeal site was as a garden centre. The appellant clarifies that retail sales are controlled by a planning condition to goods appropriate to a nursery/garden centre. In the SOCG it is agreed that planning permission is not required to re-open the garden centre.

6. Although the previous garden centre failed, the appellant has provided a comprehensive business plan for the reopening of the site based on a new proposition to create a brand and message for healthy living, the environment and sustainability, with a strong gardening and food offer focused on local

suppliers. Through several articles and studies the business plan indicates cautious optimism for the future of garden centres. Whilst garden centre trade is anticipated to level out or drop a little, turnover is still expected to remain higher than pre-covid[1].

7. In addition, the local demographic of the Knutsford area remains affluent and the uplift in any household bills is likely to have less affect in the appeal site area than other areas nationwide.

8. The appellant provides a written affidavit which declares an intention to reopen the business were the appeal to be dismissed. The declaration is supported by a structural report setting out the condition of the buildings, a remedial and upgrade programme for the building work needed to bring them back into use and confirmation of funding for the re-establishment of the garden centre.

9. The Council agreed at the Hearing that if the appeal is dismissed, there is a realistic possibility that the appellant would reopen the garden centre. Indeed, I heard that the appellant would be left with little option but to do so for financial and other reasons.

10. In light of the evidence at the Hearing and the submissions made including the reference to the legal principles in case law[2], I am satisfied that there is a greater than theoretical possibility that the garden centre would be reopened in the event that the appeal proposal was dismissed.

11. I acknowledge that were I to allow the appeal, it may be necessary to seek the removal of the garden centre buildings on parts of the appeal site not covered by housing development, however, at the Hearing the parties agreed that the garden centre and the appeal proposal could not both be implemented.

12. As a consequence, for the purposes of this appeal I consider the fallback position amounts to the reopening of the garden centre utilising the existing buildings on site (the fallback). Therefore, I must make a comparison between the proposed development and the fallback. Although not a reason for refusal, the Council and the appellant dispute the weight to be attached to the fallback as a material consideration, therefore I have dealt with this matter as a main issue.

Main Issues

13. Having regard to the above, the main issues are:

- Whether the appeal site would be an appropriate location for the proposed development, having regard to national and local planning policies and accessibility to services, facilities, employment, and public transport;
- the effect of the development on the efficiency of the Jodrell Bank Radio Telescope (JBRT);
- Whether material considerations including the fallback would outweigh any harm in respect of the proposed development.

[1] Page 13 of the Business Plan
[2] R v Secretary of State for the Environment and Havering BC [1998] Env LR 189

Reasons

Location

14. Policies STRAT 1 and STRAT 2 of the Cheshire West and Chester Council Local Plan: Part One: Strategic Policies (2015) (LP1) seek to locate new housing, with good accessibility to existing or proposed local shops, community facilities and primary schools and with good connections to public transport and to promote sustainable development through a settlement hierarchy.

15. In the rural area STRAT 8 identifies key service centres as the focus for new development in the rural area. New development will also be located in local service centres, subsequently identified through Policy R1 of the Cheshire West and Chester Council Local Plan: Part Two: Land Allocations and Detailed Policies (2019) (LP2). The amount of development in each local service centre will reflect the scale and character of the settlement and the availability of services, facilities, and public transport.

16. The appeal site is not located within an identified settlement and therefore Policy LP1 STRAT 9 applies. This policy sets out types of development that will be permitted in the countryside, including replacement buildings, provided the development is of an appropriate scale and design not to harm the character of the countryside.

17. In line with STRAT 1 and STRAT9, Policy DM19 of the LP2 sets out the circumstances in which residential development in the countryside would be acceptable. This includes the replacement of buildings on previously developed land (PDL), where there is good access to public transport, and it is located within reasonable walking distance of local services and facilities along a safe route. Other criteria also apply to replacement buildings on PDL, however, it was agreed at the Hearing that none of those apply here.

18. The parties draw my attention to two documents that formed part of the evidence base which considered which villages should be identified as local service centres. At the Hearing it was unclear if both were relevant or if one document superseded the other. In either case, those settlements identified as local service centres are set out in Policy R1 of the LP2 and the appeal site is not located in one of them.

