



Appeal Decision

Site visit made on 8 October 2024

by G Sibley MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2025

Appeal Ref: APP/Q4245/W/24/3339221

Cloud 9, Bow Green Road, Cheshire WA14 3LX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Dr Mehjabeen Khan against Trafford Metropolitan Borough Council.
 - The application Ref is 111172/OUT/23.
 - The development is described as: a stand-alone application for outline planning permission for the erection of a pair semi-detached dwellings on Plot#3 at crossroads with Bow Green Road & Stanhope Road, & demolition of existing dwelling over Plot#1 & 2 Bow Green Rd (consent sought for access, appearance, layout and scale with all other matters reserved).
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Decision

1. The appeal is dismissed, and outline planning permission refused.

Applications for costs

2. An application for an award of costs has been made by Trafford Metropolitan Borough Council against Dr Mehjabeen Khan and another has been made by Dr Mehjabeen Khan against Trafford Metropolitan Borough Council and these are the subject of separate decisions.

Preliminary and Procedural Matters

3. The description of development in the banner heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed. However, neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application form.
4. Late evidence was submitted by the appellant relating to several matters. The Wainhomes case¹ identified that the decision as to whether submitted material 'out of time' should be seen and taken into account by the Inspector lies with the Inspector or an appropriate person to whom s/he has delegated that responsibility. There can be material changes in circumstances that have occurred after the relevant dates.
5. Information was provided regarding the approval of reserved matters as well as further applications on a neighbouring site to the north². Given that the

¹ Wainhomes (South West) Holdings limited v SSCLG [2013] EWHC 597 (Admin)

² Application Reference: 114293/RES/24, 114833/OUT/24 & 115296/OUT/25

decision was issued after the date to submit final comments for this appeal it could not have been covered in evidence already received and because the decision and applications relate to a neighbouring site, they are material considerations in the assessment of the appeal. Consultation would have taken place with interested parties for those applications and as such I am satisfied it would be procedurally fair to accept this late documentation.

6. Additional information was provided regarding applications on a separate neighbouring site to the east that had been determined after the final date to provide evidence for this appeal³. Given that this information relates to a neighbouring site and was not available until recently, it clearly could not have been provided within the appeal timetable and is a material consideration in the assessment of the appeal. Consultation would have taken place with interested parties for those applications and as such I am satisfied it would be procedurally fair to accept this late documentation.
7. A swept path analysis plan and another plan showing the visibility splays from the proposed accesses to the dwellings were also submitted. The Council failed to provide the comments from the Local Highway Authority with the appeal evidence during the appeal timetable. These comments were then provided at a later date, alongside the Supplementary Planning Document SPD3: Parking Standards and Design (SPD), 2012, which had been referred to. This was after the date to submit final comments and thus the appellant would not have been aware of these comments when preparing their appeal submission. The appellant then provided comments on the Local Highway Authority's submission.
8. Nevertheless, the Local Highway Authority did not object to the application on highway safety grounds or identify a need for the two plans. Additionally, the SPD was adopted in 2012 and is a publicly available document and as such the appellant would have been able to view this document prior to submitting the appeal. Furthermore, comments were received from interested parties relating to highway safety and these were provided during the appeal timetable. These plans have not been consulted upon and thus it would be unfair to interested parties who identified concerns about highway safety to accept them. As such, I have not accepted these plans as late evidence as it would be a breach of natural justice to do so.
9. Following the submission of the appeal The Places for Everyone Joint Development Plan Document for Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Tameside, Trafford and Wigan (PFE) was adopted in March 2023. The PFE now forms part of the development plan for the area, and I have had consideration of it in determining this appeal. Both parties had the opportunity to comment on the PFE within their evidence and thus it was not necessary to consult the parties further.
10. The National Planning Policy Framework (the Framework) was updated in December 2024, during the consideration of this appeal. The main parties were given the opportunity to comment on the updates to the Framework and where they have been received these comments have been taken into consideration.

