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# Appeal Decision

Site visit made on 6 March 2024

**by A.Graham BA(hons) MAued IHBC**

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

**Decision date: 07 May 2024**

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**Appeal Ref: APP/R0660/D/23/3331682**

**Foxdale, Vicarage Lane, Bunbury, Tarporley CW6 9PE**

- 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 Mrs S Harris against the decision of Cheshire East Council.
  - The application Ref: 23/2511N dated 5 July 2023 was refused by notice dated 27 September 2023.
  - The application is to demolish modern extensions and erect two storey extension with external and internal alterations, landscaping and a new access.
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## Decision

1. The appeal is allowed and planning permission is approved for the demolition of modern extensions and erection of two storey extension with external and internal alterations, landscaping and a new access in accordance with application ref: 23/2511N dated 5 July 2023 and subject to the conditions as set out in the Schedule below.

## Procedural Matter

2. Since the determination of this application a revised National Planning Policy Framework (The Framework) was published in December 2023. I have therefore determined this appeal in accordance with the revised provisions within the Framework.

## Main Issues

3. The main issue is the effect of the proposal upon the character and appearance of the area with particular reference to the impact of the proposal upon the Non Designated Heritage Asset of Foxdale and the Lower Bunbury Conservation Area.

## Reasons

4. The Appeal property is a substantial building of approximately two different phases which appear to have been influenced by the domestic Gothic Revival and Neo Classical architecture of the mid to late 19<sup>th</sup> century. The house sits within a generous plot to the edge of the village of Bunbury and is within the Lower Bunbury Conservation Area. The building is considered a positive building within the area and as such is recognised as a Non Designated Heritage Asset.

5. The house exhibits a notable transition in its architectural style from that of something akin to a modest Gentleman's villa of around the mid 19<sup>th</sup> century to that of a more polite building determined by a later extended range to the rear. Asymmetry is noticeable in various places, not least to the front elevation where a two bay wing terminates in a slightly protruding gable end complete with ornate bargeboard eaves and a finial to the ridge. This asymmetry is more significant to the front where it helps to epitomise the villa style, however it continues to the rear where the later, more classical, extension of around 1860 includes an off set two storey bow window feature facing the rear garden area.
6. Largely because of this sizeable rear extension, the property appears intrinsically related to the rear gardens that were designed, or at least very heavily influenced, by the Victorian Landscape Designer Edward Kemp. The Cheshire Gardens Trust consider the site to be 'a rare example of a little altered Cheshire villa garden'. As such, I consider that the significance of the site is contained within both its architectural, aesthetic, associative and historical importance and that both principal building and garden justify their recognition as non-designated heritage assets.
7. In considering whether to grant planning permission Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving a Listed building or its setting or any features of special architectural or historic interest which it possesses. Similarly, Section 72 of the same Act requires me to show special attention to the desirability of preserving or enhancing the Conservation Area when determining planning applications for development within such an area. The Framework also states that when considering the impact of proposed development on the significance of the heritage asset, 'great weight' should be given to the asset's conservation.
8. These overriding statutory and non-statutory requirements are reflected in Policies MP1, SD1, SD2, SE1 and SE7 of the Cheshire East Local Plan Strategy as well as Policies GEN1, HER1, HER3, HER7 and HOU11 of the Site Allocations and Development Policies Document all of which attempt to reflect the Framework in its attempt to protect the historic environment and enhance good design and placemaking.
9. In this case I have evidence before me from the Appellant's original planning statement that the Grade II Listed building known as 'The Stores' is located directly opposite Foxdale. In actual fact I saw on my site visit that this building lies some distance to the south of the site and as such I do not consider that the proposals herein would have any effect upon the setting or significance of this building due principally to the distance involved and the plethora of other buildings and features between the two.
10. Although sitting within the Lower Bunbury Conservation Area, Foxdale represents something of a departure from the more tight knit vernacular village character that determines much of the overriding appearance of the historic environment here. Nevertheless, I did notice some other large, likely Victorian, villa type houses farther outside the village that appeared contemporary with and of a similar style to Foxdale thereby making this building not wholly unique within the vicinity. As such I consider that the building represents a tangible reminder of the architectural and social evolution of the village.

