



Appeal Decision

Site Visit made on 26 October 2021

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2021

Appeal Ref: APP/M1005/D/21/3276415

Grange Lodge, Horsley Lane, Coxbench, Derby DE21 5BH

- 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 Darren Nickless against the decision of Amber Valley Borough Council.
 - The application Ref AVA/2021/0049, dated 19 January 2021, was refused by notice dated 12 March 2021.
 - The development proposed is to provide a side/rear extension for garage and family room; with additional bedroom & en-suite in roof space. Provide an open porch to front entrance.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal site is located in the Green Belt. The National Planning Policy Framework regards the erection of new buildings in the Green Belt as generally inappropriate, unless specific criteria have been met. The evidence before me is indicative that these criteria have been met and I have no reason to disagree.
3. Therefore, the main issue in this appeal is the effect of the development upon the character and appearance of the surrounding area, with regards to the effect on nearby protected trees.

Reasons

4. The appeal site consists of a detached dwelling located on the periphery of the settlement. Adjacent to one of the appeal site's boundaries are several mature trees that are protected by a Tree Preservation Order (TPO). These trees make a significant contribution to the area's character owing to their linear arrangement. In addition, the general topography of the surrounding area increases the overall prominence of the trees.
5. The relevant trees are not within the appeal site. However, the trees are near to the site's boundaries. By reason of the size and maturity of the existing trees, there is likely to be a notable number of roots under the ground. There is a likelihood that despite the trees being located on land that is not owned by the appellant, some of these roots would be in the confines of the appeal site.
6. This causes a concern as the depth and general proportions of the proposed extension are such that development would be carried out inside of the root protection areas. This means that should the development proceed; the trees

- would not be able to gain sufficient moisture. This would have an adverse effect on their health. Should the number of trees within the general proximity of the appeal site diminish the verdant character of the surrounding area would be eroded.
7. The appeal documentation includes an arboricultural survey. However, this document does not definitively establish the position of the roots of the trees. Therefore, whilst the survey suggests that the foundations of the extension could be amended to take into account the location of the roots, this does not overcome my concerns.
 8. This is because, without certainty regarding the extent of the root network of the trees, it is not possible at this juncture to be of complete certainty that an alternative foundation design is a practical and implementable option. Therefore, it would not be possible to draft a requisite planning condition with sufficient precision to be reasonable.
 9. The appeal site features an area of hard surfacing in the same broad position as the appeal site. However, this is unlikely to have foundations as deep as the proposed extension would have and therefore does not have the same adverse effects. I therefore do not find that this presence overcomes my previous concerns.
 10. In addition, the trees would be in proximity to a window that would serve a routinely used room, in the form of a bedroom. The trees also have a greater height than the proposed development. In consequence, it is likely that, in time, there would be pressure to result in the trees being cut back in order to ensure that the occupiers of this room experience a satisfactory level of light and outlook. In reaching the view, I note that some of the branches of the trees are close to the intended siting of the proposed extension.
 11. Although this bedroom features some rooflights, they would not have the same level of outlook as a window in the elevations of the building. In consequence, the presence of the rooflights in the proposed development do not allow me to set aside my observations.
 12. In result, such pruning works has the potential to restrict future growth, which would also have an adverse effect upon the health of these trees. In addition, a reduction in the height of the trees would make them less prominent in the surrounding area. These scenarios would lead to a detrimental effect upon the area's character and appearance.
 13. I understand that planning permission has previously been granted to remove some of the trees to implement an alternative development. Whilst this may be the case, the remaining trees make a significant contribution to the area's character. In result, harm to these trees would lead to an adverse effect upon the character and appearance of the vicinity.
 14. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area, with regards to the effect on nearby protected trees. The development, in this regard, would conflict with Policy EN8 of the Amber Valley Borough Local Plan (2006) (the Local Plan). Amongst other matters, this states that developments should not damage, or destroy, significant trees.

Other Matters

15. I am aware that the proposed development was not the subject of objections from bodies, including the local Parish Council. Whilst this is a matter of note, it is only one of all the matters that must be assessed and therefore does not overcome my previous concerns.

Planning Balance and Conclusion

16. I understand that Policy EN2 of the Local Plan is considered to be out-of-date. Accordingly, the provisions of Paragraph 11 of the National Planning Policy Framework are invoked. This states that planning permission should be granted unless the benefits are significantly and demonstrably outweighed.
17. In this instance, the benefits consist of a dwelling that could be occupied by a greater number of people and economic benefits arising from the construction process. These benefits are relatively small and, in some instances, of a time-limited duration. I therefore find that the harm to the trees significantly and outweigh these benefits.
18. The proposal would therefore have an adverse effect upon the character and appearance of the surrounding area, with regards to the effect on nearby protected trees. The scheme would therefore conflict with the development plan taken as a whole. There are no material considerations, including the National Planning Policy Framework, that indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke

INSPECTOR