The Planning Inspectorate

Appeal Decision

Site visit made on 6th August 2012

by Jonathan G King BA(Hons) DipTP MRTPI

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

Decision date: 11 September 2012

Appeal Ref: APP/H1033/A/12/2172921
Land adjoining 87 Chapel Road, Whaley Bridge, High Peak SK23 7EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr M & & Mrs T Bromley against the decision of High Peak Borough Council.
- The application Ref HPK/2011/0408, dated 27th July 2011, was refused by notice dated 21st September 2011.
- The development proposed is residential development of 2 semi-detached houses and 1 detached house.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by High Peak Borough Council against Mr and Mrs Bromley. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:

   (a) whether residential development on this land is acceptable in principle, having regard to national and local planning policies;

   and the effect of the proposed development on:

   (b) the character and appearance of the area;

   (c) the living conditions of neighbouring occupiers;

   (d) protected trees; and

   (e) local wildlife.

Reasons

4. The application to which this appeal relates is in outline, with all matters reserved for later approval with the exception of access. I regard the submitted layout plans and other plans, including sections through the site other than where relating to the access, as being for illustrative purposes only.

The principle of development

5. By virtue of a planning permission granted in 2010, a proportion of the site, principally the road frontage and the present access track, and some adjoining land, was granted the status of "garden curtilage" to No 87 Chapel Road. The plan accompanying that application showed the remainder of the appeal site, including the buildings, the paved area and the wooded slope to the rear, together with No 87, as being within the "original boundary". This appears to indicate that the whole of the appeal site has the status of garden curtilage to No 87, even though it is not actively used as a garden.

6. The National Planning Policy Framework (NPPF) urges planning authorities to resist inappropriate development of residential gardens, for example where development would cause harm to the local area. It specifically excludes land such as private residential gardens in built-up areas from the definition of Previously Developed Land (PDL). On that basis, the Council contends that the site should be regarded as "greenfield" land. However, as the site includes a number of buildings or structures of commercial origin, I agree with the appellants that it should be regarded as PDL, notwithstanding its "garden curtilage" status.

7. In the event, this is not a critical area of dispute, as the Council acknowledges that site is in the built-up area of Whaley Bridge as defined in the High Peak Local Plan (LP) saved policies. It considers that in principle it would be considered appropriate for development subject to other material considerations. In broad terms, LP saved Policy H5 is supportive of residential development on previously-developed land within the built-up area boundary provided that it would not result in a loss of local employment or prejudice the use of adjoining land. That is not the case here.

8. The Council relies on policies saved in 2008 from the Local Plan adopted in 2005. The appellant considers that this document was not adopted in accordance with the Planning and Compulsory Purchase Act 2004 and by implication should not be accorded full weight, having regard to the policy of the NPPF. I do not have sufficient information to come to a firm conclusion on the matter. However, I am satisfied that the critical saved policies are broadly consistent with the NPPF, and so should be accorded significant weight, irrespective of their precise status.

9. The NPPF encourages the effective use of land by re-using land that has been previously developed, provided that it is not of high environmental value.

10. The Council has also drawn my attention to some provisions of its *Interim Housing Policy Statement*, but I am unaware of its formal status. It is not part of the development plan, and I do not rely on it in my consideration of this appeal.

11. Under this issue, I conclude that there is no "in principle" policy objection to the development of the site for housing, but that this should be balanced against other considerations.

Character and appearance

12. The site comprises an elongated area of land situated to the east of No 87 Chapel Road and lying between the road and the line of a canal feeder, rising

steeply from both. An access track climbs obliquely from the former to a flat paved area, occupied by a single-storey timber building last used as a beauty therapist's business, but now vacant. There are also a derelict garage and some other vacant structures, formerly used in connection with a cattery. From the road, the flat area and the buildings are partially screened by trees and shrubs on the intervening slope, together with a low embankment and the remnants of stone walls at the top. On the other side, most of the slope has very heavy tree cover, visible from parts of the residential roads of The Dell and The Coppice.

13. In order to provide an acceptable form of access from Chapel Road, including provision for the turning of vehicles, and to accommodate the proposed houses, significant alterations to the landform are proposed. This would involve the removal of a significant part of the roadside bank and the reduction in height of much of the flat area. The dwellings are indicatively shown cut into the steep southern slope, with 2 storeys on their northern sides and 3 storeys (or rather more in the case of the detached dwelling on Plot 3) to the south.

14. In views from the road, the present vegetated bank would be replaced by the new houses not significantly above the road level. The loss of the bank and the vegetation would significantly alter the appearance of the road frontage. However, the location is within the defined built-up area. In that context, and provided that the area around the new access were to be sensitively landscaped, I consider this would be acceptable in visual terms. The houses would appear not dissimilar to the group situated to the other side of No 87 Chapel Road.

15. But the impact to the rear would be far more significant. At present, the wooded slope, estimated by the appellant as rising over 10 metres above the houses in The Coppice and The Dell, provides a dense green backdrop to those roads and is a key component of their character. At the time of my site visit, the trees on the southern slope were in full leaf so that, other than a glimpse of No 87 Chapel Road, it was very difficult to see anything other than vegetation in views towards the site from public viewpoints.

16. As I discuss below separately, the development has a considerable impact on the trees. In short, a number would have to be removed from the top of the southern slope in order to alter the landform and to remove the existing buildings. More would be lost through the indirect effects of excavation and land raising. Then, if the occupiers were to enjoy useable garden space, more of the wooded area would need to be reduced in size or thinned. Finally, in order to ensure reasonable levels of sunlighting and daylighting, there is every prospect of there being pressure from future occupiers for even more trees to be removed, topped or thinned.

17. Whatever the degree of tree removal, it is inevitable that most would be lost from the higher parts of the site. In view of the very steep gradient, those that would remain, towards its base, would have the least screening effect on the houses, particularly bearing in mind the height of the development when viewed from the rear. The indicative levels show the semi-detached houses as having 3 full storeys and a roof exposed on their southern side; and the detached house as having the equivalent of nearly 4 storeys and a roof. Moreover, as the presently higher land between the proposed location of the semis and Chapel Road would be significantly reduced, there would be little or no opportunity for any trees to be visible above or behind the houses. It is

likely, in my opinion, that at least some of the new built development would become prominent skyline features, very significantly altering the views from the Dell and The Coppice, and adversely affecting the character of those roads. This would be contrary to the objectives of LP Policy GD4 which among other things looks to development to be sympathetic to the character of the area and not to have a detrimental effect on the visual qualities of the locality or the wider landscape.

Living conditions

18. I consider it likely that the rear-facing upper floor windows of the new houses would afford direct and elevated views towards the backs of a number of properties. The Council acknowledges that the separation distance (estimated at about 50 metres) would easily exceed the minimum standards it uses to assess the likelihood of development being overbearing or causing a loss of privacy. I am not aware that these standards have been formally adopted in policy or as Supplementary Planning Guidance, but they are similar to those used by other authorities as a "rule of thumb", and take account of height differences. They provide a reasonable guide as to what is generally acceptable.

19. I concluded under my previous issue that the proposed houses would be visually prominent and affect the character of the locality, owing to their height, elevation and limited screening. But that does not also mean that they would appear physically overbearing or oppressive to the residents living behind. In my view, there would be sufficient distance between to avoid such an effect. The impression of being overlooked might be gained, particularly as presently very high levels of screening and privacy are enjoyed. But some overlooking of neighbouring gardens is unavoidable in most urban housing layouts and is generally accepted. I am satisfied that, taking account of the distances involved, the degree of overlooking would not be unacceptable.

20. I therefore disagree with the Council's opinion that the development would unacceptably affect the living conditions of local residents or breach the objectives of LP Policy GD5.

Trees

21. The whole of the southern slope of the site is woodland contained in a Tree Preservation Order (TPO). At the bottom of the slope there is also a protected group of trees which may encroach on to the site.

22. The tree appraisal submitted in support of the application concludes that the proposed development should not necessitate the loss of any significant trees: only a hawthorn and an ash, each close to Plot 3, and what are described as lesser trees that stand on the upper part of the slope where Plots 1 & 2 and their parking spaces would be sited. It indicatively shows where tree protection barriers should be located close to the plots and recommends that care should be taken in undertaking excavations close to trees.

23. The Council has not questioned the main conclusions of the appraisal, though it expresses concern about the impact of the changes in landform required in order to accommodate the proposed dwellings and the possibility that there would be pressure from future occupiers to remove additional trees for amenity reasons. I share these concerns.

24. The tree protection barrier in the vicinity of plots 1 / 2 appears to be partly within an area where excavation would take place. Even though the precise position of a barrier would have to be determined on site, it seems to me unavoidable that some excavation within the area intended to be protected from disturbance would be disturbed with consequential potential for harm to nearby trees.

25. Though the "tree protection plan" says that the shading effect of the trees to the south of Plots 1 / 2 would be reduced because of their position at the bottom the bank, it also shows a number of the stems only about 2 to 3 metres below the lower ground floor level of Plot 1, with their canopies extending over where the flat excavated area to the rear of the houses would be created. Even if it is possible to carry out the engineering works without harming these retained trees, I consider it highly likely that they would create considerable shade to the lower parts of the back of the house and to the flat area which I assume would be used as a patio. I therefore agree with the Council that there could well be pressure for the removal, thinning or pruning of more trees in the future in order to achieve satisfactory living conditions for the occupiers.

26. From the plans accompanying the tree appraisal, I would estimate that, in addition to the 2 trees individually identified, around a dozen more of the "lesser trees" would be removed in the vicinity of Plots 1 / 2. They are described in the appraisal as a mix of self-seeded ash, sycamore and hawthorn that have emerged as an understorey beneath the larger protected trees. Individually they may not be of any great significance, and I acknowledge that some are heavily affected by dense growth of ivy. However, I consider that they have value in landscape terms which might be enhanced if they were managed actively.

27. I conclude that the impact on the protected woodland would be adverse, contrary to the intentions of LP Policy OC10 to retain and protect trees and woodland which make a contribution to the character and attractiveness of places.

Wildlife.

28. The appellants have commissioned an ecological assessment in relation to a later proposal (ref HPK/2012/0046). As indicated by the Derbyshire Wildlife Trust (DWT) and residents, its value is somewhat limited by the time of year when it was carried out. But its main shortcoming so far as the present proposal is concerned is that it is premised on the assumption that development and specifically the development footprint would be restricted to the upper hardstanding area only, and without major changes to landform. By comparison, as described earlier, the present outline proposal shows the footprint of the dwellings partly extending on to the vegetated southern slope with additional significant excavation. I have already stated my view that the scale of the engineering works would almost certainly disturb a wider area than that strictly required for constructional purposes and that further encroachment is also likely to take place.

29. The assessment describes the woodland as a relatively rich habitat though restricted in its species content, with the richness derived from the opportunities it offers for bats and badgers. The DWT also identifies habitat for reptiles. The loss of a considerable proportion of this area, and the disturbance

of more would inevitably lead to a reduction in the actual or potential value of the site to wildlife unrecognised by the assessment.

30. Moreover, the dwelling on "Plot 3" is closer to the site of an identified badger sett than that shown as "Plot 2" on the later proposals. The assessment states that further survey work would be required to determine the exact status of the sett if the proposals change and are likely to lead to disturbance. The proposals have changed and disturbance is possible; but to my knowledge no further surveys have been carried out.

31. The Council relies on the opinion of the DWT, which takes the view that the assessment forms an inadequate basis on which to approve the application. I consider their caution to be justified. But, irrespective of the detailed recommendations made by the Trust, I consider the assessment is an entirely inappropriate basis on which to come to an opinion about the likely effects of the development on wildlife. This is because, understandably, it has not considered the effects of the present proposals.

32. In the absence of an adequate assessment which addresses the particular implications of the current proposals or demonstrates that any harm may be appropriately mitigated, I conclude that the proposed development has the potential to cause significant harm to wildlife interests.

Other matters

33. I am urged on behalf of some local residents to take into account additional reasons for refusal relating to a subsequent application for 2 dwellings on the site, notably concerning the lack of access to No 87 Chapel Road; deficiencies in useable amenity space; and slope stability. It is suggested that they are equally relevant to the present proposal. It may be that there is some merit in these arguments. However, bearing in mind that the other reasons related to a different form of development and that the present application is in outline, I do not consider it appropriate to address these additional matters in the context of this appeal. I am satisfied from the evidence available to me that what is presently proposed is not acceptable for the reasons I have given above. That notwithstanding, this is not to say that it would not be appropriate to take the additional matters into consideration in a different context.

Conclusion

34. Overall, I conclude that although there is no objection in principle to housing on this site and that the proposed development would not significantly harm the living conditions of local residents, it would nonetheless be unacceptable by reason of its effect on the character and appearance of the area, and on trees and wildlife. Although the application is in outline, with matters of appearance, landscaping, layout and scale reserved for later approval, the approach promoted by the indicative plans does not demonstrate to me that development could be satisfactorily accommodated on this constrained site.

35. In reaching this conclusion, I have had regard to all other matters raised in support of the development on behalf of the appellant. I acknowledge that the present substandard access would be closed, which would improve highway safety. There would also be some benefit in the provision of family dwellings, though I have not been made aware of any particular shortage of such accommodation locally. For the reasons given under my main issues, I do not agree that either the visual amenity of the area or the ecological value of the

site would be improved. Though the long-term management of the trees could be secured by condition, I do not believe that development is necessary to bring this about. The claimed benefits do not outweigh the harm I have identified. Consequently, the appeal fails.

Jonathan G King

Inspector