



Appeal Decisions

Site visit made on 20 December 2022

by Paul Cooper MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 January 2023

Appeal A: Ref: APP/N1025/W/22/3297991

Land North of Duffield House, Stevens Lane, Breaston, Derbyshire DE72 3BU

- 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 Paul Gaughan (Paul Gaughan Building Consultants Ltd) against the decision of Erewash Borough Council.
 - The application Ref ERE/0221/0020, dated 1 February 2021, was refused by notice dated 9 December 2021.
 - The development proposed is erection of a new dwelling.
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Appeal B: Ref: APP/N1025/W/22/3297992

Land North of Duffield House, Stevens Lane, Breaston, Derbyshire DE72 3BU

- 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 Paul Gaughan (Paul Gaughan Building Consultants Ltd) against the decision of Erewash Borough Council.
 - The application Ref ERE/0122/0044, dated 19 January 2022, was refused by notice dated 31 March 2022.
 - The development proposed is erection of a new dwelling.
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Decision

1. Appeal A – The appeal is dismissed.
2. Appeal B – The appeal is dismissed.

Procedural Matter

3. The appeals have varied in terms of the site address, but they are for the same site, and I am satisfied that the address in the banner above correctly identifies the site. Furthermore, the description of development in respect of Appeal B includes text to state that it was a resubmission of the scheme that is the subject of Appeal A. I have deleted this from the description as the text does not represent a form of development. I am satisfied that neither party is prejudiced by these courses of action.

Main Issues

4. In both appeals the reasons for refusal were the same, therefore the main issues in both appeals are:
 - The effect of the development on the living conditions of future residents, by the presence of trees covered under a Tree Preservation Order (TPO), in terms of loss of natural light
 - The effect of the development on the Conservation Area

Reasons

Living Conditions

Appeals A and B

5. The appeal site is a parcel of undeveloped land located between two residential properties, Duffield House and 26 Stevens Lane. It is located in the Breaston Conservation Area and the locality is predominately residential in nature.

Appeal A

6. The appeal proposals would see the construction of a two-storey dwelling, with the outward appearance of a single storey dwelling with a large expansion of roof, with prominent two storey projections to the front and rear, and a balcony at first floor on the rear projection.
7. A single garage would be located on the southern edge of the site toward the Duffield House boundary. The materials of construction for the appeal proposal would be red facing brickwork, a cream render to part of the front projection, with clay roof tiles and UPVC windows.

Appeal B

8. This appeal would see the property "handed" from the scheme that forms Appeal A, with the garage now an integral unit on the northern side of the site toward 26 Stevens Lane. Materials of construction would be the same as Appeal A. The appellant states that this addresses the issues raised from the refusal of the first application.

Appeals A and B

9. Both proposals would be within the root protection area (RPA) of trees covered by a TPO. The presence of the trees and their maturity, combined with the sites natural, organic, and undeveloped qualities, make a significant positive contribution to the amenity of the local area.
10. Paragraph 5.3.1 of BS 5837:2012 states that "*the default position should be that structures are located outside the RPAs of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree*". In this case, no overriding justification has been put forward for development within the RPAs in either appeal.

11. The appellant has provided a Manual for Managing Trees on Development Sites (MMT), which outlines how the development would be undertaken having regard to the trees. This includes, amongst other things, the fencing of protected trees and pollution control. The appellant has also supplied a "no-dig" method statement.
12. The MMT is a general arboricultural document, and not specific to the site circumstances. However, the level of detail provided in respect of the measures to protect trees in development proposals is considerable.
13. There would be a fundamental change in the relationship from the current site circumstances to that between a dwelling and the protected trees, as there would be significantly greater activity from the dwelling and its associated usage. Developing the site as proposed in both appeals would result in the site acquiring a more manicured and developed appearance than it has at present. This would erode the natural, organic, and undeveloped qualities that characterise the appeal site.
14. I consider that large portions of the site would be affected by heavy shading from the T1 Oak at the rear of the site at various times of year. It is evident that residential development on this site would be unduly affected by loss of natural light and overshadowing. This could lead to a dark and oppressive environment for residents of either proposed dwelling subject to the separate appeals, with subsequent harm to their living conditions.
15. Nevertheless, given the proposed location of the dwelling in both appeals within such close proximity to trees, I cannot be satisfied that the proposals would not have an adverse impact on the living conditions of the future occupants from the size and spread of the tree (T1 Oak) affecting the levels of natural light to the proposed dwellings and their private amenity space.
16. Whilst potential residents would be aware of the position of the trees, the implications of living next to such large trees may not be fully appreciated until occupation.
17. I consider that there would be future pressure to undertake works such as removing overhanging branches and focussed pruning to retain good levels of natural light to the property, especially in the warmer months when the trees would have a full canopy spread. This would be a direct consequence of a more active use within the RPA of the trees.
18. Although works to protected trees would be subject to consent from the Council, given the potential effect on the living conditions of residents, especially in the summer months, such works would be difficult to resist. In turn this may lead to significant works to the tree canopies in and around the site, with subsequent harm to the contribution that these trees make to the character and appearance of the area.
19. I conclude that the proposal would not provide suitable living conditions for residents in respect of loss of natural light due to the effect of overshadowing from the mature protected trees in and around the site. The proposed development would also place long-term pressure for the removal or significant works to trees which are the subject of a TPO with subsequent unacceptable harm to their amenity value.

20. For the above reasons, I find that both of the appeal proposals would have an unacceptable effect on the living conditions of future residents leading to long term pressures on the protected trees. I therefore find that both of the appeal proposals would conflict with the requirements of Saved Policy EV14 of the ELP which expects development not to adversely affect the health of trees.
21. Both of the appeal proposals would also be contrary to the Framework with regards to ensuring that developments achieve a high standard of amenity for future residents as well as conserving and enhancing the natural environment.

Conservation Area

Appeals A and B

22. According to the Conservation Area Appraisal (The Appraisal), Breaston is situated on the "Beeston Terrace" which is a terrace of sands and gravels raised above the floodplain. The village may have originally been influenced by the presence of water courses. The Saxon and Medieval components of the village are thought to have archaeological potential.
23. Stevens Lane is shown as Zone 2 in the Appraisal, and it is stated that the western side of the lane comprises of a late medieval extension to the village, whilst buildings on the eastern side of the lane are set within spacious plots and the soft landscaping makes a positive contribution to local character.
24. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. Paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of a development on a designated heritage asset, great weight should be given to the asset's conservation.
25. Both proposals have been sited in a manner that seeks to respect two protected trees on site, but it is inevitable that the natural character of the site would be significantly diminished by the introduction, in both cases, of a building with a significant footprint.
26. In both proposals, the dwelling would be of considerable depth and occupy much of the site's width so that the intrinsic undeveloped character of the site would be spoilt. In turn, the proposed dwelling would detract from the significance of the Conservation Area as a heritage asset.
27. In both cases, the design of the dwelling is modern and contemporary, with the use of red brick, which in keeping with the locality, but this is compromised by the use of a section of render on a prominent elevation which sits ill at ease with the design, considerable amounts of fenestration and a sizable balcony at first floor level on both proposals.
28. Whilst the properties on the eastern side of Stevens Lane are more modern in construction, there is still an element of traditional design present, and the site also sits within the context of the more historic western side. In my opinion both sets of proposals would not address the Conservation Area setting and context in which they are located.

29. The Framework refers to opportunities within Conservation Areas to enhance or better reveal their significance. The encouragement for new development within such designated assets is therefore caveated in this respect. Whilst the proposal would have some beneficial aspects to it, I consider that the overall harm caused by both developments on the qualities of the Conservation Area would be harmful. In the context of the Framework, I consider the harm from both proposals to be less than substantial. I will weigh the public benefits of the proposals against this harm later in my decisions.
30. As a result of the harms that I have identified in both Appeals A and B, I find conflict with Policies 10 and 11 of the Erewash Core Strategy (2014) and Saved Policy EV5 of the Erewash Local Plan (the ELP), which, amongst other matters, expect development to have regard to local context and reinforce valued local characteristics and protect heritage assets and their settings by sustaining or enhancing them.

Planning Balance and Conclusion

31. I have found harm to the living conditions of future residents from the loss of amenities in relation to the loss of daylight and shading from a protected tree, which could lead to calls for substantial works or removal. I have also identified less than substantial harm in respect of the Conservation Area. This harm must be weighed against the public benefits of the proposals. In this case I am satisfied that the policies on which the Council relied are consistent with the aims of the Framework. Consequently, any conflict with them carries full weight in my assessment.
32. No specific public benefits have been put forward in respect of either appeal. However, each proposal would provide a social benefit from one additional unit to the Council's housing supply, in an accessible location, in support of the proposals. Each proposal would provide one additional unit to the Council's housing supply, in an accessible location. This benefit would be limited even if the Council cannot currently demonstrate a five-year supply of deliverable housing sites. There would also be some limited economic benefits associated with the creation of employment during the construction period.
33. However, I consider that the limited public benefits would not outweigh the less than substantial harm that I have found in both cases, particularly when the Framework advises that the harm must be given great weight.
34. As a result, there is a policy (Paragraph 11 (d(i)) in the Framework relating to a designated heritage asset that provides a clear reason for refusing the development proposed in Appeals A and B.
35. I have concluded that Appeals A and B would conflict with the development plan. There are no other material considerations that outweigh this conflict and for these reasons, I conclude that both appeals A and B should be dismissed.

Paul Cooper

INSPECTOR