



Appeal Decision

Hearing Held on 18 December 2018

Site visit made on 18 December 2018

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 26 February 2019

Appeal Ref: APP/A0665/W/18/3200248

The Cedars, Old Hall Street, Malpas SY14 8NE

- 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 McCarthy & Stone Retirement Lifestyles Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref 17/03491/FUL, dated 9 August 2017, was refused by a notice dated 8 November 2017.
 - The development proposed is described as a revised proposal for demolition of existing building and associated outbuildings and erection of Retirement Living housing (category II type accommodation), communal facilities, landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing building and associated outbuildings and erection of Retirement Living housing (category II type accommodation), communal facilities, landscaping and car parking at The Cedars, Old Hall Street, Malpas SY14 8NE in accordance with the terms of the application, Ref 17/03491/FUL, dated 9 August 2017, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. The hearing was opened on the 25 September 2018. However, prior to the event, additional evidence was submitted by the appellant. It became clear at the hearing that interested parties had not been afforded to opportunity to comment on that material. In the interests of fairness, I adjourned the hearing to allow further consultation to take place. The hearing was re-opened and held in full on 18 December 2018.
3. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework itself in reaching my decision.
4. A completed deed of planning obligation by Unilateral Undertaking made pursuant to Section 106 of the Town and Country Planning Act, 1990 (as amended) has been submitted and includes obligations to come into effect if planning permission is granted. I address this matter in more detail later in this decision.

Main Issue

5. The main issue in this case is the effect of the proposed development on the character and appearance of the surrounding area, including its impact on the significance of the Malpas Conservation Area.

Reasons

6. The appeal site is situated on the eastern side of Old Hall Street and at the southern edge of the village of Malpas. It comprises the remains of a bungalow which is situated within a substantial plot, the front part of the site which is situated within the Malpas Conservation Area (MCA). The bungalow is set well back from the road and only glimpses of it are visible through the vegetation which characterises the site frontage. To the north of the site is a small inter-war bungalow development and the Springfield Estate with its post war housing. The land beyond the site's eastern boundary is open countryside comprising agricultural grazing land.
7. Malpas is a large village with a historic core and good views to the surrounding countryside. The MCA includes a large part of the village with its historic core at the centre. In my view the significance of the MCA as a heritage asset is largely derived from the presence of locally-distinctive vernacular buildings, good surviving Georgian development and its relationship with the surrounding landscape. The setting of the MCA is extensive and includes much of the surrounding countryside which affords views of it from both approach roads and the network of public footpaths that traverse the surrounding fields. Taking into account the verdant site frontage, the limited amount of built development on it and its relationship to the open countryside to the east, the site undoubtedly contributes to the character and appearance of the MCA and to its setting. However, given the general appearance of the site as a whole and the form and character of the existing development on it, I consider the contribution the site currently makes to the significance of MCA as a heritage asset and to its setting to be neutral.
8. The Malpas and Overton Neighbourhood Plan (NP) was made in 2015 and forms part of the development plan. The NP recognises the need to protect, conserve and enhance the distinctive local character and heritage assets and to ensure that this is reflected in new development. To support this aim, the Malpas Character Study, 2012 (CS) was carried out on behalf of the Parish Council to provide an accurate description and evaluation of the character of different parts of the village. The appeal site is situated within the Old Hall Street Character Area and also forms part of a sample site. The CS recognises that the southern end of Old Hall Street, including the vicinity of the appeal site, has a more rural feel than other part of this street. The frontages become less continuous, with properties set within their own plots and further back from the street edge. There is a mix of architectural styles and the CS suggests that new development should follow the character of this part of the street, with vegetation on the roadside edge, domestic two or three storey development set back from the road, L-shaped groupings of buildings replicating the massing of farmhouses and their outbuildings and should reflect the rural edge to the village with a high amount of planting and open space around the dwellings and a lower density of development.
9. The appeal proposal is for 21 apartments for retirement living. The Council accept that in order to satisfy the functional and social needs of future

occupiers, the form of the proposed development as a single block is necessary. However, they are concerned that the proposed density of the development is considerably higher than that of surrounding development and that its scale, massing and design fail to have regard to the character and appearance of the area and the heritage significance of the CA.

10. Policy BE1 of the NP states that new development should be a positive addition to the existing built form and that the built character of Malpas and rural character of Overton and other outlying areas should be preserved. To that end, full consideration must be given to, amongst other things, the scale and density of the development, impacts on the significance of heritage assets and their setting and impacts on views and the existing relationship with the countryside. In addition, Policy BE2 of the NP seeks to ensure that the design of new buildings reflect the distinctive character of Malpas and Overton and requires developers to have regard to the CS to ensure that new development responds to the significant aspects of local character. Policy H4 of the NP relates specifically to new housing development which it requires to respond to the village character, positively address existing roads and integrate into the existing settlement.
11. I appreciate that the density of the proposed development is much higher than that of the surrounding area which, on the neighbouring Springfield Estate is around 20 dwellings per hectare. However, recognising the type of accommodation proposed in this case, it seems to me that a higher density of development is inevitable. Such development should not therefore be considered to be unacceptable in principle, provided the scale, layout and design of the proposal would preserve the heritage significance of the CA, integrate into the existing settlement and would not have a harmful effect on the views and the existing relationship with the countryside which provides a setting for the CA.
12. The proposed development would be two-storeys in height and positioned away from the road with forecourt car parking. Its siting in this location would respect the character of neighbouring development and although the car parking area would to an extent erode the existing verdant site frontage, mature trees and hedging would remain along the road edge and there would be additional soft landscaping along the front boundary. The car parking area would not therefore be visually conspicuous from the street. Furthermore, the front part of the building would have the proportions of a manor farmhouse and includes a dominant gable, with fenestration and external surface materials that would respond to the local vernacular. Whilst there would be glimpses of the rear wings of the building, the gradient of the site means that they step down the slope. These elements would also be recessed and subordinate to the frontage block. Overall, the building would have a distinct and legible design which would be a positive addition to the street frontage and it would preserve the character and appearance of this part of Old Hall Street.
13. There is no doubt that, by reason of its scale and mass, the proposed building would be a more conspicuous and prominent form of development than currently exists on the site. The submitted Landscape and Visual Impact Appraisal recognises this and acknowledges that there would be a high visual change from Malpas Footpath 4 to the east of the site, which would be reduced to a medium change following the proposed mitigation planting. In dismissing

a previous scheme for 27 apartments on the appeal site,¹ my colleague raised concern both with regard to the scale and design of the proposed development and also its proximity and intrusion into the neighbouring open countryside.

14. The reduction in the number of apartments has enabled the footprint of the proposed development to be reduced and importantly the depth of the southern wing has reduced by over 6m which has also increased the amount of open space between the eastern wing and the site's boundary with the open countryside. When viewed from the public right of way to the east, the block would be recessed behind the gable of the neighbouring property on Springfield Avenue and taking into account the existing development at The Hollies to the south, the development would be viewed as an infilling or rounding off of the settlement edge.
15. Albeit that the neighbouring garage block and consistent form / rhythm of development on Springfield Avenue currently present an almost continuous wall of development to the adjoining countryside, I appreciate that the proposed development presents a facade to the open countryside which is much greater in scale than the neighbouring detached and semi-detached properties. However, the proposed gable features in the eastern wing would significantly improve the appearance of the building from that which was proposed in the previous dismissed scheme. The gables would not only introduce and respond to a design characteristic which is a prominent component of both The Hollies and the neighbouring property on Springfield Avenue, but they would also provide a vertical articulation to the elevations which would break up the perceived bulk of the building. Furthermore, I noted on my visit to the site and surrounding area, that buildings with elevations of the width and scale proposed in this case are not unusual within the open countryside particularly as part of larger farmsteads.
16. In addition, the site levels are lower than those of the neighbouring properties and the building's proposed two-storey height would reflect the height of surrounding buildings. Views of Malpas Church from the neighbouring countryside would not therefore be impeded. The reduced scale and position of the building on the site would enable additional landscaping to be provided and I am satisfied that there would be sufficient space around the building to safeguard the relationship between built development at the settlement edge with the surrounding open countryside. For these reasons and those set out above, I consider that the proposed development would integrate into the settlement and preserve the setting and significance of the CA.
17. I conclude that the proposed development would preserve the character and appearance of Malpas Conservation Area, its setting and the surrounding area. There would be no conflict with the development plan and in particular with Policies BE1, BE2 and H4 of the NP the aims of which are set out above or Policies ENV5 or ENV6 of the Cheshire West and Chester Local Plan (Part One) which, amongst other things, seek to protect the Borough's heritage assets and ensure that new development respects local character.

