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## Appeal Decision

Site visit made on 16 May 2017

**by Roy Merrett BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 June 2017**

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**Appeal Ref: APP/R0660/W/16/3164953**

**Waterworks House, Dingle Lane, Sandbach CW11 1FY**

- 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 P Pollard, My Pad Developments Ltd against the decision of Cheshire East Council.
  - The application Ref 16/3924C, dated 10 August 2016, was refused by notice dated 28 October 2016.
  - The development proposed is the demolition of the existing two storey dwelling, removal of water treatment storage and settlement tanks, construction of 12 two and three storey detached dwellings together with associated car parking and landscaping works and formation of new access onto Tiverton Close.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing two storey dwelling, removal of water treatment storage and settlement tanks, construction of 12 two and three storey detached dwellings together with associated car parking and landscaping works and formation of new access onto Tiverton Close at Waterworks House, Dingle Lane, Sandbach, CW11 1FY in accordance with the terms of the application dated 10 August 2016 and subject to the conditions set out below.

### Procedural Notes

2. In coming to my decision I have had regard to the recent judgment from the Supreme Court concerning the interpretation of paragraph 49 of the National Planning Policy Framework (the Framework) and its relationship with paragraph 14 of the Framework<sup>1</sup>, and also the views of the main parties on this.
3. The appellant has submitted a planning obligation in the form of a unilateral undertaking (UU). The UU would provide financial contributions towards the off-site provision of education facilities, amenity space and play provision and ecological works. The appellant has confirmed that he does not seek to challenge the commuted payments included in the UU. This matter is considered later in my decision.

### Main Issues

4. The main issues are the effect of the development on i) the character and appearance of the surrounding area; ii) nature conservation interests and iii)

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<sup>1</sup> [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

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the need for a planning obligation to secure financial contributions towards the off-site provision of various facilities.

## **Reasons**

### *Character and Appearance*

5. The appeal site is situated at a lower ground level, immediately to the south and east of an established modern residential estate of detached two storey dwellings and bungalows. Though the site is relatively open, the perimeter is defined by mature tree and hedge planting, with particularly tall trees present to the south-east.
6. The proposal constitutes a mixture of two and three storey dwellings, all of which would incorporate distinctive, forward projecting gable features with steep sloping roofs. The proposed dwellings, despite some variation in height would generally be uniform in appearance. Though taller than dwellings in the adjacent estate and differing in appearance to that development, they would be set at lower ground level and separated by strong boundary planting. The proposal would not therefore be seen to dominate or disrupt any visual continuity or uniformity in the street scene. Furthermore views of the development from the adjacent A534 road would be substantially screened or filtered by the presence of mature tree cover, thus helping to visually integrate the development into its surroundings.
7. Whilst the actual height and appearance of the proposed dwellings would differ from those on the adjacent estate, there is already variation in the scale of buildings there, considering the presence of bungalows and two storey dwellings within that area. Furthermore, many of the existing dwellings incorporate peaked gable features, which would be represented though not imitated in the proposed design. It was also apparent from my visit that within the town centre there are historic buildings which incorporate steeply sloping gable features to their roofs. Within this context the proposal is not therefore an unfamiliar concept. Although each of the dwellings would be relatively large, I consider the mix of dwelling types to be appropriate to the limited scale of development proposed.
8. Although the proposal would not copy the scale and appearance of the established dwellings to the north and west, I conclude for the above reasons that it would not result in the over intensive use of the site or harm to the character and appearance of the surrounding area including the landscape setting. Accordingly I find no conflict with Saved Policies GR2 and GR3 of the Congleton Borough Local Plan 2005 (LP) and Policy H2 of the Sandbach Neighbourhood Development Plan 2016 (NDP) insofar as they seek development to be sympathetic to the character and appearance of its surroundings, to contribute positively to local distinctiveness and to provide an appropriate range of dwelling types and sizes.

### *Nature Conservation*

9. I am mindful that planning permission was granted previously, following appeal, for the development of 12 dwellings on the site<sup>2</sup> which would result in a similar impact on biodiversity interests. There is no dispute between the main parties that this is an extant permission that remains capable of being

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<sup>2</sup> Ref: APP/R0660/A/13/2192130

implemented. Consequently the existing planning permission provides a very substantial fallback position which weighs significantly in favour of the principle of granting planning permission in this case.

10. The proposed development would be within part of the Sandbach Wildlife Corridor. However whilst this would result in the loss of some habitat features, a buffer area between the southern boundary of the development and the adjacent brook would be retained thus preserving the continuity of the Corridor.
11. Whilst the development would necessitate the removal of a tree and some hedgerow, including to allow for the proposed access road, compensatory planting is proposed within the scheme, together with the retention of remaining existing trees and hedgerows. This can be secured through a planning condition. The development would result in the loss of approximately 0.5 hectares of grassland. However a financial contribution is proposed to secure the replacement of this habitat elsewhere within the Sandbach area.
12. I have not been presented with any evidence that the development would result in harm to protected species, subject to conditions requiring safeguarding measures for bats and birds.
13. Drawing the above considerations together I find that the development would cause limited harm but that this would not amount to a significant adverse impact on the wildlife corridor and nature conservation interests. I therefore find no conflict with Policy PC4 of the NDP and the Framework insofar as they seek to protect such assets. Further to this I am satisfied that the limited harm that would be caused can be satisfactorily mitigated or compensated for.
14. Policy NR4 of the LP seeks to avoid any damage to the wildlife corridors, along with other sites of nature conservation interest, unless there are overriding reasons for allowing the development. This is reflected in Policy RC2 of the LP which recognises wildlife corridors as an amenity feature of value. The scheme would therefore conflict with these policies. These policies, however, are not consistent with the more flexible wording in paragraph 118 of the Framework which refers to the aim of avoiding *significant* harm. Accordingly, I concur with the previous Inspector in that this lessens the weight to be attached to the conflict with the LP. In any event, I regard the fallback position of the extant planning permission, which could see the site developed in any event, as overriding the policy stance in this case.

#### *Planning Obligation*

15. Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 states that a planning obligation may only constitute a reason for granting planning permission for the development where it meets three tests. The tests, which are restated in paragraph 204 of the Framework are as follows:
  - Necessary to make the development acceptable in planning terms;
  - Directly related to the development; and
  - Fairly and reasonably related in scale and kind to the development.
16. The Council has identified a projected shortfall in secondary school place provision in Sandbach from 2019. I am satisfied from the evidence before me,

undisputed by the appellant, that the development would place increased pressure on secondary school places, albeit that the number of additional students arising as a result of the proposal would be likely to be relatively small. The proposed payment of £32,685 is required as a contribution to additional classroom provision and would be proportionate to the scale of development involved. It would also accord with Policy GR19 of the LP which states that the Council will require new development to make adequate provision for infrastructure requirements arising from that development.

17. A deficiency in the quantity of amenity open space and children's play provision has also been identified in the locality. I concur with the Council's view that the development would be occupied by families with young children, therefore placing increased pressure on existing resources. In view of the lack of on-site provision, the proposed contribution is to be spent on amenity greenspace and children and young person's play within 800 metres of the site and would accord with the provisions of Policies GR19 and GR22 of the LP, which require adequate provision to be made for infrastructure including public open space. The proposed amount, £26,935.20, would accord with the formula for calculating the appropriate level of provision and maintenance of additional facilities as set out in the Council's adopted Interim Policy Note - Public Open Space Provision for New Residential Development 2008.
18. A contribution of £5,647 would be paid for the creation and enhancement of wildlife habitat in the Sandbach area, justified to offset the loss of grassland habitat within the site. I am satisfied that this would be in keeping with the Defra publication - Costing potential actions to offset the impact of development on biodiversity 2011.
19. I am satisfied that the provisions of the UU would be necessary to make the development acceptable in planning terms, would be directly related to the development and would be fairly and reasonably related in scale and kind to the development. The statutory tests in Regulation 122 of the CIL Regulations are, therefore, met and the planning obligation is a material consideration which carries weight in the appeal decision.

#### *Other Matters*

20. There have been a number of further concerns raised by local residents. The curved and undulating form of the existing access road through the estate would serve to control traffic speed. In this context the relatively small scale of development is unlikely to result in harm to highway and pedestrian safety or significantly worsen any levels of traffic congestion in the locality. Whilst concern is raised regarding the width of the access road leading into the site, I note that the Council has raised no objection to the scheme in this regard. The question of adequate access for the emergency services, should this ever be required, was also raised. However no substantiated evidence has been provided that this would be a problem. This was not a reason for the Council refusing planning permission and I have no information that would lead me to take a contrary view, noting that the Council's highway officers have not objected to the scheme on this basis.
21. Matters of potential noise disturbance, contaminated land, drainage and flood risk are all capable of being dealt with by planning conditions.

22. As private land, the development would not result in the loss of any amenity open space available to the public. Disturbances associated with the construction period would be only temporary in nature and in any event this can be minimised through the use of construction management related conditions. The proposed dwellings would be at a lower ground level and sufficiently separated from the nearest existing dwellings not to result in mutual overlooking of property and loss of privacy.
23. Whilst it is asserted that there is enough housing in Sandbach, it is common ground between the main parties that the Council is unable, at this time, to demonstrate a five year supply of deliverable housing sites in accordance with the requirements of national planning policy. The proposed development would therefore add to the supply and choice of housing available. Although it is undisputed that the site falls within an Area of Separation as identified in Policy PC1 of the NDP, the proposal would not result in the coalescence of any distinctly separate areas of development and would allow for the integration of the existing local footpaths.
24. The appeal site is identified as part of a protected area of open space under Policy RC2 of the LP. Though the proposal would alter the existing open character of the land, the site is an area of private unused land and there is no information before me suggesting that the development would harm the quantity, range and accessibility of recreational facilities or amenity open space. This consideration is even more pertinent in the context of the fallback position of the extant planning permission, which could see the site developed in any event.
25. Whilst reference has been made to previous assurances from third parties that the land would not be developed, no such certainty can be given about the permanent planning status of any land. With regard to the effect of the development on property value I am unable to attach any significant weight to individual private property interests of this nature.

### **Conditions**

26. I have considered the conditions suggested by the Council. Conditions specifying the plans, details of the external materials, boundary treatment, finished floor levels, landscaping and tree and hedgerow protection are needed to safeguard the character and appearance of the area. An ecological management plan, scheme of features for birds and bats and control over the timing of clearance works are all required to safeguard and enhance nature conservation interests. Details of any pile driving operations, construction and delivery times and traffic noise attenuation are required to protect the living conditions of local residents. A condition to assess the risk and remediate any contamination present on the site is necessary in the interests of environmental protection and the living conditions of future occupiers. A condition requiring drainage details is required to ensure the satisfactory drainage of the site.

### **Conclusion**

27. I have not found harm to the character and appearance of the area or harm to nature conservation interests that cannot be satisfactorily mitigated or compensated for. From the information before me I have not found conflict with the NDP. The limited harm to the wildlife corridor conflicts with aspects of

Policies NR4 and RC2 of the LP. However this policy conflict is inconsistent with the Framework and therefore carries very limited weight.

28. In the absence of a demonstrable five year housing land supply the proposal would make a valuable contribution to additional residential provision in the locality to which I attach significant weight. In addition, the removal of the dilapidated house on the site would be an important visual benefit. Furthermore, without evidence that the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits, I conclude that the proposal would amount to the sustainable development for which there is a presumption in favour as set out in the Framework. However, even if a deliverable five year supply of housing land could be demonstrated, the aforementioned policy conflict would still not outweigh the overriding consideration that the site can be developed for an equivalent number of houses in any event.
29. There is also a compelling justification for financial contributions to be made towards additional school places within the Borough; for amenity open space and children's play facility provision and for compensatory habitat in order to offset the impact of the development. Accordingly, and having taken into account all other points raised, the appeal should succeed.

*Roy Merrett*

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 to which the permission relates shall be carried out in accordance with the following approved plans and specifications: 16063 (Su) 001; 16063 (Su) 002; 16063 (PL) 001; 16063 (PL) 002; 16063 (PL) 003; 16063 (PL) 004; 16063 (PL) 005 B; 16063 (PL) 006; 16063 (PL) 007; 16063 (PL) 010 B; 1030/PL/002 Rev No. D; M2613.01; M2613.02.
- 3) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 4) No development shall commence until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) No development shall take place until a scheme of boundary treatment, including programme for implementation, has been submitted to and

approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained.

- 6) No development shall take place until a scheme of landscaping and a landscape and ecological management plan have been submitted to and approved in writing by the local planning authority. The scheme of landscaping shall include identification of trees and hedgerows to be retained, and a programme for implementation. All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in accordance with the approved programme. The management plan shall include management aims and objectives, arrangements for the replacement of failed planting, prescriptions for the height and width at which the hedgerows will be maintained and the times of the year when cutting will take place, a specification for the cutting of areas planted with wild flowers, and a commitment to vary the management prescriptions, subject to the approval of the local planning authority, if a review finds that they are failing to achieve the objectives of the plan.
- 7) No development shall take place until a scheme for the protection of retained trees and hedgerows has been implemented in accordance with details to be submitted to and approved in writing by the local planning authority. The scheme shall be maintained until all equipment, machinery and surplus materials have been removed from the site. No excavation, storage of materials or machinery, parking of vehicles, deposit of soil or rubble, lighting of fires, or disposal of liquids shall take place within any area identified for the protection of retained trees and hedgerows in the scheme. If any retained tree or hedgerow is removed, uprooted or destroyed or dies within a period of 5 years from the completion of the development, it shall be replaced in the next planting season with another tree or hedge plant of similar size and species unless the local planning authority gives written approval to any variation.
- 8) No development shall take place until a scheme of features for breeding birds and roosting bats has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) No site clearance works shall take place during the bird breeding season (1 March – 31 August inclusive).
- 10) Details of the method, timing and duration of any pile-driving operations shall be submitted to and approved in writing by the local planning authority before any such works take place. Pile-driving shall only take place in accordance with the approved details.
- 11) No construction work shall be carried out or deliveries made to the site outside the following times: 0800 to 1800 hours from Monday to Friday, and 0900 to 1400 hours on Saturdays. No construction work shall be carried out or deliveries made to the site at any time on Sundays or public holidays.

- 12) No development shall take place until a scheme of mitigation, including a programme of implementation, relating to traffic noise on the A534 has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 13) No development shall take place until a contamination investigation has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. Upon completion of remediation, a validation report shall be submitted to and approved by the local planning authority confirming that the site has been remediated in accordance with the approved measures and that the site is suitable for the development hereby permitted.

If, during the course of development, any contamination is found which has not been identified in the site investigation, then additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 14) The development hereby permitted shall not be occupied until foul and surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any surface water drainage details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii. include a timetable for its implementation; and,
  - iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.