



Appeal Decision

Site visit made on 15 May 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2023

Appeal Ref: APP/R0660/W/22/3312281

Land adjacent to 2 Brereton Road (Known as 24 Beech Avenue), Rode Heath, STOKE-ON-TRENT ST7 3SL

- 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 Michael Bostock against the decision of Cheshire East Council.
 - The application Ref 21/5581C, dated 29 October 2021, was refused by notice dated 10 June 2022.
 - The development proposed is the erection of a single two-storey dwelling, including new vehicular access crossing onto public highway, associated private driveway and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single two-storey dwelling, including new vehicular access crossing onto public highway, associated private driveway and landscaping at Land adjacent to 2 Brereton Road (Known as 24 Beech Avenue), STOKE-ON-TRENT ST7 3SL in accordance with the terms of the application, Ref 21/5581C, dated 29 October 2021, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. The Cheshire East Local Plan Site Allocations and Development Plan Policies Document (SADPD) was adopted in December 2022. The Council has indicated that several policies of the SADPD have replaced the Congleton Borough Local Plan and the associated planning guidance the latter of which being referred to in the Council's RfR. Of particular note, policy ENV6, of the SADPD, requires development proposals to retain and protect trees, woodlands and hedgerows which appears to be relevant to the matters in dispute and as such I shall take this policy into account.
3. Amended plans were submitted to the Council during the application consideration process, reference 6055-002revE. This reduced the extent of hardstanding around the driveway and the footprint of the dwelling. Furthermore, an additional plan 'levels and small borehole plan' reference BR-PL01, was submitted in support of the revised Arboricultural Statement (3 Dec 2021). These plans were considered by the Council's tree officer, within its statement of case, and as such these further technical details have been considered by an appropriate expert within the Council. Consequently, I am satisfied that no party would be prejudiced by my consideration of these additional details.

4. The appeal site is subject to a Tree Preservation Order (TPO). The Appellant's Arboricultural Statement¹ (AS) has assessed the value of these trees and provides recommendations as to the impact of the proposal upon the longevity of these trees. Purely for convenience I shall use the naming conventions of individual trees as described on Tree Survey Plan ref CW/10131-P-TS-1. The Council does not object to the removal of trees T3 (ash) and T5 (fir) and a section of hedgerow, due to their low amenity value, and I have therefore not considered their removal as a point of dispute between main parties.

Main Issue

5. The main issue is whether the protected trees would be adversely affected by the proposal and, if so, the effect of this on the character and appearance of the area.

Reasons

6. The appeal site is a narrow parcel of garden land. It is alongside Brereton Road, which follows the outer edge of the settlement, and is adjacent to dwellings within Ash Grove. The site is visible from the adjacent highway albeit enclosed by a boundary hedge and a line of mature trees along its perimeter. From Brereton Road, the site is viewed within a streetscape of tall trees and hedges. There are gaps in the hedgerow opposite the site that provide views of the surrounding open countryside. Consequently, the site and trees within it make a positive contribution to the verdant rural character of the surrounding area.
7. Trees T2, T4 and T6 are 'category A' oak trees of amenity high value. The AS finds that the proposed dwelling would be within the root protection areas (RPAs) of trees T2 and T4. These RPAs would be subject to a foundation and hard surface cover of 11% and 19% respectively. This encroachment would therefore comply with good practice which seeks development to prevent RPA reductions which exceed 20%. Furthermore, the proposed tree root protection methodology includes a specially engineered foundation system and tree root protection system that would also minimize the overall effect of development on the affected root systems.
8. Tree T6 would have new hard surfacing within 31% of its RPA, which exceeds the recommended tolerance of BS5837. However, the local soil is a sandy material which allows for free draining of water and where roots will develop deep and diffuse rooting. Also, trial pit excavations in the location of the proposed driveway have revealed limited root areas, consisting only of fibrous and minor roots and one 40mm diameter root that would be retained. These factors indicate that the roots of tree T6 would be unlikely to be materially affected by the proposed driveway limiting the overall effect of the development on this tree. Furthermore, the RPA of tree T6 would be subject to a root protection system that would laterally displace any surface load to prevent the compaction of roots and surrounding soil.
9. Therefore, the design measures within the AS describe a range of construction techniques and working methodologies that broadly accord with best practice methods as set out in BS5837. As a result, the protected trees would be

¹ Arboricultural Statement, by Glyn Thomas, dated November 2022

unlikely to be affected during construction subject to the outlined tree protection measures.

10. In terms of post construction impacts, the Planning Practice Guidance (PPG) provides helpful guidance with respect to applications for works to a protected tree. It advises that authorities must consider a range of issues including the amenity value of the tree, whether the proposed work is justified, whether loss of damage would occur if consent was refused and any other material considerations. The advice is clearly focussed on the amenity value of the tree rather than the aspirations of nearby occupiers. Therefore, whilst future occupiers may have concerns with respect to the proximity of the trees this would be unlikely to provide a compelling argument to undertake tree works unless supported by technical evidence. Accordingly, the Council would be entitled to refuse works to a TPO tree where it finds such works to be unjustified.
11. Trees T2 and T4 would be close to the front and rear windowed elevations of the proposed dwelling. The nearest windows would serve bedrooms 1 and 3. These bedrooms have windowed elevations in multiple aspects, affording access to light from several directions. This would prevent future occupiers being reliant on light or outlook from only one vantage from these rooms. Furthermore, the Appellant's Daylight and Sunlight assessment² considers the effect of trees T2 and T4 on windows and the gardens of the proposed dwelling. The assessment finds that all habitable rooms would exceed the average daylight factors, the Annual Probability Sunlight Hours and Winter Probably Sunlight Hour requirements of the BRE Guidance. It also concludes that the rear garden would receive more than 50% direct sunlight on March 21 in accordance with the guidance, these conclusions appear to be reasonable.
12. The adjacent trees have relatively high canopies. This would result in an outlook for future occupiers that would be comparatively open. The neighbouring gardens to one side of the site, and the countryside on the other, would further assist in providing a horizontal outlook that would limit any sense of enclosure. Moreover, the protected trees include some low-lying branches which are proposed to be pruned in accordance with the management programme of the Arboricultural Statement, creating a vertical ground clearance of around 4.5 metres. This would enhance access to daylight to the gardens and windows of the proposed dwelling.
13. Also, the rear and front gardens would include areas that would be outside of the canopy of the trees which would be of relatively generous size. As a result, whilst the dwelling would be close to trees T2 and T4, the proposed layout and design of the proposal would ensure that it would not be materially overshadowed by the trees.
14. Due to the reasonable separation distance of trees T2 and T4, from the proposed dwelling, it is unlikely that the Council would have difficulty in refusing an application for tree works on the grounds of proximity or inconvenience. Moreover, it would be unlikely that any technical evidence would be capable of demonstrating that the proximity of the trees to the dwelling would cause structural issues or demonstrable overshadowing. Consequently, the proposal would be unlikely to pose a clear or direct threat to the longevity of the trees.

² Daylight and Sunlight Assessment, by Daylight and Sunlight Solutions, dated October 2021

15. Accordingly, the evidence does not demonstrate that the proposal would affect the protected trees through their removal or by excessive pruning authorised by any future TPO applications. Consequently, the proposal would accord with policies SE5, SD1 and SD2 of the Cheshire East Local Plan Strategy (CELPS) and SADPD Policy ENV6. These seek, among other matters, for development to retain and protect trees and to not permit development that would result in the loss or threaten the continued health of a tree that provides a significant contribution to the amenity of the surrounding area.

Other Matters

16. The appeal site is within the settlement boundary, within a village classed as 'other settlement' for policy purposes. Policy PG10 of the SADPD supports development in such areas that are at a scale commensurate with the function and character of the settlement. The site is within a sustainable location providing good access to a range of goods and services. Its locational suitability weighs in favour of the proposal.
17. I acknowledge a claim of encroachment of part of the site onto adjacent land, through its relationship with the adjacent hawthorn hedge. However, there is little evidence before me to demonstrate that would arise, or, that it could not be resolved under legislation dealing with private legal rights regarding land ownership. Furthermore, in affecting only a small strip of land its exclusion from the site would have no material bearing on the footprint of the proposed dwelling or the size of the associated garden land.
18. The site is an area of unkempt garden enclosed by trees and a hedgerow. The ground itself is largely overgrown grass land with limited ecological interest. The Appellant's bat survey identified the ash tree, proposed for removal, to have scope to include a habitat. However, this was found to not accommodate roosting bats. The Council's ecologist raised no objection to the proposal, and I see no compelling reason in evidence to come to a different conclusion. The proposal would therefore result in a minimal impact on local wildlife.
19. The proposed dwelling would include a new access onto the A50, crossing a footway beyond the site. Following the proposed hedgerow removal, clear views north and south would ensure that suitable visibility splays would be provided. This would enable motorists to enter and leave the site in a safe manner, a matter undisputed by the Highway Authority. Furthermore, the swept path analysis demonstrates that a vehicle would be able to turn within the site to exit in a forward gear. Accordingly, the scheme would not result in harm to highway safety.
20. The proposed dwelling would be two-storey with a pitched roof and brick elevations forming a dwelling of traditional design. The windows would include decorative soldier course arches and dormer features above the first-floor windows. Therefore, whilst the rear elevation facing Ash Gove would be relatively plain, the overall design features of the building would ensure that it would integrate well with its surroundings and make a positive contribution to the area.
21. The appeal site is adjacent to the residential plots of 14 and 23 Ash Grove, with the proposed dwelling being to the east of these properties. No windows would directly overlook the windows, or the rear or side gardens, of the neighbouring properties. As a result, only oblique views could be obtained from the rear and

front facing first floor windows. This would result in a negligible impact on the privacy of neighbouring occupiers. Furthermore, being to the east of these properties, the proposal could affect morning sunlight to the frontage of No's 14 and 23. However, noting local tree cover and the separation distance between the proposed dwelling and neighbouring properties, any loss of sunlight or daylight would be negligible.

Conditions

22. I have considered the use of conditions in line with the guidance set out in the PPG. Conditions are necessary with respect to a timeframe and to list approved plans in accordance with the PPG and for certainty [1 and 2].
23. It is necessary for details relating to tree protection measures, levels and a sustainable drainage strategy to be submitted prior to the commencement of development. It is also necessary for a condition to require the details of a no dig construction specification for the defined hardstanding areas within the Tree Protection Plan (TPP). Furthermore, details are required for the specification and method statement of a no dig foundation design within the areas identified within the TPP. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission.
24. The tree related conditions are necessary in the interests of the protection of the TPO trees to maintain the character and appearance of the area. The drainage condition is required prior to construction commencing because drainage works are proposed within the footprint of the building and relate to the initial setting out of the site. These measures ensure that the construction process would have a limited impact on the protected trees [6, 7 and 11].
25. Drainage details have been provided as part of the submission. These show a soakaway under the dwelling, to manage surface water, and a foul water connection to the existing system on Beech Avenue. United Utilities, advising on drainage matters, raised no objection to the proposal³ subject to the imposition of a condition to secure a sustainable drainage scheme that would expand on the submitted details. Therefore, such a condition would be necessary to ensure that the proposal would successfully integrate measures for sustainable water management and flood risk in accordance with CELPS Policy SE13 [9].
26. A condition is necessary for details of materials to ensure that these would complement local build form in the interests of the character and appearance of the area [3]. It would also be necessary to require the rooflights, serving the ensuite and bathroom, be obscurely glazed to prevent overlooking to protect the living conditions of neighbouring occupiers [4]. A condition requiring the scheme to be built in accordance with the TPP would be necessary to ensure that the trees would be protected during construction [5].
27. A landscaping scheme would also be necessary to secure replacement hedgerow planting [8] in the interests of the character and appearance of the area. A condition is also required to ensure that the access and adjacent hardstanding is constructed prior to the occupation of the dwelling to ensure that the development would function well [10].

³ United Utilities, consultation response, dated 19 January 2022

28. The Council's Environmental Health Team recommended the imposition of a condition to require an electric car charging point. However, part S of the amended 2010 Building Regulations now require these to be installed for all new dwellings. This instrument came into effect 15 June 2022 and included a transition provision that excluded development that had started before 15 June 2023. As such, this condition would duplicate other primary legislation and would therefore not be required.

Conclusion

29. The National Planning Policy Framework seeks to significantly boost the supply of housing. The proposed dwelling would be located in a suitable location within a village. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission is granted subject to the attached conditions.

Ben Plenty

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: 6005-50 Location Plan, 6055-002 rev E - Site Plan, Proposed Plans & Elevations, 6005-100 rev B – Landscape plan, 6005-200 rev A – external lighting plan, 6005-300 Fresh Water connection plan, 6005-500 Levels Plan, JG01 swept path analysis, CW/10131-P-TS-1 Tree Survey Plan, Visibility Splay (North), and SSL:20175A:200:1:1 Rev B Topographical Survey with visibility splay.
- 3) Before any above ground works commence, details of the materials to be used in the construction of the external surfaces of the development and details of all hard surfacing shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The dwelling hereby permitted shall not be occupied until the first-floor ensuite and bathroom rooflights have been fitted with obscured glazing of Pilkington level 3 (or equivalent) or higher, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the Local Planning Authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.

- 5) No development or other operations shall take place except in complete accordance with the tree protection and special construction measures identified in the Arboricultural Statement by Cheshire Woodlands (CW/10131-AS-2) dated 17th November 2022 and Tree Protection Plan and Method Statement (CW.10131-P-TP-3) dated 11th November 2022, with measures to be implemented under Arboricultural supervision in accordance with BS 5837:2012 Trees in relation to design, demolition and construction.
- 6) Prior to the commencement of development, details of an engineer designed no dig hard surface construction specification for any area of temporary ground protection shown in green diagonal hatching, any area of permanent hard surfacing shown in blue cross hatching, and any area of hard landscaping shown as orange plus hatching within the root protection area of retained trees as indicated on the Tree Protection Plan (CW.10131-P-TP-3) shall be submitted to and approved in writing by the Local Planning Authority. These details shall also include the proposed details of the materials for the final wearing surface. The development shall be implemented in accordance with the approved details.
- 7) Prior to the commencement of development, a specification and method statement for the Engineer designed no dig dwelling foundation in the area identified by red dash hatching on Tree Protection Plan (CW.10131-P-TP-3) including existing and proposed levels shall be submitted to and approved in writing by the Local Planning Authority. The approved dwelling shall then be constructed in accordance with the approved details.
- 8) Before above groundworks commence, details of a landscaping scheme shall be submitted to and approved by the Local Planning Authority detailing measures to incorporating the planting of native species of hedgerow, shrubs, herbaceous plants and areas to be grassed. The landscaping shall be carried out in the first planting season after commencement of the development unless agreed otherwise in writing by the Local Planning Authority and shall be maintained for a period of 5 years. Such maintenance shall include the replacement of any trees and shrubs that die.
- 9) Prior to the commencement development, surface and foul water drainage details shall be submitted for the approval in writing by the Local Planning Authority. The agreed drainage details shall be implemented in accordance with the approved scheme.
- 10) No part of the development hereby approved shall be first occupied until the proposed vehicular access, parking and manoeuvring area have been constructed in accordance with the approved plans. Thereafter, the access shall be kept clear of any obstruction and permanently maintained to the satisfaction of the Local Planning Authority.
- 11) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved levels.

End of conditions