¹ APP/A0665/W/17/3170561

Benefits of the Scheme

18. The development would take place in an accessible location. In addition, it would assist in meeting the demonstrable needs/demands of an aging population. It would accord with Policies H1 and H3 of the NP and that part of the Framework which seeks to address the needs of older people. As noted in the Government's Planning Practice Guidance, the proposal could also free-up under-occupied local housing for other population groups. In addition, it would increase the housing choice for some local residents whilst allowing them to maintain their independence. Despite the concerns of interested parties, there is clear evidence of a need for both affordable housing in the parish as well as accommodation to meet an ageing population. Locating the accommodation close to the local health centre would undoubtedly be a benefit of the scheme in this regard.
19. The proposal would create employment opportunities and benefits to the economy, including during the construction phase when those working on the site could also reasonably be expected to make some use of local services and facilities.
20. Those environmental, economic and social benefits of the scheme must be weighed in the planning balance and can be given considerable weight in determining the appeal.

Other Matters

21. I note the concerns of some interested parties regarding the impact on the local road network, including concerns relating to on-street car parking. However, having considered the appellant's Transport Statement, the Council are satisfied that the development would not result in any serious highway or car parking implications. There is no technical or other cogent evidence to warrant taking a different stance to the Council on these matters. In addition, the proposed development would make a contribution towards the provision of a vehicle activated advance speed warning sign on Old Hall Street, Malpas.
22. I have taken into account the concerns of interested parties over the loss of trees and biodiversity. Whilst the loss of trees is regrettable, those trees to be removed on the site frontage are required to improve highway safety and, on the whole, their loss would not have a significantly harmful effect on the visual amenities of the area. Replacement planting and additional landscaping would be provided, which would ensure that the biodiversity value of the site is not diminished and there is no evidence to suggest that the proposal would have a harmful effect on protected species.
23. There is no doubt that the proposed development would change the outlook for some neighbouring residents and I have given careful consideration to the impact it would have on the living conditions of the occupiers of The Hollies, with particular regard to privacy. However, there would be no direct line of sight from the proposed development towards any of habitable rooms within The Hollies. Whilst the windows in the southern elevation of the proposed building would overlook land belonging to this property, the views afforded would be of ancillary garages/stabling and would not impinge on the private amenity or garden areas which are closest to this dwelling.

Planning Obligations

24. The completed, signed and dated planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) includes a number of provisions. Consideration of planning obligations is to be undertaken having regard to paragraph 56 of the Framework and the statutory requirements contained within Regulation 122 and 123 of The Community Infrastructure Levy (CIL) Regulations 2010.
25. The planning obligation provides financial contributions towards affordable housing, the provision of formal playing pitches at Malpas Sports Club and a contribution towards the provision of a vehicle activated advance speed warning sign on Old Hall Street, Malpas.
26. A CIL Regulations 2010 Compliance Statement has been provided by the Council. The justification for the infrastructure contributions secured demonstrates that they would be directly related to the development proposed, are fairly and reasonably related in scale and kind, and are necessary to make the development acceptable. The statement also confirms that the contributions secured are compliant with the provisions concerning the pooling of infrastructure monies. I conclude that the obligations, which also have policy support, would comply with the requirement of Regulations 122 and 123 of the CIL Regulations and the tests in the Framework.

Conditions

27. The agreed Statement of Common Ground included an agreed list of conditions. The conditions were discussed at the hearing and considered against advice in the Framework and Planning Practice Guide. The need for additional conditions was also considered at the hearing. At my request, following the coming into force of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the appellant has provided their written agreement to the terms of such conditions and I have amended the wording of some to ensure clarity.
28. A condition is necessary to secure the approved plans as this provides certainty.
29. Pre-commencement approval of a demolition and construction management plan is necessary to prevent significant disruption to amenity, air quality, and the safe and efficient operation of the transport network. Similarly, conditions to protect retained trees on the site during the construction and to secure measures to avoid harmful impacts on badgers throughout the construction phase are necessary in the interests of visual amenity in terms of the former and wildlife conservation in relation to the latter. To avoid pollution and to prevent increased risk from flooding, details of a sustainable surface water drainage scheme are required pre-commencement, together with details for ongoing management which are essential to ensure that the scheme continues to perform as intended.
30. The site lies in an area of archaeological interest, so pre-commencement approval of a scheme of investigation is necessary as even the early stages of development could disturb archaeological remains. Pre-commencement

approval of proposed finished floor and garden levels is necessary to safeguard the character and appearance of the area and living conditions of neighbouring residents. A pre-commencement condition is necessary to require and secure details of the site access and visibility splays in the interest of highway safety.

