



Appeal Decision

Site visit made on 21 March 2025

by **G Sibley MPLAN MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 8 May 2025

Appeal Ref: APP/R0660/W/24/3355974

Land between 35-43, Castle Hill, Prestbury SK10 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Christopher Oakes against the decision of Cheshire East Council.
 - The application Ref is 22/4367M.
 - The development proposed is new dwelling and associated external works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the consideration of this appeal, I was made aware that the Council's 5-year housing land supply position had changed. As such, the main parties were given the opportunity to comment on the updated housing land supply position and where comments have been received, they have been taken into consideration.

Main Issues

3. The main issues relevant to this appeal are:
 - the effect of the proposal upon highway safety
 - the effect of the proposal upon flood risk; and
 - the effect of the proposal upon the ecology and biodiversity of the site and its surroundings.

Reasons

Highway Safety

4. There is a large pond on the appeal site and the proposed dwelling would be located above the pond. Given the unusual shape of the site, it only has a small section that connects to the public highway. The vehicular access would be onto Castle Hill and a plan has been submitted identifying that 2.4 metre(m) by 43m visibility splays could be achieved from the access point. However, notwithstanding whether the dimensions of the visibility splays would be appropriate, the submitted evidence identifies parts of the grass verge either side of the proposed access where the visibility splays would pass over may be in third party ownership.
5. The appellant has said that they would enter into a formal agreement with the third-party owners to ensure the land where the visibility splay passes over would

be kept free of obstruction, but no agreement has been submitted with this appeal. Indeed, comments from an interested party who has provided evidence that they own part of the land next the proposed access have said they intend to plant hedges within this grass verge which may obstruct visibility from the access. Without such an agreement it would not be possible to secure the visibility splays for the proposed residential use of the appeal site.

6. A Grampian condition could be used to require works on land that is not controlled by the appellant but the Planning Practice Guidance (PPG) states that this should not be used where there are no prospects at all of the action being performed. Taking into consideration the comments received by the third-party owner of part of that land, there are no prospects at all of the action being performed and a Grampian condition would not be appropriate in this instance.
7. Consequently, appropriate visibility splays cannot be achieved for the vehicular entrance for residential use of this site. This would mean that vehicles exiting the site would have substandard visibility and this could lead to accidents occurring on this road which would have an unacceptable impact on highway safety. As such, the proposed development cannot provide a safe access to and from the site for all highway users.
8. The scheme would include two parking spaces, and it is not disputed by the main parties that the development would provide parking spaces in accordance with the car parking standards set out in the Cheshire East Local Plan: Local Plan Strategy 2010-2030 (LP).
9. The internal driveway for the appeal scheme would be constrained by the pond and as such a turning circle is proposed. It is not identified that this would be motorised and as such vehicles would need to turn within this turning circle to exit the site in a forward gear. However, there is no technical evidence to robustly demonstrate that the turning circle would large enough to allow all types of vehicles to turn within it to independently enter and exit in a forward gear. As such, based on the evidence submitted, the proposal would not incorporate safe internal movement in the site to meet the requirements of servicing and emergency vehicles.
10. Therefore, the proposal would have an unacceptable impact on highway safety and would conflict with Policy C01 of the LP and Policy INF3 of the Site Allocations and Development Policies Document (SADPD). These seek, amongst other matters, to ensure developments can provide a safe access to and from the site for all highway users and incorporate safe internal movement in the site to meet the requirements of servicing and emergency vehicles. It would also not accord with the National Planning Policy Framework (the Framework) insofar as it states that development should only be prevent or refused on highways ground if there would be an unacceptable impact on highway safety.

Flood Risk

11. The proposed dwelling would be located above a large pond and based on the information before me this pond could be a source of flooding. Annex 3 of the Framework identifies that buildings used for dwelling houses are a more vulnerable use.

