



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: 22 December 2022

Appeal Ref: APP/R0660/W/22/3298506

Millers Gate, Congleton Road, Alderley Edge SK9 7AD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs James & Hannah Ellis against Cheshire East Council.
 - The application Ref 22/0739M, is dated 11 February 2022.
 - The development proposed is the demolition of existing dwelling and its replacement with a detached dwelling, garage, landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and its replacement with a detached dwelling, garage, landscaping and associated works at Millers Gate, Congleton Road, Alderley Edge SK9 7AD in accordance with the terms of the application, Ref 22/0739M, dated 11 February 2022, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal was made following the failure of the Council to give notice of their decision on the application within the statutory period. The Council have confirmed that were they to have issued a decision, they would have refused planning permission. I have been provided with what would have been their reasons for refusal as part of their statement of case, which the appellant has had opportunity to comment upon.
3. When submitting the application, the appellant used an application form titled 'application for planning permission, and for relevant demolition of an unlisted building in a conservation area'. Upon validation the Council created two separate applications, namely 22/0739M (full planning) and 22/0740M (demolition in conservation area). However, the need for Conservation Area consent was abolished by the Enterprise and Regulatory Reform Act 2013 and replaced by a requirement to apply for planning permission to demolish buildings in a Conservation Area. Therefore, there is no reason why the demolition and replacement building could not have been considered as part of a single planning application and application 22/0740M would appear to be superfluous. Accordingly, the appeal should proceed in relation to application 22/0739M.
4. However, the appeal and the associated notification to interested parties and consultees initially only related to application 22/0740M. Although both applications created by the Council consisted of the same plans and documents

submitted by the appellant, in the interests of fairness and to avoid any risk of prejudice, all interested parties and consultees were re-notified of the altered appeal providing them with an opportunity to comment on the appeal against application 22/0739M or to add to any comments already made. This process was completed, and the appeal proceeds in relation to the Council's failure to give notice of their decision on application 22/0739M within the statutory period.

5. Both parties in their submissions have referred to various saved policies contained within the Macclesfield Borough Local Plan (adopted January 2004) (MBLP), and Policy RUR13 of the emerging Cheshire East Local Plan Site Allocations and Development Plan Policies Document (SADPD). I am aware that the SADPD was formally adopted on the 14 December 2022 and now forms part of the Council's local plan, with its policies replacing all saved policies from the MBLP.
6. Since the submission of the appeal, the Alderley Edge Conservation Area & Management Plan (AECAMP) was 'made' in September 2022. The AECAMP is now a material consideration when determining applications within the Alderley Edge Conservation Area and it replaces the earlier 'Alderley Edge Conservation Area Appraisal' dated June 2004.

Main Issue

7. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposal would preserve or enhance the character or appearance of the Alderley Edge Conservation Area; and
 - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

8. The appeal proposal seeks to demolish the existing dwelling and all other buildings on the site and erect a replacement dwelling including a partly subterranean basement, along with a detached garage and associated hard and soft landscaping. The site is located within the Green Belt. Policy PG3 of the Cheshire East Local Plan Strategy (Adopted July 2017) (CELP) sets out that development proposals will be assessed against criteria which directly reflects that of the National Planning Policy Framework (the Framework). Policy RUR13 of the SADPD is broadly consistent with the Framework in relation to the replacement of buildings within the Green Belt and the requirement that it is not materially larger than the existing building.
9. Paragraph 147 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, it states that the construction of new

buildings is regarded as inappropriate in the Green Belt except for in several specified exceptions. This includes paragraph 149 (d) which states that the replacement of a building would not be inappropriate development, provided the new building is in the same use and not materially larger than the one it replaces. The appeal proposal would be the same use therefore passing the first test. The second test is a matter of judgement based on the evidence of each case as the Framework does not define 'materially larger'.

10. The appellants argue that the proposed replacement dwelling would not be materially larger than the existing building. This view is based largely on the replacement dwelling only resulting in a 28% increase in floor area when assessed above ground level only. However, when including all floorspace, including any subterranean elements, the proposal would result in a 175% increase in floor area, as well as a 125% increase in footprint. The ridge height of the proposed dwelling would be approximately 14 centimetres lower than the existing therefore representing a very minor reduction in height.
11. The appellants acknowledge that, when including the partly and fully subterranean basement areas, the cumulative increase in floor area goes beyond what could reasonably be described as 'not materially larger'. They however seek to differentiate between the increase in floor area above ground and those areas which are subterranean, as they consider that these areas would have no impact visually or spatially.
12. The size and scale of any basement is a material consideration when assessing whether a replacement building is materially larger or not. That materiality depends on its context, with the relevant context in this case being the objectives and policies relating to the Green Belt. In the case of the appeal proposal, the proposed basement would not be wholly underground and when viewed from the rear the basement would be fully exposed. The proposed basement would also be significant in size and scale, totalling 498.4 square metres in area (sqm), compared with the existing basement which totals 161.3sqm. Particularly when taken together with the increase in floor area above ground and the overall increase in footprint, it is clear that the replacement dwelling would be significantly larger than the existing dwelling on site.
13. Consequently, though there would be a negligible reduction in its ridge height, I find that by virtue of its significant increase in floor area and increase in footprint, the proposal would be materially larger than the existing dwelling to be replaced. The proposal would therefore be inappropriate development in the Green Belt by definition under the Framework. It would therefore also be at odds with Policy PG3 of the CELP and Policy RUR13 of the SADPD.

