The Planning Inspectorate

Appeal Decision

Site visit made on 3 May 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 5th May 2017

Appeal Ref: APP/K3415/W/16/3163351
65 St Johns Hill, Shenstone, Lichfield, WS14 0JD

- 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 and Mrs Barry Wilkinson against the decision of Lichfield District Council.
- The application Ref: 16/00566/FUL dated 24 May 2016 was refused by notice dated 12 September 2016.
- The development proposed is construction of a two-storey three-bedroom house with garage.

Decision

1. The appeal is dismissed.

Main Issue

2. The site lies within the settlement boundary of the village, and notwithstanding all other considerations the Council has raised no objections to the principle of residential development having regard to the policies of the development plan and the *National Planning Policy Framework* (the Framework). Nor has the Council raised any objections to the scale, design and massing of the proposed dwelling, its effect on the living conditions of the occupiers of the adjacent dwelling No 38 Schoolfields Road, or on the character or appearance of the surrounding area. I also note that the Highways Department has no objections to the proposed new access subject to conditions.

3. From what I have seen and read I find no reason to disagree, and consider the main issue in this case is whether the proposal would provide satisfactory living conditions for future occupiers of the proposed dwelling and the effect of the proposal on the future and life expectancy of the protected cedar tree adjacent to the site.

Reasons

4. The appeal site comprises part of the large rear garden of No 65 St Johns Hill and also incorporates part of No 63's rear garden. The garden landscape generally is very mature, being well planted with conifers, flowering shrubs, and individual specimen trees.

5. The proposed dwelling and garage would be positioned centrally on the site, with its front elevation slightly forward of that of the adjacent dwelling No 38 Schoolfields Road. The area in front of the dwelling would largely be given over to parking, and there would be a small garden to the rear.

6. A large cedar tree lies immediately to the west of the site and is protected by a Tree Preservation Order (TPO 272-2005). This TPO covers all trees of whatever species within the gardens of Nos 65 and 63 St John's Hill, Although some other trees would be removed to accommodate the proposed dwelling these are smaller garden species of significantly lower amenity value. The Council's main concerns relate only to the cedar tree, and I have no reason to disagree with that assessment.

7. The development plan includes the *Lichfield Local Plan Strategy 2008-2029* (LP), adopted in February 2015 and the *Shenstone Neighbourhood Plan* (NP), made on 13 December 2016. The decision notice refers to LP Policies B1 and NR4. Amongst other considerations Policy B1 seeks to achieve a high quality built environment. Policy NR4 concerns trees, and says these will be protected from damage and retained, unless it can be demonstrated that removal is necessary. It adds that potential conflict between retained trees and built form will be designed out at the planning stage. Policy NR4 is supported by the Council's *Trees, Landscaping and Development Supplementary Planning Document* (SPD). Section 3 refers to site layout and design.

8. Whilst the Council has not referred to NP policies in its reason for refusal, I have been forwarded a copy of the NP. Policy GCS3 is relevant and states that proposals affecting well-established features of the landscape, including mature trees, must demonstrate how any impact has been minimised.

9. Although the cedar tree is within a rear garden environment, it is visible in glimpsed views from the adjacent streets and is a natural asset that makes a valuable contribution to the verdant character and appearance of the area. It has a height of about 18m, with the lowest branch being on the east side (towards the proposed dwelling). The appellants' Arboricultural Report[1] identifies it as a category 'A' tree (a high quality tree with an estimated life expectancy of at least 40 years). The author of the report confirms that it is a tree of good value with no obvious defects.

10. The Tree Protection Plan shows how the proposed dwelling would encroach within the root protection area (RPA) of the tree, and how its canopy would overhang the dwelling's north-west corner. However, the Method Statement (MS)[2] advises that the tree would be protected during the construction phase using pile and beam foundations, hand-digging where necessary, and protective fencing. I am thus broadly satisfied that the identified measures in the MS should provide adequate protection during the construction period.

11. My main concerns relate to the effect of the tree on the living conditions of occupiers of the proposed dwelling and the health and future life expectancy of the tree. British Standard: BS 5837 2005 sets out factors to be taken into account to maximise the probability of future tree retention and says: "*Trees can occupy a substantial part of a development site and because of their size can have a major influence on the planning and use of a site…Layouts sited poorly in relation to retained trees, or the retention of trees of an inappropriate size or species may be resented by future occupiers and no amount of legal protection will ensure their retention and survival. To avoid such problems and ensure a harmonious relationship between trees and structures, careful planning and expert advice is needed on their juxtaposition"*.

[1] Braemar Arboriculture Ltd: Implications Assessment: 13 May 2016
[2] Braemar Arboriculture Ltd: Method Statement: 13 May 2016

12. The proximity of trees to dwellings is an important consideration because incoming occupiers will want trees to be in harmony with their surroundings, without casting excessive shade or otherwise interfering with their prospects of reasonable enjoyment of their property.

13. The finished dwelling would be very close to the tree, and it would dominate the outlook from the rear-facing windows. It is apparent that the tree's canopy would closely abut and partly overlap the building with branches extending very close to the windows and roof in some instances. As such, I am concerned about possible threats to its continued good health and longevity arising from pressure to cut-back or even fell the tree from future occupiers. Such pressures are likely to occur because of householder concerns relating to restriction of light, overshadowing, dominance, and perceived danger from falling limbs. In addition this species of tree sheds needles and other detritus which would fall into the garden, and this has the potential to be a more of nuisance and concern than the present situation where the tree is well away from property.

14. Although the habitable room windows would be orientated north-west and south-east, and not directly towards the tree, it would still compromise future residents' enjoyment of the garden as a consequence of shading and loss of daylight and afternoon/ evening sun, notwithstanding any other potential issues which may arise in terms of falling branches, blocked gutters, interference with underground services, or in relation to its overbearing presence.

15. In terms of perceived dangers, I accept that the cedar has no history of limb breakage. However, cedars are noted for the failure of limbs and the change in context from a tree in a large garden which is well away from the closest building, to one where a dwelling would be in such close proximity, is fundamentally different. If a limb falls or the tree suffers from storm damage in its current context then it is unlikely to result in significant damage. It follows that this is far less likely to be the case if the development is permitted, and is a real and valid concern.

16. Whilst protection afforded by the TPO would enable the Council to control any future tree work, it would be more difficult for it to refuse an application to prune or fell a tree that was threatening the safety of the occupiers, or having a harmful effect on their enjoyment of the property. There can be no certainty that such pressures could be reasonably resisted. Trees protected by a TPO merit special care, and this tree is no exception. If it were to be felled in the future, or stunted by further pruning, its amenity value would be diminished and the appearance of surrounding area would suffer as a result.

17. The proposal does not accord with the advice in SPD paragraph 1.7 which requires development proposals to make space for existing trees, and for potential conflicts with buildings to be "*designed out*"; or with paragraph 2.1 which states that "*In order to successfully integrate trees into a development it is essential to allow enough space in the design to allow trees to mature and flourish*." I therefore conclude on this issue that the proposal would result in unacceptable living conditions for future occupiers of the proposed dwelling, and as such would potentially harm the future and life expectancy of the protected tree. As such, the proposal would conflict with the objectives of LP Policies NR4 and B1, NP Policy GCS3, and advice in the SPD.

Conclusion

18. For the reasons given above the proposal would conflict with the policies of the development plan and those of the Framework when taken as a whole. Therefore, and taking into account all other matters before me, including the representations of a local resident, I conclude that the appeal should fail.

Nigel Harrison

INSPECTOR