



Appeal Decision

Site visit made on 17 August 2023

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th October 2023

Appeal Ref: APP/F2605/W/23/3314488

Plot 14, Taylor Drift, East Harling NR16 2TF

- 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 David Taylor against the decision of Breckland Council.
 - The application Ref 3PL/2022/0566/F, dated 12 May 2022, was refused by notice dated 31 August 2022.
 - The development proposed is the erection of new house.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Within the evidence, reference is made to plot numbers established in earlier planning permissions. As dwellings in later phases have been built, they have been given house numbers which differ from their plot numbers. For the avoidance of doubt, references throughout the decision are to the original plot numbers as identified on plans and within the parties' evidence.

Main Issues

3. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect on existing trees;
 - The effect on the living conditions of neighbouring occupants, with respect to outlook and overbearing effect;
 - The effect on ecology, including protected species, and;
 - Whether the proposal would restrict the delivery of affordable housing under earlier planning permissions on the wider site.

Reasons

Character and Appearance

4. Taylor Drift is a recent housing estate developed under a series of planning permissions and building phases. Plot 14, to the rear north-eastern corner of the development, is one of the few remaining plots not built or under construction. The site adjoins expansive agricultural land to the north and east.
5. A dwelling has previously been approved on the plot under earlier, broader planning permissions for phase three of the development and could yet be built

out to the previously approved design. However, a different design is proposed on the plot as a standalone application.

6. The dwellings to the rear of the site, notably those on Plots 11, 12 and 13 exhibit a contemporary rural aesthetic, with stone walls, heritage-style windows and porches. The dwelling on Plot 11 has an L-shaped footprint that the appeal scheme seeks to mirror, thus providing a bookend to the row of dwellings at the rear and enclosing the scheme from the wider rural hinterland. In principle, this approach has merit and would complete the ring of dwellings at the rear of the development.
7. However, the proposed dwelling would be significantly larger in scale than the dwelling on Plot 11. The garage wing to Plot 11 directly adjoins the main body of the dwelling and is lower in height and shorter in length, forming a subservient element that does not compete with the adjacent front elevation to be read as the principal frontage. In contrast, the garage wing of the proposed dwelling would be demonstrably longer with two substantial garage doors and would not directly adjoin the main body of the house, but would be attached via a lower, single storey linking element. Indeed, taken by itself, the garage element would be wider than the main body of the dwelling.
8. Due to this substantial size, the garage wing would not appear subservient to the main body of the dwelling, even taking into account its lower overall height. Rather, the garage wing would appear as a substantial, conspicuous element of the design that would contain additional noticeable features including dormer windows, a clock tower and weathervane, along with a large forecourt parking area directly in front. These elements are not necessarily harmful in and of themselves, but they would add to the prominence of the garage wing, which would face directly towards the public realm of the development and form a dominant feature in views from here and the dwellings surrounding it. This in turn would detract from the primacy of the main front elevation and lend the overall scheme an unbalanced appearance.
9. In addition, the proposed dwelling would span across most of the plot, extending close to both the western and southern boundaries of the site, occupying a much greater footprint than the dwelling on Plot 11, the garage wing of which stands several metres back from its southern boundary, lending space around the dwelling and creating a proportionate appearance. The gap between the western elevation and the eastern wall of the dwelling on Plot 13 would also be closer than the corresponding gap between the dwellings on Plots 11 and 12. This degree of plot coverage, together with the overall scale and massing, would exacerbate the sense of the dwelling being excessive in size and squeezed onto the site in a cramped manner, even allowing for the fact that the overall plot size is larger than others within the development.
10. The proposed dwelling would share much of the architectural language of the wider development in terms of numbers of storeys, roof forms, materials and design details. However, the positive attributes of the proposal in these respects would not outweigh the harmful impact of the overall size, shape and massing of the dwelling, or the dominant nature of the garage wing.
11. The appellant further refers to the similarity of the proposed dwelling to that approved on Plot 16 to the south. I note this was originally intended to stand at the end of the development, accessed by a private drive and not addressing the public realm as the plot does now. The approved design does incorporate a

