

Application No: 13/1236M

Location: SPINNEY END, CHELFORD ROAD, KNUTSFORD, WA16 8LY

Proposal: Retention of Tree House

Applicant: Haddow

Expiry Date: 20-May-2013

Date Report Prepared: 14 August 2013

SUMMARY RECOMMENDATION

Approval, subject to conditions.

MAIN ISSUES

- The main issue is the effect of the tree house on the general living conditions of people living in the surrounding area by reason of loss of privacy and outlook, noise and disturbance and light intrusions.

REASON FOR REPORT

The application has been referred to Northern Planning Committee at the discretion of the Northern Area Manager.

Subject to the recommended conditions, the proposal, on balance is considered to be acceptable for the reasons set out in the appraisal section of this report.

DESCRIPTION OF SITE AND CONTEXT

The site comprises Spinney End, a large property that has been extended over the years; the house adjoins the neighbouring property to the east. The property has a paved area to the front of the house and a detached garage and summer room set to the west of the property. The house sits amidst mature secluded gardens with a wooded back drop; the grounds extend to over two thirds of an acre. Access to the property is from a long private drive to Chelford Road.

The site is located within a Predominantly Residential Area and the Legh Road Conservation Area.

DETAILS OF PROPOSAL

This application is retrospective. The applicant has stated that they erected the structure within their garden under the misapprehension that it was permitted development. As the

structure exceeded the height limitations for permitted development, this application seeks to regularise the building.

The tree house is located in the large rear garden of a dwelling Spinney End, to the North. Whilst it would stand between two attractive mature trees, it is an independent structure, not attached or supported in any way by the trees.

The tree house is located some 30m to the south of Spinney End at the bottom of their garden. It would stand the following distances from the boundaries of the plot of Spinney End: about 6.5m from the rear boundary with No. 3 (Walmer Cottage) Green Acre Close; 2.2m from the west side boundary with the rear garden of Cherry Trees that adjoins Spinney End and approx 10m for the east side boundary. To the south of the application site lies, there is a cul-de-sac of five dwellings known as Green Acre Close, off Parkfield Road. Three of the closest of the properties of Green Acre Close to the application site have raised objections to the scheme, Nos. 2, 3 and 4. To the south of the site is the rear garden of Keisley, a property that faces Parkfield Road. This property has also raised objections.

The proposal comprises of three timber platforms with a timber house, measuring about 4.5 metres to the ridge and 1.8m wide, siting on the lower and middle platform. The lower platform starts with steps from ground level rising to about 0.9m from the ground. This then rises again with a second set of steps to a level platform about 2.1m above ground level. This level is where the timber house is accessed and there is also a 'firemans' pole', cargo net and slide to ground level. The third platform is situated to the east and is access via a rope bridge. The third platform is 2.1m above ground level and there is a climbing wall attached to the north. Below this platform is a 'jail'. The scheme has been amended to include screening on the third platform, in the form of *castle battlement* style timber balastraide. This screening would be 1.5m high.

The tree house forms a centre piece to a newly completed pebbled playground area, which includes swings, trampoline, sandpit and summer house. However, these elements do not require planning permission.

RELEVANT HISTORY

There is no relevant planning history on this site.

POLICIES

By virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004, the application should be determined in accordance with the development plan unless material considerations indicate otherwise.

The Development Plan for Cheshire East currently comprises the saved policies form the Congleton Borough (January 2005), Crewe and Nantwich (February 2005) and Macclesfield Local Plan (January 2004).

North West of England Plan Regional Spatial Strategy to 2021:

Please note that the Secretary of State for Communities and Local Government has revoked the North West Regional Strategy on the 20 May 2013. Therefore this document no longer forms part of the Development Plan.

Local Plan Policy:

The application site lies within a Predominantly Residential Area, within an Area of Special County Value and within the Legh Road Conservation Area, therefore the relevant Macclesfield Local Plan policies are considered to be: -

- Policy H13: Protecting Residential Areas;
- Policy NE1: Landscape Protection and Enhancement;
- Policy BE1: Design Guidance;
- Policy BE3: Development must preserve or enhance the Conservation Area;
- Policy BE4: Conservation Areas;
- Policy BE13: Legh Road Conservation Area, Knutsford;
- Policy DC1: Design – New Build;
- Policy DC2: Design – Extensions and Alterations;
- Policy DC3: Amenity;
- Policy DC6: Circulation and Access; and
- Policy DC9: Tree Protection.

