



Appeal Decision

Site visit made on 21 January 2025

by **B Astley-Serougi BA(Hons) LLM MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 April 2025

Appeal Ref: APP/A0665/W/24/3351355

Spinney Cottage Lower Lane, Rushton, Tarporley, Cheshire West and Chester CW6 9AN

- 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 and Mrs Jerry Markham against the decision of Cheshire West and Chester Council.
- The application Ref is 22/02768/FUL.
- The development proposed is construction of one new dwelling within the grounds of Spinney Cottage.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr and Mrs Jerry Markham against Cheshire West and Chester Council. This is subject to a separate decision.

Preliminary Matters

3. The parties have had been provided with the opportunity to comment on the full text of previous appeal decisions originally submitted by the appellant in part. I have taken into account any comments made, in my determination of the appeal as necessary.
4. The appellant has referred to a planning application for a Lawful Development Certificate¹. This is not within the scope of the appeal before me and consequently I have not taken this into account in my determination of this appeal.
5. The revised National Planning Policy Framework (the Framework) was published in December 2024. The parties have been provided with the opportunity to comment on the implications of the revisions to their cases. I have taken account of the revised Framework, and any comments made, in my determination of the appeal as necessary.

Main Issues

6. The main issues are:
 - whether the appeal site is a suitable location for the proposed development having regard to local and national policy;
 - the effect of the proposed development on trees; and

¹ Planning Application Ref: 23/00961/LDC

- the effect of the proposed development on the living conditions of neighbouring residents with regard to outlook.

Reasons

Suitable Location

7. The appeal scheme would be sited on land currently used as part of the garden of Spinney Cottage. The appeal site is partly located within the settlement boundary of Eaton which is categorised as a local service centre and partly outside the settlement boundary. The garden for the appeal scheme would be situated partly outside of the settlement boundary as would parts of the proposed dwelling and access.
8. Policy STRAT9 of the Cheshire West and Chester Council Local Plan Part One: Strategic Policies (LP1) aims to protect the intrinsic character and beauty of the Cheshire Countryside by restricting development to that which cannot be accommodated within identified settlements and requires a countryside location. Eaton is designated as an identified settlement and local service centre under Policies DM19 and R1 of the Cheshire West and Chester Council Local Plan Part Two (LP2) respectively.
9. The appellant considers the appeal site to be within the village envelope and consequently part of the Identified Settlement of Eaton. Therefore, they consider the appeal scheme to accord with Policy DMG3 of the Rushton Parish Landscape Character Assessment and Eaton Village Design Statement. However, part of the site is located outside of the settlement boundary and thus within the countryside for planning purposes. Policy DM19 of LP2 provides support for development in the countryside if it meets one of the outlined exceptions. The appellant has not adequately demonstrated that the appeal scheme would meet any of the exceptions.
10. This is further supported by DM21 of LP2 which outlines that proposals for the extension of residential garden land outside of identified settlements in the countryside will not be supported.
11. The appellant has stated that they wish to build the appeal scheme for their daughter. However, this is the appellants personal preference and consequently, they have not demonstrated that the proposed development is required to be in a countryside location nor that it cannot be accommodated within an identified settlement.
12. The appellant states that an individual access from Hickhurst Lane would be required in order to be within the settlement boundary and that this would result in harm to the Grade II listed Lower House Farmhouse² and the Eaton Conservation Area (the CA). Consequently, the appellant outlines that a grasscrete link from the existing access to the proposed development across a section of the rear garden of Spinney Cottage would assimilate with the surrounding area and could be achieved by a planning condition. However, given that the appellant has not adequately demonstrated the need for the proposed dwelling, it follows that they have also not adequately demonstrated the operational need for the proposed access.

² List Entry Number: 1136598

13. Residential development at Daffodil Lane and Furber Close have been cited. I do not have the full details of these developments before me and consequently cannot be certain that they are wholly comparable to the appeal before me. Nevertheless, each application is determined on its own merits and consequently, they do not justify the appeal before me.
14. A planning permission for two dwellings in the garden of a house in Brook Lane, Weston³ has been cited by the appellant, emphasising that the physical circumstances of a site and its relationship to a settlement are more relevant than a designated village boundary. I do not have the full details on the application before me and therefore cannot be certain that it is wholly comparable. Nevertheless, it was determined under a different policy context and each case is determined on its own merits.
15. Additionally, an application for a Lawful Development Certificate at Brownhills Cottage, Brownhills Road⁴ has been cited. However, this has been highlighted in relation to matters regarding a lawful development certificate application at the appeal site before me rather than matters within the scope of this appeal.
16. The appellant refers to development on Birch Heath Road, Tarporley⁵ and the relevant case law⁶. I do not have the full details of the appeal decision⁷ before me and consequently cannot be certain that it is wholly comparable to the appeal site. However, the Inspector in the Birch Heath Road development stated that the areas containing the access, houses and outbuilding were within the settlement and it was the majority undeveloped part of the site that was in the rural area and countryside. In the appeal before me, part of the access, dwelling and garden are not within the settlement therefore the appeal decision is not directly comparable to the appeal before me. The case of *Wood v Secretary of State for Communities and Local Government* was in regard to the limited infilling in villages in the Green Belt. The appellant in this case contended that the Inspector had failed to properly apply paragraph 89 (now paragraph 154 of the revised Framework). Given that Spinney Cottage is not located within the Green Belt the case is not directly relevant.
17. Based upon the evidence before me, the appeal scheme would not extend residential garden land outside of the settlement boundary. This is because the proposed garden land for the appeal scheme is already garden land for Spinney Cottage and is outside of the settlement boundary. It would therefore comply with policy DM21 of LP2.
18. Nevertheless, given all of the above, I conclude that the appeal site is not a suitable location for the proposed development having regard to local and national policy. It would conflict with Policies STRAT1 and STRAT 9 of the LP1 insofar as they seek to restrict development in the countryside to that which requires a countryside location. Additionally, it would conflict with DM19 of LP2 which seeks, amongst other things, to ensure development in the open countryside is restricted to that which is required in the location.

³ Planning Application Ref: 17/3117/N

⁴ Planning Application Ref: 23/01876/LDC

⁵ Planning Application Ref: 21/03535/FUL

⁶ Supreme Court of Judicature in the Court of Appeal (Civil Division) reference: C1/2014/1144

⁷ Planning Appeal Ref: APP/22/3301050

Trees

19. The proposed dwelling would result in the loss of two trees and would be located in close proximity to trees along the site boundary. The appellant states that as per Policy DM45 of LP2 because the appeal scheme would result in the felling of two trees, four new trees would be planted as required.
20. In the explanation text of DM45 it defines what the Council considers to be a significant tree as at least five metres in height with a diameter of at least 150mm, however it does also state that these are a general rule and some significant trees may be smaller. Moreover, that the Council will have regard to the species, form condition age, life expectancy and visual impact when assessing the significance of trees. It further states that where development may affect significant trees, the submission of a detailed tree survey and arboricultural impact assessment will be expected.
21. The appellant regards the trees to be lost as insignificant due to their height. However, the trees contribute to the overall pleasant visual aspect of the appeal site. Thus, I consider the trees to be significant.
22. The appeal scheme would provide broad native trees to replace the felled apple trees under the 2:1 ratio established in Policy DM45. Additionally, that the roots of the aforementioned pollarded trees located along the boundary of the appeal site would be protected as part of a construction management plan and consequently that the appellant resists the need for an additional tree survey given the previously submitted survey under a previous planning application⁸.
23. However, the report is an inadequate basis for assessing the significance of the trees and effects of the proposal given that it does not adequately assess the trees within the site and the appeal scheme before me. Whilst I acknowledge that the scheme is relatively minor in nature, the appellant is still required to submit the aforementioned tree survey and arboricultural impact assessment. Consequently, the appellant has not demonstrated that the submitted tree survey for a previous application adequately assessed the trees within the site and considered the overall impact of the appeal scheme upon trees.
24. Therefore, on the basis of the evidence provided, the proposal would not have an acceptable effect on trees. It therefore conflicts with Policy DM45 of LP2 insofar as it seeks to support development where it conserves, manages and where possible enhances existing trees.

Living Conditions

25. Policy DM2 of LP2 provides support for development where it does not result in a significant adverse impact upon the residential amenity of the occupier of existing properties. In its explanatory text it highlights that there should be a minimum separation distance of 13 metres between window of main habitable rooms and blank walls.
26. The appeal scheme would be sited adjacent to Spinney Cottage. The existing elevation which would face the proposed development includes habitable windows. The distance between the existing dwelling and the proposed development would be within the 13 metre guide and therefore the occupants of

⁸ Planning Application Ref: 21/00650/FUL

Spinney Cottage from their habitable windows would face the side elevation of the appeal scheme. It would therefore result in harm to the outlook of the occupants of Spinney Cottage.

27. The appellant considers that the separation distances outlined in LP2 are not prescriptive or mandatory. The guidelines in the supporting text of DM2 are not, in themselves, policy. However, as they assist in explaining how policy is intended to be applied, they are a good starting point. The appellant has not advanced compelling evidence supporting a departure from the guidelines. Nor is there substantiation for the assertion that the guidelines are not intended to apply to the proposal.
28. The appellant has provided examples of other development where the separation distances have not been achieved: Land adjacent to 24 Lower Lane⁹, Lower Lane Service Station¹⁰, Lydett Lane¹¹, St James Avenue¹² and Belgrave Drive¹³. I do not have the full details of these sites and the circumstance which led to the granting of their permissions. I therefore cannot be certain that they are wholly comparable to the appeal site before me. Nevertheless, the development at 24 Lower Lane was considered under a different policy context and therefore does not justify the separation distance proposed in the appeal before me. Considering the other examples of development, the Council acknowledge that these developments do not provide the minimum distance. However, each case is determined on its own merits and planning context. Consequently, these examples do not justify the appeal scheme before me in regard to inadequate living conditions.
29. Given the above, the proposal would have a harmful effect on the living conditions of neighbouring residents with regard to outlook. The appeal scheme would result in harm to the living conditions of the occupants of Spinney Cottage with regard to outlook. It would therefore conflict with Policies SOC5 of LP1 and DM2 of LP2 which seek, amongst other things, that developments safeguard residential amenity including outlook for occupiers of existing properties

Other Matters

30. I am aware that the site is proximate to the Grade II listed building 'Lower House Farmhouse'. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas Act 1990 (the Act), I have had special regard to the desirability of preserving its setting. Lower Lane separates Lower House Farmhouse from the appeal site. The special interest and significance of the Lower House Farmhouse derives in part from its architectural interest and its historic fabric dating from approximately the 16th or early 17th Century. Notwithstanding that the appeal site is proximate to the Lower House Farmhouse, and there is some intervisibility between the two, in my judgement, the appeal proposal would preserve the setting of the Lower House Farmhouse, the significance of which would not be harmed. A lack of harm in this respect, however, does not alter my conclusions.
31. The appeal site is also located within the Eaton Conservation Area (the CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

⁹ Planning Application Ref: 2000/0018

¹⁰ Planning Application Ref: 20/01586/FUL

¹¹ Planning Application Ref: 4/32242

¹² Planning Application Ref: 15/01952/REM

¹³ Planning Application Ref: 23/02309/FUL

requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the conversation area. The key features of the CA are the open countryside and residential developments in linear patterns. The pattern of development and the open countryside that surrounds the development patterns contribute positively to the character and appearance of the CA as a whole, and thereby its significance as a designated heritage asset. Bearing in mind the extent, nature and location of the proposed development the character and appearance of the CA as a whole would be preserved. I note that the Council raised no objection in this regard either. Nevertheless, this lack of harm weighs neutrally and does not amount to a consideration in support of the appeal or alter my overall conclusions on the main issues.

32. An interested party has indicated support for the appeal scheme citing that the village of Eaton has had limited new housing in recent years, that the village is a good place to live and would benefit from more younger families. Consequently, they consider that the appeal scheme would provide a new dwelling that could be used by younger families. Nevertheless, whilst this may be the case, it would not outweigh the harm I have identified above.
33. The appellant highlights that the Planning Officer has arrived at a conclusion that conflicts with some comments made by the Council's Biodiversity Officer and Highways Officer. The Council is not duty bound to follow the advice of these Officers.

Conclusion

34. The proposed development is not in a suitable location having regard to local and national policy, it would not have an acceptable effect on trees, and it would have a harmful effect on the living conditions of neighbouring residents with regard to outlook. There is conflict with the development plan flowing from this harm that amounts to conflict with the plan as a whole.
35. I have paid regard to the appellant's evidence, including the stated 'range of material considerations' in their statement of case. They do not indicate that the appeal should be decided other than in accordance with the development plan.
36. My finding of harm in relation to trees is in the absence of adequate evidence. For the avoidance of doubt, had adequate evidence been available, it would not have affected my reasoning on other main issues. As such, the outcome of the appeal would have been the same.
37. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

B Astley-Serougi

INSPECTOR