link structure between the main dwelling and garage but the garage is demonstrably smaller in height and width and would form a clearly subordinate element that would not compete for primacy with the main body of the dwelling, in contrast to my findings on the appeal scheme. Moreover, Plot 16 is a different plot and the dwelling would not be seen in the same context as that on Plot 14, with no clear mirroring to the wider layout that would be a factor in determining an appropriate scale and form. As such, I do not regard the approved design of Plot 16 as setting a precedent for the proposal on Plot 14.

12. The original plans of the approved dwelling on the plot showed a T-shaped footprint facing the public realm at a 45 degree angle, with a detached garage to one side. Both the dwelling and garage in these plans are significantly more restrained in scale and reflect the dwellings approved on Plots 12 and 13. Indeed, although I note subsequent amendments were sought in respect of the designs on Plots 11, 12 and 13, the dwellings as built still largely reflect the scale and form of the originally approved plans. In contrast, the proposal seeks to significantly enlarge the size of the dwelling and garage on Plot 14 to an excessive scale which would fail to reflect that of its surroundings.
13. Taking these considerations together, the uncharacteristic scale and unbalanced arrangement of the dwelling would not be visually attractive as a result of good architecture and layout, and so would fail to add to the overall quality of the area, contrary to the aims of the National Planning Policy Framework (the Framework).
14. For these reasons, therefore, I conclude that the proposal would cause significant harm to the character and appearance of the area, in conflict with Policies GEN02 and COM01 of the Breckland Local Plan (2019) (the BLP) which require development to be designed to the highest possible standards, to respect and contribute to the distinctive character of the local area and be compatible in terms of layout, form, style, massing, scale, density, orientation, materials and design.

Effect on Trees

15. The Council's concerns are twofold. Firstly, that the building itself would extend into the root protection areas (RPAs) of trees on the eastern boundary of the site that are subject to a tree preservation order (TPO); and secondly, that the proximity of those trees to the dwelling would lead to future pressure from residents to scale back or remove the trees due to concerns over loss of light and outlook, the inconvenience of managing falling debris or the fear of property damage or injury from a falling tree.
16. On the first issue, the appellant's own plans show the garage wing of the dwelling would extend noticeably into the RPAs of trees T1 and T2. Contrary to the appellant's claim, the approved garage on Plot 14 was shown in the original tree survey to be outside of the RPAs of the trees. The incursion into RPAs in the present case stems from the additional width of the proposed garage wing, and its inset position from the southern boundary.
17. The appellant's arboricultural impact assessment (AIA) proposes to sever roots which fall within the area of the dwelling's foundations. However, the AIA does not provide substantive evidence to confirm that such root loss would not be injurious to the long term health of the trees. No justification has been provided for locating the building within the RPAs of the protected trees, and

on the evidence before me, it is not unavoidable as incursion could be prevented through re-locating the building or amending its size, as the approved scheme was able to demonstrate. The size and likely depth of the building's foundations in this area also mean that non-invasive building techniques are not realistic options to avoid root loss. Therefore, I am not satisfied that the proposal would suitably safeguard the long term health of the protected trees on site.

18. Turning to the second issue, the trees are substantial specimens ranging from 11 to 16 metres in height. The proposed dwelling would be located close to these trees, with the AIA acknowledging that the canopies would extend over the roof of the garage wing and that east-facing windows would experience shadowing as a result. The appellant points out that the canopies would be at the height of at least 6m and there would not be conflict between the trees and dwelling. Conversely, an interested party points to two recent applications for removal of TPO trees within the estate where applicants successfully argued that the presence of trees was presenting a danger to them.
19. Whilst noting these examples, it is a matter of judgement as to whether the proximity of a dwelling to existing trees is likely to lead to pressure for their removal. In this case, the trees would be close enough to actually oversail the roof of the garage wing and cause shadowing to windows. This would generate constant impacts for residents in terms of reduced sunlight and daylight to windows and to the rear patio area to the north of the trees, along with falling debris on the ground and in gutters requiring regular attention. The risk of a tree falling and causing property damage is likely to be low but is increased by the proposed proximity of the dwelling.
20. I acknowledge that the evidence before me in respect of future pressure to remove these trees is not definitive, and that reduction or removal would require an application to the Council. However, the proximity to the dwelling is likely to be a factor in any such application and given that the dwelling could in principle be located further from these trees, I find that the proposed location, rather than having a neutral or beneficial effect, would increase the risk of future applications for tree removal.
21. Overall, there is no substantive evidence before me to justify the position of the proposed dwelling so close to protected trees and within their RPAs, where there would be an acknowledged loss of roots. The evidence does not clearly set out the likely effects of these works on the long term health of the trees. The proximity of the trees to the dwelling and acknowledged effects this would have on shadowing, plus light and outlook, alongside other risks put to me anecdotally as underpinning recent tree removal applications, adds to my concerns on this main issue.
22. Therefore, I conclude that the proposal would fail to safeguard protected trees, contrary to Policy ENV06 of the BLP, which sets out that trees should be retained as an integral part of the design of development except where their long term survival will be compromised by their age or physical condition or there are exceptional and overriding benefits in accepting their loss.

Neighbours' Living Conditions

23. The concerns raised relate to the effect of the garage wing of the proposed dwelling on the neighbouring dwelling on Plot 15 to the south, with respect to

overbearing impact. The neighbouring dwelling has a detached, single storey garage with hipped roof standing next to the shared boundary with the dwelling itself set further back.

24. The proposed garage wing would stand a couple of metres or so from the shared boundary, presenting a blank gable end that would extend rearward of the rear building lines of the neighbouring dwelling and garage and face the rear garden. The location of the garage as approved and that now proposed are not significantly different in terms of their position within the site as both would stand beyond the rear building lines of the dwelling on Plot 15.
25. The proposed garage would be taller and wider than the approved detached garage, whilst the introduction of a gable end instead of a hipped roof would add to the massing and overall impression of scale that neighbouring occupants would experience. However, the garage would be set back slightly from the boundary, which has a 1.8m high fence. The additional massing would extend across part, but not all, of the northern boundary, with the principal windows to the rear of Plot 15 being separated by its own garage and the main outlook from the rear of the dwelling to the east and south-east being unaffected. Therefore, I am not convinced that the difference in scale and form between the two designs is such that the proposed scheme would create a demonstrable loss of outlook for occupants of the neighbouring dwelling.
26. Moreover, given the position of the proposed dwelling to the north of Plot 15, there would be no demonstrable loss of sunlight or daylight for neighbouring occupants as a result of the proposal, nor would there be any facing windows that would create opportunities for overlooking or loss of privacy.
27. Overall, I am satisfied that the proposed dwelling would not lead to a significant loss of outlook or sense of enclosure for neighbouring occupants and so would not result in demonstrable harm to their living conditions. In this respect, there would be no conflict with Policy COM03 of the BLP, which sets out that development will not be permitted which causes unacceptable effects on the residential amenity of neighbouring occupants.

Ecology

28. The Council initially refused permission on the basis of a lack of information relating to the ecology of the site and potential impacts from development. The appellant points to the site having been assessed as part of the original planning permission and that there would be no material difference in impact on ecology between the two schemes.
29. The Council has subsequently provided comments from its ecologist who, having undertaken a desktop survey, does not wish to raise an objection on ecology grounds, subject to recommended conditions. Consequently, the Council indicates that it no longer wishes to defend this reason for refusal.
30. For my own part, I saw that the site is covered in patchy vegetation with many bare areas, reflecting its recent past as part of a construction site. The eastern boundary represents a narrow strip with ecological potential, but this is also adjacent to the intensive pig farm which lies beyond the site. Overall, I have no reasons to conclude differently to the Council and I am satisfied that conditions could ensure the impact of the development on local ecology is mitigated and a net gain in biodiversity is achieved in line with the aims of the Framework.