³ Application Reference: 112659/OUT/24 & 113463/CND/24

11. The appeal is made in outline with all matters reserved except for access, appearance, layout, and scale. Illustrative plans have been submitted with regard to landscaping and I have had regard to these although I acknowledge that the scheme could change at the reserved matters stage. The other plans related to access, appearance, layout and scale would form the basis of any planning permission and have thus been considered as such.

Background and Main Issues

12. The appeal was submitted against the failure of the Council to give notice within the prescribed period of a decision on an application for outline planning permission. Since the appeal was submitted the Council has identified the reasons it would have refused the application on if it had done so during the prescribed period. Taking into consideration the reasons for refusal given by the Council the main issues relevant to this appeal are:
- the effect of the proposal upon the character and appearance of the area; and
 - whether the proposal would provide accommodation that is accessible to all sections of the community.

Reasons

Character and Appearance

13. The appeal site is located on a crossroads between Bow Green Road and Stanhope Road. Partly within the appeal site is an existing dwelling known as Cloud 9 which is a large, detached dwelling and the rest of the site previously formed part of that dwellings garden. The site is bound by trees and hedges which partially screen the site from both Bow Green Road and Stanhope Road. There is also a roughly hewn stone boundary wall around the site, other than the gated access to Cloud 9. This boundary treatment is generally consistent with other properties nearby and this gives the area a verdant appearance.
14. An appeal was allowed on this site in 2020 for a pair of semi-detached dwellings⁴ (the 2020 appeal). Reserved Matters has also been granted to demolish Cloud 9 and replace it with a pair of semi-detached dwellings⁵ and next to the appeal site permission has also been granted for another pair of semi-detached dwellings⁶.
15. The proposed development would involve the demolition of the existing property and the construction of a pair of semi-detached dwellings facing onto Stanhope Road. The dwellings would have a contemporary design and would be two and a half storeys tall, with dormer windows, rooflights and full height projecting gables on the front, side, and rear elevations. The proposed dwellings would have separate vehicular accesses from Stanhope Road with off-street parking.
16. The dwellings in the area are a mix of different designs with the majority of the properties two storeys tall, detached and set within spacious sized grounds behind front gardens and driveways. Whilst the dwellings nearby are generally quite large, given the spacious sized grounds that most properties

⁴ Appeal Reference: APP/Q4245/W/20/3250863

⁵ Application Reference: 114293/RES/24

⁶ Application Reference: 99487/FUL/19

have, the arrangement of buildings and spaces creates a sense of spaciousness in the area that is supported by the verdant boundary treatment. Along Stanhope Road there is a consistent building line on both sides of the road, however, Bow Green Road curves around Stanhope Road and as such, the building line along that road is less uniform.

17. The architectural features of the proposed dwellings include projecting gables as well as large dormer windows, and the overall contemporary design of the proposed houses can be found on other dwellings including similarly designed houses that have been built nearby, including the other schemes that have been approved around the wider site. Additionally, the architectural features would address both Stanhope Road and Bow Green Road.
18. Whilst the architectural features would be appropriate in this context the dwellings when viewed together would create a substantially sized building in terms of its height, width, and depth. The siting, scale and massing of the proposed dwellings would create a large building that would create visual interest and be prominent in both the Stanhope Road and Bow Green Road street scenes.
19. To the north of the site planning permission and reserved matters approval was granted for a pair of semi-detached dwellings⁷. To the east planning permission was also granted more recently for a pair of semi-detached dwellings. Whilst I do not know if those permission have been commenced, taking into consideration the permissions that have recently been granted on the neighbouring sites, there is a greater than theoretical possibility and a real prospect that the two schemes would take place and thus form part of the street scene. Based on the plans before me the other proposed buildings around the wider site would be similar in appearance to that proposed and would be sited close to the shared boundaries with the appeal site. However, those dwellings were generally smaller in scale and set back further from the road than the development before me.
20. The building line of the proposed dwellings would sit slightly forward of the existing dwellings on Stanhope Road but given the modest difference, this scheme would only sit modestly forward of it.
21. The building line along Bow Green Road is less uniform as that on Stanhope Road given the curve in the road and the varied gaps between the buildings. The proposed dwellings would extend beyond the forward building line of the approved properties to the north and the other house on this side of Bow Green Road. However, the scheme would only extend slightly beyond the flank wall of the house on the opposite side of Stanhope Road.
22. Despite this, the proposed dwellings would generally be sited closer to the road than nearby houses, including those recently approved on neighbouring sites. Whilst the scale of the proposed development would not be substantially larger than other houses nearby, the scale and massing of the scheme would be more appreciable due to the limited set back from the two roads. Whilst the scheme would only be moderately wider than the 2020 appeal development this greater massing would be appreciated along the full depth of the building given its location on the corner of Bow Green Road and Stanhope Road.

