



Appeal Decision

Site visit made on 20 July 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2020

Appeal Ref: APP/A0665/W/20/3248402

Hampton Hall, Old Leach Road, Hampton, Malpas, Cheshire SY14 8JN

- 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 & Mrs Andrew Donaldson against the decision of Cheshire West & Chester Council.
 - The application Ref 19/00690/FUL, dated 6 February 2019, was refused by notice dated 8 October 2019.
 - The development proposed is demolition of the existing dwelling and the erection of one dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling and the erection of one dwelling at Hampton Hall, Old Leach Road, Hampton, Malpas, Cheshire SY14 8JN, in accordance with the terms of the application Ref 19/00690/FUL, dated 6 February 2019, subject to the attached schedule of conditions.

Procedural Matters

2. The evidence indicates that the planning application was amended at determination stage and that the council's decision to refuse planning permission relates to the demolition of the existing dwelling on the site and the erection of one new dwelling. I have therefore used the description of development from the Council's refusal notice and appellant's appeal form in the banner heading above. It more accurately reflects the appeal proposal.
3. Whilst the Council did not refer to the adopted No Mans Heath District & Neighbourhood Plan 2018 (NP) in its refusal notice, this is part of the development plan for the area and the Council has since confirmed that policies LAN1, H1 and H3 are of particular relevance in terms of the main issue. I have therefore taken the NP into account as part of the determination of this appeal.
4. As part of the appeal, the Council has clarified that it made an error in terms of its reason for refusal. The refusal notice refers to the proposal as being '*inappropriate development in the Green Belt*' when in fact it should have read '*inappropriate development in the Open Countryside*'. I have dealt with the appeal on that basis.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the Open Countryside.

Reasons

6. The site is the former Garden Cottage located with the grounds of Hampton Hall which is a grade II* listed building. Garden Cottage is about 1800 metres from the much larger listed building and includes a walled garden. There is no dispute between the parties that Garden Cottage is a self-contained dwellinghouse and there is no suggestion that its use is unlawful.
7. It is proposed to demolish the existing Garden Cottage and to erect a new and more contemporary designed dwelling to its side and within the existing brick built garden wall. The appellants propose to move out of Hampton Hall and into the proposed new dwelling as a 'downsizing' initiative where they could also use the property for home office purposes in connection with their various businesses in the region which employ some 30 people. The Garden Cottage does not have recognised special architectural or historic value, or any distinctive local character.
8. Whilst there is no lawful development certificate before me, the Council has not disputed the appellants' claim that there is an extant planning permission in place for the erection of a barn on the appeal site. Furthermore, the Council do not dispute that a start was made in accordance with Building Regulations consent 96/00607/OTH. The evidence shows that if the barn was erected, it would occupy part of the footprint of the proposed dwellinghouse. In this sense, it would not be possible to erect both the barn and the appeal dwellinghouse should this appeal be allowed.
9. The Council do not raise any concerns in respect of the appearance of the proposed dwellinghouse or in respect of its effect on the setting of Hampton Hall which is a grade II* listed building. Indeed, given the separation distance between the appeal property and the listed building, coupled with the fact that the existing Garden Cottage would be demolished, I am satisfied that the proposal would preserve the setting of the listed building.
10. The Council's concern relates to the size of the proposed dwellinghouse when compared to the Garden Cottage taking into account the fact that the site falls within designated Open Countryside. In this respect, reference is made to Policy DM21 of the adopted Cheshire West and Chester Local Plan (Part 2) Allocations and Detailed Policies 2019 (CWCLPP2). This relates to proposals within the curtilage of existing dwellinghouses. The appellants do not consider that the policy is applicable in so far that they do not consider that the walled garden forms part of the curtilage of the Garden Cottage.
11. The evidence before me indicates that the walled garden was historically and functionally part of Hampton Hall. Indeed, reference is made to it being used by the gardener in association with this listed building. It is not entirely clear when Garden Cottage started to be used as a self-contained and independent dwelling. However, the walled garden has a clear physical affinity with Garden Cottage and there is direct and gated access to it from the side garden. The evidence indicates that the land has been used in connection with use of the Garden Cottage.

12. As a matter of fact and degree, and taking into account past and present historical information that accompanies this appeal, as well as my site visit observations, I consider that the proposed building would be erected on land which forms part of a dwellinghouse curtilage. Hence, Policy DM21 is relevant to the determination of this appeal, although this is not in fact determinative to the outcome of the appeal.
13. Policy DM21 states that proposals for replacement dwellings will be supported where they '*would not be significantly larger than the existing dwelling and is in keeping with the scale, character and appearance of its surroundings*'. The reasoned justification to the policy states that '*as a general guide replacement dwellings should not be significantly larger (i.e. more than 30 per cent) than the existing dwelling*'. In this case, there is no dispute between the parties that the dwelling would be represent a relative increase in floor area of about 137% and in volume of approximately 193%. The proposal would breach the 30 per cent guide and would be significantly larger than the existing dwellinghouse. To this extent, there would be some conflict with Policy DM21 of the CWCLPP2 and this weighs against allowing the proposal.
14. Notwithstanding the above, it is important to look behind the purpose of Policy DM21. Indeed, paragraph 12.21 of the reasoned justification to the policy states that '*restricting the size of new development within the curtilage of a dwellinghouse will help maintain the following: the character and appearance of the original buildings and their surroundings; the character of a variety of dwelling sizes; and a range of dwelling sizes and types to enable a diverse and inclusive community in the countryside*'. In this regard, I consider that there are a number of material considerations which justify allowing the proposal notwithstanding the fact that the proposed dwellinghouse would exceed the 30% '*general guide*'.
15. Firstly, there is an extant planning permission¹ for a barn on the appeal site. I have seen plans for this development and the barn has a very domestic appearance. The permission for the barn may be for an agricultural use, but that does not mean that such a building, if built, would not have an impact on the area from a scale/size point of view.
16. The evidence before me indicates that the barn has a relatively large footprint, is marginally higher than the appeal building and has two floors. It may not be completed now, but the appellants' evidence indicates that there is a real prospect of this happening if this appeal were to be dismissed. I do not agree with the Council that the existence of the extant planning permission for the barn should not be a "*material consideration*". In fact, it is a matter which, when weighed in the overall balance, lends considerable support to allowing the appeal.
17. If the appeal proposal were to be allowed, a planning condition could be imposed in respect of the demolition of the existing dwellinghouse. In the event that the appeal dwellinghouse were constructed, the barn would not be capable of being erected on the site given the siting overlap between it and the appeal dwellinghouse. That would not be the case if the appeal were not allowed.

¹ Ref 6/24476 dated 27 November 1991

18. Taking into account my reasoning above, the effect of the resultant proposed development in terms of the presence and scale of built form in this part of the designated Open Countryside would be insignificant. These are matters to which I afford significant weight and outweigh any technical/size conflict with Policy DM21.
19. In addition to the above, the proposed dwellinghouse would be well designed. The appellant has opted for a sympathetic, simple and modern designed dwellinghouse which would be no more intrusive in the landscape setting than the existing dwellinghouse. It would not be out of keeping with other development in the immediate area which mainly comprise of large dwellings set within large landscaped grounds.
20. With the inability to erect the barn, coupled with the removal of permitted development rights by planning condition, the proposed dwellinghouse would also sit confidently and sympathetically within its self-contained setting surrounded by essentially undeveloped and landscaped grounds.
21. It is of note that the Council's only concern relates to the size of the appeal building. They do not actually make a compelling case as to why any harm would be caused in terms of design or indeed to the character and appearance of the Open Countryside. In fact, and for the reasons outlined and subject to the imposition of conditions, I do not consider that harm would be caused to the intrinsic character and beauty of the countryside. In this context, the proposal would be of an appropriate scale and design and I therefore conclude that it would not therefore conflict with the design, landscape character, appearance and scale requirements of Policy STRAT 9 of the adopted Cheshire West and Chester Local Plan (Part 1) Strategic Policies 2015; Policy DM21 of the CWCLPP1; Policies LAN1, H1 or H3 of the NP and paragraph 170b of the National Planning Policy Framework.

Conditions

22. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.
23. Planning permission is granted subject to the standard three year time limit condition. It is also necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty.
24. In the interests of the character and appearance of the area, it is necessary to impose conditions requiring the demolition of the existing dwelling on the site and to control materials and landscaping. In the interests of maintaining good design and a property that is reflective of the character and appearance of this countryside setting, there is clear justification for removing specified permitted development rights.
25. In order to minimise water consumption and to encouraging more sustainable travel, conditions are necessary relating to meeting the higher National Housing Standard for water consumption of 110 litres per person per day and the provision of an electric vehicle charging point. In the interests of ensuring that there are no local flooding issues as a result of the development, it is also

necessary to impose a condition requiring the provision of an acceptable surface water drainage on the site.

26. In the interests of highway safety, it is necessary to control the material of the access road and the position of any gates.

Conclusion

27. Whilst there would be some technical conflict with Policy DM21 of the CWCLPP1 in terms of the relative size of the proposed dwellinghouse, subject to the imposition of planning conditions, and taking into account the extant planning permission for the barn which would not be capable of being constructed given the position of the appeal dwellinghouse, I find that overall the proposal would be acceptable in terms of design and that it would not cause harm to the intrinsic character and appearance of the Open Countryside. There are no other planning reasons to withhold planning permission and I therefore conclude that the appeal should be allowed.

D Hartley

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 02 Revision B 'Site plan'; Drawing No 22 Revision E 'Proposed N & E Elevations'; Drawing No 23 Revision E 'Proposed S & W Elevations'; Drawing No 13 Revision G 'Proposed Ground Floor Plan'; Drawing No 14 Revision G 'Proposed First Floor Plan' and Drawing No 17 Revision E 'Proposed Second Floor Plan'.
3. No development above slab level shall be carried out until details / samples of the materials to be used in the construction of the external surfaces of the dwellinghouse hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details / samples.
4. Within one month of first occupation of the dwelling hereby approved the existing dwelling shall be demolished and all materials removed from site.
5. The dwelling hereby approved shall be designed and constructed to meet the higher National Housing Standard for water consumption of 110 litres per person per day.
6. Before the dwelling hereby approved is first occupied it shall be provided with electric car charging infrastructure comprising, as a minimum, one dedicated 32 amp radial circuit which is directly wired to an appropriate RCD at the consumer unit. The circuit shall terminate at a three-pin socket or BS EN 62196 Type 2 electric vehicle charging point located where it is accessible from a dedicated off-street car parking bay. A minimum of one dedicated 32 amp radial circuit directly wired to an appropriate RCD shall thereafter be retained on the site.
7. Prior to the commencement of any development, a surface water drainage scheme, based on the hierarchy of drainage options in the National Planning Practice Guidance with evidence of an assessment of the site conditions shall be submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme must be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards and no surface water shall discharge to the public sewerage system either directly or indirectly. The development shall be completed in accordance with the approved details.
8. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order with or without modification), no erection of any building, or enclosure within the curtilage of the dwellinghouse falling within Classes A, B, D and E, of Part 1 to Schedule 2 thereof shall be carried out without the grant of planning permission by the local planning authority.
9. No loose materials shall be used on any hard surfaced shared vehicular or pedestrian access or parking areas within 5 metres of the highway. No

gates or other obstructions shall be installed or located on the driveways within 5m of any access.

10. No development above slab level shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.