12. The Framework states that when determining any application, local planning authorities should ensure that flood risk is not increased elsewhere. Where appropriate, applications should be supported by a site-specific Flood Risk Assessment (FRA). Footnote 63 of the Framework identifies several circumstances where a site-specific flood risk assessment should accompany all proposals. This includes land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use. Policy SE13 of the LP and SADPD Policy ENV 16 are similarly worded. Taking into consideration the above matters the application should have been supported by a site-specific FRA but one was not submitted.
13. Given that a site-specific FRA was not submitted, the development before me does not demonstrate how flood risk would be managed now and over the proposed developments lifetime. Moreover, no sequential test has been undertaken to determine that there are no reasonable available sites for the proposed development in areas with a lower risk of flooding. Therefore, it has not been robustly demonstrated that the development should be allowed in an area at risk of flooding nor that the development would not increase flood risk on the site or elsewhere.
14. Whilst the costs to determine that the above matters could be demonstrated may be prohibitive, the Framework requires that these matters are addressed before development should be allowed in areas at risk of flooding. As such it would not be appropriate to allow development subject to conditions to determine if these matters could be demonstrated.
15. Taking into consideration the information submitted, the appellant has not provided substantive evidence to demonstrate that the scheme would adequately address flood risk and avoid the increased risk of flooding elsewhere. Consequently, the development would conflict with Policy SE13 of the LP and SADPD Policy ENV 16 which expects proposals, amongst other matters, to demonstrate that development will not increase flood risk on site or elsewhere and manage and discharge surface water through a sustainable drainage system.

Ecology

16. A Preliminary Ecological Appraisal (PEA) was prepared for the site in 2021, and further surveys were undertaken as part of the submitted Additional Ecological Surveys and Assessment Results (AESAR) in 2023.
17. The UK Biodiversity Action Plan (UKBAP) provides a statutory basis for lists of habitats and species of national conservation importance.
18. The appeal site is identified in the ecological reports as being within the 'Amber Zone' for the District Level Licencing concerning Great Crested Newts (GCNs). The ecological reports identify that the pond on site has an 'average' Habitat Suitability Index (HSI) with another nearby identified as having a 'poor' HSI and the reports identify that the on-site pond may be used as a GCN breeding pond and GCNs are identified as a UKBAP Priority species and ponds can be a UKBAP habitat. The appeal site is located within a woodland and the evidence before me indicates that this is a UKBAP Priority habitat and some of the nearby trees are also covered by a Tree Preservation Order¹. Additionally, Bluebells have been

¹ Reference: 1539-5

observed on the appeal site and they are identified as a priority species in the Cheshire Region Biodiversity Action Plan (CBAP). The trees on the site were also considered to be highly valuable to bats in a local context for foraging and commuting and certain bats are UKBAP priority species whilst all bats are a CBAP key local species.

19. The PEA recommends further consideration or survey work be carried out in respect of GCNs, amongst other surveys and assessments. Based on the information before me a newt presence/absence survey has not been undertaken.
20. The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) imposes a duty on me to consider whether protected species would be affected by the development and whether any associated mitigation measures would be effective. This duty applies irrespective of the size of the site or scale of the development. Further, Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent they may be affected by a proposal, is established before planning permission is granted.
21. The appellant identifies that they intend to acquire a District Level Licencing Certificate regarding the GCNs. However, the certificate that has been provided has not been signed, authorised and dated by Natural England and the lapse date for this provisional certificate has passed. Given that an authorised certificate has not been secured and in the absence of a district licence, or a presence/absence survey for GCNs I cannot be assured that GCNs would be successfully mitigated for. Deferring the matter for conditional approval would not be satisfactory given the sensitive nature of the species, the reported suitable habitat on site and the intention to drain a pond, reprofile it and then refill it as part of the development. The development would also result in the house being built on top of a pond using helical piles that would be within the pond itself. In the absence of evidence to the contrary, and taking a precautionary approach, I conclude that there would likely be an adverse effect on GCNs arising from the appeal proposal.
22. Several trees within the site would have to be removed to facilitate the delivery of the proposed vehicular access which would have an adverse impact on a UKBAP priority habitat. There may also be impacts upon the root protection areas of the trees during works to drain the pond and reprofile it, during underground service installation and pruning. The AESAR identifies that the lowland mixed deciduous woodland is in a poor condition and that through a detailed Landscape and Ecological Management Plan (LEMP) that this could be enhanced to a moderate condition. It is however, recommended that this be secured by a condition attached to any permission and through a planning obligation. Given that a planning obligation has not been submitted, it is not clear that these enhancements to the woodland would be secured.
23. English Bluebells were found on the appeal site although the AESAR identified that the cover of English Bluebell was 'rare' using the Dominant Abundant Frequent Occasional Rare Scale. The AESAR identifies that this means that there were only a small number of plants seen during optimal timings. It is suggested that the English Bluebell plants can be mitigated for through methods such as translocation, or as a last resort through compensation/commuted sum. This could be secured through the LEMP, but it is not clear if compensation or a commuted

sum would be necessary and without a planning obligation to secure this, it is not clear that this mitigation would be secured.

24. The AESAR identified that the projected net loss of biodiversity on the appeal site would be around -6% as calculated in using the Biodiversity Metric 4.0 calculation tool. The AESAR identifies that the proposal, including the enhancement of retained habitats would result in the loss of 0.02 habitat units that would need to be compensated financially to achieve planning consent and this may involve offsite works/contributions.
25. As discussed earlier Grampian conditions could be used to require works on land that is not controlled by the appellant, but this should not be used where there are no prospects at all of the action being performed. Taking into consideration the evidence before me I have no compelling evidence to suggest that there would be no prospect at all that the scheme could not achieve biodiversity net gain to warrant withholding approval of the development, on this matter.
26. Given that the trees on the appeal site are identified as being highly valuable for foraging and commuting for bats, any external lighting may affect the ongoing suitability of the trees for that use. Artificial lighting associated with the dwelling could affect foraging and commuting bat activity. However, this could be mitigated for via a condition requiring the approval of any artificial lighting associated with the dwelling. This should ensure that the proposed development would not significantly affect the suitability of the trees around the site for foraging and commuting activities.
27. Further terrestrial surveys should be undertaken to inform a mitigation strategy and that, in line with government advice, this information should be considered as part of the decision-making process and cannot be considered afterwards or dealt with by conditions.
28. In the absence of further ecological assessments confirming protected species and habitats would not be affected, or the identification of securable appropriate mitigation or compensation measures, I cannot conclude that the proposal would not be likely to adversely affect protected species or habitats. Therefore, the development would have a harmful effect upon the ecology and biodiversity of the site and its surroundings. The proposal would therefore conflict with Policy SE3 of the LP and Policies ENV1 and ENV2 of the SADPD which state that development proposals, amongst other matters, should provide for a net gain in biodiversity as well as ensure development is in accordance with the mitigation hierarchy.

Planning Balance

29. During the consideration of this appeal, I was made aware that the Council could no longer demonstrate a 5 year housing land supply. In these circumstances footnote 8 of the Framework establishes that the policies most important for determining the application are deemed out-of-date. Consequently, permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed. Such policies are defined in footnote 7 as including those relating to areas at risk of flooding.
30. For the reasons given above, the development would have an unacceptable effect upon flood risk and therefore, the application of policies in the Framework which

seek to ensure that flood risk is not increased elsewhere provides a strong reason for refusal. As a result, the presumption in favour of sustainable development does not apply.

31. The site is located within Prestbury and as such it is near to services and facilities that could be accessed via transport modes other than private car. Taking into consideration the Council's housing land supply position, the delivery of a single dwelling would make a limited contribution towards the Council's housing land supply as well as the Government's objective of significantly boosting the supply of homes and make efficient use of land. There would be limited short term and long term economic benefits during construction as well as from the ongoing patronage of services and facilities in the area by the occupiers of the dwelling. The occupants of the dwelling would also make a very limited contribution towards the social fabric of the area.
32. The proposed dwelling would incorporate lightweight construction materials and extensive glazing, and the internal layout has been designed taking into consideration natural ventilation and energy efficiency. The scheme would also incorporate renewable energy sources such as solar thermal and photovoltaics. Technology is also proposed to support monitoring of the control systems as well as water usage. These would generate limited environmental benefits in favour of the proposal given the limited scale of it.
33. Subject to a suitably worded condition the development could achieve biodiversity net gain. Given that the specific net gain has not been demonstrated at this time, the benefits I attribute to this in favour of the development are very limited.
34. It is not disputed between the parties that the design of the dwelling would be appropriate in this location and with regard to the site constraints and taking into consideration the evidence before me I find no reason to conclude otherwise. However, this would be expected of any development and weighs neither for nor against the proposal.
35. Taking into account the above considerations, I attribute modest weight to the benefits of the scheme.
36. The proposal would harm highway safety and flood risk in the area, and this would result in a conflict with relevant development plan policies.
37. The Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused. There is insufficient information before me to determine that significant harm to biodiversity cannot be avoided, mitigated or compensated for. This would lead to conflict with relevant development plan policies, and this matter, alongside the other identified harms, counts significantly against allowing the appeal.
38. Therefore, I attribute significant weight to the harms identified above and find that the proposal would conflict with the development plan as a whole. The limited benefits of the proposal would not outweigh these harms and overall, they do not indicate that a decision should be taken other than in accordance with the development plan.

39. Even if the presumption in favour of sustainable development did apply, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

Conclusion

40. The proposed development conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

G Sibley

INSPECTOR