



Appeal Decision

Site visit made on 26 September 2023

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st November 2023

Appeal Ref: APP/V2635/W/23/3316698

Land adj. 78 London Road, Downham Market PE38 9BP

- 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 Michael Spencer-Morris of St Edmund Investments Ltd against the decision of King's Lynn and West Norfolk Borough Council.
- The application Ref 22/01968/F, dated 5 November 2022, was refused by notice dated 3 February 2023.
- The development proposed is the erection of a new dwelling.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council decision notice refers to an adjacent property on Russell Gardens. However, I noted at my site visit that the road to the rear of the site is Russell Close, as indicated on the submitted site plan. Furthermore, the adjacent property is numbered 78, faces London Road and the numbering runs sequentially along London Road. I have therefore considered this neighbouring property as No 78 London Road.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, including its effect on the protected Oak tree; and
 - the living conditions of the occupiers of 1 and 1a Oakfield Close and 78 London Road, with particular regard to daylight, sunlight, and outlook.

Reasons

Character and appearance

4. The appeal site currently forms a gap in the built development along London Road. At the time of my visit the site was enclosed in close boarded fence and decorative post and chain along the front.
5. The site contains a mature Oak tree which is of substantial size, and which is protected by a Tree Preservation Order¹. The Oak tree is an attractive specimen and makes a significant and positive contribution to the visual character of the area, as recognised by its TPO. Although the existing close boarded fence limits the view of the tree trunk the majority of the tree can be

¹ The Borough Council of King's Lynn and West Norfolk (Downham Market) Tree Preservation Order 1985 No 1 (Council reference 2/TPO/00141)

viewed from the surrounding area, especially from London Road, Ryston Close and Russell Close. Moreover, the existing site and boundary fence is not harmful to the character or appearance of the street.

6. The area is predominately residential with some commercial uses, including the police station opposite. The appeal site is similar to other gaps in the built frontage along London Road, many of which contain large trees. The site, as a gap in the built frontage, currently contributes positively to the street scene, the character and appearance of the area and replicates other gaps along London Road.
7. The appeal proposal is for one dwelling to be erected on the site between London Road and the tree. The computer-generated images (CGI), provided in the appellant's evidence, show that although the tree would still be partially visible above and to the side of the proposed dwelling, the development would result in the appearance of the site changing from a gap in the built frontage to a developed site. The crown of the tree would still be visible, but the views of the tree would not be unimpeded as the appellant asserts. The new dwelling would become the prominent feature in the street scene and would reduce the open views of the tree and the feeling of openness created by the current site. The development would, therefore, result in a significant and adverse change to the appearance of the site and the character of the area.
8. The proposal would provide gaps to both sides of the dwelling and the design and scale of the dwelling is not objectionable. However, although the development could be built with low-impact foundations, the CGIs and submitted plans clearly show the proximity of the proposed dwelling to the tree. The house would be built close to the canopy of the tree, and this would result in the new dwelling appearing cramped and contrived when viewed from London Road.
9. Even if I were to take the appellant's view that the Oak is mature and, therefore, its growth rate is relatively low, and although the tree could be periodically managed to its current dimensions, the house would be located close to the tree canopy and a large part of the garden would be under the spread of the tree. As such the risk of pressure to severely prune or remove the tree is increased due by its proximity to the dwelling.
10. Although, as contended by the appellant, it would be wrong to assume that all homeowners dislike houses close to trees, in my judgement, it would also be wrong to assume that the future occupants of the proposed dwelling would like the tree. Furthermore, it is wrong to assume that they would be aware of the implications of living so close to a tree when purchasing the property and the circumstances of the occupants may change over time. Moreover, even though the tree is protected by a TPO, I cannot be certain that the future occupants of the proposed dwelling would not seek to heavily prune it or apply to remove it. The Council would, in those circumstances, have to balance the amenity value of the tree against the living conditions of the future occupants of the dwelling. The risk of direct harm to the tree is greater once the dwelling is built and occupied. Furthermore, the risk is greater as the street presence of the tree would be reduced by the dwelling and therefore the positive benefit of the tree to the street scene is reduced.
11. I acknowledge that the appellant's technical assessment submitted within the daylight and shade assessment shows that the living conditions of the future

occupants of the proposed dwelling would not be unacceptable, with particular regard to sunlight and daylight. Notwithstanding the Council's assertions in the officer report, I have no compelling evidence to the contrary. I also saw at my visit that the height of the tree canopy has not prevented growth below the tree and as such it is likely that a garden could be established.

12. However, there is a risk of falling branches and the frustration of dropped leaves over a large part of the garden which, although may be easy to clear, would still cause issues for the property owners. Furthermore, the available sunlight and daylight requires the regular maintenance of the tree and restricts it from growing any further, even if growth would now be limited due to its maturity.
13. Moreover, neither the Arboricultural Impact Assessment nor the technical assessment considers the cumulative effect on the tree from the proposed and previous developments around it. Shallow foundations could be used, however development within root protection areas should generally be resisted where possible as there is greater risk of direct effect when developing within the root protection area. I have no compelling evidence that the proposed works, in combination with the previous construction work in the area, would not harm the tree.
14. The proposed methods of construction and the shade studies set out in the evidence do not justify the proposed development within such proximity of the tree. That other trees are planted close to new dwellings and that development can be carried out close to mature urban street trees is also not sufficient justification and I have no compelling evidence of any similar developments to that proposed within this appeal. As such, although the tree may not cause unacceptable loss of light to the proposed dwelling or its garden, the tree would still be at risk due to the proximity to the dwelling. The risk is not mitigated by the assertion that people happily live with trees in their gardens.
15. For the above reasons I find that the proposal would have an adverse effect on the character and appearance of the area, including the protected Oak tree. The proposal would, therefore, be contrary to Policies CS04, CS08 and CS12 of the King's Lynn & West Norfolk Borough Council Local Development Framework – Core Strategy, 2011 (CS) which, taken together, seek to ensure development respects, enhances and preserves the built and natural environment, enriches the attraction of the borough, reflects the form and character of existing development and is sensitive to the surrounding area and existing landscape features.
16. For the same reasons, the proposal would be contrary to Policy DM15 of the King's Lynn & West Norfolk Borough Council Site Allocations and Development Management Policies Plan, 2016 (SADMP) which aims to create a high-quality environment, protect, and enhance the amenity of the wider environment and take into consideration the visual effect of a development.
17. The proposal would also be contrary to paragraph 131 of the National Planning Policy Framework (the Framework) which confirms the important contribution trees make to the character and quality of urban environments and advises that planning decisions should ensure that existing trees are retained wherever possible.

Living conditions

18. The appeal site lies adjacent to No 1a Oakfield Close (No 1a), a two-storey dwelling with its rear elevation facing towards the appeal site which, as I saw at the time of my visit, is on a lower ground level than the appeal site. On the opposite side of the appeal site is 78 London Road (No 78) which has a side elevation facing the appeal site. To the rear are other houses on Russell Close which are also on lower ground.
19. Contrary to the appellant's assertion, the shadow study submitted within the arboricultural assessment considers the shadowing effect of the tree on the proposed dwelling and does not provide sufficient evidence of the effect of the proposed dwelling on the living conditions of the occupants of No 1a. However, from the plans provided and my observations on site, the proposal would be a sufficient distance from the neighbouring property so as not to cause unacceptable loss of daylight or sunlight to the dwelling. Although there may be some shading of the garden of No 1a, as noted by the Council in the officer report, this would be for a short part of the day.
20. Furthermore, although the dwelling would be close to the existing boundary with No 1a the design of the proposal, with a single storey lean-to and no windows in the side elevation would ensure that, in terms of privacy, the living conditions of No 1a are not adversely affected to an unacceptable extent as there would not be any direct overlooking.
21. The occupants of No 1a would view the proposed dwelling from their rear windows and garden. However, the occupants of No 1a would continue to have the Oak tree as part of the views. As with sunlight and daylight the proposed dwelling has been designed with a single storey section closest to this neighbouring property. The design has therefore provided a low height section closest to the neighbouring property and, in my judgement, the proposal would not be harmful to the outlook from No 1a.
22. Within the officer report the Council also raised concerns about overlooking of the garden of Nos 1 and 1a Oakfield Close. The proposed new dwelling would include windows in the rear elevation, the closest of which would be a habitable bedroom window. The position of the proposed dwelling would limit the views of the garden of No 1a and provide oblique views of the garden of No 1 Oakfield Close (No 1). However, the garden of No 1 is already overlooked by the neighbouring properties, including No 1a and the additional harm from the proposed dwelling, albeit from a higher ground level, would not cause unacceptable living conditions for the occupants of No 1.
23. No 78, which has a ground floor window in the side elevation, would be close to the side elevation of the proposed dwelling. Both main parties agree that the window is a secondary window and I have no reason to suggest otherwise. There would, therefore, be some loss of light to the room which this window serves. However, as a secondary window the room would still be provided with daylight and sunlight. Consequently, the effect on the living conditions of the occupants of No 78 would not be unacceptable.
24. For the above reasons I find that the proposed dwelling would not result in unacceptable living conditions for the occupiers of Nos 1, 1a and No 78, with particular regard to daylight, sunlight and outlook. The development would,

therefore, comply with the relevant parts of Policy C08 of the CS and Policy DM15 of the SADMP which, taken together, seek to enrich the borough as a place to live and seek to resist development that would have a significant adverse effect on the living conditions of others.

25. For the same reasons I find no conflict with the advice set out in paragraph 130 of the Framework in regard to the standard of amenity.

Other Matters

26. From the evidence before me the site lies within the zone of influence of the Ouse Washes Ramsar Site, Site of Special Scientific Interest (the SSSI) and Special Protection Area (the SPA), hereafter referred to as the protected sites. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives.
27. Natural England advise that the proposed development would be likely to have significant effects on the features of interest, due to the increased recreational use arising in combination with other development. I have found no reason to disagree.
28. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to undertake the Appropriate Assessment, nor to consider this matter further.
29. The appellant contends that the residents of the housing estate do not need the appeal site as open space, as they each have private garden areas. Moreover, the appellant contends that there is no condition or legal agreement requiring the site to be retained as open space. However, the site in its current form contributes positively to the character of the wider estate and the surrounding area as a gap in the built frontage, albeit currently enclosed in fencing. I have therefore given this matter limited weight in my consideration of the appeal. The maintenance of the land is a matter for the owner and that it may become overgrown, suffer from rubbish being thrown over the fence and vermin is not justification for redeveloping the site.
30. The site, although not in use, currently forms a useful break in the built form with the tree and the space around it providing visual amenity to the area. The definition of previously developed land (PDL) in the Framework advises that land in built up areas such as residential gardens, parks, recreation grounds and allotments are not PDL. Although the appeal site is not one of the uses listed, its current use is similar to the list in the definition, which is not a closed list. In my judgement the appeal site, on its own, would not comply with the definition of PDL, even if the housing estate surrounding the site was built on PDL. Consequently, the development would not result in the use of an unused brownfield site, and I have not given any weight to the appellant's argument on this point.
31. The provision of one new dwelling would have economic and social benefits; contribute towards boosting housing supply; and is near to services and facilities. However, the benefits of one dwelling are limited and do not outweigh

the environmental harm I have found to the character and appearance of the area, including its effect on the protected Oak Tree.

Conclusion

32. For the reasons given above I have found that the proposal would be contrary to the development plan as a whole, including the Framework. There are no other material considerations that would indicate that the proposal should be determined other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

K Townsend

INSPECTOR