
Appeal Decision

Site visit made on 5 June 2025

by **G Sylvester BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 July 2025

Appeal Ref: APP/F3545/W/24/3356609

Land to the rear of 35 to 44A Queens Road, Bury St Edmunds, Suffolk IP33 3EP

- 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 Peter Romaniuk of Big Brown Dog Limited against the decision of West Suffolk Council.
 - The application Ref is DC/24/0730/FUL and was refused by notice dated 23 October 2024.
 - The development proposed is a single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In determining this appeal, I shall have regard to my statutory duty under s72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 (“the Act”), to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.
3. The Council refers to a number of policies from the emerging West Suffolk Local Plan (“the emerging WSLP”) that has progressed through the Hearing sessions. I will deal with the policies of the emerging WSLP under the main issues below.

Main Issues

4. The main issues in this appeal are whether the proposed development would preserve or enhance the character or appearance of the Victoria Street Conservation Area, with particular regard to whether there would be future pressure to remove trees, and the effect of the proposed development on biodiversity, with particular regard to Hedgehogs.

Reasons

Victoria Street Conservation Area (“the CA”)

5. The significance of the CA as a designated heritage asset is partly derived from the relationship between the area’s linear road layout and the traditional two storey period style dwellings that front onto it. Set on a consistent linear building line in tightly spaced rows close to the road, those buildings create a strong built frontage with long and open rear gardens, often containing large trees and planting, amongst small domestic outbuildings.
6. Those rear gardens provide a spacious and verdant environment within the CA, separating the rows of buildings fronting the road from other buildings and land

uses. Together, these characteristics combine to give the CA a pleasantly verdant suburban character and appearance, reflective of the town's expansion.

7. The appeal site is a sizeable dense woodland on land to the rear of a number of dwellings fronting Queens Road. The woodland's trees form a distinctively sylvan feature within the CA, that contributes positively to the verdant and spacious environment to the rear of those dwellings. The appeal site is therefore an important element of the CA that contributes positively to its character and appearance, and thus its significance as a designated heritage asset.
8. The concept is for the proposed dwelling to nestle amongst the trees and provide woodland living. The removal of a single tree to accommodate the proposed building, as identified in the Arboricultural Impact Assessment (AIA), would have a negligible effect on the character and appearance of the CA. The woodland trees were in leaf at the time of my visit and had substantial amounts of Ivy growing up them. Even so, I could see across the appeal site in close distance views from the cemetery and over the low height boundary wall. Views of the appeal site from nearby gardens is also possible through the trees.
9. When in leaf, views of the proposed dwelling would be partially filtered by the trees and its relatively low-rise form, largely blank outer elevations clad in oak with a 'green' roof, would be seen against the backdrop of those trees. This combination of factors would limit its visibility to close distance views from the cemetery and nearby gardens. However, it would nonetheless be visible, and I disagree that the trees shown as retained in the AIA would completely screen it in views from the cemetery.
10. When not in leaf, the proposed dwelling would be expected to be more visible in views from the cemetery and nearby gardens. I cannot be satisfied that additional planting would create an impenetrable barrier to views of the building. Additional planting would take several years to become fully established and would be expected to be reliant upon continual maintenance to retain a consistent form. Future occupiers may seek to prune and thin out planting and I am not aware of any mechanism before me that would prevent this.
11. There is also uncertainty over the retention of the evergreen Ivy's partial screening effects. The appellant's Heritage Statement refers to its retention, yet the Design and Access Statement refers to it as suffocating the trees, and the AIA recommends its removal from the lower parts of trees. I am not aware of any mechanism to retain it.
12. Domestic paraphernalia confined to the courtyard would have little visibility from outside of the appeal site. However, cars would be parked on the site, and I am not satisfied that there is an effective mechanism to control the spread of paraphernalia. Nonetheless, even if I was to take the appellant's best-case scenario that only a single tree would be removed and that domestic paraphernalia would be confined to the courtyard, the proposed development would be visible in close distance views from nearby gardens and the cemetery, whether the trees are in leaf or not.
13. In those views the proposed dwelling would nestle amongst the dense tree coverage on the appeal site and its largely blank outer elevations would limit light spillage and glow from interior lighting. The presence of parked vehicles would be modest and set within the trees.

