

Appeal Decision

Site visit made on 17 October 2016

by Caroline Mulloy BSc (Hons) DipTP MRTPI

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

Decision date: 2nd November 2016

Appeal Ref: APP/W4223/W/16/3152463

Land fronting 97-99 Frederick Street, Oldham OL8 1RD

- 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 Domalo Ltd against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/337668/15, dated 14 October 2015, was refused by notice dated 15 December 2015.
 - The development proposed is erection of 1 no dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area, with particular reference to trees; and
 - The effect of the proposal on the setting of no 148 Werneth Hall Road, a Grade II Listed Building.

Reasons

Character and Appearance

3. The appeal site is an area of garden land situated to the front of 97-99 Frederick Street a row of terraced properties. The site rises up from Frederick Street towards the terraces which sit well back from the street. The site is flanked by the long gardens of nos 95 and 101 Frederick Street. Some of the trees on the site are subject to a Tree Preservation Order (TPO).
4. The appeal site looks south west over Werneth Park and the surrounding streets which are characterised by relatively large houses in substantial gardens. The high degree of mature landscaping is a key visual feature of the area. The trees on the appeal site contribute significantly to the verdant nature of the area.
5. A previous appeal decision¹ for a similar proposal was dismissed on 3 September 2013. The inspector found that the proposed development would be likely to result in harm to the protected trees and that this would be

¹ Appeal Decision reference: APP/W4223/A/13/2194369

- detrimental to the character and appearance of the area. It is now proposed to locate the dwelling approximately 3m further to the north east of the site.
6. The proposed dwelling would be situated on a raised concrete pad in order to create a level site on which to build the dwelling which would be situated towards the upper part of the site. An Ash tree (T1), protected by the Tree Preservation Order is situated to the west of the proposed north-east gable projection of the property. An Arboricultural Report and Impact Assessment (the Assessment) has been submitted in support of the appeal which identifies the Ash as a mature tree of moderate quality with an expected life span of 40 plus years.
 7. The Assessment shows that there will be a small incursion into the root protection area as a result of the development and recommends the use of special engineering techniques such as piled foundations in order to minimise any potential damage. However, the Assessment also notes that T1 is rooted on a raised soil mound and that much of the tree roots are likely to be contained within this soil mound. No site levels have been provided and it is, therefore, not clear the extent to which the mound around the tree may need to be 'dug out' in order to create a level site.
 8. I agree that the intrusion into the root protection area is likely to be greater than that shown on the plans due to the need for scaffolding to be erected around the proposed property. I also note that the root protection area to the north east is within the driveway of the access road to the terraces thus limiting the potential to off-set the loss of the RPA to the south of the tree. In addition no details are provided of the works which would be required to construct the driveway and proposed parking spaces which would also encroach onto the RPA of T1. Whilst the Assessment alludes to special construction techniques in order to minimise any damage to the tree, an arboricultural method statement has not been submitted in support of this.
 9. Furthermore, due to the proximity of T1 to the proposed dwelling I consider that there would be pressure from future occupiers for pruning works and potential felling of the tree. Taking the above into consideration and in the absence of any evidence to the contrary, I consider that the long term health of T1 would be at serious risk as a consequence of the appeal proposal.
 10. A Lime tree (T10), protected by the TPO, is situated in the southern portion of the site and is categorised as in a 'good condition'. It is a mature specimen which is visible from Frederick Street and which contributes significantly to the character and appearance of the area. It is proposed to site the dwelling 3m further away from the Lime Tree (T10) when compared to the previous appeal proposal.
 11. The front elevation of the proposed house would be situated approximately 15m away from the tree. However, I note that the proposed dwelling would sit on a raised concrete pad which would project from the rear of the dwelling to create a raised patio area. This patio would be within 12m of the Lime Tree and would necessitate substantial earthworks to be undertaken in the vicinity of the tree. However, the Assessment does not show this raised pad on the plans and nor does it assess the potential implications of the pad in terms of the health of the tree.

12. Although the front elevation of the dwelling would be situated 3m further away from the Lime Tree, given the significant height and foliage of the tree, I do not consider that this is sufficient to overcome the concerns of the previous Inspector. I consider that the combined effect of T10 together with other 'retained' trees would block out light to the rear elevation of the proposed dwelling which would lead to pressure to prune or fell these trees in the long term.
13. Taking into account the above, I conclude that the proposed development would be likely to result in harm to the protected trees nos 1 and 10 on the appeal site and that this would be detrimental to the character and appearance of the area which is typified by properties on large plots with significant amounts of mature planting. The proposal would, therefore, conflict with saved Policy D1.5 of the Council's Unitary Development Plan (UDP) (2006) which relate to the protection of trees on development sites. Conflict also arises with Policies 1, 9 and 20 of the Council's joint Core Strategy (joint Core Strategy) and Development Management Policies Document (2011) which relate to issues of design and the protection of local environmental quality and amenity.

