



Appeal Decision

Site visit made on 7 June 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2023

Appeal Ref: APP/A0665/W/22/3307607

Land adj Greenwich House, 5 Sealand Road, Chester, Cheshire CH1 4LD

- 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 David Robson against the decision of Cheshire West and Chester Council.
 - The application Ref 20/04634/FUL, dated 4 December 2020, was refused by notice dated 7 July 2022.
 - The development proposed is described on the application form as the 'Development of 3 no. 2 bedroom houses with associated amenity space, parking and landscaping'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr David Robson, against Cheshire West and Chester Council. This application is the subject of a separate decision.

Preliminary Matter

3. A unilateral undertaking under Section 106 of the Town and Country Planning Act 1990, relating to the planting of replacement trees removed from the appeal site, has been submitted by the appellant in support of their appeal. The Council have been made aware of this submission and have had an opportunity to comment on it. Consequently, I am satisfied they are not disadvantaged as a result.

Main Issues

4. The main issues are:
 - The effect of the development on flood risk;
 - The provision of replacement planting, with particular regard to its delivery through a unilateral undertaking; and
 - The effect of the development on the living conditions of the occupiers of Flat 2, Greenwich House, Sealand Road, with particular regard to outlook.

Reasons

Flood risk

5. Policy ENV 1 of the Chester West & Chester Council Local Plan, Part One: Strategic Policies (the Local Plan Part 1) seeks to reduce flood risk and avoid inappropriate development in areas at risk of flooding by directing development away from areas at high risk. This policy is supported by the National Planning Policy Framework (the Framework) which states at paragraph 162 that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.
6. The appeal site is in flood zone 3a as defined by the Environment Agency's Flood Map. This is not disputed by the appellant. Furthermore, it is accepted by both main parties that a sequential approach should be adopted to site selection. However, they disagree over whether the sequential test should be limited to the appeal site, or a wider area.
7. National guidance does not define the area of search that should be applied. Instead, it suggests that the area should be defined by local circumstances and the type of development proposed. In this instance, the Council's starting point for the area of search, as set out in policy DM40 of the Chester West & Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (the Local Plan Part 2), is the whole of the Borough.
8. The appellant submitted a sequential test, a supplemental sequential test and an addendum to the supplemental sequential test. Whereas the original sequential test was concerned with the appeal site alone, the subsequent documents considered allocated sites, sites with planning permission, windfall sites, sites in neighbourhood plans and land for sale. They concluded that no potential alternative sites were available for the proposal or one similar to it.
9. Whilst acknowledging that the appellant has extended the area of search, I am unable to conclude with any certainty that the area chosen represents one which has been defined by local circumstances or equates to the whole of the Borough. Consequently, I am unable to accept that an exhaustive search of all alternatives has been provided and a full assessment carried out as required by the adopted local plan.
10. Even if I were to accept that the sequential test undertaken by the appellant covered an area defined by local circumstances there is no compelling need for the provision of housing on land at significant risk from flooding, given the current 10 year supply of deliverable land supply, as identified in the latest Housing Land Monitor Summary.
11. I have taken into account the appellant's assertion that there is a need for the development in order to protect Greenwich House, a Grade II Listed building, and its occupants, from flooding. In addition, I have given consideration to his view that the scheme would restore a derelict and despoiled site, improve the setting of the listed building, improve the gateway to the city centre.
12. I accept that the proposed development would provide a means whereby Greenwich House and its occupants could be protected from flooding in the future. Furthermore, I agree that the scheme would deliver additional benefits with regards to the appearance of the site and the setting of the listed building.

However, I disagree with the appellant that the development of the appeal site for residential use is the only option that would achieve that goal. In particular no evidence has been submitted to support the view that residential development of the site is the only financially viable proposal that would secure the desired protection.

13. Accordingly, on this main issue, I find that the proposed development would result in an unacceptable risk of flooding contrary to Policy ENV 1 of the Local Plan Part 1, Policy DM 40 of the Local Plan Part 2 and paragraphs 159 - 169 of the Framework. These policies require, amongst other matters, applying the sequential test on a borough wide basis, taking into account future climate change, for developments in Flood Zones 2 & 3.

Replacement planting

14. The submitted Unilateral Undertaking aims to provide eight trees, in lieu of trees removed from the appeal site, on Council land to the south of the appeal site. I consider that the measures in the Undertaking are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the Framework. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the works. For example, it is not signed by all of the landowners, there are issues relating to the timing of the planting, and there is no agreement between the main parties regarding the cost per tree that would be paid in the event that the owner/developer failed to carry out the planting.
15. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. Nonetheless, as it stands, and for the reason given in the previous paragraph, I am not satisfied that the submitted Unilateral Undertaking would make adequate provision for the replacement planting when assessed against Policy DM 45 of the Local Plan Part 2. This policy seeks to secure, amongst other matters, the provision of replacement trees within the site, or where this can be demonstrated to not be practical, contribute to off-site provision, prioritised within the locality of the development

Living conditions

16. Flat 2 (formerly flat 1) is a ground floor apartment within Greenwich House. The bedroom to the flat has a small window located near to the rear corner of Greenwich House which currently overlooks an unkempt area of open ground. The lounge to flat 2 has windows in the front and gable walls with open aspects across an informal parking area and towards Sealand Road.
17. Although the proposed building would be within approximately 8 metres of Greenwich House the view from the bedroom window of flat 2 would be primarily over the rear gardens of the proposed dwellings. As a result, the outlook from this window would not be significantly harmed by the proposed development. Furthermore, the view from the lounge window of the flat, located in the gable wall, would be across the proposed surfaced and landscaped car park. This view would be visually improved when compared with the situation that currently exists. Views from the lounge through the window in the front elevation would remain unaffected by the development.

Consequently, the outlook from flat 2 would not be adversely affected to a significant degree by the scheme.

18. Accordingly, on this main issue, I conclude that the proposed development would not be contrary to Policy SOC 5 of the Local Plan Part 1, or Policy DM 2 of the Local Plan Part 2. These policies, amongst other matters, support developments that do not result in a significant adverse impact upon the residential amenity of the occupiers of existing properties or future occupiers.

Other Matter

19. The site is also located within the setting of Greenwich House, a Grade II Listed Building. The Council are satisfied that the proposal would preserve the setting of the Listed Building and I have no reason to disagree.

Conclusion

20. I have found no conflict with the development plan with regards to the impact of the proposal on the amenity of the neighbouring residents. However, this is a neutral matter and does not outweigh the adverse effect the proposed development would have on flood risk. I have also found there is no certainty that replacement tree planting could be provided.
21. There are no other relevant material considerations worthy of sufficient weight that indicate the application should be determined other than in accordance with the development plan as a whole. For the reasons given above, I therefore conclude that the appeal should be dismissed.

J Gunn

INSPECTOR