



Appeal Decision

Hearing held on 14 September 2010

Site visit made on 14 September 2010

by **Jeremy Eagles** DipTP DMS MRTPI

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

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Decision date:
25 October 2010

Appeal Ref: APP/R0660/A/10/2125900

Land off Cumberland Drive, Bollington, Macclesfield SK10 5BR

- 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 H Cumberbirch against the decision of Cheshire East Council.
- The application Ref 09/4335M, dated 23 December 2009, was refused by notice dated 13 March 2010.
- The development proposed is the erection of four dwellings.

Preliminary matters

1. At the Hearing an application for costs was made by Mr H Cumberbirch against the Council. This application is the subject of a separate Decision.
2. At the opening of the Hearing I was requested by the Council to visit the site prior to hearing any evidence in order that I would have a fuller understanding of the issues to be discussed. However, I declined as I had seen the site and its surroundings from the highway the previous day and would be undertaking a formal visit after proceedings had finished in the Town Hall.
3. During the Hearing the Council asked that I accept additional evidence relating to an approved scheme for the residential development of adjoining land fronting High Street which, along with this appeal site, formed part of a larger site subject of an earlier appeal (APP/R0660/A/09/2100349) for thirteen dwellings. I declined as there had been ample opportunity for the Council to raise this issue some weeks before the Hearing; there were no plans available of these details at the time of raising this matter, and the appellant had not been given notice of this request or provided with a further statement by the Council. My acceptance of this evidence would have unduly prejudiced the appellant's position.

Decision

4. I allow the appeal, and grant planning permission for the erection of four dwellings at land off Cumberland Drive, Bollington, Macclesfield in accordance with the terms of the application, Ref 09/4335M, dated 23 December 2009, subject to the conditions set out in the attached schedule.

Main issues

5. The main issues in this case are the effect of the proposed development on:
 - (i) the character and appearance of the appeal site and its surroundings, having particular regard to its location within the Bollington Conservation Area (CA) and adjoining the Kerridge CA, and
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- (ii) the living conditions of the occupiers of adjoining property, particularly 50 Lord Street, with regard to any loss of outlook or natural light.

Reasons

Character and appearance

6. The appeal site lies immediately below the brow of the steeply sloping valley side of the River Dean within the built up area of the historic mill town of Bollington. The lower part of the vacant site, fronting Cumberland Drive, includes a gently sloping disused car park with a retaining wall against the steep slope to the rear, above which the rear frontage to Chancery Lane would be cleared of a simple brick building. The terrace of four, stone and slate, 3-storey houses would be erected at the bottom of the steep slope where further excavation would take place to allow each property a small ground floor patio with a new retaining wall and re-profiled back garden behind. Much of the present car park would form the proposed parking area for the new houses.
7. The *Bollington and Kerridge Conservation Area Appraisal* notes that the two CAs are notable for their hilly topography although Bollington has a built-up urban character whilst Kerridge is largely rural. Their attractive hillside and valley setting shows evidence of their industrial past and architecturally the most important feature is the long rows of mainly two storey 19th century stone cottages. Policy BE2 of the *Macclesfield Local Plan* (LP) contains a presumption against development which would adversely effect the historic fabric of the environment whilst Policy BE3 reflects the duty imposed by section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* requiring decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a CA.
8. Whilst there is no presumption against three storey development in the CA contained in either LP policy or *Supplementary Planning Guidance* the height of new development in relation to local character, adjoining buildings and the site itself must be considered. The traditional terraced houses in the area are generally two storey in height but there are a number of local examples of three storey developments including those at Dean Way, Dyers Court and Inglesley Vale. The archway entrance to Adshead Court is equivalent in height to three storeys and contrasts sharply with the adjoining two storey property. These may be modern developments in different settings to the appeal site but they lie within or adjoining Bollington and Kerridge CAs and form part of their overall character.
9. Closer to the site, several of the older houses in Lord Street, have large retaining foundations or sub-basements to provide a level base for each property as they step down the steep hill. These dwellings appear as three storey structures when viewed from below and two storey from above, or are of an equivalent height. Other cottages in Lord Street, because of the topography, feature two storey front elevations and three storeys to the rear. Similarly, the full height of the proposed terrace would be an important feature in the street scene when viewed from below and would be seen as a two-storey building when viewed from the rear. The proposal would stand on the opposite side of Lord Street to a group of traditional cottages, including No 50 which would be higher than the ridge line of the new terrace.