Setting of the Listed Building

14. Werneth Park Adult Education Centre lies to the south of the appeal site on the opposite side of Frederick Street and is a grade II listed building. The Council does not raise specific concerns regarding the effect of the proposal on the setting of this listed building and from everything which I have seen in submissions and on my site visit I have no reason to disagree.
15. Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires the decision maker in considering whether to grant planning permission for development which effects a listed building or its setting to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possess.
16. The National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 132 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
17. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Paragraph 134 of the Framework confirms that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimal viable use.
18. 148 Werneth Hall Road is a substantial stone building built originally in the 17th Century with later 18th and 19th Century additions which lies to the north of the appeal site. It was formerly a house but is now in use as a residential home. It comprises of coursed and squared sandstone with stone flagged and Welsh Slate roofs. It is two storey with two parallel gabled wings now linked by a new (1900-1) main range, replacing a smaller cottage. Whilst there have been some significant alterations the historical form and features are still

clearly legible. Consequently, the building makes a significant contribution to the character and appearance of the area.

19. The Council considers that the elongated front gardens of Nos 93-103 Frederick Street giving an open and wooded aspect to the Grade II listed building setting. Following removal of a number of trees on the application site the Council considers that there are clear views through the application site towards the principle elevation of the listed building from Frederick Street. Consequently, it is concerned that the dwelling would appear as an intrusion within views of the listed building from this point.
20. Werneth Hall ('the Hall') is situated within a built-up area which has changed significantly since it was originally built in the 17th Century. Indeed the property itself has altered substantially with a number of later 18th and 19th Century additions. It is surrounded by distinctive brick walls with stone copings which define the immediate curtilage of the site. Werneth Hall Road lies to the south east of the Hall separating it from the appeal site. Frederick Street defines the western boundary of the Hall. Mature trees within the garden area fronting onto Frederick Street contribute to its setting and the character and appearance of the surrounding area.
21. The Hall is imposing in short range views by virtue of its prominent location on the corner of Frederick Street and Werneth Hall Road. Longer range views of the Hall are restricted from the north-west along Frederick Street due to the presence of a hedge along the frontage of the adjacent property and the trees to the front of the Hall. Longer range views of the Hall are restricted along Werneth Hall Road due to the presence of other buildings. Views along Frederick Street when approaching from the south-east are also limited due to the presence of boundary walls and significant foliage within the appeal site. Consequently, due to the built-up and leafy nature of the area I consider that the setting of the Hall is localised.
22. Furthermore, only glimpses of the upper portion of the Hall could be seen across the site from Frederick Street. Views from within the site towards the Hall are also limited due to the presence of vegetation within the site and the neighbouring garden. Moreover, the appeal site is separated from the Hall by Werneth Hall Road and the adjacent garden.
23. I acknowledge that there is a degree of inter-visibility between the appeal site and the Hall. However, historically views of the Hall from Frederick Street have been restricted due to the presence of the trees, before some of the trees were cleared. Furthermore, as the proposed dwelling would be located in the upper half of the site views across the lower portion of the garden from Frederick Street towards the Hall would be maintained. Whilst a passer-by would be aware of the presence of the house in glimpses through the trees, I do not consider that the proposal would harm the experience of the Hall or detract from the understanding of its significance. Taking the above factors in combination, I consider that the proposal would have a neutral effect on the setting of the Listed Building.
24. For the reasons stated above, I consider that the proposal would not harm the setting of the Grade II listed Werneth Hall and nor would it undermine its significance. The proposal does not, therefore, conflict with Policy 24 of the joint Core Strategy which seeks to protect, conserve and enhance heritage

assets and their settings. Moreover, no conflict arises with Section 12 of the Framework.

Other matters

25. The appellant states that the development of the proposed house is needed to cross-subsidise the development of the nursery at No 103. However, I have no evidence to support such a need, nor any to indicate that the only solution to the issue would be the development of a house that would be harmful to the character and appearance of the area.

Conclusion

26. The proposal would have some benefit by way of a contribution, albeit limited, to housing land supply. However, I have concluded that the proposal would cause significant harm to the character and appearance of the area. This harm would not be outweighed by my findings that the proposal would not harm the setting of the listed building or the contribution the proposal would make to housing supply. The proposal would, therefore, be contrary to the development plan as a whole.
27. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector