
Appeal Decision

Site visit made on 20 August 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2024

Appeal Ref: APP/A0665/W/24/3340806

Land adjoining Marton Green, Off Clay Lane, Marton, Winsford CW7 2QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr John Alexander against the decision of Cheshire West and Chester Council.
 - The application Ref is 23/00354/OUT.
 - The development proposed is a four-bedroom dormer bungalow, with front and rear garden areas, parking for 2 cars and provision for turning vehicles within the site.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was submitted in outline with approval being sought for detailed matters relating to the access, layout, and landscaping. Scale and appearance are reserved for subsequent approval. I have therefore dealt with the appeal on that basis, treating all submitted plans and drawings as illustrative unless related to access, layout and landscaping.

Main Issues

3. The main issues are;
 - whether the proposed development accords with the development plan strategy for housing and would be in a sustainable location;
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the proposed development on biodiversity, with particular regard to protected species.

Reasons

Location

4. The appeal site comprises an undeveloped field, accessed off an unmade track, located in the open countryside. The surrounding area has a prevailing

rural character, with open fields, bounded by tall hedgerows and an abundance of mature trees within the landscape. Residential dwellings are sporadic but there is a cluster of buildings adjacent to the site and a small ribbon of residential development, which fronts Clay Lane also.

5. The Council's development strategy is set out in Policies STRAT1, STRAT2 and STRAT9 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies Adopted January 2015 (LP1). This directs new housing to accessible locations in accordance with the settlement hierarchy. Accordingly, it aims to restrict development in the countryside to that which cannot be accommodated in identified settlements. Furthermore, Policy 1 of the Whitegate and Marton Neighbourhood Plan 2015-2030 (NP) explains that housing development which meets the requirements of Policy STRAT 9 of the LP1, should meet the needs of the local community for smaller properties.
6. The appeal site is located outside of the identified settlements. In these instances, Policy DM19 of the Cheshire West and Chester Council Local Plan (Part 2) Land Allocations and Detailed Policies, Adopted July 2019 (LP2) sets out that proposals for residential development will only be supported where specific exceptions apply.
7. The appellant suggests that the proposed development would meet two of the exceptions listed in Policy DM19 of the LP2, these relating to 3) rural exception sites and 4) an essential rural workers dwelling. However, for housing development to meet these exceptions they must comply with Policies DM24 and DM25 respectively. These set out the specific criteria for small affordable exception sites and new permanent essential rural workers dwellings to support agricultural, forestry and rural land based enterprises.
8. While I am mindful that the appellant suggests that no other affordable housing has been offered in the area, which would suit their needs, and that they would be living off the land where they would be living, no substantiated evidence has been submitted to demonstrate that any of the specific exceptions are met to fully accord with Policy DM19. Consequently, the proposed development is contrary to the Council's development plan strategy for housing.
9. The nearest identified settlement is Winsford which is approximately two kilometres away. The surrounding roads have a rural character, with no footways and limited streetlighting. The occupiers would also need to travel down the unmade track to access the roads. For these reasons, future occupiers would be discouraged from walking and cycling to access services and public transport opportunities, particularly during hours of darkness and in poor weather conditions.
10. Furthermore, there is no evidence before me that the occupants would have access to a frequent bus service, thereby providing a realistic alternative mode of transport. As a result, the future occupants would be highly dependent on the use of private cars for their day-to-day needs.
11. The National Planning Policy Framework (the Framework) states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Even so, I consider that the site is not readily accessible to the nearest settlements via a range of modes of transport.

12. It has been suggested that several other houses have been built in the surrounding area in the recent past and that this provides a precedent, particularly for sustainable development. However, no further details have been provided of these previous schemes and without substantiated evidence before me I have been unable to draw comparisons between those developments and the appeal proposal. Nonetheless, it is a well-established principle that all proposals shall be adjudged on the basis of their own merits. Accordingly, as I am required to do, I have determined the case before me on the site-specific circumstances and on its own merits.
13. For the above reasons and on the evidence before me, I conclude that the proposed development does not accord with the development plan strategy for housing, and it would not be in a sustainable location. It would thereby conflict with Policies STRAT1, STRAT2 and STRAT9 of the LP1, Policy DM19 of the LP2 and Policy 1 of the NP. It would also conflict with the overall plan-led approach of the Framework.

Character and appearance

14. The appeal site, whilst unused and overgrown, makes a positive and important contribution to the prevailing rural character of the landscape, due to its open and undeveloped appearance with well-established hedgerows and trees on the site boundaries.
15. With the exception of the small ribbon of development that fronts Clay Lane and a cluster of buildings on neighbouring land, dwellings are occasional, set within generous plots and of an individual design, scale, and appearance.
16. The appeal site is located adjacent to the long access driveway which serves neighbouring buildings. However, the proposed dwelling would not be viewed within the context of these buildings due to the physical separation and juxtaposition between the site and those existing buildings.
17. The proposed dwelling would occupy a central position within the site, set off the front boundary, with a long driveway, leading to a large parking and turning area. Therefore, the proposal would introduce a large amount of built development onto the undeveloped site, which would also extend substantially across the land.
18. Whilst views of the proposal from Clay Lane would be restricted by hedgerows and a group of adjacent mature trees, the proposed dwelling would be visible from the unmade track. Furthermore, even though the design of the proposed dwelling would have the appearance of a traditional cottage and the parking area would be located towards the rear of the site, a new dwelling would result in the domestication of the site. As a result, the encroachment of residential development onto the land, would not be sympathetic to the distinctive and open, rural character of the area. Therefore, a residential dwelling would harm, not enhance, the appearance of the landscape.
19. Similarly, even though the appellant suggests that Gate Houses / Lodges at the ends of drives of large houses fit in extremely well in rural settings, this is not a particular feature within this area. I am also not persuaded that the

proposal would serve this purpose or that this would overcome the concerns that I have identified.

20. Additionally, the effect of the proposal would also be exacerbated by the proposed wind turbine which would result in a utilitarian structure onto the land which would be incongruous within the landscape, due to its functional appearance and height.
21. For the above reasons, I conclude that the proposed development would unacceptably harm the character and appearance of the area. Consequently, the proposal would conflict with Policy ENV6 of the LP1, Policies DM3 and DM19 of the LP2, and the design and natural environment objectives of the Framework, which together and amongst other things, seeks high quality design and well designed, beautiful places, that is sympathetic and respects and enhances the landscape.

Biodiversity

22. The appellant's Ecological Appraisal Report (PEA) indicates that the proposed development will not cause harm to any protected or priority habitats or species and will result in a clear biodiversity net gain, subject to reasonable avoidance measures and the incorporation of a planting scheme and wild bird nesting proposals.
23. However, the PEA also identifies that there are a number of small waterways / land drains and several ponds within proximity to the site. As such, the PEA indicates that the broader area supports good populations of great crested newt (GCN). Therefore, the PEA suggests that the local presence of GCN is likely, and a mitigation licence may be needed, following Phase 2 surveys.
24. Circular 06/2005¹ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development, is established before permission is granted. On that basis, it would be inappropriate to condition the undertaking of further surveys relating to bats or GCN. The use of conditions to require mitigation or compensation measures would also be inappropriate in the absence of further surveying because there can be no certainty that such measures would satisfactorily address any harm that might occur to the protected species. Furthermore, Natural England have not indicated that licences would be issued, and there is nothing before me to suggest that the legal tests² for issuing licences would likely be satisfied. Therefore, it has not been demonstrated that the proposal would not cause unacceptable harm to protected species.
25. I am also mindful of the Council's concern that an assessment of the effect of the proposed turbine on bats has not been considered within the PEA. In addition, whilst the PEA indicates that biodiversity enhancements could be achieved, substantive evidence such as calculations of values prior to and post-development have not been provided to support these claims or secure

¹ ODPM Circular 06/2005: Biodiversity and Geological Conservation - Statutory Obligations and their Impact within the Planning System

² Article 16(1)(c) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora

delivery of net gains. Given the lack of certainty, it would not be appropriate to require the provision of biodiversity net gain by condition.

26. Consequently, I am unable to conclude with any certainty that the proposed development would not cause unacceptable harm to biodiversity, with particular regard to protected species. This is contrary to Policy ENV4 of the LP1, Policy DM44 of the LP2 and the objectives of the Framework, which seek to safeguard and enhance biodiversity.

Other Matters

27. The Council states that it has a housing supply in excess of five years, which is not disputed by the appellant. As such there is nothing before me to suggest that current policy is not providing enough housing to meet the requirements for the area, including supported accommodation. Therefore, I attach limited weight to the provision of one dwelling to the supply of housing and the associated social and economic benefits to local services during the construction and occupancy phases.
28. No objections have been raised with regards to access arrangements, highway safety or the effect on public rights of way. However, these are requirements of planning policy and taken together they carry neutral weight.
29. Paragraph 84 of the Framework confirms that planning decisions should avoid the development of isolated homes in the countryside unless in specific circumstances, one of which being where the design is of exceptional quality. Paragraph 139 of the Framework also identifies that significant weight should be given to outstanding or innovative designs which promote high levels of sustainability. In this case, the appellant suggests that the design of the proposal is extremely eco-friendly, being of a timber frame construction and being self-sufficient for energy, due to the use of solar power and an air source heat pump. A wind turbine is also proposed. In addition, it is suggested that sewage would be treated on-site with a shallow dig sewage treatment plant. Nonetheless, I am not satisfied that the incorporation of these proven renewable energy techniques would result in a design of exceptional quality that would be outstanding or innovative which promote high levels of sustainability.
30. In considering this appeal, I have had due regard to the Public Sector Equality Duty (PSED) set out under Section 149 of the Equality Act 2010. In particular, the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. These characteristics include disability and I acknowledge that a member of the appellants family shares this protected characteristic for the purposes of the PSED.
31. I acknowledge that the proposal would benefit the appellants family by providing a suitably adapted living space, enabling the appellant or a family member to be on hand to provide the necessary care. These are personal circumstances which weigh in favour of the proposal. However, I have not been provided with full and detailed medical evidence as part of this appeal. Furthermore, information about what alternative options have been

explored, including that the appeal site is the only suitable location for the proposed development, has also not been submitted. A condition restricting the occupancy of the proposed dwelling to named persons would not be appropriate also. Given such, I am satisfied that the impact of dismissing the appeal is a proportionate and necessary approach to the legitimate aim of ensuring that development is appropriately located, and the countryside is protected. Therefore, whilst I acknowledge the personal circumstances of the appellant and his family, on the evidence before me, I conclude that these are not matters which outweigh the harm that would be caused by the proposal in respect of my aforementioned conclusions on the other main issues.

Conclusion

32. Overall, the proposed development conflicts with the development plan when read as a whole and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict.
33. For the reasons given above, I conclude that the appeal should be dismissed.

N Bromley

INSPECTOR