10. The nearby three storey Dean Way development is at a lower level than the proposed dwellings, but they both share a similar relationship with the topography, being located beneath a steep slope. I agree with the conclusions of the previous Inspector in the earlier appeal, that the character and appearance of conservation areas can be preserved or enhanced without replicating the form and style of valued or notable buildings. Although two storey houses are the most important feature in the CA, three storey development is not in itself in conflict with the area's character and on the appeal site would respect the scale of existing buildings and would not appear over dominant or obtrusive. The Council has recently approved a two storey scheme on adjoining land but that is set at a higher level, fronting High Street, and does not mean that only two storey development is acceptable on this site.
11. The top part of the proposed terrace would be visible in views of the Dean Valley and the Church from the footpath to White Nancy and from Chancery Lane, but within the wide panorama afforded by this hilly landscape this would not be unduly harmful and the development would not affect any significant views identified in the CA appraisal. The Council raises no objection to the scheme's design other than to its height, and the materials and design of the proposal would be in keeping with the area. I conclude on this issue that the proposed development would not have an adverse effect on the appearance of the appeal site and its surroundings and would preserve the character of the Bollington and Kerridge CAs in accord with relevant development plan policy.

Living conditions

12. The two storey house on the opposite side of the road to the appeal site, 50 Lord Street, has an elevation containing a large window to an habitable room on each floor which would face the gable end of the proposed terrace. Policy DC3 seeks to avoid significant harm to the amenities of nearby residential properties as a result of loss of privacy, sunlight or outlook. Policy DC38 amplifies this requirement by giving guidelines on the spatial relationships between buildings. The end gable of the proposed terrace would contain two narrow staircase windows only and would be unlikely to be the cause of any significant loss of privacy. The garden to No 50 would not be overlooked by the new development to any greater extent than it is already from No 48.
13. The affected windows to No 50 face generally north-west and any loss of sunlight would be for a short period only at the end of the day. The front elevation to the proposed house on Plot 4, facing 1 Cumberland Drive, although higher than the existing house, appears as a two storey building and would provide a separation distance sufficient to avoid any undue overshadowing. No evidence has been submitted to show that the recommended standards in *Site Layout Planning for Daylight and Sunlight* (BRE) would not be met.
14. In considering the guidelines set out in Policy DC38 the basic separation distance for habitable rooms facing non-habitable rooms should be increased to reflect the three storey form of the proposal but should also be off-set to take account of its significantly lower level. No comparative floor levels have been submitted and therefore precise guidance under this policy is difficult to define. Although the necessary separation distance is less than that suggested by the Council it would be more than that proposed by the appellant. However, in the context of the tight knit urban form of the CA the full application of modern

space standards would not be appropriate and would result in development out of keeping with the character of the area. In this case the two rooms affected also have sizable windows in the return elevation facing the property's garden and the overall impact of the proposal on daylight levels and outlook within these rooms would not be so great as to warrant dismissal of this appeal. I conclude on this issue that the proposed development would not cause significant harm to the living conditions of the occupiers of adjoining properties, in accord with relevant development plan policy.

15. In relation to the other matters raised at the hearing and in written representations there is local concern about the level of on-street parking in the historic core of Bollington. However, the proposal includes two parking spaces for each dwelling which would be sufficient to avoid adding unduly to parking stress in the locality. There is no indication that the appellant is obliged to allow general public use of the existing car park on the appeal site. The previous Inspector recognised that concerns about land stability and contamination, following the initial report, could be addressed by condition and one requiring the review of the ground survey report and implementation of a remediation scheme is necessary in the interests of public safety. Matters of ground stability and foundation design are dealt with under other legislation.

Conditions

16. In addition to a condition specifying the approved plans, for the avoidance of doubt, others are necessary requiring the approval of materials of external construction and the landscaping of the site including boundary treatment, in the interests of visual amenity. A condition limiting the hours of operation of plant and machinery is necessary to minimise disturbance. The removal of permitted development rights is necessary to preserve neighbours' privacy and the appearance of the CA. A condition requiring the provision of the parking facilities and preventing the erection of gates is necessary in the interests of highway safety. I have already identified the need for a condition requiring the review and implementation of a contaminated soil remediation scheme.
17. However, a condition protecting nesting birds from disturbance is unnecessary as this is a matter dealt with by other legislation. Insufficient justification has been submitted for the need to provide nesting boxes. In view of the need for external materials to be approved under Condition 3 it is not necessary to specify the materials of rainwater goods, doors and windows or roofs. Since the protection of trees is included in Condition 4 and bearing in mind the site lies within a conservation area a separate condition on this matter is not necessary. Approval of the methods to be employed in protecting trees required by Condition 4 would include details of any service or drainage runs likely to affect them. A condition requiring the approval of a method statement relating to the construction phase is, in relation to the method of construction, unduly onerous and in view of the minimisation of noise and disturbance sought in condition 5, unnecessary in large part. There appears to be sufficient space to keep waste bins at the rear of the proposed dwellings and a condition requiring the approval of a storage scheme is unnecessary.

Jeremy Eagles

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby approved shall be carried out in accordance with the submitted plans No'd: CUM7/1-004; 7/3-001; 7/3-002; 7/3-003; 7/3-005; 7/3-005-2.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the dwellings 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 development shall take place until full details of soft and hard landscaping works, including means of enclosure; planting plans; a schedule of proposed species, plant sizes, numbers and densities and the methods to be employed in the protection of trees to be retained on or near the site during construction, have been submitted to and approved in writing by the local planning authority. The approved tree protection measures shall be carried out prior to the commencement of any other development and retained throughout the construction phase. The hard surfaced areas and means of enclosure as approved shall be completed within three months of the first occupation of any of the dwellings hereby approved. The soft landscaping works shall be carried out before the end of the first planting season following the completion of the development. For a period of 5 years following the completion of the works any plant damaged, dying or removed shall be replaced with one of a similar type and size during the next planting season.
- 5) During the construction phase of the development no plant or machinery, including pile driving, shall be operated within the appeal site before 07.30 on Mondays to Fridays and 08.00 on Saturdays nor after 18.00 on Mondays to Fridays and 14.00 on Saturdays, nor at any time on Sundays or Public Holidays.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows other than those expressly authorised by this permission shall be constructed on the south-east elevation of Plot 1 and no other development as may be authorised by Classes A to G of Part 1, Schedule 2 of the Order shall be carried out.
- 7) Prior to the first occupation of the houses hereby approved the parking and manoeuvring space indicated on the submitted plan shall be surfaced, marked out and made available for use by the occupiers and retained as such thereafter. No gates shall be erected at the entrance to the car park at any time.
- 8) (a) No development shall take place until:
 - (i) the existing site contamination report has been reviewed by a competent person and submitted to and approved in writing by the local planning authority. The review shall assess the nature and extent of contamination against current standards, and

(ii) a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and criteria, an appraisal of options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(b) The remediation scheme shall be implemented in accordance with the approved timetable of works. Within four months of the completion of measures identified in the approved remediation scheme, a validation report, demonstrating the effectiveness of the remediation carried out, shall be submitted to and approved in writing by the local planning authority.

(c) In the event that contamination not previously identified is found when carrying out the approved development, it shall be reported in writing within three days to the local planning authority and development on that part of the site identified by the local planning authority as being affected by the unexpected contamination shall immediately cease. A further assessment and, where necessary, remediation scheme shall be undertaken, together with a timetable for its implementation, which shall be submitted to and approved in writing by the local planning authority. The measures so approved shall be implemented in accordance with the approved timetable. Following completion of the scheme, a validation report shall be submitted to and approved in writing by the local planning authority in accordance with (b) above.

(d) No development shall take place until details of a monitoring and maintenance scheme to include monitoring and reporting on the long term effectiveness of the proposed remediation over a period of three years, has been submitted to and approved in writing by the local planning authority. Following completion of the remediation scheme the monitoring and maintenance scheme shall be implemented in accordance with the details so approved.

APPEARANCES

FOR THE APPELLANT:

Mr C Copestake BA(Hons) Dip UPI MRTPI	John Rose Associates
Mr W Parr DipTP (Manc) MRTPI	John Rose Associates

FOR THE LOCAL PLANNING AUTHORITY:

Mrs L Whinnett	Cheshire East Council
Ms E Tutton BSc(Hons) DipTP MRTPI	Cheshire East Council
Councillor D Thompson	Cheshire East Council
Councillor M Davies	Cheshire East Council

INTERESTED PERSONS:

Mr T Boddington	Vice- Chairman Bollington Civic Society
Mr C de Wet	Neighbouring resident

DOCUMENTS:

Document 1	List of persons present at the Hearing
Document 2	Statement by Mr C de Wet. Neighbouring resident
Document 3	Statement by Professor FM Burdekin OBE FRS FREng FICE. Chairman, Bollington Town Plan Steering Group.
Document 4	Statement by Patricia MacDuff. Neighbouring resident
Document 5	Application for costs by the appellant
Document 6	Response to costs application by the Council