



Appeal Decision

Site visit made on 19 January 2015

by **Louise Crosby MA MRTPI**

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

Decision date: 24 February 2015

Appeal Ref: APP/A0665/A/14/2223160

Birch Heath Road, Tarporley, Cheshire, CW6 9UR

- 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 Elan Homes Ltd/Muller Strategic Projects Ltd against the decision of Cheshire West & Chester Council.
 - The application Ref: 14/00770/FUL, dated 25 February 2014, was refused by notice dated 4 June 2014.
 - The development proposed is erection of 18 No dwellings with associated garages, car parking, landscaping, means of access and site infrastructure, plus temporary sales advertising signage during development.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 18 No dwellings with associated garages, car parking, landscaping, means of access and site infrastructure at Birch Heath Road, Tarporley, Cheshire, CW6 9UR, in accordance with the terms of the application, Ref: 14/00770/FUL, dated 25 February 2014, subject to the attached Schedule of Conditions.

Procedural Matters

2. The description of development on the submitted planning application form includes 'temporary sales advertising signage during development'. However, I have not considered this part of the proposal since even if planning permission were granted for the structure supporting the advertisement it would not grant consent for any advertisement. Consequently, advertisement consent will still be required to display the proposed temporary advertisements.
3. The appeal is accompanied by an executed Unilateral Undertaking (UU). This would secure a contribution of £5,796.00 towards improving local play and public open space facilities within Tarporley and £28,456.74 towards secondary education. It would provide additional school places and facilities at Tarporley High School. I shall deal with this matter in more detail below.
4. It was agreed at the site visit that the submitted house type plan for plot 14 was handed the wrong way and that a revised plan to rectify this would not disadvantage anyone. The revised plan was received on 30 January 2015. I shall proceed on this basis.

Main Issue

5. The main issue is the whether the proposal would preserve or enhance the character or appearance of Tarporley Conservation Area.

Background

6. There is an extant outline planning permission on the appeal site for a 35 dwelling sheltered housing scheme with warden facilities, communal room, TV lounge, garaging, parking, access and landscaping. The approved access in that case is the same as is proposed here. While the appeal site is outside the defined development limits for Tarporley and so in planning policy terms the site is in open countryside, the principle of residential development here has been accepted by the Council. I shall deal with the appeal on this basis.

Reasons

Whether the proposal would preserve or enhance the character or appearance of Tarporley Conservation Area

7. Tarporley was originally a linear settlement built along High Street. However, the growth of this sustainable settlement has resulted in large areas of estate type residential development being formed away from the main street. Some of this is within the conservation area.
8. The appeal site is an open field located to the south west of the main village of Tarporley, inside the designated conservation area. Tarporley is designated in the adopted Vale Royal Borough Local Plan First Review Alteration (LP) as a Tier 2 location that contains a full range of facilities and services. The site is bounded by residential development to the south and east; to the west of the site is open fields and to the north a large garden area.
9. To the east of the site the existing dwellings are traditional in design and date from the early to mid 19th Century. The area to the south contains more recent development. Close by, but not adjacent to the site is the Forester's Arms, a locally listed building. Further away to the north is the Church of St Helen, which is listed grade II*. I shall return to the effect of the proposal on the setting of these buildings later.
10. The proposed scheme includes a mix of 2, 3, 4 and 5 bedroom detached, semi-detached and terraced dwellings. The dwellings would be mainly 2 storey in height. The 2½ storey ones would be on the lower parts of the site as it slopes down from east to west. The development would be laid out in a spacious manner with good sized gardens and sufficient separation distances. I note that the Council are concerned about the inclusion of integral garages however I saw examples of these in Bridgedown, the adjacent residential development. I am satisfied that they would not appear out of place in this location, away from the more traditional development along High Street.
11. The main public views of the development would be from the open land to the west. From here the new development would be seen in the context of the existing dwellings around the site, some of which are sizeable. While it would bring built development closer to the open area beyond the village, there is a planning permission which would allow the site to be built on in any event.
12. This well designed development of 19 dwellings would appear as a natural extension to the village and the dwellings themselves have been designed to ensure that they respect the character and appearance of the conservation area which Tarporley Village Design Statement (VDS) describes as diverse, with a range of architectural types and form. The VDS identifies the appeal site

as an important open space, but as stated above the principle of residential development here is not contested by the Council.

13. The proposal would preserve the character and appearance of Tarporley conservation area and accord with LP policy BE10 which seeks to ensure that development preserves or enhances the character or appearance of the conservation area.