11. The proposal before me includes an intention to restore and recreate something of the Kemp garden, of which only one sunken area, small steps, hedges and some larger larch type trees appear to remain, even though the general form of the space is still open. Alongside this the proposal would intend to construct a new, northern wing to the house that would significantly alter the asymmetrical appearance of the property as it currently stands.
12. In so doing the proposed extensions would be most noticeable from the north and from the west, rear elevation, where the scheme Architects seek permission to create, or, as they say, 'complete', the rear elevation more in the spirit of a symmetrical and classical range. This would have the effect of ensuring the existing two storey bow feature would sit centrally to both the building and, perhaps crucially, to the Kemp garden.
13. The design of this extension is therefore effectively the main point of contention between the parties. The Council also have concerns with regards the loss of the general asymmetry of the house along with the loss of the existing northern elevation and the parking and access arrangements to the house itself from Vicarage Lane.
14. I recognise that the proposals before me would constitute considerable alteration to this property. This would principally be due to the core desire of this scheme to present a more symmetrical rear elevation onto the Kemp garden. Indeed, it seems to me very strange that the rear elevation includes such a sizeable double height bay feature and yet this does not align directly with the symmetry of the Kemp garden itself, nor does it relate well to the rest of the house or to the classical aesthetic. The theory provided by the Appellant is that the original design was always meant to echo the symmetry of the garden, and I consider this has some merit worthy of consideration.
15. The scheme before me clearly does not, and cannot in this form, abide by one element of the guidance contained within Policy HOU11 of the Cheshire West Local Plan or the Council's Supplementary Planning Document on Household extensions in the manner that they insist that any new extension appear subordinate to the existing dwelling. Although I fully appreciate the Council's approach to residential extensions in the fact that they should be legible from the original house, I consider that the potential benefits of creating a more logical rear (west) elevation to this particular property would outweigh the potential for harm through lack of subservience. Indeed, were such an extension to be subservient in the manner suggested by the Council's policy, it would have the potential to undermine the overriding design aesthetic that the house contains and perhaps demands.
16. As such I consider that the bay is such a dramatic feature that it really does need to be completed as a symmetrical façade onto the Kemp garden. In this regard I consider that such an intervention would not be harmful, but would, rather, represent an enhancement to this site. Moreover, it would meet the majority of the requirements for good design as contained within Policy HOU11. As such, a departure from the requirement for subservience is justified in this case.
17. Although the northern elevation would also be significantly altered through this scheme, I consider that the proposals before me represent the best possible 'pastiche' design that echoes very well the proportions, design features and

details that make the property so attractive in the first place. Nevertheless, I consider that, cumulatively, the loss of the northern elevation, together with the loss of the Kemp dual entranceways, would constitute a certain amount of less than substantial harm that I must give great weight to and as such the public benefits of the proposal would need to be assessed as part of the overall balancing exercise.

### *Planning Balance*

18. Firstly, the Kemp garden would be respected and restored, at least within the red line boundary of the site. I give this benefit substantial weight as it recreates a notable feature that is of great local significance to both the property and to the conservation area. Secondly, I consider that there is considerable merit in extending the rear elevation so as to respond better to the obvious symmetry as shown on the Kemp plans and to complete the classical rear elevation so that it appears balanced.
19. In terms of the loss of the northern elevation of the property, I consider that although the loss of this original façade would be somewhat unfortunate, the proposed solution would echo very well the original design and would also enhance the property both architecturally and aesthetically. Moreover, I note that much of this elevation would already have the potential to be dramatically altered through a recently consented scheme for a single storey extension here<sup>1</sup> that would see much of this northern elevation significantly altered.
20. The loss of the Kemp driveways would be harmful and it is of concern that whereas the rest of the proposal gives significant attention to the Kemp garden, his original entry to the site is paid so little respect. However, when considered as part of the overall balancing exercise the proposed benefits of this scheme would outweigh such harm and the subsequent impact could be mitigated through the Council's suggested conditions.
21. In summary I give great weight to the benefits of this scheme in responding better to the Kemp Garden and producing what is a credible and high quality scheme to evolve the building and the site. As such I find that any harm suffered would be outweighed by the restoration of the garden and the quality of the architecture as proposed herein.
22. Ultimately, I consider that the departure from a small part of Policy HOU11 of the LP and the Council's SPD on household extensions is justified and will result in greater gains for the overall significance of the property and Conservation Area as a result. Similarly, in terms of the loss of the northern elevation of the house, I consider that the proposal would very much reflect the original design intent for this elevation and would not appear to undermine the character or appearance of the house as a whole.
23. Ultimately this proposal would be in general accordance with Policies MP1, SD1, SD2, SE1 and SE7 of the Cheshire East Local Plan Strategy as well as Policies GEN1, HER1, HER3, HER7 and HOU11 of the Site Allocations and Development Policies Document as well as Policies H3 and LC1 of the Bunbury Neighbourhood Plan and would preserve the character and appearance of the Lower Bunbury Conservation Area as a result.

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<sup>1</sup> 23/4214N Application approved for single storey side extension to the north elevation.

### **Conditions**

24. I have added the usual conditions along with those suggested by the Council which mainly relate to conditions relating to landscape and tree management so as to ensure a satisfactory landscape solution for this site that can recognise the public benefits of the restoration of the Kemp garden.

### **Conclusion**

25. For the reasons given above, and taking into account of all other matters raised, I allow the appeal subject to the conditions outlined in the Schedule below.

*A Graham*

INSPECTOR

## **Schedule of Conditions**

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number 6432 SK 0005B Proposed East Elevation, 6432 SK 0004A, Proposed North Elevation, 6432 SK 0007A, Proposed South Elevation, 6432 SK 0006 Proposed West Elevation, 6432 SK 0002, Proposed First Floor Plan, 6432 SK 0001, Proposed Ground Floor Plan and 6432 SK 0003, Proposed Roof Plan all dated May 2023 as well as concept landscape plan scale 1:500 @ A3 showing the proposed restoration of the Kemp Gardens as far as it relates to the proposed red line boundary.
3. The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
4. Prior to first occupation of the extension, a scheme for the landscaping of the site shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include details of hard landscaping, planting plans, written specifications (including cultivation and other operations associated with tree, shrub, hedge or grass establishment), schedules of plants noting species, plant sizes, the proposed numbers and densities and an implementation program.
5. The approved landscaping plan shall be completed in accordance with the following: -
  - a) All hard and soft landscaping works shall be completed in full accordance with the approved scheme, within the first planting season following completion of the development hereby approved, or in accordance with a program agreed with the Local Planning Authority.
  - b) All trees, shrubs and hedge plants supplied shall comply with the requirements of British Standard 3936, Specification for Nursery Stock. All pre-planting site preparation, planting and post-planting maintenance works shall be carried out in accordance with the requirements of British Standard 4428(1989) Code of Practice for General Landscape Operations (excluding hard surfaces).
  - c) All new tree plantings shall be positioned in accordance with the requirements of Table 3 of British Standard BS5837: 2005 Trees in Relation to Construction: Recommendations.

- d) Any trees, shrubs or hedges planted in accordance with this condition which are removed, die, become severely damaged or become seriously diseased within five years of planting shall be replaced within the next planting season by trees, shrubs or hedging plants of similar size and species to those originally required to be planted.
6. The Landscape Plan shall include a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be carried out in accordance with the approved details and permanently retained unless otherwise first approved in writing by the Local Planning Authority
7. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, willfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within five years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species until the Local Planning Authority gives written consent to any variation.
8. (a) Prior to the commencement of development or other operations being undertaken on site a scheme for the protection of the retained trees produced in accordance with BS5837: 2012 (Trees in Relation to Design, Demolition and construction - Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
- (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery) until the protection works required by the approved protection scheme are in place.
- (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- (d) Protective fencing shall be retained intact for the full duration of the development hereby approved and shall not be removed or

repositioned without the prior written approval of the Local Planning Authority.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A-H of Part 1, or Class A of Part 2 Schedule 2 of the Order shall be carried out.

## **End of Schedule**