



Appeal Decision

Site visit made on 19 September 2023

by F Wilkinson BSc (Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd October 2023

Appeal Ref: APP/P4415/W/23/3318229

159 Doncaster Road, Rotherham, South Yorkshire, England

- 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 Mrs Cathy Devoti against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2020/1048, dated 1 July 2020, was refused by notice dated 28 September 2022.
- The development proposed is 2 no. 3 bedroomed dormer bungalows.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's concern relates to the effect of the proposal on a Copper Beech tree located to the front of the appeal site. During the course of the application, the decision was made to protect the tree through a Tree Preservation Order (TPO) which was made on 5 May 2021¹. The Council's evidence sets out that all interested parties were notified and one objection was received. Under the Council's scheme of delegation, TPOs can be confirmed using delegated authority rather than through the Council's Planning Board if five or fewer objections are received. A report to the relevant Chair and Vice Chair requesting confirmation without modification of the TPO is dated 28 July 2021.
3. The validity of a TPO cannot be challenged in any legal proceeding, including appeals, except by way of application to the High Court within the relevant timescales. The appellant raises concern about the confirmation status of the TPO, highlighting that the only version supplied by the Council does not have the confirmation of order section completed. However, it has not been necessary for me to reach a definitive view on this matter. This is because I have considered the effects of the proposal regardless of whether the TPO has been confirmed.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area having regard to the contribution made by the Copper Beech tree.

Reasons

5. Paragraph 131 of the National Planning Policy Framework 2023 (the Framework) states that trees make an important contribution to the character and quality of urban environments. The appeal site is part of the large rear

¹ Tree Preservation Order No. 6 (2021)

garden of the dwelling at 159 Doncaster Road. The trees, hedges and other vegetation in the grounds of this dwelling and that of other nearby properties, together with the street trees and fairly wide grass verges further west on Doncaster Road, provide the otherwise generally built-up area surrounding the appeal site with a pleasantly verdant character and appearance.

6. The Copper Beech tree sits very close to the edge of the garden that faces onto Rotherhill Close and is within the appeal site. It is clearly visible from the public realm along this cul-de-sac as well as from most of the dwellings that face onto it, notwithstanding that the lower parts of the tree are screened by the garden wall and hedge. The tree is also clearly visible from Doncaster Road when at the junction with Rotherhill Close and close to it on the approach from the east. The tree's canopy can be seen from points to the west on Doncaster Road where it is visible in views through the buildings fronting onto the road. It is also visible in views through the properties along parts of Oxford Street to the west.
7. The tree is relatively large both in terms of height and spread. This, together with its colour, means that it is a noticeable feature in the street scene as described above. Given its attractive appearance, and its location, it makes a significant and positive contribution to the visual amenity of the area, regardless of whether the TPO has been confirmed.
8. The proposed development would comprise the erection of two dormer bungalows that would front onto Rotherhill Close. The tree would be close to the proposed dwelling on plot 1 and would be within its parking area.
9. The appellant's tree report² states that the proposal would almost certainly necessitate the removal of the Copper Beech tree given the extent of its root protection area (RPA) and location in relation to the proposed development. The tree report also identifies the tree's proximity to the garden wall and states that unless some significant work is undertaken to the tree, within a very short period the wall would be distorted to such an extent that it would have to be demolished. While identifying measures that could be implemented to help protect the RPA of the tree and put back the time when the wall would have to be rebuilt or removed, the tree report concludes that the best way forward would be to remove the Copper Beech tree and replant new hedges and trees.
10. Both the Council's and appellant's evidence describe the tree as healthy. The view of the Council's tree officer is that, with the necessary repairs made to the boundary wall, the tree could easily be retained for the next 20 to 40 years. This view reflects that of the author of the method used by the Council to assess the suitability of trees for inclusion in TPOs, who puts 20 to 40 years as the top end of its retention span based on a rooting restriction due to the proximity of the wall and use of a bridging lintel to enable the repair of the wall while retaining the tree³. I therefore have no substantiated evidence before me to demonstrate that, with the necessary repairs made to the boundary wall, the tree would be unlikely to survive on site for many years.
11. Despite other trees in the vicinity, the loss of the Copper Beech would be readily discernible given its clear and prominent presence when appreciated

² Prepared by Anderson Tree Care, 4 November 2020

³ Report to Chair and Vice Chair of the Planning Board dated 28/7/21 and appendix 11 of the appeal statement prepared by Anderson Tree Care

from public vantage points in the vicinity. Due to the positive contribution that the tree makes to the character and appearance of the area, its removal would result in a significant level of harm, as the site would become more urbanised and the verdant backdrop to the built form in the vicinity would be unacceptably diminished.

12. Even if I had been able to conclude that the tree could be retained without unacceptable harm being caused to it, although future occupiers would be aware of its proximity when purchasing the dwellings, it is not unreasonable to assume that dissatisfaction with shade, falling leaves, and debris could well increase over time. If the development was to be allowed with the tree remaining, in my judgement there would likely be pressure for lopping or complete felling of the tree. It would be difficult for the local planning authority to resist such requests for works to the tree in this situation in the event of the TPO having been confirmed.
13. The appellant proposes the planting of two trees in the remaining garden of the host property, and one within the front garden of each of the proposed dwellings. If I was minded to allow the appeal, the species could be secured by way of a planning condition. However, the Copper Beech tree that is proposed to be removed is relatively large and mature. Any landscaping for the proposal would take many years to reach the same size and therefore make a similar positive contribution to the character and appearance of the area. In any event, given the relatively small size of the front gardens proposed for both dwellings, I find that there would be limited space for future tree planting. The proposed planting would not therefore adequately mitigate the harm that I have found.
14. For the above reasons, I conclude that the proposal would result in unacceptable harm being caused to the character and appearance of the area arising from the loss of the Copper Beech tree. It would therefore conflict with Policies SP32 and SP33 of the Rotherham Local Plan Sites and Policies, adopted 2018. Amongst other considerations, these policies require proposals to support the protection, enhancement, creation and management of green infrastructure assets and networks including landscape, and to conserve and enhance existing features of biodiversity value which the supporting text confirms includes trees. The proposal would also conflict with the objectives of the Framework for the conservation and enhancement of the natural environment.

Other Matters

15. I note the appellant's concerns regarding the Council's handling of the case. However, in determining this appeal, I am only able to have regard to the planning merits of the case.

Conclusion

16. The proposal would conflict with the development plan taken as a whole. There are no material considerations that would indicate a decision other than in accordance with it. For the reasons given, the appeal should be dismissed.

F Wilkinson

INSPECTOR