19. Paragraph 80 of the National Planning Policy Framework (the Framework) states that planning decisions should avoid isolated homes in the countryside unless one or more defined circumstances apply. However, in terms of Braintree[3] the appeal site is not isolated as it is adjacent to existing residential dwellings in Allostock.

20. Paragraph 79 of the Framework states that planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. The Framework also recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas and this should be taken into account in plan-making and decision-taking. The spatial strategy set out in the development plan is consistent with the Framework in these respects.

[3] Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2018] EWCA Civ 610

21. The Department for Transport document Manual for Streets says that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to about 800m) walking distance of residential areas which residents may access comfortably on foot. However, it goes on to state that this is not an upper limit, and that walking offers the greatest potential to replace short car trips, particularly those under 2km. Policy DM19 refers to a reasonable walking distance and I heard from the Council that reasonable is not defined and is a matter of judgement based on the particular site circumstances.

22. The appeal site is accessed from London Road, which is a busy through route. The nearest villages with services and facilities are identified in the appellant's technical note as Goostrey and Holmes Chapel. Both these villages are within East Cheshire area, and I am advised that these settlements are local service centres as defined in the East Cheshire Development Plan. Goostrey is the closest village at approximately 2.5 km from the site. The village facilities include a primary school, railway station, a number of shops, public houses, café, pharmacy as well as village hall, and playing fields.

23. The route to the village from the appeal site would be to travel along London Road, turning in to New Platts Lane. London Road has a narrow footpath to one side but no crossing points to New Platts Lane. The first 1km of New Platts Lane as far as Harrison Drive is an unlit straight road with no footpaths. After this there are houses adjacent to the lane with footpaths and lighting suitable for pedestrian use. Close to the junction with Main Road is a convenience store. Other facilities within the village are about a further 500 metres from the junction.

24. The appellant's technical note acknowledges that none of the facilities in Goostrey would be accessible on foot. Nevertheless, the note considers that Goostrey would be accessible by bicycle. However, cyclists would be turning out of the appeal site across the traffic on the busy London Road to access Goostrey. With the amount and speed of traffic on the initial section of the road and lack of streetlights to the junction with New Platts Lane, I consider that the likelihood of bicycles being utilised to access services and facilities is low. I acknowledge that there is a rural route that could be cycled to et to New Platts Lane, but this route is longer and would still require crossing London Road. Its use for other than leisure purposes is unlikely.

25. There is a greater range of services and facilities at Holmes Chapel about 3.5 km away. The appellant accepts that Holmes Chapel is not within walking distance of the appeal site. The appellant considers that the facilities and services in the village can be accessed by bicycle but the A50 is a main road with no cycle lanes, the traffic is busy, but mostly free flowing and travelling at speed. As the road is busy, lacks cycle lanes and street lighting and due to the distances involved I do not agree that cycling to access services and facilities in Holmes Chapel is likely, even in fine weather in the summer months.

26. There is a bus stop approximately 230 metres from the appeal site on Chapel Lane providing a limited service during the week, but no service after mid-afternoon or at weekends. Whilst the bus stop is close to the site, the restricted bus service would provide very limited opportunities for accessing services and facilities by public transport.

27. The proposed development would be in the catchment area of the primary school in Lower Peover a distance of 4.8 km from the site. Whilst I acknowledge that children may be entitled to assistance to get to and from school, this possibility does not mean that the appeal site has good access to public transport in the terms set out in Policy DM19.

28. At the Hearing the appellant pointed to the road safety record which indicates that there have been no accidents in the vicinity of the appeal site during the 5-year study period. However, I do not consider that the safety record indicates that the route to the nearest village is a safe route for pedestrians or cyclists.

29. With regard to the decision at Goostrey Business Park[4], I accept that there are similarities with the appeal scheme, although I note that planning permission had previously been given for the conversion of the existing buildings into 5 dwellings prior to that appeal being considered. Even so the shop on the A50 has now closed and it appears that the frequency of the buses has reduced[5].

30. In addition, to access the nearest facilities in Goostrey by bicycle from the appeal site would be unlikely for the reasons I have set out. Whereas the Inspector considered that Goostrey was within cycling distance of Goostrey Business Park. Overall, the appeal decision does not lead me to a different conclusion in respect of the accessibility to services and facilities from the appeal site, which is a larger development where no previous housing scheme has been supported and the site is adjacent to a main road.

31. I acknowledge that there has been an increase in home working, and this could to some extent reduce the need to travel long distances. However, it is likely that travel to work would be replaced with shorter journeys to local services and facilities, which in this case given my conclusions are likely to be by car.

32. I also accept that it is possible to walk from the site to the village hall and to the children's play area, but I am not satisfied that these facilities would be sufficient to provide the services and facilities for the daily needs of the occupiers of the development. Nor does the definition of sustainable transport modes in the Framework alter my assessment above.

33. Taking all of the above points into account, I conclude that the appeal site would not be an appropriate location for the proposed development, having regard to national and local planning policies and accessibility to services, facilities, employment and public transport. In this respect the proposal would conflict with Policies STRAT1, STRAT2, STRAT8 and STRAT9 of the LP1 and DM19 of the LP2 which sets out the spatial strategy for Cheshire West and Chester. It would also conflict with the Framework.

Jodrell Bank

34. The Jodrell Bank Observatory (JBO) is a designated World Heritage Site (WHS) because of its contribution to radio astronomy. Its ground-breaking accomplishments following its initial construction and continued operational research listening for patterns in specific areas of the radio spectrum are recognised as having exceptional importance. This benefit is to both present

[4] APP.A0665/W/16/3155442
[5] comparing transport statement dated November 2019 with transport technical note WB/190686/TN01 Rev A - 14 July 2021

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.

35. 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, which can be adversely affected by radio interference caused by electronic equipment, including common domestic and industrial equipment. The degradation of data quality through radio interference is a threat to the function of the facility, its research projects and the associated investments.

36. The appeal site is within the WHS buffer zone. The buffer zone is based on the Jodrell Bank Radio Telescope Consultation Zone (CZ) which has operated to protect JBO since it was established by the Town and Country Planning (Jodrell Bank Radio Telescope) Direction 1973. As set out in the Planning Practice Guidance (PPG) the buffer zone forms part of the setting of the WHS.

37. Policy DM12 of LP2, permits development in the CZ that would not impair the efficiency of the JBRT, subject to other relevant planning policies. It states that protection from local sources of interference is still of utmost importance.

38. 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 JBRT 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.

39. Modelling of the predicted levels of radio noise from the proposed development, carried out by the University of Manchester (UofM) in response to the Council's consultation, shows that the housing scheme would exceed the agreed international threshold for harmful interference to radio astronomy (ITU) by a factor of 16.

40. The appellant's representative calculates the development would exceed the ITU by a factor of approximately 80. Whilst the assumptions made in the calculations of emissions by each party results in a different factor of exceedance of the ITU, the UofM acknowledge that their estimate is conservative and there was no disagreement at the Hearing between the parties that the housing development would exceed the ITU threshold. Consequently, even though the appellant considers that the exceedance is relatively minor, the proposal would have a detrimental effect on the efficiency of the JBRT as it would exceed the ITU.

41. The UofM also points to the cumulative effects of development in the CZ. Development within the CZ is already impairing efficiency of JBRT, and the development would exacerbate interference and degrade JBRT's ability to perform its recognised function.

42. In accordance with the Framework, I am required to give great weight to any harm to the WHS as a designated heritage asset. In Framework terms the proposal would lead to less than substantial harm to the designated JBO which should be weighed against the public benefits. I return to this matter later in my decision.

43. Overall, the proposal would have a detrimental effect on the efficiency of the JBRT in conflict with Policy DM12 of LP2. However, the disagreement between the parties is around how the fallback would compare with the proposed development. I go on to consider this below.

Fallback

44. The appellant considers that the proposed development better meets all of the development plan aspirations set out in Policy STRAT1 of LP1 and the Framework than the fallback. The appellant points to environmental gains associated with the reduction of traffic movements to the site as well as economic, social, and other environmental benefits of the appeal scheme compared to the fallback.

45. There is no suggestion by either party that traffic associated with the fallback could not be accommodated on the highway or that there are other highway concerns with the garden centre use. Nevertheless, the appellant anticipates that depending on the number of employees, the weekly vehicle movements associated with the garden centre would be between 2831 and 4109 additional movements compared to the use of the site for housing.

46. The environmental objectives of the Framework seek to protect and enhance the natural, built, and historic environment in a number of ways. Fewer vehicle movements could result in improved air quality and a reduced CO_2 emissions and could support the environmental objectives of the Framework where it seeks to mitigate climate change and move to a low carbon economy. Nevertheless, a proportion of the traffic associated with the garden centre would visit other garden centres in the area in the absence of one at the appeal site and this would limit, to some extent, the reduction in CO_2 emissions suggested.

47. Further, the appellant points to the significant net gains in biodiversity proposed as part of the development. However, the fallback would allow the retention of the existing hedges and trees and I have limited evidence that this would be a less beneficial outcome in biodiversity terms. Nor have I the evidence to be satisfied that the use of sustainable measures within the design of the dwellings is preferable to minimising waste through the reuse of the existing garden centre buildings and materials on site.

48. I appreciate that there may be some economic benefits during the construction phase of the housing development, but the fallback would also provide economic benefits in the form of jobs and would contribute to the rural economy. Rural businesses are supported in the Framework, where it is accepted that economic development may be beyond settlements and not served by public transport.

49. The development would boost housing supply and support the development of small sites, provide an area of open space available to the public, contribute to open space more widely and the dwellings are designed to meet lifetime home standards. However, the lack of affordable housing, the absence of any undersupply in housing land and the distance from services and facilities limits the social benefits of the scheme. The fallback would have its own social benefits, providing jobs for local people and a place for people to meet.

50. In addition, the garden centre buildings are low lying and set back from the road frontage and if brought back into use their appearance would not be detrimental to the area. There is little to suggest that the fallback poses a problem for neighbouring amenity. Therefore, even though the pattern of vehicle movement would be changed, and the number of vehicles reduced as a result of the proposed development, I am not satisfied that the economic social and environmental objectives of the Framework would be better secured through the development scheme rather than the implementation of the fallback.

51. With regard to JBRT, the appellant sets out that the electronic devices in both residential and commercial premises emit a low-level, broad band irregular radio noise that acts as a background to the radio observations made by astronomers. The likely consequences in terms of radio interference at JBO from such unintentional, weak emitters can be estimated and compared by using mathematical and physical modelling.

52. As I set out, the emissions from the proposed residential development would exceed the ITU thresholds. Nevertheless, the appellant estimates that due to various factors, including the lack of mitigation to the existing structures the garden centre as it previously operated exceeded the ITU threshold by a factor of approximately 68,000, 850 times more damaging than the housing development. The appellant for comparison also states that if mitigation measures were introduced to the garden centre buildings emissions would still be 10 times higher.

53. At the hearing the Council did not accept this, indicating that were the ITU threshold to be exceeded in the way suggested this could equate to emissions from all the housing in the CZ. The appellant provided alternative methods for calculating interference levels between the two uses at the Hearing and these concluded that the garden centre would be at least 32 times more harmful. The difference in the various calculations serves to highlight the difficulty in comparing the emissions from different uses of the appeal site.

54. The appellant considers that the two variable factors in the calculation of ITU exceedance are the mitigation measures, in particular the level of containment around the electrical devices, and the number of effective devices which represents the number of devices in continuous use.

55. In its evidence the Council accepts that the garden centre electricity consumption implies the use of many more devices at the garden centre, but this does not take into account the difference in the interference generating effect of different types of devices. Digital electronics, such as would be found in consumer electronics, and controls for washing machines, dishwashers, freezers, refrigerators, microwave ovens, kettles etc. are far more concerning than lights and conventional electric heating. Hence the Council does not expect the garden centre to scale in the way suggested by the appellant. Whilst the garden centre would have many more lights and possible resistive electric heaters, the Council considers these to be relatively benign as far as radio interference is concerned and there would not be a large number of games consoles, microwave ovens, or washing machines in the garden centre.

56. In these terms the appellant's inventory of garden centre appliances and catering kitchen equipment list indicates that there would be a small number of computers and 7 tills as well as a router and 2 printers and 2 washing

machines. In addition, new electrical equipment to meet the aspirations of the business plan would be needed for the catering kitchen including fridges and microwaves. However, at the Hearing the Council considered that the number of digital electronic devices in the proposed housing development would far exceed those in use in the garden centre, even when considering the level of use of the devices.

57. In terms of the mitigation measures, the appellant considers that the majority of emissions can be expected to come from inside the dwellings and would be attenuated by the building materials, which could be further enhanced by reducing windows facing the direction of the JBRT, using foil backed plaster board and low emissivity glass. The buildings in the garden centre would have little attenuation for emissions because of their construction.

58. Nonetheless, several of the proposed dwellings are designed with large areas of glazing at ground floor level, large openings are designed with bifold doors addressing outdoor amenity spaces. When these doors are open this could limit mitigation of the emissions from within the dwellings where they are orientated toward the JBRT. Accordingly, I find that there is some question as to whether the particular design of the dwellings would be conducive to the aim of minimising interference.

59. Further, the appellant has accounted for outdoor usage of electrically operated appliances being limited to short amounts of time where the usage is typically sporadic. However, I heard that sustainability measures would be incorporated into the design of the dwellings including air source heat pumps and solar panels and that electric recharging points for vehicles would be required. I have not been provided with any assessment of the effect of the introduction of sustainability measures on emissions, although at the Hearing the Council confirmed that these would be unattenuated sources of emissions.

60. Taking these points together, on balance, I am not convinced by the arguments advanced by the appellant that the garden centre would be overall more harmful in terms of electromagnetic interference. Therefore, I cannot conclude that the fallback would be of greater harm to the operation of the JBRT than the appeal proposal.

61. Overall, there is not sufficient evidence to show that the fallback proposal would be more harmful than the proposed development and the existence of the fallback does not outweigh the appeal scheme's conflict with the development plan.

Section 106 agreement

62. The s106 agreement provides a mechanism to secure the provision of offsite financial contributions towards sports pitches, allotments, green amenity space, and child and youth play areas to mitigate the pressures on open space which are acknowledged to be deficient within the area. Although the agreement has been signed by the relevant parties, it is necessary that I consider this obligation against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

63. Policy SOC6 of LP1 and Policy DM35 of LP2 require contributions to open space where there are existing deficiencies in quantity, quality or access to open space or the development generates a need that cannot be met by existing

provision. This is consistent with the Framework's objective of achieving accessible open spaces that reflect current and future needs and where it seeks to plan positively for the provision of open spaces.

64. Overall, I am satisfied that the contributions would be necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, they would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The agreement, therefore, meets the relevant tests and I have attached weight to its provisions in reaching my decision.

Other Matters

65. I recognise that there are local residents who support the appeal scheme because of the dilapidated appearance of the site and the threat of its condition to their security. However, I have not been drawn to any concerns about the previous garden centre use for the living conditions of neighbours and as it is the appellant's intention to re-establish the garden centre the local concerns could be resolved by the reopening of the business. Therefore, these matters are neutral factors.

Planning Balance and Conclusion

66. Section 38(6) requires that decisions are made in accordance with the development plan unless material considerations indicate otherwise.

67. For the reasons I have set out, the proposal would conflict with the development plan as a whole and the fallback does not present an alternative situation of greater conflict.

68. I have identified that the proposal would provide economic, social, and environmental benefits. Collectively I give moderate weight to these benefits.

69. The economic, social, and environmental benefits would be public benefits for the purposes of paragraph 202 of the Framework, but these would not outweigh the harm I have identified to the WHS as a designated heritage asset to which I am required to attach great weight.

70. Overall, I conclude that the proposal would conflict with the development plan and there are no material considerations, including the Framework and the fallback, that indicate that the development should be determined otherwise than in accordance with it. Therefore, the appeal is dismissed.

Diane Cragg

INSPECTOR

Appearances:

Appellant:

Daniel Hughes	PNA Planning
Andrew Burton	Malcolm C Scott
William Booker	SCP Transport
Yousef Mousini	Altin Homes
Professor Roberto Trotta	Imperial College

Council:

Robert Lester	Cheshire West and Chester Council
Professor Simon Garrington	University of Manchester
Neil Roddis	University of Manchester

Third Parties:

Dr Ken Morris