



Appeal Decision

Site visit made on 21 October 2024

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2024

Appeal Ref: APP/A0665/W/24/3345828

932 Chester Road, Great Sutton, Ellesmere Port CH66 2LT

- 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 Lonsdale against the decision of Cheshire West and Chester Council.
 - The application Ref is 22/03659/FUL.
 - The development proposed is 2no. bungalows within the curtilage of 932 Chester Road.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Within its Statement of Case the appellant submitted additional documentation not previously seen by the Council during the planning application stage, in an attempt to address some of the reasons for refusal. Nevertheless, the Council and consultees provided comments on the new information. Third parties would have also been aware of the additional documentation during the appeal timetable. Thus, I consider no party would be prejudiced by me considering the additional information provided at this stage.
3. However, further evidence was submitted by the appellant with regards to Flood Risk at the final comments stage of the appeal. The Council and consultees were not able to respond to this information. I shall return to this matter below.

Main Issues

4. The main issues are the effect of the proposal on a) the character and appearance of the area; b) biodiversity; c) trees; d) flood risk; and e) highway safety.

Reasons

Character and appearance

5. The appeal site is located on the south-west side of Chester Road and comprises a two-storey semi-detached dwellinghouse, its rear garden and an extensive plot of land beyond. Whilst I note the few examples of bungalows in the locality, the immediate stretch of Chester Road is predominantly characterised by two storey detached and semi-detached dwellings of similar age and character. These properties are generally commensurate with their generous plots.

6. The dwellings along Chester Road tend to have generous setbacks from the highway. They are nevertheless visible and prominent in the street scene. The more recent properties on nearby Farmers Heath also have a very clear and close relationship with the highway.
7. To the contrary, the proposed dwellings would have a very substantial set back from the access point onto Chester Road. Whilst there would be limited views of the proposed dwellings from Chester Road due to their set-back positioning and design, the lengthy access route, to include the hardstanding and boundaries, would be readily discernible. Passers-by would be aware that uncharacteristic development was located to the rear of the host dwelling. The incongruous backland siting would also be visible from neighbouring properties. Overall, the poor physical relationship of the proposal to Chester Road would be in stark contrast to the pattern of development in the locality and it would not contribute positively to or respect the character of the area.
8. Furthermore, the proposal would result in a low density development and bungalow style properties. This would be at odds with adjacent built form and the urban grain of the locality. These factors, along with the inappropriate layout of the proposal, would result in discordant built form that would fail to respond positively to or assimilate well into its surroundings.
9. Whilst there are a mix of property styles and palette of materials in the locality, the character of the area is not determined by such features. Rather, it is the arrangement of built form which is a key characteristic of this locality. Therefore, the use of materials which are featured on surrounding dwellings would not be sufficient to overcome the harm I have identified.
10. I appreciate that the land to the rear of the host dwelling is of a very considerable size and that the appeal proposal would not result in a disproportionate loss of its garden land. Nevertheless, this does not justify harmful and uncharacteristic development.
11. The appellant states that two single storey buildings could be erected on this parcel of land by utilising permitted development (PD) rights. It is therefore suggested that the massing of buildings of this size should be considered acceptable. No exact details of what could be erected utilising PD rights are before me. However, even if the scale, positioning and massing of buildings erected under PD rights would be similar, the appeal proposal would result in two individual dwellings and their respective plots, with associated domestic paraphernalia, boundaries, access routes and parking. Such features would not result from PD built form which would be ancillary to the host dwelling. Therefore, a PD fallback would not be directly comparable and would not justify the appeal proposal.
12. Taking all of the above together, the proposal would be considerably at odds with its surroundings and thus would harm the character and appearance of the area. Accordingly, the proposal fails to accord with Policy ENV6 of the Cheshire West and Chester Council Local Plan (Part One) Strategic Policies (the LP1) and policies DM3 and DM19 of the Cheshire West and Chester Council Local Plan (Part Two) Land Allocations and Detailed Policies (the LP2) which aim for developments which respect and contribute positively to local character, taking account of matters of form, layout, urban grain and density, amongst other things.

