



Appeal Decision

Site visit made on 17 March 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal Ref: APP/A0665/W/19/3242753

Poplar View, Street Hey Lane, Willaston, Neston CH64 1SU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Kewin against Cheshire West & Chester Council.
 - The application Ref 19/03622/FUL, is dated 30 September 2019.
 - The development proposed is a new self-contained access road to service the dwellings at Poplar View and The Coach House.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of this appeal highlighting that it would have refused the application for planning permission. I have had regard to this statement in framing the main issues.
3. The description of development makes reference to a building known as The Coach House, however, there is disagreement between the parties as to the status of planning permission 15/04635/FUL relating to its conversion to an independent residential unit. It is not for me, under a section 78 appeal, to determine whether or not an existing development is lawful. To that end, it is open to the appellant to apply for a determination under s191/192 of the Town and Country Planning Act 1990 and my determination of this appeal under s78 does not affect the issuing of a determination under s191/192 regardless of the outcome of this appeal. My decision is therefore based on the description of development as provided by the appellant.

Background and Main Issue

4. The site lies within the Green Belt and the main parties agree that the development does not constitute inappropriate development in the Green Belt under the terms of paragraph 146 of the National Planning Policy Framework (the Framework). This conclusion follows from two previous appeal decisions¹ whereupon, for the reasons of limited scale, location within an established residential curtilage, and low level of use, the formation of an access, driveway and hardstandings would not harm the openness of the Green Belt or conflict with its purposes. Further to my site inspection, and being mindful of the

¹ APP/A0665/W/17/3181063 and APP/A0665/W/19/3229161

specific circumstances of the site's planning history, I saw no reason to disagree with that conclusion.

5. Accordingly, the main issue is the effect of the proposal on the character and appearance of the area including that arising from its effect on protected trees.

Reasons

6. The appeal site is situated on a single-track part of Street Hey Lane. The tree lined bridleway with wide green verges serves a number of well-spaced detached residential properties and has a verdant rural character.
7. The appeal site frontage is currently delineated by high close board timber fencing and gates. Under the terms of planning permission 17/02058/FUL an agreed landscaping plan² is to be implemented which would see the replacement of the fencing and gates with a Beech hedgerow for the length of the site's frontage. The proposal would require the provision of a gap of several metres within the frontage.
8. Other driveway openings exist on the lane and these vary in width and character. Although the proposed opening would lead to the creation of an additional entrance point, subject to the use of informal surfacing and appropriately styled gates (if required), the proposed hedge landscaping along the initial curved length of the driveway would create a suitable informal rural appearance consistent with the prevailing character of the area. The proposed hedging would also augment the agreed roadside planting scheme.
9. Within the highway verge are a number of trees of varying age and condition subject of group protection under The Neston No.9A Willaston Tree Preservation Order X/78/20042/ORD (TPO). The access point is proposed between two trees individually identified as of low quality (category C), however, each is sited close to a tree of recognised high quality (category A) according to the appellant's arboricultural statement. From my site inspection it was noted that all of these trees contribute to the group value and visual amenity of the locality.
10. The proposed track would be sited in very close proximity to both of the category C trees and tree T1, a category A Oak. The undulation of the land on the verge of the road and into the site is such that, in addition to the construction of a sub-base and final surface of the driveway, excavation and fill would be required within parts of the root protection areas (RPAs) of all four trees. The RPA constraint is generally accepted as the minimum area about a tree sufficient to contain rooting volume to maintain its viability and the default position should be that structures, including driveways, should be located outside the RPAs of trees to be retained³. In combination with the existing roadway, the degree of incursion into the rooting areas would be high and with little overriding justification.
11. Some excavation has already taken place to a limited depth and minor roots are subsequently visible. Although the view expressed in the arboricultural statement suggests that the development could be accommodated without significant damage to the long-term health of the trees, the incursions into the RPA of the TPO trees are recognised.

² Plan 1511/101 rev B

³ BS 5837:2012 Trees in relation to design, demolition and construction - Recommendations

12. The report suggests that by use of a suitable engineered solution to form the track, there would be little impact on the category A trees. However, little detail is provided in that respect. Furthermore, the effect of the development on the category C trees is inconclusive. The statement advises that the access would be reduced in width and located a short distance to the south than shown in the appeal plans. However, being mindful of the close proximity of the trees and degree of incursion into the RPAs, I find there is insufficient detailed evidence to demonstrate that the long term viability of the trees would not be prejudiced such that their contribution to the character and appearance of the lane would be preserved.
13. Whilst I have found that the design of the access and driveway would assimilate into the local character of development, on the basis of the evidence before me, I am not persuaded that the siting of the access in the proposed location could be accommodated without harm to the health and longevity of the protected trees within a group TPO. For the above reasons, I conclude that, the development would conflict with Policies DM45, ENV4, ENV6 and STRAT 9 of the Cheshire West & Chester Council Local Plan, as they seek to protect local character and appearance, and the intrinsic beauty of the countryside, including through the protection of trees.

Other Matters

14. In support of the appeal the appellant submits that the proposal would reduce access and egress pressures placed upon the existing driveway. It is also stated that the shared drive would prejudice the living conditions of the occupiers of Street Hey in terms of privacy and outlook and resulting in pressure to implement further means of enclosure to provide security and safety enhancements. Furthermore, it is stated that the annexation of part of their garden has prejudiced the sale of that property and is an unsuitable arrangement.
15. The existing access at Street Hey is not insignificant and appears capable of accommodating traffic movements associated with the occupation of the existing and approved properties and there is little evidence to the contrary.
16. The effects on living conditions arising from the reliance on a shared driveway are matters that have previously been found acceptable, and I find no reason to disagree with that conclusion. Whilst the shared access would subdivide the plot of Street Hey, this has also been found to be a suitable mechanism to access the appeal site whilst protecting the character and appearance of the locality. Furthermore, ample amenity space to serve that property would remain. Any additional enclosure of that site would be contained within the existing screened boundaries such that the outward appearance would remain substantially unchanged.
17. The appellant has offered to provide a planning obligation under s106 of the Town and Country Planning Act 1990 to relinquish planning permission 15/04635/FUL relating to the residential use of The Coach House in favour of the development. Although this may reduce traffic and parking need on the site this would not overcome the harm in relation to the protected trees. Accordingly, this is a matter to which I attach limited weight.

18. Taken individually or together, these are not matters that would outweigh the harm I have identified. Any effect on property value is not a matter for this appeal.

Conclusion

19. Whilst I have found the development to be acceptable in regard to its Green Belt location and proposed design, I do not consider these matters outweigh the potential harm to trees of amenity value that contribute to the character and appearance of the locality. I therefore conclude that the appeal should be dismissed.

R Hitchcock

INSPECTOR