
Appeal Decision

Site visit made on 8 September 2020

by C Osgathorp BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2020

Appeal Ref: APP/W1905/W/20/3252759

Land adjacent 26 Doverfield, Goffs Oak EN7 5EL

- 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 Tony Gaunt against the decision of Broxbourne Borough Council.
 - The application Ref 07/19/1054/F, dated 6 December 2019, was refused by notice dated 28 January 2020.
 - The development proposed is erection of detached two bedroom dwelling with associated amenity and access off Hillcrest Close.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council adopted the Broxbourne Local Plan 2018 – 2033 (the BLP) in June 2020 and I therefore give full weight to the relevant policies of the BLP. The Council's decision notice refers to policies DSC1 and NEB5 of the BLP. It also refers to policies of the Borough of Broxbourne Local Plan Second Review 2001-2011, which have now been replaced by the BLP and therefore have had no bearing on my decision. The appellant has been given the opportunity to comment on the relevant BLP policies.

Main Issues

3. The main issues are the effect of the proposed development on (i) the living conditions of future occupiers, (ii) protected trees, and (iii) the character and appearance of the area.

Reasons

Living conditions

4. The proposed garden would be dominated by the protected oak tree T7, and the canopy of the tree would cause overshadowing of the garden and the side patio doors of the kitchen/family room. This would be particularly so during the months when the tree is in full leaf.
5. The kitchen/family room would also be served by patio doors in the rear elevation, however this would not alleviate the overshadowing caused by the oak tree T7 due to the close proximity of the rear elevation to the boundary. The provision of additional planting would cause further overshadowing of the garden and patio doors. Consequently, the kitchen/family room and the garden

would be gloomy and would result in an oppressive living environment for future occupiers.

6. I acknowledge the appellant's reference to a nearby development¹ in respect of its proximity to trees at the front. Plans of that development are not before me, however I do not consider that it is directly comparable to the appeal scheme. This is because the neighbouring development appears to have a greater degree of separation to the trees, and the rear garden is not overshadowed. I have nevertheless determined the appeal scheme on its own individual merits.
7. I therefore conclude that overshadowing from the canopy of the oak tree T7 would result in unacceptable living conditions for future occupiers of the proposed development. The Council has referred to Policy DSC1 of the BLP, however this policy does not specifically refer to the living conditions of future occupiers. Nevertheless, the proposal would be contrary to paragraph 127 of the National Planning Policy Framework (the Framework), which, amongst other things, states that planning decisions should ensure that developments create places with a high standard of amenity for future users.

Protected trees

8. The trees on the appeal site are the subject of a Tree Preservation Order (No 4) 2001 (TPO). This includes 6no silver birch trees (T1 – T6) and one oak tree (T7). There are also nearby oak trees outside the appeal site (T8 and T9). The proposal would involve the removal of 6no protected silver birch trees and the cutting back of the canopy of the oak tree T7. The appellant's Arboricultural Impact Assessment Report² (the AIA) classifies the trees as category 'C' trees, considered to be of low quality with an estimated remaining life expectancy of at least 10 years.
9. I note paragraph 6.3 of the AIA, which states that the oak trees T7 and T9 are the most prominent trees, with the crown of T9 partially obscuring the visibility of the silver birch trees. In this context, the AIA states that the silver birch trees have a limited public visibility and are considered to not be prominent features of the landscape. Nevertheless, I find that the silver birch trees collectively contribute to the verdant character of the street scene and so their removal would harm the local landscape character.
10. The AIA refers to mitigation planting within the appeal site along the southern boundary; the wider site of 26 Doverfield; and potentially within the local area. However, as no formal planting scheme has been provided as part of this submission, I do not find any form of satisfactory mitigation is present to compensate against the loss of the protected trees.
11. Given the modest size of the appeal site, I have doubts as to whether any planting could suitably mitigate the loss of protected trees. Furthermore, the planting of replacement trees in the garden of No 26 would be likely to overshadow that dwelling and the garden. In this respect, I note that the garden already contains a large oak tree. As such, based on the evidence before me, this matter could not be dealt with by means of the imposition of a planning condition.

¹ Referred to as 'position 2' in the appellant's statement

² Prepared by Tim Moya Associates ref. 190421-PD-11 dated November 2019.

12. Furthermore, given the close proximity of the proposed dwelling to the oak tree T7, I am concerned about possible post-development threats to the tree arising from pressure to fell or prune from future occupiers. This is likely to include householder concerns such as overshadowing and falling debris. Potential residents would be aware of the position of the oak tree, however the implications of living next to a large tree could not be fully appreciated until occupation. Whilst the protection afforded by the TPO would enable the Council to control any future tree work, I consider that it would be more difficult for them to refuse an application to cut back or even remove a tree that was threatening the safety of the occupiers of the proposed dwelling or posing a nuisance.
13. For these reasons, I conclude that the proposed development would harm the amenity value of the protected trees and would also place unacceptable long-term pressure for the removal or significant works to the protected oak tree T7. The proposal would therefore be contrary to Policy NEB5 of the BLP, which seeks to protect mature trees. The proposal would also conflict with the Framework, which states that planning decisions should contribute to and enhance the natural and local environment.

Character and appearance

14. The appeal site is located in an established residential area, which predominantly consists of detached dwellings that are of varied scale, including bungalows and 2 storey dwellings. There is also variation in respect of the design and spacing of buildings. The properties are generally set back from the road, however there is not a consistent building line. Gabled roof forms are a common feature of the area.
15. The proposed dwelling would be designed with a gabled roof, which would reflect the predominant roof form in the area. I note the Council's concerns in relation to the width of the proposed dwelling, however, given the varied scale of neighbouring properties, the proposal would not appear out of keeping.
16. The southern and western elevations of the dwelling would be positioned close to the boundary and therefore window openings in those elevations would be fairly limited. However, the front elevation would be well articulated and there would be limited views of the southern and western elevations from the public domain due to the screening provided by mature trees and neighbouring buildings.
17. The dwelling would be set back from the road and the size of the garden would accord with the Council's guidance. Whilst it would be positioned close to the southern and western boundaries, the proposed dwelling would maintain a reasonable level of separation to neighbouring buildings. In this context, I do not consider that the proposal would appear cramped in relation to its surroundings.
18. For these reasons, I conclude that the proposed development would maintain the character and appearance of the area. The proposal would therefore accord with Policy DSC1 of the BLP, which seeks a high standard of design for all development. It would also accord with Chapter 12 of the Framework, which, amongst other things, seeks the creation of high quality buildings and places.

Conclusion

19. I have found that the proposed development would maintain the character and appearance of the area. However, it would harm the amenity value of the protected trees and would also place unacceptable long-term pressure for the removal or significant works to the protected oak tree T7. Furthermore, the overshadowing from the canopy of the oak tree T7 would result in unacceptable living conditions for future occupiers of the proposed development. These are sufficient reasons to dismiss the appeal.
20. For the above reasons, and having had regard to all other matters, I conclude that the appeal should be dismissed.

C Osgathorp

INSPECTOR