14. Although not prominent or strident in those views, the proposed development would have an urbanising effect that would intrude into the woodland and be inconsistent with the predominant linear pattern of development fronting Queen Street. Consequently, the proposed development would, in that scenario, harm the character and appearance of the CA, albeit to a moderate and localised extent, falling towards the lower end of the 'less than substantial harm' category in the Framework.
15. Planning conditions appear capable of ensuring that construction of the proposed dwelling avoids direct physical harm to the retained trees. I am satisfied that sampling soil for testing could be carried out in locations that would not harm trees.
16. However, a principle controversial issue between the main parties is whether the occupation of the proposed development would result in future pressure to remove trees. Whether this is a material consideration in a particular case will depend upon the facts of that case, including factors such as the proximity of development to trees, the effects of those trees upon construction and occupation of the development and how that may change over time.
17. I am not aware of the source of the appellant's list of matters not material to the consideration of a planning application. In my experience it is common for councils to produce lists of matters that are not, in their view, material considerations. However, I give greater weight to the Planning Practice Guidance¹ which defines a material consideration as one which is relevant to making the planning decision in question (eg whether to grant or refuse an application for planning permission) and very wide in scope.
18. Pressure from future occupiers to remove trees, including trees protected by a Tree Preservation Order (TPO) was a material consideration in the appeals² drawn to my attention by the Council. Even though full details of those cases are not before me, they illustrate that future pressure on trees is capable of being a material consideration and a determinative factor in decision making. Details of the tree houses featured on the television series Grand Designs are not before me, and they have little relevance and weight to my considerations in this appeal.
19. In the case before me, the proposed dwelling would occupy a densely planted woodland. There would be significant seasonal leaf drop and the potential for trees and branches to fall onto the dwelling's roof and outdoor spaces. This would pose a significant safety risk to occupiers of the appeal development and would likely cause damage to the building.
20. The openness of the cemetery means some of the trees are particularly exposed to the effects of the wind and this may heighten any fears future occupants may have over the safety risks of trees and branches falling. The appellant's evidence in the DAS indicates that a number of trees were prematurely blown down during a recent winter, albeit attributed to the weight of Ivy, which could be removed.
21. There would also be a need for cyclical pruning of the trees to maintain physical separation between them and the proposed development. Fallen branches, leaves and other tree related detritus would require regular removal, including from drainage systems that could otherwise be blocked. Therefore, the trees would

¹ Paragraph: 008 Reference ID: 21b-008-20140306

² APP/K0425/W/24/3345099; APP/Z0116/W/24/3341713; APP/W3520/W/15/3139045

impose a considerable lasting maintenance burden on future occupiers, incurring ongoing expense. Given that a sizeable proportion of the appeal site's trees appear to be early or semi-mature, these issues would only become more acute as they continue to grow.

22. I share the Council's concerns over the effects of the trees on the living conditions of future occupiers. The proposed dwelling is a family sized property with 3 good sized bedrooms and a sizeable office of equivalent size to the bedrooms. The dense coverage of trees would have a shading effect on the dwelling and its outdoor spaces by impeding sunlight and daylight, particularly when in leaf and coinciding with the better weather when outside space is frequently used.
23. Dappled sunlight and shading may provide future occupiers with refuge from the effects of higher temperature associated with direct sunlight within the summer months. However, the dwelling's internal rooms and outdoor spaces would inevitably be darkened by the tree coverage, leading to gloomy living conditions. Those were the conditions at the appeal site that I observed at my visit. No formal assessment of the levels of daylight or sunlight reaching the proposed development are before me to indicate otherwise.
24. The outdoor amenity space for the proposed dwelling would be sizeable in numerical terms. However, the formal outdoor courtyard beneath the tree canopy is relatively modest in size and would be expected to feel like an enclosed space given its proximity to trees and the building's walls. The dense pattern of trees would impose significant constraints on the usability and functionality of the remaining outdoor space. The trees would inhibit the establishment of a good sized childrens play space and outdoor seating area commensurate to a family sized house, and those spaces would have little in the way of access to sunlight.
25. I am satisfied that a sizeable number of trees on the appeal site, particularly those nearest the dwelling, would result in poor living conditions for future occupiers that could only be resolved by their removal. Therefore, occupation of the proposed dwelling would be expected to apply pressure for the removal of those trees, despite occupants being well aware of their presence before moving in. This is a material planning consideration of considerable weight in this appeal.
26. Whilst removing trees would be contrary to the appellant's concept for woodland living, there is no mechanism before me to control occupation of the proposed dwelling to the appellant or any other occupiers committed to embracing woodland living. I am not satisfied that removing trees would be detrimental to the functioning of the proposed dwelling, such that no reasonable occupier would do so.
27. Removing trees would encourage the spread of paraphernalia through opening-up the garden and resulting in an adverse visual effect. The appellant asserts that the use of open spaces on the appeal site will not be left to the discretion of future occupiers. However, there is no mechanism before me to demonstrate that the spread of paraphernalia could be controlled.
28. Serving a TPO on the trees would not prevent a landowner from applying to have them removed, nor would it address the poor living conditions that I have identified. The outcome of an application to remove trees would depend upon the evidence before the decision maker and the merits of the case, including any negative effects of the trees on the property and its occupants. The Council would

not have the final decision on such an application as it would carry a right of appeal.

29. Consequently, occupation of the proposed development would be expected to result in the removal of trees. This would erode the sylvan appearance of the woodland and its positive contribution to the character and appearance of the CA. Removing trees would also open up views of the proposed dwelling from the cemetery and nearby properties, making its adverse effects on the CA more visible and causing a greater level of harm.
30. Those adverse effects would cause significant harm to the character and appearance of the CA. This would be appreciable from some distance away and its magnitude would place it towards the upper end of the 'less than substantial harm' category in the Framework. Replacement trees would take many years to become fully established and contribute positively to the CA, and there is no guarantee that they would not fail. The Council's suggested planning conditions would not override the harm resulting from pressure to remove trees.
31. I have assessed the appeal scheme on its individual merits based on the evidence before me and my experiences at my site visit, and I have found harm. In that context, the materially different and larger developments in the appeal schemes determined in 2014³ and 2021⁴ ("the 2021 appeal scheme") are of limited relevance and weight to my considerations on this main issue.
32. Although the development at Cherry Tree Close (CTC) presents a relatively dense built edge to the cemetery, I have limited evidence as to the circumstances under which it was permitted or what it replaced. Given my assessment of the appeal site's contribution to the CA, the development at CTC does not set a context for the appeal scheme and I note that the Inspector in the 2014 appeal reached a similar conclusion. It is therefore of limited relevance and weight to my considerations, and it does not alter my conclusion on this main issue.
33. In terms of the Framework, I am required by Paragraph 212 to give great weight to the conservation of a designated heritage asset. Harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. In accordance with the Framework, the harm should be weighed against the public benefits of the proposal, including securing optimum viable use.
34. The proposed development could be delivered relatively quickly in a location where walking and cycling to services, facilities and employment could be prioritised, and where housing is supported as a matter of principle. The Council has performed well against the Housing Delivery Test, and the emerging WSLP indicates a housing land supply of around 6 years.
35. However, I have based my assessment on the Council's current land supply of 3.6 years, which is significantly short of Government expectations. Furthermore, as there is a shortfall of 74 self-build plots against the demand indicated by the register as of 30 October 2023, the Council is not meeting its duty under the Self-build and Custom Housebuilding Act. No alternative figures are before me to substantiate the influx in self-build schemes since the exemption for Biodiversity Net Gain came into force.

³ APP/E3525/A/14/2223684

⁴ APP/F3545/W/20/3254215

36. The proposed dwelling would therefore make a small but useful contribution to mitigating the shortfall in the supply of housing and self-build plots. Construction and occupation would deliver short and long term economic and social benefits to the area, including businesses, services and facilities with the town. Local subcontractors and suppliers would benefit from the spend in the construction supply chain.
37. The proposed dwelling would be highly insulated and would generate and store renewable energy, thus reducing energy consumption, carbon emissions and running costs. Electric charging points would encourage travel by low or zero emission vehicles. Accessibility standards in the Building Regulations would be met. The proposal would deliver a 41% gain in biodiversity and would benefit several species.
38. There is limited evidence that the woodland and its sylvan appearance is at risk of imminent loss due to lack of management and maintenance of the trees. Whilst living within the woodland could incentivise its management and maintenance, I am not satisfied that it would be contingent on the proposed development. The removal of trees would be expected to outweigh the benefits of the woodland's management.
39. There is evidence of some fly tipping and outdoor drinking on the appeal site. However, there is little substantive evidence of frequency of such incidents, or the extent to which they are likely to harm trees and ecology. There is limited evidence to demonstrate that measures to minimise unauthorised access were pursued or that appropriate enforcement action could not resolve such matters, as identified in the Inspector's decision for the 2021 appeal. Therefore, the public benefits of the proposal in reducing the potential for antisocial behaviour, which is supported by a number of nearby residents, are modest.
40. Taking all the above into account, the proposal's public benefits attract moderate weight in its favour. However, they would not be sufficient to outweigh the proposal's less than substantial harm to the character, appearance and significance of the CA as a designated heritage asset, nor would they amount to clear and convincing justification for that harm. This is a matter of considerable importance and great weight should be given to conserving the CA as a designated heritage asset, which is irreplaceable.
41. The harm brings the development into conflict with Section s72(1) of the LBCA, Policy CS3 of the St Edmundsbury Local Development Framework Core Strategy December 2010 ("the CS") and Policies DM2 and DM17 of The Forest Heath and St Edmundsbury Local Plan Joint Development Management Policies Document, February 2015 ("the JDMPD").
42. Together those policies require development to, amongst others, preserve or enhance the character and appearance, and the setting, including views in or out of, a conservation area, and not involve the loss of important open, green or landscaped areas which make a significant contribution to the character and appearance of a settlement. Furthermore, the appeal proposal would conflict with the policies in the Framework that seek to protect the historic environment.
43. For the same reasons, the appeal proposal would also conflict with Policies LP10, LP13 and LP53 of the emerging WSLP, insofar as they seek to preserve or enhance the character or appearance of the conservation area, avoid potential

long-term conflict between woodlands, trees and the built form, and avoid the loss of important open, green or landscaped areas which make a significant contribution to the character and appearance of a settlement.

