The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2021

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th April 2021

Appeal Ref: APP/A0665/W/20/3262185
Agawate, Capenhurst Lane, Great Sutton, Ellesmere Port, CH66 2NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Mark Johnson against the decision of Cheshire West & Chester Council.
- The application Ref 19/02898/OUT, dated 26 July 2019, was refused by notice dated 10 July 2020.
- The development proposed is outline planning for residential development.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with all matters reserved for future consideration. However, Article 5(3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states that where access is a reserved matter, the application must state the area or areas where access points to the proposed development will be situated. In this regard, the access is indicated as being taken from Capenhurst Lane and I have determined the appeal on this basis. Whilst drawings showing an indicative layout have been submitted with the application, I have regarded these as being illustrative only.

Main Issues

3. The main issues are:
   (a) The effect of the development on protected trees;
   (b) The effect of the development on the ecological value of the site;
   (c) The effect of the development on the character of the area; and
   (d) Whether the development would prejudice highway safety.

Reasons

Protected trees

4. A number of mature trees are positioned around the site frontage that are subject to a group Tree Preservation Order. They are prominent in the surrounding area including in views from along Capenhurst Lane and across the roundabout immediately to the south east of the site. They form an attractive feature within the street and contribute to the verdant, tree-lined character of

the area. An Arboricultural Report[1] has been submitted that identifies several of these trees as being either Category A (high quality) or Category B (moderate quality).

5. Access is a reserved matter and so the precise location of the access point onto Capenhurst Lane is not before me at this stage. However, a number of plans have been submitted to show how access into the site could be achieved. These show the development being served either by the existing access point, or alternatively by the creation of a new access point to the west.

6. The existing access point is located between 2 mature trees that are both identified as being in Category A in the submitted Arboricultural Report (Refs 85 and 86). The Corsican Pine to the west of the access is particularly tall and characterful in this regard. The gap between these 2 trees is relatively narrow and it is not clear that it would be capable of accommodating an access of the necessary width to serve the development. Moreover, the upgrading and widening of this access would be likely to require significant excavations and/or incursions into the Root Protection Areas ('RPAs') of both trees. The intensification of the use of this access, including by larger vehicles during the construction process, could also result in further damage. In this regard, there is little information before me to demonstrate that its use would not undermine the longer term existence and visual contribution of the trees.

7. The introduction of a new access point to the west of the existing would necessitate the removal of a number of protected trees, including 2 trees identified as being within Category A (Refs 88 and 92), and others within Category B. Moreover, an indicative layout shows this access route making a significant incursion into the RPA of tree Ref 86, and given the position of the existing road, it is not clear that this could be avoided. Any turning head for larger vehicles in this area, as is indicated on Plan Ref 0151-04, would result in further incursions into the RPAs of nearby trees.

8. Based on the information before me, both of the potential access options would be likely to result in significant harm to protected trees across the site frontage. The loss of these trees, particularly those identified as being within Category A, would significantly harm the character and appearance of the area. Any replacement planting would take many years to mature and would be unlikely to be in as prominent a position. It is also unclear whether alternative access arrangements have been fully explored.

9. For the above reasons, I conclude that the development would significantly undermine the longer term existence and visual contribution of protected trees within the site. It would therefore be contrary to Policy DM 45 of the Cheshire West and Chester Local Plan (Part Two) Land Allocations and Detailed Policies (2019) ('Local Plan Part 2'). This policy seeks to ensure, amongst other things, that new development conserves existing significant trees wherever possible.

Ecology

10. Policy DM 44 of the Local Plan Part 2 states that development which is likely to have an impact on protected sites, including Priority Habitats, must be accompanied by an Ecological Assessment that identifies the net losses and gains for biodiversity/geodiversity, using a biodiversity metric calculation. In

[1] Sylvan Resources Ltd (May 2019)

this case, part of the appeal site consists of a traditional orchard (a Priority Habitat) and it contains a significant number of mature trees and hedgerows. However, no biodiversity metric calculation has been provided.

11. The appellant has submitted an Ecological Assessment[2] that identifies a number of potential mitigation and enhancement measures. However, this does not include a biodiversity metric calculation, as required by Policy DM 44. The Council also state that the suggested enhancements are not measurable habitats and so are not considered in the DEFRA Biodiversity Metric 2.0. Whilst the appeal is in outline with all matters reserved, it is unclear why an illustrative biodiversity metric calculation could not have been undertaken based on the indicative layout, and then refined at reserved matters stage.

12. For the above reasons, I conclude that it has not been demonstrated that the development would avoid harm to the ecological value of the site. It would be contrary to Policy ENV 4 of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (2015) ('Local Plan Part 1') and Policy DM 44 of the Local Plan Part 2 in this regard.

Character of the area

13. The appeal site consists of a large residential plot that extends significantly to the rear of the existing property. It is adjacent to residential development to both the north and east and abuts open countryside to the west.

14. Whilst layout is a reserved matter, the central part of the site is within Flood Zones 2 and 3 on the Environment Agency's Flood Map for Planning. This would limit any residential development to the northern and southern parts of the site only, which is reflected in the indicative layouts. Access would be taken from Capenhurst Lane, which would result in the development having a backland character were Agawate to be retained. However, there are other backland developments in the immediate vicinity of the appeal site, including to the rear of both Fairacre and Grove Cottage. The rear garden to Agawate is also significantly larger than the gardens to any of the neighbouring properties. Moreover, the northern part of the site adjoins a modern housing estate that is denser in character than the properties along Capenhurst Lane. In these circumstances, I consider that it would be possible to develop the site in a way that is compatible with the character of the surrounding area.

15. My attention has been drawn to 3 recent dismissed appeal decisions[3] that relate to a site on the edge of Farndon. However, the full details of those cases, including the submitted plans and the surrounding context, are not before me. It is therefore unclear whether the character of that area is directly comparable. I further note that those proposals are described as resulting in an outward incursion of the village into open countryside, which is not the case here. In this regard, the current appeal site adjoins open countryside on only 1 side and is separated from it by mature trees and hedgerows.

16. For the above reasons, I conclude that the development would not significantly harm the character of the area. It would therefore accord with Policy ENV 6 of the Cheshire West and Local Plan Part 1 and Policy DM 19 of the Local Plan Part 2. These policies seek to ensure, amongst other things, that new development

[2] Star Ecology (Ref LSP/2200/18.1, 7 October 2019)

[3] APP/A0665/W/17/3187692, APP/A0665/W/18/3213263, APP/A0665/W/18/3213266

is of an appropriate layout and design, and that the creation of new dwellings on garden land does not cause unacceptable harm to the character of the surrounding area.

Highway safety

17. Any refuse vehicles entering the site would need to take a relatively circuitous route that would involve turning in Capenhurst Gardens around 90 metres to the east, and then returning along Capenhurst Lane to the site entrance. Whilst drawings have been submitted to show how a refuse vehicle could enter the site should a new access point be created, it is not clear whether this would be possible were the existing access point to be utilised. However, a refuse collection point could be created at the site entrance to serve the entire development. Whilst this would require residents to move their bins a significant distance on collection day, future residents would be aware of this before choosing to occupy the properties. No highway safety or amenity concerns would arise from this arrangement.

18. Were a new access point to be created, it would be possible to provide adequate space for 2 vehicles to pass one another at the site entrance. However, it is unclear whether this would be possible were the existing access to be retained, given the narrow gap between 2 existing trees. However, as I am dismissing the appeal on other grounds, this matter is not determinative in this case.

Other Matters

19. The central part of the appeal site is at high risk of both fluvial and surface water flooding, and I understand that this area experienced significant flooding in 2000. However, large parts of the site are identified as being at low risk of flooding, which is reflected in the indicative layout. The submitted Flood Risk Assessment[4] also indicates that greenfield run-off rates could be achieved. I further note that neither the Environment Agency, nor the Lead Local Flood Authority, has objected to the development on flood risk grounds.

20. Layout is a reserved matter that does not fall to be considered at this stage. However, given the size and shape of the site I am satisfied that it would be possible to develop it for housing without resulting in a significant loss of outlook or privacy to existing occupiers.

Conclusion

21. As set out above, I conclude that the development would significantly undermine the longer term existence and visual contribution of protected trees within the site. It has also not been demonstrated that harm to the ecological value of the site would be avoided. Whilst the development would provide new housing in a relatively accessible location, and would generate some economic benefits, that does not alter my view that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

[4] Sumner Consultancy (Ref 471-19, 10 July 2019)