



Appeal Decision

Site visit made on 26 March 2024

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2024

Appeal Ref: APP/R0660/W/23/3331478

Mossley House Lodge, Biddulph Road, Congleton CW12 3LQ

- 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 Alex Jones against the decision of Cheshire East Council.
 - The application Ref is 21/0226C.
 - The development proposed is redevelopment of the site, including the demolition of the current buildings, and the construction of a new dwelling, with associated landscaping and parking.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site, including the demolition of the current buildings, and the construction of a new dwelling, with associated landscaping and parking at Mossley House Lodge, Biddulph Road, Congleton CW12 3LQ in accordance with the terms of the application, Ref 21/0226C, and subject to the conditions in the attached schedule.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published by Government on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no parties' interests have been prejudiced by my taking this approach.
3. The appeal documentation from the appellant included an updated Arboricultural Statement and a Bat Report. The Council and interested parties have had the opportunity to comment on them and therefore I have taken them into account in determining this appeal.

Main Issues

4. The main issues are the effects of the proposed development on trees subject to Tree Preservation Orders and bats.

Reasons

Trees

5. The appeal site lies within the settlement limits of Congleton, set back from Biddulph Road and is currently occupied by a two storey dwelling in a poor state of repair. The site is the subject of a Tree Preservation Order (TPO). The

- proposal would see a new dwelling constructed on a similar footprint as the existing dwelling, with a car port to the side and a detached garage to the rear.
6. The trees subject to the TPO cover a large area of the appeal site, some of which are in close proximity to the existing dwelling. The planning application was supported by a tree survey and an Arboricultural Statement (Oct 2020) which established that in principle the development would be possible without significant damage to the protected trees. An updated Arboricultural Assessment (2021) was submitted to the Council to address further concerns in respect of the trees and included indicative tree protection plans.
 7. The appeal was also accompanied by an updated Arboricultural Statement which indicated that the majority of protected trees on the site would be accommodated by the proposal and protected during the demolition and construction activities on the site. It did however recommend that tree T89a should be removed due to the poor and declining condition of the tree.
 8. During the demolition temporary ground protection would be installed to safeguard the root protection zone and a porous permanent no dig driveway would be installed. I consider that these would be sufficient to protect the trees from damage during the demolition of the existing building. The root protection zones and no dig driveway would also ensure that the trees would be protected from delivery vehicles and storage of materials during the construction phase.
 9. The updated arboricultural report submitted as part of the appeal includes an indicative construction method statement. This includes foundation details shown on plan reference PL-900-014 rev P2, comprising of a mini-pile foundation system to minimise impacts on the protected trees which would comply with BS5837. Additional details of construction and a final method statement, including details of access for delivery vehicles, location of welfare facilities, storage of materials and the post development soil amelioration could be secured by condition to allow the council to consider the effectiveness of the protection measures.
 10. Due to the position of the remaining trees following the construction of the proposed dwelling I consider it is unlikely that the occupation of the dwelling would lead to conflict with the remaining trees and subsequent requests to remove or reduce them.
 11. I conclude that the proposal's impacts on trees would be acceptable. It would comply with Policy SE5 of the Cheshire East Local Plan Strategy (LPS) and Policy ENV6 of the Cheshire East Local Plan Site Allocations and Development Policies Document which together amongst other matters seek to ensure that development does not result in a loss of or threat to trees and that it is supported by an arboricultural impact assessment.

Bats

12. The planning application was supported by an initial Bat Report which showed that the building had a low potential to support roosting bats. It also showed that the trees had a low roosting potential. A nocturnal emergence survey was also undertaken and submitted to the Council prior to their determination of the planning application which showed that there were no entering or emerging bats.

13. As part of the appeal evidence the surveys were updated, as they were over two years old. These updated surveys again found low potential to support roosting bats and limited dusk activity with no bats observed entering or emerging from the building. I am therefore satisfied, from the evidence before me, that the proposal would not have an adverse effect on local bat populations.
14. I conclude that the site is suitable for the proposed development with regard to the protection of bats. It would comply with Policy SE3 of the LPS which amongst other matters seeks to ensure that development contributes to the conservation and enhancement of biodiversity.

Other Matter

15. Interested parties contend that the occupiers of the new property would have no or limited rights of access onto Quarry Close, which I understand is a private road. However, there is an existing pedestrian access onto Quarry Close. The gate would be retained as part of the proposal and the main vehicular and pedestrian access to the site would be from Biddulph Road. The pedestrian access onto Quarry Close has seemingly been in place for a number of years. I do not have any evidence before me to indicate that its removal is necessary for planning purposes. Moreover, such property issues are private matters and should not have a bearing on the outcome of this decision.

Conditions

16. I have considered the conditions suggested by the Council and requested by the statutory consultees, having regard to the six tests set out in the Framework. Both parties have had the opportunity to comment on them and I have taken their comments into account. For the sake of clarity and enforceability, I have amended the suggested conditions where appropriate.
17. To provide certainty I have included the standard time limit condition and specified that the development should be carried out in accordance with the approved plans. The latter condition is also necessary to protect the character and appearance of the area as the plans specify the external materials to be used for the development.
18. The pre-commencement condition requiring the submission and approval of a Construction Method Statement is necessary to protect the retained trees, for highway safety and to protect the living conditions of neighbouring occupiers. The Tree Protection Plan, Arboricultural Method Statement are necessary to protect the retained trees and the surface water drainage scheme condition and a condition requiring separate foul and surface water systems are necessary to ensure adequate drainage and protection from flood risk. The information is required to inform the early stages of construction, so pre-commencement conditions are necessary. The appellant has accepted these conditions.
19. A landscaping condition is necessary in the interests of the character and appearance of the area as well as the living conditions of neighbouring occupiers and the condition limiting the time during which vegetation clearance and demolition can take place is necessary to protect nesting birds. Also, the condition requiring a strategy to incorporate features to enhance the biodiversity of the site is necessary to promote biodiversity on the site. In addition the contamination condition is necessary to ensure that the development does not create undue risks for site users or neighbours.

20. I have not included conditions relating to gas boilers and electric vehicle charging points as they are dealt with under other legislation.
21. The Council had suggested a condition to remove permitted development rights associated with the new dwelling in order to ensure development within the site would not have an adverse impact on the health of the protected trees. Normally planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this case extensions to the dwelling could impact on the root protection zones of the trees and result in development closer to the retained trees which may result in an increase in pressure to remove the trees. The condition is therefore necessary in this instance to protect the health of the trees.

Conclusion

22. For the reasons given above the appeal should be allowed.

H Senior

INSPECTOR

Schedule of Conditions

- 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: PL-900-001; PL-900-002; MOS-XX-P-PL-900-003; MOS-XX-P-PL-900-004; MOS-XX-P-EL-900-005; EL-900-006; PL-900-014 Rev P2.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;
 - v) measures to control the emission of dust and dirt during construction;
 - vi) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - vii) delivery, demolition and construction working hours.The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 4) No development shall take place until a scheme for the protection of retained trees (the Tree Protection Plan) and appropriate working methods (the Arboricultural Method Statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an

equivalent British Standard if replaced) have been submitted to and approved in writing by the local planning authority. The schemes shall be carried out as approved.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 5) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
- ii) include a timetable for its implementation.

The development shall be carried out in accordance with the approved details.

- 6) Prior to the first occupation of the new dwelling, full details of both hard and soft landscaping, including details of any hard surfacing and boundary fencing, shall be submitted to and approved in writing by the local planning authority. The approved hard landscaping scheme shall be implemented prior to the occupation of the development hereby approved and the soft landscaping shall be implemented not later than the first planting season following the first occupation of the new dwelling.
- 7) 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.
- 8) Prior to the commencement of the relevant work details of a strategy for the incorporation of features to enhance the biodiversity value of the proposed development should be submitted to and approved in writing by the local planning authority. The submitted strategy include proposals for the provision of features for nesting birds including house sparrow and roosting bats (any external lighting should avoid direct light spill upon bat roost features). The proposals shall be permanently installed and thereafter retained in accordance with approved details.
- 9) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the site shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out

in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order with or without modification), no development permitted by virtue of Classes A, AA, B, C, D, E and F of Part 1 and Classes A and B of Part 2, Schedule 2 of the Order shall be undertaken.

End of Schedule