



Appeal Decision

Site visit made on 13 June 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 June 2024

Appeal Ref: APP/J1915/W/23/3331026

Land to the rear of 82 Ware Road, Hertford SG13 7HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr N Rhodes (Carlton Rhodes Associates Ltd) against the decision of East Hertfordshire District Council.
 - The application Ref is 3/22/2215/FUL.
 - The development proposed is the erection of a new detached 4 bedroom bungalow with basement.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, and since the Council made its decision on the application, a revised version of the National Planning Policy Framework (the Framework) has been published. I have had regard to the revised Framework insofar as it is relevant to this appeal.

Main Issues

3. The main issues are the effects of the proposal upon the character and appearance of the area including the host property, 82 Ware Road, and the Hertford Conservation Area.

Reasons

4. The appeal site is located within the Hertford Conservation Area (CA). The CA is large, and it covers a substantial proportion of Hertford. Within its centre there is Hertford Castle and a concentration of historic and traditionally designed buildings which form a historic core, many of which are listed. Verdant green fingers of land run through the CA which includes the wooded banks of Hertford's rivers. Prominent landmark buildings are distributed around the CA, this includes Shire Hall (15 Fore Street) and Hertford St Andrew Church. The historic core, the landmark buildings and the verdant character are important facets of the significance and special interest of the CA as a whole.
5. The part of the CA within which the appeal site is located is predominantly residential in character. In close proximity to the site, many of the residential properties that line Ware Road are large, traditionally designed and are set within spacious plots with mature trees and other landscape features. This attractive residential character also contributes positively to the significance of the CA as a whole. Close-by to the site there are other residential properties

which are more modern and arranged more densely including those on Fallow Rise and Beechwood Close. These are not within the CA, however.

6. The host property, 82 Ware Road, is a large and distinctively designed house. Its rear elevation contains feature bay windows and french doors which overlook a large back garden. Both the back and front gardens are mature and contain some large trees. The Hertford Conservation Area Appraisal and Management Plan (CAA) does not specifically identify No 82 as a non-listed building that makes an important architectural or historic contribution to the CA. Even so, the Council identify it as a non-designated heritage asset and, given its character and architecture, I have no reason to disagree. Regardless, it is an attractive property in an attractive setting which is very reflective of the character of the CA here. Therefore, it contributes positively to the CA's significance.
7. As a result of the proposal, a substantial amount of No 82's spacious rear garden would be built-upon. In reducing this garden, the proposal would detract from the character of large houses within spacious plots which the host property is representative of in this particular part of the CA. The loss of part of the property's large and leafy garden would also infringe upon and detract from the house's setting.
8. The appellant refers to the house at No 92 which is set out the back of properties on Ware Road. However, the evidence that the land upon which No 92 is sited was truncated from another property's garden, in a very similar manner to that proposed in this appeal, is not very compelling. Moreover, and importantly, No 92 is not within the CA. The effects of No 92 upon the CA's character and appearance are not therefore comparable to those of the appeal scheme.
9. The plans show that at least two conifers and an ash tree would be removed to facilitate the development. These trees contribute positively to the mature and leafy appearance of the garden. The proposed dwelling would be closely positioned to other trees, and so much so that it would be beneath where some canopies presently over-sail. The proposed dwelling includes a basement area – ground excavations would therefore be significant. Parking spaces and the driveway upon which vehicles would travel are also situated very closely beside large trees.
10. Given this, I find it likely that the effects upon the trees within the back garden would be greater than just the felling shown on the plans. Further removal may be a necessity whilst damage to rooting systems to the detriment of the trees' health could be another outcome. In the absence of a tree report, I have no substantive evidence before me to dispel my concerns in these regards.
11. Should further tree loss result, either to facilitate works, or later because of harm to their condition, this would further erode the attractive garden setting of the host property and it would make the development more prominent in views from the likes of Fallow Rise and Caxton Hill.
12. For these reasons, the proposal would result in harm to the character and appearance of the area, No 82 Ware Road itself, whilst it would fail to preserve or enhance the character or appearance of the CA as a whole. The harm to the designated heritage asset would be less than substantial. Even so, having regard to the statutory duty in Section 72 of the Planning (Listed Buildings and

Conservation Areas) Act 1990, this harm is a matter of considerable importance and weight in my decision.

13. The trees on site are not protected by virtue of a Tree Preservation Order, they are not specifically referred to within the CAA or associated plans and the evidence before me indicates that the authorisation is in place to undertake the felling of some trees within the site. However, it has not been made clear to me that the tree felling which has authorisation involves the same trees as would need to be felled as a part of the appeal proposal, nor that the proposal would not endanger different trees. Furthermore, without permission for the proposed dwelling, the incentive to remove trees within the garden is not clear to me either. Therefore, although a fallback position has been presented to me regarding tree works, it is one which I can only attribute limited weight.
14. The Framework sets out that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. It further sets out that in weighing applications that affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
15. The proposal would provide a boost to housing supply, provide a choice for home-seekers and, appropriately, the site is located within the bounds of a settlement with good access to the services and facilities it offers. As a quite small development, it would be likely to contribute quickly to the supply of houses in the area as well. This would come at a time when the Council cannot demonstrate a deliverable five-year supply of housing land as required by the Framework. Some economic benefits would be derived from the construction of the development and the occupation of the dwelling would also provide some support to local services and facilities. However, with only a single dwelling being provided, the effect upon reducing the housing shortfall would be limited, as would the economic benefits derived from it.
16. Given all that is before me, I find that the public benefits that would be derived from the development would be insufficient to outweigh the less than substantial harm to the CA.
17. Therefore, I have identified harmful effects upon the character and appearance of the area, including the host property and the CA. As a result, the proposal would conflict with Policies HA1 and HA4 of the East Herts District Plan. These policies seek to ensure developments are sympathetic and complementary to their surroundings so that they preserve or enhance the special interest, character and appearance of conservation areas. Together, these policies also require that any less than substantial harm to designated heritage assets that would be caused by development should be weighed against its public benefits. Given the development would fail to sustain the significance of the designated heritage asset, and its public benefits would not outweigh the harm which would result from it, the development would also be contrary to the advice to this end at paragraphs 203 and 208 of the Framework.

Other Matters

18. The proposal may not result in harmful effects in relation to a range of considerations including, amongst them, living conditions and highway safety. However, these matters also do not outweigh the harm I have identified.

19. The appellant has drawn issue with the Council's handling of the planning application and some earlier related history. This includes submissions that the Council's application of development plan policies has been inconsistent and that it provided positive pre-application advice which has not been upheld. However, I must determine the appeal proposal on its own planning merits. The Council's handling of the site's various schemes has very little bearing upon this.
20. It may also be the case that the appeal proposal has resolved some of the design issues with which the Council drew issue within an earlier planning application. Even so, and for the reasons I have set out in my main issues, I have nevertheless identified that the proposal would be harmful and would conflict with development plan policies.

Planning Balance and Conclusion

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. As part of my main issues, I have found that the proposal would fail to preserve or enhance the character or appearance of the CA. Consequently, I have identified particular development plan policies that the proposal conflicts with and I conclude that it conflicts with the development plan taken as a whole.
22. The Framework is an important material consideration. The Council cannot demonstrate five years' worth of housing supply. The result of this is that paragraph 11 d) of the Framework is engaged.
23. In this case, the public benefits of the development would not outweigh the less than substantial harm that would be caused to the designated heritage asset. The application of Framework policy that protects designated heritage assets therefore provides a clear reason for refusing the development and, in turn, the proposal does not benefit from the presumption in favour of sustainable development.
24. Consequently, I have found that the proposal conflicts with the development plan and no other considerations material to the appeal, including the content of the Framework, indicate that a decision should be made other than one in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

H Jones

INSPECTOR