Openness

14. Paragraph 137 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and permanence. It follows that openness is defined by an absence of buildings or other forms of development. Openness has a visual and spatial dimension.
15. The replacement dwelling and detached garage would be sited in roughly the same location as the existing dwelling and garage, however as detailed above the proposal would see the total floor area increase by 175% and the total

footprint increase by 125%. Although a large proportion of this increase would be underground, it is nevertheless evident that the increase in floor area and footprint would lead to a moderate loss of openness to the Green Belt.

16. Whilst partially subterranean, the proposed basement would be fully exposed when viewed from the rear. This would result a level of the property currently underground being visible externally and the replacement building appearing as a four-storey dwelling when viewed from the rear, representing an appreciable change from the existing. Though this element of the proposed development would not be visible from Congleton Road due to its orientation, boundary treatments and vegetation, there would nevertheless remain limited harm to the visual aspect of the Green Belt's openness.
17. I therefore conclude that the proposed development would lead to a loss of Green Belt openness by virtue of the increase in the total floor area and footprint of the replacement dwelling, and the partial exposure of the proposed basement. Whilst some of this harm is absorbed by the subterranean nature of part of the proposal and its limited visibility in the wider area, there would remain some moderate harm in this respect.

The Alderley Edge Conservation Area (CA)

18. The site is located on the western side of Congleton Road and is the first property within the CA when approaching from the south along Congleton Road. The CA is characterised by its cohesive sylvan qualities, as well as its detached villas which mostly date from between 1845 and 1900 and which sit within generously sized plots. However, more modern and in some cases large contemporary dwellings are interspersed with older more traditional buildings, resulting in the area having a varied mixture of architectural styles, design and materials. The majority of properties along this part of the CA are largely hidden from public view by mature planting and boundary treatments. The significance of the CA is therefore largely derived from the sylvan appearance of the area and the contribution made to it by mature trees, planting, stone walls and settled roads.
19. Millers Gate dates from the late 1930's and is of an Arts and Crafts influenced style. Although retaining some original features, including stone window and door mullions on the front elevation, and the arts and crafts composition of the property still being discernible, alterations and additions to the property as well as the later erection of detached outbuildings have negatively impacted upon its significance.
20. The property is not statutory listed, nor does it feature on the Council's Local List of Historic Buildings. I also note that the property does not feature in the publication "The Villas of Alderley Edge", and there is no substantive evidence to suggest that the property is attributable to any architects of note, such as Baille Scott, who was known to be of influence in the area around the time of its construction. I do not consider therefore that the existing building is of significant architectural or historic merit.
21. The property however has been identified on the townscape map contained within the AECAMP as a 'twentieth century building which makes a positive contribution to conservation area character'.

22. The ground levels of the appeal site fall away sharply from Congleton Road, resulting in Millers Gate being set below road level. By virtue of the site's topography, boundary fencing and gates, and the number of mature trees and planting along the site frontage, only glimpses of the upper floors of the property are possible along Congleton Road. As a result, I consider that the existing property's contribution to the character and appearance of the CA to be limited.
23. Whilst I acknowledge the Council's concerns regarding the cumulative loss of more traditional existing properties with replacement dwellings and the subsequent impact on the character and appearance of the CA, some buildings are of more importance than others and their prominence and visibility will vary. In this instance, given its lack of prominence and lack of any significant architectural or historic merit, the overall contribution to the character and appearance of the CA of the building which would be lost as a consequence of the proposed demolition would not be so compelling as to warrant its retention.
24. The proposed replacement dwelling is of contemporary design whilst incorporating the use of traditional materials and features. The form and design of the proposed replacement dwelling would relate to other similar modern and contemporary buildings present in the surrounding area, including the immediately adjacent new build property to the north of the appeal site. The replacement dwelling would be of a comparable height and sited on a similar footprint to the existing dwelling, and therefore would be no more visible in the street scene than the existing. Indeed, the replacement dwelling's slight change in orientation would present less of the front elevation towards the site's access and therefore assist in marginally reducing the prominence of the property in the fleeting views possible when approaching from the south. Therefore, I do not consider that the proposal would result in harm being caused to the character or appearance of the CA.
25. The existing close boarded timber fence which runs along the front boundary of the site is a harsh and dominant feature which detracts from the sylvan character of this part of the CA. The proposed landscaping scheme includes the provision of a planted frontage screening the fence from view. This would have a positive effect on the character and appearance of the CA, albeit to a relatively limited extent.
26. The AECAMP states that the CA is notable for its cohesive, sylvan qualities and detached villas which sit in generous plots with mature tree planting largely hiding them from public view. These characteristics would not be compromised by the proposed development. In my view, taking all of these factors into account, the proposed replacement dwelling would accord with the overall character of this part of the CA being a large distinctive dwelling sat within a spacious plot whilst retaining its sylvan appearance.
27. I find therefore that the proposed development would have a neutral effect, therefore preserving the character and appearance of the CA. As such it would accord with Policies SD1 and SE7 of the CELP which seek, among other matters, to support development proposals that do not cause harm to the significance of heritage assets and ensure that developments contribute to protecting and enhancing the built and historic environment.

