

Appeal Decision

Site Visit made on 22 June 2021

by Luke Simpson BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2021

Appeal Ref: APP/L2630/D/21/3268904

19 Patteson Close, Cringleford NR4 6XX

- 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 Jim Sadler against the decision of South Norfolk District Council.
 - The application Ref 2020/2235, dated 23 November 2020, was refused by notice dated 18 January 2021.
 - The development proposed is described as 'single story workshop and garage extension to existing garage'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Jim Sadler against South Norfolk District Council. This is the subject of a separate Decision.

Preliminary Matters

3. The Council has provided additional representations in relation to the effect of the proposed development upon the Root Protection Areas (RPAs) of two protected trees. I consider that these representations amount to a new issue not previously covered within the reason for refusal. The appellant has made representations in relation to this matter and I have taken both parties' representations into account.
4. On 20 July 2021 the Government published a revised version of the National Planning Policy Framework (the Framework). Both parties were invited to provide representations in relation to the revised Framework. The appellant has responded but no response was received from the Council. I have taken the appellant's representations into account and in considering this appeal I have had regard to the revised Framework.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the area, with regard to the effect on protected trees.

Reasons

6. The appeal site comprises an existing driveway and gravelled garden area associated with 19 Patteson Close (No 19). The proposed development would extend an existing detached garage to form a single storey workshop and

- garage. There are several mature oak trees and a beech tree within the appeal site which are the subject of tree preservation orders (TPOs).
7. The reason for refusal and case report do not identify the specific trees to which potential harm is alleged. The Appellant has submitted a plan pertaining to 'Tree Preservation Order 2017 No. 22'. This plan identifies six trees which are subject to TPOs. There are three trees which are located in close proximity to the location of the proposed development. These trees are identified as T2, T3 and T4. All are identified as Oak Trees and they are all large mature specimens, which are visible from the appeal site and neighbouring residential properties. The trees make a positive contribution towards the relatively verdant character of the surrounding area and the appellant does not allege otherwise.
 8. The Appellant submitted an Arboricultural Impact Assessment (AIA) to the Council which includes a 'Tree Constraints Plan'. The AIA confirms that the foundations of the proposed development would be within the Root Protection Area (RPA) of T1 (30% encroachment) and T2 (34% encroachment). On this basis, I requested clarification from the Council as to whether their suggested conditions sufficiently addressed the incursion of the development into the RPAs. The Council's response outlined that a planning condition would not be sufficient to address this matter. This is a new issue which is not covered by the Council's reason for refusal. Given that the trees have protected status, I must have full regard to this additional information.
 9. The appellant has suggested that the foundations could be designed such that the trees would not be harmed and increased drainage could be achieved to the roots. The appellant has described such a method as involving a raft foundation, set on piles with airspace underneath to allow gaseous exchange, incorporating an irrigation system. The appellant has also provided a guidance note which outlines examples of such methods in practice. However, these details are not specific to the circumstances of the appeal site or the appeal development. These details are therefore not sufficient to allow me to conclude that the impact upon the protected trees could be sufficiently mitigated or avoided. There is therefore a possibility that a suitable construction method could not be achieved. A planning condition, requiring the submission of more detailed information, would therefore have the potential to impact upon the proper implementation of any planning permission granted, contrary to advice contained in the National Planning Practice Guidance.
 10. The Council has also referred to British Standard BS 5837 'Trees in relation to design, demolition and construction', which outlines that structures should be located outside of RPAs, and only where there is an overriding justification for construction within the RPA should technical solutions be considered to prevent root damage. In this case, the appellant has provided evidence to demonstrate that several classic cars located on the appeal site are at risk of damage from falling branches. Indeed, he suggests that this is one of the reasons that the building is being proposed.
 11. I accept the appellant's assertion that there is a risk to his property and I also consider that there is no reasonable alternative location for the proposed building within the appeal site. On this basis, I consider that the appellant has provided sufficient justification for the siting of the building within the RPAs. However, given the absence of appropriate construction method details, it has

not been demonstrated that the development would not cause harm to the trees. As such, the justification for the location of the development is not sufficient to outweigh the harm that the development would be likely to cause to the character and appearance of the surrounding area.

12. The Council suggests that the future actions of the appellant might result in tree works, which could affect the value of the protected trees. However, this alleged harm relates to a hypothetical situation and one which is no more likely to occur as a result of the proposed development, given that the trees already pose a risk, in terms of falling branches.
13. There is no evidence to suggest that the canopies of any of the protected trees would be affected by the development. In any case, the appellant has provided evidence to show that the driveway is already in regular use and has asserted that, regardless of whether the proposed development is erected, he would be likely to seek works to trees in the event that they would cause a risk to property or possessions. I accept the appellant's assertion in this regard. With regard to leaf fall, I accept the appellant's assertion that this is a common occurrence which he could address through regular clearing of leaves.
14. Despite my conclusions in relation to the Council's original reason for refusal, the proposed development would be likely to harm two TPO trees (T1 and T2), as a result of the proximity of the proposed development to their RPAs. Insufficient evidence has been provided to demonstrate that these effects could be sufficiently mitigated or avoided. The trees make a positive contribution to the character of the area and this character would be harmed by the proposed development.
15. The development would therefore be contrary to Core Strategy¹ Policy 1 and Local Plan² Policy DM 4.8, which seek in part to protect the area's environmental assets and safeguard protected trees respectively. There would also be a conflict with National Planning Policy Framework (Framework) Paragraph 130(c) which seeks to ensure that development is sympathetic to local character. There would also be a conflict with Framework Paragraph 131, which states that trees make an important contribution to the character of urban environments and that they should be retained where possible.
16. Core Strategy Policy 2 is not referred to within the Council's reason for refusal, but a copy has been provided by the Council. The proposed development would conflict with this policy insofar as it seeks to ensure that new development respects local distinctiveness, including through avoiding harmful impacts on key environmental assets.

Other Matters

17. The appellant has suggested that the proposed development would improve privacy for neighbouring residents. However, I do not consider that there are any significant issues with regard to privacy at present. As such, any benefit in this regard would be limited and would not be sufficient to outweigh the harm which I have identified.
18. The appellant asserts that the development complies with Framework Paragraph 97(a) because it requires that planning decisions promote safety, by

¹ Joint Core Strategy for Broadland, Norwich, and South Norfolk (March 2011)

² South Norfolk Local Plan Development Management Policies Document (October 2015)

anticipating and addressing natural hazards. I have accepted the appellant's justification for the location of the development in this regard. The appellant has also referred to Framework Paragraphs 97(b) and 119 and the onus they place upon ensuring security and safe living conditions, respectively. I accept that the development would meet these aims. However, whilst I recognise these benefits, they are not so great that they would outweigh the harm that the development would cause to the protected trees (T1 and T2) and subsequent harm to the character and appearance of the surrounding area.

19. The appellant suggests that the proposed development makes use of under-utilised land, which he suggests is supported by Framework Paragraph 120(d). The site comprises the existing garden of No 19. The garden is large but is proportionate to the size of the host property. In this regard it is not underutilised land within the terms of Framework Paragraph 120(d). Therefore, this consideration is not a benefit of the development and it does not outweigh the harm that the development would cause.

Conclusion

20. The proposed development would conflict with the development plan taken as a whole. There are no other considerations which indicate that a decision should be made other than in accordance with the development plan. As such, I conclude that the appeal should be dismissed.

Luke Simpson

INSPECTOR