44. Those policies are consistent with the Framework's policies on the historic environment and for development to be sympathetic to local character and history, including incorporating trees into developments. The emerging WSLP is an advanced stage of preparation and there appears to be no dispute that the proposed modifications to those policies are less than significant. The final content of the plan might change. However, I am satisfied that the conflict with those policies should carry significant weight against the appeal proposal.

Effect on the hedgehog population

45. The appellant's Ecological Impact Assessment (EIA) contains records of hedgehogs found in the area of the appeal site. Those records appear consistent with those in the Ecological Report (ER) that is referenced in the 2021 appeal decision. The Inspector appeared to concur with the ER's main finding that mitigation and enhancement measures would ensure that the overall impact on hedgehogs in the local area was unlikely to be significant. However, due to a lack of detail in respect of those measures he remained unpersuaded that the previous scheme would not result in a fragmented environment of harm to the population of hedgehogs.
46. The appeal scheme before me proposes a lesser amount of development than the 2021 appeal scheme, consisting of a single dwelling with a smaller, more compact footprint, set centrally within the site with space around it. Its occupation would create a less intensive level of activity at the appeal site, including fewer comings and goings of people and vehicles.
47. The EIA found it likely that hedgehogs utilise the appeal site for foraging, albeit no hedgehogs were found on the appeal site. The appeal site's ecological value was assessed as limited. The Council's ecological consultants advise that the appeal site is not a priority habitat, and having assessed the EIA, they raise no objection to the proposed development's effects on biodiversity, ecology or species, subject to the imposition of conditions. I find no basis to disagree with their assessment. No substantive technical evidence has been advanced to justify me departing from their expert evidence.
48. Therefore, subject to the imposition of conditions, including those managing construction works and securing biodiversity enhancement, including specific measures for hedgehogs, I conclude on this main issue that the appeal proposal would not have a harmful effect on biodiversity, with particular regard to hedgehogs.
49. For these reasons the appeal proposal is consistent with JDMPD Policy DM11 insofar as it seeks to avoid adverse impacts on protected species and those listed in the Suffolk Biodiversity Action Plan, and where suitable measures reduce disturbance to a minimum and maintain populations identified on site. For the same reasons I find no conflict with emerging WSLP Policy LP16, the requirements of which are substantially similar.

Other Matters

50. The appellant's evidence indicates that the appeal site was formerly an orchard and was likely to have included part of a gravel pit. The piles of corrugated metal sheets and timbers on the site could be the remains of buildings associated with those uses. However, the Framework's definition of previously developed land (PDL) excludes land that is or was last occupied by agricultural or forestry buildings and land that has been developed for minerals extraction. The evidence before me does not demonstrate that the appeal site is PDL.
51. An absence of harm and policy conflicts, including in respect of matters including highway safety and flood risk, would be requirements of any well-designed scheme and do not weigh in favour or against the proposal. Details of the large developments on the outskirts of the town are not before me and are therefore of limited relevance to my considerations. Whether Council Officers gained access to the appeal site as part of its decision to refuse permission does not affect my assessment of the merits of the appeal scheme.

Conclusion

52. The proposed dwelling would make a small but useful contribution to mitigating the shortfall in the supply of housing and the Council's failure to grant sufficient permissions for self-build plots in its area. It would also deliver economic, social and environmental benefits, including a sizeable gain in the appeal site's biodiversity value, consistent with a number of policies of the development plan.
53. Given its scale the cumulative benefits of the appeal proposal are material considerations that attract moderate weight in its favour. However, they are firmly outweighed by the great weight that I attach to the proposal's harmful effect on the character, appearance and significance of the CA as a designated heritage asset, which is a matter of considerable importance in my decision. The harm is sufficient to bring the proposed development into conflict with CS Policy CS3 and JDMPD Policies DM2 and DM17, and the development plan as a whole.
54. Despite the current development plan's significant housing shortfall against the 5 year requirement, the application of Footnote 7 to Framework Paragraph 11.d)i. would apply to the appeal development. In that scenario the conflict with the Framework's policies that seek to protect designated heritage assets would provide a strong reason for refusing permission. As such, the appeal proposal does not benefit from the Framework's presumption in favour of sustainable development.
55. The conflict with the development plan carries significant weight against the grant of planning permission. The material considerations, including the benefits of the proposal and the provisions of the Framework, do not outweigh the conflict with the development plan, or indicate that the appeal should be determined other than in accordance with it. I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR