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## Appeal Decision

Hearing Held on 27 September 2018

Site visit made on 27 September 2018

**by Mike Worden BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 November 2018**

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**Appeal Ref: APP/R0660/W/18/3195272**

**Moss Lane, Macclesfield**

- 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 John Matthews of Eccleston Homes Ltd against the decision of Cheshire East Council.
  - The application Ref 17/2854M dated 5 June 2017, was refused by notice dated 12 December 2017.
  - The development proposed is the erection of 32 residential dwellings and associated engineering works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 29 dwellings and associated engineering works at Moss Lane Macclesfield in accordance with the terms of the application, Ref 17/2854M, dated 5 June 2017, subject to the conditions on the attached schedule.

### Application for costs

2. At the Hearing an application for costs was made by Eccleston Homes Ltd against Cheshire East Council. This application is the subject of a separate Decision.

### Procedural Matter

3. Before the Council issued its decision, the applicant submitted a revised layout plan. The amendment had the effect of altering the layout slightly and reducing the number of dwellings proposed from 32 to 29. The Council has confirmed that this amendment was the subject of additional consultation and I have had regard to the revised plan in my decision.

### Main Issue

4. The main issue is the effect of the proposed development on highway safety.

### Reasons

5. The appeal site is a small part of a wider area of land to the south of the town which is allocated for housing within the *Cheshire East Local Plan Strategy* (the Local Plan). The remainder of the allocation has outline planning permission for around 950 dwellings and other uses. The appeal site is just less than one

- hectare. It lies adjacent to a small housing development, Moss Chase, which itself is accessed off Moss Lane.
6. The proposal is for residential development with access to be taken through Moss Chase. Moss Chase is a development of townhouses constructed around 10 years ago. Its layout consists of a short entrance road, then a 90 degree left turn with a turning head, and a short stretch of straight road up to a turning head at the end of the cul-de-sac. It is from this turning head that access to the appeal site is proposed to be taken.
  7. The townhouses are generally provided with one single garage and one parking space each. The carriageway on Moss Chase was constructed to residential estate road standards and is comprised of a pavement either side of a carriageway of around 5.5m width.
  8. The Council is concerned that since some of the existing residents tend to park on the carriageway or half on the carriageway and half on the pavement, the additional traffic resulting from the proposed development would be harmful to highway and pedestrian safety. The Council considers that many of the residents in Moss Chase do not park their cars in their garages and that the second car in a household is more often parked on the street. At the hearing the one resident of Moss Chase who spoke confirmed that he parks his car in his garage. My understanding is that some residents will use their garages for the parking of a car, some will not.
  9. The Council has a general concern about the ability of larger vehicles including refuse lorries and fire engines to access through Moss Chase safely, given the existing parking situation. As stated at the hearing the Council is also concerned about pedestrian safety as it considers pedestrians, particularly those with pushchairs, would have to step into the carriageway because of not being able to pass on the inside of parked cars.
  10. The Council does not dispute that the design of the existing road and its extension into the proposed development both meet highway standards or that they are capable of serving the volume of traffic which the two developments together would generate. In accordance with the highway design standards used by the Council, the width of the existing and proposed carriageways would be capable of serving up to 400 dwellings. The proposed and existing developments together would be less than 50 dwellings in total.
  11. The appellant has submitted evidence of swept path analysis showing a passage of vehicles of a refuse lorry size and of a fire engine size through Moss Chase. This analysis takes account of some of the residents' vehicles being parked half on the carriageway and half on the pavement, since this was the position at the times of the surveys. However, at the hearing the appellant confirmed that even with a car parked fully on the carriageway, it would still be possible for a refuse lorry or a fire engine to pass along the carriageway without having to mount the pavement. If the cars were double parked on the carriageway, then this would not be possible. However in that case, the passage of a car would be prevented too and so the highway itself would be blocked.
  12. I have no evidence before me that such double parking occurs in Moss Chase currently to block the flow of traffic, although I have had regard to the photographic evidence submitted by a local resident showing parking on both

sides of the road and pavement. In any event, the obstruction of a highway is controlled through highways legislation.

