



Appeal Decision

Site visit made on 10 June 2025

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2025

Appeal Ref: APP/R0660/W/25/3358342

Land North Of Junction With Mill Lane, Warmingham Lane, Moston, Cheshire East CW11 3PT

- 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 Bluefield (Sandbach) Limited against the decision of Cheshire East Council.
 - The application Ref is 24/0596C.
 - The development proposed is full planning application for removal of concrete lagoons and structures and redevelopment of site to provide a single detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for removal of concrete lagoons and structures and redevelopment of site to provide a single detached dwelling at Land North Of Junction With Mill Lane, Warmingham Lane, Moston, Cheshire East CW11 3PT in accordance with the terms of the application, Ref 24/0596C, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are
 - (i) Whether the proposal would be suitably located having regard to relevant development plan policies concerning development in the open countryside;
 - (ii) The effect of the use of the proposed access on highway safety; and
 - (iii) Whether the proposal would be acceptable having regard to ground conditions.

Reasons

Open countryside

3. The proposal does not fall within any of the development types that are permissible in the open countryside under Policy PG 6 of the Local Plan Strategy 2017 (LPS). There are however a number of exceptions stated within the policy, including in instances where a dwelling is exceptional in design and sustainable development terms. The accompanying policy text refers to the criteria for this test as being set out in the National Planning Policy Framework (the Framework), albeit those criteria have been re-worded in the period since the LPS was adopted.
4. The proposed dwelling would display a contemporary form and be built over water. It has been designed to be sensitive to its canal side location and would incorporate features to minimise energy demand and water use. It would further

incorporate a green sedum roof, large openable windows to allow for natural ventilation and natural daylight and has been orientated with elements such as the sun path and prevailing wind in mind. There would be a local provenance landscape scheme, ecological enhancements and sustainable drainage.

5. Collectively these represent an impressive list of measures and features. However, many would be expected to be considered and incorporated into the design of any 21st Century dwelling. Even considered cumulatively, they would not be exceptional inclusions. Likewise, whilst the design quality of the scheme is high, in essence it is a flat roof contemporary dwelling style that is not uncommon in modern times. There is therefore nothing exceptional in its design, either. That it would 'stand out' in the locality does not mean that it would cross the bar into being of exceptional quality or be truly outstanding.
6. In conclusion, the proposed development would fail to accord with Policy PG 6 of the LPS where it sets out the types of development that are acceptable in the open countryside. There would also be a failure to accord with Policies SD1 and SD 2 of the LPS, Policy PG 10 of the Site Allocations and Development Policies Document 2022 (SADPD) and Policy HOU1 of the Moston Neighbourhood Plan 2018-2030 where they collectively set out the broader strategic objectives for new development in the plan area. The main parties disagree about whether or not the appeal site is isolated for the purposes of paragraph 84 of the Framework, but even if it were to be considered as isolated then, for the reasons I have set out, the proposed design would not be of exceptional quality.

Highway safety

7. The Highway Authority (HA) requests an evidence-based justification be submitted in support of the dimensions used for the visibility splays to the new access that would serve the proposed dwelling. No such justification has been provided. However, the Council does not dispute that the access proposed is identical to that shown on an earlier 2023 planning application. At that time the HA did not raise an objection to the visibility splays proposed, noting the limited scale of the proposed development, the location on a minor road and the fact that an existing use was being replaced.
8. It is not therefore clear why further justification is required to justify an access to which the HA did not previously object. I have not been made aware that there have been any material changes in relation to the public highway that might suggest the visibility splays are no longer acceptable in highway safety terms, and the proposal remains for a single dwelling. I concur with the earlier response from the HA in that the minor nature of the road, the quantum of development proposed, and the replacement of an existing use mean that the visibility splays proposed would be appropriate to ensure that there would be no harm to highway safety.
9. I therefore find that the proposed development would accord with Policy INF 3 of the SADPD where it requires development proposals to provide safe access to and from the site for all highway users. There would also be no conflict with the aims of the Framework in that regard. Whilst the reason for refusal also refers to Policy CO 1 of the LPS, that policy does not relate directly to matters of highway safety.

Ground conditions

10. The appellant has provided a Geotechnical Summary Note with the appeal. This confirms that appropriate solutions to address matters related to brine subsidence can only be specified once an intrusive ground investigation and a Brine Subsidence Risk Assessment are undertaken. However, it is advised in the report that the proposed dwelling would be suitable for a reinforced concrete raft foundation with movement joints, which is suggested as a possible solution in the Cheshire Brine Subsidence Compensation Board's first consultation response.
11. That being the case, I am satisfied that the imposition of a condition requiring the submission of a ground dissolution/ brine extraction related risk assessment would satisfactorily address this matter. This would also ensure that the aims of Policy SE 12 of the LPS were met, where it requires that land instability issues be appropriately mitigated against.

Other Considerations

Paragraph 11d)

12. As the Council cannot demonstrate a five year supply of deliverable housing sites, paragraph 11d) of the Framework is triggered and the balance set out in 11d)ii applies. This states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.
13. The proposed dwelling would be of a high design quality, include extensive appropriate landscaping and would make effective use of land. In doing so it would transform an unattractive and disused site enclosed by a palisade fence which detracts from the adjacent canal and the surrounding area in general. Although only a proposal for one new dwelling, it would still make a contribution to boosting the supply of housing and to addressing the Council's shortfall in housing land. Weighing against the proposal is its location, in that there would be very limited transport options, other than private motor vehicle, to access services and facilities.
14. I am mindful that the site had a previous use which would have generated movements of vehicles to and from it, and this too would have been likely to have been via a private motor vehicle. But in any event, concerns about the location of the site do not significantly and demonstrably outweigh the clear benefits that would arise from the proposed development. Therefore, I find that the presumption in favour of sustainable development applies.

Other matters

15. The appeal site is located immediately adjacent to Trent and Mersey Canal Lock Number 67, which is grade II listed. Given that the previous use of the appeal site does not relate to the canal or the lock and that what is proposed would be a visual improvement on what exists at the present time, I am satisfied that there would be no harm to the setting of the listed structure or to its significance. For the same reasons, there would be no harm to the adjacent Conservation Area. There is a

further grade II listed structure in the vicinity in the form of a Canal Milestone located immediately south of Crow Nest Bridge (number 161). That structure is further away from the appeal site and visually screened by topography and an intervening road bridge over the canal. There too would not therefore be any harm to its setting or significance.

16. The proposal includes reference to an existing informal parking area located adjacent to the red line site boundary and shown within a blue line as being in the ownership of the appellant. However, the Canal & River Trust disputes ownership of part of that land. Whilst it is the intention of the appellant to give the land over to Moston Parish Council to provide a more formal parking area, given the landownership issues this may or may not be possible. It is not however a matter on which the acceptability or otherwise of the proposed development turns and is therefore one that can be addressed separately by the relevant parties.

Planning Balance

17. The proposed development would fail to accord with the development plan taken as a whole, arising from its location in the open countryside. However, there would be a number of clear benefits resulting specifically from the redevelopment of the appeal site and I have found that the presumption in favour of sustainable development applies. These considerations outweigh the conflict with the development plan and they indicate that a decision should be made otherwise than in accordance with the plan.

Conditions

18. Conditions relating to the time period to commence the development and the approved plans are needed to provide certainty. A condition requiring the development to be undertaken in accordance with the materials shown on the approved plans is required in the interests of ensuring that the external appearance of the building is acceptable and a condition requiring implementation of the ecological enhancement is needed to safeguard biodiversity. A condition relating to the removal of vegetation and the demolition of buildings is needed for the same reason. In order to address land contamination matters, conditions relating to Phase II ground investigations and remediation, a verification report, the importation of soil and any unexpected contamination are needed.
19. A condition relating to brine extraction related risks is required for the reasons set out above. Details of ground and finished floor levels are required to ensure that the proposal has an acceptable visual impact, drainage details are needed to ensure that adequate drainage is put in place, a condition relating to tree protection is needed in the interests of the visual amenity of the locality, as are details of landscaping and a condition relating to its implementation. Conditions to safeguard the adjacent canal from seepage and damage and pollution during construction are needed to protect the waterway.

Conclusion

20. For the above reasons, the appeal should be allowed.

Graham Wraight

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following drawings:
Location Plan: N400 – A1.0C
Proposed Site Layout: N400 – A1.2I
Proposed Ground Floor: N400 – A1.3H
Proposed Roof Plan: N400 – A1.5G
Proposed Elevations: N400 – A1.6H
Proposed Site Sections: N400 – A1.7G
Access Layout: N400 – A1.13D
Vehicle Tracking layout: N400 – A1.14C
Driveway Visibility Splay: N400 – A1.15E
Proposed Context Elevations: N400 – A1.16B
- 3) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The development shall be carried out in accordance with the approved Planting Scheme and Ecological Enhancement Plan (Arborist & Ecological Services Ltd 2024).
- 5) No removal of any vegetation or the demolition, extension or conversion 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 4 metre 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 take place.
- 6) No development (other than agreed demolition and site clearance works) shall commence until:
 - (a) A Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the Local Planning Authority AND:
 - (b) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the Local Planning Authority.The remedial scheme shall be carried out in accordance with the approved Remediation Strategy unless otherwise agreed in writing by the Local Planning Authority.

- 7) No part of the development hereby approved shall be occupied or in use prior to submission and approval in writing of a Verification Report prepared in accordance with the approved Remediation Strategy that covers that part of the development to be occupied or used.
- 8) (a) Any soil or soil forming materials to be brought to site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use in line with the current version of 'Developing Land within Cheshire East Council – A Guide to Submitting Planning Applications, Land Contamination' (in the absence of any other agreement for the development), which can be found on the Development and Contaminated Land page of Cheshire East Council's website.

(b) Prior to occupation, evidence and verification information (for example: quantity/source of material, laboratory certificates, depth measurements, photographs) shall be submitted to, and approved in writing by, the Local Planning Authority.
- 9) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority.
- 10) Prior to the commencement of development, a ground dissolution/ brine extraction related risk assessment shall be submitted to and approved in writing by the Local Planning Authority, together with proposed foundation designs that are designed to overcome the potential effects of brine pumping related subsidence. The development shall be carried out in accordance with the approved details.
- 11) Prior to the commencement of development, details of the proposed ground levels and the level of the proposed floor slabs shall be submitted to the Local Planning Authority for approval in writing. Details which receive the written approval of the Local Planning Authority shall be implemented in full, unless otherwise approved in writing by the Local Planning Authority.
- 12) No development shall take place until a detailed drainage strategy / design, associated management / maintenance plan for the site has been submitted to and approved in writing by the Local Planning Authority. The drainage design must include;
 - (a) Surface water run-off rates
 - (b) Storm water design periods and intensity & any temporary storage facilities included, to ensure adequate drainage is implemented on site. Any tests or investigations carried out during this stage must be in accordance with BRE365 and CIRIA guidance
 - (c) Detailed boundary drainage
 - (d) Management and Maintenance plan

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

- 13) (a) No development or other operations shall take place except in complete accordance with the tree protection measures identified in the Tree Condition Report, Arboricultural Impact Assessment and Tree Protection Plan dated 3rd September 2021, updated 2nd January 2024 in accordance with BS 5837:2012 Trees in relation to design, demolition and construction. – Recommendations.
- (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
- (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- (d) Protective fencing shall be retained intact for the full duration of the construction of the development hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- 14) Prior to the construction of the dwelling, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation programme.
- 15) The approved landscaping plan shall be completed in accordance with the following:-
- a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a programme agreed with the Local Planning Authority.
- b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
- c) All new tree plantings shall be positioned in accordance with the requirements of Table A.1 of BS5837:2012 Trees in Relation to Design, Demolition and Construction: Recommendations.
- d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next

planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.

- 16) Prior to the commencement of development, details of how any seepage from the Trent & Mersey Canal will be managed and disposed of from the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 17) Prior to the commencement of development, a demolition and construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The details shall include:
 - Details of vibration control and measurement on site
 - The location of plant and machinery on site
 - The location of stockpiles on site
 - Measures to control dust during demolition works
 - Piling methodology (if applicable)
 - Measures to stop up redundant drainage on site

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

-----End of Conditions-----