



Appeal Decision

Site visit made on 15 October 2021

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 November 2021

Appeal Ref: APP/P1560/W/21/3271526

Land Adjacent Church Lane, Weeley CO16 9DN

- 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 D Akers against the decision of Tendring District Council
 - The application Ref 20/00513/FUL, dated 15 April 2020, was refused by notice dated 04 December 2021
 - The development proposed is 'Construction of 1 no. residential dwelling and detached garage with associated access and landscaping works'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The latest iteration of the National Planning Policy Framework (the Framework) was published on 20 July 2021, after the application was determined.
3. Planning permission for a previous scheme for 'outline application with all matters reserved for one dwelling' at the appeal site was dismissed at appeal¹ on 25 November 2016 (the 2016 appeal). The 2016 appeal referred to the site as 'Hilltop Rise'.

Main Issues

4. The main issues for this appeal are:
 - (i) Whether the principle of residential development is acceptable in this location,
 - (ii) The effect of the development on the character and appearance of the area, including its effect on trees on site which are the subject of a woodland Tree Preservation Order² (TPO), and;
 - (iii) Whether the proposal would provide a adequate living conditions for future occupiers of the proposed dwelling.

Reasons

Principle of development

¹ APP/P1560/W/16/3152997.

² TPO/16/0007.

5. The 2016 appeal arose due to the Council's failure to determine the planning application and the Council supplied putative reasons for refusal. The Council did not cite the principle of residential development in this location as a putative reason, however, there have been material changes in circumstances since the 2016 appeal.
6. The development plan comprises of the saved policies of the Tendring District Local Plan (LP), adopted 2007, and Section 1 of the Local Plan for Tendring (LPT S1), adopted on 26 January 2021, shortly after the planning application subject to this appeal was determined. Following the adoption of LPT S1 2021 the Council can demonstrate an excess of a five-year supply of deliverable housing land with appropriate buffer. LPT S1 also sets out a new spatial strategy which is consistent with the Framework. As such, the 'tilted balance' no longer applies³ and the proposal should be determined in accordance with the development plan unless material considerations indicate otherwise.
7. Policies SP1, SP3, SP4 and SP7 of the LPT S1 set out a spatial strategy of planned growth which aims, amongst other things, to direct growth to settlements in accordance with a settlement hierarchy and, beyond settlements, to diversify the rural economy whilst ensuring the conservation and enhancement of the natural environment. These broad aims are consistent with the National Planning Policy Framework (the Framework) aims to enhance or maintain the vitality of rural communities, and to avoid isolated new homes in the countryside except for specific circumstances.
8. Similarly, the emerging Tendring District Local Plan 2013-2033 and Beyond (LPT S2) is a material consideration. There is little information before me regarding the level of unresolved objection to individual policies, however, the LPT S2 is at an advanced stage of preparation. Emerging policy SPL1 sets out the settlement hierarchy, SPL3 seeks sustainable design and LP1 sets out housing supply. These policies are consistent with the spatial strategy of LPT S1 and the Framework.
9. It has not been disputed that the appeal site is close enough, and sufficiently accessible, to some services within the built-up areas of Weeley, which is classified as a 'rural service centre'. Nonetheless, the proposed new dwelling would be located outside of the settlement boundaries, within the open countryside and it would, therefore conflict with the spatial strategy for housing in the district.

Character and appearance

10. Woodland designation W1 of the TPO encompasses the entire application site. The trees have a high amenity value as a group, as part of a woodland, which forms an attractive landscape feature of the verdant setting of the settlement and the rural character of the open countryside. The height and maturity of the trees contributes towards this amenity value. In addition to the visual setting of the settlement and countryside, the woodland also makes a positive contribution to the intrinsic beauty of the countryside.
11. The appeal is supported by an Arboricultural Statement (AS) which surveyed 59 trees in total and identifies and classifies a total of 20 trees to be removed as part of the proposal. The Council does not dispute the classifications. Of

³ Paragraph 11 (c) National Planning Policy Framework.

these, 2 of the trees to be removed are classified as Category U and are to be removed due to their condition, and not as a result of the development. Another 13 of the trees are Category C; one is to be removed to facilitate the landscaping scheme and the remainder of the trees, plus an additional 5 Category B trees, are to be removed as a direct result of construction impacts or with the aim of achieving an appropriate relationship between trees and the proposed dwelling.

12. The proposed drive would also pass over the root protection area (RPA) of 2 further trees; a reduced dig drive is proposed to avoid damage to the root structures of those trees. Potential for residual risk to the longevity of the trees due to soil compaction from hard surfacing and the parking or manoeuvring of vehicles is not addressed in the AS. Similarly, the construction space would be within the RPA of an oak tree; the AS suggests suitable ground protection during construction would address this.
13. The AS also identifies that the proximity of the proposed garage to the RPA and crown spread of tree T16 would require cutting back to the crown, manual root excavation and root pruning, which the AS claims is unlikely to result in significant long-term harm to the tree. The proximity of the crown of this tree with the garage building would result in a requirement for continuous maintenance and cutting of the tree, which could result in pressure to remove it. I note, however, that despite the AS strategy for its retention, that T16 is identified as a tree for removal in the AS.
14. The proposal therefore seeks to remove a very substantial portion of the trees which form the woodland, as well as creating potential risk for the future longevity of other trees within the protected group.
15. The AS strategy seeks to maintain the appearance of trees along the Clacton Road and Church Lane boundaries of the site to maintain woodland character along boundaries, and to screen the new development. However, this strategy fails to address the amenity value arising from the trees as a group; the inherent woodland character would be significantly eroded by hollowing out the woodland. Although the treed boundary 'buffers' might maintain the visual illusion of a woodland, to some extent, this would not make the same contribution to the intrinsic beauty of the countryside and verdant setting of the settlement.
16. Moreover, the visual illusion would be seasonal as the hollow centre would become apparent following leaf fall. The AS seeks to mitigate this through landscape enhancement and screening with a native hedgerow. However, screening at low level would not address the loss of tall, mature trees. Moreover, such screening would likely obscure from view shorter trees and would detract from the woodland character.
17. The hedgerow would contribute towards the verdant character setting of the settlement, but this would not off-set the loss of protected trees and the amenity value derived from them.
18. The application seeks to clear a large area to avoid crown overhang of the dwelling and approximately 200sqm of rear garden. The appeal is supported by a shadow study, which suggests that sufficient daylight would be afforded to the house and garden year-round and therefore, that there would be no future pressure to remove additional trees.

19. However, to maintain this relationship, there would be a need for constant maintenance to the retained trees by way of cutting back and removal of leaf litter, which could result in future pressure to remove as a more convenient alternative. Although the retained trees would provide a sense of privacy, the house and garden would nonetheless have a strong and overbearing sense of enclosure, which could also add to future pressure to remove additional trees.
20. Whilst the AS theoretically acknowledges the group value of the protected trees⁴, it does not take sufficient steps to preserve or mitigate the loss of this group value. Aside from the Category C trees, there is no evidence before me to suggest that the longevity of the trees, which contributes to the mature woodland amenity value, would be compromised were it not for the proposed development.
21. For these reasons, the proposal would have an adverse effect on the character and appearance of the area, contrary to saved policy EN1 of the LP and emerging policies SPL3 and PPL3 of the LPT S2, as well as the Framework. These policies seek, amongst other things, high quality sustainable design which responds to local character and protects the rural landscape.

Living conditions

22. The proposal would result in the removal of a significant proportion of the trees on site to create a substantial open clearing for the dwelling and garden. As outlined above, appeal is supported by a shadow study, which suggests that sufficient daylight would be afforded to the house and garden year-round. As such, the immediate direct impact of trees by way of shadowing on the living conditions of the future occupiers of the development would be limited.
23. The garden space and dwelling would nonetheless be surrounded by the retained tall trees, which would provide a sense of privacy, but which would have a strong and overbearing sense of enclosure, particularly to the garden area. Future occupiers would need to undertake continuous maintenance to retain the standard of living conditions in respect of shadow and leaf litter within the garden space, which would erode the quality of life of those occupiers and the quality of the outdoor space.
24. For these reasons, the proposed dwelling would provide a poor standard of living conditions for future occupiers of the development, contrary to emerging policy SPL3 of the LPT S2, as well as the Framework. These policies seek, amongst other things, development which provides a high standard of amenity for the occupiers of development.

Other considerations

25. The proposal would provide the public benefit of a single-family home towards local housing need. Whilst housing targets are not limits, the weight to be given to this public benefit is limited by its small contribution of a single dwelling and the lack of unmet need.
26. Some limited other environmental benefits would arise from the landscaping and ecology enhancement measures of the scheme. These benefits would be outweighed by the environmental disbenefits outlined above.

⁴ A failure to acknowledge the group value was a reason for dismissal of the 2016 appeal.

Conclusions

27. For the reasons stated above, the appeal proposal is contrary to the relevant policies of the Development Plan. Material considerations do not indicate the proposal should be determined other than in accordance with the development plan. The appeal is accordingly dismissed.

Kim Langford Tejrar

INSPECTOR