13. The Fire Authority was consulted on the planning application and has not objected, and neither has the Council, as highways authority. Refuse vehicles or other large vehicles which need to access the proposed development could turn round in the turning spaces which would be provided within the proposed road layout. This would mean that such vehicles would not necessarily have to utilise the two existing turning heads on Moss Chase to turn round. For the reasons above, I therefore consider that the proposal would not cause harm to highway safety as a result of the movement of fire engines or other large vehicles.
14. The appellant confirmed at the hearing that even if a car was parked half on the carriageway and half on the pavement, there would be sufficient width on the existing pavements on either side of Moss Chase for a pedestrian to walk between the car and the edge of the pavement in normal circumstances. It may be possible for a pushchair to pass, depending upon the size of the car, its position, and the width of the pushchair. However, given the additional traffic volumes predicted and the existing off road car parking provision, I consider that the existing car parking pattern would not be likely to lead to the proposal causing harm to pedestrian safety in Moss Chase.
15. The existing and proposed roads meet highway standards. I have no evidence before me, other than general concerns expressed by residents and the Council, that the proposed development would cause harm to the safety of cyclists on Moss Chase.
16. A number of the residents have stated that children currently play in the street in Moss Chase. I recognise that the houses along Moss Chase are family sized properties. However, the layout of the street has not been designed to accommodate children playing on the highway, and each house has a private garden space. Furthermore, provision would be made through the planning obligation for the improvement of recreation facilities off site.
17. For the reasons above, on the basis of the evidence before me, I conclude that the proposed development would not cause harm to highway, cyclist or pedestrian safety, and would accord with Policy CO1 of the Local Plan which seeks to promote sustainable travel and transport, and Saved Policy DC6 of the *Macclesfield Borough Local Plan* (the MBLP) which, amongst other things, requires developments to ensure safe and convenient vehicular and pedestrian access.
18. I also consider that the proposed development would accord with paragraph 109 of the National Planning Policy Framework (the Framework) which indicates that developments should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

#### *Other matters*

19. A number of local residents have expressed concern about the proposed access point and have stated that the appeal site should be accessed through the wider area of proposed development to the south or via an alternative route off Moss Lane. However, the proposal before me seeks approval for access through

Moss Chase, and it is on this basis that the application was determined and on which I have considered this appeal.

20. Local residents have also expressed concerns about the additional traffic which the proposed development would place onto the local highway network and in particular the operation of the junction of Moss Lane with Congleton Road. I did observe queueing at this junction in the morning peak travel time on my site visit, but have no evidence that the additional traffic from the development would have a harmful effect on the operation of that junction or the wider local highway network.
21. Bats have been observed on the site and their protection is a concern of some local residents. I have imposed a condition to require an updated bat survey and for measures to be agreed with the local planning authority and adhered to. A resident has questioned the findings of the bat survey as it is claimed the surveyors were disturbed by a member of the public. I have no evidence that such incident affected the survey findings, and in any case, the condition requires an updated survey.
22. My attention has been drawn to a local byelaw which seeks to prevent obstructions within eight metres of a watercourse. I have no evidence that this would prevent the development being taken forward and it has not been raised as a concern by the Council. The appellant would need to resolve any conflict with any non-planning legislation.
23. I have no evidence that the proposed development would cause harm to the living conditions of the occupants of Moss Chase with regard to sunlight or daylight. The proposed development would alter the view from the upper floor windows of those existing properties which look out over the appeal site. However, I have no evidence that this would be harmful to the living conditions of the occupants of those properties with regard to outlook, or that adopted standards in terms of separation distances would not be met.

### **Conditions**

24. I have considered the conditions suggested by the Council and agreed with the appellant, in relation to the guidance and tests within the Framework and Planning Practice Guidance. In some cases, I have combined the suggested conditions, or shortened them in the interests of conciseness and clarity.
25. In addition to the standard condition relating to the time period for implementation, there is a need for a condition specifying the plans to which the permission relates, in the interests of clarity and certainty. I have included the revised proposed layout plan within the list of the approved plans. I have however not included the plans showing the Kingsleigh house type submitted with the application, as there are no dwellings of this house type shown on the proposed layout plan and it was not one of the plans listed on the Council's decision notice as those which it based its decision on.
26. There is a need for conditions requiring the detail of the proposed materials and boundary treatments to be submitted by the appellant and approved by the local planning authority, in the interests of the character and appearance of the area. I have imposed the specific hedgehog gap requirement for garden boundary fences as suggested by the Council in the interests of biodiversity.

27. There is a need for a condition requiring details of a Residents Travel Information Pack to be agreed and then the Pack distributed to occupants in the interests of sustainable transport. Also in the interests of sustainable transport, there is a need for condition requiring the installation of electric car charging points.
28. There is a need for a condition to ensure that any soil to be imported should be tested for contamination, in the interests of environmental protection.
29. A condition requiring details of the proposed bin storage to be submitted and approved, needs to be imposed in the interests of the character and appearance of the area. In the interests of not causing harm to the living conditions of the occupants of neighbouring dwellings with regard to privacy, a condition needs to be imposed to ensure that certain windows on the proposed houses on plots 3 and 39 are obscurely glazed and of restricted opening.
30. I consider that there is a need to impose a number of pre-commencement conditions. In accordance with the Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, the appellant has confirmed its agreement to these conditions in writing.
31. There is a need to ensure that detailed proposals for the disposal of foul and surface water and of the proposed foul water pumping station are agreed in writing by the local planning authority before development commences, and carried out in accordance with the approved details, in the interests of environmental amenity. There is also a need for details of existing and proposed ground and proposed floor slab levels to be submitted and approved by the local planning authority and the development carried out in accordance with the approved details, in the interests of environmental amenity.
32. There is a need for a pre-commencement condition to require further and updated reports in the interests of ecology and biodiversity. These relate to Water Voles, Bats and Reptiles. I consider that the three suggested separate conditions on this issue can be combined into one for clarity and conciseness.
33. There is a need for pre-commencement conditions to require details of any piling to be submitted and approved, and to require a construction method statement in the interests of residential amenity. The conditions would also require adherence to the agreed details in either case. The issue of potential piling has been raised as a concern from local residents in relation to vibration. Given that this is a residential area, I consider that the construction method statement should not only specify details of dust emission control but of other activities which could lead to harm to the living conditions of neighbouring residents if not controlled.
34. A pre-commencement condition is necessary to require details of potential gas risk and for any necessary remediation to be agreed by the local planning authority and undertaken accordingly. This is in the interests of environmental protection.
35. There is also a need for a condition requiring details of proposed landscaping to be submitted and approved at pre-commencement stage in the interests of the character and appearance of the area. I consider that there is also a need for a condition to specify that development must take place in accordance with the agreed details. I have made some changes to the condition suggested to me by

the Council as I consider that the specific detail of planting etc can be set out in the proposed scheme to be approved rather than in the condition.

### **Planning Obligations**

36. Paragraph 56 of the Framework requires that planning obligations should only be sought where they are: necessary to make the development acceptable in planning terms; directly related to the development proposed; and are fairly and reasonably related in scale and kind to the development.
37. A signed and dated Section 106 agreement was submitted at the hearing. The agreement includes obligations relating to the provision of affordable housing, public open space, biodiversity, and education.
38. Policy SC5 of the Local Plan sets out the requirement for affordable homes in the borough. In accordance with the policy, 30% of new dwellings on sites of 15 or more dwellings are expected to be affordable. The planning obligation makes provision for this and to ensure that the nature of the affordable housing meets local housing needs, accords with the definition of affordable housing in the Framework and is secured in the long term.
39. Provision is made in the planning obligation for financial contributions towards improvements, additions and enhancements to a local play area and playing fields, as a direct result of the need arising from the proposed development. I consider that this accords with Policy SC1 of the Local Plan which seeks to ensure appropriate leisure and recreational facilities in the borough; and Policy SC2 of the Local Plan which seeks to ensure that, amongst other things, that major new residential developments contribute to new or improved sports facilities where development will increase demand for such facilities.
40. The planning obligation secures financial contributions for improvements to both primary and secondary education facilities as a direct result of the proposed development which would put pressure on local school services. The proposed development is for family housing which would generate additional need for education places.
41. The information provided by the Council indicates that there will be insufficient capacity within both primary and secondary schools by 2021 to accommodate additional pupils. The contributions have been calculated using established and approved methods and are fair and reasonable in kind in relation to the number and nature of the dwellings proposed and accord with Policies IN1 and IN2 of the Local Plan, which seek to ensure infrastructure delivery and appropriate developer contributions respectively.
42. Provision is also made for a financial contribution towards offsite habitat creation and enhancement works within the area as a result of the loss of biodiversity resulting from the proposed development. This accords with Policy SE3 of the Local Plan which seeks to protect and enhance biodiversity and which provides for offsetting in appropriate circumstances.
43. I consider that the obligations in the Section 106 agreement are necessary to render the proposed development acceptable in planning terms and to ensure compliance with the development plan. They are directly related to proposed development and are reasonably related in scale and kind. The parties have confirmed that they accord with the Community Infrastructure Levy



Regulations. Accordingly, I attach significant weight to these obligations in my consideration of this appeal.

**Conclusions**

44. For the reasons given above I conclude that the appeal should be allowed.

*Mike Worden*

INSPECTOR

Richborough Estates

## **APPEARANCES**

### FOR THE APPELLANT:

Mr Anthony McAteer	McAteer Associates Ltd
Mr Peter Todd	SCP Transport

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Law	Cheshire East Council
Councillor Nick Mannion	Cheshire East Council

### INTERESTED PERSONS:

Mr Keith Smith	Macclesfield Civic Society
Mr Bayley	Local resident
Mrs Vivien Mannion	Local resident speaking on behalf of Mr Bayley

## DOCUMENTS

- 1 Planning Obligation by Deed of Agreement under S106 of the Town and Country Planning Act 1990
- 2 Costs claim rebuttal –Cheshire East Council



## SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan dwg no. 101; Planning Layout Rev G Dwg no.102; Estate Railings Dwg no. F07; 1 bed apartments plots 24-27 Dwg 1BA-P-01 Rev A; Edenfield House Type Planning Drawing Dwg no. ED-P-01 Rev A; Single Garage Planning Drawing Dwg no. SG-P-01; Tarleton House Type Planning Drawing Dwg no. TA-P-01 ; Whalley 2 House Type Planning Drawing Dwg no. WH2-P-01; 1800mm High Brick Wall with Tile Crease Dwg no. F01; Buckley House Type Planning Drawing Dwg no: BU-P-01; 1800mm High Closeboard Fence Dwg no F02; Frodsham House Type Planning Drawing Dwg no. FR-P-01; Hartford House Type Planning Drawing Dwg no. HT-P-01; Parkgate Double Garage House Type Planning Drawing Dwg no. PKDG-P-01; Parkgate House Type Planning Drawing Dwg no. PK-P-01; Materials and Enclosures Plan Dwg no. 103; Drainage Feasibility Layout Dwg no120.
- 3) No development involving the use of external facing materials shall commence until details / samples of the materials to be used in the construction of the external surfaces of the extension 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 / samples.
- 4) Prior to any development involving the erection of boundary treatments associated with the development hereby permitted, details showing the location, size, design and materials of the proposed boundary treatments shall be submitted to and approved in writing by the local planning authority. The proposed boundary treatments shall include the provision of gaps (measuring 10cm by 15cm every 5 metres) for hedgehogs into any garden or boundary fencing proposed. The approved boundary treatments shall be erected in accordance with the approved plans and shall be retained in such form thereafter.
- 5) No development shall commence on site until detailed proposals for the disposal of foul and surface water (including a scheme for on-site storage and regulated discharge) and of the foul water pumping station have been submitted to, and approved in writing by, the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 6) No development shall take place until detail of existing and proposed ground levels and the level of proposed floor slabs have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 7) No development shall take place until an updated Water Vole Survey, an updated Bat Survey and a Reptile Method Statement (including a suite of reasonable avoidance measures) have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved updated Surveys and Statement.

- 8) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
  - ii. loading and unloading of plant and materials;
  - iii. storage of plant and materials used in constructing the development;
  - iv. wheel washing facilities;
  - v. measures to control the emission of dust and dirt during construction;
  - vi. a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - vii. delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 9) No development shall be carried out until a piling method statement has been submitted to and approved in writing by the local planning authority or the local planning authority agree in writing that piling is not required on the site. If piling is required, the development shall be carried out in accordance with the approved details.
- 10) Prior to the first occupation of the development hereby permitted, a Residents Travel Information Pack shall be submitted to and approved in writing by the local planning authority. The approved Residents Travel Information Pack shall be issued to each residential unit prior to first occupation.
- 11) Prior to the first occupation of each unit with dedicated off road parking, Electric Vehicle Infrastructure shall be installed by the following specification including plans demonstrating the location of each unit: a single mode 2 compliant electric vehicle charging point per property with off road car parking. The charging point shall be independently wired to a 30A spur to enable minimum 7kv charging.
- 12) No development shall commence until an additional ground gas risk assessment has been carried out in accordance with a scope of works agreed by the local planning authority; and the results and a remediation strategy submitted to and approved in writing by the local planning authority.
- Prior to the first occupation of the development the works identified in the approved remediation strategy shall be carried out; and a verification report shall be submitted and approved in writing by the local planning authority.
- 13) Any soil or soil forming materials to be brought to the site for use in garden areas or soft landscaping shall be tested for contamination and suitability for use prior to importation to the site. Prior to first occupation, evidence and verification information (for example laboratory certificates)

- shall be submitted to and approved in writing by the local planning authority.
- 14) No development shall take place until a scheme for the landscaping of the site has been 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 plans including species, plant sizes, proposed numbers and densities, and an implementation plan for each phase. The development shall be carried out in accordance with the approved details.
  - 15) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
  - 16) Prior to first occupation of the development hereby approved, details of bin storage shall be submitted to and approved in writing by the local planning authority. The approved bin storage shall be implemented in accordance with approved details prior to the first occupation of the units to which they serve and shall be retained in such form thereafter.
  - 17) The houses at Plots 3 and 39 hereby permitted shall not be occupied until the upper floor facing windows on them have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

-----end of conditions-----