



Appeal Decision

Site visit made on 26 June 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 1st September 2020

Appeal Ref: APP/L2630/W/19/3240309

Land adj to 48 Rectory Gardens, Hingham NR9 4RG

- 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 Jonathan Rootham against the decision of South Norfolk District Council.
 - The application Ref 2019/0541, dated 6 March 2019, was refused by notice dated 1 May 2019.
 - The development proposed is the erection of two storey detached dwelling with integral double garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above I adopted the address indicated by the appellant in related correspondence, as it better describes the location of the appeal site.
3. I have used the description of the proposed development included in the Council's decision notice and on the appeal form, as it describes the proposal more accurately.

Main Issues

4. The main issues are the effect of the proposed development (i) on the character and appearance of the area, (ii) on the living conditions of future occupiers and on the trees growing within the site, (iii) on the living conditions of occupiers of neighbouring properties.

Reasons

5. The appeal site is a substantial L-shaped plot of land to the south east of Rectory Gardens, a residential cul-de-sac. The site is within the development boundary of Hingham and adjacent to the Conservation Area of Hingham to the east. The site is adjacent to a block of flats to the north and to three dwellings to the west, while to the south there are agricultural fields. To the east the site is adjacent to the gardens of the Rectory of St Andrew Church and used to be part of the same gardens before the Rectory Gardens estate was built in the 1980s. The site includes several trees, five of them protected by a TPO since 1972 when the site was still part of the gardens of the previous rectory. Nowadays, notwithstanding the legal boundaries between properties, due to its mature vegetation the land still forms a continuum with the adjacent gardens.

6. The application follows a refused planning permission on the same site for a scheme that included a dwelling on the west side of the appeal site and a dwelling in the position of the current scheme¹. The current application seeks to address the concerns raised on the previous one regarding matters of scale, design and impacts on the protected trees and living conditions of neighbours.

Character and appearance

7. The appeal site has been part of the garden of the flat No 48 Rectory Gardens for a few decades, but currently is largely unkempt due to its onerous maintenance according to the appellant. The proposed scheme is to subdivide the garden and construct a two-storey detached dwelling, including a one-and-half-storey garage, to the east of the site, close to the flats. The appeal site has several mature trees, including four trees protected by a TPO, while a fifth protected tree is in 36 Rectory Gardens and close to the boundary with the appeal site.
8. The appeal site provides a significant positive contribution to the area as a green space, due to its rich and mature vegetation, and as such provides a distinctive woodland-like character to the street scene. The Rectory Gardens estate has a mixture of dwellings with a varying degree of density and the appeal site also contributes with its spaciousness to the character of the built form of the surrounding area.
9. Due to its scale, with the construction of a substantive dwelling and the creation of a gravel driveway throughout the length of site, the proposed development would lead to the domestication of a significant portion of the site that would erode the verdant and spacious character of the land and, in particular, the open space between the dwellings on the west and the block of flats to the north. Although due to its siting the dwelling would be mostly hidden from the main street view and the existing protected trees would be retained, the development would still impact on the distinctive character and appearance of the area as described above.
10. The appellant contends that the appeal site was never intended to function as part of the gardens of any of the surrounding dwellings. However, according to the appellant's representation, the appeal site was initially part of the property of 40 Rectory Gardens and, after this dwelling was sold, the land was kept in the ownership of the appellant as part of the garden of flat No 48. The layout and mixture of dwellings' types of the surrounding buildings, and in particular the presence of the block of flats with some of them facing the appeal site, would suggest that the appeal site was designed to be kept as a green space within the southern area of the estate.
11. Paragraph 70 of the National Planning Policy Framework (2019) (the Framework) seeks to resist inappropriate development of residential gardens, for example where development would result in harm to the local area. Policy DM 3.5 of the South Norfolk Local Plan (SNLP) on replacement dwellings and additional dwellings on subdivided plots within development boundaries is consistent with the policy aim of paragraph 70 of the Framework. In DM 3.5 (a) the policy seeks to permit dwellings that incorporate a good quality design which maintains or enhances the character and appearance of the buildings, street scene and surroundings. Policy DM 3.8 of the SNLP also stresses the

¹ Ref 2018/2678

need for development to protect and enhance the environment and existing locally distinctive character and states that the Council will refuse development that fails to improve the character and quality of an area and the way the area functions.

12. I therefore conclude that the proposed development would be harmful to the character and appearance of the area and contrary to Policies DM 3.5 (a) and DM 3.8 of the SNLP and to paragraph 70 of the Framework.