Local Policies can be read in full with the Macclesfield Local Plan (January 2004), with an electronic copy on the planning pages of the Council's Website.

Other Material Considerations

The National Planning Policy Framework came into effect on 27 March 2012, and replaces the advice provided in Planning Policy Guidance Notes and Statements. The aim of this document is to make the planning system less complex and more accessible, to protect the environment and to promote sustainable growth. Local planning authorities are expected to “plan positively” and that there should be a presumption in favour of sustainable development.

- Paragraph 9: Achieving Sustainable Development;
- Paragraph 14: The presumption in favour of sustainable development;
- Paragraphs 56, 57 and 61: Requiring good design; and
- Paragraphs 196 and 197: Determining Applications.

Since the NPPF was published, the saved policies within the Macclesfield Borough Council Local Plan are still applicable but should be weighted according to their degree of consistency with the NPPF. The Local Plan policies outlined above are consistent with the NPPF and therefore should be given full weight.

The National Planning Policy Framework can be read in full with an electronic copy on the Department for Communities and Local Government's Website.

CONSULTATIONS (External to Planning)

Environmental Health: The above application has been assessed by Environmental Protection Officers: Public Protection & Health, Air Quality and Contaminated Land. There are no objections/ comments to be raised.

VIEWS OF THE PARISH / TOWN COUNCIL

Knutsford Town Council: If the tree house does not affect the privacy of adjacent properties, have no objections.

REPRESENTATIONS

Objections to the scheme have been made by Leith Planning Ltd on behalf of the local residents at Nos. 2, 3 and 4 Green Acre Close and Keisley, Parkfield Road.

These neighbours believe that the proposed development is far from an innocuous amenity for children, it is injurious, harmful and offensive. It is an engineered, large, elevated structure built on the boundary of the property with no regard for the residential amenity of neighbours. As a small children play structure it is unacceptable, when compounded by illumination and use by adults late in the evening it moves into the realms of offensive.

They have requested that the application be refused for the following reason: -

1. The tree house by reason of its scale and height would be an obtrusive and incongruous feature detrimental to the character of the Legh Road Conservation Area and the setting of neighbouring properties, contrary to policy BE13 of the adopted Macclesfield Local Plan (2004). Furthermore, if approved, it would set an unwelcome precedent for similarly large structures in rear gardens, within the Legh Road Conservation Area and Area of Special County Value.
1. The tree house and associated raised platform would, by way of its height, permit views into the amenity space of neighbouring dwellings to the south. The resulting overlooking and perception of overlooking are considered to be harmful to the amenity space of neighbouring dwellings, along with the impact of noise associated with increased activity; contrary to the policy H13 of the adopted Macclesfield Local Plan (2004).

The objection letter also references other planning issues such as:

- Interpretation of Development Plan Policies;
- Government Advice and Local Plan Policy;
- Principle of Development;
- Localism Agenda;
- Procedural Matters;
- Similar Applications;
- Lack of a Conservation Application;
- Lack of Arbicultural Survey;
- Lack of Ecological Survey;
- Comments on Landscape Scheme/Boundary Treatment;
- Comments on Lighting

- Suggested Conditions; and
- Question whether the New Summerhouse is PD.

The amendments to the scheme have been shared with the neighbours and they have stated that the revisions to the plan have done little to alleviate their concerns. They believe that the development is still in breach of the referable provisions of the development plan as detailed above. The tree house and associated raised platform would still, by way of its height (in certain areas, increased height), permit views into the amenity space of neighbouring dwellings to the south, as comprehensively detailed in our Objection Submission (dated 26/04/2013). The resultant overlooking and perception of overlooking are considered to be harmful to the amenity space of neighbouring dwellings, along with the impact of noise associated with increased activity; despite the additional screening provision proposed on the revised plans.

Additionally, it is noted that the revised plan proposes an additional 'timber ballustrade to form battlement of castle feature'. This proposed feature will increase the height of the eastern element of the Tree House, in a location adjacent to the boundary of the curtilage. It is considered unreasonable that under circumstances where we would expect mitigating changes to the plans, the applicant has further heightened the proposal, in turn, increasing the impact on the amenity of neighbouring properties.

In light of the above, we would ask that the application be refused and the tree house be removed, in circumstances where the applicant appears to offer little mitigation.

Additional objections to the scheme and rebuttal on the previous committee report have been made by Leith Planning Ltd on behalf of the local residents at Nos. 2, 3 and 4 Green Acre Close and Keisley, Parkfield Road, dated 23 August 2013, and these can be summarised as follows:

- Interpretation of Development Plan Policies;
- Government Advice and Local Plan Policy;
- Principle of Development;
- Localism Agenda;
- A Conservation Application is required;
- An Agricultural Report is required;
- An Ecology appraisal is required;
- Further details of landscaping mitigation would be required to give reassurance to the neighbours;
- Requested that conditions are incorporated on the application that require the removal of the lights, the tree house remains ancillary to the main dwelling and PD rights are removed;

The comments in the rebuttal can be summarised as; -

- It is noted that this application does not benefit from permitted development and as such should be determined with no bias toward such a benefit;
- It should be noted that the 'battlement of castle' feature, resulting from the addition of timber balustrade to the east platform has been neglected from the description of the proposal;

- It is also noted that this addition has increased the height of the east element, at a point adjacent to the boundary;
- It is noted that Section 3 & 4 deal comprehensively with the development plan and the referable provisions of both the National Planning Policy Framework and the Macclesfield Local Plan;
- It is felt that given the location of the application site and the description of the development that certain statutory consultees should have been involved, including; Tree Officer, Ecologist and Landscape Officer;
- Given the brief response provided, it is therefore a concern that the Parish Council has not undertaken a visit and is therefore reliant on the opinions of others.
- The neighbours can confirm that their opinions and views have not changed, despite revisions to the plans and attempts to mitigate the development. They respectfully request that this application be refused and the tree house removed from the application site.
- Amendments are considered to be derisory attempts to mitigate what is considered to be unlawful development and the detrimental impact on neighbouring amenity as a result.
- It is a concern, given that the Case Officer has visited site that they can consider the structure to be 'not unduly prominent', given that he 'sympathy with the neighbouring properties';
- These revisions to the scheme are felt to add to the visual impact on the neighbouring properties, adding further height to an already oversized development.
- They feel that little mitigation would be offered through this provision and fail to see it as 'screening', in circumstances where foliage is only carried for 5 months of the year.
- It is evident that the Case Officer has noted the issue of overlooking from the tree house into neighbouring properties and as he states, he has 'sympathy with the neighbouring properties'. It is therefore a concern that he then goes on to report that the development is 'not duly prominent' despite the elevated position and close proximity to No. 3.
- The neighbours would contend that the 'noisy' activities resulting from the development would have an unacceptable impact on the neighbour's enjoyment of their amenity space. This is a further concern given that the Case Officer has noted that 'there is no way that disturbance of this sort can be effectively mitigated. Given this adverse impact on neighbouring amenity, they would request that the application be refused.
- Comments on Agricultural information is considered to be contradictory.

A full copy of all the comments made by the local residents toward this application as summarised above, can be viewed on the electronic file on the Council's public access website.

APPLICANT'S SUPPORTING INFORMATION

The applicant has submitted a *Design & Access and heritage Statement*, details of which can be viewed on the electronic file on the Council's public access website.

Determination:

During the course of the application, officers did seek to negotiate a solution that would be acceptable to all parties, the applicant and the neighbours. Whilst this was unsuccessful, the applicant did confirm the following:

The reason behind the height of the platforms: The platform was set at the current height as it allowed play equipment to be stored underneath. The height was also chosen as it meant children could pass underneath the tree house without the risk of banging their head and sustaining an injury, a serious health and safety implication.

Willingness to reduce the height of the platforms: Reducing the height of the platform would have serious implications; it is really the last thing the applicant would like to amend.

Removal of the lighting: The applicant is prepared to remove the lighting from the treehouse although they do not feel it is required as the lighting is very low voltage and does not emit a strong or glaring light.

Willingness to move the structure further into the centre of the garden or remove elements that are closest to the rear boundary: The applicant has stated that this is not possible. The structure is based around a tree, therefore to move the structure would require moving 2 x mature trees! Additional boundary planting is something they will happily complete if it keeps everybody happy.

Notwithstanding the reasoning for the erection of the tree house and that the application is retrospective, the application should be determined on its own merits and with no bias to the above.

OFFICER APPRAISAL

The Principle of the development:

The erection of detached buildings/structures within the residential curtilage of houses can be acceptable in principle subject to the scale and appearance of the building/structure and compliance with other relevant policies.

Character and Appearance of the Conservation Area:

The Legh Road area is characterised by large houses of interesting and individual design set in spacious grounds with mature planting. Existing mature planting and frontage enclosures are important features of the Conservation Area and their retention is essential if the character of the area is to be preserved.

The tree House is a well designed rustic structure. Although its upper parts can be seen from the rear gardens of neighbouring properties, the backdrop of trees and other garden vegetation, with the use of natural materials have helped to assimilate the structure into the surroundings. It is considered that the structure is not unduly prominent or intrusive in the wider Conservation Area, due to its organic material and rustic picturesque form are consistent with the spacious grounds of Legh Road. The Council's Conservation officer has no objections to the scheme. It is therefore considered to preserve the Character and Appearance of the Conservation Area.

Residential Amenity (*loss of privacy and outlook*):

Cherry Tress would be located about 28m from the tree house. The views of the people inside that house would be reduced significantly by that distance. It is accepted that the tree house is in close proximity to the bottom on the garden to Gerry Trees and this area of the rear garden can be overlooked. However with additional boundary tree planting this can be mitigated. It is noted that Cherry trees have not objected to the tree house. 4 Green Acre Close would be in the region of 40m from the tree house. The occupiers of No.4 would not suffer a material loss of privacy, having regard to that distance and the acute angle of views from the Tree House towards the first floor windows in that building. The front windows of 2 Green Acre Close would look directly at the tree house. However they are over 40m from the tree house which would substantially reduce any views into the house from the tree house. View of the tree house from No.2 would be partially blocked by No.3. The property known as Keisley, Parkfield Road would be located about 70m from the tree house. The views of the people inside that house would be reduced significantly by that distance.

Amendments to the scheme have been secure which additional screening, in the form of 1.5m castle battlement style screen to the third platform to block views out of the platform. This would mitigate any loss of privacy to Cherry Trees, the east portion of the garden and windows to No. 3 and No. 4 Green Acre Close.

The views into all the rear gardens of Cherry Trees, 2 and 4 Green Acre Close and Keisley in the surrounding area would be substantially reduced by distances they are located from the tree house, the existing boundary treatments and mature trees on the appeal site from those properties. Additionally, for much of the year, the existing trees and shrubs growing between the tree house and those properties would screen those views. The retention of the tree house would not harm the amenities of the people living in Cherry Trees, 2 and 4 Green Acre Close and Keisley by reason of loss of privacy and outlook.

The tree house platforms are at a raised level higher than the intervening boundary fence so that its elevated position and proximity to the boundary allows views into an extensive part of the neighbouring garden and windows on No. 3 Green Acre Close. No. 3 is approx 13m from the tree house. The tree canopy would significantly obscure views for the majority of the year. From a usage point of view, it is likely to be a summer play area and less used in the autumn and winter months when the leaves have dropped. A semi mature evergreen hedge, 3 to 3.5m high has been planted on the boundary between the tree house and No. 3. The applicant has agreed to continue that planting along that boundary.

The existing planting along the adjacent side boundary is mainly evergreen shrubs. This includes Rhododendron, a spring flowering evergreen shrub which can grow to large proportions if untended. They like a shady aspect and thrive in woodland. Other existing planting includes the taxus bacatta and ilex aquifolium. Both are evergreen shrubs and if left will over the years will grow into trees.

