



Appeal Decision

Site visit made on 22 June 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2021

Appeal Ref: APP/R0660/W/21/3267957

"Sunnyhurst", 4 Mobberley Road, Knutsford WA16 8EF

- 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 and Mrs Gates against Cheshire East Council.
 - The application Ref 20/1795M is dated 30 April 2020.
 - The development proposed is the erection of two dwellings and associated access.
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Decision

1. The appeal is dismissed and planning permission for the erection of two dwellings and associated access is refused.

Procedural Matters

2. I have omitted the word "resubmission" in the description of development in the banner heading and my formal decision above, as it is not descriptive of the proposal.
3. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Both main parties were given the opportunity to comment on the relevance of changes to the appeal proposal. Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.
4. A Unilateral Undertaking ("UU") was submitted by the appellant during the course of the appeal. I have considered this in my reasoning below.

Background and Main Issues

5. The Council had not determined the planning application before the appeal was lodged, but in its appeal statement explained that it considers the proposal conflicts with development plan policies which seek to protect open spaces.
6. The appeal site is within the Cross Town (Knutsford) Conservation Area ("the CTCA"), and I have a duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay particular attention to the desirability of preserving or enhancing the character and appearance of conservation areas. Several interested parties commented on the potential impact of the scheme on the CTCA, and the appellants have had the opportunity to address the matters raised. The Council's appeal statement also expressed some

concern about the effect of the proposal on trees, which they consider collectively form a Non-Designated Heritage Asset ("NDHA") within the CTCA.

7. I therefore consider that the main issues are the effects of the proposed development on:
- Open space; and
 - The character and appearance of the CTCA.

Reasons

Open space

8. The appeal site is a substantial area of trees and open grassland, within the triangular block formed by Mobberley Road, Hollow Lane and Brook Street close to the centre of Knutsford. To the east the site abuts the rear gardens of houses on Mobberley Road, including No 4, "Sunnyhurst" from which it can be accessed. Because of the topography of the area the ground level of the site is some way above Hollow Lane and Brook Street. The sloping boundaries to these two roads have dense areas of mature trees, some of which are within the appeal site while others sit outside the site on highways land owned by the Council.
9. The proposal is the erection of two detached dwellings, each of two storeys and having four bedrooms. Each dwelling would have a single attached garage and a gravel forecourt providing a parking and turning area. Access to the properties would be from Mobberley Road at the side of Sunnyhurst, with a new shared driveway in the space created by the demolition of Sunnyhurst's existing garage. The application material also states that a parking area serving Sunnyhurst would be provided at the rear of that property, but this does not form part of the appeal proposal.

Relevant development plan policies

10. The development plan consists of the saved policies of the 2004 Macclesfield Local Plan ("the MLP"), the 2017 Cheshire East Local Plan Strategy ("the CELPS"), and the 2019 Knutsford Neighbourhood Plan ("the KNP"). I have also been directed towards emerging policies in the Revised Publication Draft Site Allocations and Development Policies Document ("the SADPD") which was published earlier in 2021.
11. The appeal site, and some of the adjacent land outside the site boundary, was designated as existing open space by the MLP, carrying forward an earlier designation from the 1997 version of that plan. Saved Policy RT1 of the MLP states that identified open spaces will be protected from other forms of development. The appeal site's designation within an area of protected open space was unchanged by the adoption of the CELPS in 2017. Policy SE6 of the CELPS seeks to safeguard and retain "green infrastructure" assets, including open spaces, which the plan describes as being multi-functional urban and rural green spaces capable of delivering a wide range of environmental and quality of life benefits for local communities.
12. Policy E4 of the KNP designates Local Green Spaces, which in line with Paragraph 101 of the Framework are described as having special value or purpose for the local community. Paragraph 103 of the Framework indicates

that policies for managing Local Green Spaces should be consistent with those for Green Belts, which essentially means that, subject to certain exceptions, the construction of new buildings should generally be regarded as inappropriate. However, the appeal site is not within one of the Local Green Spaces designated by the KNP.