31. As such, no conflict arises with Policy ENV02 of the BLP which requires that development potentially affecting biodiversity should demonstrate how such effects have been considered, by firstly demonstrating how effects have been avoided and then how effects that cannot be avoided have been minimised.

Affordable Housing

32. The application is made as a standalone application for a single dwelling. On its face, this would not trigger a requirement for affordable housing under Policy HOU7. However, the site forms part of the wider Phase 3 of the development which was required to provide 40% affordable housing in accordance with development plan policy at the time. The Council's concern is that the granting of planning permission for this proposal would negate the possibility of securing affordable housing on the wider site under the terms of an existing Section 106 agreement signed in respect of the original permission for Phase 3.
33. The appellant argues that an application for 3 market dwellings on the plots identified for affordable housing in Phase 3 was granted in September 2020¹ without a deed of variation being signed in respect of the original Section 106 agreement and that, as a consequence, the Council has lost its ability to secure affordable housing. The Council argues that the terms of the Section 106 still fall to be met on the site, though it does not clearly set out the affordable housing requirement it considers applicable in this case, or how it expects the appellant to meet this requirement, given that at least three dwellings appear to be sought by the Council on a single remaining plot within Phase 3.
34. In considering this issue, I note a June 2023² appeal decision relating to Plot 16, where the Inspector viewed the proposal as part of the wider Taylor Drift development for the purposes of assessing the requirement to provide affordable housing. This scheme proposed a net increase of five dwellings, without additional affordable housing, which would have reduced the overall proportion of affordable housing on the wider site, contrary to Policy HOU7. This differs from the scheme before me where no net increase in dwellings is proposed across the overall development. The evidence also indicates Plot 14 was not originally intended to provide affordable housing within Phase 3.
35. Ultimately, the evidence before me is not conclusive that this proposal would, in and of itself, preclude delivery of affordable housing across the wider development. It is not within the scope of this appeal to pronounce on whether other planning permissions can still be implemented or what the implications of allowing this appeal would be in terms of fulfilling obligations under an existing Section 106 Agreement. It would be for the Council in the first instance to enforce the terms of any legal agreement or breach of planning control. Nevertheless, as my findings above in respect of other main issues point to the dismissal of the appeal, it is not essential that I reach a finding in respect of this matter, as it would not be determinative of the overall outcome.

Other Matters

36. The original planning permission, which the evidence indicates is still extant, represents a fall-back position for the appellant. However, for the reasons set out above, I have found that the appeal scheme would be more harmful than the approved scheme in terms of character and appearance and the effect on

¹ Council Ref: 3/PL/2020/0528/F

² Appeal Ref: APP/F2605/W/22/3294630

trees. Consequently, the fall-back position would not present an equivalent or greater degree of harm than the appeal scheme, and it would not justify granting the appeal proposal. Therefore, it is not a matter attracting favourable weight in the planning balance.

37. I have had regard to other matters raised in evidence, but nothing I have read, or that I have seen on site, leads me to findings of additional material benefits or harms to be weighed in the planning balance. As such, it is not necessary to address other matters in further detail as they would not alter the overall outcome.

Conclusion

38. For the reasons set out, the harm identified to the character and appearance of the area and to protected trees means the proposal would conflict with the development plan, taken as a whole, to which I afford significant weight.
39. The proposal would add a dwelling to the housing stock but would not represent a net increase in dwellings over the number already approved on the wider site. As such, this is not a benefit of any tangible weight. Similarly, the economic benefits arising from the construction of the dwelling would be realised to much the same extent were the approved scheme built out, meaning this also attracts only modest weight.
40. The material considerations in this case, including the appellant's fall-back position, do not cumulatively outweigh the conflict with the development plan so as to justify a decision other than in accordance with it.
41. Therefore, I conclude that the appeal should be dismissed.

K Savage

INSPECTOR