
Appeal Decision

Site visit made on 23 July 2019

by Karen Taylor MSC URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2019

Appeal Ref: APP/P1045/W/19/3226556

Penzer House, Dale Road South, Darley Dale DE4 3BP

- 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 Mr Jonathan Jenkin against the decision of Derbyshire Dales District Council.
 - The application Ref 19/00148/OUT, dated 6 February 2019, was refused by notice dated 4 April 2019.
 - The development proposed is an outline application for the construction of 2 dwellings and the formation of access and access driveway.
-

Decision

1. The appeal is dismissed.

Procedural Issues

2. Outline planning permission is sought with access to be considered at this stage, with indicative plans showing the respective position of dwellings in both plots.
3. However, the appellant has provided site layout plans showing the position of the dwellings which taken together with the submitted Arboricultural Impact Assessment, Tree Shading Report, Tree Shading Target Areas and 3D modelling are somewhat more indicative in an attempt to demonstrate that an acceptable detailed scheme could be advanced at the reserved matters stage, and are a basis for the Council's case. The Design and Access statement forms part of the evidence in this appeal and is fairly specific (paragraph 3.9) as to the siting of the proposed dwellings and to some extent the proposed design. I have therefore taken these into account in so far as establishing whether it would be possible, in principle, to erect 2 dwellings on the site.
4. The appellant has confirmed that the name of the property has changed from "Rotherwood" to "Penzer House", I have taken this to be the site address.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area, including the implications for the retention and health of protected trees and non-protected trees, on the site.

Reasons

6. The appeal site forms part of the private garden of Penzer House, within a residential area of semi and detached dwellings set within substantial plots. To the south of the site is a large office block at a significantly lower level separated by a high boundary wall. To the west of the site is a field leading to open countryside. Access to the site is taken directly from the A6, which currently serves Penzer House. There are two dwellings proposed and identified as 'Plot 1' to be located towards the north of the site and 'Plot 2' to the south.
7. A number of mature trees lie within the site boundaries which include Poplars, Conifers, Cypress and Limes as well as other small and ornamental trees. There are 14 individual Lime trees within the site protected by a Tree Preservation Order (TPO) to the southern boundary of the site and a further 2 covered by the TPO which adjoin the boundary with the field, notable is (T17) a large mature Lime. The arboricultural report submitted with the application identifies 72 individual trees, a group of 14 limes and shrubs and small trees. The majority being category C and B trees, but some unclassified (U).
8. The development itself would lead to the loss of 9 category U trees and 33 category C trees, which include many overgrown self-sets. Pruning works would also be required for branch clearing, canopy raising and overhanging deadwood with only four new trees proposed as replacements. The removal of these trees within the site would lead to a change in character and appearance of the site with loss of some tree cover and a change to the spacious garden setting of the mature trees. The Lime (T17) would be pruned and the extent of the pruning work would likely be excessive in order to facilitate 'Plot 2' and the overall change from the tree works would be perceived as being negative and would harm the character and appearance of the immediate and wider area.
9. As 'Plot 2' would be positioned near to the protected Lime trees, and other non-protected trees towards the southern boundary of the site, the root protection area as shown for these protected Lime trees (T16), (043) and (T17), (046) would be in extreme close proximity and I consider this would be of an insufficient distance for suitable protection and would lead to damage of the trees during construction works. Furthermore, (T17) root protection area and its canopy spread would extend across most of the rear garden of the southern plot. This would not be an ideal situation for the future protection of the tree as it would restrict the garden area of occupiers of the dwelling, place future pressure for its removal and would leave the tree vulnerable, causing harm to its health and safety and long term-wellbeing.
10. The appellant's shadow analysis appraisal of the proposed dwellings as part of the application shows 'Plot 1' with limited shading during the summer months due to the building position and tree coverage. However, it indicates that there would be significant shading particularly within the summer months during the daytime hours within the garden area of 'Plot 2' and this would worsen during the winter months. I note the appellants comments that some level of tree shade in gardens can be highly desirable and the plot would remain cool in summer and this would be the occupier's choice where to sit. I consider that the loss of daylight and sunlight caused by the overshadowing would be excessive and not be an acceptable situation for any future occupiers, furthermore this would lead to increased pressure on protected trees to be pruned or even removed.

11. Outline planning permission has been granted for the site. This permission is for the erection of only one dwelling, although indicative site layout plans, the dwelling would be positioned towards the north of the site. While there is a greater theoretical possibility that this development might take place, further permissions are likely to be required from the Council for works to the protected trees given their maturity over time and growth. From the evidence before me, any such works would likely to be a concern for the Council. I am not therefore certain that the effect of the fallback position advanced compared to that which the appeal scheme would cause. Consequently, the fallback position advanced does not outweigh my findings.
12. I therefore conclude that the proposed development would result in significant harm to the character and appearance of the area, including the implications for the retention and health of protected trees and non-protected trees, on the site. The proposal would be contrary to Policies S1, S3, S7, PD1 and PD6 of the Derbyshire Dales Local Plan (2017). Which these policies collectively seek that developments positively contribute towards sustainable development and that they are compatible with the character and appearance of the area; where possible seek to protect, manage and where possible enhance biodiversity; and that development will be refused which results in the loss or deterioration of aged or veteran trees.
13. For the same reasons the proposal would fail to conform with the policy relating to conserving and enhancing the natural environment as set out in section 15 of the Framework, specifically engaging paragraph 170 thereof, which ensures where decisions should enhance the natural and local environment.

Other Matters

14. The Council has referred to other appeal decisions and I would agree with the appellant that the circumstances that applied to the other cases are not directly comparable to those before me. I have, in any case, reached my own conclusions on the appeal proposal on the basis of the evidence before me.

Planning Balance

15. I have found that the harm to the character and appearance of the area identified would be significant. Against this has to be balanced the factors in favour of the proposed development.
16. The provision of two additional dwellings would make a positive contribution to the Council's housing land supply shortage when weighed in the overall planning balance, albeit that the contribution would be limited due to the quantum of development proposed. There would be a small social benefit in providing the two housing units. Economic advantages would also arise from the construction and occupation of new houses.
17. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development.

Conclusion

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

Karen Taylor

INSPECTOR