



Appeal Decision

Site visit made on 7 February 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 March 2024

Appeal Ref: APP/J4525/W/23/3334088

2 Boundary Cottages, Golf Course Road, Houghton-le-Spring, Sunderland DH4 4QB

- 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 Dr Jafar Mojtavavi on behalf of Persepolis Architecture Ltd against the decision of Sunderland City Council.
- The application Ref is 23/00970/FUL.
- The development proposed is the construction of new three-bedroom cottage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the area, including the implications for the retention and health of protected trees on the site;
 - whether the proposed development would provide adequate living conditions for future occupiers of the proposed dwelling, with particular regard to outlook and light; and
 - the effect of the proposed development on biodiversity.

Reasons

Character and Appearance, including Protected Trees

4. The appeal site comprises an area of garden land that was originally associated with 2 Boundary Cottages (No.2), which forms part of a pair of dwellings set back from the main road and accessed via a shared driveway. The appeal site has an irregular shape and contains several mature trees located along the north, eastern and southern boundaries of the site with the remaining site being grassed. The surrounding area is predominantly residential.

5. The proposed development would involve the erection of a 3-bedroom, dormer style bungalow, with shared access from Chester Road. The proposed dwelling would be constructed of brick and cladding with natural slate-tiling and uPVC windows. It would occupy a relatively small area within the plot, and in terms of its scale, design and materials of the proposed dwelling would not cause harm to the character and appearance of the area.
6. The appeal site contains a significant number of trees that are covered individually and as a group by a Tree Preservation Order¹ (TPO). These trees make a significant positive contribution to the character and appearance of the area, particularly those that run along the boundary with Chester Road which are prominent and attractive natural features in the street-scene.
7. The appeal is supported by an Arboricultural Impact Assessment² (AIA) which has provided an assessment of the health of the trees, including those trees which would be affected by the proposed development. These include some category B trees, T04 (Common Lime), T08 (Sycamore) and G02 (a group including Oak, Whitebeam, Wych Elm, and Ash) and two category C trees, T05 (Common Ash) and T07 (Common Laburnum). These trees are all recognised as either being in a fair or good condition with expected life spans of between 10+ and 40+ years.
8. The AIA states that no trees within the appeal site will be removed. However, by retaining the identified trees, this would mean that majority of the site would fall within the root protection area (RPA) of a tree or group of trees. As such, approximately 50% of the proposed dwelling would be sited within one or more RPA, which would not accord with the British Standard 5837:2012 which states that the "*default position should be that structures are located outside the RPAs of trees to be retained*". As a result, the construction of the dwelling may cause unavoidable damage to the protected trees both within the site due to the significant overhanging of the canopies and the root protection areas within the construction area.
9. Furthermore, the proposed development would require the immediate pruning of T08 and G02 to provide 1.5 metres clearance to the proposed dwelling. There would also be likely to be future pressure, post development, for the removal or pruning of trees within the site. This would arise as a result of the proximity of the trees to the dwelling and external amenity areas. The trees would cause overshadowing, especially as they continue to grow and there will also be associated effects from dropped leaves, sap, and the potential risk of damage during storm events. Any such requests would be to the detriment of the trees and to the character and appearance of the site and the locality.
10. Whilst these concerns would not be sufficient in themselves to warrant dismissing the appeal, they nevertheless add to my concerns that the proposed development would be likely to cause harm to the health and amenity value of the protected trees.
11. The AIA has provided some mitigation proposals, which include the proposed use of pile foundations and manual excavation. However, the AIA states that these measures will only minimise harm and not eliminate harm. The Council's Tree Officer also suggested that the services and drainage could be located

¹ TPO 168 (November 2016)

² Arboricultural Impact Assessment, prepared by Arbtech (dated 20 September 2023)

outside of the RPAs, in locations which would cause less harm to the protected trees. Furthermore, there is very limited site-specific evidence to demonstrate that the proposed development could take place without causing harm to the protected trees. Accordingly, I have not been presented with any compelling evidence that the proposed development would not cause harm to the viability of protected trees.

12. For the above reasons, I conclude that the proposed development would have significant implications for the retention and health of protected trees, which would undermine the positive contribution that the trees make and therefore be harmful to the character and appearance of the area. The proposed development would conflict with Policy NE3 of the CSDP 2015-2033 which requires, amongst other things, that development retains trees subject to Tree Preservation Orders (TPOs) and ensure that where trees are impacted negatively by proposed development, justification, mitigation, and compensation are provided.