31. Conditions requiring detailed proposals for the incorporation of features for the protection of breeding birds and bats, and to control site clearance works and external lighting, are necessary in the interests of biodiversity and the protection of wildlife.
32. Details of external surface materials and hard landscaping and their implementation, including approved soft landscaping, are necessary to safeguard the character and appearance of the area.
33. In order to avoid pollution, a condition to specify the separation of foul drainage from clean surface and roof water is necessary.
34. In the interests of providing sustainable transport alternatives, details of cycle parking provision are necessary. It is also necessary to secure the layout and retention of the approved parking area within the site in the interest of highway safety.
35. A condition is necessary to specify the occupancy of the units, as consideration has been given to the exceptional circumstances, including the lack of provisions relating to education provision and on-site parking requirements.

Conclusion

36. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

Elizabeth Pleasant

INSPECTOR

Attached - Schedule of Conditions

APPEARANCES

FOR THE APPELLANT

John Barrett	Counsel for Appellant
David Beardmore	Beardmore URBAN
Ed Harvey	The Planning Bureau Limited
Nigel Appleton	Contact Consulting

FOR THE LOCAL PLANNING AUTHORITY

Brain Leonard	Senior Planning Officer
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INTERESTED PARTIES

Matthew Gilbert The Planning Consultancy

John Pierson Local Resident

DOCUMENTS SUMMITTED AT/AFTER THE HEARING

1. Completed Planning Obligation by Unilateral Undertaking dated 18 December 2018.
2. Statement of Compliance with Community Infrastructure Regulations 2010.
3. Letter from John Pierson and Sally Sharp, Laurel Bank, Old Hall Street, Malpas.

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, NW-2263-03-02-AC-001; North Elevation, NW-2263-03-02-AC-002; South Elevation, 2263-03-02-AC-003; East Elevation, NW-2263-03-02-AC-004; West Elevation, NW-2263-03-02-AC-005; Site Plan, NW-2263-03-02-AC-006; Material Details Elevations, NW-2263-03-02-AC-007; Floor Plans, NW-2263-03-02-AC-008; Watercolour Elevations, NW-2263-03-02-AC-009; Landscape Layout, NW-2263-03-02-LA-001; Landscape Section 1 of 2, NW-2263-03-02-LA-002; Landscape Section 2 of 2, NW-2263-03-02-LA-003; Planting Plan, NW-2263-0302-LA-004; Boundary Treatments, NW-2263-03-02-LA-007; Tree Constraints Plan, 9006/01; Tree Protection Plan, 9006/02 Rev C; Topographical Survey, 06101SJC-01; On-site Drainage Strategy, EW/001A (Sheet 1 of 2); Off-site Drainage Strategy, EW/001A (Sheet 2 of 2); Proposed External Works Drawing, NW-2263-01-ENG-001.
- 3) No site clearance, preparatory work or development shall take place until the tree protection measures hereby approved (9006/01 Tree Constraints Plan and 9006/02 Rev C Tree Protection Plan) have been implemented in accordance with approved details. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans before any equipment, plant machinery or materials are brought onto the application site for the purposes of implementing the development hereby approved. Such fencing shall be maintained in situ for the duration of the construction works. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within the areas protected by the fencing shall not be altered in any way without the prior written agreement of the local planning authority.
- 4) The development hereby permitted shall not commence until full details of existing levels and proposed finished floor (slab) and site (garden)

levels of the application site have been submitted to and approved in wiring by the local planning authority. All submitted details must relate to adjoining land. The development shall be carried out in accordance with the approved details and completed prior to the occupation of the units hereby permitted.

- 5) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority. The works shall be carried out strictly in accordance with the approved scheme.
- 6) 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 approved 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) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) demolition and construction working hours;
 - ix) Details of any piling.