Other considerations

28. The appellant has put forward a fall-back position in the form of an extant planning permission¹ and Lawful Development Certificate² which could be implemented. The planning permission was approved on 18 December 2020 and relates to a two-storey extension to the dwelling and extension to the existing detached garage. The Lawful Development Certificate was granted on 23 November 2021 in relation to a proposed detached leisure building, garden office, garden store and log store. I accept therefore that the fallback position is available and a material consideration in the assessment of the proposal.
29. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission were to be refused, but it would also need to be equally or more harmful than the appeal scheme.
30. The appellant's have provided a statement which states that, in order to meet the family's needs, either the appeal scheme or the fallback position will commence before the end of the year come what may. The Council however contend that the layout which would be achieved under the fallback position would not be as attractive a proposition as the appeal scheme, particularly given that part of the additional space would be provided through a separate outbuilding. Be that as it may, there is no evidence before me to suggest that the fallback scheme would not be an acceptable alternative. Moreover, given that a Lawful Development Certificate and planning permission have been issued for the fallback position, I consider that there is a strong possibility that they would be implemented. I am therefore satisfied that there is a reasonable prospect of the fallback position being carried out in the event that planning permission were to be refused.
31. There is no dispute that the proposed replacement dwelling would have a smaller footprint than the fallback position, with it being 272.4sqm less than that of the fallback scheme. The inclusion of above ground extensions and detached outbuildings result in the fallback scheme being far less compact than the appeal proposal, which incorporates a lot of its increase in floorspace below ground level. This is further evidenced by the significant increase in the building to plot densities of the two schemes which rises from 10.9% to 18.9%. I therefore find that, in terms of its effect upon the openness of the Green Belt, the proposed scheme would represent a significant improvement from the fallback position.
32. The proposed scheme would represent a more integrated design, removing the need for further extensions to the original dwelling which would further detract from its original form and appearance, as well as the additional detached outbuildings that would arise from the fallback position. I find therefore that the proposed scheme would also represent an improvement visually from the fallback position.
33. I therefore consider that the fallback position is a material consideration of significant weight in this case, and in the overall planning balance.

¹ Council Ref: 20/2787M

² Council Ref: 21/0269M

Planning Balance

34. The proposal would represent inappropriate development in the Green Belt. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that harm. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
35. The proposal would result in a replacement dwelling that would be materially larger than the one it would replace, and therefore would constitute inappropriate development in the Green Belt. There would also be moderate harm caused to the openness of the Green Belt. Although the proposed development would preserve the character and appearance of the CA, this results in there being no further additional harm and is of neutral effect.
36. However, I afford significant weight to the fallback position for which I consider there would be a reasonable prospect of it being carried out. The fallback position would have a greater adverse effect on openness and would be an inferior design when compared to the appeal scheme.
37. I find therefore that this other consideration is of sufficient weight to clearly outweigh the substantial harm to the Green Belt by way of inappropriateness and effect on openness. As a result, very special circumstances exist to justify inappropriate development in the Green Belt. Consequently, although there would be conflict with the development plan, the planning balance in this case leads me to the view that the appeal should be allowed.

Conditions

38. The Council has suggested a number of conditions which I have considered against the tests set out in the Framework. As a result, I have amended the wording of some for clarity and omitted others.
39. In addition to the standard time limit condition, I have imposed a condition concerning the approved plans for clarity. To ensure the appropriate external appearance of the development a condition has been imposed requiring the materials to be used to match those specified in the application. Similarly, in order to ensure the appropriate external appearance of the development and to protect the sylvan quality and appearance of the area, a condition requiring the approval of all boundary treatments has been attached.
40. To ensure that the approved landscaping works which form part of the proposal are implemented, a condition has been attached requiring the landscaping works to be carried out in accordance with the approved details and within the first planting season following the completion of the development.
41. Given the presence of trees subject of a Tree Preservation Order on the site, and other retained trees which contribute to the sylvan quality of the site and wider area, a condition has been imposed requiring a scheme for the protection of the retained trees on the site to be submitted to the local planning authority. As the protection of these trees are essential, such detail needs to be approved and implemented prior to any works commencing on site. A further condition is also imposed requiring that any trees, shrubs or hedges which were shown to be retained but subsequently removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building shall be adequately replaced.

