
Appeal Decision

Site visit made on 28 November 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 10 January 2018

Appeal Ref: APP/F0114/W/17/3181284

Parking area between 4 and 6 Greenvale Drive, Timsbury, Bath

- 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 D Claridge (Cranmore Homes Ltd) against the decision of Bath & North East Somerset Council.
 - The application Ref 17/01344/FUL, dated 17 March 2017, was refused by notice dated 9 May 2017.
 - The development proposed is described as 'erection of a single dwellinghouse attached to existing consent 15/05437/FUL and revisions to approved site layout/parking.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the determination of the planning application, the Bath and North East Somerset Placemaking Plan (PP)¹ was formally adopted by the Council on 14 July 2017. Therefore, policies NE.4 and D.2 of the Bath and North East Somerset Local Plan, referred to in the Council's decision notice, have been replaced by policies NE6 and D6 of the PP. They are also referred to in the decision notice, but were emerging at the time. I am required to determine the appeal on the basis of the current development plan, which both parties have had the opportunity to comment upon during the course of the appeal.
3. The site address in the banner heading above is taken from the appeal form and the Council's decision notice, as it more precisely describes the location than the address in the planning application form.

Main Issues

4. The main issues concern the effect of the proposed development, in relation to a protected tree, on the living conditions of future occupiers, with particular regard to light and outlook, and on the character and appearance of the area.
5. As the main issues are interrelated, I will deal with them together.

Reasons

6. The appeal site is located to the rear of Greenvale Drive. Previously occupied by two rows of garages, since demolished, and covered in hardstanding, it was

¹ District-wide Strategy and Policies

used as an informal parking area. Planning permission² was granted for a terrace of 3 dwellings on the site, which had been constructed at the time of my site visit. It is proposed to attach a further two storey dwelling, of the same design, to the southern end of the newly constructed terrace, bringing the number of houses to 4. The site is largely enclosed by other surrounding residential development. To the rear, near its south west corner, is a large beech tree which is located on adjoining land in the grounds of The Laurels, a residential care home.

7. According to the Council, the previous planning permission for 3 dwellings, referred to above, was originally an application for 4 houses, arranged in two semi-detached pairs. However, in response to concerns about the proximity of the same beech tree, the proposal was modified to a terrace of 3 dwellings, which was the form in which permission was subsequently granted and implemented. The Council observes that the current proposal, in effect, represents a substantive return to the original scheme for 4 dwellings, albeit in a terraced form. The appellant has not specifically commented on that aspect. In any event, my role is to consider the effect of the current proposal.
8. The height and size of the beech tree ensures that it is prominent and can be seen from various public vantage points along Greenvale Drive and in the surrounding area. It also complements a number of other trees, greenery and grass verges which characterise this part of the rural village of Timsbury. The tree is an attractive specimen and makes a substantial and positive contribution to the character and appearance of the area, as recognised by its protection under a Tree Preservation Order (TPO).
9. The beech tree would be located almost directly behind the proposed dwelling and its garden. Although I understand that crown reduction and pruning has previously taken place, the tree is still substantial. Whilst the tree makes a positive contribution to the landscape, its size and proximity would be likely to have a different effect on future residents of the proposed dwelling. That would be to dominate views from the rear windows and garden of the house, to a degree which would be overbearing and oppressive for future occupants. It would, therefore, have a significant adverse effect on their outlook.
10. Moreover, the canopy of the tree would restrict light reaching the garden and, at some times, the rear elevation of the proposed dwelling during the spring and summer months. That is confirmed by the shadow analysis contained in the appellant's Arboricultural Report³, which indicates that there would be overshadowing of the garden and the rear elevation of the dwelling, to varying degrees, during the afternoons between mid-March to mid-September. At some times of the day the entire garden and much of the rear elevation would be in shade for significant periods.
11. It is suggested in the Arboricultural Report that because there is overshadowing of plot 3, which was given planning consent, the effect on plot 4 should be accepted. In any case, the report indicates that the shadowing effect on plot 4, the site of the proposed dwelling, would be greater than on the other previously consented dwellings.

² 15/05437/FUL

³ FLA (Furse Landscape Architects) 'Arboricultural Report on Potential Future Pressures for Removal of Tree T5, Residential Development Land at Greenvale Drive' dated 27 February 2017 Rev B

12. It is also submitted in the report that dappled light would still filter through the beech tree canopy during the summer, although the Council's Senior Arboriculturalist does not share that assessment. Photographs, provided by the Council, of the tree in full leaf, both before and after pruning, show a relatively dense canopy. Overall therefore, I am more persuaded by the Council's view that the shading effect of the tree would be significant and to the detriment of future occupiers of the dwelling.
13. It is said by the appellant that such shading during hot summer months would be a potential benefit to future occupants. However, I consider that while some areas of shade might be considered beneficial, the extent and periods of shading, during the afternoons in spring and summer, would more likely be perceived negatively by future occupants as an unwelcome restriction on sunlight. As the house would have three bedrooms and a garden, it would also be attractive to families, which would be likely to result in more intensive use of the garden, where the adverse effects on sunlight would be most apparent.
14. The appellant's Arboricultural report concedes that there *'there will always be the potential pressure for trees to be seen as a nuisance in terms of overshadowing and/or the dropping of leaves, mast, branches or limbs'*. It suggests that canopy reduction works and shadow analysis clearly shows that *'the potential future pressure for the tree to be removed has been minimised where possible.'* Whilst that may be, given the effect on outlook and the extent of shading, I am not persuaded by the report's conclusion that the construction of the fourth house would not significantly increase future pressures for the removal of the tree.
15. Given the position of the tree, part of its canopy would be likely to overhang the garden of the proposed dwelling. Indeed, the appellant's Arboricultural Report advises that the *'canopy on the eastern side has been cut back to a line consistent with the site's western boundary, thereby reducing the extent to which the tree overhangs the site boundary fence.'* The Council's Senior Arboriculturalist also advises that the tree has yet to reach its full growth potential and would continue to grow, exacerbating that aspect. That would lead to the possibility of branches falling and likely seasonal nuisance from leaf fall and beech mast in the garden of the proposed dwelling, despite the recent pruning works.
16. The appellant refers to the proximity of the consented properties and an existing bungalow to the beech tree. However, the effect on the other three properties in the existing terrace would not be as pronounced, as they are further away from the tree and views towards it would be less direct. Moreover, the presence of existing properties does not, in itself, justify the introduction of another property in close proximity to the tree, where future occupiers would be exposed to adverse effects. Although the tree would be apparent to potential occupiers, they may not be fully aware of the extent of its effect until living in the property for a period of time.
17. My attention has also been drawn by the Council to an appeal decision relating to 27 Ludlow Road, Bridgnorth.⁴ It concerned a large protected tree that made a valuable contribution to the character and appearance of the area, which would be in close proximity to proposed dwellings. The dominant position of the tree and its effect on outlook and shading were relevant factors. There are,

⁴ APP/L3245/A13/2190478

therefore, clear similarities between the issues in that appeal and in the appeal before me. In paragraph 7 of that decision, the Inspector refers to British Standard guidance which identifies that the relationship of buildings to large trees can cause apprehension to the occupiers, resulting in pressure for the removal of trees.

18. A further publication⁵, although superseded by newer regulations, is also cited in that appeal. It draws attention to the expectations of incoming occupiers for *'trees to be in harmony with their surroundings, without casting excessive shade or otherwise interfering with their prospects of reasonable enjoyment of their property'*. Ultimately, the Inspector concluded, in paragraphs 16 and 17, that the proposal would be likely to lead to increased pressure for works to the tree, which could have a detrimental effect on its future appearance and life expectancy. Given the similarities with this appeal, I give weight to the findings of the Inspector which I have taken into account in reaching my decision.
19. The appellant submits that maintenance of the tree by the adjacent landowner would continue and that the Council would be likely to approve such applications, if reasonable. However, as the tree is in third party ownership on adjoining land, it is more likely that it would be perceived as a nuisance by future occupiers of the proposed dwelling, particularly as they would lack any direct control over it. Combined with the effects on outlook and shading and other issues such as overhanging, potential falling branches and seasonal nuisance, I find that the proposal would be likely to lead to pressure over time for the tree to be pruned or even felled.
20. Therefore, even though it is protected by a TPO enabling the Council to control future works, it would be more difficult for the Council to resist applications to cut back or remove the tree if it was having a harmful effect on the living conditions of new occupiers.
21. Drawing the above factors together, I conclude, on balance, that the overbearing and shading effect of the tree would significantly harm the living conditions of future occupiers of the dwelling, with particular regard to outlook and light. That would also be likely to lead to increased pressure for continued pruning, which could compromise the health and longevity of the tree, or requests for its removal, to the detriment of the character and appearance of the area.
22. Therefore, the proposal would be contrary to policy D6 of the PP, which, amongst other things, seeks to ensure that development does not cause significant harm to the amenity or living conditions of future occupiers, in terms of outlook and access to natural light. The scheme would also conflict with policy NE6 of the PP, which says that development will only be permitted where it seeks to avoid any adverse impact on trees of landscape or amenity value.

Planning Balance and Conclusion

23. The proposal would lead to some economic uplift during construction and from future occupiers. It would also contribute to the supply of housing and to the public finances via Council Tax and the Community Infrastructure Levy. However, as the proposal amounts to just one house, the benefits would be

⁵ Tree Preservation Orders: A Guide to the Law and Good Practice

limited and could equally be achieved by a residential dwelling at a different location. Overall, therefore, the benefits do not outweigh the significant harm that I have identified to the living conditions of future occupiers and, potentially, to the character and appearance of the area, because of pressure to prune or remove the protected beech tree.

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR