



Appeal Decision

Site visit made on 23 August 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 September 2022

Appeal Ref: APP/W4223/W/22/3294095
Land on Delph New Road, Oldham OL3 5BY

- 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 Jamie Gledhill against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/343735/19, dated 24 July 2019, was refused by notice dated 22 December 2021.
 - The development proposed was originally described as 3 new dwellings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on protected trees, and linked to that, whether the proposed development would provide acceptable living conditions for future occupants, with regard to sunlight and daylight.

Reasons

3. The appeal site comprises a sloped area of land which is adjacent to Delph New Road and terraced dwellings. Towards the south of the site are three trees which are protected by a Tree Preservation Order (TPO).
4. As stated in paragraph 131 of the National Planning Policy Framework (the 'Framework'), trees make an important contribution to the character and quality of urban environments. The TPO trees are tall, mature, large specimens which have many years of growth and life expectancy left. They make a positive contribution to the visual amenity of the surrounding area and are important to the character and appearance of the locality. Proposed plots 1 and 2 would be situated near to these trees with windows serving living spaces and bedrooms directly facing the trees.
5. The Council has provided a recommended condition relating to the trees. It is standard procedure for the Council to recommend conditions should the appeal be allowed, and it does not affect the Council's position in relation to the proposal.
6. I have considered the Arboricultural reports, Arboricultural Officer comments and the Tree Impact and Protection Scheme in making my decision. The Tree Impact and Protection Scheme sets out that the development can be undertaken in accordance with BS5837:2012 and BS3998:2010. The report

recommends that the height and spread of the protected trees should be reduced. Such measures would help to reduce conflict between the proposed development and the trees in primarily the short term. Nonetheless, the need for such measures demonstrates that the development would have a close relationship with the trees.

7. The Council acknowledges that crown reductions are a recognised tree pruning operation and may be suitable in some circumstances, but in the case of protected trees where there is no health, structural or physiological issues which require remediation, then a crown reduction would be unacceptable particularly for mature trees. Furthermore, such pruning could potentially have a negative impact on the tree.
8. Given the proximity of these large specimens and the siting of plots 1 and 2 it is likely that there would be conflict between future occupiers and the trees, particularly in the long term. It is likely that the trees would cause significant shading and overshadowing of the garden areas and internal spaces of plots 1 and 2, which could result in rooms becoming unduly gloomy. This is due to the limited gap between the trees and plots 1 and 2's windows and garden areas as well as the position of the sun. There could also be additional issues relating to seasonal leaf drop, natural branch loss and root encroachment. As the trees grow it is likely that these issues would increase and might lead to future pressures to prune or fell the trees. Therefore, having regard to the information submitted, the proposed dwellings would not be positioned at a sufficient distance to the protected trees to avoid an unacceptable degree of overshadowing of both internal accommodation and garden areas.
9. The proposed pruning is likely to diminish the positive contribution that the TPO trees make to the area. Furthermore, it is likely that future pressures to prune the protected trees would compromise the value, character and function of the trees. Future pressures to prune the trees, or possible even removal of the trees, would have a harmful impact on the visual amenity of the area. I recognise that as the trees are protected, the Council would be able to control future pruning works. Having said that, it would be difficult for the Council to resist applications to prune or fell the trees if there are adverse conflicts between the dwellings and trees.
10. Plots 1 and 2, and the associated hardstanding areas, would be sited outside of the Root Protection Areas (RPA) of the TPO trees. However, at the closest point, the development would be extremely close to the trees and RPA. Taking into account the limited distance between the proposed development and tree protective fencing, this could be problematic during the construction period, for example excavating as well as moving plant and materials. It could result in the need to reposition the protective fencing which could have an adverse impact on the RPA and protected trees.
11. Pictures and details of various developments/ residential units in close proximity of trees have been drawn to my attention to demonstrate that it is not uncommon and acceptable for dwellings to be built within this distance of protected larger trees. I do not have full details of these cases. In any event proposals of this nature are often very site specific. For example, taking into account whether the trees are protected, species, the placement of windows, orientation of the sun as well as the health and structural integrity of the trees.

Nevertheless, each case is treated on its own merits, and I have made a planning judgement based on the site specific context on the ground.

12. In my judgement, the appellant's submission does not provide sufficient information upon which I can conclude that the appeal proposal would not result in an unacceptable impact on the existing protected trees. They do not satisfactorily address the relationship between the proposed development and the future growth of the trees. For these reasons, the proposed development would result in a poorly designed development because it would have a poor relationship with the TPO trees and it would not provide satisfactory living conditions for future occupants, with regard to sunlight and daylight.
13. Consequently, the proposed development would conflict with Policy 20 of the Oldham Local Development Framework Development Plan Document- Joint Core Strategy and Development Management Policies (2011) (LDF) and Policy D1.5 of the Oldham Metropolitan Borough Unitary Development Plan (2006) (UDP). These seek, amongst other matters, to promote high quality design and state the Council will only permit a proposal where development comprising residential accommodation is positioned in relation to retained trees so as to avoid an unacceptable degree of overshadowing of both internal accommodation and garden areas.

Other Matters

14. The Council state that they cannot currently demonstrate a five-year housing land supply. I acknowledge that there would be benefits associated with the proposal, including housing supply and economic benefits. The benefits associated with the appeal scheme would carry limited weight given the small scale of the development.

Planning Balance and Conclusion

15. Having regard to the conflicts identified above, I conclude that the proposal would be contrary to the LDF and UDP, as a whole. Given the absence of a five year supply of housing land, the relevant policies of the development plan, should not be considered up to date, having regard to paragraph 11(d) of the Framework and, on the basis of the evidence before me, paragraph 11(d)(ii) is engaged.
16. Nonetheless, weight may still be afforded to policies depending on their consistency with the Framework. The most relevant policies are consistent with the aims of the Framework regarding the need to achieve well-designed places. There is nothing within the Framework to suggest that those requirements of all development should be lessened on account of the lack of a five year housing supply. In that context, I attach significant weight to the conflict with the development plan.
17. Paragraph 11(d)(ii) of the Framework is engaged, and I must determine whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
18. For the reasons given above, the proposed development would have a poor relationship with the protected trees and would not provide satisfactory living conditions for future occupants. The benefits associated with the appeal scheme carry limited weight. Consequently, the adverse impacts would

significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

19. The proposal would be contrary to Policy 20 of the LDF and Policy D1.5 of the UDP, and I afford this conflict with the relevant policies of the development plan significant weight.
20. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR