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# Appeal Decision

Site visit made on 28 February 2023

**by R Hitchcock BSc DipCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 March 2023**

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**Appeal Ref: APP/R0660/W/22/3309363**

**5 Summerhill Road, Prestbury, Macclesfield, Cheshire SK10 4AH**

- 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 Emery Planning (agent) against the decision of Cheshire East Council.
  - The application Ref 21/4573M, dated 23 August 2021, was refused by notice dated 10 May 2022.
  - The development proposed is Demolition of existing dwelling and the construction of a replacement dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling and the construction of a replacement dwelling at 5 Summerhill Road, Macclesfield SK10 4AH, in accordance with the terms of application Ref 21/4573M, dated 23 August 2021, subject to the conditions set out in a schedule attached to this Decision.

## Preliminary Matters

2. Since its decision, the Council has adopted the Cheshire East Council Site Allocations and Development Plan Document (the SADPD). The policies within it supersede those of the Macclesfield Borough Local Plan referred to in the Council's Decision Notice. The relevant new policies are PG 10 – Infill Villages, GEN 1 – Design Principles and RUR 13 – Replacement Buildings Outside of Settlement Boundaries. I have regard to these in coming to my decision.
3. During the Council's consideration of the planning application amended plans were provided by the appellant to seek to address some expressed concerns. These showed a reduced scale of development and removal of some side-facing windows and rear balconies. It is unclear whether the proposed revisions were advertised. However, as they were minor amendments, and the nature of concerns of those who would normally have been consulted are clear from consultation on the original set of plans, I do not consider that their interests would be prejudiced if I take the revised plans into account.
4. For the avoidance of doubt, I have determined the appeal on the basis of the development shown on plans: Site Location Plan EX-100; Proposed Site Plan P-100 Rev D; Proposed Ground Floor Plan P-110 Rev H; Proposed First Floor P-111 Rev H; Proposed Front and Rear Elevations P-200 Rev H; Proposed Side Elevations P-201 Rev H; and Proposed Street Scene P 210 Rev D.
5. For the purposes of the appeal, the appellant has referred me to separate development which is the subject of an application to the Council for a

Certificate of Lawfulness of Proposed Use or Development (CLOPUD) on the site (Ref. 22/3411M). It is not for me under a s78 appeal to predetermine the lawful status of any such development. Nevertheless, for the purposes of determining this appeal I must come to a view based on the balance of the evidence before me as a relevant consideration to the matters at hand only; this view is not binding.

## **Main Issues**

6. The main issues are:

- whether or not the proposal would be inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (the Framework) and any relevant development plan policies
- the effect of the proposal on the character and appearance of the area
- if found to be inappropriate development, whether any 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**

### *Green Belt*

7. The Government's approach to protecting the Green Belt is set out in Section 13 of the Framework. It states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 149 of the Framework makes it clear that new buildings are inappropriate in the Green Belt subject to a number of exceptions. Policy PG3 of the Cheshire East Local Plan Strategy 2010-2030 [2017] (the CELPS) restates the national policy position in relation to Green Belt development, including the exceptions to inappropriate development.
8. The appellant refers to the provisions listed in Paragraphs 149 d), e) and g) of the Framework. These relate to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; limited infilling in villages; and, limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development, respectively.
9. There is no dispute between the main parties that the proposed building would be materially larger than the existing building. Accordingly, the proposal would not meet the exception provided in Paragraph 149 d).
10. On the adoption of the SADPD, Policy PG10 clarifies which settlements are villages for the purpose of the exception to inappropriate development comprising 'limited infilling in villages' as referenced in Policies PG3 and PG6 of the CELPS. It provides a clear interpretation of those areas determined to fall within that provision, and those beyond it. Notwithstanding the finding in *Wood*<sup>1</sup>, which confirms designated settlement boundaries as not being

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<sup>1</sup> *Wood v SSCLG and Gravesham BC* [2015] EWCA Civ 195

generally definitive, I find a policy specifically aimed at defining relevant qualifying areas to be one with more gravitas.

11. Summerwood Road has been assessed as one lying outside the scope of 'within a village' for the purposes of the Paragraph 149 e) exception. On the ground, the houses along the road are situated in a countryside location between the main built-up areas of Macclesfield and Prestbury. They are substantially bordered by open sporting and recreational sites on 2 sides and undeveloped agricultural landscape to the east. Despite having a connection to the village via buildings at Walnut Tree Farm, they appear as a distinct enclave of development.
12. Notwithstanding that some appeal cases referred to me by the appellant have individually concluded that the locality forms part of the village of Prestbury, I do not find these or the situation on the ground are sufficiently conclusive to outweigh the more recent adopted policy assessment of the locality. Accordingly, I find the proposal would not benefit from the exception at Paragraph 149 e).
13. As a site featuring an existing building and associated surface infrastructure, it would fall within the description of previously developed land (PDL) as set out in Annex 2 of the Framework. Whilst the extent of the PDL would normally apply to a whole site curtilage, the definition excludes gardens in built up areas. The approach thereby makes a distinction between different parts of what might be a single planning unit.
14. On straightforward reading and application, whilst the enclave of built development either side of the Summerwood Road could be described as a built-up element in its countryside location, the rear garden area is undeveloped and contiguous with the predominantly open landscapes beyond. It would not therefore be within the built-up area.
15. However, as a complete redevelopment of PDL, the proposal is subject to the qualifying criteria of not having any greater impact on the openness of the Green Belt than the existing development. There is no dispute between the main parties that the proposed building would be materially larger than the existing building. The greater volume and footprint would have some adverse effect on the spatial openness of the Green Belt.
16. Visually, the spreading footprint and position of the replacement dwelling deeper in its plot would cause it to extend further into the open area to the south of the existing dwelling. This would cause it to have a visual effect on openness. However, as this could only be perceived from limited vantage points, the adverse effect would be minor.
17. As aspects of the development that would give rise to a greater impact on openness than the existing development, albeit limited, the scheme would not accord with the exception in Paragraph 149 g).
18. In support of the proposal, the appellant draws my attention to several leading cases<sup>2</sup> as to how openness should be assessed for the purposes of Green Belt

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<sup>2</sup> *John Turner vs SoSCLG and East Dorset Council* [2016], *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin), *Samuel Smith Old Brewery (Tadcaster), Oxtan Farm v North Yorkshire CC & Darrington Quarries Ltd* [2018] EWCA Civ 489, and *Samuel Smith Old Brewery (Tadcaster) and others (Respondents) v North Yorkshire County Council (Appellant)* [2020] UKSC 3

development. Notwithstanding a broader application to openness assessment advocated within the combined findings of those decisions, for the purposes of Paragraph 149 g), any greater effect on openness would cause it to fall outside of its provisions.

19. Whilst this is a matter I return to below, it is important to acknowledge that measured against the exceptions to new building in the Green Belt, the development would not qualify under any of Paragraphs 149 d), e) or g) of the Framework. For similar reasons, the development does not fall within the exceptions outlined in Policy PG3 of the CELPS.

### *Character and appearance*

20. The site lies on a private cul-de-sac flanked on both sides by large, individually designed, detached houses in substantial plots. The buildings are predominantly set behind enclosed front gardens incorporating mature landscaping and vehicle areas. Large private amenity spaces are set to the rear of the buildings.
21. The road includes an eclectic mix of architectural styles and features from various periods. It has seen several phases of development, including some modern additions and/or replacement buildings.
22. The proposal would see the demolition of the existing dwelling with integral garaging. There is no dispute between the main parties that the building has specific heritage or design qualities such that any part should be retained.
23. The design of the replacement dwelling, described by the appellant as taking influences from recent developments in the locality, would introduce a further individual style into the mixed character of buildings in the vicinity. With Georgian colonial influences, the overall design, detailing and use of materials would provide a consolidated appearance to the proposed dwelling.
24. Whilst of similar overall height to neighbouring properties, some vertical emphasis would be provided by the deep frontage windows and higher middle section. The main central block, with a relatively low roof form and deep profile, would have a high degree of massing. However, this would be somewhat tempered by the combined effects of the subordinate flanking elements and the articulation in the main frontage. Alongside the contrasts between the various facing materials and the low roof profile, the combined building would not read as monolithic in its setting.
25. Although the proposal would have greater scale and massing than some houses along the lane, it would be comparable to others. It would be within the range of acceptable scale derived from those buildings elsewhere along the road.
26. For those reasons, I find it would preserve the character and appearance of the locality. It would comply with the requirements in Policies SD2 and SE1 of the CELPS, Policy GEN1 of the SADPD and the Framework as they require development to respect and respond positively to the character and appearance of their locations.

### **Other Considerations**

27. In support of the appeal, the appellant refers me to potential fall-back positions in relation to development that could take place on the site if planning

permission was refused. These arise from a previous part-implemented permission (ref. 02/1383P) and development permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

28. The Council does not dispute that the remainder of planning permission ref. 02/1383P could be implemented. This would include a first-floor extension. According to the appellant's evidence, when viewed from the front or rear, this would have a comparable visual extent to the proposed development.
29. The provisions of the GPDO would also potentially allow for the erection of further extensions to the existing dwelling and/or separate building/s within the curtilage for a purpose incidental to the enjoyment of the dwellinghouse. This is also not contested by the Council.
30. The appellant has provided limited detail of the position and footprint of a detached building that could house a swimming pool and/or other leisure facilities. Such facilities are also shown within the floor plans of the proposal.
31. The position of this, or an alternative detached outbuilding, would extend the visual limits of development across a larger part of the site which is currently free from buildings and structures. It would encroach into the more open area to the south of the dwelling. Furthermore, it could add to the cumulative volume and footprint of development contained upon the site. This would potentially have a similar or greater effect on the spatial and visual openness of the Green Belt than the proposed development.
32. The fact that the appellant has applied for a CLOPUD provides an indication that efforts to implement a fallback alternative are afoot and therefore some degree of additional accommodation has more than a theoretical possibility of taking place.
33. Even allowing for modest amounts of additional accommodation, whether by extension or detached building, there would be corresponding effects on the spatial and visual openness arising from development on the site. It is a well-established principle that the provisions of the GPDO may provide a fallback position. Accordingly, I find this a matter of considerable weight in the appeal.
34. The Council's assessment of the replacement building indicates that the dimensional increases, in isolation, would lead to a harmful impact on openness. However, their appraisal taking account of the effect of the development on the openness of the wider Green Belt (as *Euro Garages*, *Samuel Smith Old Brewery* and others), found no adverse effect. This was concluded on the basis of its context within the existing ribbon of development. This is also a matter of considerable weight.
35. I note the concerns of neighbouring residents in relation to the potential for overlooking if the roof of the leisure wing were to be used as a terrace. Notwithstanding that the revised scheme does not show this roof to be accessible, its use would afford views into the neighbouring property at 3 Summerhill Road. This would result in an undue level of overlooking and loss of privacy. Accordingly, a restriction to prevent its use as a terrace would be appropriate in the particular circumstances of the case.

## **Planning Balance**

36. By virtue of the increased scale of the proposed development against the existing dwelling and the site's location identified to be outside a village, the proposal would constitute inappropriate development in the Green Belt. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and that substantial weight should be given to that harm.
37. However, the alternative proposition of the fallback position, that could result in a similar or worse effect on the spatial and visual openness of the Green Belt, would be a realistic option to provide the additional residential elements which are proposed to be incorporated into the replacement dwelling. The impact or harm, wrought by the proposal in comparison to the fallback, would be negligible in the context of the setting between existing development of a similar scale and an established cluster of large houses. Accordingly, I find the fallback in this instance provides sufficient justification to outweigh the harm that would arise to openness and from inappropriateness and that very special circumstances therefore exist to justify the development.

### **Conditions**

38. I have considered the suggested conditions from the Council and had regard to Paragraph 56 of the Framework and the Planning Practice Guidance in terms of the use of planning conditions. In addition to the standard condition limiting the lifespan of the planning permission, I have imposed a condition specifying the relevant drawings as this provides certainty.
39. In the interests of preserving the character and amenity of the locality, conditions relating to external materials and tree protection are reasonable. Conditions to prevent harm to nesting birds and other protected species, and to enhance the ecological value of the site are necessary in the interests of biodiversity.
40. A condition preventing the use of the roof area above the pool as a terrace is reasonable to prevent undue overlooking of a neighbouring property.
41. In the instance where development permitted by the GPDO was necessary to justify an otherwise inappropriate form of development in the Green Belt, I find a clear justification for restricting further development that could cause harm to the openness of the Green Belt under its terms exists. For similar reasons, the removal of any outbuildings provided subsequent to this decision but before implementation of the permission is also justified.
42. Conditions requiring landscaping details and implementation are not necessary for an established residential site.

### **Conclusion**

43. For the reasons given, the appeal should be allowed.

*R Hitchcock*      INSPECTOR

### **Schedule of Conditions to Planning Permission Ref. 21/4573M**



- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans with project number 2921: Site Location Plan EX-100; Proposed Site Plan P-100 Rev D; Proposed Ground Floor Plan P-110 Rev H; Proposed First Floor Plan P-111 Rev H; Proposed Front and Rear Elevations P-200 Rev H; Proposed Side Elevations P-201 Rev H; and Proposed Street Scene P-210 Rev D.
- 3) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) (a) No development or other operations shall take place except in complete accordance with the tree protection measures identified in the Cheshire Woodlands Arboricultural Consultants Tree Protection Plan Ref CW/10484-P-TP, dated 24 September 2021, with measures to be implemented under arboricultural supervision in accordance with BS 5837:2012 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 phase of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- 5) No removal of any vegetation or the demolition 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 demolished in the case of buildings), a 4m exclusion zone shall be left around the nest until breeding is complete. Completion 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.
- 6) The development shall be carried out in accordance with the reasonable avoidance measures detailed within the report 21/4573M - Ecological Addendum for Amberlay, 5 Summerhill Road, Prestbury by Rachel Hacking Ecology, dated 21<sup>st</sup> January 2022.
- 7) Prior to the use of any building materials in the development hereby approved, a strategy for the incorporation of features on the site to enhance the biodiversity value of the proposed development shall be submitted to and approved in writing by the local planning authority. The submitted strategy should include proposals for the provision of features for nesting birds including house sparrow and roosting bats (any external lighting shall avoid direct light spill upon bat roost features), brash/deadwood piles and native species planting. The proposals shall be installed

in accordance with approved details prior to first occupation of the dwelling and be retained for the duration of the development.

8) The roof area of the pool house and associated leisure facilities hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

9) All outbuildings present on the site at the time of demolition of the existing dwelling shall also be demolished prior to the construction of any part of the dwelling hereby approved.

10) 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 by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) A-E of Part 1 Schedule 2 of the Order shall be carried out.

END.