
Appeal Decision

Site visit made on 5 November 2015

by Isobel McCretton BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2nd December 2015

Appeal Ref: APP/A0665/W/15/3049319

Land at Dee Banks, Chester CH3 5UU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs A Smith against the decision of Cheshire West & Chester Council.
 - The application Ref. 14/04607/OUT, dated 28 October 2014, was refused by notice dated 3 March 2015.
 - The development proposed is one dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Smith against Cheshire West & Chester Council. This application will be the subject of a separate Decision.

Procedural Matters

3. The application was in outline with all matters reserved other than access. Indicative drawings have been submitted which show a flat-roofed, 2-storey dwelling cut into the slope with a parking and turning area accessed from Dee Banks. I have taken this into account in my determination of the appeal.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the Chester – Dee Banks Conservation Area.

Reasons

5. The appeal site lies on the western side of Dee Banks, above Sandy Lane. To the north of the site is the large garden of the Grade II/II*listed Walmoor House. This side of Dee Banks is an area of steeply sloping land historically in use as gardens for the villas on the eastern side of Dee Banks. From this elevated position there are extensive views of the River Dee, Chester Meadows and the city beyond. The northern part of the bank, including the appeal site, is more heavily treed than the area to the south. The appeal site itself (which is no longer associated with one of the Dee Banks houses) is generally rather overgrown with trees and other vegetation.

6. It is proposed to construct a dwelling on the site with access from Dee Banks.
7. The site falls within character area 'M. Riverside' in the Chester City Centre and Approaches Characterisation Study¹ (Characterisation Study). This states that *'The defining feature of this character area is the River Dee; and the relationship of development to the river is the most important factor in the urban form of the area.....The steep topography of the river valley in the east allows a second frontage overlooking the riverside on Dee Banks, where villas can face the river with unobstructed views over properties on Sandy Lane. These villas can address both Dee Banks and the river with the same frontage. An interesting and distinctive feature is the lower gardens to these villas that are divided from their respective villas by Dee Banks. This is one of the defining features of the character area'*.
8. There are one or two garden buildings on the plots to the south, but other than these, this side of Dee Banks, above Sandy Lane, is undeveloped. The views out over the river and the meadows from this area (sub-area M12) are among the key views identified in the Characterisation Study. The view down from this part of Dee Banks to the river would be interrupted or obscured by a house on the plot.
9. I appreciate that the submitted drawings are only indicative, but it is clear that the large flank wall of any dwelling on the plot would be highly visible in the approach up Dee Banks. Added to this, even though a house could/would be set below road level, the roof would be seen. The indicative drawing shows a grass roof but this would be set behind a high fence. Even if there were no fence, a large, flat expanse of grass would be an incongruous feature on this steeply sloping bank.
10. Although the trees shown on the submitted drawings are numbered, there is no supporting tree survey information before me. It is therefore difficult to assess exactly how many trees would be removed as part of the proposal, or whether there would be likely to be an unacceptable effect on the remaining trees and trees outside the application site as a result of the considerable construction works which would be required.
11. The trees on the site are protected as part of a group Tree Preservation Order (TPO) associated with Walmoor House. This upper end of Dee Banks is more verdant than the area to the south and the loss of trees would add further harm to the character and appearance of sub-area M12. The appellant contends that much of the existing vegetation on the site could be removed even if the site were not developed, but this would not apply to the trees and some of the larger self-sown saplings which are protected by the TPO and/or the Conservation Area designation. Furthermore, once the house is constructed there is quite likely to be pressure for reduction or removal of some of the remaining trees which would obscure some of the views out from the house.
12. The Characterisation Study also identifies key views out to the east, including towards the appeal site, from parkland on Chester Meadows (sub-area M9). In

¹ Chester City Centre and Approaches Characterisation Study Volume 2: Outer Areas (May 2011)

addition the Council points out that the site is within a Key Vista edge as identified in Fig.3a of the Chester District Local Plan and that it would be visible in views 7 & 8 on that diagram. The appellant claims that the site cannot be seen in the views referred to by the Council as it would be obscured by trees. I agree that there may only be glimpses of the development but, firstly, the appellant's assertion is dependent on the retention of trees on the site, and secondly, all the photographs submitted by the appellant are at a time of the year when the trees are in full leaf. At other times, even with the trees on the site retained, the house would generally be more exposed with much of the dwelling above the canopy of the retained trees (as shown on drawing CDB.01/2200), whatever its design. Although a dwelling would appear small scale in the longer views, development of a house on the site would, nonetheless, introduce an additional and uncharacteristic tier of development into this important river bank view, which would be far more visible and intrusive than the modest garden buildings on the other plots.

13. I conclude that the proposed development would be detrimental to, and would not preserve, the character or appearance of the Conservation Area and would harm what is highlighted as one of its defining features. It would not accord with saved policy ENV37 of the Chester District Local Plan which permits development in conservation areas only where it will preserve or enhance its character or appearance, or with policy ENV38 which resists development that will obstruct important views within, or views in or out of, conservation areas.
14. The National Planning Policy Framework states that great weight should be given to the conservation of heritage assets. Where a development will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal. In this case I consider that the public benefit of adding one dwelling to the housing stock is outweighed by the harm to the character and appearance of the Conservation Area which I have identified.

Other Matters

15. Local residents have objected to the proposal in terms of highway safety. Dee Banks is quite narrow and the site is not far from a bend at the top of the road. I note that there is no objection from the Highway Authority in this regard, subject to the imposition of conditions on any planning permission and, on the evidence available, it has not been demonstrated that the proposal would lead to conditions prejudicial to highway safety. However, the requirement for adequate sight lines would preclude substantial landscaping on the Dee Banks frontage which could soften the visual impact of a dwelling on the site. The indicative drawings show no planting at all on this frontage other than one retained tree.
16. There are also concerns that allowing development on this site would set a precedent for development of other gardens along this embankment. The appellant argues that this is the only plot which is not subject to a restrictive covenant, but in my experience restrictive covenants are not necessarily a bar to development, and they are not a reason to withhold planning permission. While any application for further development would have to be considered on

its own merits, I agree that the development of this plot would make it more difficult for the Council to resist further proposals.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Isobel McCretton

INSPECTOR