



Appeal Decision

Site visit made on 9 January 2024

by **G D Jones BSc(Hons) DipTP DMS MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6th February 2024

Appeal Ref: APP/R0660/W/23/3323276

Former Zest Restaurant, Newcastle Road, Sandbach CW11 2SW

- 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 James O'Loughlin of Charlotte Properties Ltd against the decision of Cheshire East Council.
 - The application Ref 21/6377C, dated 15 November 2022, was refused by notice dated 16 December 2022.
 - The development proposed is the demolition of an existing restaurant building with subsequent erection of 12no new build apartments with associated car parking and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2023. As both main parties had the opportunity to make final comments after its publication, it has not been necessary to expressly seek further views on it.
3. As part of the appeal process, the appellant submitted a legal agreement, dated 19 January 2024, made with the Council under Section 106 of the Town and Country Planning Act 1990 (the S106 Agreement). I have had regard to it in my consideration and determination of the appeal. The Council has advised that the S106 Agreement overcomes its third reason for refusal regarding affordable housing. I have assessed the appeal scheme on that basis.

Main Issues

4. The main issues are, therefore, the effect of the proposed development on the Jodrell Bank Radio Telescopes, on trees, and on highway safety.

Reasons

Jodrell Bank

5. As the supporting text to Policy SE 14 of the Cheshire East Local Plan Strategy 2010-2030, July 2017, (the Local Plan) states, *the Jodrell Bank site is one of the earliest planned sites for radio-telescopes in the world and is home to the iconic Lovell Telescope (grade I listed building) which is a prominent feature within the Cheshire East landscape*. It adds, amongst other things, that this

Policy aims to make sure that the telescopes retain their ability to receive radio emissions from space with minimum interference from electrical equipment.

6. A zone is identified in the Local Plan within which the University of Manchester (UoM), as the body responsible for Jodrell Bank, shall be consulted on certain types of development, and to which Local Plan Policy HER 9 applies (the Buffer Zone). The appeal site is located towards the southern fringes of the Buffer Zone yet lies some distance within its boundary. Following consultation, the UoM has objected to the appeal scheme on the basis that it would lead to the impairment of the efficiency of the telescopes contrary to Policy SE 14.
7. The UoM also advises that the relevant recommendation for what constitutes detrimental interference to radio astronomy is ITU-R RA.769, which sets out the threshold for the signal strength received at the telescope in various bands protected for and used by radio astronomy and assuming no directional gain. I have found no good reason to disagree on this point. I also note that other Inspectors have had regard to ITU-R RA.769 when determining appeals concerning proposed development elsewhere within the Buffer Zone.
8. Notwithstanding how infrequently interference might occur, the appeal site's distance from Jodrell Bank and its location close to other development in Arclid, including residential uses and telecommunications apparatus, the UoM has estimated the proposed development would lead to interference exceeding the ITU RA.769 threshold by a factor of four. In coming to this estimate it appears to have applied reasonable and helpful assumptions, including making allowance for attenuation by the building's walls, including foil-backed plasterboard and metal-fil window glass, and the path loss using a detailed terrain model.
9. While I recognise that further mitigation may be possible, as referred to on behalf of the appellant, there is no firm evidence that the estimated exceedance of ITU RA.769 identified by UoM could be fully addressed. I also note that the site is previously developed land, most recently used as a restaurant, albeit that the evidence suggests that it is 'currently used for informal parking'. The UoM estimate does not appear to take account of the level of interference that the former restaurant use would have been likely to have given rise to.
10. Nonetheless, the sources of interference that appear to be of greatest concern to the UoM are those from unregulated electronic devices rather than telecommunications equipment, such as mobile phones. Accordingly, it seems reasonable to assume that the appeal development, comprising 12 dwellings, would result in more of such unregulated electronic equipment, and hence greater interference, than the restaurant would have done when it operated and than the current car park use.
11. In any event, the restaurant use has ceased and there is no evidence to suggest there is any prospect of such a use returning to the site. Indeed, it seems unlikely given that the site has been cleared of the building(s) that housed the restaurant. Accordingly, the former restaurant use attracts limited weight in the assessment of the proposed development's net effect on Jodrell Bank in terms of interference.
12. I note the evidence regarding nearby residential development that has been permitted without mitigation. I am not familiar with all of the circumstances of

that development. In any event, if that development has resulted in impairment to the efficiency of the telescopes at Jodrell Bank, such harm cannot justify further harm. Accordingly, it carries no more than very little weight in favour of the proposed scheme.

13. For the foregoing reasons, therefore, the appeal development would impair the efficiency of the Jodrell Bank telescopes in the terms of Local Plan Policy SE 14, such that it would conflict with the Local Plan in this regard.
14. In addition to the grade I listed Lovell Telescope, Jodrell Bank is a World Heritage Site. The significance of these heritage assets stems in part from the continued use of the site for radio astronomy. Consequently, any impairment of the efficiency of the radio astronomy use would be harmful to the significance of these heritage assets. The harm would be less than substantial in the terms of Framework paragraph 208. I return to this matter as part of the balancing exercise within the Conclusion section below.

Trees

15. The evidence indicates that parts of the material submitted in support of the appeal planning application are contradictory in terms of accurately recording the location of trees, such that at least some of it is incorrect. Given that certain trees are proposed to be retained they have the potential to have an important influence on the assessment of the proposed development's effect on the character and appearance of the area. Accordingly, it is important that the information before me is correct if planning permission is to be granted.
16. I am mindful that the Inspectorate's 'Procedural Guide: Planning appeals – England' is clear that appellants should not make their appeal until they are ready to proceed to the decision. Given the foregoing, that was evidently not the case in this instance. Moreover, the problematic inconsistencies within the application material about trees have not been rectified at the appeal stage.
17. Accordingly, there is insufficient information before me to adequately assess what the proposed development's effect on trees would be. In the absence of such information, it is also not possible to conclude with sufficient confidence whether or not the scheme would accord with Policy SE 5 (Trees, Hedgerows and Woodland) of the Local Plan and Policy ENV6 (Trees, hedgerows and woodland implementation) of the Cheshire East Site Allocations and Development Policies Document (the SADPD).

Highway Safety

18. Visibility from the proposed site access north-eastwards along the A534 would be substandard for the reasons set out in the evidence. Given the likely speed, volume and character of traffic along this A Road, a substandard arrangement of this type would be likely to compromise highway safety. I am also concerned that certain types of vehicles, notably refuse lorries, would be unable to turn within the site. Consequently, they would either have to be reversed in from the A534, reversed out or be parked within the highway. Each of these scenarios would also be likely to undermine highway safety.
19. The appellant's evidence refers to potentially altering the proposed site access arrangements and / or the internal layout to address these points. Although there is indicative information within the evidence, no such details are before me. I have, therefore, determined the appeal based on the proposal

drawings that were before the Council when it processed the application, and which formed the basis for its decision to refuse planning permission.

20. For these reasons, the proposed development would be likely to have a significantly detrimental effect on highway safety. Accordingly, in this regard, it would conflict with Policy INF 3 (Highway safety and access) of the SADPD.

Other Matters

21. Several other appeal decisions regarding the effect of proposed development on Jodrell Bank have been put to me by both main parties. They refer to other development in differing locations. Some were also made a while ago such that the development plan policy at play at that time is likely to have been different to now. The approach of UoM as consultee may also have differed. Moreover, I am not familiar with all of the wider circumstances of each of those other cases. While I am mindful of the importance of consistency in appeal decision-making, it is also important that each decision is made on its individual merits. In the circumstances, therefore, those other appeal decisions have had little bearing on the outcome of this appeal.
22. The S106 Agreement is designed to deliver on-site affordable housing as well as payments to secure open space and educational mitigation. All of these matters would attract weight in favour of the appeal scheme. Nonetheless, as they would primarily address needs arising from the appeal development, any wider benefits that would be associated with the open space and education mitigation attract no more than limited weight.

Conclusion

23. The proposed development would give rise to public benefits, notably those associated with housing delivery, including affordable housing, on previously developed land within a settlement. However, given that those benefits would be commensurate to the reasonably modest scale of development, they would be very comfortably outweighed by the identified less than substantial harm to the significance of the heritage assets in question. I have come to this conclusion bearing in mind that such harm should be given considerable importance and weight, and as the listed building and the World Heritage Site are of national and international interest respectively. Consequently, the appeal development would also conflict with Policy HER 9 of the Local Plan.
24. In certain respects, the proposed scheme would contribute positively to sustainable development objectives as set out in the Framework, particularly in terms of market and affordable housing delivery. Nonetheless, given the significant identified harm and associated development plan conflict when taken as a whole, the combined benefits of the scheme would be substantially outweighed. Accordingly, it would not be sustainable development in the terms of the Framework. Indeed, each of the matters addressed under the last two main issues would, individually, be sufficient to warrant the refusal of planning permission as they are both important and weighty matters.
25. The appeal should, therefore, be dismissed.

G D Jones

INSPECTOR