



Appeal Decision

Site visit made on 11 July 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 20 July 2017

Appeal Ref: APP/P1235/W/17/3171725

Barrodene, Grosvenor Road, Weymouth, Dorset DT4 7QL

- 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 A Seymour against the decision of Weymouth & Portland Borough Council.
- The application Ref WP/16/00473/FUL, dated 22 June 2016, was refused by notice dated 1 November 2016.
- The development proposed is erect 2 dwellings.

Decision

1. The appeal is dismissed.

Main Issues

2. Having regard to the trees on site, the main issues are the effect of the development on the living conditions of the future occupiers of the dwellings and whether the proposal would preserve or enhance the character or appearance of the Lodmoor Hill Conservation Area (the CA).

Reasons

3. Grosvenor Road is located in a residential area. The properties are set back from the road and there are a number of street trees on both pavements. The appeal site forms part of the side garden area for Barrodene, a building containing a number of flats. There are several trees located within the appeal site and to the front of the flats including several beech trees, located close to the road. These are of high amenity value and significantly contribute to the character of the area and the verdant setting created by the street and garden trees. The frontage trees are subject to a Tree Preservation Order.

Living conditions and character and appearance

4. The appeal development would introduce a pair of semi-detached dwellings; these would be sited a little behind the front building line of the flats with garden areas to the front. At the rear, each dwelling would have a small garden area with the rear wall of the dwellings sited close to the common boundary with 7 Westbourne Road. No windows are proposed in the rear walls at first floor level, with the rear bedrooms and studies proposed to be served by rooflights only.
5. The front of the proposed plot 2 would be located within a few metres of the canopy of the beech tree (identified as T5 on the tree location plan). The front of plot 1 would look out towards trees T2 and T3, although the canopies of these would be a little further from the frontage than would be the case for plot 2. It is proposed to raise the canopy of all three of these beech trees, but the canopies would extend significantly into the front garden areas. The outlook from the ground floor and the first floor bedroom windows would be

- dominated by the beech trees and a street tree beyond. There would be a dark environment internally and also in the front garden.
6. The rear bedrooms/studies would have no direct outlook being served only by rooflights. Therefore, as the front bedrooms would be dominated by the tree canopies, the outlook from all the bedrooms in both houses would be compromised. The front gardens would be dominated by the tree canopies and the rear garden areas would be relatively small. Taking all these factors together, the living conditions for the future occupiers of the dwellings would be inadequate.
 7. The trees would have little effect on direct sunlight reaching the front of the appeal dwellings and the rear gardens would benefit from direct sunlight later in the day. This would not minimise or mitigate the dominant effect of the trees or their impact on the levels of day light in the front gardens or the front rooms. I observed a number of trees located in front gardens. However there were few local examples where the fronts of dwellings are as significantly dominated by trees as would result with the appeal scheme. In general at least parts of the frontages have a more open aspect and many properties benefit from larger rear gardens. Even where more comparable examples exist it is not a sound basis for allowing further harmful development.
 8. The parties disagree as to the appropriate form of the root protection area (RPA). The dispute is primarily whether the nominal circle is appropriate or whether factors such as the boundary wall, the pavement, the road, and the neighbouring hardstanding are likely to have influenced the rooting such that it has occurred asymmetrically and extends more significantly into the site.
 9. The appellant's consultant arborist has cited a number of examples where he has observed rooting systems having thrived under hard surfaces. The Council consider that these should be treated as anomalous. I accept that it is possible that the beech trees may have rooted in a broadly circular pattern, or may have a communal root system extending a similar distance into the street and the site. However I have no substantive evidence that this is actually the case. I am mindful that BS 5837:2012 advises that where site conditions indicate that rooting has occurred asymmetrically, modifications should be made to the RPA to reflect the likely root distribution. The presence of roads and structures is a pre-existing site condition that may have had this type of influence.
 10. Without significant evidence to the contrary I am concerned that the proposed development could result in works within the RPA and that this may result in the loss of, or significant deterioration to, one or more of the beech trees. I did observe some trees in the locality where there is little open space to their rear. However, this does little to suggest that the root systems of the beech trees at the appeal site have not extended into the garden land. The garden contains other trees and shrubs, with the appellant suggesting that this is likely to have resulted in rooting under the street where such competition does not exist. There is no evidence that this has actually occurred and I note the appellant's own evidence that overlapping RPAs is common, with there being 'room for all'.
 11. Reference has been made to a court judgement. I have not been provided with the details of this, but it appears the case centred on whether a tree owner could have reasonably foresaw that tree routes could cause soil shrinkage and subsidence. It does not assist in reaching a conclusion as to whether it is appropriate to maintain a circular RPA in this particular case.

