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## Appeal Decision

Site visit made on 13 March 2025

by **B Pattison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13<sup>th</sup> May 2025

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**Appeal Ref: APP/V0510/W/24/3345127**

**44 Church Lane, Cheveley, Cambridgeshire CB8 9DJ**

- 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 Marc Ottolini against the decision of East Cambridgeshire District Council.
  - The application Ref is 23/01003/FUL.
  - The development proposed is Construction of a single two storey dwelling with cart shed garage, new garden wall and access drive. Dismantling the existing cart shed and store and reassembling the cart shed garage and store in two separate buildings.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The Council's reasons for refusal did not refer to policies from the emerging Cheveley Neighbourhood Plan (2024) (CNP). However, during the appeal, the council provided an update on the status of the CNP and alleged conflict with some of its draft policies. I understand that the CNP has now been adopted, and accordingly I have referred to the relevant CNP policies within this decision.
3. The National Planning Policy Framework was revised in December 2024 and amended on 7 February 2025 to correct cross references from footnotes 7 and 8, and to amend the end of the first sentence of paragraph 155 to make its intent clear. The 2025 Framework (the Framework) has not materially changed in terms of the identified main issues below and therefore, it has not been necessary for me to seek comments from the main parties.

### Main Issues

4. The main issues in this appeal are the effect of the proposal on:
  - trees on and surrounding the appeal site;
  - biodiversity net gain and protected species;
  - the character and appearance of the surrounding area, with particular regard to the setting of the nearby 44 Church Lane (No. 44) which is a non-designated heritage asset, and the setting of the Cheveley Conservation Area (the CA); and
  - the living conditions of the neighbouring occupiers of No. 44, with particular regard to outlook.

## Reasons

### *Trees*

5. Tree T23 is a large, mature Plum tree. Due to the layout and positioning of the proposed driveway, the proposal would result in an incursion of 19% into T23's root protection area (RPA). The appellant's Tree Protection Scheme indicates that to minimise the impact, excavations within the RPA will be undertaken with hand tools and manual techniques.
6. The Council suggest that it would be possible to minimise incursion into the RPA by using no dig surfacing for the driveway. Whilst the appellant's Statement of Case indicates that grass permeable pavers would be used, no further information has been submitted to demonstrate the extent to which this would preserve the health of the tree.
7. The Council and interested parties raise concerns about the effect on T30, a large, mature sycamore tree located within the garden of 9 Church Lane which makes a positive contribution to the character of the CA. The appellant's additional information submitted with the appeal<sup>1</sup> indicates that to protect the tree's roots four foundation pads will be used to limit root incursion from the construction of the new cart shed.
8. However, no further details have been provided to explain the extent to which the foundation pads would limit root incursion, or demonstrate how potential harm to the tree would be mitigated. In the absence of such information, in relation to trees T23 and T30, it has not been demonstrated that the health of the trees would be safeguarded.
9. The Council refer to the potential for significant pressure from future occupiers for the removal or works to the trees on and around the site. I note that future occupiers would be aware of the proximity of the trees when deciding whether to move to the property. Photographic evidence indicates that the area surrounding the proposed dwelling would be well-lit, for at least parts of the day, in September when the trees were in full leaf. When I visited the site in Spring, I noted that much of the appeal site received sunlight as many of the surrounding trees were not in leaf. Furthermore, the proposed dwelling would have a generous amount of floor to ceiling glazing serving its main habitable areas. Consequently, it seems to me, that the dwelling and its garden area would receive a satisfactory level of natural light. If the development were to be allowed therefore, I do not consider that there would be a significant risk of substantial reduction or complete felling of trees within the appeal site.
10. However, for the above reasons, I conclude that it has not been demonstrated that the proposal would not have a detrimental impact on the health of trees T23 and T30. I therefore find that it conflicts with Policy ENV 1 and ENV 7 of the East Cambridgeshire Local Plan, 2015 (as amended 2023) (LP) and the Council's Natural Environment Supplementary Planning Document (SPD). Amongst other things, these seek to ensure that the natural environment, including landscaping and trees, are safeguarded from harm.

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<sup>1</sup> Page 30 of the 'Visual evidence 44 Church Lane Cheveley' – Appeal document

### *Protected species and biodiversity*

11. Bats, Great Crested Newts (GCNs), and a number of bird species are protected by law<sup>2</sup> and their presence is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. There is a statutory duty on me to have regard to the conservation of biodiversity<sup>3</sup>.
12. The Office of the Deputy Prime Minister Circular 06/2005 states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.
13. The appellant indicates that an ecology survey has been carried out which concluded that the likelihood of GCNs on site was low and that there is negligible potential for bats. There is a high likelihood of nesting birds. However, a copy of the ecology survey has not been provided. In its absence, there is limited substantive evidence before me with regard to the ecological interest of the appeal site, and it is simply not known whether protected species are present and, if there are, whether or what mitigation measures would be appropriate. Furthermore, in its absence, I am unclear on the qualifications of the author of the ES or whether they are a member of the Chartered Institute of Ecology and Environmental Management.
14. The planning application was submitted prior to biodiversity net gain (BNG) becoming mandatory via the Environment Act 2021. However, Policy ENV 7 of the LP requires that new development not cause harm to biodiversity and sets the expectation that new development maximises opportunities for creation and restoration of natural habitats. The Council's Natural Environment Supplementary Planning Document (2020) (SPD) also requires a net gain in biodiversity.
15. The proposal involves new mixed tree, ornamental shrubs, and hedge planting, which the appellant indicates would be native or European origin type species and which would increase the diversity and ecology of the appeal site. Five trees would be removed. Whilst the biodiversity net gain effects have not been quantified in detail, Policy ENV 7 requires any net gain, rather than a 10% gain. Therefore, given the size of the appeal site, I have no reason to believe that net gain could not be secured through planning conditions requiring an appropriate planting mix within the site and other features about the dwelling.
16. However, in the absence of substantive, evidence insufficient information has been provided to determine whether or not the proposal would be harmful to protected species. It would therefore be contrary to Policy ENV 7 of the LP, Policy CHEV 14 of the CNP and the SPD insofar as they seek to conserve biodiversity and ensure proposals do not have a detrimental impact on priority habitats.

### *Heritage assets*

17. The proposed dwelling would be located within part of the rear garden of No. 44, a pair of mid-19<sup>th</sup> century cottages which have been amalgamated into a single dwelling. No. 44 is set within a large garden, surrounded by mature trees. Whilst it

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<sup>2</sup> Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981)

<sup>3</sup> Section 40 of the Natural Environment and Rural Communities Act 2000, as amended

has not yet been formally designated as a Locally Listed Building (LLB) it has been nominated as part of the joint Cambridgeshire Local Heritage List Project (CLHLP). No. 44 is within the Chevening Conservation Area (CA), however the CA boundary bisects the garden, and the proposed dwelling would be located outside it at the rural edge of the village. As such, the part of the site which the proposed dwelling would be located lies within the setting of the CA.