42. In the interests of safeguarding protected species, I have attached a condition stipulating that no removal of vegetation or demolition or conversion of buildings should take place between 1 March and 31 August in any year, unless a detailed survey has been undertaken to check for nesting birds. Additionally, in order to safeguard and enhance biodiversity on the site, a condition is imposed requiring detailed proposals for the incorporation of features suitable for use by breeding birds to be submitted and approved prior to the first occupation of the development.
43. In order to ensure that the development is suitable for its end use and to protect future occupiers, a condition is attached requiring that any soil or soil forming materials brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to its importation to site. To encourage the uptake of ultra-low emission vehicles and to ensure that the development is sustainable, a condition is imposed requiring the submission and approval of an Electric Vehicle Infrastructure Plan.
44. I have also imposed a condition which removes rights for works permitted to take place without the need for express planning permission on a selective basis, referring to Classes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) concerned with the addition of built volume. Given the size and design of the replacement dwelling which encompasses a large subterranean element, and based on the particulars of the site, this condition is necessary to allow the Council to assess the impact that any future additions would have on the openness Green Belt.
45. In addition, Nether Alderley Parish Council requested a further condition concerning the parking of contractors and visitors vehicles during the construction phase. However, given the site's size and accessibility, I do not consider that such a condition is necessary. I also note that neither the Council nor any consultees raised any concerns or objections in relation to any potential highway impacts during the construction phase.

Conclusion

46. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

David Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following plans:

Site Location Plan DWG: 19188 (SU) 002, Proposed Site Plan DWG: 19188 (PL) 020 A, Proposed Basement and Ground Floor Plans DWG: 19188 (PL) 100, Proposed First and Second Floor Plans DWG: 19188 (PL) 101, Proposed Front (E) and Side (S) Elevations DWG: 19188 (PL) 200, Proposed Rear (W) and Side (N) Elevations DWG: 19188 (PL) 201, Site Sections DWG: 19188 (PL) 300, Landscape Layout – Replacement Dwelling DWG No: M3254-PA-03-V2.
- 3) The materials to be used in the construction of the development shall be in strict accordance with those specified in the application, unless otherwise first agreed in writing with the local planning authority.
- 4) Prior to any development taking place above ground level (not including demolition), details of all proposed boundary treatments shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented in full prior to the occupation of the development hereby permitted.
- 5) The hard and soft landscaping of the site shall be carried out in accordance with the details shown on approved plan DWG No: M3254-PA-03-V2. All hard and soft landscaping works shall be completed in full accordance with the approved plan, and within the first planting season following the completion of the development hereby permitted, or in accordance with a programme otherwise agreed with the local planning authority. Any trees, shrubs or hedges planted in accordance with this condition which are removed, die or become severely damaged or seriously diseased within five years of planting shall be replaced within the next planting season with trees, shrubs or hedging plants of a similar size and species to those originally required to be planted.
- 6) (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837:2012 (Trees in Relation to Design, Demolition and Construction Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.

(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 of 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 development hereby approved and shall not be removed or repositioned without the prior written approval of the local planning authority.

- 7) No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the local planning authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the local planning authority gives written consent to any variation.
- 8) 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. Completing 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 take place.
- 9) Prior to the first occupation of the development, detailed proposals for the incorporation of features into the scheme suitable for use by breeding birds including sparrow and swifts, shall be submitted to and approved in writing by the local planning authority. The approved features shall be permanently installed prior to the first occupation of the development hereby permitted and thereafter retained, unless otherwise agreed in writing by the local planning authority.
- 10) 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. Prior to the occupation of the development hereby permitted, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by the local planning authority.
- 11) Prior to the first occupation of the property, an Electric Vehicle Infrastructure Plan shall be submitted to and agreed in writing by the local planning authority. The infrastructure plan shall aim to meet the following specification:

- A single mode 3 compliant Electric Vehicle Charging Point per property with off road parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kW fast charging or the best available given the electrical infrastructure.
- Should the infrastructure not be available, written confirmation of such from the electrical supplier shall be submitted to the Local Planning Authority.
- Where there is insufficient infrastructure, Mode 2 compliant charging may be deemed acceptable subject to the written confirmation referred to above being submitted.

The approved Electric Vehicle Infrastructure Plan shall be implemented and maintained throughout the use of the development hereby permitted.

- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking or re-enacting that order), no development (as defined under Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A and E of Part 1 Schedule 2 of the Order shall be carried out.