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## Appeal Decision

Site visit made on 10 September 2015

**by Sarah Colebourne MA, MRTPI**

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

**Decision date: 24 September 2015**

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**Appeal Ref: APP/K2420/W/15/3049417**

**48 Barton Road, Market Bosworth, Leicestershire, CV13 0RL**

- 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 Mr Steve Wong against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref 14/00966FUL, dated 29 September 2014, was refused by notice dated 17 March 2015.
  - The development proposed is the construction of a new 5 bed dwelling with associated parking.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are the effect of the proposed development on:-
  - the character and appearance of the area;
  - the scheduled monument of Roman Foundations east of Barton Road;
  - trees which are the subject of a provisional Tree Preservation Order.

### Reasons

#### *Character and appearance*

3. The objectives of the Council's policy BE1 in the Hinckley and Bosworth Local Plan (2001) are broadly compatible with the National Planning Policy Framework (the Framework) in seeking to achieve a high standard of design. I have not taken into account policy BE7 referred to by the Council as this refers to development in Conservation Areas and I have not been provided with any evidence to indicate that the site lies within or adjacent to a Conservation Area.
4. The appeal site lies very close to the northern edge of Market Bosworth. The view along Barton Road is identified in the Market Bosworth Neighbourhood Plan ('made' 4 September 2015) as a key view and an important approach towards the town. The mature front boundary of a hedge and very tall trees contributes strongly to the semi-rural character of this part of Barton Road which lies between the more suburban character of the road to the south and the more rural character of the open countryside beyond the edge of the settlement. Dwellings are not clearly seen at this point in the street scene and

are set well back from the road. From no 42 onwards, the dwellings become more prominent. The style of dwelling varies but they are generally of a suburban character.

5. The proposed house would be sited on a tennis court and part of the front garden of an existing house which was built a few years ago, at a significantly lower level than the existing house due to the ground levels which rise away from the road. It would be sited broadly at right angles to the road, facing towards the existing drive. I have noted that no 45 opposite is sited closer to the road as are the garages of some of the other properties and that the proposed siting would broadly follow the staggered building line of the dwellings at nos 40 to 46. However, it would be significantly closer to the road than the other dwellings in the frontage on this side of the road.
6. Like the existing house, the proposed house would have two storeys although most of the nearby dwellings are of one and a half storeys. Whilst the eaves and ridge levels would be slightly higher than the neighbouring dwelling at no 46, the height, scale and massing of the new house would be substantially bulkier and, by reason of its siting close to the road, more prominent than most of its neighbours.
7. Whilst the existing front boundary and planting would provide some screening, I noted at my visit a gap between the hedge and the canopy of the trees. As most of the trees are deciduous and the conifer trees have a narrow spread, the dwelling would remain unduly prominent, particularly in winter.
8. For these reasons, I conclude that the proposal would significantly harm the character and appearance of the area, contrary to LP policy BE1.

#### *Scheduled monument*

9. According to the appellant's Archaeological Desk-Based Assessment, the proposed dwelling would be some 33m from a scheduled monument, to the rear of the existing dwelling. Historic England (HE) and Leicestershire County Council's Archaeologist's (LCC) representations indicate that the site was possibly that of a Romano-British villa and that Iron Age artefacts have also been identified.
10. Paragraph 132 of the Framework states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to its conservation. The paragraph goes on to say that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting and that any harm should require clear and convincing justification. The objectives of the Council's LP policy BE14 are broadly compatible with the Framework in seeking to protect important heritage assets.
11. The appellant's assessment considers that the potential for preservation is reduced due to earlier medieval agriculture, tree planting in the C19th and more recently by the construction of the tennis court, the existing dwelling and its garage block. However, both HE and LCC consider that there is potential for the construction and all associated landscaping works to impact on non-designated archaeological remains which might make a positive contribution to the significance of the scheduled monument, particularly where the proposed new dwelling extends beyond the footprint of the tennis court.

12. LCC recommends that an Archaeological Impact Assessment is submitted requiring a field evaluation by trial trenching to identify and locate any significant archaeological remains and proposed suitable treatment to avoid or minimise damage by the development. This accords with paragraph 128 of the Framework. It is not unreasonable given that the land is already within the ownership of the appellant and given the national importance of the scheduled monument. A pre commencement condition would not be appropriate as it could not guarantee that any harm could be suitably mitigated.
13. Without this information I cannot be certain that the proposal would not harm the significance of the scheduled monument and I have insufficient justification for the development to override such harm. Although the harm I have identified would be less than substantial, I must give it considerable importance and weight.
14. I accept that the appeal site is in a sustainable location outside the Green Belt but one new dwelling would provide only a very limited public benefit. The existing dwelling appeared to me to be in very good condition and of an attractive appearance. Any enhancement of that property that were to arise from the proposal would, therefore, also be of very limited public benefit. From what I saw at my visit I would disagree that the land is in an unkempt state and the proposal would not benefit its appearance. Any reduction in maintenance costs would be a private benefit. I conclude then, that on the basis of the information available to me at this time, the proposed development would harm the significance of the scheduled monument and this is not outweighed by the very limited public benefits. It would be contrary to LP policy BE14 and to national policy.

#### *Trees*

15. There are a number of mature trees along the northern and western boundaries of the site on which a provisional Tree Preservation Order has been made following the submission of the proposal. This includes three silver birch along the northern boundary and several silver birch, one beech, two larch and a maple along the western boundary. These trees can be seen clearly from the road and make an important contribution to the character and appearance of the area as referred to earlier.
16. At the site visit, the parties agreed that the canopies of the two trees measured on the western boundary were approximately 1m greater than shown on the appellant's tree survey, although that survey was dated September 2014 and it is likely that some growth would have occurred since then. However, even on the basis of the submitted tree survey, the proposed dwelling would abut or infringe slightly the root protection area of some of the important trees along the western boundary. This would not allow sufficient space for site working around the dwelling or for canopy growth and would be likely to result in damage to the trees.
17. I am less concerned about light to the western elevation as this contains only windows to ensuite bathrooms and secondary windows to living rooms. However, the main dining room window in the north elevation would be very close to the trees as would the kitchen/family room to a lesser extent. Furthermore, a significant area of the rear garden would lie under the tree canopies which would result in late afternoon and early evening shading. It is likely that future occupiers would try to maximise the light and outlook to these

north-facing rooms and rear garden. This relationship is likely to result in pressure for the cutting back or removal of the trees which may be difficult for the Council to refuse if the trees were materially affecting the living conditions of the occupiers. Any substantial cutting back or loss would fail to protect the trees and would harm the character and appearance of the area.

18. A pre-commencement condition for the protection of these trees could not provide sufficient mitigation. I conclude then that the proposed development, by reason of its siting, would result in significant harm to or the loss of important trees within the site, contrary to LP policy BE1 which accords with the Framework in seeking to avoid the loss of vegetation and features which contribute to the quality of the local environment.

### **Conclusion**

19. For the reasons given above, the proposed development would cause harm to the character and appearance of the area, would fail to conserve the significance of the scheduled monument and would result in harm to or the loss of important trees. I have taken into account all other matters raised but the very limited public benefits provided by the proposal do not sufficiently outweigh the harm I have identified. It would, therefore, conflict with the development plan as a whole and does not constitute sustainable development. The appeal should be dismissed.

*Sarah Colebourne*

Inspector