Biodiversity

13. The planning application for the appeal proposal was submitted prior to the introduction of mandatory biodiversity net gain requirements, thus it is exempt from delivering a biodiversity net gain of 10%. Nevertheless, Policy ENV4 of the LP1 and Policy DM44 of the LP2 seek to ensure that developments deliver net gains and not result in any net loss of natural assets.
14. During the appeal the appellant submitted a Biodiversity Net Gain Assessment¹ (the BNGA). I do not have a copy of the completed biodiversity metric tool which was used for the on-site calculation of the development however images of the headline results have been provided. This indicates that whilst a 132.72% net gain in hedgerow units would result, the proposed development would result in a net loss of 61.83% in habitat units. An alternative scenario is also set out however this would result in a net loss of 52.28% in habitat units. As such, there would be a very substantial reduction in the biodiversity value of the appeal site.
15. Given the findings of the BNGA it would not be appropriate to condition such matters as it has not been demonstrated that onsite gains could be achieved or that off-site habitat enhancement offsetting routes are available to compensate for the habitat unit deficiencies.
16. Consequently, the proposal would result in harm to biodiversity, contrary to Policy ENV4 of the LP1 and Policy DM44 of the LP2 as set out above and section 15 of the National Planning Policy Framework (the Framework) which aims to minimise impacts on and provide net gains for biodiversity.

Trees

17. The front of the appeal site, between the host dwelling and Chester Road, is covered by a Tree Preservation Order (TPO). Based on my observations and the details provided in the Arboricultural Survey², the trees to the front of the host dwelling are of considerable size and of a good or fair physiological condition.
18. The appellant states that none of the protected trees to the front of the host dwelling are to be removed as part of the proposed development. However, it is stated within the evidence that an application for the removal of one existing tree has been submitted. No further details are before me thus I cannot ascertain which tree this relates to or the outcome of that application. I do however note that the site photos provided by the Council are not reflective of my observations during my visit, namely I observed less tree and shrub coverage to the front of the host dwelling than is shown on the Council's photos.
19. Furthermore, the positioning of trees to the front of the appeal site (along with their corresponding canopies and root protection areas) as shown on the Tree Constraints Plan included in the Arboricultural Survey do not correlate with the positionings shown on the Arboricultural Impact Assessment³ and the Tree Protection Plan⁴.

¹ Arbtech, May 2024

² Arbtech, 06 May 2024

³ Drawing No: Arbtech AIA 01

⁴ Drawing No: Arbtech TPP 01

20. It is not for me within the context of this appeal to ascertain whether trees have been removed. Based on the Tree Constraints Plan and the proposed site plan, it is clear that a number of trees would require removal to provide access to the appeal site. This has not been considered as part of the Arboricultural Impact Assessment.
21. In the instance that such trees have already been removed and have the relevant permissions, or they are positioned outside of the appeal site as suggested in various plans, the appeal proposal seeks to create an enlarged, shared access to the front of the site. This would encompass an area adjacent to the existing hard surfaced driveway to the host dwelling which, according to the Arboricultural Impact Assessment and the Tree Protection Plan, would be under the canopies of trees and/or over their RPAs.
22. Crown clearance heights for three trees to the front of the site have been provided by the appellant during the final comments stage of this appeal. Even if minor pruning to raise the crowns to accommodate construction access, and the attaching of a condition restricting the size of construction machinery to prevent branch strikes, would be required and considered appropriate in this instance, no details of protection measures for the RPAs of these trees or construction techniques for the access route have been included within the Arboricultural Impact Assessment or Tree Protection Plan.
23. Given the above uncertainty, I cannot confidently conclude that the proposed development would not have a significant adverse impact upon the protected and established trees in this location.
24. There are also a number of mature trees and groups of trees/shrubs along the southern and northern boundaries of the appeal site, the RPAs of which some areas of the proposed buildings and paved areas would encroach within. The evidence before me indicates that pile and beam foundations could be adopted for the proposed buildings and that new permanent hard surfacing would not exceed 20% of any existing unsurfaced ground within a single RPA of a tree to this rear portion of the site, as recommended in BS5837:2012. There is no explanation as to why the Council would struggle to ensure compliance with conditions controlling and overseeing construction methods.
25. However, the groups of trees along the southern boundary are of significant height and density. Given this and their positioning, they would cast shade to the rear gardens of the proposed dwellings for the majority of the day. As such, I consider there would be pressure from future occupiers of the proposed dwellings to prune the retained trees in order to address concerns with overshadowing.
26. Taking all the above into consideration, the proposal would result in harm to existing trees thus it is in conflict with Policy DM45 of the LP2 which seeks to ensure that developments conserve, manage and, wherever possible, enhance existing trees and hedgerows, with all significant healthy trees and hedgerows integrated with the development scheme.

Flood Risk

27. With its statement of case the appellant provided an addendum⁵ to the Flood Risk Assessment which was originally submitted with the planning application.

⁵ Delta-Simons ref: 99034.583463, 20/12/2023

This was in an attempt to overcome the Council's concerns regarding flooding in and around the appeal site, particularly at the neighbouring plot where there had been recent evidence of surface water flooding.

28. The Council's Local Lead Flood Authority raised concerns over the lack of detail on how the proposed development may affect the surface water flow pathway across the site, however noted that this information could be subject to a condition.
29. However, the Environment Agency (the EA) raised concerns that there is no demonstration on the submitted plans that there would be no built development or ground raising in the floodplain. The EA is also concerned that as the design flood event outline has not been provided nor overlain on the plans that it has not been demonstrated whether any compensatory flood storage would be required to ensure any development within the design flood event will not increase flood risk elsewhere.
30. Based on the information before me, I am concerned that the proposal would involve development within Flood Zone 2 and 3. Namely, there would be a patio area to the rear of proposed bungalow No 932b and the proposed site plan indicates that its rear garden would be grassed however there is currently a large pond to the rear part of the site.
31. Within its Final Comments the appellant provided additional information in response to the EA's concerns. The appellant indicates that the flood zone extents do not follow local topography and therefore cannot be accurately relied upon. It is stated that a figure to demonstrate the inaccuracies with the flood zone extents relative to the LiDAR data has been prepared.
32. As noted, the submission of this information at the Final Comments stage of the appeal meant the EA were not able to comment upon it. Where I to allow this appeal, it would have been necessary to ascertain the EA's position on this matter. However, as I am dismissing the appeal for other reasons, resolution of this matter would not alter the overall outcome.
33. Nevertheless, based on the information that is before me and on which all concerned parties were able to comment on during the appeal, I am not satisfied that the flood risk to and from the proposed development has been adequately assessed thus I cannot be certain that flood risk will be managed now and over the development's lifetime. It therefore conflicts with Policy ENV1 of the LP1 and Policy DM40 of the LP2 which together seek to ensure developments avoid or reduce flood risk. The proposal is also inconsistent with the advice set out in the Planning Practice Guidance for Flood Risk and Coastal Change.

Highway Safety

34. The main parties are in agreement that a condition could be attached to ensure the existing access point to Chester Road could be widened to allow for two-way vehicle movement into and out of the site.
35. The internal access road leading from the front of the appeal site to the proposed dwellings would be of a considerable length. Its limited width would result in conflict between passing cars and pedestrians. I do not have any details before me which indicates that the red line site boundary could be amended so as to allow for a widened access route.

36. Accordingly, I am not satisfied that the proposal would have an acceptable impact upon highway safety. Thus, it conflicts with Policy STRAT10 of the LP1 and Policy T5 of the LP2 which aim to ensure that traffic can safely access and be accommodated within the development.

Planning Balance and Conclusion

37. Economic benefits would arise from the proposal during construction and on subsequent occupation. Whilst no shortfall in housing land supply in the borough has been identified, I nevertheless acknowledge that the provision of two additional dwellings, which would offer modern living accommodation, would make a positive contribution to local housing supply. Given the small scale of the development, I collectively afford these benefits limited weight.
38. I have set out above how the proposal would result in harm to the character and appearance of the area, biodiversity, trees, flood risk and highway safety. This harm leads to conflict with the development plan as a whole. The benefits of the proposal do not indicate that a decision should be made other than in accordance with it. Therefore, the appeal should be dismissed.

H Ellison
INSPECTOR