



Appeal Decisions

Site Visit made on 16 August 2021

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2021

Appeal A Ref: APP/M9496/W/21/3271911

Land off Hardy Lane, Tideswell, Derbyshire SK17 8JU

- 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 Ellert against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/1220/1143, dated 2 December 2020, was refused by notice dated 12 February 2021.
 - The development proposed is Erection of two affordable local needs dwellings.
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Appeal B Ref: APP/M9496/W/21/3271913

Land off Hardy Lane, Tideswell, Derbyshire SK17 8JU

- 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 Ellert against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/0620/0548, dated 16 June 2020, was refused by notice dated 6 November 2020.
 - The development proposed is Erection of three affordable local need dwellings.
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Decisions

1. Appeal A and Appeal B are dismissed.

Preliminary Matters

2. In order to avoid duplication, I have considered the appeals together where appropriate.
3. The evidence before me indicates that the site contains roosting bats, which are a protected species. Although not specifically cited in the Council's reasons for refusal as the decision maker it is appropriate that I consider the effects of the developments on bats within my reasoning. As a bat survey has been carried out, I see no reason why this should be prejudicial to the parties.

Main Issues – Appeals A and B

4. The main issues for Appeals A and B are the effect of the development on:
 - The health and longevity of protected trees;
 - Local biodiversity; and,

- Whether the proposals would conserve or enhance the character or appearance of the Tideswell Conservation Area (TDA), and the setting of the Grade II listed Hardy House.

Reasons – Appeals A and B

Protected trees

5. The sloping site is situated within the urban form of Tideswell and contains a line of three garages which appear to be abandoned. It is dominated by six mature and imposing trees whose canopies oversail a large proportion of the appeal site, as well as extending over the site boundaries. The trees are in two distinct groups of three, described as two beech and a lime to the west of the site and a sycamore, elm and beech to the east. The tree survey suggests that they range in height from between 24 – 28 metres, have canopies that have a diameter of between 12 and 22 metres, and all but one tree is categorised as A or B under the system set out in BS 5837¹. The combined Root Protection Zones (RPAs) of these trees extend over almost the entire site.
6. The trees are prominent in the street scene on Sherwood Road and are also seen on the skyline behind Fountain Square Church from Buxton Road. Their height, form and visibility within the building pattern make a highly positive contribution to the distinctiveness of the village, and their categorisation broadly suggests that they are in reasonable or good health, with reasonable life expectancy.

Appeal A

7. A pair of flat-sided and simply designed semi-detached dwellings would be located towards the centre of the long rectangular site, largely between the tree canopies of each group. Nonetheless, the layout shows that there would be some oversailing of the dwellings by the beech (T6), and almost all the garden areas and about half of the parking area would be oversailed by this and other trees.
8. In my experience, there is very little tolerance of mature trees near dwellings where they obstruct light entry, cause overshadowing and oversailing, and drop leaves and other debris on gutters, hardstanding and garden areas. In addition, the size and form of these trees suggests that in windy conditions there would be a perceived safety concern for future occupiers, whether justified or not. In addition, the dwellings would have fairly small window openings, which although consistent with the underlying vernacular style of the National Park, would further limit light entry.
9. In such circumstances it is highly likely that the Council could come under pressure to allow felling of the site's trees or severe pruning on the basis that the dwellings had been allowed too near the trees. On the basis of what is before me I conclude that a decision maker could agree. The trees' protected status is no guarantee that such applications would be unsuccessful.
10. Pruning works or felling would be highly detrimental to the character and appearance of the immediate locality and the TDA. Works could also leave any remaining trees open to increased exposure and windthrow, and put them under more stress. Pruning wounds can also lead to pathogen entry which

¹ BS 5837:2012 Trees in relation to design, demolition and construction

would be detrimental to the trees' ongoing health. Moreover, it is unclear how the dwellings would sit beneath the canopy of the beech (T6) which has a 3 metre ground clearance according to the tree survey and which reinforces the observations I made on site. This in itself suggests that there would be significant pruning required to T6 at least in the short term.

11. Moreover, although there is reference to ground protection measures to protect the RPAs, the tree survey sets out that a permanent ground protection layer, 100mm deep, would be installed and that the piling or specialist slab footings would be laid on top. There is a generic diagram of no-dig construction within the tree survey, but it is unclear how this would apply to this sloping site or how piled foundations for the dwellings could be laid without the supporting ground protection being laid underground. As the extent of ground protection as shown in the survey would coincide with a very large proportion of the combined RPAs, I conclude that the trees' roots could be significantly damaged. This could lead to tree loss in the medium term.
12. BS 5837 states that with regard to shade from existing trees, the shading of buildings can be a problem particularly where there are rooms that require natural light. It also states that gardens and sitting areas should be designed to meet the normal requirements for direct sunlight for at least part of the day.
13. The tree survey includes a shading diagram. There is nothing to explain what this shows and I conclude that the hatched area does not show the extent of shade cast by the site trees which in any case would vary throughout the day and seasonally. My own experience suggests that the site would be overshadowed by T4, T5 and T6 in the morning. There would be a period around midday and early afternoon when the trees would not obstruct the sun to a significant extent, but the site would be partly overshadowed by the House as well as by the proposed dwellings themselves. In the late afternoon and evening shade would increasingly be cast by T1, T2 and T3 as well as the building line of Sherwood Road. Topography would also contribute to afternoon shading in the winter months as the site slopes from west to east. Moreover, the trees would cast shade beneath at least some of their canopies, whatever the sun's direction. I conclude that there would be substantial overshadowing of the garden and parking areas for a considerable period each day.

Appeal B

14. Appeal B comprises the development of Appeal A together with an additional detached dwelling with its front elevation hard against Hardy Lane, close to the corner with Sherwood Road. One lime tree (T3) would be removed to accommodate the development.
15. The canopy clearance above ground of the nearest beech (T1), which would oversail the detached dwelling, is given as 3 metres in the tree survey. The parking area would also be largely below the canopies of T1 and another beech, T2. The tree survey recommends that T1 and T2 should have their canopies raised to 5 metres. As such, this development would result in the loss of one tree and significant pruning, with the attendant risks outlined above, to two others. The detached dwelling would also contribute to the afternoon shading patterns outlined above.

Protected Trees – Conclusion

16. It is difficult to reconcile the siting of the dwellings and the future use of their gardens and parking areas with the presence of the mature trees. It is unclear how dwellings could be built beneath trees with low canopies or how external amenity space almost wholly oversailed by large tree canopies could be anything other than rather dark and not particularly usable, or allow sufficient light to enter the dwellings. Moreover, as set out above I find it highly likely that other issues relating to the proximity of the trees would be raised in the longer term.
17. The appeal statement states that none of the existing trees would be affected by the development but on the basis of what is before me I have concluded that this would not be the case. There is some variation in canopy height for individual trees but this does not alter my reasoning with regard to light loss. I am also unable to conclude that the developments would be anything but detrimental with regard to the trees' RPAs.
18. In the light of the above, I conclude that both developments would have an adverse effect on the health and longevity of these protected trees. They would therefore be contrary to Policy DMC13 of the Local Plan (LP) which is concerned with the protection of trees which contribute to visual amenity. The developments would also be contrary to Policies GSP1, GSP2 and GSP3 of the Core Strategy (CS), which taken together set out a requirement for all development to secure the purposes of National Park designation and to respect, conserve and enhance the characteristics of an area or location, amongst other considerations. I have considered the trees in relation to biodiversity in my reasoning below.
19. CS Policy L1 requires development to conserve and enhance valued landscape character as identified in the Landscape Strategy and Action Plan. However, there is nothing before me to identify specific harm in this regard and consequently this policy weighs neither for nor against the appeal.

Biodiversity – Appeals A and B

20. A bat survey has identified that there are bats roosting in two trees on the site. One of these would be removed for Appeal B. Moreover, as set out above it is very likely that there would be other severe pruning works in order to accommodate the build in the short term, and then to mitigate poor living conditions for future occupiers in the longer term. The bat survey notes that for both developments there would be a highly negative impact in the short term and longer terms, unless there was appropriate mitigation.
21. Whilst I appreciate that measures could be taken to minimise conflict with bats during construction, the long term measures to compensate for loss of roosts include bat boxes, modified ridge tiles, native species planting and lighting design. Whilst these measures might provide some mitigation, the site will be much more intensively used than at present, which would result in increased disturbance. With regard to lighting, there will be a need for adequate illumination around the dwellings and parking areas which could conflict with the recommendations given to limit bat disturbance. Moreover, it is difficult to see where additional planting could take place, given the dominance of the existing trees.

22. As such I am not satisfied that mitigation works would necessarily provide adequate mitigation for the loss of bats roosts or the loss of tree cover, whether through felling or pruning in the longer term.
23. In addition, the site has biodiversity value arising from the trees and the overgrown sward provides cover for fauna likely to provide food sources for bats and other predators.
24. Consequently, the disturbance of protected species and the loss of tree cover would have an adverse effect on local biodiversity. This would be contrary to LP Policy DMC13 which is concerned with the protection of trees which contribute to biodiversity, and LP Policy DMC11 which sets out that proposals should aim to achieve no loss of biodiversity, amongst other considerations. The developments would also fail to accord with CS Policies GSP1, 2 and 3 as set out above.

Heritage Assets

Hardy House

25. Hardy House (the House) is a substantial mid-18th century coursed gritstone house with a stone slate roof, sited with its gable end hard against the narrow Hardy Lane. An irregular 'T' plan is obscured by later additions comprising gable extensions which project into an enclosed courtyard. The long barn that forms one corner of the Hardy Lane and Sherwood Road junction forms the western boundary of that courtyard.
26. Externally the House appears to have retained a very large proportion of its original features. Hardy Lane is very narrow and for most of its length is suitable for pedestrians only. It seems likely that the relationship between the House, its barns and Hardy Lane has changed little since the House was built.
27. I conclude that the House's significance is derived from its intact historic fabric, and its spatial relationship with Hardy Lane and its outbuildings. This has historic and evidential value which reflects the evolution of the village. As such I conclude that Hardy Lane and the appeal site form an integral part of the House's context and setting.

Tideswell Conservation Area

28. There is very little before me with regard to the TDA. From my observations I concluded that the significance of the TDA is derived from its distinct vernacular building style, intact historic fabric and the high degree of consistency in detailing and the use of building materials. There is also a distinct grain to the building pattern along Sherwood Road in the vicinity of the site, with modest terraces, barns and larger detached houses having a broadly consistent alignment on each side of the road. The site trees are also a strong contributor to the TDA's significance and provide a visual link to the open countryside behind the building line.

Appeal A

29. The dwellings' gable end would be hard against Hardy Lane and close to the House. There is limited information before me regarding the typical proportions of local vernacular dwellings, but the layout plan shows that dwellings would be significantly deeper than the House or the dwelling to the

north. The side elevations would also have a more squat appearance than I observed in the area. As such the developments would appear uncharacteristic and poorly proportioned, particularly in relation to the House and its setting.

30. Moreover, although aligned with the nearby buildings with regard to their ridge line, their location midway along the long narrow site would appear remote and contrived.

Appeal B

31. The detached dwelling for Appeal B would have a front elevation facing Hardy Lane, and would be gable end to Sherwood Street. In addition to the proportional differences between the development and the underlying typology, this dwelling would be located perpendicular to the underlying grain set by the House's barns, the House itself and the detached dwelling to the immediate north of the site. This in itself would appear highly incongruous. The alignment of the three dwellings comprising Appeal B would also appear unrelated to the underlying building pattern.

Heritage Assets – Conclusions

32. Although Paragraph 194 of the National Planning Policy Framework (the Framework) requires an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting, there is no such assessment within the appellant's evidence.
33. On the basis of what is before me I conclude that both developments would result in an erosion of the distinctive character of the locality and would detract from the setting of the House. Both developments would fail to preserve or enhance the character or setting of the TDA. This would amount to less than substantial harm with regard to the TDA and the House.
34. Consequently, with regard to the lack of information before me, both developments would be contrary to Paragraph 194 of the Framework, as set out above as well as LP Policy DMC7 which sets out that planning applications affecting a listed building or its setting should clearly demonstrate how its significance will be preserved. This policy also sets out that development will not be permitted if it would adversely affect the character, scale proportion or design of the listed building, amongst other considerations. Both appeals would also be contrary to LP Policy DMC5 which requires development to clearly demonstrate how heritage assets will be conserved and where possible enhanced. The developments would also be contrary to LP Policy DMC8 which is concerned with the preservation and enhancement of Conservation areas.
35. In addition, both developments would be contrary to CS Policies GSP1, 2 and 3 as set out above. Finally, the proposals would fail to accord with the design aims of LP Policy DMC3, which is concerned with the natural beauty, quality and visual amenity of the landscape, as well as the provisions of Section 16 of the Framework and Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) 1990 Act.

Planning balance

36. With regard to the effect of development on heritage assets, Paragraph 200 of the Framework sets out that any harm to the significance of a heritage asset should require clear and convincing justification. Paragraph 202 sets out that

where there would be less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including where appropriate, securing its optimum viable use.

37. There is no dispute that there is a proven need for affordable dwellings within the parish and I note that the proposals have the parish council's support. Moreover, there is nothing before me to indicate that the site could not be used for housing. In this case there is clear public benefit to be derived from the provision of two or three affordable dwellings in an accessible location, and with on-site parking.
38. However, there is nothing before me to indicate that the policies cited by the Council should be given anything other than full weight. In addition, although I give some weight to the provision of affordable dwellings, I have found harm in relation to heritage assets, protected trees and biodiversity. As such the public benefits are not outweighed by the harm identified above.

Other Matters

39. I give little weight to the argument that the site is waste ground. Although the site is overgrown it appeared to support a diverse range of grass and ruderal species which have their own biodiversity value. Nor did I find the site's appearance particularly incongruous in this setting. In any case maintenance is a matter for the appellant.
40. Interested parties have raised other concerns but as I have found harm in relation to the main issues it is not necessary for me to consider them further.
41. I see no reason why the removal of the garages should be predicated upon this development. Although this would be a small benefit it carries limited weight.

Conclusion – Appeal A and Appeal B

42. I conclude that the development would fail to comply with the local development plan taken as a whole and there are no material considerations of such weight to lead me to reach a different conclusion. Appeal A and Appeal B are dismissed.

A Edgington

INSPECTOR