



Appeal Decision

Site visit made on 1 August 2023

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 September 2023

Appeal Ref: APP/R0660/W/23/3316789

Heath House, Whitchurch Road, Cheshire East, Bunbury CW6 9SX

- 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 Mrs Sally Harris against Cheshire East Council.
 - The application Ref 22/4071N, is dated 14 October 2022.
 - The development proposed is for the change of use of open countryside to designated garden land to be used in association with Heath House.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mrs Sally Harris against Cheshire East Council. This application is the subject of a separate decision.

Preliminary Matters and Main Issues

3. This appeal follows the failure of the Council to determine the planning application within the prescribed period. Had it been able to determine the application, the Council has indicated that the application would have been refused.
4. I note the reasons set out within the Council's Appeal Statement. While this is not the application decision, as jurisdiction over that was taken away when the appeal was lodged, I have treated it as the decision the Council would have made, had it been empowered to do so.
5. Therefore, the main issues are:
 - The effect of the proposal on biodiversity on site;
 - Whether the proposal would affect drainage on site and flood risk within the surrounding area; and,
 - The effect of the proposal on the character and appearance of the surrounding area and landscape.

Reasons

6. The appeal site is part of a ribbon of development along Whitchurch Road that backs on to fields and trees to the rear. The appeal site itself contains a large dwelling to the front and a sizeable open space to the rear, part of which has planning permission for use as a garden in association with the dwelling.

Biodiversity

7. The area of the appeal site covered by the proposal is, as existing, a large area of lawn that contains some large trees and is bounded by further trees and mature hedgerows. I have not been provided with any substantive details of the ecological or biodiversity on site. However, given the presence of mature trees and hedgerows and its context at a rural edge, there is the potential for the site to support biodiversity on and around the site. In particular, I note the Council's concerns regarding bats and great crested newts, both of which are protected species.
8. I am statutorily required to have regard to the purpose of conserving biodiversity by Section 40 of the Natural Environment and Rural Communities Act 2006. As the proposal would include the clearance of a sizeable area to the rear of the site, there is a reasonable likelihood that, if present, protected species, their breeding or resting places are adversely affected by the proposal.
9. It is not appropriate to require the submission of protected species surveys through conditions. It is therefore essential that the presence, or otherwise of a protected species is known prior to the grant of planning permission.
10. I recognise that the proposal may result in an improved habitat with the provision of the pond, additional trees and wildflower planting. However, without suitable details of any protected species, I cannot be certain that if any harm were to occur as a result of the proposal, that it would be sufficiently mitigated.
11. The proposal risks unacceptably affecting biodiversity and protected species on and around the appeal site. Insufficient evidence has been submitted to demonstrate that that this would not occur. The proposal would therefore conflict with Policies SD1, SE1, SE3, SE4 of the Local Plan Strategy (the LPS), Policy ENV2 of the Site Allocations and Development Policies Document (the SADPD), and Policy BIO1 of the Bunbury Neighbourhood Plan (the BNP). These policies collectively, and amongst other matters, require developments to contribute to protecting and enhancing the natural environment through works evidenced by ecological assessments. The proposal would also conflict with the aims of the National Planning Policy Framework (the Framework), including Chapter 15 and in particular Paragraph 180(a) which considers that developments should be refused where it is not possible to avoid, mitigate or compensate for harm to biodiversity.

Drainage and Flood Risk

12. The proposal would significantly change the nature of the site through the clearance of trees and the creation of a pond. The submitted details are limited with regards to how the pond would be created or what the 'viewing area' would comprise. I noted during my site visit that the area covered by the proposal was not completely flat.
13. The proposal would introduce a large body of water to the appeal site, and it has not been demonstrated how this would be safely achieved. Whilst it is likely that the site would be excavated to accommodate the creation of the pond, it may also be necessary to raise some areas of the land to create a level barrier around the whole of the pond. Lacking sufficient information as to the nature of the land and the construction of the pond, I cannot be certain that

the pond would be safe, and that it would not create a risk of flooding on the appeal site or within the surrounding area.

14. Moreover, the pond would remove a substantial permeable area serving the site. Whilst the pond may be able to hold some additional water in times of heavy rain, no details have been provided as to how the water levels would be managed to prevent it overtopping the banks of the pond.
15. Given the limited details before me I cannot be certain of the level of risk that the proposal would introduce or that a suitable solution could be found. Therefore, whilst it has been suggested that any flood risk could be dealt with through conditions, in the event that a solution could not be found, it would put pressure on the Council to allow the development to go ahead without complying with the condition.
16. The above could be further exacerbated should the proposal include the laying of any hardstanding of the erection of any platforms or features associated with the proposed viewing area. These would have the potential to further reduce the availability of permeable surfaces and increase the potential for surface water run-off.
17. The proposal has the potential to result in unacceptable flood risks and insufficient evidence has been submitted to demonstrate that this would not occur. The proposal would therefore conflict with Policy SE13 of the LPS and Policy ENV16 of the SADPD which seek to minimise flood risk and surface water run off through ensuring development is safe for its lifetime and that any surface water run-off is managed suitably. It would also conflict with the Framework's aims regarding minimising flood risk as set out under Chapter 14.

Character and Appearance

18. As noted above, the appeal site sits in a ribbon of development and backs on to an open rural landscape. The rear of the site contributes to the wider rural area as a result of the mature trees and hedgerows and the lack of any formal planting or other domestic features. The proposal, alongside providing a pond, would extend the residential curtilage across the rear portion of the site.
19. The submitted details do not clearly identify which trees would be affected as part of the proposal, although it appears some would need to be removed to accommodate the pond. I am content that the Tree Preservation Order does not cover any of these trees. Although trees make an important contribution to the character of the area, it is likely that there would only be a small loss as a result of the proposal. Whilst this would negatively affect the character of the surrounding area, I note the appellant intends to provide replacement tree planting. In the event that the appeal were to be allowed, a suitable scheme of replacement trees could be secured, along with a detailed landscaping scheme, by way of conditions.
20. I further find that the proposed pond and wildflower planting surrounding it would complement the rural character of the wider landscape. I would be concerned that the proposed viewing area could introduce built features such as decking or hardstanding. However, I note the appellant's suggestion that it would be merely a part of the planted area that would allow views of the pond to be enjoyed. I find that, in the event of the appeal being allowed, this could be ensured through a landscaping plan and permitted development rights could

be removed in this area. In this way, and mindful of the above, the proposal would not result in the built environment unacceptably encroaching on the open countryside.

21. Subject to the above, the proposal would not unacceptably harm the character and appearance of the site, its contribution to the wider landscape or the provision of trees. The proposal would therefore comply with Policies PG6, SD1, SD2, SE1, SE4 and SE5 of the LPS, Policies GEN1, ENV3, ENV5, ENV6 and RUR12 of the SADPD and, Policy LC1 of the BNP. Amongst other matters, these policies collectively seek to resist development that would harm the character and appearance of the surrounding landscape, including through the extension of residential curtilages. Particular regard is paid to the protection of natural features including trees. The proposal would also comply with the character and appearance aims of the Framework set out under Chapter 12.

Other Matters

22. I have had regard to the submissions by the appellant regarding family members with additional needs and the potential benefits of the proposal for them. Whilst I have no doubt that the proposal would be of benefit to the appellant's family, it is likely that the proposal would be permanent and would remain long after the current personal circumstances change. Therefore, I attach this matter modest weight and it does not outweigh the harm I have identified above.

Conclusion

23. The proposal risks unacceptable harm to biodiversity and flood risk on, and around, the site, and would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Samuel Watson

INSPECTOR