⁷ 103057/OUT/20

23. The proposed 180-degree glazed corners within each dwelling would, up to a point, break up the massing of the dwellings but as they only relate to a small section of the dwellings, they would not significantly reduce the scale of the proposal. This increased massing of the proposal and its close relationship with Bow Green Road would make the scheme appear more intensive within the site in a manner that would conflict with the prevailing arrangement of buildings and spaces in the area.
24. While only moderately larger overall compared to the 2020 appeal scheme, this would create an appreciably denser form of development and would bring the dwellings closer to the boundaries of the site and the neighbouring properties that could be built. This would result in the dwellings being set within conspicuously smaller and more enclosed plots than the surrounding dwellings and this would appear jarring with the spacious character established by the other properties in the area. Given the close siting of the flank wall to Bow Green Road, the slight drop in ground level along this road is only marginal and would not overcome the above concerns.
25. Due to its scale and siting, the scheme would create a more enclosed appearance compared to the surrounding development and this incongruous appearance would be more prominent in the area due to the siting of the dwellings on the junction between the two roads.
26. Tall dwellings on corner plots next to junctions can create visual interest, as suggested in the New Residential Development Supplementary Planning Document (SPG). However, the bulky appearance of the houses and the limited gaps between the proposed scheme and the neighbouring dwellings that could be built as well as the boundary with the two roads would create a cramped street scene, and this would not be sympathetic to the spacious character of the area. The loss of trees and hedges along the boundary with Stanhope Road for the proposed accesses would also partly erode the positive contribution the existing boundary treatment makes to the verdant appearance of the area. As a result, the proposed development would appear unacceptably stark, squeezed in and strident in the area.
27. The landscaping would be determined as part of any reserved matters application(s), and this could also partially screen the site but given the siting and significant scale of the proposal it would not overcome the identified concerns.
28. Reference has been made to a significant number of dwellings within the Contextual Photographic Study that have been built nearby. However, I generally do not have the planning history for those properties and in most instances the dwellings had typically retained a larger gap between them and the neighbouring plots and were set back further from the road than the scheme before me. This contributed to retaining the spacious character of the area. A number of these properties were also smaller in scale and were not in such a prominent location to that proposed which are important matters of consequence in this appeal. Each case must be determined on its own merits, and I have considered the scheme based on the site-specific circumstances of this case.
29. A number of applications and dwellings have been referred to in Appendices 10 and 11 of the appellants Statement of Case. The scheme at Brown Street was constrained by the need to retain the car park to the rear whilst the proposed

scheme is not constrained by such considerations. The character for this area also varies considerably from the area around the appeal site, with a mix of smaller terrace development, similar to the scheme that was approved on Brown Street, and significantly sized buildings.

30. While the building at Eyebrook Road would be a significant size, that scheme also retained a considerably sized plot with the front elevation set back further from the roadside than the scheme before me which is consistent with other development in the area. The scheme at Blueberry Road relates to a single dwelling but set within a similarly sized plot as the scheme before me and set back further from Stanhope Road. That dwelling also appears to be shorter than the scheme before me with a mix of single storey elements that would be built into the house which would reduce the appreciated scale of the dwelling.
31. The set back distances and gaps between properties are an important characteristic of the area and for the reasons given above, the appeal scheme would harm these characteristics. On this basis the appeal scheme is not comparable to the other schemes referred to.
32. Given that appearance, layout and scale are matters to be determined as part of this appeal I do not consider that these matters could be appropriately mitigated through suitably worded conditions.
33. The proposed dwellings are sited in mostly the same location as the 2020 appeal dwellings. However, the scale and siting of the scheme before me would reduce the sense of space around the dwellings to a greater degree than what was approved, even when taking into consideration the removal of the chimney from the 2020 appeal development. In that appeal the Inspector concluded that the scale, height, and massing of the development would harm the character and appearance of the area and for the reasons given above, this scheme which proposes even larger dwellings would be harmful for similar reasons, albeit to a greater degree.
34. Whilst the 2020 appeal granted permission for two dwellings on the appeal site, the Council state that the permission had not been commenced within the statutory period.
35. Section 56 of the Town and Country Planning Act 1990 (the 1990 Act) identifies that for the purposes of the 1990 Act, development of land shall be taken to be initiated if the development consists of the carrying out of operations, at the time when those operations are begun. It is commenced when a material operation comprised in the development begins to be carried out. Paragraph 4 states that "material operation" includes several meanings, including the digging of a trench which is to contain the foundations, or part of the foundations of a building.
36. The appellant has provided dated photographic, written and financial evidence that works were undertaken on site prior to the expiration of the three-year statutory commencement condition contained within the allowed appeal decision. Furthermore, the Council acknowledge that the pre-commencement conditions had been discharged before this date as well⁸.
37. Based on the evidence before me ground works were undertaken to remove topsoil, dig foundations as well as undertake drainage works on the appeal

⁸ Application Reference: 111741CND23

site. Given that these initial steps were comprised in the development for which permission was obtained I conclude that, for the purposes of this appeal, these works amounted to a material operation and conclude that the 2020 appeal has been implemented.

38. In the Court of Appeal Judgment of *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 it was confirmed that there should be a 'real prospect' of a fallback development being implemented and that the decision maker should exercise their planning judgement as to whether that would be the case depending on the particular circumstances.
39. Given the planning history for the site and the conclusion on the implementation of the approved scheme, it is evident that the appellant intends to build two dwellings on this site. There would also not appear to be anything that would physically prevent both schemes from being built, other than if the other was implemented. As such, there is a greater than theoretical possibility that the development might take place and thus a real prospect of it being implemented.
40. Nevertheless, the proposed scheme would have a greater scale and mass than the approved development and given my conclusions above the fallback scheme is less harmful to the character and appearance of the area than this proposal. Consequently, whilst the principle of two dwellings on this site has been established by the fallback scheme, the development before me would be more harmful.
41. While the scheme is made in outline, access, appearance, layout and scale are matters to be considered and for the reasons given above the proposed scheme would unacceptably harm the character and appearance of the area. Therefore, the proposal would conflict with Policy JP-P1 of the PFE which states that development, amongst other matters, should respect and acknowledge the character and identity of the locality in terms of design, siting, size, scale, and materials used.

Whether the proposal would provide accommodation that is accessible to all sections of the community

42. The Council has identified concerns with the evidence submitted and considers the appellant has failed to demonstrate that the proposal would provide accommodation that is accessible to all sections of the community.
43. Whilst it would normally be preferable that details are provided before any grant of planning permission, the Framework and the Planning Practice Guidance indicate that it is appropriate to consider whether otherwise unacceptable development could be made acceptable through the use of conditions.
44. The site is largely level and as such it would be possible to provide step-free access to and from the street and the proposed dwellings, as well as from the garden areas. I have no substantive reasoning to suggest that step-free access could not be provided to the accommodation on the ground floor, including its toilet, nor that a wide range of people could not use the accommodation throughout. There are several ways that this could be achieved, and I have no persuasive evidence before me to suggest that common adaptations could not be carried out in the future, as required, to

increase the dwellings' functionality and accessibility or that switches and controls could not be provided in positions which suited people with limited reach.

45. Taking into consideration the internal layout and siting of the proposed development, in these circumstances, I am satisfied that this matter could be satisfactorily addressed by means of an appropriately worded condition.
46. Therefore, through the use of an appropriately worded condition, the proposal would provide accommodation that would be accessible to all sections of the community. Consequently, it would comply with Policies JP-H3 and JP-P1 of the PFE which, amongst other matters, expects developments to be adaptable, able to respond easily to varied and changing needs and technology as well as built to the accessible and adaptable standard in Part M4(2) of the Building Regulations.

Other Matters

47. An application for a non-material amendment differs from an outline planning application which requires the scheme to be considered on its own merits given that it is a separate application to the development that was approved on the site.
48. The concept of the Annual Position Statement was removed from the Framework in the latest update. Whilst transitional arrangements are in place where a Council had confirmed its housing land supply position through an Annual Position Statement, based on the evidence before me this is not the case in this instance.
49. While reference has been made to a separate application and the intention to retain the existing dwelling on site, the description of development for this appeal includes the demolition of the existing dwelling and it is within this context that the scheme has been assessed.
50. The appellant was frustrated with the handling of the application and subsequent appeal by the Council, but these are matters outside the consideration of this appeal and are dealt with in the associated costs decisions.

Planning Balance and Conclusion

51. The scheme would deliver one additional dwelling when taking into consideration the dwelling that is proposed to be demolished. This would accord with the Frameworks policies that seek to increase the supply of housing, including areas facing affordability pressures as well as utilising the effective use of land. It also supports small and medium sized sites that can make an important contribution towards meeting the housing requirement of an area and are often built out relatively quickly.
52. The Glossary to the Framework provides a definition of previously developed land. Whilst Cloud 9 is included within the red line plan, gardens within built up areas, like the appeal site, are not previously developed land. For the purposes of this appeal, the 2020 appeal development has been commenced, however, the Framework states that for the site to be previously developed it is land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it.

Based on the evidence before me no permanent structure has been built on site. Fixed surface infrastructure is referred to in the Framework as large areas of hardstanding that have been lawfully developed. Based on the works taken place to date this does not appear to have involved the laying of hardstanding and thus fixed surface infrastructure has not been installed. Consequently, the site is not previously developed land as defined in the Framework.

53. The scheme is proposed to deliver a self-build house. The benefits of custom or self-build housing are recognised by the Planning Practice Guidance finding that it helps to diversify the housing market and increase customer choice. The Framework also states that local planning authorities should seek opportunities, through policies and decisions, to support small sites to come forward for community-led development for housing and self-build and custom-build housing.
54. However, a section 106 obligation is likely to be the most appropriate method to secure matters relating to the ownership of the self-build house for a period of three years as well as bind the requirement to successors in title should the property be sold in the future. Without such a mechanism in place I am not convinced the scheme would be able to secure these and thus this matter weighs neither for nor against the development. Even if I were to give weight to the self-build element of the proposal given the limited scale of this, I would attribute limited weight to it in favour of the scheme.
55. The dwellings are referred to as 'market affordable housing' but it is not proposed that these dwellings would be affordable as per the definitions of 'affordable housing' set out in the Glossary of the Framework. Furthermore, no mechanism has been submitted to secure these properties as 'market affordable housing'. Consequently, these dwellings would be houses available on the open market although benefits are still attributed to the delivery of two market houses in this location.
56. Whilst these dwellings would not be affordable as per the definitions in the Framework, the delivery of a net dwelling in an area that is claimed to be facing affordability pressures would increase the supply of houses in this area and thus contribute towards reducing said affordability pressures in accordance with aims of the Framework.
57. Whilst the PFE was recently adopted, the net additional dwelling within a sustainable location, close to services and facilities via a range of alternative transport options, would make a positive contribution to maintaining the Councils housing land supply. There would also be both short term and long-term economic benefits to the area during demolition and construction as well as from patronage of nearby services and facilities by the occupiers who would also contribute towards the social fabric of the area.
58. Whilst landscaping would be secured at the reserved matters stage there would be environmental benefits to the area through additional planting around the site. The appellant also proposes that the dwellings would be eco houses, insofar as they would be airtight with exceptional insulation.
59. The Housing Delivery Test is a measurement of housing delivery in an area and the government's latest measurements identify that the Council is delivering 78% of its housing need. This is tangible evidence that the Council is supporting the delivery of housing sites in the area.

