

Appeal Decision

Site visit made on 26 July 2022

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2022

Appeal Ref: APP/F3545/D/21/3289735

80 Nowton Road, Bury St Edmunds IP33 2NN

- 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 Michael Falcone against the decision of West Suffolk Council.
 - The application Ref DC/21/0664/HH, dated 24 March 2021, was refused by notice dated 8 October 2021.
 - The development proposed is a new vehicular access to the property from the highway.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. An application for costs was made by Mr Michael Falcone against West Suffolk Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the proposed access on the character and appearance of the appeal site and surrounding area; and, related to this, the effect on two hornbeam trees.

Reasons

Character and Appearance

4. No 80 Nowton Road is a two storey end-of-terrace dwelling in a residential estate of similar properties.
 5. Policy DM2 of the Council's Joint Development Management Policies Document (2015) concerns development principles and local distinctiveness, and includes the requirement that development should maintain or create a sense of place and/or local character. Policy CS3 of the St Edmundsbury Core Strategy (2010), concerning design and local distinctiveness, requires that development proposals must create and contribute to a high quality, safe and sustainable environment.
 6. The green traffic islands and wide verges to the front of the appeal property help to soften the effects of the built environment in this suburban setting, particularly the hard infrastructure of Nowton and Mayfield Roads. As such,
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these green areas are a prominent characteristic of the area, which as a whole reflect the planned layout of development. In this wider context, the grass verge which the access would cross provides a soft buffer to the road frontage where the short terrace of three dwellings, including No 80, are set back from the road on a staggered building line.

7. The proposed access would bisect this area and introduce hardstanding to the existing broad green verge. While I acknowledge the appellant's contention that the amount of land used for the access would be limited, that the land is not designated green space and the surface of the access would be permeable asphalt, the proposal would nonetheless result in a substantive change to what is an otherwise unspoilt green area. Therefore, despite its limited area, the new access would be a highly prominent and uncharacteristic feature seen from the surrounding area. As such, it would be incongruous and would result in material harm to the verdant character of the street scene.
8. There are other examples of residential accesses near the appeal property, on Nowton, Mayfield and Sandpiper Roads. However, these more simply require a dropped kerb to enable vehicles to cross the footpath and do not involve incursions into green space as with the appeal proposal. Consequently, they cannot be considered as precedents for a different form of access as proposed here; nor, for the same reasons, can any future dropped kerb accesses which might be undertaken as permitted development on the unadopted part of Mayfield Road be seen as justification for overcoming the harm that would arise from the current proposal.
9. I acknowledge that the Highway Authority may have agreed in principle to a dropped kerb in this location. However, this would not have involved any assessment of the proposal's effects on the character and appearance of the area against development plan policy. As such, this in principle agreement does not outweigh the harm that has been found.
10. I accept also that the appellant wishes to install an electric vehicle charging point, which requires access to the front parking area. This would support national and local environmental objectives and I note in this regard that Policy CS3 of the Core Strategy requires development to contribute to a sustainable environment. This must, however, be balanced against the effect of development on the quality and character of the local area, which local and national policies also require. While I give this matter some weight, the provision of a charging point serving a single dwelling is not sufficient basis to outweigh the wider harm to the character and appearance of the area that has been found.
11. Based on the site inspection, any work previously done within the area by statutory undertakers or the Highway Authority has not adversely affected the character or appearance of the grass verge or wider area. Conjecture about the effects of any future works within this area cannot have a determinative bearing on the outcome of the appeal. I have had full regard to the representations from interested parties in support of the proposal, particularly that it would ease parking pressures within the area. However, the provision of access to a single off-street parking space is not sufficient reason to overcome the harm that would result from the proposal, as found above.

12. Accordingly, for the reasons given, I conclude that the proposed access would have an unacceptably harmful effect on the character and appearance of the appeal site and surrounding area. As such, it is contrary to Policy DM2 of the Joint Development Management Policies Document and to Policy CS3 of the St Edmundsbury Core Strategy, as described above.

Hornbeam Trees

13. The three hornbeam trees planted on the grassed area in front of the short terrace of three properties are subject to a provisional Tree Preservation Order. I note the appellant's comments about some uncertainty concerning the status of the Order. While I accept that from the appeal submissions the position is not fully clear, nonetheless I agree with the Council that the trees have amenity value as they make a positive contribution to the street scene.
14. The proposed access would pass between the two trees in front of Nos 78 and 80, with agreement between the parties that the access would be constructed within the Root Protection Area (RPA) of the tree nearest to No 80. While the Council's decision notice refers to the effect on two trees, based on the available information it appears that the RPA of the tree in front of No 78 would be unaffected and, therefore, the principal focus is on the tree in front of No 80.
15. There is, however, a divergence of views concerning the likely effects of the access on the tree. I note the Council's contention that there is some lack of clarity in terms of the proposed construction of the access, particularly the extent of excavation required. However, the appeal submissions clarify that excavation of up to 245mm would be required and that it is not feasible to construct the access on top of the existing ground with no excavation.
16. British Standard 5837 (2012) concerning trees and construction says that where permanent hard surfacing within the RPA is considered unavoidable, site-specific and specialist arboricultural and construction design advice should be sought to determine whether it is achievable without significant adverse impact on trees to be retained¹. I note that such advice has been sought in the form of a tree survey and arboricultural impact assessment. While this has not been provided as part of the appeal submissions an arboricultural statement summarising the findings has been made available.
17. The statement indicates that the tree is in good health and there is sufficient space for it to adapt to any change in growing conditions; that the location of the access is at the edge of the RPA and the majority of it would be unaffected; that construction materials would allow for gaseous exchange and water permeation within the rooting zone; and that the deepest area of excavation would be adjacent to the highway outside the RPA. While I acknowledge the Council's concerns with regard to whether the proposal would comply with some of the BS 5837 design recommendations, on balance from the available information I consider that the access could be constructed without significant adverse impact on the relevant tree.
18. I note also that in the event that the appeal succeeds, the Council suggests a condition requiring a Tree Protection Plan and Arboricultural Method Statement

¹ Paragraph 7.4.1

to be submitted and approved, which would include a monitoring schedule and arboricultural supervision. This would enable detailed controls over the potential effects of development on the tree during the construction of the access. I have had regard to the appellant's references to the role of statutory undertakers and to previous decisions on a similar proposal and a recent appeal. I have, however, considered the appeal proposal on its own merits on the basis of the details pertaining to this particular case.

19. Therefore, for the above reasons, I conclude that the proposal would not have a materially harmful effect on two hornbeam trees. Consequently, there is no conflict with Policy DM13 of the Joint Development Management Policies Document, which states that development will be permitted where it will not have an unacceptable adverse impact on landscape features or amenity value, amongst other matters.

Conclusion

20. I have found in the appellant's favour with regard to one main issue, concerning the effect of the proposal on trees. However, this is not sufficient to outweigh the fact that the proposal is contrary to the development plan as it would result in unacceptable harm to the character and appearance of the appeal site and surrounding area. There are no other material considerations that outweigh the conflict with the development plan. Accordingly, it is concluded that the appeal should be dismissed.

J Bell-Williamson
INSPECTOR