Other matters

14. It is agreed between the parties that the Council do not have a 5 year supply of housing; however this has not been a determinative issue in this case since I have not identified any harm in relation to my main issue.
15. The Forester's Arms on High Street abuts the footpath and is visually dominant in the streetscene. Close by is a range of buildings which vary in age and quality. Limited views of the proposed development could be possible from High Street, close to this public house, but over some distance and with other buildings in between. As such, the proposal would not harm the setting of this building.
16. Further away, to the north of the appeal site, is the Church of St Helen which is listed Grade II*. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard should be had to the desirability of preserving the setting of listed buildings. This means that considerable weight and importance must be given to any harm caused to designated heritage assets in the planning balance. This includes any harm to the setting of a listed building.
17. It is a 15th century Perpendicular Church with extensive 19th century additions and alterations. The significance of the Church, amongst other things, is derived from its age, historic association with the village and its architectural style.
18. South of the Church and closer to the appeal site is its burial ground which provides part of the setting of the Church. Beyond the burial ground to the south and west is open land containing some trees and hedgerows as well as public footpaths. This forms part of the setting of the Church. From these footpaths there are views across to existing housing in the vicinity of the appeal site, but these are filtered greatly by trees. Consequently the new dwellings would be visible to a limited degree through the intervening trees from the footpath, but in conjunction with existing residential development. Nevertheless, views from the Church and its grounds would be unlikely.
19. The Church is not visible from the appeal site because of the distance and the intervening landscaping. Only a very narrow view is available of the very top of the tower, above trees, from Birch Heath Road. Moreover, given the topography of the site, the intervening landscaping and the height of the dwellings compared to the upper section of the Church tower it is highly unlikely that the proposed dwellings would alter this view of the Church tower.
20. As such, the contribution that setting makes to the significance of this designated heritage asset would not be undermined to any discernible degree. I find that the proposal would not harm the setting of the Church or its significance. The proposal would therefore preserve the special architectural and historic interest of the listed building, the desirability of which is fully

anticipated by section 66(1) of the Act and to which I am required to have special regard.

21. To the north east of the site is Tarporley Baptist and Methodist Church. This attractive building is located within a built-up frontage on High Street. Given that the appeal site is some distance beyond the Church and not directly behind it, the proposal would not alter the ability to appreciate this building from High Street or indeed anywhere else.
22. There is local concern that existing facilities and services in Tarporley cannot support any more housing, however this scheme would provide less dwellings than that already approved. Moreover, a contribution would be used to provide additional spaces at the local high and a commuted sum would result in the enhancement of local play and public open space.
23. Subject to the highway related conditions suggested by the Council I am satisfied that this proposal would not result in highway safety problems or materially add to any existing local congestion.
24. The proposed dwellings would be sited ample distance from existing residential properties to prevent any unacceptable harm to living conditions as a result of overlooking or an increase in noise and disturbance. While vehicular traffic using the access into and out of the site would cause some noise and disturbance to neighbouring residents, given the number of proposed dwellings this would not be unduly harmful. Moreover, this scheme may result in less traffic movements than that already approved.
25. Turning to the matter of ecology, the planning application was accompanied by a habitat survey and it concluded that there are no statutory sites or sites of local importance in the vicinity of the appeal site. While an internal hedgerow within the site would need to be removed compensation measures could be dealt with by a planning condition.

Planning Obligation

26. A UU under S106 of the Town and Country Planning Act 1990 has been submitted relating to the provision of the contributions and matters set out above. The UU binds the owner to covenants with Cheshire West and Chester Council. The Community Infrastructure Levy (CIL) Regulations require that any planning obligation providing for contributions, such as those set out above, must be 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.
27. Policy RT3 of the LP seeks informal amenity open space provision, play space and formal recreation space provision where there is a net increase in dwellings and sets out the standards that will be applied. In this case part of the provision would be provided on site and part by way of a commuted sum which would be used towards projects in Tarporley.
28. The education contribution would provide additional places at the local school. The Council have provided evidence to show how the amounts being sought have been calculated. The supporting information for these contributions is contained in the Council's Supplementary Planning Document 3 (Developer Contributions).

29. I am satisfied that the provisions of the submitted UU would meet the three tests set out in Regulation 122 of the CIL Regulations 2010 and the tests in the Framework.

Conclusion

30. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Conditions

31. In addition to the standard time condition I have imposed a condition to ensure that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning. Some conditions are necessary to ensure that the external appearance of the dwellings respect the character and appearance of the conservation area. It is also necessary to control existing and proposed landscaping within and around the site for the same reason.
32. I have imposed some conditions that will ensure the protection and/or provision of habitats for protected species. Some conditions that will control delivery times and construction hours are necessary to protect the living conditions of existing residents living near the site and to control any piling or works that would cause vibration. I have imposed a number of conditions that are necessary for highway safety reasons and one to ensure that the on-site play area is constructed in accordance with the submitted plan. Since the existing ground levels across the site differ it is important that the finished floor levels of the dwellings and the levels of the gardens are agreed. If the site were raised some of the dwellings would appear unduly prominent and could affect living conditions in existing dwellings nearby.
33. It is necessary to secure the provision of affordable housing, in accordance with the Council's adopted affordable housing policy and that part of the energy needs of the occupiers of the new dwellings is provided by means of renewable energy. I have imposed the Council's suggested drainage conditions to ensure that the site is adequately drained and the development does not give rise to surface water flooding problems elsewhere.
34. From the evidence submitted by the appellant, it appears that the site is not contaminated, however I have imposed the Council's suggested condition in the event that contamination is found during construction works. I have amended some of the Council's suggested conditions to prevent repetition and in some instances to make them more precise. In particular I have removed references to phasing as this a modest sized development that is unlikely to be built in a phased manner.

Louise Crosby

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan (Drawing No. BHR-LP-001 Rev B); Planning Layout (Drawing No. BHR-PL-002 Rev D); Fence details (Ref G-06 Rev A); Street scene and sections (Drawing No. BHR-SS-001 Rev C); Landscape plan (Drawing No. BHR-LL-001 Rev B); and house and garage types: BHR-AUD/01 Rev BHR-D, BHR-HOW/01 Rev BHR-C, BHR-MAR/01 Rev BHR-C, BHR-HAR-01 Rev BHR-D, BHR-WES/01 Rev B-H, BHR-WES/02 Rev C-H, BHR-MEL/01 Rev A, BHR-MEL/02 Rev B, BHR-MEL/03 Rev B, BHR-LIN/01 Rev B, BHR-KEL/01 Rev A, BHR-KEL/02 Rev B, BHR-HAL/01 Rev A, BHR-HAL/02 Rev B, BHR-FAR/01 Rev A, BHR-FAR/02 Rev B, BHR-GAR/02 Rev A, BHR-GAR/01 Rev A.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building 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.
- 4) No works shall commence until details of the design and materials of window heads and cills has been submitted to and approved in writing by the Local Planning Authority. The work shall be completed in strict accordance with the approved details.
- 5) No works shall commence until details of the proposed rainwater goods, including profile, colour and decorative finish, have been submitted to and approved in writing by the Local Planning Authority. The work shall be completed in strict accordance with the approved details.
- 6) No development shall commence until full details of the soft landscaping works have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented wholly in accordance with the approved details in the first available planting season after the dwellings are completed.
- 7) 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.
- 8) In this condition a "retained tree" means an existing tree/hedge which is to be retained in accordance with the approved plans (Tree Protection Plan Drawing number BHT/TPP/OL/01/14/01 revision A). Paragraphs (a) and (b) below shall have effect until the expiry of 5 years from the date of occupation of the last building for its permitted use.
 - a) No retained tree/hedge shall be cut down, uprooted or destroyed, nor shall any retained tree/hedge be topped or lopped other than in accordance with the approved plans unless agreed otherwise in writing by the local planning authority. Any lopping or topping shall

- be carried out in accordance with the British Standard BS3998 Tree Work.
- b) If any retained tree/hedge is removed, uprooted or destroyed or dies another tree/hedge shall be planted at the same place and the specification of the replacement shall be agreed in writing by the local planning authority.
- c) The erection of fencing for the protection of any retained tree/hedge shall be undertaken in accordance with the approved plans (Tree Protection Plan Drawing number: BHT/TPP/OL/01/14/01 revision A), before any equipment, plant machinery or material 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. These measures shall include details of protective fencing and load spreading covers for the Root Protection Areas that cannot be fenced (along the site entrance). 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.
- 9) No development shall take place until a scheme for the provision of bird and bat boxes within the site has been submitted to and approved in writing by the local planning authority. No dwelling hereby permitted shall be occupied until bird and bat boxes have been installed in accordance with the approved scheme. Thereafter, these boxes shall be retained.
- 10) Clearance of the site should be undertaken in accordance with the mitigation measures contained within the Extended Phase 1 habitat survey – Birch Heath Road, Tarporley (Sensible Ecological Survey Solutions, 2014).
- 11) The building demolition, tree or hedgerow removal/arboricultural works shall not take place within the bird breeding season (1st of March to 31st of August inclusive).
- 12) All on-site hedgerows to be retained shall be protected during construction through the installation of protective fencing a minimum of a metre from the foot of the hedge. Should any semi-natural habitats be discovered, these shall be inspected prior to their removal as part of the development.
- 13) No development shall commence until details of construction traffic for the new development, including temporary highway vehicle and pedestrian routings and suitable off-highway parking for all construction related vehicles have been submitted to and approved in writing by the local planning authority. The approved details shall be adhered to throughout the construction period.
- 14) No development shall commence until full details of the land and surface water drainage from the site, including details of its implementation, have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with the approved scheme.

- 15) The site must be drained on a separate system, with only foul drainage connected to the foul sewer. This site must be drained on a total separate system in full accordance with the submitted drainage management strategy. All surface water flows should discharge directly into the adjacent watercourse without recourse to the public sewerage system.
- 16) The access hereby approved, shall be completed to binder level, in accordance with the approved plans and to the satisfaction of the Highway Department and made available for use prior to the commencement of construction of the development.
- 17) No development shall commence until details of parking for vehicles has been submitted to and approved in writing by the local planning authority. The agreed parking details shall be completed and made available for use prior to the first occupation of any of the dwellings. The parking spaces shall be retained at all times thereafter.
- 18) No development shall commence until details of the secure and covered parking facilities for cycles have been submitted to and agreed in writing by the local planning authority. The development hereby approved shall not be occupied until the cycle parking has been provided in accordance with the agreed details and retained at all times thereafter.
- 19) Unless otherwise agreed in writing with the local planning authority no operations associated with the demolition and construction phases, shall be carried out on the site except between the hours of 08:00 - 18:00 Monday to Friday and 08:00 - 13:00 on Saturdays. No activities shall take place on Sundays or Public Holidays.
- 20) Unless otherwise agreed in writing with the local planning authority no deliveries shall be taken at or dispatched from the site during the demolition and construction phases except between the hours of 08:00 - 18:00 Mondays to Fridays; 08:00 - 13:00 on Saturdays. No deliveries shall take place on Sundays or Public Holidays.
- 21) Before the commencement of operations on site the location of the site office and construction compound shall be approved in writing by the local planning authority.
- 22) No operations requiring piling or subsurface vibration ground improvement techniques shall be carried out on the site unless, details of the work, monitoring and environmental controls proposed have been supplied to and agreed in writing with the local planning authority. All such works shall be undertaken in complete accordance with the agreed scheme.
- 23) If, during the course of development, any contamination is found which has not been identified in the site investigation, 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.
- 24) Prior to the commencement of development full details of existing levels and proposed finished floor (slab) and site (garden) levels shall be submitted to and approved in writing by the Local Planning Authority. All submitted details must relate to adjoining land. Development shall be carried out in accordance with the approved details.

- 25) The first dwelling shall not be occupied until the area shown on the approved layout drawing ref: BHR-PL-002 Rev D, has been laid out as open space in accordance with the approved details and that area shall not thereafter be used for any purpose other than public open space.
- 26) Prior to the commencement of the development a scheme for the provision of affordable housing shall be submitted to and approved in writing by the Local Planning Authority.

The affordable housing shall be 30% of the total number of dwellings to be provided on site and must be provided in accordance with the approved scheme and shall meet the definition of affordable housing in the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- a) the numbers, tenure and location on the site of the affordable housing provision to be made;
- b) the type and mix of affordable dwellings shall be a split of 50:50 intermediate/affordable rent, unless otherwise agreed in writing by the Local Planning Authority;
- c) the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing;
- d) the arrangements for the transfer or management of the affordable housing;
- e) the arrangement to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
- f) the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

All parts of the agreed scheme for the provision of affordable housing shall be implemented in full.

- 27) No development hereby permitted, shall commence until a scheme to demonstrate that not less than 10% of the total energy consumption of the development will be provided by means of renewable energy or that alternative measures will achieve at least 10% less energy consumption than similar development constructed in accordance with the current Building Regulations has been submitted to and approved in writing by the Local Planning Authority. The development shall be completed wholly in accordance with the approved details.