



Appeal Decision

Site visit made on 6 November 2023

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

an Inspector appointed by the Secretary of State

Decision date: 18 December 2023

Appeal Ref: APP/Q0505/W/23/3322818

237 Hills Road, Cambridge, Cambridgeshire CB2 8RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Hutchinson of H&T Hills Road Ltd, against the decision of Cambridge City Council.
 - The application Ref 22/02657/FUL, dated 7 June 2022, was refused by notice dated 3 April 2023.
 - The development proposed is the construction of two dwellings with garage, parking, landscaping and associated ancillary works to replace the existing dwelling and garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Submitted with the appeal are new drawings and documents relating to the relationship between proposed Plot 2 and a side window in Tirnalia House, images of buildings in the area, shading of the proposed garden of Plot 2 by existing trees and alternative options for replacement tree planting. The images of buildings in the area are matters of fact. The relationship between Tirnalia House and proposed Plot 2, and potential shading of its garden, relate to the living conditions of future occupiers. As such, these submissions would not constitute a fundamental change to the proposal or unfairly prejudice the interests of third parties. The Council has had the opportunity through the appeal process to make representations on those submissions. Therefore, I have taken them into account in determining this appeal.

Main Issues

3. The main issues are:
 - Whether the proposed development would provide adequate living conditions for future occupiers of the proposed dwelling on Plot 2, with particular regard to outlook, access to light, and privacy within the rear garden/patio area.
 - The effect of the proposed development on the character and appearance of the area, including its effect on protected trees.

Reasons

Living conditions

4. The patio area of the proposed dwelling on Plot 2, would be located close to the common boundary with Tirnalia House. The occupiers of this property would have an elevated view of the patio of Plot 2 from a relatively large upper floor window in the side wall of the building that serves a study. Although the patio

is a small part of the spacious garden of proposed Plot 2, it would have a close association with the door opening serving the kitchen/diner. As such it would be likely to be well used and highly valued by future occupiers as a space for recreation and relaxation.

5. The view of the patio from the study window in Tirnalia House would be across a relatively short distance and therefore future occupiers of proposed Plot 2 would be likely to experience being overlooked and a perception of being so when using the patio area. As such, future occupiers of Plot 2 would not be provided with adequate levels of privacy.
6. The appellant's technical assessment of access to daylight and sunlight, demonstrates that even when the canopies of the Copper Beech and Walnut trees are taken into account, the habitable rooms in Plot 2 would meet the internal daylight targets recommended within the BRE guidelines, including at least one habitable room in the dwelling meeting the target sunlight exposure. Furthermore, the assessment shows that on 21 March, the trees would have relatively modest effects on the extent of overshadowing of the garden of Plot 2, when assessed against the BRE guidelines. I have no alternative technical evidence to cast doubt over the appellant's evidence in this regard.
7. The Walnut Tree in the rear garden of proposed Plot 2 would be clearly visible in views from the rear facing windows given its position and closeness to the rear wall of the proposed dwelling. Its canopy would be a relatively imposing feature, particularly when in leaf. However, in combination with the findings of the appellant's daylight and sunlight assessment, I do not find that this tree, or indeed the canopy of the adjacent Copper Beech, would lead to an unduly restricted outlook for future occupiers from the rear facing rooms in the dwelling.
8. Nonetheless, for the reasons given above, I conclude that the proposal would not provide adequate living conditions for the future occupiers of proposed Plot 2, with particular regard to privacy. As such, it would be contrary to Policy 58 of the Cambridge Local Plan 2018 (the CLP), which amongst others, requires development on gardens or subdividing a plot to protect the amenity and privacy of new properties.
9. Insofar as is relevant to this case, this Policy is consistent with the objective of the National Planning Policy Framework (the Framework) Paragraph 130.f), which states that decisions should ensure that developments create places with a high standard of amenity for future occupiers. For the reasons given above, the proposal would be contrary to this objective of the Framework.
10. Although cited in the refusal reasons, CLP Policies 34, 35, 50 and 59, relate to light pollution, noise and vibration, internal space standards, alterations and existing buildings. The appeal proposal seeks to demolish an existing building rather than alter it, and I find no substantive evidence of any conflict with the objectives of these Policies.

Character and appearance, and trees

11. The area of the appeal site consists predominantly of wide residential streets in a grid-like pattern that are fronted by generally large buildings of various ages and styles, set within relatively long plots with spacious rear gardens. The appeal site has frontages to Hills Road, which is a principal route in and out of

the City, and Hills Avenue, which is a residential street lined by mature trees with buildings set back from the road, often behind hedgerows and trees that are growing in front gardens. The relationship between the buildings, trees and roads gives the area a mature verdant and sylvan character and appearance.

