
Appeal Decision

Site visit made on 13 November 2017

by S Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 21st December 2017

Appeal Ref: APP/D2510/W/17/3179272

26 Albert Avenue, Skegness PE25 3DQ

- 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 Ms M Norman against the decision of East Lindsey District Council.
 - The application Ref S/153/01658/16, dated 8 August 2016, was refused by notice dated 17 January 2017.
 - The development proposed is erection of two dwellings with layout and means of access to be considered.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is submitted in outline with all matters reserved except for access and layout. I have determined the appeal on the basis of the above treating the submitted elevational drawings as indicative of one way in which the development could take place.
3. Decision makers are required to make adequate provision for the preservation and planting of trees when considering planning applications and appeals¹. A local planning authority may make a Tree Preservation Order to protect specific trees or groups of trees. Anyone wanting to cut down, top, lop or uproot trees subject to an Order must first apply to the local planning authority for its consent unless the proposed work is exempt through an exception. One such exception is works necessary to implement a planning permission².
4. An Arboricultural Implications Assessment and Method Statement (Tree Statement) dated 14 June 2017 was prepared for this appeal. On 3 August 2017 the Council confirmed the Skegness 2017 (153.07) Tree Preservation Order (the TPO). This protects trees situated on land at 26 Albert Avenue, in the area defined as Area A1 on the accompanying plan. The belt of trees along the eastern boundary of the site is not included in the TPO. The Council advises that it is likely that large scale removal in that area would need a Forestry Commission felling licence.

¹ S197 Town and Country Planning Act 1990

² Paragraph: 060 Reference ID: 36-060-20140306 the National Planning Practice Guidance (PPG)

Main Issue

5. The main issue is the effect of the proposed development on the character of the area and the setting of the adjoining Site of Special Scientific Interest (SSSI)³, including its effects on protected trees.

Reasons

6. Albert Avenue is situated within the built up area of Skegness. Future occupiers of the proposed dwellings would therefore have good access to services and shops in the town centre. No 26 Albert Avenue is a large residential property with an extensive garden. To the north, south and west of No 26 are residential properties of mixed sizes styles and designs. Recent nearby permissions for residential developments include houses on Albert Avenue and Derby Avenue⁴.
7. The appeal site is part of the extensive garden area of No 26 containing a mix of mature trees, beech and conifer hedges and various shrubs. It is bounded to the north and south by two public footpaths which extend off the ends of the culs de sac of Albert and Buckthorn Avenues respectively. The houses at Nos 33 and 35 Albert Avenue are sited behind No 31, directly across the footpath to the north of the appeal site. To the east the appeal site adjoins the SSSI and the Coastal Conservation Area which features sand dunes, flat marsh areas and the sea beyond.
8. The house at No 26 is on the higher part of the property. There is a significant drop in levels from the house to the tennis court and beyond that levels rise again forming a bank along the eastern boundary of the site. These levels continue through a tree belt beyond the appeal site boundary before falling away to the lower levels of the coastal marsh beyond. Levels are also higher at the northern and southern boundaries of the site. The overall effect is of a shallow irregular "bowl" within the centre of the site.
9. Within the garden there are a large number of trees, diverse in species, size and age which together make an attractive feature. The trees can be seen from public viewpoints in particular from the footpaths either side of No 26. As a group they contribute to the local landscape and skyline, providing a distinctive attractive sylvan character with substantial public amenity value.
10. As required by the legislation I have assessed the effects of the proposal on trees. Due to the position and footprint sizes of the proposed dwellings their construction, together with the access arrangements, would result in the loss of a considerable number of trees. Many of the trees that would be removed are in relatively poor condition or of lesser arboricultural value such as Leyland Cypress. However, many of the trees that would be removed are in reasonable condition and would make a positive contribution to the local environment for many years. The proposed removal of trees to facilitate construction would result in the loss of the landscaped verdant character of the two public footpaths that lead into the SSSI.
11. I acknowledge that additional replacement planting is proposed. However, due to the closeness of the proposed accesses and dwellings to the side boundaries

³ The SSSI also has the following designations: "National Nature Reserve (NNR), Local Nature Reserve (LNR), Special Protection Area, E.E.C Birds Directive (SPA), Wetland Of International Importance (Ramsar Site), (WII), Special Area Of Conservation (SAC) area" – Paragraph 3.2 of the Council's Statement

⁴ S/153/01863/15; S/153/01332/13; S/153/01881/03

it seems unlikely there would be sufficient space for replacement screen planting of the scale and height of that being lost or necessary to retain the verdant landscape approach to the SSSI.

12. One of the most prominent attractive individual trees on the site is the Copper Beech Ref 3063 in the Tree Statement. Paragraphs 8.6.3 and 9.5.2 of the Tree Statement indicate that pruning works would be required to facilitate development. The extent of these works is not specified and I also note there would be some disturbance to the Root Protection Area of the Beech. On this basis I cannot confidently conclude that the works would not undermine the appearance and long term health of this protected tree.
13. For the reasons set out above I conclude that the proposed development would have a significant harmful effect on protected mature trees within the site and therefore an adverse effect on the distinctive character of the area. This would be particularly so in respect of the characters of both of the public footpaths that lead to the SSSI. Accordingly the development would be contrary to Saved Policy A5 of the East Lindsey Local Plan Alteration 1999 (the LP) which seeks to retain the distinctive local character; to retain features or characteristics which are important to the quality of the local environment; and to integrate landscaping appropriate to the setting of the site. The LP is of some age, but the aims of Policy A5 accord with similar principles in the National Planning Policy Framework (the Framework) that seek good design that respects the character of the local area. I therefore give it substantial weight.
14. The Council can control works to many of the trees within the site and there is a belt of trees beyond the eastern boundary of the site at a higher level than the coastal marsh which would not be affected by the loss of trees within the site. On this basis I conclude that sufficient woodland would be retained such that the setting of the SSSI would not be adversely affected, even if the tops of the proposed dwellings could be glimpsed at a distance amongst the trees.
15. The appellant asserts that the Council has put forward tree related conditions which indicates that the Council is willing to accept the conclusions of the Tree Statement; that the TPO is not robust enough to prevent development; and that the Council did not take account of the quality or health of individual trees in preparing the TPO. However, the proposing of putative planning conditions by the Council, in the event that the appeal was allowed, is without prejudice to the consideration of the appeal. Moreover, it was open to the Council to omit trees that did not merit protection before confirming the TPO.
16. I have taken account of the dwelling at No 35 Albert Avenue. However, nothing I saw during my site visit leads me to conclude the development as proposed would have an acceptable effect on the character of the area.

Other considerations

17. The Framework seeks to direct development away from areas of highest flood risk. The site lies within Flood Zone 1 and, like in many parts of Skegness, there is some risk of flooding. However, the site falls outside the Coastal Hazard Mapping for all scenarios. The Environment Agency raises no objections regarding flood risk provided appropriate mitigating conditions were attached to any planning permission. Lindsey Marsh Drainage Board have no objections subject to a suitable drainage scheme being agreed. In the absence of detailed evidence to the contrary I see no reason to reach a different view.

18. The East Lindsey Core Strategy 2016 – 2031 (the emerging CS) is under preparation. Emerging Policy SP18 of the CS seeks to restrict unconstrained coastal housing growth. This is to avoid placing more people at risk of flooding. The proposed development would not meet the criteria set out in Emerging Policy SP18. However, the emerging CS carries, in my judgement, little weight as it is in the early stages of the plan-making process.
19. The proposal was refused by the Planning Committee contrary to the officer recommendation. I have exercised my own judgment and have reached my own conclusions in relation to the relevant material planning considerations.

Planning Balance and Conclusion

20. Planning applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise⁵. The weight to be attached to policies in the development plan, whatever their chronological age, should be according to their degree of consistency with the Framework which sets out the Government's planning policies and is a material consideration. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the Council cannot demonstrate a five-year supply of deliverable housing sites. Where relevant policies are out-of-date, Paragraph 14 of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits in the Framework taken as a whole (the tilted balance).
21. At the time of the decision on the planning application the Council could not demonstrate a five year supply of deliverable housing sites. For the purposes of this appeal the Council asserts that a 5.2 year supply of deliverable housing land can be demonstrated⁶. The appellant queries the calculations. If I were to agree with the appellant that a five year housing land supply cannot be demonstrated then the tilted balance in Paragraph 14 would apply.
22. I have found that the proposal would have a harmful effect on protected trees and the character and appearance of the area. It would conflict with Saved Policy A5 of the LP to which I accord substantial weight.
23. The proposal would add two houses to the supply of housing locally in the coastal area outside Flood Zone 3. There would be some limited economic benefits arising from employment during construction and future occupiers would support local services and shops. However, applying the tilted balance, I conclude that the adverse impacts of the proposed development on protected trees and the character of the local environment significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
24. For the reasons set out above and taking into account all other relevant matters raised I conclude the appeal should not succeed.

S Harley

INSPECTOR

⁵ Section 38 of the Planning and Compulsory Purchase Act 2004

⁶ Housing Supply Calculations Appendix B of the Council's Statement