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# Appeal Decision

Site visit made on 5 April 2022

**by David Jones BSc (Hons) MPlan MRTPI**

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

**Decision date: 26 May 2022**

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**Appeal Ref: APP/R0660/W/21/3288083**

**Land adjacent 35 Chancery Lane, Alsager ST7 2HE**

- 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 Richard Lee against the decision of Cheshire East Council.
  - The application Ref 21/0698C, dated 9 February 2021, was refused by notice dated 2 June 2021.
  - The development proposed is the erection of 1no detached house and ancillary works.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The Council has referred to the emerging Cheshire East Local Plan Revised Publication Draft Site Allocations and Development Plan Policies Document (SADPD), and in particular draft Policy ENV6. The examination hearings have concluded, and the Inspector has issued his post hearing comments which include reference to Policy ENV6.
3. I have little information however to suggest when the plan is likely to be adopted, however in any event Policy ENV6 does not significantly change the approach from the relevant policies in the adopted plan which seek to protect trees and ensure that developments do not threaten their life expectancy. The presence of the emerging plan has therefore not had any significant bearing on my decision.

## Main Issues

4. The main issues are:
  - whether the proposal would provide suitable living conditions for future occupants with particular reference to light and outdoor amenity space; and
  - the effect of the development on the character and appearance of the area, with particular regard to protected trees.

## Reasons

5. The appeal site comprises a sectioned off lawned area of land to the south of 35 Chancery Lane. It is understood that the site originally formed part of the garden of No 35. The site is bounded to the south by low hedging and two large mature trees, with a further mature tree located on its western boundary. These mature trees, which consist of a lime and two beeches, are protected by

a Tree Preservation Order and contribute positively to the visual amenity and leafy character of the residential area.

6. Planning permission has previously been granted on the site for the erection of a detached bungalow (Ref 12/4170C). An application to vary this permission to provide a new vehicular access point was later approved (Ref 13/2264C). Neither of these permissions were implemented and have therefore now expired. Several subsequent planning applications proposing the erection of a detached dwelling have been refused, with one such application (Ref 17/1041C) also being dismissed at appeal (APP/R0660/W/17/3179798). It is evident from the information available to me however that the previous permissions consisted of a larger overall plot size than the subsequent refusals and the appeal proposal.

### *Living Conditions*

7. The three protected trees which occupy much of the western and southern boundaries of the site are, by virtue of their size, imposing features when viewed both within the site and from the wider street scene. Although their canopies cover less than 40% of the total site area, the trees nevertheless remain a dominant presence.
8. The proposed detached dwelling would be constructed in the extreme north-eastern corner of the site and would be located further away from the protected trees than the dwelling proposed under Ref 17/1041C which was dismissed by the previous Inspector. The proposed dwelling would also have a footprint approximately 30% less than the previously dismissed scheme.
9. However, whilst these factors slightly improve the amount of outdoor amenity space available, this space would still be located to the south and west of the proposed dwelling. Consequently, the outdoor amenity space would be located immediately adjacent to the protected trees, with a significant proportion of it under the canopy spread.
10. Although works approved under Ref 21/3144T have recently been undertaken to the two protected trees along the site's southern boundary, it is clear to me that as a consequence of the plot's orientation, size and layout, and the size of the protected trees, the outdoor amenity space would suffer from a significant amount of overshadowing to the extent that light levels would be poor. This view is further supported by the appellant's Arboricultural Impact Assessment (AIA) and supporting statements from the Arboriculturist which accepts that the garden area would be influenced by shading for large parts of the day.
11. As a result, the presence of the trees would be acutely experienced by future occupants. This small group of large mature protected trees would be dominating and imposing, and their presence would overwhelm the adjacent outdoor amenity space. The significant amount of overshadowing and resulting reduced light levels would, in my view, significantly limit the functionality of this space. This would be to the detriment of future occupants and would limit the enjoyment of the dwelling and private outdoor amenity space to an unacceptable degree.
12. The AIA and supporting statements also acknowledge that, whilst part of the proposed dwelling would receive acceptable levels of light throughout the year, the dwelling would remain shaded during key parts of the day. Despite the

proposed dwelling incorporating large glazed areas to its south and west elevations in order to maximise light levels into the property, I am not satisfied that all habitable rooms would receive acceptable levels of light and that the property would not be subject to a significant amount of overshadowing.

13. Seeking to overcome the amount of overshadowing and subsequent lack of light on the site, the AIA submitted as part of the appeal proposal includes a range of works which are recommended to be carried out to the protected trees. These works include crown lifting the beech tree and lime tree on the southern boundary to a height of 6 metres. It is also proposed to crown lift the beech tree on the western boundary to a height of 7.5 metres, which would represent a ground clearance of almost half its overall height.
14. Whilst the carrying out of these proposed works would increase the amount of light which would be able to penetrate into the site, given the trees height of 16 metres, the density of the canopies and their proximity to the site, I do not consider that the works would significantly reduce the amount of overshadowing on the site. Furthermore, given the scale of the proposed tree works I also consider that they would have a material effect on the trees shape and appearance, harming their appearance and contribution to the visual amenity and character of the area.
15. The appellant has also referred to a tree works consent (Ref 20/5650T) which has been approved in relation to the protected tree at 18 Beechwood Drive, located adjacent to the western boundary and which overhangs the appeal site. Whilst the carrying out of these works, which include crown lift to 5 metres and a crown thin (10% maximum), would result in a modest increase in light to the appeal site, for the reasons given above I do not consider that these works would overcome the concerns raised.
16. Therefore, I conclude that the proposal would fail to provide satisfactory living conditions for future occupants with particular reference to light and outdoor amenity space. As such it would conflict with Policies SD1 and SD2 of the Cheshire East Local Plan Strategy (2017) (LP). These policies, amongst other matters, seek to ensure that developments provide open space appropriate to the development with particular attention being given to landscape features, whilst also supporting the health and well-being of residents.

#### *Protected Trees*

17. The Tree Quality Assessment and Tree Schedule contained within the AIA classifies T1 and T3 (as identified in the AIA) as being of high quality with a life expectancy in excess of 40 years, whilst T2 is classed as moderate quality with a life expectancy in excess of 20 years. The AIA and my own observations on site make it clear that the trees make a significant positive contribution to the visual amenity and character of the area, and that they remain capable of doing so for a number of years.
18. British Standards BS5837:2012 places an importance on buildings and structures being positioned so that they will not dominate the property or its outdoor space in such a way that would result in pressure to prune or remove trees in the future. Whilst it is acknowledged that the proposed dwelling itself is located further away from the protected trees than the dwelling previously approved (Ref 12/4170C and Ref 13/2264C), as identified above the property would still be subject to overshadowing. In particular, the trees would

dominate the outdoor amenity space resulting in a significant amount of overshadowing and reduction of light.

19. Therefore, given the effect of the trees on the proposed dwelling, and in particular on its outdoor amenity space, I consider that there would be continued pressure from future occupants to carry out works to the trees which would likely harm their appearance and well-being or possibly even lead to their felling or loss. The scale of the recommended tree works within the AIA itself further serves as an example as to the type of works likely to be requested going forward. I am therefore concerned that future occupants may wish to undertake significant or unsustainable works to the trees in order to improve their living conditions.
20. I note the appellants view that the appeal site was previously garden land associated with No 35, and therefore concerns regarding the use of the outdoor amenity space and the likelihood of occupants seeking consent to prune or carry out other works to the trees are unjustified. However, when the appeal site was part of the garden land of No 35 it formed part of a larger more substantial plot which afforded significantly more amenity space to occupants than the appeal proposal. As a result, the protected trees would not have had such an impact on the larger plot and there would have been far less pressure for occupants to seek significant and unsustainable works to the protected trees to utilise their outdoor amenity space.
21. The appellant has also referred to nearby properties which have similar sized mature trees in close proximity to their host dwelling, and which have co-existed for some time. I observed during my site visit that this was indeed the case, including along Beechwood Drive. However, in the vast majority of cases the trees were located in the front garden of properties and had no impact on their private amenity space which was predominately located to the rear. I do not consider therefore that these are comparable to the appeal site and proposal.
22. Consequently, I conclude that the proposal would likely give rise to future requests for tree works which would have a harmful effect on the protected trees and therefore the character and appearance of the area. The proposed development would therefore conflict with Policy SE5 of the LP, Policy NBE4 of the Alsager Neighbourhood Plan, and guidance contained within Supplementary Guidance Note 2 Provision of Open Space in new Residential Developments, and Supplementary Planning Document 14: Trees and Development (Congleton Borough Council Local Plan First Review). These policies, amongst other matters, state that development proposals which are likely to result in the loss of or threat to the continued life expectancy of trees that make a significant contribution to amenity will not normally be permitted.

## **Conclusion**

23. The proposal would conflict with the development plan, when taken as a whole, and there are no material considerations, including the approach of the Framework, which would indicate a decision other than in accordance with it. The appeal should therefore be dismissed.

*David Jones*

INSPECTOR