



Appeal Decision

Site visit made on 21 March 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2023

Appeal Ref: APP/R0660/W/22/3312015

The Farthings, London Road, Bridgemere CW5 7PZ

- 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 Mr Mark Humber of Signature Self Builds Limited against the decision of Cheshire East Council.
 - The application Ref 22/2087N, dated 16 May 2022, was refused by notice dated 12 August 2022.
 - The development proposed is new dwelling on the designated site which includes a two storey 5-bedroom house and detached garage.
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Decision

1. The appeal is allowed, and planning permission is granted for a new dwelling which includes a two storey house and detached garage at The Farthings, London Road, Bridgemere CW5 7PZ in accordance with the terms of the application Ref 22/2087N, dated 16 May 2022, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the Council's determination of the application the Cheshire East Site Allocations and Development Policies Document (the SADPD) was adopted on 14 December 2022. In its Appeal Statement the Council confirms that as a result the Crewe and Nantwich Replacement Local Plan no longer forms part of the development plan and saved policy RES.5 is no longer relevant. The Council also confirms that there is no direct replacement policy in the SADPD for new housing development in the countryside and that Policy PG6 of the Cheshire East Local Plan Strategy¹ (the CELPS) remains the most relevant. A list of general relevant SADPD Policies has also been provided including Policy PG10 for its definition of an infill village. The appellant has had the opportunity to comment.

Background

3. The appeal site currently forms part of the garden of a replacement dwelling that was granted planning permission² following the demolition of a vacant dwelling that was used as an office (formerly associated with the adjacent Bridgemere Garden Centre) on the corner with Yew Tree Lane and the A51. To move the building away from the garden centre delivery yard and allow for the demolition of a number of outbuildings, the dwelling is not on the footprint of the previous building, but on the other side of the plot. That dwelling has since been built.

¹ Adopted July 2021

² LPA Ref: 20/0016N granted 7 May 2020

4. The proposal would involve the erection of a large detached 5-bedroom dwelling with detached double garage in the grounds of the replacement dwelling, which would mirror the design and orientation, although handed, of the now-built dwelling. The appeal site is enclosed by the tall brick wall that was built around the replacement dwelling and site. The existing gated vehicular access off the A51 would be used and would lead to a shared driveway for the existing and proposed dwelling.

Main Issue

5. The main issue in this appeal is whether the proposal would accord with local and national policies with regard to its location and its effect on the countryside.

Reasons

6. SADPD Policy PG10 lists settlements in the rural area defined as "infill villages" that have a defined 'village infill boundary' within which limited infilling will be supported. There is no dispute between the parties that the site does not lie within a settlement or identified "infill village" and is hence in the open countryside. I saw this to be the case on my visit.
7. In the countryside, under CELPS Policy PG6 only development essential for agricultural, forestry, outdoor recreation, public infrastructure and other essential workers and uses appropriate to a rural area will be permitted. The proposal is not purported to be for any of these uses. Part 3 of Policy PG6 goes on to list exceptions that might be made. The only one of relevance to this appeal is exception 3i) for sites outside villages where development would be for the infill of a 'small gap with one or two dwellings in an otherwise built-up frontage'. SADPD Policy PG10 refers to infill being development of a relatively small gap existing between buildings, but this policy relates specifically to infill villages.
8. Policy H1 of the Wybunbury Combined Parishes Neighbourhood Plan³ (the NP), similarly will support development of up to 2 dwellings in a small gap in an otherwise built-up frontage, outside the settlements named in the policy.
9. There is no definition in the development plan or Framework of "built-up frontage". However, the words themselves give sufficient guidance. There needs to be more than one building present. To form a frontage, the buildings need to have some principally linear alignment fronting the road. The group of buildings therefore needs to have some continuous form and extent. It will then be a matter of judgement based on the site in relation to its context and the facts on the ground.
10. The appeal site has the replacement dwelling to the north. Adjacent to the south side of the site is a service road leading to the delivery yard for Bridgemere Garden Centre. Beyond this is land with mature trees and screened from the road behind a hedge. Next to this is the first building at the garden centre site. Therefore, the appeal site, intervening service road and treed land form a sizeable gap, not a small gap, between the existing replacement dwelling and the garden centre building. If the appeal was allowed and the proposed dwelling was built, the intervening gap of the service road and treed land would still exist between it and the garden centre building.

³ Made April 2020

11. Furthermore, I saw that the garden centre site comprises a building that has been extended over time, which is set back from the road. The garden centre's extensive car park then extends the garden centre complex further southwards along the road, beyond which there is only fields. However, the garden centre buildings and car park are set back a considerable distance from the road behind a wide grassed landscaped verge with intervening mature hedgerow and trees. This boundary planting screens the garden centre complex from view, even at the time of my visit when not all trees were in leaf, such that as one travels along the A51 one would hardly know the garden centre complex was there, save for the vehicular entrance and exit.
12. With the screened nature of the site and the sizeable gap between the garden centre buildings and the proposed dwelling the proposal would not represent infill of a built-up frontage. Accordingly, it would conflict with CELPS Policy PG6 and NP Policy H1 in this regard.
13. However, NP Policy H1 does allow small-scale residential development on brownfield sites (otherwise known as previously development land or PDL). The appeal site would be PDL in accordance with the definition in the Glossary in Annex 2 of the National Planning Policy Framework (the Framework). Policy H1 does not require brownfield sites to be within settlements or comprise infill development. Therefore, in principle the proposal would accord with Policy H1 in this regard.
14. With regards access to services, CELPS Policy SD2 expects residential development to provide access to a range of forms of public transport and key services and amenities, a list of which is provided in its table 9.1, together with recommended distances to them. The site is located beyond the distances to key amenities. Furthermore, there is no public transport and no footpath along the A51 to the nearest village of Woore that has some services and facilities.
15. However, Policy H1 does not require brownfield sites proposed for the re-use for residential development to be located close to services and facilities or in settlements. Indeed, by their nature not all brownfield sites will be well located to services and facilities.
16. Nonetheless I saw that some limited food stuffs, clothes, shoes and some household items can be bought at the adjacent Garden Centre complex which has a number of non-gardening retail outlets, and which is open 7 days a week. Whilst there is no footpath, it would be a short distance to cycle along the road or walk along the grass verge. There would also likely be some employment opportunities at the garden centre. The garden centre would therefore offer future occupiers some access to limited basic day-to-day items and help reduce reliance on the private car. With no public transport, there would have to be car dependency to access higher order services and facilities such as schools and doctors.
17. The Council does not object to the actual design of the dwelling, which is similar to the one it has already approved, and which has been built. The build-quality of the dwelling is also not in question. I accept that the proposal would result in two large dwellings sited side by side within the site, on this prominent roadside location. However, the design and size of the replacement dwelling on site is already more suburban than rural vernacular, so whilst a second dwelling would increase this, the presence of two dwellings would not be unduly harmful with what has already been allowed. In addition, the

development would not extend into the adjacent countryside but would be contained within an already well-defined curtilage surrounded by a suburban style wall and access gates. The site is close to another dwelling and Bridgemere Garden Centre and therefore cannot be regarded as 'isolated' under the terms of the Framework. Furthermore, NP Policy H1 permits residential development on brownfield sites in rural areas so some change of character and possible urbanisation of sites will be an inevitable consequence. Hence, I do not find conflict with CELPS Policy SE1, which seeks, amongst other things, to ensure development has regard to the site and its wider setting.

18. In conclusion, the site is not an infill site and conflicts with CELPS Policy PG6 and NP Policy H1 in this regard. However, the proposal would be in accordance with NP Policy H1 for utilising a brownfield site in the rural area and making more efficient use of land, which is advocated by the Framework. There would be some conflict with CELPS Policy SD2 for not being accessible to public transport and key services and facilities. However, there would be easy access to some basic day-to-day food stuffs and other items such as clothes and shoes and local employment opportunities at the adjacent garden centre that would help reduce dependency on the car. The erection of a second dwelling would not unduly harm the countryside character. Therefore, on balance I find the proposal would be an acceptable form of development that would broadly comply with the development plan as a whole.

Other Matters

19. Noise from the adjacent garden centre service yard was a principal reason for relocating the approved replacement dwelling on the other side of the site. An Acoustic Report was submitted with the application the subject of this appeal and proposed some noise mitigation measures. The Council's Environment Protection Team has raised no objection to the proposed dwelling, subject to the implementation of the mitigation set out in the Acoustic Report. This can be conditioned.

