



Appeal Decisions

Site Visit made on 27 July 2021

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal A Ref: APP/B3030/W/20/3255991

4 Yew Tree Way, Coddington, NEWARK, NG24 2RZ

- 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 and Mrs Hazzledine against the decision of Newark & Sherwood District Council.
 - The application Ref 20/00525/FUL, dated 26 March 2020, was refused by notice dated 3 June 2020.
 - The development proposed is Construction of a single detached dwelling and garage.
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Appeal B Ref: APP/B3030/W/20/3255992

4 Yew Tree Way, Coddington, NEWARK, NG24 2RZ

- 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 and Mrs Hazzledine against the decision of Newark & Sherwood District Council.
 - The application Ref 19/00131/FUL, dated 25 January 2019, was refused by notice dated 15 January 2020.
 - The development proposed is Construction of 2no. dwellings adjacent to 4 Yew Tree Way.
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Decision

1. Appeals A and B are dismissed.

Applications for Costs

2. The appellants have submitted an application for an award of costs in relation to Appeal A and Appeal B. This is considered separately from these decisions.

Preliminary Matters

3. In order to avoid duplication, I have considered the appeals together where appropriate.
4. During the appeal I queried whether formal tree shading information had been submitted. The agent confirmed that all relevant evidence had been submitted.

Main Issues – Appeals A and B

5. The main issues for both appeals are:
 - The effect of the development on protected woodland; and,

- Whether there would be adequate and appropriate amenity space for future occupiers.

Reasons

Protected Woodland

Tree Preservation Orders

6. The evidence before me indicates that for a period of time the Council was unable to find evidence of Tree Preservation Order (TPO) N34¹. In the period that TPO N34 was mislaid, two more TPOs were made, namely TPO N174² and TPO 349³. Appendix 12.1 of the appeal statement shows that the earlier TPO N34 covers almost all of the appeal site apart from a small area in the south-western corner. A similar area is also covered by the combined TPOs N174 and N349. TPO N174 covers the northern portion of the appeal site, and TPO N349 covers the southern part of the site. Clearly there is duplication. However, there is nothing before me to indicate that TPO N34 has been revoked or varied. Advice from MHCLG⁴ is that where there are duplicate TPOs in force at the time of application and decision, the appeal should be decided under both. As such, I conclude that all the TPOs carry weight in my reasoning.
7. With regard to TPO N34, almost all the site sits within its woodland order, described as *mainly Yew with broadleaves including Beech, Birch, Horse Chestnut, Lime, Oak and Sycamores (excluding the elm trees)*.
8. TPO N174 largely replicates TPO N34 in that the northern part of the site lies within a woodland category, described as *Yew with broadleaves including Beech, Birch, Horse Chestnut, Lime, Oak, Sycamore, Mulberry, Cherry Holly*.
9. TPO N349 has only a group category and includes only *Yew and Oak*. A group order covers only those specimens protected at the time that the TPO was made. However, as set out above, there is nothing before me to indicate that the protection afforded by TPO N34 is in any way diminished by the making of TPO N349. As such, I conclude that apart from a very small area to the south, the appeal site is covered by a woodland order.
10. I also noticed what appeared to be native species amongst the vegetation between a close boarded fence within the appeal site and the southern site boundary. These have been omitted from the tree survey despite being within the site boundary. Although these particular trees would not be covered by TPO N349, they are covered by TPO N34, whether planted or self-seeded.

Proposals

11. Yew Tree Way is a series of red brick executive-style dwellings arranged in an informal layout between and around blocks and specimens of mature trees and other vegetation. This gives the area a spacious, verdant and attractive character.
12. The appeal site is situated at the end of the cul de sac and close to a track which runs along the western edge of the protected woodland. The mix of

¹ Coddington Hall, TPO N34 1981

² The Old Hall, Coddington N174 1991

³ TPO N349 2013

⁴ Ministry of Housing, Communities and Local Government

seemingly self-seeded trees at the front of the site makes an informal and naturalistic, if untidy contribution, to the street scene and an appropriate edge to the tall woodland behind. Moreover, given the proximity of open countryside and woodland the frontage vegetation does not appear incongruous in this context and it also frames the end of the building line and the cul de sac.