12. Even if the appeal dwellings could be accommodated without undue impact on the tree roots, this would not minimise the poor living conditions that would be created for the future occupiers of the buildings. In view of this I have significant concerns that, if the development went ahead, there would be pressure in the future for some of the trees to be removed or significant works to be carried out to reduce their effect on the dwellings.
13. I note the appellant is of the view that the protection afforded to the trees should be sufficient for the Council to resist removal or harmful works. If that were the case it would result in maintaining poor living conditions for the occupiers of the appeal dwellings in the long term. The reality is that the living environment would be material in considering whether applications to fell or carryout works to the trees should be allowed. Allowing the appeal would inevitably create a tension. I acknowledge that some future residents may value having a significant tree in their garden however there is a reasonable likelihood that ultimately the development could result in works being allowed that are harmful to the amenity value of the trees.
14. The lower branches, to the south-west, are less visible from the street and some works may not have significant effects on the amenity value of the trees. However the periodic tipping back of these branches would not sufficiently reduce the dominance of the trees or improve the levels of day light reaching the front garden and front rooms.
15. The loss of any of the 3 beech trees which front the site would have a harmful effect on the verdant setting and, consequently, to the character and appearance of the CA. Significant works to the trees is likely to have an effect on their canopies and therefore to their amenity value which in turn would be harmful to the character and appearance of the CA. The street trees are also an important characteristic of the CA; however their presence would not diminish the harm that would arise through the loss or degradation of the beech trees at the appeal site.
16. I conclude that the development would be contrary to the aims of the National Planning Policy Framework (the Framework) which seeks to ensure there is a good standard of living conditions for all existing and future occupiers of land and buildings. For the above reasons I am also unable to conclude that the development would preserve or enhance the character or appearance of the CA. As such I must find that it would conflict with Policies ENV4 and ENV12 of the West Dorset, Weymouth & Portland Local Plan. These policies seek to ensure development conserves the significance of heritage assets, respects the character of its surroundings including in respect of how it relates to features that contribute to the character of the area.
17. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. This is a matter of considerable importance and weight. The trees are seen from a small section of the CA and consequently the extent of any harm to the heritage asset would be "less than substantial" in the terms of the National Planning Policy Framework (the Framework). This harm must therefore be weighed against any public benefits of the proposal, which I will return to in the "Other matters" section below.

Other matters

18. Some removal of overgrown undergrowth and clearing of debris would occur as part of the development. This would result in modest benefits but these could be achieved regardless of whether the development proceeded. There would be some private benefits to the current occupant of the ground floor flat who desires to be responsible for maintaining a smaller area of garden. Even taken together, these factors do little to weigh in favour of the development and I give them only very limited weight. The existing wall at the front of the site would be retained and the reduced garden area for the flat would not be significantly overlooked. These are neutral factors and do little to weigh in favour of the development.
19. The evidence before me suggests that the Council is unable to demonstrate a five-year supply of deliverable housing sites, albeit only by a very small margin. In these circumstances, having regard to paragraphs 49 and 14 of the Framework, this means that planning permission should be granted unless:
- any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole (often referred to as "the tilted balance"); or
 - specific policies in the Framework indicate development should be restricted.
20. In relation to the latter, footnote 9 in the Framework provides examples of these policies which include those relating to designated heritage assets. I have been unable to conclude that harm will not arise to the character and appearance of the CA, but that such harm would be less than substantial. The development would bolster the housing land supply. Social and economic benefits would also arise from the provision of 2 dwellings which would be in a location that accords with the Council's strategy for the provision of housing and is close to shops and other facilities. These are public benefits, but they would be modest given that the development would only add two dwellings to the housing supply and ultimately the housing stock. I therefore give this only limited weight and it does not outweigh the harm that would arise to the CA.
21. Having reached this conclusion, specific policies in the Framework, and the related policies in the development plan, indicate that the development should be restricted. The 'tilted balance' in paragraph 14 of the Framework does not apply. However, having regard to paragraph 49 of the Framework, the housing land supply situation nevertheless remains a material consideration. I have already concluded that the benefits of the scheme would not outweigh the harm to the CA. The harm to the living conditions of future occupiers of the development adds further weight against the development. Even when I take account of the other modest benefits of the development, none of the benefits, alone or in combination, would outweigh the harm.

Conclusion

22. The adverse effects of the development are sufficient to mean that the proposal would conflict with the development plan when taken as a whole. I conclude that the appeal should be dismissed.

K Taylor

INSPECTOR