
Appeal Decision

Site visit made on 13 June 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/C4615/W/17/3167610
78 Windsor Road, Halesowen B63 4BH

- 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 Francesca Billington against the decision of Dudley Metropolitan Borough Council.
 - The application Ref P16/1277, dated 13 September 2016, was refused by notice dated 4 November 2016.
 - The development proposed is the erection of 1 No 3 storey detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is submitted in outline with all detailed matters reserved. An illustrative site layout plan accompanies the application and I have taken this into account only in so far as considering whether or not in principle it would be possible to erect a dwelling on the appeal site.

Main Issue

3. The main issue is whether or not it would be possible for a dwelling to be erected on the site with acceptable outside amenity space.

Reasons

4. The appeal site relates to part of the rear garden area of No 78 Windsor Road which fronts onto Loughton Grove. To the rear of the site there is a large oak tree which is the subject of a Tree Preservation Order (TPO). The area is residential in character and the appeal site is positioned at a higher level than Loughton Grove. It currently includes a brick retaining wall abutting the pavement. The proposed dwelling would be built adjacent to three storey dwellings to the east including a recently built three storey house at No 18 Loughton Grove.
 5. The Council raises no objection to the erection of a dwelling on the site in land use principle terms. I have no reason to disagree with this view. I note that representations have been received from the occupiers of No 18 Loughton Grove and No's 76 and 78 Windsor Road in respect of the effect of the erection of a dwelling upon levels of privacy, light and outlook. However, based on the illustrative site layout plan, and the separation distances between properties, I
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am satisfied that it would be possible to erect a dwelling on the site without it having a significantly detrimental impact upon the living conditions of the occupiers of surrounding dwellings.

6. The principal issue relates to the size and position of the protected oak tree and whether or not it would be possible, in principle, to erect a dwelling on the site without such a tree unacceptably interfering with the enjoyment of the outside amenity space in terms of light and outlook. The appellant has submitted a tree survey and this demonstrates that whilst the illustrative dwelling would be likely result in some penetration into the root protection zone, this would not be to the detriment of the health of the oak tree. I have no reason to disagree with the findings of the tree survey and this is a matter that could be considered in greater detail as part of the future consideration of landscaping matters taking into account advice in British Standard 5837 2012.
7. The oak tree is large and has been protected as it contributes positively to the amenity of the area. As part of my site visit, I was able to see that the tree did contribute positively to the character and appearance of the area and the street-scene, particularly when viewed from Loughton Grove. I note the comments made by the appellant about the history of the planning application and the circumstances which led to the oak tree being protected by the Council. I am also aware of the appellant's comments about another tree in the immediate area which was allowed to be felled when planning permission was approved for the erection of a dwelling at No 18 Loughton Grove. I do not know why this other tree was not protected, but, in any event, I must determine this planning application based on the existing site conditions and in the knowledge that the oak tree is the subject of a TPO.
8. The oak tree is large and its canopy is extensive. Part of it straddles the boundary with No 18 Loughton Grove. In respect of the occupier of this property, the appellant has commented that *"in the summer she has no sun at all due to the excess shade cast by the crown of the tree"*. Given the position, height and crown spread of the oak tree I consider that a very significant proportion of the appeal site would be in shade for large parts of the year: there is potential for the tree to have a greater impact upon the outside amenity space of the appeal dwelling when compared to the outside amenity space of No 18 Loughton Grove.
9. Whilst this is an outline application, the need for good design and the constraints imposed by the position of the oak tree, would dictate that it would likely be necessary for a dwelling to be erected alongside the gable elevation of No 18 Loughton Grove. Consequently, the land affected by the tree would likely constitute a rear garden area. Whilst landscaping and layout matters are details reserved for a subsequent reserved matters application, in this case I consider that such matters should have been submitted alongside this outline application. It may be possible to erect a slightly smaller dwelling and therefore have a greater amount of outside amenity space where light were allowed to penetrate at all times of the year. However, I do not have any additional illustrative plans and so cannot be certain that it would actually be possible to achieve acceptable outside amenity space or whether or not such a proposal would reduce the likely pressure to lop or fell the protected tree from the occupiers of such a property.

10. Whilst the accompanying site layout plan is only indicative, if such a dwelling were to be built I do consider that there would likely be pressure to lop or fell the tree from the occupiers of the proposed dwelling given its close and imposing position and the limited amount of light that would be afforded to rear windows and outside amenity space.
11. For the above reasons, I conclude that this outline application includes insufficient information to allow me to determine whether or not it would be possible, in principle, to erect a dwelling on the appeal site with acceptable outside amenity space and where the pressure to lop or fell the protected tree would be minimised. Therefore, it has not been possible to properly determine the application against the design and amenity aims of saved Policies DD1, DD4 and NC10 of the adopted Dudley Unitary Development Plan 2005 ; Policies CSP4, EN2 and HOU2 of the adopted Black Country Core Strategy 2011 and the National Planning Policy Framework. The Council has included other development policies with its appeal questionnaire, but I do not consider that such policies are directly relevant to the main issue.

Other Matters

12. The appellant has commented that there appears to be a contradiction with the Council on the one hand protecting the oak tree because it makes a "*positive contribution to the amenity of the Loughton Grove area*" and on the other hand indicating that the occupiers of the proposed dwelling would likely want to lop or fell such a tree. I consider that these are two very different matters. The oak tree makes a positive contribution to the amenity of the wider area in the public interest. However, this does not mean that the occupiers of a residential property would not wish to seek its removal or alteration if it were causing harm to their individual living conditions.
13. The occupier of No 99 Windsor Road has raised concerns about whether or not the oak tree would be preserved: this is a matter which has been addressed in the reasoning above.
14. None of the other matters raised outweigh or alter my conclusion on the main issue.

Conclusion

15. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Daniel Hartley

INSPECTOR