



Appeal Decision

Site visit made on 17 April 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 14th May 2024

Appeal Ref: APP/C4235/W/23/3326734

Land rear of 2A Hill Top Avenue, Cheadle Hulme, Cheadle, Cheshire SK8 7HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr P Duffy of Beluga Group Ltd against the decision of Stockport Metropolitan Borough Council.
 - The application Ref is DC/087191.
 - The development proposed is erection of one detached dwelling with creation of new access and demolition of existing attached garage at 2B Hill Top Avenue.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Submitted with the appeal is a planning agreement (S106) under Section 106 of the Town and Country Planning Act 1990. The agreement has been signed by both the Council and the appellant. It secures a contribution of £7,480 towards enhancing existing public open space facilities and funding the provision and maintenance of children's play and formal recreation areas within the borough. It also secures a £500 monitoring fee.

Main Issues

3. The main issues are:
 - whether the proposal would preserve or enhance the character or appearance of the Hulme Hall Road/Hill Top Avenue/Swann Lane Conservation Area;
 - the effect of the proposal on the living conditions of occupants of 2 and 4 Radley Drive and 2A Hill Top Avenue, with particular regard to outlook and the provision of light, and occupants of 2B Hill Top Avenue, with particular regard to privacy;
 - whether the proposal would provide acceptable living conditions for future occupants, with particular regard to the provision of light;
 - whether a biodiversity net gain (BNG) could be achieved; and,
 - whether the proposal would make a suitable contribution toward the provision of open space.

Reasons

Conservation area

4. The appeal site is 2B Hill Top Avenue (No 2B). No 2B is a large, detached property which has an L-shaped rear garden that partially wraps around the garden of 2A Hill Top Avenue (No 2A). The properties along Hill Top Avenue are of varying design but most have steep-pitched, tiled roofs with chimneys and are large, semi-detached or detached properties. This section of the road is tree lined and there are also several tall trees to the rear of the properties, which are viewable from the road. These factors combine to create a verdant and sylvan character.
5. The rear garden also connects to Scholars Green Avenue, close to its junction with Hill Top Avenue. This section of the road is bordered by long boundary treatments which enclose rear gardens. The character of the road changes as you approach Radley Drive, to a denser, tight-knit pattern of residential development. Nonetheless, the appeal site and surrounding area is distinctly suburban in character.
6. The appeal site is within the Hulme Hall/Swann Lane/Hill Top Avenue Conservation Area (CA). As set out within the Conservation Area Character Appraisal¹, the special character of the area includes a rural suburb with a diverse range of buildings, yet harmonious in style; mature trees providing a leafy quality to the area; and a spacious quality with buildings set in generous plots with space between adjacent dwellings. As set out above the appeal site has characteristics which are reflective of the special character of the CA. As such, it makes a positive contribution to the CA.
7. As the proposal is in the CA, I have paid special attention to the desirability of preserving or enhancing the character or appearance of the area, as set out in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
8. The proposed dwelling would be sited to the rear of No 2A and would be L-shaped running broadly parallel to the boundaries with 2 and 4 Radley Drive (Nos 2 and 4) and Scholars Green Avenue. The proposed dwelling would be largely screened in views from Hill Top Avenue by existing development. Nonetheless, it would be visible from Scholars Green Avenue, in the section of the road which is currently defined by long boundary treatments bordering large back gardens.
9. Whilst there is a denser pattern of development along Scholars Green Avenue, this has not altered the character of the whole CA. In any event, due to its siting the proposed dwelling would be primarily viewed alongside the development on Hill Top Avenue. It would be sited next to No 2A, which has a modestly sized rear garden compared to others on the road. The proposal, including the sub-division of No 2B, in combination with No 2A would create a series of large properties with relatively modest garden areas. This would further erode the sense of spaciousness along Hill Top Avenue.
10. The proposed siting to the rear of properties, close to the boundary and not addressing the street does not reflect the pattern of development in this area. Moreover, the proposed scale of the dwelling, flat roof, and no glazing in the

¹ Hulme Hall/Swann Lane/Hill Top Avenue Conservation Area Character Appraisal, 2005 (Updated 2011)

south east and south west elevations, would make it appear blockish and a defensive structure, unlike other residential properties in the area. Whilst difference does not necessarily mean harm, in this instance, the proposed contemporary design would not appear harmonious in style. As such, the proposal would detract from the character and appearance of the CA.

11. The inclusion of green walls and the retention of the tree to the middle of the site, alongside a comprehensive landscaping scheme, would enhance the sylvan and verdant character of the site. Whilst the enhanced vegetation would partially assimilate the proposed dwelling with its surrounding, it would not fully mitigate the harm identified above.
12. The proposed dwelling would be largely screened in views from Hill Top Avenue. However, it would be prominent in views from its junction with Scholars Green Avenue and up to Radley Drive. It would also be very prominent in views from neighbouring gardens. As such, the potential screening of the development would not mitigate the identified harm.
13. No 2B's garage is an unremarkable structure which neither enhances nor detracts from the character or appearance of the CA. Therefore, its demolition would be a neutral factor.
14. The proposal would not preserve or enhance the character and appearance of the Hulme Hall Road/Hill Top Avenue/Swann Lane Conservation Area. It would therefore be contrary to Policies SIE-1 and SIE-3 of the Core Strategy DPD, March 2011 (CS). These policies indicate that specific account should be had to the potential to incorporate the qualities of the historic environment, and harm to the significance of a heritage asset will require convincing justification.
15. Moreover, the proposal would not be in accordance with the National Planning Policy Framework (the Framework) where it indicates that the creation of beautiful places is fundamental to what the planning process should achieve, and planning decisions should ensure that developments are sympathetic to the historic character.

Heritage Balance

16. Paragraph 205 of the Framework indicates that great weight should be given to an asset's conservation, irrespective of whether any potential harm amounts to substantial or less than substantial harm.
17. I have found that the proposed development would fail to preserve or enhance the character and appearance of the CA. In accordance with paragraph 208, I find that the harm would be less than substantial, due to the scale of the proposed development. This harm is to be weighed against the public benefits arising from the proposal and I will return to this later in my decision.

Neighbouring occupants' living conditions

18. Based on the evidence, the proposal would comply with the minimum space standards set out within the Design of Residential Development SPD. Nevertheless, the SPD is guidance and identifies that greater separation between properties may be required in certain circumstances. In this instance, given the scale of the proposal, orientation of neighbouring properties, and limited separations from the site boundaries, greater separation is required.

19. The proposed dwelling would be sited very close to the rear boundaries of Nos 2 and 4. Both properties have modest sized gardens compared to properties on Hill Top Avenue. Given the scale of the proposed dwelling, its siting and the orientation of the properties, it would tower over the rear gardens of Nos 2 and 4 at a short distance and would overshadow them for long periods of the day. Moreover, during my site visit I observed that the main living space and bedrooms within No 2 look directly toward the appeal site. Also, the main living space had a significant amount of glazing facing toward the appeal site. The proposed dwelling would appear overbearing to No 2's occupants inside their main living space as well as in their garden. As such, the internal arrangement of No 2 would amplify the harmful effect of the proposal on its occupants.
20. The proposed dwelling would extend toward the garden of No 2A and would be a short distance from the boundary. The rear garden of No 2A is an intimate space enclosed by an extended section of the property and a brick wall. The proposed dwelling would extend significantly above the rear wall of No 2A, at a short distance. As such, it would appear overbearing to occupants when using the garden. Whilst the proposal includes green walls to soften the appearance of the proposed dwelling, it would still appear overbearing to Nos 2 and 4, and No 2A, due to the presence of tall built development very close to their boundaries.
21. Although the proposed dwelling would appear overbearing to occupants of No 2A, given the orientation of the property and the appeal site, I do not consider that the proposed dwelling would overshadow No 2A to a harmful extent.
22. An appropriate condition could be attached to any permission requiring details of a privacy screen on the balcony to be approved and for it to be installed prior to occupation. This would ensure that views from the proposed balcony to No 2B would be indirect and from a distance. As such, the proposal would not lead to a material loss of privacy for occupants of No 2B.
23. The proposal would have a harmful effect on the living conditions of occupants of Nos 2 and 4, with regard to outlook and the provision of light, and occupants of No 2A, with regard to outlook. It would not have a harmful effect on the living condition of occupants of No 2A, with regard to the provision of light, and occupants of No 2B, with regard to privacy. Overall, the proposal would conflict with CS Policy SIE-1 which indicates that specific account should be had for the maintenance of amenity for neighbouring residents. Furthermore, it would not be in accordance with paragraph 135 of the Framework where it advises that planning decisions should ensure that developments create places with a high standard of amenity.

