

Appeal Decision

Site visit made on 16 August 2016

by Amanda Blicq BSc (Hons) MA CMLI

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

Decision date: 14 September 2016

Appeal Ref: APP/Q3115/W/16/3152356

60 The Dell, Whitehouse Road, Woodcote, Reading RG8 0SA

- 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 C Pye against the decision of South Oxfordshire District Council.
 - The application Ref P15/S3857/FUL, dated 17 November 2015, was refused by notice dated 3 May 2016.
 - The development proposed is erection of two dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's reasons for refusal refer to the relationship between the development and the protected trees on the site, which are an important landscape feature contributing to the character and appearance of the site, and the landscape qualities of the Chilterns Area of Outstanding Natural Beauty (AONB). As such, although the appellant notes that the only issue between the main parties is the alleged pressure to remove the trees, it is clear from the evidence before me that the Council considers the likely outcome of such pressure would be the removal or severe pruning of the trees, and its effect on the AONB. Consequently, I have included consideration of the effect of the development on the character and appearance of the AONB in my reasoning.

Main Issue

3. The main issue is whether the proposals would represent a cramped form of development leading to pressure to remove the protected trees, and the consequent effect on the character and appearance of the AONB.

Reasons

4. The appeal site comprises a sunken and level garden area bounded by steep banks up to four metres high. Mature trees on the tops of those banks line the road boundary and are prominent in the street scene. Although Whitehouse Lane lies towards the centre of the village, mature trees in gardens combine with the relatively loose development pattern to create a distinctive sylvan character. The AONB designation washes over Woodcote, and the evidence before me also indicates that some of the trees along the site's eastern boundary are subject to Tree Protection Orders (TPOs).
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5. The development comprises the construction of two dwellings on level ground within the garden area; the main parties do not dispute the principle of development and there is a fall-back scheme of one detached dwelling¹. The Council's concern is that the proximity of the mature trees and their height relative to the proposed dwellings would lead to significant shading of usable garden areas, as well as having an overbearing effect. These effects would be likely to lead to pressure for the trees' removal or severe pruning. This, the Council considers, would be detrimental to the character and appearance of the site and its surroundings, particularly as the site is within the AONB, and conservation and enhancement of the AONB is given high priority under Policy CSEN1 of the Core Strategy (CS)². In addition, Paragraph 115 of the National Planning Policy Framework (the Framework) states that great weight should be given to conserving scenic beauty in AONBs.
6. It is apparent from the proposed layout³ that the canopies of existing trees would extend to within 2 – 6 metres of the dwellings to their south and east. The trees would also be on notably higher ground, and given their height and canopy width would cause significant overshadowing of the proposed garden areas. Although these garden areas would be compliant with Council policy in terms of total area, they would nonetheless have restricted level space, particularly in the case of Plot B. As such, I consider it highly likely that shading would affect day to day usability of the dwellings' gardens. Consequently, future pressure to remove or severely prune the trees to relieve their shading effect, is to my mind, a realistic possibility.
7. The tree survey⁴ recommends some pruning and felling works. Whilst I appreciate that some of the works represent good husbandry, the survey also recommends raising the canopies of four mature trees along the site boundary, (T9, T10, T13 and T14), by five metres⁵. The appellant states that this will improve the site and ensure the garden areas of the houses are light in summer, which appears to indicate that the protected trees are already considered to affect light levels to a degree requiring mitigation. This reinforces my concern that the trees would cause significant shading within the site, were the appeal to be allowed. Although I appreciate that the shading pattern would be the same for the fall-back scheme, the amenity area in that case would be considerably larger and so the effect of shading would have less effect on the usability of the garden for future occupiers
8. Furthermore, even for trees with an overall height of 16 – 20 metres, as is the case here, raising the canopy to 5 metres, will have a significant effect on their overall form and appearance. It could also significantly reduce canopy width, depending on the underlying form of the tree, and appreciably lessen the stature and prominence of the trees in the locality. This would reduce their impact and diminish the sylvan character of the area, which, as noted above, is a distinctive feature of the AONB.
9. The appellant has drawn my attention to a previous appeal decision⁶ where an Inspector concluded that it was not reasonable for the Council to raise a

¹ Ref P/14/S2831/FUL

² South Oxfordshire Core Strategy 2012

³ Dwg. 100101 Rev B

⁴ Arboricultural Method Statement, June 2016

⁵ I have taken this to mean raising the canopy to 5 metres above ground level rather than 5 metres above an existing clear stem level.

⁶ APP/Q3115/A/01/1057163

concern that the future possibility of removing a protected tree would bring it into conflict with relevant policies. However, this appeal predates the current Local Plan by some years. Furthermore, the Council has drawn my attention to more recent appeal decisions⁷. Although I recognise that the situations of each appeal are not wholly comparable to the appeal before me, in each one the Inspector considered the future pressure likely to be brought for the removal or significant pruning of trees, and the effect this would have on the character and appearance of the area. There are enough similarities between these appeals and the case before me, to conclude that it is not inappropriate to consider future pressure on protected trees where those trees are a prominent part of the local estate.

10. The appellant argues that future occupiers would have an appreciation of the potential effect of the trees when purchasing the property. However, to some extent this would be dependent upon the season and weather conditions at the time of viewing and subsequent purchase. I appreciate that the TPO status would protect the trees to some extent, but I am not persuaded that it would prevent their future lawful removal were sufficient conflict identified with the proposed dwellings and use of the garden areas. I concur with the Council that foreseeable conflicts should be avoided.
11. With regard to overbearing effect, Section AA on the layout illustrates the relationship between the trees on the road boundary and the dwelling on Plot A. Although the existing trees would be appreciably closer to the dwelling on Plot B than that shown for Plot A, the overall relationship between the two dwellings and the site trees would not be significantly different from that of the fall-back scheme. Although the proximity and height of the trees would be somewhat discomfiting for future occupiers in inclement weather, this would be a similar situation to that of the fall-back scheme. Consequently, I find no significant harm in relation to the overbearing effect of the trees.
12. The Design Guide⁸ (DG) and guidance in BS 5837⁹ expect due allowance to be made for the future growth of trees and the effects of shading on both dwellings and amenity space; in this instance insufficient regard has been given to the protected trees in relation to the siting, layout and scale of the proposed development, which would lead to pressure for their removal. Significant reductions in the canopies of prominent trees have been proposed to improve light levels, and this alone leads me to conclude that the proposals represent cramped development which would fail to provide for a sustainable relationship between the trees and the future occupiers of the development.
13. Were the trees to be removed or significantly reduced in stature in the future, there would be a negative effect on the character and appearance of the area, and the AONB. Accordingly, the development would fail to meet the test of CS Policy CSEN1 which in addition to the priority given to the conservation and enhancement of the AONB, protects the district's distinct landscape character and key features. It would also be contrary to the requirements of CS Policy CSQ3 which expects development to respond positively to and respect the character of the site and its surroundings, and to enhance local distinctiveness.

⁷ APP/Q3115/A/14/2219623, APP/Q3115/A/12/2169778, APP/Q3115/A/09/2119684

⁸ South Oxfordshire Design Guide, July 2008

⁹ BS 5837:2012 Trees in relation to design, demolition and construction

14. The development would also fail to meet the provisions of Policies D1, G2 and H4 of the Local Plan¹⁰ (LP) and Policies D1 and H10 of the Woodcote Neighbourhood Plan which taken together, require the protection, enhancement and reinforcement of local distinctiveness, and LP Policy C9 which does not permit development which would cause the loss of landscape features where those features make an important contribution to the local scene. It would also be contrary to the provisions of LP Policy D3 which although it does not give prescriptive measurements with regard to garden size, expects the amount allocated to be determined by the character of the surrounding area.
15. Section 197 of the Town and Country Planning Act 1990 (the Act) also places a duty on councils to ensure, whenever appropriate, that in granting planning permission adequate provision is made for the preservation of trees, which would not be the case in this instance. As such, the development would be contrary to the provisions of the Act, as well the core principles of Paragraph 17 of the National Planning Policy Framework (the Framework), which requires decision making to contribute to conserving and enhancing the natural environment.

Other matters

16. The Council has noted that it does not have a five year housing supply, and consequently its policies for housing supply are considered out of date through the provisions of Paragraph 49 of the Framework. In such cases, Paragraph 14 of the Framework states that permission for development should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, unless specific policies, for example relating to AONBs, indicate that development should be restricted. As the appeal site lies within the AONB, Paragraph 14 of the Framework does not apply and consequently I have determined the appeal on the basis of the development plan and national policy. Even if Paragraph 14 were to apply, the provision of two small dwellings would make a limited contribution to local housing supply and the harm identified above would significantly and demonstrably outweigh the benefits so gained.
17. Representations from a third party have raised concerns in relation to the shared responsibility for maintenance of the appeal site's access drive. However, this is a matter which is outside the scope of this appeal.

Conclusion

18. For reasons given above and taking all matters into account, I conclude that the development would be contrary to the relevant policies of the Council's Local Plan and Core Strategy and that therefore the appeal should be dismissed.

Amanda Blicq

INSPECTOR

¹⁰ South Oxfordshire Local Plan 2011, adopted January 2006