
Appeal Decision

Site visit made on 6 February 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th February 2023

Appeal Ref: APP/J1915/W/22/3305648

Land to the East of The Barracks, Silver Leys, Bishop's Stortford CM23 2QE

- 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 Sam Gardiner against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/0525/FUL, dated 8 March 2021, was refused by notice dated 22 February 2022.
 - The development proposed is creation of 2 new dwellings.
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Decision

1. The appeal is dismissed.

Main Issue

2. The effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon protected trees.

Reasons

Background and the proposal

3. A Tree Preservation Order¹ applies to a defined area, of which the site forms part, and relates to several trees of whatever species that stood in the area when the Order was made. The site takes the appearance of an unmanaged woodland, with numerous established trees of varying species and sizes in place upon it. Owing to its generous ground coverage, the maturity of many of its trees, and its visibility from publicly accessible vantage points, the site has considerable amenity value and makes an important contribution to the often-verdant local landscape and to the character and appearance of the area.
4. The proposal involves the introduction of two large dwellings to the site as well as additional areas of hardstanding for the purpose of providing internal access, parking and turning. The intended positions of the dwellings on the site have, in broad terms, been guided by the locations of existing trees in the interests of seeking to limit conflict between new development and existing tree cover. Even so, submitted Tree Protection Plans indicate the removal of several trees, including a large oak tree² (the large oak), and development close to various other trees intended to be retained.

¹ The East Hertfordshire District Council (Silver Leys, Bishop's Stortford) Tree Preservation Order (No. 11) 1980

² T22, as surveyed and reported via the Arboricultural Impact Assessment (August 2020) (the AIA)

Tree removals

5. The intended removal of the large oak, which is located approximately centrally within the site, raises concern. Despite visible fungal brackets to its main stem and some minor defects to its crown, the large oak's main elements appeared structurally sound upon inspection and nothing has been submitted to clearly demonstrate otherwise. Moreover, it is a very prominent and visible specimen that has developed a natural and attractive shape and form. It has been graded, through the AIA, as being moderate quality with a remaining minimum lifespan of 20 years whilst, through a separately produced Tree Survey (December 2018), it is identified as being of fair condition with an estimated life expectancy of more than 40 years. I have no reason to doubt that the tree, without intervention, could survive upon the site for many years.
6. Whilst the AIA recommends more detailed investigations to ascertain the extent of any decay to the large oak, I am unaware of any additional investigations carried out. As such, whilst the intended felling of the large oak is analogous with the appellant's plans for developing the site, no detailed or convincing justification has been provided for its removal, which would result in a marked reduction in the visual amenity offered by the site's tree cover.
7. This identified adverse effect would be exacerbated, to at least some degree, by the further removals that are intended adjacent to the southern edge of the site. Indeed, whilst clearly smaller than the large oak and potentially of self-seeded origin, the cluster of trees earmarked for removal makes a valid contribution to the amenity of the local area. Consistent with the tree report contained within the AIA, this contribution could be reasonably anticipated to endure for at least another 20 years.
8. Thus, the proposed tree removals, especially when considered in combination, would cause considerable harm to the character and appearance of the area. I also note that any possible scheme of replacement planting would take time to establish, and that any newly planted specimen would take many years to reach a comparable stature to any established/mature tree that would be lost.

Retained trees

9. The numerous large-sized trees that are intended to be retained in proximity to the new dwellings include mature oaks, which are identified at Appendix B of the Tree Survey (2018) as the most significant trees of the highest amenity value within the woodland. I concur with this assessment.
10. One such mature oak³ is particularly prominent and categorised as being of high quality. The built footprint of proposed House B is intended to protrude beneath a part of its canopy and the principal south-facing elevation of House A would have a direct and close relationship with this tree. A further established tall oak⁴ would, I note, exist very near to House B. There would inevitably be some anticipated effects experienced by future occupiers of the development due to the potential threat of damage to property and loss of light/shading. Furthermore, given the continuity of tree cover that exists across the northern side of the site, it is realistic to speculate that future desires to remove or heavily prune trees of value could avail in the interests of improving the

³ T5, as surveyed and reported via the AIA

⁴ T4, as surveyed and reported via the AIA

useability of private garden spaces. Such a prospect would be most likely to apply at the plot to contain House B.

11. The existence of the TPO is a relevant factor when gauging the level of future risk that retained trees would be subjected to. Indeed, separate future applications would need to be made and approved by the Council before works to protected trees could lawfully be carried out. It is also anticipated that future house owners/occupiers would be fully aware of the presence of protected trees and the scheme's design approach before taking occupation. Even so, I do not consider that these factors would fully account for the anticipated future pressures that would be placed upon retained trees. This is not least due to the considerable scale and coverage of the tree canopies envisaged to be retained and their associated potential to influence day-to-day living arrangements at the site.
12. I also note that there would be limitations in terms of how far any possible management/maintenance regime could realistically go in terms of protecting the long-term future of trees. This is particularly so given the intended private garden area locations of many of the trees.
13. As such, even without factoring in any possible implications of new hardstanding at the site upon root systems, the proposal would be likely to have a negative long-term effect upon the integrity of protected trees intended to be retained. This would lead to a further erosion of the site's verdant character, which would exacerbate the considerable harm I have already identified would be caused by the proposed tree removals.

Conclusion on the main issue

14. For the above reasons, having particular regard to the effect upon protected trees, the proposal would cause significant harm to the character and appearance of the area. The scheme conflicts with Policies DES3 and DES4 of the East Herts District Plan (October 2018) (the EHDP) in so far as these policies set out that development proposals must demonstrate how they will retain, protect and enhance landscape features which are of amenity and/or biodiversity value, in order to ensure that there is no net loss of such features, and require that proposals respect or improve upon the character of the site and the surrounding area.

Other Matters

15. I have noted objections/concerns raised by interested parties with respect to matters including the location of the proposed access route through the site, the proximity of a listed brickwork wall, the potential for noise and disturbance to occur, and site arrangements during the construction phase. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore these matters further here.
16. The proposed dwellings are of high-quality modern design and would incorporate specialist and sustainable construction techniques (including the creation of voids to clear root systems). Moreover, two well-designed family-sized residential units are proposed in a central location and the National Planning Policy Framework (July 2021) reaffirms the Government's objectives of significantly boosting the supply of homes and making an effective use of land. Nevertheless, two additional units would not make a clear or noticeable

difference to the District-wide housing supply situation. I thus attach relatively limited weight to the delivery of new housing as a scheme benefit.

17. The scheme would also create jobs during the construction phase and provide support to the local economy and local community facilities once occupied. However, these benefits attract limited weight due to the somewhat modest scale of development under consideration. Any possible biodiversity enhancements to be achieved would be minor (especially in the context of the tree removals that are planned) and attractive of limited weight in the planning balance.
18. The scheme's benefits, considered cumulatively, would not outweigh the significant harm and associated policy conflicts that I have identified. Whilst I accept that the proposal complies with various policy provisions that are contained within the EHDP and the Neighbourhood Plan⁵, including with specific respect to both innovative design and future on-site living conditions, there is conflict with the development plan when read as a whole and material considerations do not lead me to a decision otherwise.

Conclusion

19. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR

⁵ Bishop's Stortford Town Council Neighbourhood Plan for Silverleys and Meads Wards 2021-2033