Conditions

20. The Council has listed 17 conditions to be imposed, which include a number of pre-commencement conditions. I have considered the conditions against the advice and tests in the Framework and the Planning Practice Guidance (the PPG). Where necessary and in the interests of precision and clarity I have amended them to accord with the PPG and have grouped them in the order that they need to be satisfied, or where appropriate by topic.
21. In addition to the standard condition which limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
22. In the interests of the character and appearance of the area it is necessary to impose a materials condition. However, I have amended the trigger to 'before above ground works take place' as this provides greater enforceability and clarity. To ensure a satisfactory form and setting of development I shall impose landscaping, biodiversity and tree protection conditions, again with some amendment to triggers.
23. The access gate has already been imposed under the replacement dwelling permission and is to be shared. Therefore, there is no need for me to impose it

again, but I shall impose the condition for refuse collection as the property is separate from the previously approved one. As part of an overhaul of the Building Regulations, new homes with associated parking must now have an Electric Vehicle charge point. Therefore, a planning condition requiring their provision is unnecessary.

24. I shall impose the contamination-related conditions on the advice of the Council's Environmental Protection team, and which were imposed on the permission for the replacement dwelling as a precautionary measure. As already explained I shall add a condition requiring the implementation of acoustic mitigation.
25. I am mindful of the advice in the Framework and the PPG about avoiding restricting national permitted development rights unless there is clear justification to do so. However, a similar condition was imposed on the replacement dwelling. In respect of parity and the already sizeable nature of the dwelling, I shall impose it in this instance.

Conclusion

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

K. Stephens
INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby approved shall commence within 3 years of the date of this permission.
2. The development hereby approved shall be carried out in accordance with the approved plans 1015-01; 1015-02; 1015-03 and 1015-101 received by the Local Planning Authority on the 20th May 2022.
3. Tree protection measures.
 - a) No operations shall be undertaken on site in connection with the development hereby approved (including 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 fencing is erected around the site in accordance with BS 5837:2012 'Trees in relation to design, demolition and construction—recommendations'.
 - b) 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.
 - c) 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.
4. No above ground works shall take place until samples/details of the materials to be used in the construction of external surfaces and roof of the dwelling and garage hereby permitted have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

5. No above ground works shall take place until a strategy for the incorporation of features to enhance the biodiversity value of the proposed development has been 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, brash/deadwood piles, and native species planting. The proposals shall be permanently installed in accordance with approved details.
6. Prior to the first occupation of the dwelling hereby approved, a landscaping scheme shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of hard landscaping; planting plans; written specifications (including cultivation and other operations associated with tree, shrub, hedge and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers and densities where appropriate; and an implementation programme.
7. The landscaping plan required by condition 6 shall be completed in accordance with the following:-
 - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
 - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification -for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
 - c) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 'Trees in Relation to Design, Demolition and Construction-recommendations'.
 - d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
8. The landscape plan, as required by Condition 6 shall include the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be carried out in accordance with the approved details and shall be completed before the dwelling is first occupied.
9. 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 converted 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 taking place

10. The surfacing materials to be used in the development shall be permeable and, notwithstanding the details already submitted, details of the surfacing materials shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the dwelling hereby approved. The development shall be carried out in accordance with the approved details.
11. Prior to the first occupation of the dwelling hereby approved, a plan showing a refuse collection point shall be submitted and approved in writing by the Local Planning Authority. The development shall be implemented as approved prior to the first occupation of the dwelling.
12. Prior to the first occupation of the dwelling hereby approved, the mitigation recommended in the Acoustic Report 5987MH dated 18/05/21 shall be implemented in full. The mitigation in section 5 refers to design and build specification which refers to the building envelope, roof specification, glazing specification and ventilation specification and must be adhered to. The agreed mitigation scheme shall be maintained for the purpose originally intended throughout the use of the development.
13. Contamination
 - a) 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 in line with the current version of 'Developing Land within Cheshire East Council – A Guide to Submitting Planning Applications, Land Contamination' (in the absence of any other agreement for the development), which can be found on the Development and Contaminated Land page of Cheshire East Council's website.
 - b) Prior to occupation of the dwelling hereby approved, evidence and verification information (for example: quantity/source of material, laboratory certificates, depth measurements, photographs) shall be submitted to, and approved in writing by, the Local Planning Authority.
 - c) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made, and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation of the dwelling hereby approved, confirmation should be provided to the LPA that no such contamination was found and, if so, what remedial measures were agreed and implemented.
14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A, B and E of Part 1 of Schedule 2 of the Order shall be carried out.

End of conditions