60. Given that the Council has a recently adopted development plan, can identify a 5-year housing land supply and is not failing the housing delivery test I attribute modest weight to the benefits of the proposed scheme in favour of it.
61. Whilst moderate weight was attributed to the delivery of a single dwelling in the linked appeal at Bowden Old Hall⁹, in that instance the Council had a shortfall in its housing supply and delivery unlike the scheme before me.
62. Two houses could be built on this site regardless of the outcome of this appeal but for the reasons given earlier in this decision, this scheme before me would be more harmful to the character and appearance of the area than the 2020 appeal scheme and thus this fallback scheme does not weigh in favour of the proposed development.
63. Whilst the proposal would provide accommodation that would be accessible to all sections of the community it would harm the character and appearance of the area and thus conflict with Policy JP-P1 of the PFE and this would lead to a conflict with the development plan as a whole. The benefits of the scheme must be weighed against the harms that would arise from the development and I attribute such considerations considerable weight.
64. Even if the Council could not identify a 5-year housing land supply, for the reasons given above the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This includes paragraph 135 b) which states that decisions should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and this is consistent with PFE Policy JP-P1. This would indicate that the appeal should be dismissed.
65. One of the proposed dwellings would incorporate rooms which would support a future occupier who has a disability which is a protected characteristic for the purposes of the Public Sector Equality Duty (PSED).
66. I have therefore had due regard to the PSED contained in Section 149 of the Equality Act 2010 (the 2010 Act). This sets out 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. In reaching my decision, I have kept these interests at the forefront of my mind. However, they are qualified rights and interference may be justified where in the public interest. The concept of proportionality is key.
67. I have been provided with evidence from a medical expert that has identified that the individual is disabled. The supporting evidence sets out that services and facilities would be provided within the dwelling to support the occupier and their particular needs. If the appeal was dismissed, the services and facilities required to support the individual with the protected characteristic would not be delivered.
68. However, it has not been robustly evidenced that the proposed services and facilities could not be delivered in a less harmful way, such as within the already approved development on the appeal site. There is also no robust justification why both houses would need to be larger to secure the services

⁹ Appeal Reference: APP/Q4245/W/21/3272646 & APP/Q4245/W/21/327645

and facilities within just one of the proposed houses. Overall, it has not been demonstrated that the three aims of the 2010 Act could only be secured by the development as proposed.

69. Dismissing the appeal would interfere with the individual's right to peaceful enjoyment of their possessions and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. However, those are qualified rights; interference with them in this instance would accord with the law and be in pursuance of a well-established and legitimate aim of protecting the character and appearance of the area. The harm caused by the appeal development outweighs its benefits in terms of eliminating discrimination against persons with the protected characteristic of disability, advancing equality of opportunity for those persons and fostering good relations between them and others.
70. It has not been robustly evidenced that the services and facilities could not be provided within a less harmful scheme, therefore I conclude that it is proportionate and necessary to dismiss the appeal. There will be no violation of the individual or their family's human rights. The protection of the public interest cannot be achieved by means that are less interfering with their rights.
71. The development conflicts with the development plan and the material considerations do not indicate that the appeal should be determined other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed, and outline planning permission refused.

G Sibley

INSPECTOR