



Appeal Decision

Site visit made on 17 June 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Appeal Ref: APP/J4525/W/20/3245206

Land adjacent to 2 Boundary Cottages, Off Chester Road, Shiney Row, Houghton-le-Spring DH4 4QB

- 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 Dr Jafar Mojtavavi of Persepolis Architecture Ltd against the decision of Sunderland City Council.
 - The application Ref 19/01269/FUL, dated 18 July 2019, was refused by notice dated 30 October 2019.
 - The development proposed is erection of 1 no 4 bed dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the site address and description of development from the Council's Decision Notice as this is a more precise description of the site address and the development proposed.
3. Since the original decision the Council has adopted the Core Strategy and Development Plan (2015-2033) on 30 January 2020. As a result, the Core Strategy and Development Plan supersedes some of the policies of the Unitary Development Plan (UDP) as the adopted development plan for Sunderland. Several UDP policies have been retained to be used alongside the Core Strategy and Development Plan.

Main Issues

4. The main issues are the effect of the proposed development on 1) the character and appearance of the area and 2) the living conditions of future occupants with regard to overshadowing and outlook.

Reasons

Character and appearance

5. The appeal site is located in a predominantly residential area. The site has previously formed part of the garden of 2 Boundary Cottages, which is one of a pair of dwellings set back from the main road and reached by a gravel driveway. The site contains a number of mature trees that are predominantly confined to the site boundaries.

6. The proposed dwelling would be located close to the site boundary overlooking Chester Road. It would share the existing vehicular access from Chester Road. The surrounding area is characterised by properties of various sizes, styles and siting's, including a two-storey dwelling to the north-east of the appeal site that sits directly adjacent to the highway. There is also a wide variation in plot sizes. In this setting, I consider that the appeal proposal by reason of its size, style and siting would not be out of character with the area or cause harm.
7. The dwelling would be sited close to the front boundary where it would be visible above the boundary wall. The dwelling would incorporate a two-storey gable feature, however the first floor is primarily made up of roof space accommodation and the incorporation of dormer windows. Such an approach would contribute to reduce the overall scale of the dwelling and I find that the design, in the context of the surroundings, would not be dominant, oppressive or out of scale.
8. The dwelling would result in the partial removal of an existing area of green space. The effects of the development on character and appearance of the area in relation to trees, is considered elsewhere in this decision, however I find that the partial loss of the green space onto which the dwelling is proposed would not cause harm. The space is not prominently sited in the area and is largely concealed from the street-scene by the large boundary wall. It is not a particularly significant feature of the area.
9. The appeal site contains a significant number of trees that are subject to a preservation order¹. The trees make a hugely positive contribution to the character and appearance of the area, particularly those that run along the boundary with Chester Road which are prominent and attractive features in the street-scene.
10. The proposal would involve the removal of a significant number of trees and landscape features. The trees have significant amenity value and enhance the verdant character of the site. There are around 9 trees proposed to be removed. Of these trees, 3 have been identified as Category U – Trees unsuitable for retention, trees in such a condition that they cannot be realistically retained for longer than 10 years. Five have been identified as Category C - Trees of low quality with an estimated remaining life expectancy of at least 10 years, or young trees with a stem diameter below 15cms. One tree for removal has been identified as Category B - Trees of moderate quality with an estimated remaining life expectancy of at least 20 years.
11. For the purposes of good landscape management and maintenance, I find no harm would be caused by the removal of the Category U trees. I consider that collectively, the cumulative impact of the removal of the Category C trees would have a harmful impact on the character and appearance of the area, particularly in the absence of any significant proposed mitigation. I find that the removal of the Category B tree, a Sycamore on the boundary with Chester Road, would have a harmful impact on the character and appearance of the area despite the retention of the trees elsewhere on the site. The trees proposed for removal are located in such prominent positions adjacent to the boundary with Chester Road and are in such a condition as to make a significant contribution for many years to come.

¹ TPO 168 (November 2016)

12. Although significant mitigation is absent, replacement planting would not make the same contribution to the character and appearance of the area and would take a significant amount of time to become established. The siting of the proposed dwelling and the position of existing trees to be retained, severely limits the opportunity for trees to be planted in such an area where they would provide the same contribution to the character and appearance of the area as those which are proposed to be removed.
13. The submitted information shows that the proposed dwelling would be constructed outside the root protection areas and canopy spreads of the trees to be retained. A hardstanding is proposed within the root protection area of a retained tree. Construction techniques are highlighted which could be adopted to ensure that harm would be avoided to retained trees and their roots. I am satisfied that through the appropriate construction techniques and practices on site, the development would be possible without causing harm to retained trees or their roots. Such measures could be conditioned were the appeal to be allowed. I find that in relation to the trees that are to be retained, sufficient evidence has been submitted to demonstrate that the development could proceed without causing harm to the trees which are shown to be retained.
14. Concern is expressed in relation to pressure from future occupants of the dwelling for the removal or pruning of the trees due to shading that would be caused to the dwelling and rear garden by the trees. I have considered the impact of the retained trees on living conditions below, however, I find that there is no evidence to suggest that there would be pressure to remove the trees or carry out tree works.
15. The Council have referred me to an appeal² where a similar matter was considered. I do not have full details of the case. In any event I have determined the current appeal on its own individual merits on the basis of the evidence before me.
16. I therefore conclude that due to the loss of trees, the proposed development would be harmful to the character and appearance of the area. It would be contrary to Policies NE3 and BH1 of the Sunderland Core Strategy & Development Plan 2015-2033 (2020) which require, amongst other things, that development retains trees subject to Tree Preservation Orders (TPOs) and ensure that where trees are impacted negatively by proposed development, justification, mitigation and compensation are provided; and that developments provide landscaping as an integral part of the development including retaining landscape features.
17. The proposal would be contrary to guidance contained in the National Planning Policy Framework (the Framework) (2019) which outlines that developments should add to the overall quality of the area and are sympathetic to local character including the landscape setting.

Living conditions

18. The proposal includes the provision of a garden area to serve the proposed dwelling. This would contain the large mature trees that are to be retained on the site. I do not dispute that the retained trees will cause an element of overshadowing of the dwelling and the garden. However, I observed on my site

² APP/A4520/W/18/3206701

visit, that although some shading occurs, it does not affect the whole of the site at all times. There is also likely to be a reduced impact when the trees are not in full leaf. Also, conversely, in the absence of any harmful amount of overshadowing, the trees can serve to positively contribute to the overall character and appearance of the property and its garden.

19. In relation to the outlook from the proposed dwelling, I similarly find that the presence of the retained trees would not result in an unacceptable outlook. The retained trees do not produce a blank or solid feature. There are interspersed gaps between them allowing for an outlook through them. Additionally, the front elevation, particularly from the first-floor benefits from a relatively uninterrupted street-based outlook. Again, the presence of such trees, where they are not unreasonably dominant or overbearing, can positively contribute to outlook, which for the reasons outlined, I find to be the case in this instance.
20. The Council have referred me to an appeal³ where a similar matter was in dispute. I do not have full details of the case. In any event I have determined the current appeal on its own individual merits on the basis of the evidence before me and my visit to the site.
21. I therefore conclude that as a whole, the proposed development would not result in unacceptable living conditions for future occupants with regard to overshadowing or outlook. It would comply with Policy BH1 of the Sunderland Core Strategy & Development Plan 2015-2033 (2020) which requires, amongst other things, that development ensures a good standard of amenity for future occupiers of land and buildings.
22. The proposal would comply with guidance contained in the Framework which outlines, amongst other things, that developments should ensure a high standard of amenity for future users.
23. The Council consider that the proposal is contrary to the Residential Design Guide Supplementary Planning Document and I have been provided with Section 10C. This section relates to distances that should be achieved between dwellings which I do not consider to be pertinent to the main issue relating to the effect on living conditions with regard to outlook or overshadowing from retained trees.

Other Matters

24. The appellant has referred to their frustration in dealing with the Council in relation to the pre-application process, a previous application on the site and the application subject to the appeal. These are not pertinent to the main issues and are not relevant matters for the appeal process. In determining the appeal, I have only had regard to the planning merits of the proposal.
25. The appellant has referred to the fact that the proposal would clear out poor, dead and self-seeded trees and lop trees if deemed necessary for the health and longevity of the best remaining trees. Such maintenance would not however be dependent on securing planning consent, and I find that any benefit of such works would not outweigh the harm I have identified.

³ APP/A4520/W/16/3151072

Conclusion

26. Although I find no harm would be caused to the living conditions of future occupants, this does not overcome the harm I have found would be caused to the character and appearance of the area due to the impact on protected trees. I therefore conclude that the appeal be dismissed.

A M Nilsson

INSPECTOR