



Appeal Decision

Site visit made on 4 November 2019

by Graham Chamberlain BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2019

Appeal Ref: APP/V0510/W/18/3217024

30 Cambridge Road, Ely, Cambridgeshire CB7 4HL

- 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 K Petherick against the decision of East Cambridgeshire District Council.
 - The application Ref 18/00378/FUL, dated 20 March 2018, was refused by notice dated 5 July 2018.
 - The development proposed is described as 'replacement building containing 9 apartments, covered parking, alterations to the access and landscaping works'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - The effect of the proposed development on 30 Cambridge Road, a non-designated heritage asset;
 - Whether the proposal would preserve or enhance the character or appearance of the Ely Conservation Area; and
 - The effect of the proposed development on protected trees and Great Crested Newts.

Reasons

The effect on 30 Cambridge Road, a non-designated heritage asset

3. 30 Cambridge Road (No 30) is a grand and imposing structure set in generous grounds on the periphery of the town centre. Although set behind landscaping it has a presence in the street scene. The building is generally well preserved but has been unused for a few years and has a tired appearance. It has also been subject to some unsympathetic alterations such as the insertion of UPVC windows in the rear elevation and ad hoc repairs. Internally the floor plan has been much altered to accommodate its previous use as an office, but several features such as fireplaces and staircases are still evident. The Council's Buildings of Local Interest Register 2017 (the 'register') explains that No 30 is a good example of the Queen Anne Revival style and was designed by William Timbrell Price. I have no reason to doubt this analysis.

4. The appellant's Heritage Statement does not explain the significance of William Timbrell Price as an architect and sheds little light on the history of the building more generally. The assessment instead focusses on its architectural quality and how it sits in the street scene. That said, the register notes that there are no other buildings of this style within the vicinity. This makes the building a rare architectural addition in the context of Ely regardless of who designed it. Moreover, the building has a historical significance, being originally designed as a vicarage associated with Holy Trinity Church. In the mid-20th Century it performed a civic role as an orphanage, a home for the blind and then a centre for Cambridgeshire Primary Care Trust. Accordingly, in a local context, the building has a high level of architectural and historic significance.
5. The proposal would involve the complete demolition of No 30 and this would result in a complete loss of its significance. The impact of the appeal scheme on the building, which is a non-designated heritage asset, would be severe.
6. Policy ENV13 of the East Cambridgeshire Local Plan 2015 (LP) is concerned with the extension, alteration and demolition of buildings on the register. It states that proposals to demolish a building on the register will only be permitted in wholly exceptional circumstances, including instances where measures to sustain or find an alternative use for the building has been exhausted or evidence has been provided to demonstrate it is structurally unsound and beyond all reasonable repair.
7. The appellant has not advanced any evidence of marketing but has submitted a report prepared by a structural engineer that considers the condition of the building. The Council has not taken issue with the methodology, findings or costings within the report and has not provided its own evidence to counter it. Accordingly, I am content to rely on the findings therein for the purposes of my assessment.
8. The report explains that past surveys of the building concluded that it is suffering from subsidence, with this being evident in progressive cracking caused by shrinkage of the clay subsoil promoted by adjacent trees. The appellant's engineer has also assessed the building and concurs with the earlier findings because there is evidence of foundation movement such as internal and external cracks and misaligned doors and windows. The removal of internal plaster had exposed significant cracks with evidence of unsuccessful repairs.
9. However, the report notes that the rate of foundation movement appears to have stabilised in recent times as the trees have reached maturity. That said, further damage could be caused by immature trees maturing and old trees dying or being removed. As it stands, the engineer concludes that 'it is difficult to envisage how the building could be used as collateral for a mortgage'. This would make it difficult to raise funds for repair and refurbishment. Given the soil conditions, conventional underpinning is unlikely to be financially viable and a piled raft foundation would likewise be very expensive due to the extent and complexity of the works involved in such an approach.
10. The most cost-effective means of stabilising the building would be to remove those trees causing the subsidence and allow the building to settle as the clay subsoil re-hydrates. It could take around five years for the soil to rehydrate, which would have a cost implication if the building is unused during this period. However, no substantive evidence has been provided to demonstrate what costs would be involved in retaining the building whilst the sub-soil rehydrates.

Nor has it been demonstrated that the building could not be safely or economically used during the period needed to remediate the subsidence. The removal of the trees would have a visual effect, but no detailed analysis has been undertaken to ascertain which trees would need to be felled and therefore the extent of this impact on the visual amenity of the area is unclear.

11. Given the above, it is reasonable to conclude that the building is structurally unsound at present but the evidence before me does not demonstrate that the building, which is of notable local historic and architectural significance, is beyond reasonable repair. Therefore, the appellant has not demonstrated that there are wholly exceptional circumstances justifying the demolition of the building. I therefore conclude that the appeal scheme would be at odds with Policy ENV13 of the LP. The proposal would result in severe harm to a non-designated heritage asset and this is to be taken into account and weighed in my overall assessment.

Whether the proposal would preserve or enhance the character or appearance of the Ely Conservation Area

12. The Ely Conservation Area (the 'CA') is focussed on the historic town centre, which in turn is centred around the Cathedral. Much of the CA's significance is derived from its period buildings, the historic layout of the streets and open spaces and the views of the Cathedral. Cambridge Road is located on the edge of the town centre. It is a residential street with a distinctive layer of development dating from the 19th Century. The appeal building, which is 19th Century in origin, has a group value with the surrounding buildings and this adds to the authenticity and historic interest of the townscape. The attractive façade of the building alongside the generously landscaped plot contributes positively to the spacious and dignified appearance of the street scene.
13. The demolition of the existing building would remove an imposing period building from the CA. This loss would harm the character and authenticity of the CA because an important component of its significance is the collective presence of historic buildings. The removal of an attractive historic building with a patina of age would also harm the CA's appearance.
14. That said, the replacement building would echo the Queen Anne Revival style evident in the existing building through the use of prominent gables, ornate chimneys and red brick. Importantly, this approach would be pursued with integrity in the proportions, materials and detailing. For example, the building would include timber period style windows, a decorative front door, brick bands and a heritage bond and mortar mix. The heritage statement also explains that bricks from the existing building would be reused, providing the new building with a sense of maturity. Overall, the proposed building would have a similar presence in, and effect on, the street scene as the existing.
15. The replacement building would also respond to the proportions and footprint of the existing building, albeit being slightly larger and closer to the road, and would be set back behind a generous belt of landscaping with a single access and within a large plot. This approach would enable the replacement building to echo the existing thereby providing some visual continuity to the street scene. Moreover, the proposal would respect the pattern and grain of development in Cambridge Road and the extent of parking to the front of the building would be reduced. These points would go a long way to mitigating for the loss of the

existing building, but they would not extinguish the harm to the authenticity of the CA or result in a net improvement in its character or appearance.

16. Policy ENV11 of the LP states that development proposals within a CA should only involve the demolition of a building of significance where it is structurally unsound and beyond reasonable repair. I have already concluded that the appellant has not demonstrated that the building is beyond reasonable repair. The policy also requires that measures to sustain the existing use or find an alternative use must be exhausted. However, I have not been presented with substantive evidence that demonstrates the existing building could not be reused in the short term with subsidence (whilst the land re-hydrates) and in the long term if this defect was to be economically remedied. Thus, the evidence does not demonstrate the building cannot be put to a use that would negate the need to demolish it.
17. In conclusion, the proposal, through the demolition of the existing structure without adequate justification, would result in some modest residual harm to the character and appearance of the CA. The proposal would therefore be at odds with Policy ENV11, which seeks to preserve or enhance the character or appearance of the CA.

The effect of the proposed development on protected trees

18. Most of the parking spaces intended to serve future residents of the appeal scheme would be located to the rear of the building. This would necessitate the construction of an access drive alongside the boundary with 32 Cambridge Road in the vicinity of mature Oak and Yew trees. However, the appellant has proposed a 'no-dig' solution so as not to disturb tree roots. The Council's Tree Officer accepts this would be possible provided it is done with professional arboricultural supervision and a method statement, which could be secured through the imposition of planning conditions. There is nothing of substance before me justifying a different conclusion, particularly as BS 5837¹ provides guidance on this approach.
19. Many of the parking spaces behind the proposed building would be located around, and near, a mature Beech tree. It is identified in the tree survey as being a Category A1 tree with greater than 40 years remaining. It is an important tree the loss of which would harm the amenity of the area. Thus, it is protected through a Tree Preservation Order.
20. To protect vehicles parked under the Beech tree from branch shedding and general debris such as leaf litter, a cover would be erected. The cover would provide adequate protection to the vehicles by shielding them from nuisance tree deposits. Its maintenance would not be unduly onerous and would be part of the routine upkeep of the grounds, which are extensive. Thus, the presence of parking spaces near to the Beech tree should not inevitably result in reasonable pressure for the tree to be felled. Substantive evidence has not been provided to demonstrate the use of the parking spaces would unreasonably harm the roots of the Beech tree if a 'no dig' system was used.
21. The cover would be open sided so it would be possible to access the base of the tree in order to check its condition and undertake any necessary maintenance. Moreover, I have seen nothing of substance to refute the appellant's

¹ BS 5837:2012 Trees in relation to design, demolition and construction.

proposition that tree work could be undertaken by specialists from aerial access systems/platforms. In this respect the Beech tree would not be 'trapped' or inaccessible. Considering the foregoing, the proposal would not conflict with Policy ENV7 of the LP, which seeks to protect and minimise harm to, or loss of, environmental features such as trees.

The effect of the proposed development on Great Crested Newts

22. Natural England's standing advice² states that survey reports are required for development projects that could affect protected species. It goes on to state that a developer should survey for Great Crested Newts if historical records suggest they may be present, the development site includes refuge such as grassland and scrub and there is a pond within 500m of the development site, even if it holds water some of the year.
23. There was a report in 2013 of a Great Crested Newt being sighted in a nearby garden. This is described by the appellant as an anecdotal report and in the absence of detailed survey evidence confirming the sighting, I afford this limited weight. The other sightings referred to date from 1985 and 1994 and originate from sites that have now been developed. A record from 2011 came from a site surrounded by a brick wall which would hamper outward colonisation. Thus, historic records do not indicate the site is likely to support Great Crested Newts (GCN) or that they are present nearby.
24. The appeal site includes a pond that contained water at the time of my visit and although shaded and vegetated with leaf litter, the standing advice suggests newts could still be present in such a feature. Moreover, the garden has numerous areas that are overgrown and scrubby in appearance which could act as refuge.
25. However, the site is located close to the centre of Ely and away from potential sources of GCN. The appellant's habitat suitability index (HSI) found the site to be of poor suitability for GCN. The standing advice states that the use of HSI to calculate habitat quality and the likelihood of GCN being present is not a replacement for a detailed survey and cannot confirm presence or absence. This is because the HIS system is not sufficiently precise to allow the conclusion that any particular pond with a high score will support newts, or that any pond with a low score will not do so. However, the HIS finding is highly significant when taken with the absence of records and the urban context. The previous survey is unlikely to provide a useful up to date picture either way as it is around five years old³.
26. Taking the above points together, I am satisfied that it is highly unlikely Great Crested Newts would be present at the appeal site. This is a conclusion shared by the appellant's ecologist following a site-specific assessment. I afford this notable weight as I have not seen contradictory expert evidence. Accordingly, the standing advice and guidance in Circular 06/2005⁴ would suggest a survey is unnecessary as GCN are highly unlikely to be present and affected by the development. The precautionary measures in the Phase 1 Habitat Assessment would suffice to manage any risk in the unlikely event GCN are present. As such, a conflict with Policy EN7 of the LP would not occur.

² Paragraph: 011 Reference ID: 8-011-20190721

³ The survey commissioned by Cambridgeshire County Council in 2014

⁴ Biodiversity and Geological Conservation – see footnote 56 of the National Planning Policy Framework

Other Considerations

Whether public benefits would outweigh the harm to the designated heritage asset

27. The harm I have identified to the CA, a designated heritage asset, would be partially offset by the quality of the proposed replacement and localised in extent and therefore 'less than substantial' within the meaning of the National Planning Policy Framework (the 'Framework'). Paragraph 196 of the Framework requires such harm to be weighed against the public benefits of the proposal.
28. The proposal would provide nine homes in a location close to the town centre. This modest boost in housing supply would be a public benefit because the Council is currently unable to demonstrate a five-year housing land supply. The appellant has directed me to an appeal decision⁵ where the Inspector found that the supply is around 3.86 years if a 20% buffer is applied. The emerging LP has apparently been withdrawn, so it is unclear how the shortfall is to be remedied. In this context, the benefit would be of moderate weight.
29. The proposed building would have a better environmental performance than the existing but the extent of this is unquantified. The proposal would result in modest benefits to the construction industry and future residents may spend locally. However, the contribution to the construction industry would be short lived and I have seen nothing to suggest the 'spend' from nine additional households would have more than a limited effect on local facilities. For example, evidence has not been provided to suggest local facilities, clubs and services are suffering for lack of patronage or the town is struggling to attract investment. As such, the cumulative benefits of the proposal carry slightly greater than moderate weight.
30. When giving considerable importance and great weight to the special regard I must have to the desirability of preserving or enhancing the character or appearance of the CA⁶, I find that the modest harm to the CA that would arise from the appeal scheme would be marginally outweighed by its cumulative public benefits. Accordingly, there would be no conflict with Paragraph 194 of the Framework as harm to a designated heritage asset would have a clear and convincing justification.

Whether the adverse impacts of the proposal would significantly and demonstrably outweigh its benefits

31. In situations where the Council are unable to demonstrate a five-year housing land supply Paragraph 11d) of the Framework states that planning permission should be granted unless the application of policies⁷ within the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed, or the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. Given my assessment above, there are no policies in the Framework that provide a clear reason for refusing the proposed development.
32. An adverse impact of the appeal scheme would be the severe and unjustified harm to the significance of an undesignated heritage asset of notable local

⁵ APP/V0510/17/3186785

⁶ See Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ The policies are identified in a closed list in Footnote 6 of the Framework

significance. This would be at odds with Policy ENV13 of the LP. It would also result in modest harm to the character and appearance of the CA, contrary to Policy ENV11 of the LP. Policies ENV11 and ENV13 are consistent with the Framework's aims of recognising the desirability of sustaining and enhancing the significance of heritage assets and for development plans to include a positive strategy for the historic environment.

33. I have already concluded that the benefits of the proposal would marginally outweigh the harm to the CA. The Framework states that great weight should be given to the benefits of using suitable sites within existing settlements for homes. However, even when taking account of this, the adverse impacts of the appeal scheme taken together would significantly and demonstrably outweigh the scheme's benefits when assessed against the policies in the Framework taken as a whole. This does not suggest the appeal should be determined other than in accordance with the development plan.

Other Matters

34. The Council has referred to its draft policies but given the emerging Local Plan's stage of preparation, which appears to have been withdrawn, the policies carry very limited weight and are not determinative. Various concerns have been raised by interested parties including reservations regarding the level of parking and the effect on living conditions. However, given my findings above it has not been necessary for me to address these matters further as the appeal has failed. The appellant has referred to an appeal decision in Cambridge⁸ but because each heritage asset is unique and my findings are specific to the appeal site and the case before me, the decision referred to is of very limited weight and has not proven to be determinative.

Conclusion

35. The proposed development would not result in unreasonable harm to trees or biodiversity. That's said, the proposed development would otherwise be contrary to the development plan due to its impact on built heritage and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal has not succeeded.

Graham Chamberlain
INSPECTOR

⁸ APP/Q0505/A/11/2163768