12. Growing on the part of the appeal site fronting Hills Avenue are 3 trees protected by a Tree Preservation Order (the TPO). These include a Walnut Tree (T1) growing broadly in a central position and a Copper Beech (T5), growing within the garden of the adjacent dwellinghouse. The Copper Beech (category A) is of good health, with a substantial canopy spread that is highly visible from the road and of high amenity value. Although lower in height at approximately 16m, and with a smaller canopy spread, the Walnut Tree (category B) was also clearly visible from the road and of high amenity value. Despite reference to some decay, this tree is assessed as being of fair condition and structure, with a considerable life expectancy, and it appeared to be a healthy specimen with consistent leaf coverage. Together, these trees make a positive contribution to the character and appearance of the area.
13. Based on the evidence before me, the siting of the proposed building on Plot 2 would avoid excavation in the root protection areas of the retained trees. The Copper Beech tree is shown as roughly equidistant between the proposed building at Plot 2 and the adjacent dwelling. This tree does not appear to have been harmed by the adjacent dwelling. It is expected that the proposed building on Plot 2 would be clear of the canopy of the Copper Beech tree, which the evidence suggests has reached maturity, and that it would enable normal development of the Walnut Tree. Nonetheless, the evidence indicates that the Walnut Tree is not yet fully grown such that it is likely to grow further. The extent of future growth is not covered in the evidence before me.
14. The Walnut Tree would appear as a relatively imposing feature in views out of the proposed dwelling's rear windows given its proximity to the rear wall of the proposed building on Plot 2 and its broadly central position in the rear garden. Although set to the north of the proposed building, and notwithstanding my conclusions above on its effect on access to light, the Walnut Tree, in combination with the large canopy of the Copper Beech, is likely to have some effect on shading of this area of garden, particularly when in leaf.
15. The garden size of proposed Plot 2 would exceed space standards. Nonetheless, the position of the tree would be likely to affect usability of the part of the garden most closely associated with the dwelling and of the greatest value for relaxation and recreation by future occupiers. The tree will drop leaves, branches and other detritus, over the garden and potentially the roof of the dwelling, which although seasonal could nonetheless be seen as a nuisance by some occupiers. Given its closeness, future occupiers of proposed Plot 2 are also likely to perceive this tree as a threat to the proposed building in respect of damage and a nuisance to their living conditions.
16. Taken together, in my judgement the potential effects of the trees are likely to subject the Walnut Tree to additional pressure for pruning works, to thin out the canopy or even felling to avoid perceived or actual damage to people and property, aid usability of the garden, and reduce the amount of leaf litter, branches and detritus falling on the property. Given its potential lifespan, I find that this issue would only become more acute as the tree continues to grow.

17. The TPO would enable the Council to have some control over future work to this tree. However, I have limited evidence to demonstrate with sufficient certainty that the Council would be able to resist an application to prune or potentially remove a tree that was a threat to the property or its occupiers, or was harming their enjoyment of the property. Even if the Council was to resist such an application, a right of appeal would be outside of its jurisdiction.
18. I note that the Inspector in appeal decision APP/Q0505/W/18/3211453, considered that works to a preserved tree would fall under the control of the Council. While some general similarities can be drawn with that appeal case, I am not familiar with all the details of that other case, nor can I be certain that it is directly comparable to the proposal before me. As such, it does not alter my conclusion on this main issue.
19. Although I have found that the Walnut Tree would not directly cause unacceptable living conditions for future occupiers of proposed Plot 2, this does not reassure me that future occupiers would be deterred from seeking to fell the tree. Furthermore, that future occupiers of proposed Plot 2, would not be likely to exert any control over the neighbouring Copper Beech tree, the canopy of which partly overhangs the appeal site, only adds to my concern that potential future occupiers would seek to have the Walnut tree removed. This would be in order to open-up the part of the garden closest to the rear wall of the dwelling and to remove its perceived threat to living conditions and the building, particularly given its life expectancy. Consequently, there is a realistic risk that the proposed development would threaten the integrity and long-term future of the protected Walnut Tree and its important contribution to the character and appearance of the area.
20. Compared to the mature deciduous trees on the appeal site and in the locality along Hills Avenue, the Pine tree (T11) has a relatively modest amenity value. I have limited evidence to demonstrate that there is insufficient space on the site frontage to accommodate a replacement tree or trees of suitable species in the locations shown on the drawings submitted with the appeal.
21. The position of the dormer on the rear roof slope of the proposed dwelling on proposed Plot 2 would limit its visibility in views from any public vantage point. Nonetheless, it would be visible from nearby properties within the garden scene and nothing I have read or seen would limit the application of the relevant design planning policies to developments visible from the public domain only. Although the roofscape in the garden scene consists of a mix of roof forms, those roofs are generally sloping roofs with slopes generally undisrupted except by relatively modest roof dormers. Even the larger box-like dormers at 7 Hills Avenue, are considerably smaller than proposed in this appeal.
22. In the context of its surroundings, the width of the proposed dormer and its considerable elevated mass and box-like form would overwhelm the roof slope of the proposed dwelling. As such, it would be a visibly discordant feature that would detract from the appearance of the proposed dwelling and the roofscape in the garden scene. Its visual impact would not be mitigated by the filtering effect of the existing trees, even when in leaf.
23. The proposed replacement dwelling on Plot 1, although markedly larger than the building it would replace, would have a similar eaves level, and its taller ridgeline would not represent a significant height increase in context of the large buildings in the area. I have not read or seen anything in the evidence

- that requires a replacement dwelling to be of a similar scale to the dwelling it would replace, let alone subservient in scale to that dwelling.
24. Even were I to accept that it is good practice for buildings set to the rear of buildings fronting on to roads to be smaller in scale, the proposed dwelling on Plot 1 would have its own frontage to Hills Road, albeit narrow. It would be sited just behind and close to the markedly larger flat block of Homerton Court, and comparable in scale to several large buildings in the locality. Viewed in this context from either the nearby properties or from Hills Road, the proposed dwelling on Plot 1 would not appear overly large and it would respect the general pattern of development fronting onto roads in the area. As such, its massing would generally be absorbed into the row of large buildings that front the roads in the area.
 25. Several dwellings in the area feature relatively high levels of architectural detailing and are of a traditional style. However, taken as a whole, the buildings in the area display a varied mix of architectural styles, particularly along the section of Hills Avenue closest to Hills Road, which includes more recent buildings, some of which have a simple form and appearance. In this context the traditional architectural style of the proposed dwelling on Plot 1, with its double fronted gables, sloping roofs, gabled dormers and substantial chimney stack, would be in-keeping with the appearances of existing buildings in the area.
 26. The proposed dwelling on Plot 2 would be noticeably lower in height than the flanking dwellings, and with a lesser scale and massing. Although it would not display a high level of architectural detailing, its facade would have a simple form with well-ordered and proportioned window openings and a sloping roof. It would be reflective of the simple style of the modern Tirnalia House, with some traditional detailing in the form of stonework and subdivided window frames, consistent with the traditional buildings in the area. As such, it would form an appropriate visual transition in the street scene between Tirnalia House and the more traditional bay window and hipped roof appearance of 1 Hills Avenue. Consequently, the architectural styles of the proposed dwellings would be in-keeping with the mixed styles of buildings in the area.
 27. In drawing together my findings on this main issue, I conclude on this issue that the appeal proposal's threat to the protected Walnut Tree, combined with the scale and appearance of the dormer window to proposed Plot 2, would harm the character and appearance of the area, contrary to CLP Policies 52, 55, 56, 57 and 71, which together seek high quality design that responds positively to its context in terms of massing, scale, form, and that any trees worthy of retention due to their contribution to the character of the area are preserved, protected and enhanced.
 28. Insofar as is relevant to this case, those policies are consistent with the aims of the Framework in Paragraphs 130 and 131, which require planning decisions to ensure that developments are well designed and sympathetic to local character, including the surrounding built environment, and opportunities are taken to incorporate trees in developments and retain existing trees where possible. For the reasons given above, the proposal would be contrary to those aims of the Framework.
 29. Although cited in the Council's refusal reasons, CLP Policy 50 relates to internal space standards and CLP Policy 59 relates to alterations and existing buildings.

The appeal proposal seeks to demolish the existing building rather than alter it and I find no substantive evidence of any conflict with interior space standards.

Other Matters

30. Whether or not the proposed dormer would meet the restrictions and limitations set out in the relevant permitted development right is of limited relevance to my considerations. This appeal relates to a new dwelling which requires planning permission on application, and I have determined the appeal accordingly. In any case, the Council is recommending that certain permitted development rights are removed by condition in the event of planning permission being granted.
31. The Council can demonstrate a 5-year supply of deliverable housing land and is therefore achieving the boost in the supply of housing that the Framework expects. There is no upper ceiling on housing delivery and the additional dwelling would bring economic and social benefits through the construction process and occupation by future residents spending money in the locality. However, the benefits attributed to the delivery of an additional dwelling would be small, and of modest weight in its favour.
32. The environmental benefits derived from the proposed dwellings exceeding Building Regulations standards in respect of energy and carbon dioxide emissions, including fitting heat pumps, and delivering a net gain in biodiversity, would be relatively modest given the scale of the proposed development. As such, those benefits attract very modest weight in its favour.

Planning Balance and Conclusion

33. The proposed development would harm the character and appearance of the area and fail to secure acceptable living conditions for the future intended occupiers, which would bring it into conflict with the development plan as a whole. I give significant weight to the appeal proposal's conflict with the development plan in this regard. Although I have not identified any other planning harms, an absence of harm does not weigh positively in favour of the proposal.
34. The proposed additional housing unit would make efficient use of land in a sustainable location as a matter of principle. It would deliver some relatively small economic, social and environmental benefits, which attract modest weight in its favour. However, these would not outweigh the conflict with the development plan. There are no material considerations of sufficient weight, including the provisions of the Framework, to indicate that a decision should be made other than in accordance with the development plan. Having considered all matters raised, I therefore conclude that the appeal should be dismissed.

G Sylvester

INSPECTOR