
Appeal Decision

Site visit made on 1 December 2022

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/P3420/W/22/3301893

Land off Hardings Row, Mow Cop Road, Mow Cop, Kidsgrove ST7 3NE

- 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 Jenny Booth and Denny Jones against the decision of Newcastle-under-Lyme Borough Council.
 - The application Ref 21/00955/FUL, dated 4 October 2021, was refused by notice dated 28 February 2022.
 - The development proposed is construction of a dormer bungalow with access and parking.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - highway safety;
 - the protection and enhancement of public rights of way (PROW); and
 - the living conditions of the occupiers of numbers 14, 16, and 18 Hillside Close, with respect to privacy.

Reasons

Highway safety

3. The appeal site is an overgrown broadly rectangular parcel of land, surrounded by a variety of dwelling types within the village of Mow Cop. It incorporates a steep slope down across the site from north to south, aligned with that of the local topography. It lies south of Hardings Row, a track running between the adopted highways of Mow Cop Road and High Street. Hardings Row is also a PROW with bridleway status, and provides vehicular access for 13 other dwellings as well as a water treatment works. Another pedestrian PROW runs adjacent to the site's east boundary, and a footpath runs to its south separating the site from the rear gardens of dwellings on Hillside Close, which are further dropped down.
4. The proposal is to construct a 2-storey detached dwelling alongside and facing Hardings Row, with parking to its side and the remainder of the site being garden bounded by a low wall. The dwelling would use local materials and would be accessed off Hardings Row.

5. Hardings Row is generally narrow with few passing places, steep in parts, in poor physical condition as it predominantly lacks a hardstanding surface, and generally unlit. There is no disagreement that the proposal would provide sufficient off-street parking, bin store, and visibility splays. However, the increased use of the track by vehicles from the dwelling and those servicing it, as well as during its construction, would increase the likelihood of conflicts when meeting other vehicles and other users. Conflicts may not have caused such significant individual harm as to have been reported, with no recorded incidents during the past 5 years, but I have no doubt that they occur in some form for the majority of occasions when vehicles meet other parties.
6. While the rights of pedestrian, cycle and vehicular traffic along Hardings Row would be unaffected, priority for pedestrians and cyclists is not guaranteed. The state and nature of the track should not be relied upon to self-police this. It is very unlikely for pedestrians and cyclists to have priority when faced with a car or larger vehicle taking up the entire width, and they would thus be the ones needing to take evasive action. This would be exacerbated after dark, and if the pedestrian were running or with a dog. Horseback riders would similarly be affected, and neighbour objections identify that the PROW route is popular for all these activities due to its location adjacent to National Trust land.
7. While a single dwelling would only itself generate a limited number of trips, there would still be an increased likelihood of conflicts arising as a cumulative effect, given the existing dwellings and water treatment works that are accessed from Hardings Row. Furthermore, the proposed dwelling would be located much further along Hardings Row than the access points for a number of those dwellings and the plant, and therefore this would create increased scope for vehicle conflict.
8. The Hardings Row junction with Mow Cop Road also has existing highway safety issues, with visibility exiting onto the latter being severely restricted. This also has a steep incline down, making conflict likely between two vehicles attempting to use the junction at once. The vehicle on Mow Cop Road would need to wait in the main highway, rather than take the priority for the turn as would be expected by other road users. In addition, there is no formal pavement along the stretch of Mow Cop Road directly conjoining the junction to the south. The increased use of this junction would therefore exacerbate all these issues.
9. Hardings Row is also connected to the adopted highway network at High Street, although this is in Cheshire East, a different local authority. Cheshire East Council did not respond to the consultation on the proposal and from the very limited information provided by the appellant, it has not been demonstrated to my satisfaction that this junction is significantly better than the junction with Mow Cop Road.
10. Section 9 of the National Planning Policy Framework ('the Framework') (2021) seeks to promote sustainable transport and ensure safe access to sites, and I acknowledge that the scheme meets a number of the criteria for development proposals within its paragraphs 110 to 112. However, these paragraphs also identify for safe and suitable access to the site to be achieved for all users, that development should be prevented if a proposal would have an unacceptable impact on highway safety, and to create places which minimise the scope for

conflicts between pedestrians, cyclists, and vehicles. As set out above, I have found that these requirements are not met.

11. Furthermore, pursuant to paragraphs 110b and 112b of the Framework I have had due regard to the Public Sector Equality Duty contained at s149 of the Equality Act 2010, including the need to eliminate discrimination, to advance equality of opportunity, and to foster good relations between people with a protected characteristic and those without. I find that for people with mobility impairments, the difficulties accessing the proposed dwelling via Hardings Row would not be consistent with these aims.
12. I do acknowledge the disagreement between the parties as to the exact status and access rights of Hardings Row, which is not an adopted highway. This also relates to whether the red line plan of the application should incorporate an extent of Hardings Row to reach the adopted highway at Mow Cop Road. However, as I have already concluded that the increased use of Hardings Row would be harmful to highway safety, an extended red line boundary would not alter this finding. I therefore have no need to conclude further on this matter.
13. In conclusion therefore, the proposed development would cause harm to highway safety, and so would be contrary to policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (2009), specifically regarding new development being safe and easy to get to. It would also conflict with Section 9 of the Framework.

Public rights of way

14. Paragraph 100 of the Framework requires that that decisions should protect and enhance public rights of way and access. I have highlighted above in detail the ways in which the proposal would increase conflict between pedestrians, cyclists, and vehicles on the PROW, and concluded that there would be harm to highway safety, and I do not repeat this reasoning here.
15. This increased likelihood of conflict would be detrimental to users of the PROW, including pedestrians, cyclists and equestrians. Consequently, the proposed development would not protect or enhance the PROW. For these reasons the proposed development would be contrary to paragraph 100 of the Framework.

Living conditions

16. The proposed dwelling would be positioned significantly higher than those to its rear at numbers 14, 16, and 18 Hillside Close. The proposal therefore has the potential to affect privacy through overlooking. The existing dwellings have relatively open gardens, and rear elevations with principal windows as classified by the Newcastle-under-Lyme and Stoke-on-Trent Space Around Dwellings Supplementary Planning Guidance (SPG) (2004). The SPG provides guidance for new dwellings, including the need to create and retain privacy to allow for acceptable living conditions. It sets out detailed aspects such as separation distances between properties based on different types of rooms and windows. The Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance Supplementary Planning document (SPD) (2010) also provides more general guidance on such matters in Section 7.
17. In its rear elevation the proposed dwelling would have lounge patio doors, which the SPG classes as a principal window. To resolve the resulting overlooking issue an external wall is proposed 1 metre away alongside the

small patio, with a permanent glazed privacy screen above. This would obscure direct views out and down to Hillside Close, with views thus predominantly looking over those rooftops. While this would create a relatively poor rear outlook for the future occupants, the lounge also has a front window and so this would overall be acceptable.

18. The other rear windows are to a non-dining kitchen, bathroom, and landing area, and so are not classified as principal windows by the SPG. These rooms would generate minimal overlooking due to the activities normally undertaken within them which do not include long periods adjacent to windows looking out. Additionally, because the proposed dwelling's facing wall to the Hillside Close windows would thus contain no principal windows, SPG policy SD7 is most relevant in setting its required separation distance. Even if an assumption for the dwelling to be 4 storeys high is accounted for to reflect the height differential, the separation distance would still be in excess of the minimum set by the SPG. Overall therefore, I am satisfied that the window placement in the proposed dwelling would not cause a harmful effect on privacy for neighbouring properties.
19. However, there would still be the potential for overlooking from the rear and side garden areas towards the Hillside Close dwellings, as the majority of the garden would be at a significantly higher level. I accept that some overlooking already takes place resulting from the footpath use. However, this would be markedly different being generally at a lower elevation, more fleeting, and with views predominantly angled. In comparison, use of a garden alongside a 3 bedroom house is likely for prolonged periods of time, including having guests and for children playing. This would also increase the perception of being overlooked even if actual overlooking were not regularly occurring during such occasions.
20. Furthermore, while the scheme would not directly impact on daylight levels to the Hillside Close properties, the dwelling would be very prominent due to its elevation in the landscape above them. It would have an overbearing impact on the gardens and rear windows of those dwellings due to the topography difference. I find that this prominent nature would further result in an impression of being overlooked. A lack of objections from the occupiers of Hillside Close does not equate to a lack of harm.
21. While the steep topography of this part of Mow Cop means that many houses and gardens do overlook one another, I have judged the appeal proposal on its own merits. The introduction of new overlooking and any resulting impact on privacy for properties is not justified by the general character of the area.
22. In conclusion, the proposed development would cause harm to the living conditions of the occupiers of numbers 14, 16, and 18 Hillside Close, with respect to privacy, and would therefore be contrary to the Space Around Dwellings SPG. It would also generally conflict with the Framework regarding the need to ensure that developments function well, and to create places which have a high standard of amenity for existing and future users.

Other Matters

23. The creation of an additional dwelling at the site would contribute to boosting the supply of new housing and support windfall development as referenced in the Framework. However, for only 1 dwelling this is only a very minor benefit.

While the site may have been historically occupied by a row of cottages, this is not its current context, and so the site is greenfield.

24. The site is within an Area of Landscape Restoration whereby policy N21 of the Newcastle-under-Lyme Local Plan 2011 (2003) supports development that will restore the character and improve the quality of the landscape. However, that the site is presently overgrown, and the lack of objection from the Council and its Landscape team under policy N21, does not lead me to agree that the scheme inherently presents a benefit in landscape terms overall. I find this a neutral aspect of the proposal.

Conclusion

25. In conclusion, the scheme conflicts with the development plan as a whole and I am satisfied that dismissing the appeal would be a proportionate outcome in this case. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L Hughes

INSPECTOR