13. The appellants comment that "it is telling that [the appeal site] was not designated as a Local Green Space" in the KNP, which they suggest has "primacy" over the older MLP and CELPS. The KNP was made in 2019, and the MLP and CELPS were adopted in 2004 and 2017 respectively. Section 38(5) of the Planning and Compulsory Purchase Act 2004 requires that conflict between development plan policies must be resolved in favour of the document which has more recently become part of the development plan.
14. However, it seems to me that the Local Green Space designation as introduced by the Framework is intended to provide an additional level of protection for those spaces most important to local communities, as subsequently identified in the KNP. Indeed, the wording originally used in the Framework¹ (repeated in the supporting text for Policy SE6 of the CELPS) stated that the Local Green Space designation would "not be appropriate for most green areas or open space". In that light, that the appeal site is not designated a Local Green Space in the KNP neither outweighs nor negates its designation as an existing or protected open space in earlier, but still current, development plan documents. Accordingly, on this matter I do not consider that there is a policy conflict which needs to be resolved.
15. The appellants have provided a document² assessing the 2012 Cheshire Open Space Assessment ("the COAS"), which formed part of the evidence base for the CELPS. The appellants' submission draws attention to what they consider to be methodological flaws, lack of clarity, inaccuracies and inconsistencies in the COAS. They assert that, given its age the COAS is out of date, cannot be relied upon as evidence by the Council, and that the Local Plan has "incorrectly allocated the land in question as open space". However, the appeal site's designation as open space stems from the CELPS which was adopted in 2017. The examining Inspector at the time would have had full regard to the relevance and accuracy of the evidence base, representations and objections made, as well as the requirements of the Framework. It is not part of my role in determining this appeal to reopen issues which would have been addressed in the CELPS examination, and the fact remains that the site is currently designated as open space by the development plan.
16. The Council's evidence also referred to an emerging development plan policy, Policy REC1 of the publication draft SADPD, which would seek to prevent development resulting in "the loss of green/open space [...] which has recreational or amenity value". The Council acknowledges that the appeal site is part of an area to which there is no public access and therefore it is not a recreation space, but considers its value as open space is principally derived from its visual amenity value and remains of the view that it should continue to be protected. At the same time, I note the appellants' comment that "robust representations" have been made in respect of the continued designation of the appeal site as open space in the SADPD, including their continuing challenge to the evidence base. I understand that the SADPD had its Examination in Public

¹ National Planning Policy Framework 2012, Paragraph 77

² "Supplementary Open Space Review" by Ethos Environmental Planning, June 2020

during 2021, but there is nothing before me to indicate when it might be adopted. Given the appellants' representations, I also cannot be certain whether Policy REC1, in whatever form it might take in an adopted plan, would apply to the appeal site.

17. Taking all of these points together, I consider that the most relevant development plan policies in determining this appeal are Saved Policy RT1 of the MLP and Policy SE6 of the CELPS. Emerging Policy REC1 of the SADPD is also relevant, although given the uncertainty about the form and applicability of that policy which I have just described I can give it only limited weight in determining this appeal.

Effect of the proposed development

18. The two dwellings proposed would be sited on open grassland approximately at the centre of the appeal site; as a consequence the site would be transformed from being open land to developed land. Saved Policy RT1 of the MLP sets out two circumstances where development on designated open space will be permitted – these are for the redevelopment of a building footprint or where additional or replacement educational buildings are being developed, in both cases with the proviso that the integrity of the open space is not harmed. Neither of those exceptions apply in this case.
19. As I have already described, the appeal site is not one to which public access is possible. The supporting text to Saved Policy RT1 is clear that open spaces are also valued and protected for the contribution they can make to the character of the townscape. Although Policy SE6 of the CELPS seeks to provide an accessible network of green spaces to enjoy, it also emphasises the contribution that green infrastructure sites make to biodiversity, mitigating the impact of extreme weather events, and to the visual quality and attractiveness of the borough. None of these matters is dependent on the public having access onto a site, and it is notable that the neither policy seeks to distinguish between public or private, and accessible or closed, sites. I note also that the definition of “open space” in the Framework refers to spaces of public value, including those which can act as a visual amenity; again, public access is not a defining factor.
20. I note the appellant's comment that “the proposal will not lead to the loss of any open space that is detrimental to the visual amenity of the area”. However, from my own observations I consider that the appeal site makes a significant contribution to giving this part of Knutsford an attractive appearance and verdant character. I saw that the boundary trees (whether on the appeal site or the adjoining highway land) are mostly deciduous, and at the time of my site visit they were in full leaf, effectively screening the open space interior of the appeal site from view. However, in winter the bare branches would offer rather less screening and it seems likely to me that the proposed dwellings would, at least to some degree, be seen from the streets, notably from the higher parts of Brook Street and Hollow Lane (further south and east, respectively) where there is less difference in ground levels. The loss of the open space to built development would be apparent to outside observers, and consequently the contribution it makes to the visual quality of the area would be much diminished.

Findings in respect of open space

21. I conclude that the proposal would result in the development, and effective loss, of a designated open space. It would therefore conflict with Saved Policy RT1 of the MLP and Policy SE6 of the CELPS, which seek to protect such spaces from development. The proposal would also conflict with Emerging Policy REC1 of the Publication Draft SADPD for the same reasons but, as I have explained above, I give conflict with that policy limited weight in my decision.

Character and appearance

22. As I have already described, the appeal site is within the CTCA, and I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the Framework states that they should be conserved in a manner appropriate to their significance (paragraph 189). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 200) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 202).
23. The CTCA is a relatively small Conservation Area covering the core of the oldest settlement within the Knutsford area, including the Grade II* Listed Church of St. Cross and a number of possibly 17th- and 18th-century buildings, along with 19th-century brick cottages of a modest scale and some examples of early 20th-century Arts and Crafts influenced architecture. The built form within the Conservation Area follows the historic ribbon layout with development fronting onto the roads. The significance of the CTCA derives from the surviving elements of its historic core, the varied building form and streetscene, its pre-suburban character, and its numerous mature trees.
24. While not identified in the 2006 CTCA Appraisal as an important open space within the Conservation Area, the area including the appeal site is described as having heavy tree coverage which forms a strong landscape backdrop for Sunnyhurst and six other houses on Mobberley Road, and making an important visual contribution seen from Brook Street. It is notable that the CTCA Appraisal identifies the "strong landscape backdrop" and "important visual contribution" as being not simply derived from the presence of and views of trees, but from the presence of the space as a whole. Based on all the evidence before me, including my observations on site, I consider that the appeal site makes a positive contribution to the character and appearance of the CTCA.
25. The introduction of two new dwellings onto the appeal site would interrupt the backdrop of the Mobberley Road dwellings, and would introduce a suburbanising private backland development quite at odds with the prevalent street frontage development which characterises the CTCA. I note that other dwellings nearby have been extended, redeveloped or replaced in recent years, but they nevertheless still follow the CTCA's prevailing street-facing pattern of development in a way which the appeal proposal would not.
26. The scheme would also, as I have described in paragraph 20 above, introduce built form which – in winter at least – would be likely to intrude into the views along and from Brook Street which are currently dominated by trees including those on and around the appeal site. All of this would, in my view, diminish the positive contribution the appeal site makes to the quality of the surrounding

area and would therefore cause harm to the character and appearance of the CTCA.

27. The Council raised concerns particularly about the potential loss of trees which, in its view, are collectively an NDHA because of the contribution they make to the CTCA. The potential loss is suggested to stem from possible pressure from occupiers of the proposed dwellings to reduce tree cover at some point in the future. I note that these concerns were couched in somewhat equivocal terms, and the Council accepts that the proposal could “subject to arboricultural supervision” be constructed while protecting all those trees which it is intended would be retained. The appellants did not address the issue of whether the trees on and around the site should be treated as an NDHA, but given the lack of substantive evidence before me of any hypothetical future damage to or loss of trees, I do not find harm in this respect. However, this lack of harm does not outweigh the other harm to the CTCA which I have found.
28. In the Framework’s terms, the harm to the significance of the CTCA as a designated heritage asset would be less than substantial. There would be some social and economic benefits associated with providing additional housing supply and choice in the form of two new energy-efficient dwellings. The construction phase would potentially provide support for local employers and suppliers, and beyond that businesses in the town would benefit from having additional prospective customers close by. I note also that there were several comments from interested parties both at application and appeal stage extolling these virtues of the scheme. The proposals to carry out some improvement work to trees on the highway land around the appeal site and to provide an “interpretation board” celebrating the qualities of the Conservation Area would also represent modest, if short-term, public benefits. I consider that these are all positive factors which, given the small scale of the proposal, carry moderate weight in its favour.
29. The appellants also suggest that the provision of “biodiversity enhancements” and the removal of the prefabricated garage at the side of Sunnyhurst would also be public benefits. However, in my view the proposed biodiversity enhancements – bat boxes, a sparrow terrace, the provision of hedgehog houses, additional planting of native species, and the provision of two very small green roofs – would go no further than what would be necessary to offset the impact of the development and so would not represent a public benefit.
30. While the existing garage at the side of Sunnyhurst is not an especially attractive structure, neither is it especially harmful; it is small, discreet and in a secluded setting, and its impact on the character and appearance of the CTCA is, in my view, negligible. Its removal, on the other hand, would open up the view towards the rear of properties on Mobberley Road and, in so doing, would make the interruption or reduction of their consistent wooded backdrop arising from the development more readily apparent from the street. Having found that this would be harmful to the character and appearance of the CTCA, as I have described in paragraph 25 above, in the circumstances I do not consider that this would be a public benefit.
31. The proposed development would not preserve or enhance the character or appearance of the CTCA, and while I have taken into account the public benefits of the scheme which have been suggested they would not outweigh the harm to the heritage asset, to which I must attribute great weight.

32. I therefore conclude that the proposal conflicts with Policy SE7 of the CELPS, and with Policies HE2 and HE3 of the KNP. Together these policies seek to protect and enhance the character and appearance of heritage assets, including Conservation Areas. For the same reasons, I conclude that the proposal conflicts with the provisions of the Framework in respect of conserving and enhancing the historic environment, in particular those requirements set out in paragraphs 199, 200, and 202.

Other Matters

33. The appellants, as well as a considerable number of interested parties responding either to the original planning application or to the appeal notification, have gone to some lengths to describe the appeal site as being a private garden rather than any other sort of open space. I note that at the time this appeal was submitted, another appeal at Sunnyhurst was being determined relating to a certificate of lawful development for a detached outbuilding³. In that case the Inspector's analysis turned on whether or not the land would fall within the curtilage of the dwellinghouse, and that decision does not directly assist me in determining this appeal one way or the other.
34. Both main parties commented on of Policy D1 of the KNP, and its requirement that development proposals should demonstrate compliance with the Knutsford Design Guide ("the KDG") – although the KDG does not itself form part of the development plan. The KDG supports development in gardens only where exceptional circumstances have been demonstrated and where eight criteria are complied with, although Policy D1 of the KNP also provides for "exceptions" where non-compliance with the KDG can be justified. To this end the appellants have also drawn my attention to an appeal decision relating to site on Toft Road a short distance from this appeal site. In that case the Inspector granted planning permission for a new detached dwelling on garden land at the side of an existing dwelling, having found that there would be no significant planning harms arising from the scheme and that the KDG's "exceptional circumstances" therefore applied⁴
35. However, the site in the Toft Road appeal was not a designated open space and, for the reasons I have already set out, I have found other harms would arise in this case. In my view, this appeal does not therefore turn on whether or not the appeal site is a private garden, or for how long it may have been used as such, and it has not therefore been necessary for me to consider the provisions of either Policy D1 of the KNP or the advice in the KDG in detail. I have no reason to disagree with the conclusions of my colleague in the Toft Road appeal, but the circumstances are not the same in this case, and that decision does not lend weight in support of the proposal before me.
36. Various further matters were raised by interested parties objecting to the proposal, including where they disagreed with the Council's view that no significant harm would arise in respect of issues such as ecology, noise, traffic and highway access, and effects on neighbours' living conditions. However, as I am dismissing the appeal for other substantive reasons it has not been necessary for me to consider these points in detail, as they could not have altered the outcome of the appeal.

³ Ref: APP/R0660/X/21/3269604

⁴ Ref: APP/R0660/W/20/3252463

37. A planning obligation, in the form of a UU, was submitted by the appellants during the course of the appeal. It is intended to provide for the tree works outside the appeal site and the interpretation board, both of which I have described in paragraph 28 above. I have some concerns about the document itself, its execution, and whether it could be relied on by the Council – for example it is not properly dated, and does not include the site plan, tree report or public benefit statement referred to within the document. However, as I am dismissing the appeal for other reasons I have not pursued this matter with the main parties, as it would not have altered the outcome of the appeal.

Conclusion

38. The scheme conflicts with the development plan read as a whole. None of the material considerations identified, including the Framework, outweigh this conflict or justify a decision other than in accordance with the development plan. The appeal is therefore dismissed.

M Cryan

Inspector