



Appeal Decision

Site visit made on 3 September 2019

by A Denby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2019

Appeal Ref: APP/H3510/W/19/3229153

La Grange House, Fordham Road, Newmarket, CB8 7AA

- 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 Marcus Worsley against the decision of Forest Heath District Council.
 - The application Ref DC/18/1167/FUL, dated 26 March 2018, was refused by notice dated 7 February 2019.
 - The development proposed is erection of dwelling – revision to scheme approved under F/2012/0627/FUL.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Marcus Worsley against Forest Heath District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. On 1 April 2019 Forest Heath District Council merged with St Edmundsbury Borough Council to become West Suffolk Council. The development plans for the constituent areas remain in place until such time as they are revoked or replaced. It is therefore necessary to determine this appeal with reference to policies set out in the plans produced by the now dissolved district council.
4. The proposals were amended during the application process and I note the appellant's concerns with regards to references within the Officer Report to the original scheme. These references appear to have been corrected by the Council as part of the 'Development Control Committee Wednesday 6 February 2019 Late Papers' document which has been provided as part of Appendix 3 of the appellant's Appeal statement. The council made its decision on drawings including refs: 1086-P03B; 1086-P04A; 1086-P05A; 1086-P06A and 6697-D-AIA A, and I have determined the appeal on the same basis.

Main Issues

5. The main issues are;
 - whether the proposed development would provide acceptable living conditions for future occupants, with regard to sunlight and daylight; and

- whether the proposal would preserve or enhance the character or appearance of the Newmarket Conservation Area.

Reasons

Living conditions

6. The proposed dwelling would occupy the majority of the site and would be tight to all its boundaries. Many of the windows to habitable rooms would be in close proximity to and have a direct outlook onto the existing boundary fence and wall. Whilst the submitted plans show open areas around the building, due to their linear nature and restricted depth, they would have limited value as useable outdoor amenity space. The courtyard area proposed, due to its size and relationship to the proposed internal room layout, would therefore provide the primary outdoor amenity area and outlook from the dwelling.
7. The plans show that the canopy of a Beech tree would be in close proximity to this area. Whilst I note that the appellant has sought to maximise the size of the windows to the courtyard, the tree would still be a dominant feature looming over the dwelling and courtyard area.
8. The submitted arboricultural shade analysis shows that minimum levels of sunlight to the living/dining/kitchen room window would be achieved. This is one tool that can be utilised in assessing the impacts of a development, but it does only provide a guide and achieving minimum criteria does not necessarily equate to an acceptable development. Considering its southerly aspect and that it is the main source of light to this substantially sized room, which includes the main areas used for daily living, future occupants could reasonably expect to experience higher levels of natural light without reliance on skylights, which may result in a gloomy interior.
9. Considering the proximity to the tree, restricted outlook from other windows and overall compact and restricted nature of the proposed development, I find that the resulting overshadowing would provide future occupants with poor living conditions, both internally and externally.
10. For these reasons the proposed development would fail to comply with Policies DM2 and DM22 of the Forest Heath and St Edmundsbury Local Plan: Joint Development Management Policies Document February 2015, (LP) which seek to ensure that new developments do not adversely affect residential amenity and new dwellings are of a high architectural quality, being fit for purpose and function well, providing adequate space, light and privacy.

Conservation area

11. The site currently forms part of the garden area for La Grange House and is within the Newmarket Conservation Area (CA) which, whilst being within an urban setting, includes numerous areas of open space. Some of these areas are used in connection with the horseracing industry, which Newmarket is well known for. The CA also has a verdant character due to its mature trees, some of which are of very large stature, prominent and distinctive due to their size, shape or leaf colouring. The site is reflective of this verdant character. It contains an open area which was previously used as a tennis court; this part of the site is set back from the road and its enclosed nature means that it has a neutral impact on the overall character and appearance of the CA.

