
Appeal Decision

Site visit made on 8 May 2025

by **J D Clark BA (Hons) DpTRP MCD DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 May 2025

Appeal Ref: APP/R0660/D/24/3352516

52 Woodlands Road, Handforth, Cheshire East SK9 3AU

- 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 Mark Bowker against the decision of Cheshire East Council.
 - The application Ref is 23/2383M.
 - The development is proposed garden re-modelling and garden outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024 and is a material consideration in this appeal. Having considered the revisions to the Framework, as well as the principles of natural justice, together with the nature of the determining issues in this appeal it is clear to me that there are no material changes in the revised Framework relevant to the substance of this appeal. Therefore, I do not consider it necessary, in this instance, to invite any submissions from the parties on the revised Framework.
3. Third party comments are made about the wall to the front of the property. However, this is not included in this application and the plans indicate that it is subject to a separate submission.
4. The Council's reasons for refusal refer to the proposed development being outside the curtilage of the dwelling and therefore cannot be determined under the householder submission. However, the application was determined and a decision notice issued. My assessment is therefore based on the submission as it was made and the decision notice issued.

Main Issues

5. The main issues are the effect of the proposal on: -
 - the living conditions of the neighbouring property to the east, No 54 Woodlands Road; and
 - ancient woodland and habitats.

Reasons

Living Conditions

6. The appeal site comprises a detached house with a generous garden to the rear. The development has been partially completed and the land level has been raised and a decking area constructed to create a terrace, level with the garden but elevated above the land to the south. Beneath the decking, an outbuilding would be constructed to provide ancillary accommodation. Between the appeal site and the property to the west, No 50, there is a timber fence but between the terrace and the property to the east, No 54, there are steps leading down to the lower level. These would provide access to the below deck outbuilding.
7. There is fencing partly along this boundary and vegetation provides some screening. The sloping boundary is defined by Gabian walling and from the steps it is possible to see across the bottom part of the neighbouring garden. Views up to the house are more acute. The plans indicate that the fence would continue along this boundary but it is not clear how this would be constructed as there is little space between the Gabian walling and the boundary with No 54. The views across the neighbouring property from the terrace are quite considerable and whilst this is of only parts of the garden, the amount of overlooking is intrusive.
8. I accept that there is inevitably some overlooking between properties in urban areas but the properties on the southern side of Woodlands Road, including the appeal site, comprises a linear row with open space to the rear. There is therefore only modest overlooking from properties either side of each other. The proposal introduces a raised terrace and steps and so due to the topography the overlooking here is especially intrusive. The appellants indicate that overlooking could occur from a similar extension being built under permitted development rights but I have no information as to what the scale, appearance or location of such a development might be. This claim therefore carries little weight.
9. I note that a scheme of mitigation has been requested by the Council but has not been forthcoming. The appellant suggests a condition could secure appropriate measures but I am unclear as to what those measures may be. Whilst there is fencing along the boundary with No 50, the same measures may not be appropriate along the boundary with No 54. This is due to the Gabion walling close to the boundary, the steps that have already been constructed and the extent of the raised terrace and glazed screening currently in place.
10. Policy HOU 12 of the Site Allocations and Development Policies Document (SADPD)¹ seeks to protect the amenities of residential occupiers, taking into account, amongst other things, privacy. The proposal would conflict with this policy by causing a loss of privacy and therefore it would have a harmful effect on the living conditions of the neighbouring property to the east, No 54 Woodlands Road.

Ancient Woodland/Habitats

11. The Council consider that the works carried out have resulted in the irreplaceable loss of ancient woodland and a loss of biodiversity. A tree assessment prepared by an arboricultural consultant has been submitted which focuses on one tree close to the site and confirms that no damage has been done to it. I saw the Beech tree

¹ Cheshire East Council – Cheshire East Local Plan Site Allocations and Development Policies Document Adopted December 2022 (SADPD).

and noted its position in relation to the development. However, an ecological appraisal has not been submitted nor has any assessment or clarification of the ancient woodland. I saw that the area of land to the south is overgrown but no evidence has been submitted as to what, if any loss has occurred. The appellant states that the land taken up by the decking and the work carried out to date for the outbuilding has occurred wholly within the domestic curtilage. An application for a Lawful Development Certificate is apparently being prepared about the status of the land but I have no information about whether this has been approved or not.

12. Overall, there is a considerable lack of evidence regarding the ancient woodland and the biodiversity that may or may not have been lost. The appellant states a comprehensive scheme of mitigation measures could be implemented through the provision of biodiversity enhancements. It is suggested that this could be dealt with by condition. However, given the lack of evidence, I do not consider that a condition would meet the necessary tests. In particular, it would need to be sufficiently precise so that the necessary measures were identified and carried out as appropriate. No suggested wording has been presented to assist in the suitability of a condition.
13. Local Plan Strategy² Policies SE 3, SE 4 and SE 5 and SADPD Policies ENV 1 and ENV 6 collectively require development to protect and/or mitigate as appropriate, irreplaceable habitats including ancient woodland and aged or veteran trees and seek to protect biodiversity. It is unclear what damage has been done in this case and as I have explained, appropriate mitigation cannot be dealt with by condition in this case. Therefore, the proposal would have a harmful effect on ancient woodland and habitats and conflict with these policies.

Other Matters

14. I appreciate that the proposal involves making the garden more useable and family friendly and that the costs involved in the development represent a positive investment in the property. In this sense the proposal has both social and economic benefits in keeping with the objectives of the Framework. However, as I have found above, the environmental implications are unclear and the evidence has not been submitted to assure me that mitigation would address any harm. The proposal would conflict with the Framework in this regard.

Conclusion

15. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal should be dismissed.

J D Clark

INSPECTOR

² Cheshire East Council – Cheshire East Local Plan Local Plan Strategy 2010 – 2030 July 2017.