18. From the evidence before me, and my observations on my site visit, it seems to me that the significance of this part of the CA is derived from the evolution of the village and the architectural tastes and styles of the time. It has an aesthetic quality due to the design and appearance of the buildings, in particular the central Grade I Listed church and its grounds which are set at a raised level above Church Lane.
19. With its vernacular architectural appearance utilising flint, No. 44 makes a positive contribution to the character of the CA. However, due to its location at the end of Church Lane, and its side-on orientation to the public highway it is not an especially prominent feature within the CA. Views of the dwelling from Church Lane are largely restricted to its side elevation and a contemporary extension, rather than a principal elevation. The verdant planting within the appeal site further filters views of the property and its rear garden.
20. The development, by comprising built form on a currently undeveloped part of the appeal site, would slightly alter the setting of the rural edge of the CA. The eastern side of Church Lane is characterised by a loose and informal layout of dwellings, and plot sizes are not consistent, as is often found within a less ordered fringe area that transitions from the settlement into a rural landscape beyond. The positioning of the dwelling to the rear of No.44 would maintain the loose-knit, informal pattern of dwellings on this stretch of Church Lane. Views of the rear garden where the new dwelling would be constructed are very restricted as a result of the appeal site's well-established verdant planted within the appeal site. The two associated outbuildings would be of a domestic scale similar to other outbuildings found within the CA. Consequently, the proposal would not be obtrusive in views into and out of the CA. As such, it would preserve the setting of the CA and would neither harm nor diminish the ability to appreciate its significance.
21. Whilst No. 44 is not statutorily listed, paragraph 216 of the Framework states that the effect of an application on the significance of a non-designated heritage asset (NDHA) should be taken into account in determining the application. In weighing applications that affect directly or indirectly a NDHA, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
22. I acknowledge that the appellant has concerns regarding the nomination for the local heritage list. The Planning Practice Guidance (PPG) is clear that there are a number of processes through which NDHA may be identified and that, irrespective of how they are identified, it is important that the decisions to identify them as NDHA are based on sound evidence. Furthermore, the PPG confirms that, in some cases, planning authorities may also identify NDHA as part of the decision-making process on planning applications, for example, following archaeological investigations.

23. The Draft Local List entry for No. 44 identifies that its significance as a NDHA is largely derived from its historic association as a former residence of William 'Bill' Tutte, the famous local mathematician and World War Two codebreaker. The Council's assessment also identifies the building's vernacular style as having architectural interest.
24. I have not been provided with further evidence that the draft list has been formally adopted. However, I have no compelling evidence that the building will not appear on the final adopted list, which is supported by a draft assessment of the significance of the building<sup>4</sup>. As a consequence, on the evidence before me I am satisfied that the building has a sufficient degree of significance because of its heritage interest to be given due regard as a NDHA.
25. The proposed dwelling would be located on a part of No.44's rear garden which is at a raised level. Whilst there would be intervisibility between No. 44 and the new dwelling this does not necessarily equate to harm. The new dwelling would have a comfortable separation distance from No. 44, whilst its L-shaped form would orientate much of its mass away from the host dwelling. Its ridge height would not be greater than No. 44, and the dwelling's roof form incorporates low-set dormers which would minimise its mass. Whilst not subservient to No. 44, these factors would ensure that the proposed dwelling would not unacceptably visually compete with the host dwelling. The proposed boundary planting to separate the dwelling from No.44, which could be controlled by planning condition, would also reduce intervisibility as it matures.
26. The dwelling's layout combined with its positioning away from the plot's boundaries would ensure that a satisfactory sense of spaciousness would be maintained within the new plot. In coming to this view, I have taken into account the guidance within the Council's Design Guide Supplementary Planning Document (2012) which outlines that whilst there may be sufficient space within the curtilage to construct a dwelling this will not, in itself, be sufficient justification for doing so.
27. This part of Church Lane does not exhibit strong design uniformity as a result of the mixture of properties from different decades. Consequently, the proposal's design, which takes cues from agricultural barns, and utilises vertical timber cladding and a slate tile roof would not be an incongruous addition.
28. The proposed access to the new dwelling, whilst close to the boundary, seems to me to be in a logical location and would not be an especially prominent or harmful addition. Whilst the proposed garden store would not have a common rectangular form, given its small scale and positioning it would not be an especially prominent feature. I have no substantive evidence to suggest that its design would be harmful to the character and appearance of the area.
29. The proposed cart lodge would screen some views of the NDHA from Church Lane. However, as existing, the property is not prominent in views from the public domain and given its orientation within the streetscene, its significance is appreciated from fairly close range within the appeal site. Views from these points would be unaffected, and the single storey cart lodge would be clearly understood as a subservient outbuilding to the NDHA. The NDHA's historic interest related to

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<sup>4</sup> Appendix 2 of the Council's Statement of Case

its association with William 'Bill' Tutte would not be affected. Consequently, the proposal would sustain the significance of the NDHA.

30. Concerns have been raised by interested parties about the impact of the proposed dwelling in long views from the nearby Grade I church, which I visited during my site visit. Given the distances involved and the extent of boundary screening, the built form would not be particularly visible from this distant viewpoint and would not read as harmful in these isolated views.
31. Accordingly, I find no conflict with Policies ENV 1, ENV 2 and ENV 11 of the LP and Policies CHEV 7, CHEV 11 and CHEV 12 of the CNP. Taken together, these seek amongst other things, that proposals preserve or enhance the setting of conservation areas and heritage assets and utilise high quality design which integrates effectively with the surroundings, reflecting local distinctiveness. The proposal also complies with the provisions of the Framework in relation to conserving and enhancing the historic environment.

### *Neighbouring occupiers*

32. The main parties are in agreement that the nearest part of the proposed dwelling would be 25 metres from No. 44's rear elevation, which contains windows serving habitable rooms at both ground and first floor levels. Whilst it would be on land which is slightly higher than No. 44, the dwelling's L-shaped floorplan orientates the majority of its bulk away further from the neighbouring property's rear windows and garden. At this distance the proposed dwelling would not be overly oppressive to the extent that it would significantly harm the level of outlook for occupiers of No. 44 when viewed from the nearest residential windows or within its gardens.
33. A new site boundary would be formed by a row of evergreen pleached trees located 15 metres from No. 44's rear elevation, which would filter some views of the proposed dwelling. I acknowledge the Council's concerns that the boundary planting would impair the outlook from No. 44. However, the separation distance to the boundary is substantial, and I have no evidence before me to suggest that the boundary planting would be grown to such a height that it would significantly impair views from the nearest windows.
34. The proposed cart lodge would be single storey and located on the boundary with 9 Church Lane. Consequently, it would have a good level of separation from No. 44's nearest windows and would not appear dominant or overbearing to the neighbouring occupiers.
35. For the reasons outlined above, I conclude that the proposal would not have a harmful effect on the living conditions of neighbouring occupiers. Accordingly, I find no conflict with Policy ENV 2 of the LP which seeks to prevent significantly detrimental effects on the residential amenity of nearby occupiers.

### **Other Matters**

36. The concerns expressed regarding the Council's conduct during the processing of the planning application are outside the remit of this appeal decision.
37. The proposal would add to the supply of housing within the district and would make a more efficient use of the site, which is located within the village's development envelope. The Framework seeks to significantly boost the supply of homes, and also outlines that small and medium sized sites can make an

important contribution to meeting the housing requirement of an area, and are often built-out relatively quickly. I recognise that the windfall development would incorporate low-carbon technologies, and would be energy efficient.

38. The dwelling would bring social and economic benefits to the village. The development would also give rise to some economic benefits during the construction phase and provide support to local services. Given the scale of the proposal the economic benefits are afforded minor weight.
39. I acknowledge that residential development in this general location is acceptable in principle and the proposal may be compliant with various other provisions of the development plan, for instance in respect of the standard of accommodation or living conditions of future occupiers. However, the absence of other planning harms are only neutral factors and the contribution of a single home, which is a modest addition to the local housing stock, leads me to consider that the public benefits would be limited.
40. Consequently, I find that the above matters neither outweigh the harm I have identified nor the conflict with the development plan and the great weight given to the conservation of protected species.

### **Conclusion**

41. It has not been demonstrated that the proposal would not cause harm to trees and protected species within the appeal site. For the above reasons, having had regard to the development plan as a whole, along with all other relevant material considerations, the appeal is dismissed.

*B Pattison*

INSPECTOR