



Appeal Decision

Site visit made on 16 October 2023

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2024

Appeal Ref: APP/E0915/W/23/3320644

Land adjacent to Geltsdale Avenue, Durranhill Road, Carlisle CA1 2RL

- 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 Ian Murray against the decision of Carlisle City Council.
 - The application Ref 21/1060, dated 8 November 2021, was refused by notice dated 3 November 2022.
 - The development proposed is detached dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area with specific reference to trees and whether or not the trees would have an effect on the living conditions of future occupiers; and
 - The effect of the proposal on the ecology of the area with specific reference to the River Eden Special Area of Conservation (SAC) and biodiversity.

Reasons

Trees

3. The appeal site is a parcel of land situated between Geltsdale Avenue and Durranhill Road bound by a stone wall. Residential development lies to the north-west at Geltsdale Avenue, to the north-east at Chapel Brow and to the south of Durranhill Road. It comprises of a copse of trees some of which are subject to a Tree Preservation Order (TPO). Durranhill House lies to the north and Durranhill Lodge to the south both of which are listed buildings.
4. The trees on the site which are covered by TPO comprise a mix of mature Ash, Beech, Elm and Sycamore with a maximum height of around 25m and a spread of around 20m. Smaller tree species such as Blackthorn, Cherry, and Elder are also present. The trees can be seen from Alexandra Drive opposite and when travelling in both directions along Durranhill Road. The trees collectively contribute significantly to the verdant character of the area.
5. The proposal is for a two-storey dwelling situated towards the eastern part of the site served by an existing access from Durranhill Road. It would also comprise of an area of hardstanding for car parking and landscaping.
6. The Council's 'Trees and Development' - Supplementary Planning Document (SPD) requires that development should provide for the protection and integration of

existing trees and hedges. It states that where the trees and hedges have the potential or would cause unreasonable loss of daylight or sunlight due to their size this should be shown on the Tree Constraints Plan. Development will not be permitted where a habitable room window would be overshadowed by a tree or hedge, or where any part of a tree or hedge would be sited within 5 metres of a habitable room window. To allow for useable garden space no more than 50% of a new garden area should be dominated by the tree canopy of mature trees. Account should also be taken of the need for the growth of developing trees on the site.

7. The proposed development would be situated in close proximity to mature trees on all sides. The tree management plan shows that the canopy of the trees would cover around 15.7% of the proposed house. The north-eastern corner of the house would be overshadowed which would reduce the level of natural light to a bedroom window on the ground floor and a north facing bedroom window on the first floor. The lounge windows to the north and south would also be affected by overshadowing.
8. The appellant has referenced the BRE Guidance 'Site Layout Planning for Daylight and Sunlight – a Guide to Good Practice' which states that the amount of daylight needs depends on what it is being used for but an angle greater than 65 degrees for a conventional window design will usually give reasonable results. He refers to a plan which shows that the bedroom on the north-eastern corner on the ground floor would achieve an angle of around 68.52 degrees. However, the window and angle are shown in isolation as opposed to in relation to the trees, so I cannot be certain that the required angle could be achieved. Whilst there may be potential for some early morning light, the bedrooms would receive very little sunlight during the remainder of the day. Furthermore, the diagram only shows the bedroom window as opposed to other rooms in the house.
9. Whilst paragraph 3.1.2 of the BRE Guidance states that sunlight is less important in bedrooms and in kitchens those rooms, nevertheless, require some sunlight, particularly given the more recent trend towards homeworking. Without any assessment of the annual probable sunlight hours (APSH), I cannot be certain that those rooms would receive sufficient sunlight. Although the living room windows of the proposed development may face south and west (in addition to north) in accordance with section 3.1.5 of the BRE Guidance they would still be overshadowed from the adjacent trees. In the absence of cogent evidence, I cannot be certain that the living room or indeed other rooms would receive sufficient light. Given the close proximity of the mature trees to the proposed development, the dwelling may not experience sufficient levels of daylight and sunlight to the detriment of future occupiers. Moreover, the predicted growth of the trees has not been taken into account and as such the harm could be exacerbated over time.
10. Furthermore, more than 50% of the garden would be overshadowed by trees restricting the enjoyment of the garden by future occupiers. There would be pressure from future occupiers to prune or remove the trees due to a lack of daylight/sunlight to the rooms and garden and the nuisance of branches and leaves falling on the roof of the dwelling, or on the cars and in the garden. Moreover, future occupiers may have perceived concerns over safety, particularly in inclement weather. Whilst I acknowledge that the trees are protected; there would inevitably be pressure to undertake works to the trees or to remove the trees altogether to the detriment of the character and appearance of the area.

11. In conclusion, the proposal would harm the character and appearance of the area with specific reference to trees. Furthermore, the proposal would have a harmful effect on the living conditions of future occupiers with specific reference to daylight and sunlight. It would, therefore, conflict with Policies SP6 and GI6 of the Carlisle District Local Plan (Local Plan) 2015-2030 and the SPD which amongst other things seek to ensure that proposals respect local landscape character, secure good design, protect existing trees within new developments and ensure that there is no adverse effect on local amenity. Conflict would also arise with paragraph 130c and 131 of the National Planning Policy Framework (the Framework) which seek to ensure that developments are sympathetic to local character and history including the landscape setting and that existing trees are retained where possible.

Ecology

12. The development is situated within the catchment of the River Eden Special Area of Conservation (SAC) within which Natural England advises that new development comprising overnight accommodation can cause adverse impacts to nutrient pollution. Natural England's Nutrient Neutrality Budget Calculator shows that the development would result in an annual phosphorous load of 0.75 TP/year that would need to be mitigated.
13. It was initially proposed that the foul drainage would discharge direct to the public sewer. However, the appellant is now proposing that foul drainage could be dealt with through an advanced waste-water treatment system, with a +P Phosphate removal package which would reduce the phosphate in the effluent. He goes on to say that surface water could also be drained into the ground in addition to the discharge from the treatment system.
14. The Council question whether this would be permissible under Part H1 Section 2: Foul Drainage paragraph 2.3 of Approved Document H of the Building Regulations 2010 which states that foul drainage should be connected to a public sewer wherever this is reasonably practicable. For small developments connection should be made to a public sewer where this is within 30m provided that the developer has the right to construct the drainage over the intervening private land. Where levels do not permit drainage by gravity a pumping installation should be provided. It is not within my remit to determine whether it would be permissible under the Building Regulations; however, even if it were permissible no calculations have been provided by the appellant to demonstrate that the proposed drainage system would mitigate any nutrient outfall from the development. In terms of surface water drainage, no details of the percolation test are before me and furthermore the installation of such a system could result in disturbance to the trees. In the absence of this evidence, it would not be appropriate to leave the acceptability of this matter to a planning condition. Consequently, I cannot be certain that the proposal would not have an adverse effect on the SAC with regards to nutrient outfall in the catchment area.
15. In terms of general biodiversity, the appellant submitted a Bat Report (the Report) with the application. The Report identifies the land as 'Mixed Woodland'. A range of species typical to the local area were identified as having potential to be on the site. Pipistrelle and Brown Long Eared bats are reported in this Tetrad and Pipistrelle and Soprano Pipistrelle were observed on site. No barn owls were observed. However, the group of trees provide a feeding and commuting area for bats, with sheltered areas used for 'wing warming'. The proposed new building would be in the 'wing warming' area and the Report urges for lighting in this area to be low level. The Report makes several recommendations to help to protect

bats and maintain and improve biodiversity. These include: the provision of 3 Schwegler bat boxes on T11 at 5m high in addition to bats access to the new building; nesting boxes in trees and ledges and holes in the building to create bird nesting opportunities; planting and maintaining broad leaf native tree species; native flowering species planting to link habitats; and designing external lighting to encourage dark wildlife friendly corridors. The Report concludes that a well thought out and planted domestic garden can form an important oasis and corridors for wildlife. Whilst this may be the case, the proposal would inevitably result in a domestication of the site with increased lighting, movement, activity and the presence of outbuildings which would inevitably cause disruption to wildlife. I cannot, therefore, be certain that the suggested mechanisms would fully mitigate the impact on biodiversity, particularly given the potential loss of the trees.

16. In conclusion, the proposal would have an adverse effect on ecology with specific reference to the SAC and biodiversity in general. It would, therefore, be contrary to Policy GI3 of the Local Plan and paragraphs 174 and 179 of the Framework which seek to protect sites of biodiversity value and minimise impacts on and providing net gains for biodiversity.

Other matters

17. Durranhill House is a Grade II listed building which lies immediately adjacent to the north-east boundary. The proposal is not within the curtilage of the listed building and would be set at a lower level due to the topography. Furthermore, it would be separated by mature trees and vegetation and the retaining wall which forms the boundary of Chapel Brow. Furthermore, new dwellings and apartments have been constructed in the grounds of Durranhill House. Consequently, the proposal would not have an adverse impact on the setting of Durranhill House.
18. Durranhill Lodge, a grade II listed building is situated to the south-west of the proposed development. It is set back from the boundary and is partially screened by mature landscaping. Given the greater distance from the proposed development and the intervening mature trees to the south-west of the appeal site, I am satisfied that the proposal would not have an adverse impact on the setting of Durranhill Lodge.
19. The proposal would make a contribution, albeit limited, to housing land supply in the area. There would be economic benefits during the construction phase and thereafter as future occupiers utilise local shops and services. Due to the scale of the development, I can only attach modest weight to these benefits.
20. However, I have identified that the proposal would harm the character and appearance of the area, the living conditions of future occupiers and have a harmful effect on ecology. The proposal would, therefore, be contrary to the development plan as a whole. There are no material considerations which would indicate a decision other than in accordance with the development plan.

Conclusion

21. For the reasons stated and taking all other considerations into account the appeal should be dismissed.

Caroline Mulloy

Inspector