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

- 7) Prior to the commencement of any development on site, the developer must submit to and have approved in writing by the local planning authority detailed plans in respect of the works required within the highway to form the access, visibility splays and associated works. The works shall only be carried out in strict conformity with the agreed details and completed prior to first occupation of the development.
- 8) No development shall take place until a scheme for the protection of badgers during construction works has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the agreed scheme.
- 9) Prior to the commencement of any development (with the exception of site clearance and demolition of buildings on the site) a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions (inclusive of how the scheme shall be managed after completion) shall be submitted to and approved in writing by the local planning authority.

The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and unless otherwise agreed in writing by the local planning authority, no surface water shall discharge to the public sewerage system either directly or indirectly.

The development shall be completed, maintained and managed in accordance with the approved details.

- 10) Prior to the commencement of development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to and approved in writing by the local planning authority. The sustainable drainage management and maintenance plan shall include as a minimum:

- a) The arrangements for adoption by an appropriate public body or statutory undertaker, or, management and maintenance by a Resident's Management Company; and
- b) Arrangements concerning appropriate funding mechanisms for its on-going maintenance of all elements of the sustainable drainage system (including mechanical components) and will include elements such as on-going inspections relating to performance and asset condition assessments, operation costs, regular maintenance, remedial works, and irregular maintenance caused by less sustainable limited life assets or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

The development shall subsequently be completed, maintained and managed in accordance with the approved plans.

- 11) No development shall commence above ground level until samples of the materials to be used in the construction of external surfaces of the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 12) No development shall commence above ground level until details of bat and bird nesting boxes have been submitted to and approved in writing by the local planning authority. The boxes shall be installed in accordance with the approved scheme prior to the occupation of any unit hereby permitted.
- 13) The foul drainage shall be kept separate from clean surface and roof water in accordance with details that have previously and shall be connected to a proprietary sewage treatment plant prior to occupation of the development hereby approved.
- 14) No development shall commence above ground level until full details of the hard landscaping works have been submitted to and approved in writing by the local planning authority. The work shall be carried out to the approved specification prior to the occupation of any unit.
- 15) Prior to the occupation of any unit hereby permitted, the related parking area shall be provided, with spaces marked out, in accordance with the approved site plan (drawing no MW-2263-02-AC-006). The parking areas shall not thereafter be used for any other purpose other than the parking

of vehicles in connection with occupation of the development hereby permitted.

- 16) All soft landscape works shall be carried out in accordance with the approved details NW-2263-03-02-LA-001 Landscape Layout (NW-2263-03-02-LA-002 Landscape Section 1 of 2, NW-2263-03-02-LA-003 Landscape Section 2 of 2, NW-2263-03-02-LA-004 Planting Plan). The approved details shall be implemented wholly in accordance with the approved details in the first available planting season after occupation. If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.
- 17) Parking for cycles and mobility scooters shall be provided within the site prior to the occupation of any part of the development in accordance with a scheme which has previously been submitted to and approved in writing by the local planning authority. Details shall include the number, type and design of each parking facility. The parking facilities shall then be retained and remain available for use by the occupiers of the development, as well as staff and visitors, at all times thereafter, unless otherwise approved by the local planning authority.
- 18) No trees/scrub/hedges related to the construction process are to be removed between 1 March and 31 August in any year, until a precautionary survey for the presence of nesting birds has been carried out in accordance with a scheme that shall have previously been submitted to and approved in writing by the local planning authority. The survey shall be undertaken in full accordance with the approved scheme. If the survey identifies the presence of birds, a scheme of mitigation measures shall be undertaken in accordance with details and a timescale that shall previously have been submitted to and approved in writing by the local planning authority.
- 19) No external lighting shall be installed other than in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. The external lighting shall thereafter be maintained in accordance with the approved details.
- 20) The development hereby permitted shall be used as sheltered housing accommodation for the elderly only and for no other purpose. The occupancy age limit shall be a minimum of 60 years for single occupants and for the head of the household where occupancy is by couples. For the avoidance of doubt the age restriction does not apply to partners or dependants continuing to occupy the unit following the death of the partner/guardian.
- 21) Clearance of the site is to be undertaken in accordance with the measures set out in para 6.6 of the submitted Extended Phase 1 Habitat Survey (Innovation Group Environmental Services, 2017).

End of Condition Schedule