



Appeal Decision

Site visit made on 8 August 2023

by J Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/Q3115/W/23/3315643

Land at rear of 99 High Street, Wallingford, Oxfordshire OX10 0BW

- 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 Chris Baylis against the decision of South Oxfordshire District Council.
 - The application Ref P21/S3606/FUL, dated 11 August 2021, was refused by notice dated 2 September 2022.
 - The development proposed is described on the application form as the 'removal of dilapidated building and erection of two storey dwelling.'
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. During the course of the application amended plans were submitted to the Council. They based their decision on the amended plans, referenced DRG: 20123-10D, and so shall I.

Main Issues

3. The main issues are:
 - The effect of the proposal on a protected tree; and
 - Whether the proposal would provide acceptable living conditions for future occupants, with particular regard to hazards associated with land contamination.

Reasons

Protected tree.

4. The proposed dwelling would be located to the rear of properties in High Street with access through the historic gates, which have an historical connection with Wallingford Castle, the remains of which lie on a raised mound a short distance to the north of the appeal site. The buildings in the immediate vicinity of the site range from bold architectural statements to more modest townhouses and vernacular structures. The plots are generally long and narrow with each frontage building cheek-by-jowl to the next. To the rear, extensions and outbuildings sprawl into the plots in diminishing size.
5. Trees are not generally significant features along the High Street although there are some mature trees in large private rear gardens which add to the more domestic character of the eastern part of the street. That said, a mature

red cedar tree (T8)¹, which is located within a neighbouring garden, to the north of the appeal site, is a prominent feature within the area. Its species and height, sets it apart from other trees in the locality, and it can be clearly seen above and between the neighbouring buildings from the High Street, alongside the River Thames and from the Castle Gardens. As a result, it makes a significant contribution to the character and appearance of the area.

6. The amended plans indicate that any incursion into the root protection area (RPA), by the proposed dwelling, would be limited to 1.5 percent. The appellant has also confirmed that the ground levels would remain as existing, and it would be his intention to provide a gravel driveway without the need for reduced level digging. He further asserts that sufficient space is available to enable the proposed dwelling to be erected without affecting the canopy of the tree. That said, the northern elevation drawing indicates a level site, which does not accord with the more varied levels that I saw on my site visit. Moreover, I have no substantive evidence before me regarding finished ground levels, including cross sections in and around the RPA. Therefore, I am not persuaded the proposed development could be undertaken without harm to the root system of the tree.
7. Whilst I note the appellant's submission that the proposal would not be harmful to the tree and that its roots within the RPA could bend or relocate so that they would remain intact and functional, there is a high probability that at some point during the construction of a building of this size that some mechanical equipment would be used to dig the foundations. As such the likelihood of root damage occurring would be high. The ability of the tree to tolerate damage to the rooting area is already likely to be limited by the age of the tree.
8. Accordingly, on this main issue, the proposal would be contrary to policies ENV1, ENV8, DES1 and DES2 of the South Oxfordshire Local Plan 2035 (LP). These policies seek, amongst other matters, to preserve or enhance the character and appearance of the conservation area by taking into account local context and protecting trees of significant amenity value.
9. Whilst the proposal might also be contrary to the advice given in BS5837:2012, this does not form Council policy and therefore I afford it limited weight.

Contamination

10. The Council, at the time they made their decision to refuse the application, indicated that the proposed dwelling would be erected on unfilled ground and within 50m of a former coal yard. Moreover, they said that insufficient information had been submitted to assess any risk or identify mitigation measures that might be required.
11. I have taken into account the exchange of correspondence between the Council and the appellant following the issue of the refusal. In particular, I note the e-mail from the Council's Environmental Protection Team dated 21 March 2023 that concludes that they would have no objection to land contamination risks being addressed through the imposition of appropriate conditions. From what I have seen and read, and in the event that I was to allow the appeal, I would not disagree with adopting this approach.

¹ As shown on the appellant's Arboricultural Report

12. Accordingly, on this main issue, subject to the imposition of appropriately worded conditions, I find that the proposal would provide acceptable living conditions for future occupants, with particular regard to hazards associated with land contamination. As a result, the proposal would not conflict with policies DES7 and ENV11 of the LP. These policies seek, amongst other matters, to ensure that land is of a suitable quality for development and that remediation of contaminated land is undertaken, where necessary, in order to protect future occupants from the adverse impact(s) of pollution.

Other Matters

13. I am mindful of my duty under Sections 66(1) and 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 which requires me to have special regard to the desirability of preserving heritage assets, their setting or any features of special architectural or historic interest they possess and consider the effect of the proposal on character or appearance of the conservation area. I note from the officers report that the Council consider the scheme to have no more harmful impact than earlier approved schemes, and the proposal would comply with the conservation policies of the development plan. From what I saw on my site visit, and what I have read, I have no reason to disagree with the conclusions they reached on this matter and consider that the proposal would not have a harmful effect on heritage assets and would preserve the character and appearance of the conservation area.
14. I have also taken into account representations made by the occupiers of Thames Cottage with regards to the impact the development would have on their living conditions. In this regard I note the conclusions reached by the Council with regards to the impact the proposal would have on the amenity of neighbouring occupiers. On my site visit I gave careful consideration to the outlook from the kitchen/conservatory of Thames Cottage and considered the implications of the proposed development with regards to privacy and sunlight/daylight. Given the design of the proposed dwelling and the separation distance between the respective properties I find that the appeal proposal would not have a significant harmful effect on the occupiers of Thames Cottage.

Conclusion

15. I have found that, subject to appropriate planning conditions regarding land contamination, the proposed development would provide acceptable living conditions for future occupiers. However, the absence of harm with respect to this matter is a neutral factor and does not outweigh the adverse effect that the proposal would have on the protected red cedar tree.
16. There are no other material matters, of sufficient weight, that indicate the application should be determined other than in accordance with the development plan as a whole. The appeal is therefore dismissed.

J Gunn

INSPECTOR