Living Conditions of Future Occupiers

13. As outlined above, the proposed dwelling would be located in close proximity to a large number of trees and hedgerows. These are mostly mature, with heights ranging from approximately 3.5 to 19 metres high. The proposed dwelling would have windows in each elevation, but in particular windows serving habitable rooms which would face towards trees which are significantly taller than the proposed dwelling.
14. It is not disputed that the retained trees would, by virtue of their height, density, and proximity to the proposed dwelling result in large parts of the site being overshadowed for much of the day. This would also reduce the amount of light entering the dwelling to the detriment of the living conditions of the future occupiers. The proximity and size of these trees would also be likely to dominate the outlook from some windows and particularly when in full leaf. In addition, there is also a high probability of dropped leaves, sap and branches dropping onto the roof of the property and into the garden areas.
15. The appeal site was the subject of a previous appeal decision³, which was dismissed. The appeal decision is a material consideration in the determination of this appeal. However, the previous scheme would have involved the removal of a number of trees⁴ within the site, mostly located along the boundary with Chester Road. The primary difference between the proposal and the previous scheme is that all of the trees within the appeal site would be retained.
16. Whilst I acknowledge that the previous appeal decision did not find harm in respect of overshadowing and outlook. As outlined above, it would have involved the removal of several trees from within the site including a number of trees which form the belt of trees along Chester Road. The removal of trees from within the site would have provided both a substantial reduction in the number and proximity of trees to the proposed dwelling. As a result, this would have reduced the amount of shadowing and harm to outlook experienced by the future occupiers of the proposed dwelling. Therefore, whilst I have had regard to this decision, the two schemes are materially different.

³ Appeal Ref: APP/J4525/W/20/3245206

⁴ T13, T14, T15, T17, T18, T19, T20, T21, T23 and G1.

17. Consequently, the proposed development would fail to provide adequate living conditions for future occupiers with particular regard to outlook and light. It would therefore be contrary to Policy BH1 of the CSDP, which requires, amongst other things, to ensure a good standard of amenity for future occupants of land and buildings. It would also be contrary to Paragraph 135 of the Framework, which seek to ensure a good standard of amenity for future occupants of land and buildings.

Biodiversity

18. The appeal is supported by a Preliminary Ecology Appraisal⁵ (PEA) which includes a survey of the site, a brief impact assessment and recommendations for mitigation measures to be carried out. The PEA did not identify the presence of any protected species or habitats within the site but does recognise that the mature trees and hedgerows have biodiversity value.
19. Policy NE2 of the CSDP seeks to achieve net gains in biodiversity, and to minimise adverse impacts. The PEA concludes that this would be achieved if all existing trees and hedgerows would be retained. However, for the reasons set out above there is a risk that future tree removal, or significant pruning works will be required. Therefore, in the absence of compelling evidence to demonstrate that all of the existing trees would remain viable, I am not persuaded that the proposed development would not be detrimental to the ecological value of the protected trees.
20. For the above reasons, I cannot be certain that the proposed development would not cause adverse harm to biodiversity within the site. The proposal would therefore be contrary to Policy NE2 of the CSDP, which states that development must provide net gains in biodiversity and avoid or minimise adverse impacts on biodiversity in accordance with the mitigation hierarchy.
21. The proposed development would also be contrary to Paragraph 186(a) of the Framework, which states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other Matters

22. The appeal is supported by a document titled 'Planning Obligation' and dated 7 December 2023. The document largely duplicates the mitigation measures included within the AIA, which for the reasons given above, have not demonstrated that they would be sufficient to eliminate harm to the protected trees. I also have some concerns about the document itself, its execution and thus whether the Council could rely on it. However, the lack of an obligation did not form a reason for refusal and the Council have raised concerns over the implementation of such a proposal. Consequently, this matter is not determinative, therefore it is not necessary for me to consider it any further.
23. The proposed development would not cause any harm in relation to the living conditions of neighbouring occupiers, highway safety, contaminated land, noise, or compliance with the national technical housing standards. However, these considerations do not outweigh the harm caused by the proposed development.

⁵ Preliminary Ecological Assessment, prepared by Arbtech (dated 7 September 2023)

Conclusion

24. For the reasons given, the proposal would therefore not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal is therefore dismissed.

K Lancaster

INSPECTOR