12. The remainder of the site, however, is heavily landscaped, with a number of mature trees present. These trees in addition to those on the adjacent La Grange House site form an attractive group. Within this group is a mature Beech tree which, due to its size and leaf colouring, stands out visually from the other trees and is a prominent feature from the surrounding area. Therefore, whilst it enhances the attractiveness of the group of trees, individually it adds significantly to the character and appearance of the CA.
13. The proposed development would be in close proximity to this Beech tree. The appellant states that some works would be required to the roots of this tree though they consider this would not compromise the tree overall. However, I note that the submitted arboricultural evidence states that the position of the tree has been estimated and a structural engineer would need to be consulted to assess the implications of the tree retention on the required foundation design. Whilst from my site visit it is evident that the location of the tree, as indicated, is unlikely to be wholly inaccurate it has not been fully demonstrated to my satisfaction that the tree could be retained unharmed.
14. Even if it could be proven that the root system of the Beech tree was not adversely affected, it is evident from the details submitted that the canopy would be close to the proposed dwelling.
15. Although I saw on my site visit that a number of the lower limbs of the Beech tree extending towards the site have been removed, the tree would still be a significant feature and dominate the outlook from the property and courtyard area. As detailed above, considering the orientation of the site and overall size and layout of the dwelling proposed, it would result in a significant level of shading that would impact on the living conditions of future occupiers.
16. Furthermore, I saw that there was a substantial quantity of Beech nuts on the site and this, in combination with leaf drop, is likely to be a burden to future occupiers as it would primarily affect their main outdoor amenity area and require continual maintenance.
17. Whilst I note the proposal does not specifically include works to the tree or its removal, on the basis of the above, I consider it likely that there would be pressure to prune or remove this tree in the future, due to its effect on light, maintenance and safety or structural integrity concerns. Considering the layout of the site, it would be difficult for the Council to resist this, even with the CA protection or additional protection that would come if the tree was the subject of a preservation order. Although the Conservation Officer did not raise concerns with the proposal, this was on the basis of the Beech tree being retained.
18. The proposed development would therefore cause harm to the CA as it has not made adequate provision for the preservation of the existing tree which contributes positively to the character and appearance of the CA.
19. I have paid special attention to the desirability of preserving or enhancing the character and appearance of the CA, and the result of the proposal would be less than substantial harm when considered in the context of the National Planning Policy Framework. Whilst the Framework would support the provision of an additional dwelling, in an accessible location, I do not consider these public benefits would be sufficient to outweigh the harm I have identified to the CA and to which I have attached considerable importance and weight.

20. Therefore for the reasons stated above the development would conflict with Policies DM2, DM13 and DM17 of the LP and Policy CS5 of the Forest Heath Core Strategy 2010 which seek to ensure that developments have regard to local context, respond well to, and retain, important trees which contribute to the special character of the area, and preserve or enhance the character or appearance of the CA.

Other Matters

21. The appellant has referred to a previous approval for a dwelling at La Grange House where the Council did not raise concerns in relation to the proximity of the development to existing trees. However, there are differences between that approval and the current appeal scheme. The previous site covered a larger area, incorporating the existing swimming pool area as part of the garden area, and there was a slightly greater separation from the proposed dwelling to the eastern site boundary. Therefore, whilst a courtyard area, in close proximity to the existing Beech tree, did form part of the previous proposal future occupants of that development would not have been wholly reliant on it as their main outdoor amenity area, or outlook from the dwelling.
22. Consequently, I consider there would have been less pressure from future occupants to prune or remove the tree and, in the event that such pressure did materialise, due to the size, layout of the site and alternative outdoor amenity areas, the Council would have been better placed to resist such pressures.
23. In addition to the previous approval the appellant has also referenced two other decisions the Council have taken whereby development was proposed in close proximity to existing trees. These schemes were, however, for office development and guest accommodation where the expectations of future users and occupants would be distinctly different to a dwellinghouse. They would be occupied for shorter periods of time and users would not have the same maintenance and management responsibilities. They are therefore not directly comparable to the appeal scheme which would be a main residence and occupied on a more permanent basis.

Conclusion

24. For the reasons given above I conclude that the appeal be dismissed.

A Denby

INSPECTOR