Living conditions of future occupiers and trees

13. The dwelling would be constructed to the east side of the appeal site facing part of the block of flats to avoid encroaching on the protected trees and their root protection areas (RPAs). A 'Tree Method Statement' sets out the construction methods that would prevent harm on the trees. The site plan shows that the dwelling layout is very close to the boundaries of the RPAs and crown spreads of a Sycamore tree (T4) and a Beech tree (T5) without allowing space for the trees to grow further. Only T5 is protected by the TPO. The 'Tree Shadow Pattern' already shows that the existing trees on the site create a significant shade on the dwelling and its private gardens.
14. The appellant contends that, according to the 'Tree Method Statement', since most of the trees are mature, they are unlikely to grow significantly. Furthermore, the 'Tree Shadow Pattern' shows that the external gardens to the south of the dwelling and adjacent to the ground floor habitable rooms would receive direct sunlight from the morning to the early afternoon. I acknowledge that the above study shows that the level of shading would provide sufficient access to sunlight to the rooms and the private garden. However, I am not persuaded that on the long term the proximity of the trees to the dwelling would certainly not affect the living conditions of future occupiers.
15. People may have different perception to what is the preferred level of shading during the day and across seasons. Besides, future occupiers may use the dwelling mainly from the late afternoon and evenings during a working week and this may exacerbate a perception of not receiving enough direct sunlight or general light due to the presence of the trees. On the long term, whether the trees will continue to grow or not, the level of shading, general level of natural light and any unforeseen disturbance from tree crown spreads and root growth may pressure future occupiers to request the removal of the trees.
16. I therefore conclude that the proposed development would be contrary to Policy DM 3.5 (e) of the SNLP, which requires proposals to provide and maintain adequate levels of amenities with reasonable access to light and privacy. The proposal would be in general agreement with the South Norfolk Place-Making Guide Supplementary Planning Document (2012) (SPD) insofar as it would provide a private garden space receiving sunlight at some point in the day, capable of accommodating various activities and accessible for cycling storage. However, this would not outweigh the harm identified due to the presence of the trees.
17. Due to the potential pressure to remove the trees, the proposal would be also contrary to Policy DM 4.8 of the SNLP, which promotes the retention and conservation of significant trees; according to the policy, the Council would promote the appropriate management of protected and other significant trees,

unless the need for, and the benefit of, a development would clearly outweigh their loss.

Living conditions of neighbours

18. The appellant has pointed out that the siting of the dwelling has been chosen similar to the location of the eastern dwelling in the previous scheme, also to address the issues raised by the Council on the living conditions of the residents of the neighbouring dwellings to the west of the appeal site. The appellant has also pointed out that the Council did not raise objections to the previous scheme in relation to the property positioned in the plot corresponding to this appeal and that impacts on the living conditions of neighbouring occupiers were identified solely in relation to the residents of the western houses.
19. According to the representations of the owners of the block of flats, during the previous planning application process they had missed the opportunity to raise their concerns on the impacts of the scheme on the living conditions of the flats' residents because they did not receive notifications from the Council, which consequently did not consider those impacts in their reasons for refusal. The residents and owners of the flats have complained of possible overbearing, noise, loss of privacy, loss of natural light and direct sunlight due to massing, scale and proximity of the proposed dwelling from their properties.
20. The one-and-half storey element and the two-storey element of the proposed development would be approximately 5.4 m and 11 m from the flats, respectively. As such, due to its scale and massing, the proposed dwelling would have a dominant position over the ground floor flats and their private gardens, and to less extent over the first floor flats, on the south east side of the block. For the same reasons, those flats would likely be affected by the loss of natural light and poor outlook; such issues would be exacerbated by the layout of the flats, which have habitable rooms facing south. The proposed development would include the erection of a 2 m fence on the northern boundary that would result in further poor outlook from the ground floor flats and gardens.
21. Given that there would be windows on the flank of the one-and-half storey element and only a non-habitable window in the north-facing elevation of the two-storey element of the proposed dwelling, I would not expect the flats to be impacted by significant overlooking. Therefore, it would not be necessary to attach a condition for the use of obscure glazing on those windows as suggested by the appellant. The traffic generated by the proposed development would not result in significant levels of noise.
22. The 'Dwelling Shadow Patterns' study submitted by the appellant shows that the proposed dwelling would not significantly increase shading over the flats or their private gardens. However, the study does not provide definitive information on the level of natural light following the construction of the proposed dwelling. According to the statement, the appellant would accept a condition to provide acceptable boundary treatments to address issues of poor outlook and loss of privacy. Notwithstanding that no detail of alternative boundary treatments have been submitted, such a condition would not address completely the issues of overbearing, loss of natural light and poor outlook arising from the proposed development.

23. Therefore, I conclude that due to its massing and close proximity, the proposed dwelling would result in unacceptable impacts on the living conditions of the neighbouring occupiers of the flats, specifically in terms of being overbearing and loss of light. For those reasons, the proposed development would be contrary to Policies DM 3.5 (b) and DM 3.13 of the SNLP that require developments to not have unacceptable impacts on the amenities of neighbouring occupiers, including loss of day light, overshadowing and overbearing impacts.

Other Matters

24. The appellant has expressed the intention to progress the proposed development as 'Self-build'. I acknowledge that the appellant is registered on the Council's Self-Build Register and that a 'Self-build' development would weigh in favour of the proposal. Furthermore, the new dwelling would result in modest social and economic benefits as it would be in an accessible location and would make a very modest contribution to the housing supply.
25. However, no mechanism has been put in place to guarantee that the proposal would be developed as 'Self-build' and, therefore, as a material consideration it has little weight in the planning balance and together with the limited social and economic benefits would not outweigh the significant harm identified above in terms of environmental and social dimensions. Therefore, the proposal cannot be considered sustainable development.
26. I noted the concerns of occupiers of the flats regarding a legal boundary dispute. However, this appeal has been determined only on its own planning merits and against local and national planning policies. Concerns regarding overflowing of the drainage system were also raised, but those issues could be addressed by suitable conditions.

Conclusion

27. For the reasons set out above, I conclude that the appeal should be dismissed.

S A Schinaia

INSPECTOR