
Appeal Decision

Site visit made on 4 July 2019

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2019

Appeal Ref: APP/A0665/W/19/3226805

1 Fountain Lane, Davenham, Northwich CW9 8LT

- 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 Keith Platt against the decision of Cheshire West and Chester Council.
 - The application Ref 18/02017/FUL, dated 18 May 2018, was refused by notice dated 25 February 2019.
 - The development proposed is described as a 'New build low-energy family dwelling'.
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Decision

1. The appeal is dismissed.

Preliminary Issue

2. Since the application was determined, the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies Plan (July 2019) (LPP2) has been adopted by the Council. Along with the Cheshire West and Chester Local Plan (Part One) Strategic Policies (2015) (LPP1), and the Davenham and Whatcroft Neighbourhood Plan (2017) it forms the development plan for the area. The policies in the LPP2 replace those in the Vale Royal Borough Local Plan referred to in the Council's decision notice. I sought the views from the main parties in relation to the LPP2 and I have had regard to the representations received in reaching my decision.

Main Issues

3. The main issue is the effect of the proposed development on the character and appearance of the conservation area, with particular regard the long-term appearance and longevity of protected trees.

Reasons

4. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a Conservation Area. The appeal site is formed of No 1 Fountain Lane (No 1) a large detached house set within a generous garden. It is within the Davenham Conservation Area which is concentrated around the centre of the village but extends along London Road encompassing Davenham Hall and its parkland. Its significance stems, in part, from the mature trees that line London Road with large attractive dwellings set behind.

5. The proposal is for the construction of a detached dwelling, described as 'low energy' within the garden of No 1, between the existing dwelling and London Road. The proposed dwelling would be close to a number of trees on site that are the subject of a Tree Preservation Order (V/76/00058/ORD). I saw from my site visit that these trees provide significant visual amenity within the immediate location and this is not disputed by the parties. The trees make a positive contribution to the character and appearance of the Conservation Area, framing the corner of Fountain Lane and London Road.
6. I note that only part of the proposed dwelling, in the north-east corner, would encroach into the Root Protection Area (RPA) of one of the trees, a mature Sycamore (T7) close to the boundary with London Road. A root investigation survey undertaken on behalf of the appellant identified that whilst there would be an impact on a small number of roots, subject to the recommendations made, normal construction of the dwelling would not cause significant harm to the Sycamore. On the evidence before me, I am therefore satisfied that the dwelling could be built without causing harm to the appearance or longevity of the protected trees.
7. However, trees can be perceived as a nuisance due, amongst other things, to the obstruction of light, falling leaves, twigs and branches. In addition, their presence may lead to concerns about safety. The trees on site are up to around 22m in height and, as I saw on site, would dominate the garden and the outlook from the proposed dwelling. In my view, most people would come to regard the trees as a potential threat to the safety of their property because of their stature and physical proximity. This uncomfortably close relationship would be likely to lead to requests for the removal of all or some of the trees, which could be very difficult to resist.
8. Further, save a small area close to the rear elevation of the proposed dwelling, the garden would be under the canopies of the trees. Located to the north, the trees would not unduly restrict sunlight reaching the dwelling. They would, however, result in dappled shade over much of the small garden and whilst some people may well view the trees as an asset, many would consider them an intrusion. I consider the trees would unacceptably dominate the garden, limiting its use and enjoyment.
9. As a consequence, I find there would be significant pressure to remove all, or some, of the trees on site despite the protection afforded by the Tree Preservation Order. This would cause significant harm to the character and appearance of the Conservation Area and I give that harm considerable importance and weight.
10. The proposals would therefore conflict with Policy ENV5 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (2015) and Policy DM46 of the Local Plan (Part Two) Land Allocations and Detailed Policies (July 2019) (LPP2) because they do not safeguard or enhance the Conservation Area or take into account landscape setting and natural features.
11. The appellant has drawn my attention to the explanatory text to LPP2 Policy DM45 which states that in exceptional circumstances where a tree could practically be retained but doing so would create pressure for its removal in the future, appropriate replacement provision may be considered. In the absence of any proposals before me, and due to the space available on site, I am not persuaded that in this case replacement trees could mitigate the loss of the

existing mature trees. I therefore also find conflict with LPP2 Policy DM45 because the proposals would fail to conserve or enhance the existing trees.

Other Matters

12. I note the parties agree that the proposed dwelling would not cause harm to living conditions of neighbours. I consider this to be a neutral factor, rather than a benefit weighing in favour of the proposal.
13. I have also taken into consideration the appellant's comments in respect of the high quality design of the proposals. I recognise that the dwelling would be of high quality, contemporary design and I note that this is also not at issue with the Council. I cannot draw a conclusion as to the energy efficiency of the dwelling, as I have very little information before me on this matter. However, whilst I accept both would be benefits of the scheme they would not outweigh the harm I have identified to the character and appearance of the Conservation Area, or the conflict with the development plan.
14. The appellant has also made reference to a residential scheme at 28 Church Road, Church Street, Davenham. I have no substantive evidence before me in respect of that development, particularly regarding the relationship of the proposed dwellings to nearby trees. I cannot therefore draw a comparison between that scheme and the appeal proposals before me. In any event, I have considered the appeal proposal on its own merits.

Conclusion

15. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R. Jones

INSPECTOR