Future occupants' living conditions

24. Due to the orientation of the proposed dwelling and the tree in the middle of the site, it would generally cast shadows away from the windows of the proposed dwelling. Also, the northern elevations would include a significant amount of glazing. Nonetheless, the tree would only be a short distance from the property. Given the scale of the tree and its siting very close to the proposed windows it would create a gloomy external courtyard area and would restrict the amount of daylight experienced within the property.
25. The proposed dwelling includes no glazing within the southern elevations. As such, future occupants would be largely reliant on roof lights and sunlight

appearing above sections of the buildings, to experience sunlight within the dwelling. It is not clear how the roof lights would enable sunlight to reach the ground floor of the property. As such, given the proposed orientation of the building and internal arrangement, the kitchen and dining area would receive very little direct sunlight.

26. The proposed dwelling would be gloomy and, in particular the ground floor, would receive little direct sunlight. Therefore, the proposal would not provide acceptable living conditions for future occupants, with particular regard to the provision of light. It would therefore be contrary to CS Policy SIE-1 which indicates that specific account should be had to the maintenance of satisfactory levels of amenity for future residents; and as above it would be contrary to paragraph 135 of the Framework.

BNG

27. The Preliminary Arboricultural Survey² assesses the arboricultural, landscape and cultural qualities of trees on the site. The survey does not provide an assessment on the biodiversity value of the trees to be removed or the whole site.
28. Concerns have been raised about the feasibility of the proposed landscaping scheme. Nevertheless, a condition could be attached to any permission requesting details of a maintenance scheme to be submitted and approved. Without substantive evidence to indicate why certain species would not be able to grow where they are proposed, I have taken the landscaping scheme on face value.
29. The proposal includes the removal of only a few trees but would include the construction of a large dwelling within what is currently a garden area. Whilst the proposal includes a landscaping scheme, there is no assessment on the current biodiversity value of the site or forecast of its future value.
30. Taking a precautionary approach, it has not been evidenced whether BNG could be achieved. As such, the proposal is contrary to CS Policy CS8 which indicates that development will be expected to make a positive contribution to the protection of the borough's natural environment. Furthermore, it is contrary to the Framework where it advises that planning decisions should contribute to and enhance the natural environment by providing net gains for biodiversity.

Financial contributions

31. The Open Space Provision and Commuted Payments SPD, September 2019, advises that there is a below standard provision of play provision in all committee areas of the borough. As such, it is important that developments make a contribution toward satisfying the demand generated by that scheme. The SPD also sets out how the contribution should be calculated.
32. The S106 is necessary to make the development acceptable, directly related to the development, and fairly and reasonably related in scale and kind to the development. It is clear it is a planning obligation and would help address the demand for public open space facilities, and children's play and formal recreation areas within the borough.

² Preliminary Arboricultural Survey, DEP Landscape Architecture, April 2022, Job No. 4987

33. However, the S106 is not legally sound as it refers to the correct planning application reference but states that it was registered by the Council on 14 April 2023. The planning application was refused on 11 April 2023. Therefore, the reference to the planning application is ambiguous. As such, the S106 holds no weight in my decision.
34. The proposal would therefore not make a suitable contribution toward the provision of open space. It would be contrary to CS Policy SIE-2 and saved Policy L1.2 of the Stockport Unitary Development Plan Review, May 2006. These policies indicate that small new residential development will be required to contribute towards the provision of open space and the Council will require the provision of suitable and accessible space and facilities.

Planning Balance

35. As there are no cited policies which would support development which is contrary to the policies listed above, the proposal would be contrary to the development plan when considered as a whole.
36. The Council did not dispute that it could only demonstrate 2.6 years of deliverable housing land supply. This amounts to a considerable shortfall. The construction of a single dwelling on previously developed land, in an accessible location would be a benefit of the proposal. Other benefits include the proposed dwelling providing ample internal and external amenity space, the proposal including sustainability measures, as well as economic benefits associated with the construction period and from an increased population living in the area. Whilst the proposal would only lead to the construction of a single dwelling, given the considerable shortfall, I ascribe moderate weight to the benefits of the scheme.
37. In accordance with paragraph 208 of the Framework, I conclude, even when considered in combination, that the benefits do not outweigh the 'less than substantial harm' to the CA.
38. As the Council cannot demonstrate five years supply of deliverable housing land, footnote 8 of the Framework establishes that the policies which are most important for determining the application are out-of-date. In this instance, paragraph 11 d) i) is engaged and it advises granting permission unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development. Footnote 7 of the Framework details that these policies include designated heritage assets. As above, the proposal would cause harm to the CA. Therefore, the provision of paragraph 11) d) ii) of the Framework is not engaged.

Conclusion

39. The material considerations do not indicate that a decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR