



## Appeal Decisions

Site visit made on 7 July and 10 August 2020

**by J M Tweddle BSc(Hons) MSc(Dist) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> October 2020.**

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### **Appeal A - Ref: APP/R0660/Y/20/3249664**

#### **7 Moody Street, Congleton CW12 4AN**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Michael Bracegirdle on behalf of Hornbuckle Mitchell SIPP against the decision of Cheshire East Council.
  - The application Ref 19/3525C, dated 25 July 2019, was refused by notice dated 3 October 2019.
  - The works proposed are described as 'demolition of existing 2 storey office building and ancillary storage buildings and erection of new 2 storey building comprising 5 nr 2 bedroom apartments with courtyard parking and new vehicular access from the highway'.
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### **Appeal B - Ref: APP/R0660/W/20/3249661**

#### **7 Moody Street, Congleton CW12 4AN**

- 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 Michael Bracegirdle on behalf of Hornbuckle Mitchell SIPP against the decision of Cheshire East Council.
  - The application Ref 19/1061C, dated 3 January 2019, was refused by notice dated 3 October 2019.
  - The development proposed is described as 'demolition of existing 2 storey office building and ancillary storage buildings and erection of new 2 storey building comprising 5 nr 2 bedroom apartments with courtyard parking and new vehicular access from the highway'.
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#### **Decision Appeal A**

1. No action, for the reasons set out below.

#### **Decision Appeal B**

2. The appeal is dismissed.

#### **Application for Costs**

3. During the appeal proceedings an application for costs was made by Michael Bracegirdle against Cheshire East Council. This application is the subject of a separate decision.

#### **Procedural Matters**

4. An unaccompanied site visit was conducted on 7 July 2020. Given the extent of the proposal and following my initial onsite observations, I invited the parties' comments over the requirement for listed building consent. Following the receipt of these comments, I conducted an 'access required' site visit on 10 August 2020 in order to gain full access to the site and to place the new evidence in context.

5. Regarding Appeal A, the appeal property is not a listed building and I have no evidence before me to suggest that the site forms part of the curtilage of a listed building. The neighbouring Moody Hall is a Grade II listed building and the Council have provided evidence to suggest that the southern boundary wall, between the appeal site and Moody Hall, would constitute a curtilage listed structure. On this basis, the Council contend that the boundary wall is part of the listed building.
6. In this regard, I am mindful that section 7(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.
7. A single storey lean-to style brick building, currently being used as a mortuary to serve the onsite funeral director, abuts the listed boundary wall and is to be removed as part of the appeal scheme. I was able to gain access to this building during my second visit and observed that it is a freestanding structure which merely abuts the listed boundary wall, with minimal physical attachment. A strip of lead flashing adjoins the building's roof to the boundary wall, but its brick elevations are not tied into the wall. This is evident by the gap that exists between the rear of the building and the boundary wall when viewed along its east facing elevation. As such, the building does not form part of the wall but is instead an independent structure.
8. The appellant has confirmed that the proposal does not involve any works to the boundary wall. The demolition of the building would involve only minimal disturbance to the wall by virtue of the removal of the lead flashing. However, the very limited scope of this activity would not materially affect the wall's appearance or character.
9. That being the case, I find that the proposal does not constitute works for the demolition, alteration or extension of a listed building in a manner that would affect its character as a building of special architectural or historic interest. What is proposed does not, therefore, require listed building consent and no action is required on Appeal A.
10. I appreciate the Council's Conservation Officer has raised concerns regarding the stability of the boundary wall. However, the fact remains that the proposal does not include any works to this structure. If the appellant was reckless enough to carry out works or development that were to cause damage to the boundary wall, then this might well be viewed as an unauthorised alteration to a listed building. The remedy would then be enforcement action pursuant to sections 9 and/or 38 of the Act. However, for the reasons set out, these considerations are clearly outside of the scope of the current appeals which instead consider the merits of the proposal based on the submitted plans, supporting information and the description of the proposals given in the banner headings above.

### **Main Issue**

11. The main issue is the effect of the proposal on the setting of Moody Hall (a Grade II listed building) and whether it would preserve or enhance the character or appearance of the Moody Street Conservation Area, including any effect on the adjacent protected trees.

## Reasons

### *Special Interest and Significance*

12. Situated in the Moody Street Conservation Area, the appeal site is a modest two storey building constructed of red facing brick with a traditional pitched roof covered in slate. Whilst it is a detached property, its appearance is similar to that of a traditional terrace house and sits within a spacious plot with a surfaced parking area to its side and rear along with a small lean-to style outbuilding. At the time of my visit the site was being used as a Funeral Director's business.
13. To its immediate south is the Grade II listed Moody Hall, a grand three storey red brick Georgian house set back from the road, occupying substantial grounds and surrounded by mature trees. Both the scale of the building and the spaciousness of its grounds accentuate Moody Hall's historical significance as the former home of affluent mill owners, the Reade family. The setting of the hall comprises its spacious and verdant grounds along with the urban townscape which immediately surrounds it along Moody Street. The appeal site forms part of this setting with its modest form, scale and separation distance from the hall affording views of the listed building and from which the hall can be experienced and appreciated. In this context, Moody Hall and its verdant grounds form a backdrop against which the appeal building appears subservient and sympathetic to the Listed Building. For these reasons, the appeal site makes a positive contribution to the setting of Moody Hall within which the architectural and historical significance of the Listed Building can be appreciated. It is these aspects of the listed building and its setting that are of relevance to the subject matter of the appeal.
14. Moody Street rises up from the medieval centre of Congleton with this part of the Conservation Area (CA) characterised by a mix of predominantly 18<sup>th</sup> and 19<sup>th</sup> century terrace properties. While there is some variety, the buildings are of traditional design reflecting the period in which they were constructed. All of the buildings have traditional dual pitched roofs covered in slate. Another defining characteristic of the area is the presence of a number of tall and mature trees, some of which are subject to Tree Preservation Orders (TPOs). Being highly visible from along Moody Street, with views through the appeal site, the trees provide significant amenity value due to their size and arrangement along the boundary to Moody Hall. This creates a spacious and verdant feel to the CA. Overall, the significance of the CA is largely derived from the cohesive spacing and design of its constituent buildings set against a backdrop of mature trees. In its current form, the appeal site adds to this sense of spaciousness with its modest scale and massing providing an open feel to the area and allowing an appreciation of its verdant surroundings.

### *The Appeal Scheme*

15. The proposed development would see the site cleared of existing buildings and the erection of a large two storey building with accommodation in the roof space. The building would provide five apartments, each with two bedrooms and arranged around a central courtyard. The proposed development would provide a continuous built frontage with built form extending to the rear of the site.
16. The proposed building would be constructed from antique facing brick with traditional features including sandstone quoins and Georgian style sliding sash timber windows with stone heads and cills. It would have a large

Dutch/gambrel style roof covered in lead, incorporating conservation style rooflights and flanked by stone capped parapets to its gables. Vehicular access would be through the building from Moody Street and secured by wrought iron automatic gates. The proposed development would provide a new stone boundary wall topped with stone copings and metal railings.

*Listed Building, Conservation Area and Protected Trees*

17. The proposal would introduce a large and bulky building that would completely alter the existing spacious character and appearance of the appeal site. Its scale and massing would be significantly larger than that of the existing building and would therefore result in an overly assertive addition to the street scene, at odds with the more modest scale and traditional form of development that is evident along the street. Despite the existing boundary wall, it would be particularly prominent in views of the listed building from the south. Taken together, these aspects of the proposal would harmfully erode the spacious setting of the listed building, dominating views to and from the building, and thereby diminishing its significance.
18. I note the appellant's assertion that the design is influenced by the stucco fronted Georgian townhouses to the south, and it would incorporate a number of traditional features and materials such as sliding sash windows, stone heads and cills, stone quoins, amongst other features. However, the use of a gambrel style roof covered in lead would be in stark contrast to that of the traditional dual pitched roofs found along the street. Despite being set at a similar height to the existing building, the roof would be an incongruous feature, the form of which would add to the overall bulk of the proposed building, this would exacerbate its dominant and unsympathetic appearance.
19. In contrast to its surroundings, the proposal would take up considerably more of its available plot, imparting a more intensively developed character to the appeal site in marked variance to the spacious characteristics of the area. Whilst I readily accept that in the wider CA scales and types of buildings vary, as do their roof styles, this does not provide justification for the insensitive relationship the proposed development would have with its immediate surroundings – which would be a clear result of its bulk and site coverage.
20. The appellant is of the view that the existing building makes no positive contribution to the character of the area as it is not mentioned in the Council's Conservation Area Appraisal (the CAA) and has been subject to modern alterations and extensions. However, the lack of specific reference within the CAA does not mean that the building makes no contribution to the character of the area. In this regard, I agree with the findings of the Council's Conservation Officer, in that the current building is of a simple traditional design that reflects its period of construction and therefore makes a modest, though positive, contribution to the overall character and appearance of the CA.
21. With regard to trees, there are four trees along the southern boundary of the site: a Horse Chestnut; a Lime; a Yew; and, a Holly. All but the Holly are the subject of a TPO and are mature specimens with high amenity value to the surrounding area.
22. The appellant submitted an Arboricultural Statement (including Tree Survey, Tree Protection Plan and Method Statement)<sup>1</sup> (the assessment) and a Foundation Detail<sup>2</sup> with their original application. This has been supplemented

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<sup>1</sup> Produced by Cheshire Woodlands Arboricultural Consultancy dated 6 March 2019

<sup>2</sup> Produced by Bower Edleston Architects dated March 2019

at the appeal stage with a Ground Beam and Pile Layout<sup>3</sup> and a Typical Section within Tree Root Protection Zone<sup>4</sup>, produced in accordance with the relevant British Standard<sup>5</sup>.

