



Appeal Decision

Site visit made on 8 April 2025

by Eleni Marshall BSc (hons) MSc FRICS FAAV MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/A0665/D/25/3361002

60 Nursery Road, Barnton, Northwich, CW8 4JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Chris Wright against the decision of Cheshire West and Chester Council.
 - The application reference is 21/01371/FUL.
 - The development proposed is side extension (retrospective).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised the Council's description of the proposal as I find that it more concisely describes the proposal.

Main Issue

3. The main issue is the impact of the proposal upon land stability.

Reasons

4. The appeal site is an end of terrace, two storey, dwelling which was granted planning permission under planning permission 14/01643/FUL (amendment to 10/02213/FUL). The appeal site is adjacent to a steep cutting sloping down to the Trent and Mersey Canal where a public footpath crosses through the cutting/slope (closed at the time of my site visit due to safety concerns following a landslide) to gain access to the bridge over the canal.
5. The proposal before me is submitted on a retrospective basis for a single storey side extension with the extension having been constructed with a taller eave height and ridge than a standard garage (which enables first floor storage). The proposal is noted to be timber framed with composite cladding to the side elevation, and brick slip cladding to the front and rear elevations. The Council's delegated report confirms that the proposal is acceptable in terms of visual amenity, residential amenity, highways and all other matters. I have no reason to conclude differently on these elements. This appeal will, therefore, focus upon the main issue as a result of the stated refusal reason – land stability.
6. I note that the appellant outlines, within their Statement of Case, that paragraph 201 of the National Planning Policy Framework 2024 (the Framework) outlines that the focus of planning policies, and decisions should be on whether proposed development is an acceptable use of land rather than the control of processes, however, the starting point for determination is the Local Plan in accordance with

Section 38(6) of the Planning and Compulsory Purchase Act 2004 taking into account all material considerations which include the Framework and the Government's Planning Practice Guidance (PPG).

7. Cheshire West and Chester Local Plan Part 2 (LP2) Policy DM32 requires that development proposals on land known or suspected to be unstable must demonstrate that they will not give rise to significant adverse impacts. In areas of potential land instability, an assessment should be made to ensure that the land is suitable for the proposed development, and that development can be undertaken, occupied and used without risk to people or property resulting from underground conditions. The Council will need to be satisfied that potentially unstable land is safe for its proposed use. Based on the submissions before me I find that it is fair to consider that the adjacent cutting is noted to have a history of landslides and instability to support that information of this nature would be required and which has been requested/considered throughout the site's planning history.
8. It is also of direct relevance that paragraph 196 of the Framework is clear that planning policies and decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability. Decisions should ensure that adequate site investigation information, prepared by a competent person, is available to inform these assessments. Paragraph 197 of the Framework confirms that where a site is affected by land stability issues, responsibility for securing a safe development rests with the developer and/or landowner. The PPG also reiterates that the planning system has an important role in considering land stability by helping ensure that development does not occur in unstable locations or without appropriate precautions.
9. Both the Framework and PPG are material considerations alongside LP2, which is the starting point for determination, and all of these documents support that the consideration of land stability is within the remit of the determination of proposals within the planning system. In that regard I do not find that it is questionable as to whether land stability falls within the remit of this appeal – it is evident from the Local Plan, the Framework and the PPG that land stability is an important and relevant consideration within the planning system notwithstanding the role of building control and/or building regulations. I do not find, therefore, that it is appropriate to rely upon additional legislation to ensure that the proposal is acceptable in terms of effects on ground quality in this case.
10. I note comments highlighted by the appellant as to the Council's assessment for application reference 10/02213/FUL (and its subsequent allowance via appeal), however, this permission was granted at a point in time that predates the current Local Plan (adopted in 2019), the current Framework (even in its earliest form from 2012) as well as the current PPG (first published in 2014) in relation to land stability which actively seeks, as outlined above, to ensure development is suitable to ground condition and to avoid risks caused by unstable land.
11. I note that the original permission for the appeal site was approved subject to a number of conditions and that in appeal reference APP/A0665/A/11/2148929 (which allowed 10/02213/FUL) the Inspector noted that land stability was a matter which was capable of being dealt with by way of condition. In the case of 14/01643/FUL, however, Condition 3 (Land Stability) was clearly a pre-commencement condition which I find went to the heart of the permission in question in requiring that information to be submitted, and approved, prior to

development taking place to ensure that the proposals could be undertaken in an appropriate manner with regard to land stability prior to any construction work. I do not find that the use of conditions in such scenarios (especially in light of being pre-commencement) infers that land stability was not a fundamental issue or of limited concern at the point those determinations were made and, in this case, I am unable to utilise a condition of this nature given that the proposal is already constructed.

12. The proposal that is before me is closer to the cutting sloping down to the Trent and Mersey Canal and also closer to the public footpath currently closed on safety grounds. Furthermore, since the previous permissions on this site, there have been landslides within the vicinity and as noted within the varying supporting reports, matters such as ground stability, ground water etc can change over time with it being a number of years since reports utilised for the condition discharge of the original permission were prepared and submitted in the context of 14/01643/FUL. I note that an application (14/02824/DIS) was made to discharge conditions on 14/01643/FUL, including condition 3, which is stated to have included a report on ground investigations. An extract of the site plan for trial hole locations is included within figure 1 of the appellant's statement of case, along with a statement as to the report's conclusions, however, the full report has not been submitted as evidence before me as part of this appeal.
13. The Technical Note – Slope Stability Assessment (October 2024 – Waterman Infrastructure and Environment Limited) (TNSSA) is noted to acknowledge a report, produced in 2021, as considering the risk to the residential properties to the top of the escarpment slope and Nursery Road, associated with the failure of the slope, to be low. I do not, however, have a copy of the report stated to have been produced by Ramboll in 2021 before me within the context of this appeal. The TNSSA is clear in its acknowledgement of the structure being likely of lightweight construction. The TNSSA notes that the erosion of the slope is occurring beneath the public footpath and that the risk to the property is likely to increase in the future. The TNSSA is therefore clear in its recommendation that a detailed Slope Stability Analysis, based upon new ground investigation data, is undertaken to determine the most appropriate remedial measures to stabilise the public footpath.
14. Whilst I appreciate that, evidently, the appellant is not responsible for the stabilisation of the public footpath the proximity of the appeal site, in terms of land stability, is closely linked in terms of the stability of the slope immediately below the appeal site. The two are therefore closely linked in terms of potential impact in the context of the appeal proposal. Furthermore, the advice note requires further topographical survey data and further ground investigation. Overall, whilst the TNSSA confirms the low risk of slope instability impacting the housing at the crest of the slope at present this confirmation is made on what is specifically stated to be a tentative basis – I do not find this is sufficient to confirm land stability in the context of the proposal, there is uncertainty with a conclusion clearly setting out a need for further information to inform a detailed slope stability assessment.
15. As outlined above, whilst the Council have commissioned a Preliminary Slope Stability Analysis, I do not find that the information provided is sufficient in the context of the proposed extension which has been constructed. I cannot be satisfied, therefore, that the proposal would be acceptable in this regard, and I do not find that The Canal and Riverside Trust (the Trust) is simply attempting to use the proposal to provide/request assessments. Where a site is affected by land

stability issues, responsibility for securing a safe development rests with the developer and/or landowner. The Trust set out, within their correspondence (provided within the appellant's Statement of Case) the reasoning for the type of information to fully assess the impact of the extension upon the stability of the adjacent cutting and, in turn, whether the ground stability now, or within the near future, is capable of safely supporting the extension.

16. I note the appellant's response to this, in January 2022, but based upon the information before me and given the site's longstanding history in terms of considering land (in)stability, and evidence of land slippage and closure of the adjacent public footpath, I find that there is still insufficient information to support that the proposal is sufficiently self-supporting and to ensure that the land is suitable for the development to enable it to be safely occupied and used without risk to people and property resulting from underground conditions.
17. I note that some information has been provided to date by the appellant in relation to confirming a lack of tree removal and use of existing drainage but whilst the structure itself may be lightweight, and on a concrete slab the supporting reports to date only realistically serve to demonstrate that the structure, in isolation, is suitable in terms of loading and basic built form. I do not find that the information before clearly confirms that the ground upon which the extension has been constructed is safe and suitable in terms of stability in the absence of any ground investigation, slope analysis/cross sections or further information as has been requested during the application period, with reasoning, from the Trust/the Council. I find that it has not been adequately evidenced at the point of determination that the structure and the combined loading as a result of its use would be self-supporting.
18. I note the appellant, within correspondence included as an appendix to their Statement of Case has made comparison to, for example, the ability to park vehicles on the site of the extension beyond the control of the Council. This is acknowledged, however, I do not find that this would result in the same impacts, regardless of weight, as the current/proposed built form. In the event of ground instability or failure a vehicle could be moved with relative ease and safety compared to failure of built form. If the extension in question failed, as a result of ground instability or a further landslide for example, the works to make the site safe and/remove it as applicable would have far greater implications and complications for the appeal site and adjacent land as well as safety implications for the footpath. I do not find the proposal realistically comparable, therefore, to the ability of the appellant to park a vehicle in the same location in the absence of the extension.
19. The presence of a public footpath, albeit currently closed, I find to add to the importance of ensuring that the proposal is acceptable in terms of ground stability. In the event ground stability caused failure of the structure within the lifetime of the development the impacts of the proposals, beyond the boundary of the appeal site, would be notable and in this case, I find this adds further weight to the importance of ensuring that the proposal is acceptable and safe in that regard without risk to people.
20. Based upon the information before me I find that the proposal would be contrary to LP2 Policy DM32 which requires assessment to be made to ensure that the land is suitable for the proposed development, and that the development can be undertaken, occupied and used without risk to people and property resulting from underground conditions. The proposal would also be contrary to paragraph 196

and 197 of the Framework as well as the guidance set out within Planning Practice Guidance as outlined earlier within this decision letter in so far as they seek to ensure that development does not occur in unstable locations or without appropriate precautions.

Other Matters

21. I note an objection to the proposal in relation to parking spaces. The Council do not raise an issue with regard to Highway Safety/Highway impact and, at the time of my site visit (albeit I appreciate it is only a snapshot in time) I did not find there to be an issue finding on street parking in the vicinity of the appeal site. I have no evidence, therefore, to support that the proposal if allowed would cause unacceptable impact with regard to parking.

Conclusion

22. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Eleni Marshall

INSPECTOR