13. The appeal site includes a broad strip of rough grass, with a strip of mature Yew and Oak specimens forming the woodland edge to the north, and the aforementioned strip of mixed trees and shrubs on land outside a fenced garden boundary behind the footway to the south. Three tree stumps within the grass strip appear to indicate where trees were felled in the period when TPO N34 was unable to be found.
14. Both developments would comprise one or two dwellings sited between the road and the woodland edge to the north of the grass strip, and would require the removal of the strip of trees and scrub bordering the footway. These appeared to me to contain specimens which might in time grow to be substantial trees and these trees, even if self-seeded, are included in the woodland order of TPO N34. The number of trees in this area, which is supported by the habitat survey, leads me to conclude that significantly more trees would be removed from the site than noted in the application.

Appeal A

15. There would be a maximum of about 9 metres between the dwelling's rear elevation, which faces north-north-west, and the canopies of trees on the woodland edge. To the west there would be a maximum distance of about 12 metres between the dwelling's side elevation and the tree canopies to the west and south-west.
16. The dwelling itself would cast shade over the rear and side garden areas for much of the day. Furthermore, some of the trees to the immediate west and north-west of the open garden areas are reported in the tree survey as being 23 metres tall⁵. These would cast significant shade within the proposed garden area after midday and particularly on summer evenings when the sun is low and in the north-west. Given the proximity, height and density of the trees, I conclude that there would be very little sun to the rear of the house and for a limited period only around midday and early afternoon to the side of the house.
17. It is my experience that people are rarely tolerant of trees where they cause significant overshadowing, particularly at times of the day when people might wish to be enjoying the garden.
18. Planning Practice Guidance states that with regard to TPOs, the woodland category's purpose is to safeguard a woodland as a whole. Some trees may lack individual merit, but all trees within a protected woodland are protected. In a woodland environment issues that are likely to cause concern for householders such as excessive shade, oversailing, and the shedding of branches and other debris, can occur without necessarily requiring arboricultural intervention. Moreover, PPG states that it is unlikely to be appropriate to use a woodland classification in gardens.
19. I appreciate that No 4 has what is effectively a woodland garden. However, the tree survey shows that the woodland to the north of No 4 is less dense

⁵ Oaks T16 and T17

than the woodland to the rear of the proposed dwelling. The planning history for No 4 also shows that five trees within No 4's garden were given consent for crown lifting in 2016. The application for the oak cited its proximity to No 4's garage and the yews were crown lifted to relieve shading. Whatever the reasons, crown lifting is not generally required as part of woodland management. This reinforces my concerns that the woodland within and overhanging the appeal site would be subject to unnecessary and over-management informed by the needs of future occupiers.

20. Whilst I appreciate that trees can be managed, the aim of a woodland order in particular, is to manage a woodland for the ongoing health of the woodland, rather than to accommodate its inclusion in a domestic garden.
21. Moreover, the southern canopy of a mature oak⁶ situated in the area covered by TPOs N34 and N174, is already slightly oversailing what would be the garage's footprint. In addition, all the trees on the woodland's southern edge were actively growing towards the south, over the grassed area and what would be the dwelling's garden. This would reduce the area of garden likely to receive unobstructed sunlight.
22. As such, given the proximity of the trees and the propensity of those specimens on the south facing woodland edge to grow over the current grass strip, it seems very likely that in time there would be concerns raised around the lack of usable garden space, oversailing, debris in gutters and given the congested canopies, hazards arising from falling branches.

