



Appeal Decision

Site visit made on 20 November 2024

by T Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2024

Appeal Ref: APP/A0665/W/24/3343139

Land Opposite Baytree House, Royal Lane, Eaton, Rushton, Tarporey CW6 9XE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Ken Roscoe (LCH Bunbury Ltd) against Cheshire West & Chester Council.
 - The application Ref 24/00034/OUT, is dated 3 January 2024.
 - The development proposed is erection of up to two self-build custom houses with access and layout included, and matters of scale, appearance, and landscaping reserved for future consideration.
-

Decision

1. The appeal is dismissed and planning permission is refused.

Procedural Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted a statement of case in relation to the appeal which sets out its putative reasons for refusal. These constitute the matters of disagreement which inform the main issues.
3. The application is in outline with access and layout included. Matters of scale, appearance and landscaping are reserved for future consideration. Nonetheless it is clear from the details before me regarding layout and access that the site would be divided to provide for two building plots which would be likely to accommodate well sized dwellings with access provided at the northern end of the site.

Main Issues

4. The main issues are, i) the effect of the proposal on the character and appearance of Eaton Conservation Area (the Conservation Area), ii) the effect of the proposal on the setting of Baytree House and Church Cottage, iii) the effect of the proposal on the setting of the Church of St Thomas and Royal Farm and Outbuildings, iv) whether the location of the proposals would be acceptable having regard to the locational strategy for development within the area and v) the effect of the proposal on highway safety.

Reasons

Planning policy context

5. The most important policies are STRAT 1 (Sustainable Development) , STRAT 2 (Strategic Development), STRAT 8 (Rural Area), STRAT 9 (Green Belt and Countryside) STRAT 10 (Transport and Accessibility), ENV 5 (Historic Environment) and ENV 6 (High quality design and sustainable construction) of the Cheshire West and Chester Local Plan (Part One) (2015) (LPP1) and policies DM 3 (Design, character and visual amenity), DM 19 (Proposals for residential development), DM 46 (Development in conservation areas), DM 47 (Listed buildings) and T5 (Parking and Access) of the Cheshire West and Chester Local Plan (Part Two) (2019) (LPP2). These policies are quoted within the Councils putative refusal reasons.
6. The appellant considers that policies STRAT 1, STRAT 2, STRAT 8, STRAT 9 of the LPP1 and Policy DM 19 of the LPP2 are out of date. The policies broadly relate to the sustainable development of residential development within the district and also seek to protect amongst other things the intrinsic character and beauty of the Cheshire countryside. Such provisions are in line with the aims of the Framework¹ and these policies are not therefore out of date. The remaining most important policies are also in line with the Framework. The basket of most important policies is not therefore out of date.

Conservation Area

7. Eaton is an attractive village set within the countryside. The appeal site is within the Conservation Area, which encompasses both the main body of Eaton as well as adjacent and surrounding fields to offer a degree of protection to important views in and out of the village. The inclusion of the surrounding fields also acts to preserve the rural character of the village.
8. Despite its slightly elevated level, the appeal site, which is undeveloped and laid to grass is located adjacent to and visible from one of the entrance roads into the Conservation Area. In its current form it therefore offers a positive contribution to the significance of and subsequently the character and appearance of the Conservation Area.
9. Whilst the whole of the area of land would be unlikely to be developed given that only two dwellings are proposed there would be buildings on the site as well as the general domestication of the land through the introduction of residential gardens. This would contrast with its existing rural appearance. The proposal would therefore detract from the significance of the Conservation Area and the proposal would have an adverse impact on its character and appearance.
10. The proposal would subsequently conflict with Policy DM 46 of the LPP2 which states that development within Conservation Areas will be expected to pay special attention to the desirability of preserving or enhancing the character or appearance of that area and take into account amongst other matters landscape setting and natural features. There would also be conflict with Policy STRAT 1 of the LPP1 which seeks development that at a minimum would protect the historic environment amongst other things. There would be conflict with Policy ENV 5 of the LPP1 which seeks to protect heritage assets.

¹ National Planning Policy Framework 2023.

11. The harm to the significance of the Conservation Area would be less than substantial and the Framework requires that this harm be weighed against the public benefits of the proposal.

Listed buildings

12. Grade II listed Baytree House is a C17 timber framed house with part thatched roof which is set prominently on the opposite side of Royal Lane to the appeal site meaning there is a direct visual relationship between the two sites. The evidence also indicates that Baytree House has a historic association with the site through shared ownership.
13. Baytree House is currently experienced within a peaceful and rather rural setting, as it has always likely to have been, which contributes positively to its setting and therefore significance.
14. With this in mind, the open, quiet, and pastoral character and appearance of the site makes a positive contribution to the setting of Baytree House. That positive contribution would be undermined through the provision of residential dwellings and additional activity on the site. The proposal would therefore cause harm to the setting of Baytree House.
15. The proposal would therefore conflict with Policy DM 47 of the LPP2 which states amongst other things that development proposals will only be supported which would conserve the significance of a listed building and its setting. There would also be conflict with Policy STRAT 1 of the LPP1 which seeks development that at a minimum would protect the historic environment amongst other things. There would be conflict with Policy ENV 5 of the LPP1 which seeks to protect the setting of heritage assets.
16. The harm to the setting of Baytree House would be less than substantial and the Framework requires that this harm be weighed against the public benefits of the proposal.
17. The evidence indicates that the site has historic association with grade II listed Church Cottage confirmed by tithe mapping which identifies the same occupier and owner of the two plots. However, a modern garage, hedge planting and a driveway between the appeal site and Church Cottage have led to a sense of visual and functional separation and as such the appeal site makes a neutral contribution to its setting. The proposal would not therefore cause any harm to the setting of Church Cottage.

Locally listed buildings

18. Royal Farm and Outbuildings is a brick farmhouse with a stone barn and cowsheds located opposing the site along Royal Lane, likely dating from the 18th century.
19. Locally listed Royal Farm and Outbuildings are currently experienced within a peaceful and rather rural setting, as they are always likely to have been which contributes positively to their setting and therefore significance.
20. With this in mind, the open, quiet and pastoral character and appearance of the site makes a positive contribution to the setting of Royal Farm and Outbuildings. That positive contribution would be undermined through the provision of residential dwellings and ancillary activity on the site. The proposal

would therefore cause harm to the setting of Royal Farm and Outbuildings. There would therefore be conflict with Policy STRAT 1 of the LPP1 which seeks development that at a minimum would protect the historic environment amongst other things. There would be conflict with Policy ENV 5 of the LPP1 which seeks to protect the setting of heritage assets including those which are non-designated.

21. The evidence indicates that the locally listed Church of St Thomas was built as a chapel of ease in 1896. However, it is set to the north of and away from the appeal site and sits at ease within the body of Eaton. The visual and functional separation between this building and the appeal site means that the appeal site makes a neutral contribution to the setting of the church. The proposal would not therefore cause any harm to the setting of The Church of St Thomas.

Locational strategy

22. The appeal site is located adjacent to the settlement boundary of Eaton. Therefore, as a result of this close proximity, future residents could easily and quickly access services and facilities within the village, which include a primary school.
23. However, the proposal would fail to protect the natural and historic environment, would not conserve Eaton's character and setting, would not protect the intrinsic character and beauty of the Cheshire countryside and would not be sympathetic to the characteristics of the development site, its relationship with its surroundings and views into over and out of the site. It is for these reasons that the location of the proposal would not be acceptable having regard to the locational strategy for development within the area. The proposal would conflict with policies STRAT 1, STRAT 2, STRAT 8 and STRAT 9 and ENV 6 of the LPP1 and Policy DM 3 of the LPP2.
24. There is nothing to lead me to conclude that the proposal would be appropriate development within the countryside under Policy DM 19 of the LPP2 given that the type of development does not meet the identified exceptions and given the Council indicates that it can currently demonstrate a 5 year housing land supply in excess of 5 years.

Highway safety

25. The site is located to the south side of the village and the access would be formed onto one of its principal entrance roads. There do not appear to have been any recent collisions within the village. However, although the site access falls within an area with a 20mph speed limit, there is no evidence which confirms actual measured traffic speeds at the entrance to the appeal site.
26. The location of the site on the fringe of the village means that some drivers travelling towards it may still be transitioning down from higher speeds as they move into the body of the village.
27. The concerns with regard to highway safety at this site are that drivers leaving from the exit point will not be able to safely see approaching vehicles and that the drivers of approaching vehicles would not have the chance to stop were a driver to pull out of the access. Even were actual vehicle speeds at 20mph,

MFS² indicates a safe stopping distance of 22m. Visibility splays of 2m are shown.

28. There is nothing to indicate that a much increased visibility splay could be provided at the site, the extent of which would be dependent on actual vehicle speeds. The proposal would therefore give rise to an unacceptable risk of collision between drivers using Royal Lane and drivers at the site access. The proposal would subsequently have an unacceptable impact on highway safety.
29. The proposal would therefore conflict with Policy T 5 of the LPP2 which states that development proposals will be supported where amongst other things they make safe provision for access to and from the site for all users of the development, including the provision of access to adopted highways and visibility splays. There would also be conflict with Policy STRAT 10 of the LPP1 which states amongst other matters that development should contribute to safer and secure transport.

Other Matters

30. There is nothing compelling to convince me that any necessary investigations or remediation measures with regard to contaminated land could not be dealt with via condition were I minded to allow the appeal. The same would be the case with regard to biodiversity net gain which is proposed within the scheme.
31. My attention has been drawn to appeal decision APP/Y3940/W/23/3317252. This relates to a scheme for self-build residential development in Wiltshire. It is the case that with regard to that scheme that Inspector found the impact of the scheme acceptable with regard to Grade I listed buildings. However, the circumstances of that scheme did differ and the Inspector considered the effect of that proposal on the setting of the nearby conservation area. Further, that scheme was for substantially more self-build dwellings than the scheme before me. For those reasons the ability to draw direct comparisons is restrained and I afford this matter limited weight.
32. Further appeals have been drawn to my attention referenced APP/W0530/W/23/3322754, APP/T0355/W/22/3309281 and APP/T0355/W/23/3314990. However, it does not appear to be the case that these appeals exactly replicate the range of issues before me and I therefore afford them limited weight.
33. My attention is also drawn to appeal APP/A0665/W/14/2212671. Within that scheme in Cheshire the provision of self-build custom houses was afforded substantial weight. I am able to afford this matter significant weight.
34. The appellant suggests that there is a significant and drastic shortfall in the supply of self-build custom plots within the Council area.

Planning Balance and Conclusion

35. The proposal would contribute to housing supply and would provide two self-build custom houses (SBCH) secured by a deed of undertaking which would be located such that future residents would be well placed to access services and facilities within Eaton.

² Communities and Local Government / Department for Transport – Manual for Streets - Table 7.1.

36. Hedgerow would be improved. There would be a net gain in habitat units and a net gain in hedgerow units in excess of 10% on both terms. There would be economic and social benefits and local spend and use of services and facilities and there could be the potential for lower energy consumption than standard dwellings due to the self-build nature of the properties.
37. However, the public benefits of the scheme would not be sufficient to outweigh the harm to the significance of the Conservation Area and the harm to the setting of Baytree House. Harm to the setting of Royal Farm and Outbuildings weighs against the proposal. The harm that would arise to highway safety weighs heavily against the proposal.
38. The harm would not be outweighed even were I to agree with the level of undersupply of SBCH identified by the appellant and attribute that matter the weight that they do.
39. There are no other material considerations to indicate that the decision should be made otherwise than in accordance with the development plan with which the proposal would conflict. I therefore conclude that the appeal should be dismissed and planning permission be refused.

T Burnham

INSPECTOR