
Appeal Decision

Hearing held on 29 November 2017

Site visit made on 29 November 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 8th January 2018

Appeal Ref: APP/R0660/W/17/3180027

Land adjacent to Flat 2a, Brookside, Ryleys Lane, Alderley Edge SK9 7UU

- 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 P Schaefer & Ms S Gal against the decision of Cheshire East Council.
 - The application Ref 16/5695M, dated 22 November 2016, was refused by notice dated 18 January 2017.
 - The development proposed is for erection of one dwelling with associated works (resubmission of 16/2412M).
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Cheshire East Council against Mr P Schaefer & Ms S Gal. This application is the subject of a separate Decision.

Procedural Matter

3. The Council and appellants have confirmed that Policies BE1 and BE20 from the Macclesfield Borough Local Plan 2004 (LP) referred to by the Council in its decision notice have been superseded by Policies SE1, SD2 and SE7 from the Cheshire East Local Plan Strategy 2010-2030 (CELPS) which was adopted in July 2017, since the appeal was submitted. The design and heritage aims of both sets of policies are similar and so neither party has been prejudiced by this change in policy circumstances.

Main Issues

4. The main issues are the effect of the proposed development on:
 - (i) the trees on the site subject to a Tree Preservation Order;
 - (ii) the character and appearance of the area; and
 - (iii) the setting of the Locally Listed Building at No. 2 Brookside.

Reasons

Trees

5. The appeal site forms part of the garden area of No. 2 Brookside, a substantial two storey semi-detached property set back from Ryleys Lane within a mature spacious landscaped plot. The property has been converted into two flats and the appeal site occupies the southwestern corner of the front garden of the ground floor flat at No. 2a Brookside that contains a large number of shrubs and trees, three of which are protected by a Tree Protection Order (TPO)¹.
6. The protected trees as identified in the appellants submitted arboricultural statement include three Deodar cedar trees (T1, T2 and T3). These trees, particularly as a group with an understorey of smaller trees and shrubs, are a very valuable and significant landscape feature within the site and streetscene. It is not disputed by the main parties that two of the cedar trees (T1 and T3) are in good condition and of a moderate arboricultural quality (Category B), but that the cedar tree (T2) exhibits signs of decline and reduced vitality, probably as a result of shoot blight (*Sirococcus*) and is of a low arboricultural quality (Category C).
7. It is clear that two of the three trees (T1 and T3) offer significant benefits in terms of their contribution to the sylvan character, public amenity and landscape quality of the immediate area as a whole. It is not disputed that the trees located within the site are visually prominent to public views along Ryleys Lane and contribute to the sylvan character and appearance of the area. In these circumstances, there is a presumption in favour of retention of such trees, unless it can be demonstrated that there is an overriding justification for their removal and that any such losses would be adequately mitigated. The proposed scheme aims to retain all three trees, what is primarily in contention is whether that objective would, realistically, be likely to be achieved.
8. The Council accepts that the position of the proposed dwelling would not significantly or detrimentally impact on the Root Protection Area (RPA) of the retained trees. The Council's concern relates to the impact of above ground constraints where there are likely to be indirect consequences due to the attributes of protected trees impacting on the living conditions of future residents should the development proceed. I recognise the Council's concerns that the continued growth of the trees and their proximity to the proposed dwelling could cause a perceptive safety concern for the future occupiers. I also recognise that seasonal leaf drop could cause a degree of inconvenience and require the regular maintenance of any leaf guards installed in the building. The Council suggests that these factors would give rise to a high likelihood of irresistible post development pressure to heavily prune or fell trees.
9. British Standard *Trees in Relation to Design, Demolition and Construction – Recommendations* (BS5837:2012) requires an assessment of the likely long term implications of the scheme for the trees, taking into account future growth, shading and compatibility with users of the site. The Standard is a significant material consideration.
10. All three Cedars (T1 to T3) have been identified as being early mature specimens, with T1 and T3, given their age species characteristics, identified as

¹ Macclesfield Borough Council (Alderley Edge – Ryleys Lane) Tree Preservation Order 1999

having significant growth potential. In order to facilitate construction of the proposed dwelling, it is proposed to tie back branch tips into the respective main crowns to enable scaffolding to be erected allowing construction to proceed. In addition, there is an identified need to undertake a 3 to 5 year pruning programme to control the radial crown spread on the south side of T1 and west side of T3.

11. The appellants submitted arboricultural statement currently identifies that the height of the trees at around 16m to 19m and the crown spread of between 9m and 10.5m. The new dwelling would be positioned approximately 5.4m from T1, 6.1m from T2 and 6.4m from T3 with the crown spread extending to within 1.4m of the proposed building for T1, 1m for T2 and 2.4m for T3². Whilst there was some dispute between the main parties regarding the potential crown spread of the trees would reach at full maturity, they agreed that the predicted ultimate height of the cedar trees would be slightly over 20m given the trees current ages, conditions, sizes and forms.
12. The appellants indicate that the proposed 3 to 5 year pruning programme would not impact on the long term health of the protected trees and based on the evidence before me, I see no reason to disagree. In addition, I see no reason why the construction works would adversely harm the trees with the implementation of the proposed tree protection measures in the RPAs, nor that there would be a need for further justified pruning of any of the retained trees during the construction work, based on the illustrative site compound areas shown on the submitted drawing ref. 04 (02) (Doc 4) showing the compound situated on the garden area immediately to the east of the existing driveway.
13. Seasonal leaf drop can be a source of inconvenience but I accept the appellants view that some very simple design features can be installed that accord with current best practice, as set out in British Standard BS5837, to minimise future maintenance of the dwelling. Moreover, the management of leaf drop in the appeal proposal would be no different to that of many other developments that are located close to trees, whether protected or not. I see nothing unusual in this case to suggest that seasonal leaf drop would give rise to a sustainable reason to heavily prune or fell trees.
14. I consider, however, that the pruning programme would impact on the characteristic pyramidal form and shape of the Deodar Cedar trees with their descending lower lateral branches, and drooping apical tips. I observed during my site visit, a nearby example of a mature Deodar cedar tree at Ryleys School that exhibits the natural characteristic pyramidal form, as opposed to a mature Deodar cedar at Ryleys Farm that has been heavily pruned and has lost its natural characteristic pyramidal form to the detriment of the visual amenity of the area. The proposed pruning cycle would remove the prospect of the trees establishing their predicted dimensions, natural pyramidal form and prominence within the Ryley's Lane street scene at full maturity. The trees would be left with an un-balanced crown form, impacting directly on their long term amenity if the remaining three sides of T1 and T3 are not pruned.
15. In terms of shading from the trees, the proposed dwelling is designed with its principal rooms and windows facing south. The BS5837 shading segments on the tree constraints plan in the submitted arboricultural statement and the Solar Study Shading Drawing ref. S (01) 001C (Doc 2) show that throughout

² Cheshire Woodlands Arboricultural Statement (September 2016) Paragraph 7.7.5

the main part of the day, only retained tree T3 would obscure sunlight reaching the north eastern part of the new dwelling and the eastern part of the external outdoor amenity area. However, this area contains the principal windows to the ground floor bedroom and first floor kitchen/dining room in the proposed dwelling and forms a large part of the external outdoor amenity area.

16. The relationship between the trees and the dwelling and its amenity space would, therefore, be constrained. The appellants acknowledgement that this would necessitate a commitment to a regular, serious long term management and pruning programme is indicative of this fact. Therefore, the possibility cannot be discounted that, over time, given the potential significant growth of the protected trees T1 and T3 in particular and the constrained relationship with the proposed dwelling, the occupants would be increasingly likely to seek to significantly reduce or remove protected trees.
17. Moreover, although any prospective new occupiers would be aware of the TPO, it is not unusual for the full implications of shade or concerns about tree safety to gradually manifest themselves over time. In the circumstances here, there is a potential likelihood that future occupiers would seek to reduce the tree cover. The proximity of the trees to the house would enhance the prospects of a persuasive case being made, despite the protection afforded by a TPO.
18. Overall, the evidence before me indicates a strong likelihood that constructing the proposed scheme would impact significantly on the visual amenity of the retained trees and lead to irresistible post development pressure to heavily prune or fell trees. These established trees individually and as a group of trees, make a significant contribution to the visual amenity of the area and the open and verdant character and appearance of the area. Consequently, I conclude that the proposal would be contrary to the overall aims of LP Policy DC9, which seeks to ensure that new development would not result in the loss of, or threat to, or an unsatisfactory relationship with protected trees.

Character and appearance of the area

19. No. 2 Brookside is a substantial two storey semi-detached Victorian locally listed building set back and elevated above the road behind a low stone boundary wall and hedge. A detached garage and car port associated with No. 2a is situated to the side of the building and the property is located in a mature well-established residential area, with a diverse mix of house types and variety in the design, density and appearance of the dwellings in the area.
20. This part of Ryleys Lane is characterised by large two storey detached and semi-detached properties of varying styles and ages set back from the road behind mature landscaping and trees which adds to the open and verdant character of the area. This is further enhanced by the presence of mature landscaping and established trees within the surrounding gardens.
21. The proposal would entail the construction of a two storey detached dwelling with associated parking, garden and landscaping. The contemporary styled dwelling would be located in a wedge of land adjacent to the locally listed building and beyond the existing driveway that would be used as a shared vehicular access to Ryleys Lane. The external finish of the dwelling would be predominantly constructed from buff sandstone, grey zinc and glass with a flat roof covered in a green roof system.

22. Although the proposed dwelling would not appear overlarge, relative to the overall plot size, the two storey scale and form of the proposed dwelling would nevertheless be substantial in this location. Although it would be set back and set down below the adjacent locally listed building, the proposed dwelling would compromise the sense of space and openness between the dwelling and the highway. Whilst the innovative design of the dwelling, making a clear distinction between the original building and the new addition, has some merits, the contemporary appearance would be very much at odds with the older more traditional character and appearance of many of the properties in the area.
23. These shortcomings would be exacerbated by the proposal's prominent position, which would be visible from a number of public vantage points along Ryleys Lane. I therefore consider that the proposed development, by virtue its scale, siting and design, would fail to promote or reinforce the distinctive characteristic of the area and would adversely harm rather than positively contribute to the character and appearance of the area.
24. I have considered the appellants arguments that the design and layout of the proposed dwelling have been carefully considered in order to provide an innovative design solution to the development of the site that would minimise any impacts on the adjacent locally listed building and the area and to take into account the Council's comments on the previously withdrawn application on the site³. However, whilst the changes to the proposal's design, use of traditional materials, landscaping and boundary treatment would assist in integrating the proposal with the area, these aspects do not overcome the adverse effects outlined above.
25. The appellants make reference to the contemporary style detached garage and carport⁴ built within the grounds of the appeal site in support of the proposal. This, however, is a single storey building that has different development characteristics to the appeal scheme. It is a rare example of a contemporary-styled building in the area and unrepresentative of the overall character and appearance of the area. The single storey extension to the rear of No. 1 Brookside and the redevelopment of the former Provisional House on the opposite side of Ryleys Lane with four detached dwellings, are of a different scale and form and have different development characteristics. I therefore accord these limited weight as precedents in this case.
26. I note the appellants comments regarding the context provided in the National Planning Policy Framework (the Framework) for good design and that planning decisions should not attempt to impose architectural styling and should not stifle innovation, originality or initiative in design, but I find that the proposal does not achieve the standards the Framework seeks. I also note the appellants desire to create a dwelling with more flexible living space to meet their requirements and the needs of modern living. However, such circumstances are not a material consideration to which I can attach significant weight in making this decision.
27. Consequently, I conclude that the development would adversely harm the character and appearance of the area and would conflict with CELPS Policies

³ 16/2412M

⁴ 13/1319M

SE1 and SD2. These policies, amongst other things, seek to ensure that all development will be of a high quality design that contributes positively to the character, identity and sense of place, creating or reinforcing local distinctiveness and settlement character and encourages innovative and sustainable design solutions that are appropriate to the local context.

Setting of the Locally Listed Building

28. Nos. 1 and 2 Brookside are both included in the Council's local list of locally important buildings in the Local List of Historic Buildings Supplementary Planning Document (SPD). The evidence provided, including the appellants Planning and Heritage statements outline that the pair of two storey semi-detached properties known as Brookside Villas are of local architectural and historic interest, symbolising the wealth and growth of Alderley Edge in the mid-19th century during the expansion of the railways.
29. The pair of semi-detached locally listed buildings situated at Nos. 1 and 2 comprise of buff coloured brick with Welsh slate pitched roofs. The large spacious mature gardens that splay out at the front towards Ryleys Lane provide an important contribution to the setting of the locally listed buildings. No. 2 Brookside, a Victorian Villa with its pleasant mature landscaped garden, has moderate historical significance, in that it retains a character that is relatively rare in this locality. This significance can be readily appreciated from both outside as well as within the site.
30. The relationship between the No. 2 Brookside Villa and the whole front garden area is symbiotic in terms of historic and visual character, to which the protected trees contribute. Whilst I see no direct intrinsic harm in the detailed, contemporary design of the proposed dwelling on the architectural interest, the proposal would intrude into the spacious setting. Although the proposal would be set back and set down, the proposed dwelling, by virtue of its scale and siting, would fail to achieve an appropriate degree of subordination to the adjacent locally listed building. The subdivision of the plot, by inserting the proposed dwelling into the front garden, would have a direct impact by eroding the spacious character and, thereby, harming the historical significance.
31. I note the appellants desire is to provide a flexibly designed dwelling for their own use that would contribute towards the local housing need. However, I find insufficient public benefit, appropriate mitigation and compensation measures arising from this proposal to offset the identified harm.
32. Consequently, I conclude that the proposed development would adversely harm the setting of the adjacent locally listed building and would conflict with CELPS Policy SE7 and the SPD. This policy and guidance, amongst other things, seeks to ensure that the impacts of a proposal on the significance of a non-designated heritage asset are properly assessed and that a balanced approach is required, weighting the direct and indirect impacts upon the heritage asset and its setting, having regard to the scale of any harm or loss and the significance of the heritage asset. In addition, it would not accord with the aims of paragraph 135 of the Framework, which follows the same balanced approach to the assessment of non- designated heritage assets.