Appeal B

23. For this development there would be a smaller area of garden outside the woodland canopy. House 1 would have an area of little more than 5 by 6 metres outside the north north-west facing French doors, and the area to the side would be largely taken up by the hardstanding and/or oversailed by the canopies of T1 and T6. Given the configuration and orientation of the dwelling and the nearby trees it is difficult to see when those areas would get unobstructed sun. House 2 would have a slightly larger area outside the French doors and another limited strip along the side of the house which would get sun around midday and early afternoon. However, in both case I conclude that the areas of usable and unshaded garden would be highly limited and very likely to lead to pressure for works to the trees, for the reasons outlined above.
24. I appreciate that there may be potential occupiers who wish to live in shady conditions and my experience of people who are intolerant of the proximity of trees and overshadowing and other inconvenience, may be unrepresentative. However, it remains that many people occupy dwellings in proximity to protected trees without being fully aware of the implications. The additional maintenance associated with leaf litter and debris, and restrictions on usable outdoor space due to oversailing and overshadowing are not always welcomed or accepted. Over time those concerns can outweigh the perceived advantages. Moreover, family circumstances and the requirements of the dwelling may change.
25. I conclude that if one or both appeals were to be allowed it is highly likely that there would be pressure on the Council to allow felling or severe pruning, on

⁶ Oak T6

the basis that the dwellings had been allowed to be built too close to the woodland. On the basis of what is before me, it seems likely that a decision maker could agree.

26. This could result in incremental encroachment into the woodland, a loss of biomass and the knock-on effects of windthrow and increased exposure for trees currently shielded by the canopies of others. Moreover, pruning wounds would encourage pathogen entry, further compromising the woodlands future health and longevity.
27. A previous Inspector for development for two dwellings on this site⁷ concluded that the development would be carried out without undue harm to the health of the trees. However, the living conditions of future occupiers and the usability of amenity space was not discussed as a main issue or mentioned in the reasoning. The only mention of residential amenity is in relation to nearby residents, not future occupiers of the development. In any case, that appeal was determined in 2014 and it is likely that the trees have grown in the intervening years. For these reasons the previous appeal weighs neither for nor against these appeals.
28. Some of the houses along Beaconsfield Drive appear to have trees protected by group orders in their plots. None appears to include a woodland order which, as noted above, has different criteria for the assessment of applications for works. In any case, my concern does not necessarily arise from unauthorised works. The prevalence of TPO applications for these dwellings reinforces my experience that dwellings located in proximity to protected trees invariably leads to conflict and pressure for works that are not necessarily required on arboricultural grounds. Moreover, Appendix 1.1 indicates that there are no other dwellings with the same relationship with the protected woodland as would be the case for the appeal developments. Even if there was, it would not necessarily set a precedent as the planning context has changed since the 1990s.
29. I do not disagree that the building works for both appeals could probably be undertaken with tree management measures that would safeguard root zones in place. However, this does not alter my reasoning with regard to the longer term pressure likely to be placed on the trees and the woodland as a whole. Although reference is made to the quantum of open space within the gardens this appears to be the area outwith the tree canopy. As it is a fixed figure I conclude that it does not take into account the shifting shade patterns and extents likely to be experienced throughout the year and arising from the combination of the dwelling(s) and the trees.
30. Reference is made within the evidence to tree-shading assessments. However, these are not before me and I have based my reasoning on my own judgement and experience. I give no weight to the argument that for both appeals the front gardens would be in full sun. Not only are the front gardens of limited depth, but amenity space in full view of passers-by on a road frontage does not compensate for very limited usable private space to the rear.
31. I conclude that for both appeals it is highly likely that the developments would have an adverse effect on the visual amenity, and future health and longevity of the woodland. This would be contrary to Policy CS9 of the 2019 Core

⁷ APP/B3030/W/14/2225664

Strategy (CS) which requires new development to protect and enhance the natural environment, and to sustain rich local distinctiveness, and CS Policy CS12 which seeks to conserve and enhance biodiversity and expects proposals to take into account the need for continued protection of the district's ecological, biological and geological assets.

32. Both developments would also be contrary to Policy DM5 of the 2013 Development Plan Document (DPD) which states that natural features of importance within or adjacent to development sites should be protected and enhanced. Finally, both developments would be contrary to DPD Policy DM7 which requires new development to protect, promote and enhance green infrastructure to deliver multi-functional benefits and to contribute to ecological networks.
33. The removal of native trees excluded from the group order of TPO N349 to enable the dwellings for both appeals would also be contrary to the guidance given in Paragraph 131 of the 2021 updated National Planning Policy Framework (the Framework) which states that existing trees are to be retained where possible. In any case, these trees are covered by TPO N349.

Amenity space

34. I have concluded that overshadowing from the dwellings and the woodland would restrict the areas of external amenity space to a considerable degree. The dwelling for Appeal A would have four bedrooms, and the dwellings for Appeal B would each have three bedrooms. For the reasons given in relation to the protected woodland I conclude that the amenity areas available for future occupiers would be neither adequate nor appropriate. This would be detrimental to the living conditions of future occupiers and contrary to Paragraph 130 f) of the Framework which requires a high standard of amenity for those occupiers.

Conservation Area

35. Although not raised as a concern by the Council, I have a statutory duty to consider the effect of the development on the Coddington Conservation Area (CA) which is approximately 25 metres north of the site.
36. The CA is a largely remnant woodland area associated with the former Coddington Hall. There is limited evidence before me regarding the significance of the CA, but I conclude that it is derived from the evidential and historic value of the remnant woodland. This takes the form of mature parkland specimens, smaller clumps of woodland trees, and the blocks of woodland amongst and containing the building pattern. The mature vegetation in and around Yew Tree Way and Beaconsfield Drive makes a highly positive contribution to the setting of the CA. However, given the distance between the site and the CA boundary I am satisfied that the additional dwellings proposed would not fail to preserve or enhance the character or appearance of the CA.

Other Matters

37. The site sits within the 1999 site allocations⁸. It is unclear why residential development did not extent across the entire allocation in the 1990s, but site allocations are often broad brush and subject to more detailed assessments

⁸ Newark and Sherwood Local Plan 1999

when a developer comes forward with proposals. In any case, the appeals before me are determined on their own merits and in the current legislative and planning context. Similarly, the content of the S106 agreement attached to the 1991 permissions for Yew Tree Way, carries limited weight in my reasoning. The management proposals are fairly standard and do not alter my reasoning. In any case, as noted above my concern arises from the potential conflict between best practice for the woodland and the amenity requirements of future occupiers.

38. I appreciate that other developments may have incorporated management plans within the approved documents, but I have determined these appeals on the evidence before me and on their own merits.
39. I also appreciate that the officer and tree consultant did not find significant harm in relation to these applications. However, Members are entitled to reach a different conclusion, as am I. Although the designs have been altered to reduce the dwellings' footprints this does not alter my reasoning which is based on what is before me.
40. There is no evidence that this particular yew woodland is unique in any way. However, it remains that it is protected by woodland TPOs.
41. I have some difficulty reconciling the photograph of amenity grassland in the habitat survey, with the rough grassland that I observed on site. There did not appear to be any areas of grass similar to the image within the appeal site, and nor did I conclude that the site contained mainly garden species as stated in the survey. I also found that the woodland canopy extends to a far greater extent than shown. Insofar as the habitat survey appears to understate the extent of tree cover within the appeal site and overstates the condition of the grass, I give it very limited weight. In any case, irrespective of ground conditions most of the site is covered by one or more woodland orders.
42. It is apparent that at the time of the 2013 tree felling the Council was unable to find the relevant TPO and consequently the felling works were approved. That history carries no weight in my reasoning which is concerned with what is before me.
43. Interested parties have raised other concerns but as I have found harm in relation to the main issues there is no need for me to consider them further.

Planning balance

44. It is not disputed that the appeal site would be accessible for local amenities, and the developments of one or two dwellings in an accessible location would make a very small contribution to local housing supply. However, I conclude that the limited benefits arising from the developments would not be outweighed by the harm identified above.

Conclusion

45. I conclude that both appeals would be contrary to the local development plan taken as a whole and that there are no material considerations of such weight to lead me to a different conclusion. Appeals A and B are dismissed.

A Edgington INSPECTOR