In terms of the proposed planting, the applicants have proposed to plant 3x Betula pendula, strategically positioned within the planting bed to provide screen between the two neighbours. Betula pendula is a silver birch. They are a medium sized deciduous tree. Thuja Plicata an evergreen hedging plant will be grown and trimmed to head height to be in fitting with other boundary treatments. A condition is suggested to control these details and to ensure they are not removed, replaced if they die and managed and maintained.

It is considered that the additional planning would mitigate the loss of privacy from overlooking to a significant degree and sufficiently so to make the development acceptable and compliant with policies H13 and DC3 of the Local Plan.

Residential Amenity (*noise and disturbance*):

Some of the activities associated with the tree house could be noisy. However the distances the tree house would stand from 2 and 4 Green Acre Close and Keisley on Parkfield Road would attenuate the sound levels emanating from the structure substantially. The noisiest activities would not be heard by people whilst indoors and would be highly unlikely to be at a level which would disturb people relaxing in these gardens.

It is accepted that due to the close proximity of no. 3 Green Acre Close, this property would hear the most noise when the tree house is in use. However, noise from children playing on the tree house or in the garden or on any of the other play equipment in the play area would be indistinguishable. There is no way that disturbance of this sort can be effectively mitigated by acoustical measures, and it is unrealistic and unreasonable for the Council to condition that the tree house is used at certain times.

Residential Amenity (*light intrusions*):

It is considered that lighting emanating from the tree house during the hours of darkness would be out of keeping with the rustic character of large gardens. It would be visually intrusive, particularly at the times of the year when the trees and shrubs have shed their leaves. It would not preserve and enhance the character and appearance of the Conservation Area. It should be noted that garden lighting could be used without planning permission but there is specific concern about the level of lighting illuminating the structure. A condition is suggested to remove these lights to prevent this harm.

Impact on trees:

Although no Arbiocultural Survey was submitted with the application, as the Tree House is self supported on timber poles and not secured to the tree (Cedar), it is considered that there is no evidence that would suggest any substantial physiological harm to the tree. The tree is also afforded pre-emptive protection by virtue of its location within the Knutsford Legh Road Conservation Area. The Council's Tree Officer has raised no objections to the scheme. It is therefore considered that the impact upon the Conservation Area in terms of the trees long term contribution to the historical character is not detrimentally affected by the tree house. The proposal is in accordance with policy DC9 of the Local Plan which seeks the retention of trees worthy of protection and of amenity value.

Ecology implications:

Although no Ecology Survey was submitted with the application, The Council's Principal Nature Conservation Officer has reviewed the application submission and has stated that it is not anticipated there being any significant ecological issues associated with the retention of this structure.

Highways:

There are no highways issues in relation to the proposal. The tree house is to be used by existing occupiers of the site and will not generate additional traffic movements.

Other Matters:

Circular 11/95 gives advice about the use of planning conditions. Paragraph 86 states that it is possible, exceptionally, to impose conditions to restrict further development which would normally be permitted by a development order. There is a presumption against such restrictions (paragraph 87). It is not considered that such exception circumstance exists and that the condition imposed would be sufficient to protect the neighbours. Similarly it is not considered necessary to impose a condition that ensures that the tree house must remain ancillary to the main dwellinghouse during the lifetime of the development.

CONCLUSIONS AND REASON(S) FOR THE DECISION

Whilst the comments are of neighbours are duly considered, it is considered that the retention of the tree house would not cause undue harm to the living conditions of the occupiers of Cherry Trees, 2 and 4 Green Acre Close and Keisley by reason of loss of privacy and outlook, noise and disturbance and light intrusions. Sufficient mitigation has been provided that would alleviate any significant loss of amenity to the Occupiers of No. 3 Green Acre Close.

Subject to the recommended conditions the development proposal complies with the relevant policies of the Macclesfield Borough Local Plan. The amenity of neighbours will be adequately safeguarded to comply with policies H13 and DC3 of the Local Plan and one of the core planning principles of the NPPF. The character and appearance of the Conservation Area is preserved in accordance with Local Plan policy BE3 and chapter 12 of the NPPF.

The application is therefore recommended for approval subject to conditions.

RECOMMENDATION:

1. A01AP - Development in accord with approved plans
2. Additional screening/planting to be completed within 2 months and retained thereafter
3. Remove of lighting within 2 months
4. No additional external lighting

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