23. The appellant's assessment recommends the use of 'mini piles' for foundations within the root protection zone and a technical drawing has been provided alongside the assessment. I am satisfied that a proportionate level of supporting evidence has been provided to demonstrate, in principle, that the development could proceed without significant damage to the protected trees, and if the appeal were to be allowed, additional details could be secured via condition. In reaching this view I am mindful that foundations already exist in the form of the existing boundary wall and the existing building. Moreover, the method statement recommends that all demolition and construction works within the root protection zones would be carried out under the supervision of a competent Arboriculturist and in accordance with the relevant British Standard<sup>6</sup>.
24. Accordingly, subject to appropriate tree protection measures during the construction period, and, if necessary, further details secured by condition to identify the number of mini piles within the root protection zones, I consider that the proposed development would not adversely affect the health or stability of the protected trees. Consequently, the contribution of the trees to the visual amenity of their surroundings would not be unduly impaired as a result of the proposal. Nevertheless, the lack of harm in this regard is a neutral factor, and thus does not serve to overcome the other harmful effects I have identified to the setting of the listed building or the character and appearance of the area.
25. Taking the above points together, and mindful of the duties arising from sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I conclude that the proposed development would fail to preserve the setting of Moody Hall and the character or appearance of the Moody Street Conservation Area. For these reasons too, I find that the proposal would conflict with Policy SE7 of the Cheshire East Local Plan Strategy (the CELP) and Policies BH4 and BH9 of the Congleton Borough Local Plan which together seek to conserve and enhance the historic environment, including conservation areas, and to secure development that does not adversely affect the setting of listed buildings.
26. As for the reasons set out above, I have found no harm would occur to the protected trees as a result of the proposed development. Thus, there is no conflict with Policy SE5 of the CELP which seeks to protect trees that provide a significant contribution to the amenity of the area. However, the lack of policy conflict in this regard is not a positive benefit of the appeal scheme and only has a neutral effect on the overall planning balance

### **Other Matters**

27. The appeal is supported by a draft legal agreement pursuant to section 106 of the Town & Country Planning Act 1990. If executed this could commit the appellant to meeting the cost of altering a Traffic Regulation Order to facilitate access to the site in the event that planning permission was granted. However,

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<sup>3</sup> Produced by Cheshire Structural Design Services dated 18 March 2020

<sup>4</sup> Produced by Cheshire Structural Design Services dated 18 March 2020

<sup>5</sup> BS5837:2012 *Trees in relation to design, demolition and construction - Recommendations*

<sup>6</sup> BS5837:2012 *Trees in relation to design, demolition and construction - Recommendations*

the lack of an obligation did not form a reason for refusal. Consequently, this matter is not determinative, therefore it is not necessary for me to consider it any further. Moreover, as the obligation would be related to access to the proposed development, its benefits would be restricted to the future occupants of the appeal site and as such I find that no wider public benefit would accrue as a result of the draft obligation.

### **Overall Balance and Conclusion**

28. Paragraph 193 of the National Planning Policy Framework (the Framework) advises that when considering the impact of a proposed development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 194 goes on to advise that significance can be harmed or lost through the alteration or destruction of the heritage asset or development within its setting and that this should have clear and convincing justification.
29. The Framework anticipates that once harm has been found in relation to a development proposal affecting a heritage asset, such as a listed building or conservation area, the magnitude of that harm should be assessed. In this case, due to the extent of the proposed development's impacts, I find that it would cause less than substantial harm to the significance of Moody Hall and the Moody Street Conservation Area. However, less than substantial harm does not equate to less than substantial weight in the planning balance and therefore, in accordance with the Framework, it attracts considerable weight and importance. Under such circumstances, the Framework advises, at paragraph 196, that any harm should be weighed against the public benefits of the proposal.
30. I accept that the proposal would provide five residential units with good access to a range of services and facilities within Congleton town centre, thereby contributing to local housing supply. Public benefits, both economic and social would accrue as a result of this which weigh in favour of the appeal scheme to a moderate degree. Given the identified harm to the historic environment, there would be no environmental benefits. Nevertheless, the harmful effects to the significance of both the CA and Moody Hall, are considerations to which I attach great weight and importance, and their combined weight tips the balance against the appeal scheme. Consequently, the proposed development would conflict with the Framework in so far as it seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.
31. Furthermore, the benefits and other matters advanced in favour of the proposal are not of sufficient weight to justify a decision other than in accordance with the development plan, with which, in respect of Policies SE7, BH4 and BH9 the appeal proposal would clearly conflict.
32. Accordingly, for the reasons set out above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

*Jeff Tweddle*

INSPECTOR