Other Matters

33. I have noted the other developments in the area drawn to my attention by the appellants and the Council. However, the appeal decisions for a dwelling allowed at Scholar Green⁵ and the dwelling dismissed at Wilmslow⁶ both relate to sites that have different development and locational characteristics to the appeal scheme. On the basis of the limited evidence provided I am not convinced that the circumstances are compellingly similar to the appeal proposal. I therefore accord these limited weight as precedents in this case.
34. I have noted the objections from the Parish Council, Alderley Edge Association, local residents and third parties to the proposal. However, in light of my findings on the main issues above, my decision does not turn on these matters.

Overall Planning Balance and Conclusion

35. The Council stated during the hearing that, since the original application was determined, it can now demonstrate a five year supply of deliverable housing sites. However, no substantive evidence has been submitted in support of this and, as such, I give this change in circumstance limited weight as a material consideration. Paragraph 49 of the Framework states that relevant policies for the supply of housing cannot be considered up to date if the local planning authority cannot demonstrate such a supply. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development. For decision making this means that where the development plan is absent, silent or relevant policies are out of date, planning permission will be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Sustainable development is identified as having social, economic and environmental roles in the Framework.
36. The appellants state that the proposal would be well connected to existing services and facilities and provide some social and economic benefits through providing a flexibly designed dwelling that would contribute to the supply and mix of housing in the area, providing construction jobs and additional household spend within the local economy. However, while I note the appellants view that the scheme's innovative design and the high energy efficiency would amount to environmental benefits, I have found above that taken overall the proposal would harm the protected trees on the site, the area's character and appearance and the setting of the locally listed building.
37. This harm would conflict with the environmental dimension of sustainable development and, in my view, would be sufficient to significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework as a whole. The proposal would not therefore amount to sustainable development in the terms of the Framework.
38. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR

⁵ APP/R0660/W/16/3147846

⁶ APP/R0660/A/14/2226360

APPEARANCES

FOR THE APPELLANTS:

Peter Schaefer	Appellant
John Riley	Architect
Gareth Salthouse	Emery Planning
Jonathan Edis	Heritage Collective
Glyn Thomas	Cheshire Woodlands Limited

FOR THE LOCAL PLANNING AUTHORITY:

Louise Dowd	Senior Planning Officer
Christopher Hudson	Tree Officer
Craig Browne	Local Ward Councillor

INTERESTED PARTIES:

Dr Jonquille Chantrey	Local resident
Peter Yates	Planning and Development consultant representing Dr J Chantrey
Jenny Wetton	Historic Building consultant representing Dr J Chantrey
Alan Jones	The Alderley Edge Association
Michelle Whetham	Local resident
Nigel Crouch	Local resident
Graham Baxendale	Local resident
Carole Geary	Local resident

DOCUMENTS SUBMITTED DURING THE HEARING

- Doc 1 Shading Diagram from Sweet Chestnut (T15 of TPO) Provincial House, 2A Ryleys Lane by Alan Jones, The Alderley Edge Association.
- Doc 2 Solar Study Shading Drawing ref. S (01) 001C submitted by the appellants.
- Doc 3 Site Diagram showing dimensions (sqm) for house footprint, garden, hardstanding and red line boundary submitted by the appellants.
- Doc 4 Site Plan showing potential site compound areas Drawing ref. 04 (02) submitted by the appellants.
- Doc 5 Tree Protection Plan Drawing Ref. CW/7861-P-TP submitted by the appellants.
- Doc 6 Appeal Decision Ref. APP/R0660/W/16/3147846 Land adjacent to No. 1 Congleton North, Scholar Green submitted by the appellants.