



Appeal Decision

Site visit made on 12 March 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/R2520/D/23/3331505

2 Sisters Close, South Hykeham, Lincoln LN6 9YE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Russell Drewery against the decision of North Kesteven District Council.
 - The application Ref is 23/0578/HOUS.
 - The development proposed is erection of garden room.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. Those parts of the Framework most relevant to this appeal have not been materially amended. As a result, I consider that there is no requirement for me to seek further submissions and I am satisfied that no party's interests have been prejudiced by my taking this approach. I will refer to the updated paragraph numbers in this decision.

Main Issue

3. The main issue is the effect of the proposed development on protected trees.

Reasons

4. The proposed garden room would be sited to the rear of the garden of the host property, immediately adjacent to the boundary with the neighbouring properties to the side and rear. It would also be in close proximity to one of several oak trees which are protected by a Tree Preservation Order (TPO) and would lie within the root protection area (RPA) of two of these trees. These trees sit outwith the appeal site, in the rear gardens of the properties on Ascot Way.
5. BS 5837:2012 Trees in relation to design, demolition, and construction – Recommendations (BS 5837) advises that in proximity to existing trees, 'construction within the RPA should accord to the principle that the tree and soil structure take priority, and the most reliable way to ensure this is to preserve the RPA completely undisturbed'. It also advises that in general, the older a tree, the less successful it will be in adapting to new conditions. BS 5837 is not a specification, nor is compliance with it mandatory. However, it does provide robust guidance on assessing the effect of development on trees.

6. The proposed garden room would be constructed on a framework of small surface laid pads so it would be slightly above the level of the surrounding garden. Drainage from the proposed building would be distributed underneath via an array of perforated drainage pipes. The slight raise in the floor level would most likely allow leaves to blow underneath.
7. It is proposed to place a membrane under the garden room which would prevent weed growth but would continue to allow water and gas exchange to the soil. It is also put forward that organic matter would remain available including from leaves that would blow under the structure. However, the extent to which the membrane would allow decaying organic matter to be absorbed into the soil is not clear. There is also no substantive evidence before me that would allow me to be satisfied that there would be no change to soil fauna or mycorrhiza development and function as a result of either the membrane or the changed circumstances of being under the garden room. I therefore cannot be satisfied that there would not be an adverse effect on soil structure, and in turn, that this would not have an adverse effect on the health of the tree.
8. The Arboricultural Method Statement refers to the garden room as 2.9m high, although the plans show it rises from this to 3.4m. At my site visit, I observed substantial branches did overhang the appeal site. There are no measurements before me demonstrating that the garden room at its maximum height would not require the removal of some of these branches.
9. The Framework is clear in paragraph 136 that 'trees make an important contribution to the character and quality of urban environments' and that they should be retained wherever possible. Central Lincolnshire Local Plan (April 2023) (CLLP) Policy S66 seeks to prevent development that would result in the loss or deterioration of TPO trees unless there would be no net loss of amenity or that the need for, and benefits of, the development in that location clearly outweigh the loss. There is no argument before me that the tree does not provide an amenity benefit. The appellant's aspirations to have a garden room and the benefits that would accrue would be of limited weight and would not outweigh the potential for deterioration to the protected tree.
10. There have been previous applications, enforcement action and appeals relating to this site. However, I have dealt with the proposal before me on its own planning merits. While it may be that the proposed development would have a lesser effect than other means of delivery such as a slab, this would not justify allowing the proposal given the potential harm to the protected trees I have identified.
11. The evidence of both parties is to be taken in its entirety, and I do not find that the Council's officer report is inconsistent with the comments of the tree officer. Notwithstanding, the references in BS 5837 to the loss of 20% of the existing unsurfaced ground do appear to relate to where a slab is proposed for minor structures. It is not proposed to site the garden room on a slab.
12. There would be the potential for the proposed garden room to be damaged both directly, such as by falling branches, and indirectly through the potential for there to be a damp microclimate given its shaded position under the tree which could give rise to issues such as moss. However, the position of the protected trees within and adjacent to residential gardens means there is always the potential for further applications to carry out works. Furthermore, any consideration of the effect on an ancillary structure would be different to

that of the effect on a dwelling. Such a position may give rise to additional maintenance requirements however this would be a matter for the appellant to consider. I also note the tree is not within the control of the appellant.

13. The proposed development would have a harmful effect on protected trees. It would therefore be contrary to CLLP Policy S66 which seeks to prevent development that would result in the deterioration of a tree protected by a TPO.

Other Matters

14. The Council has not raised any concerns with regard to the effect of the proposal on the living conditions of occupiers of the host dwelling or neighbouring properties. From my observations at my site visit, I have no reason to disagree.
15. It may be that there are other activities that could be carried out in the garden which would not require planning permission and which may have a similar effect on the root system. However, wilful damage to a protected tree is prohibited. If such were to occur, it would be a matter for the Council to determine the appropriate course of action.

Conclusion

16. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight to indicate the decision should be made otherwise. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

J Downs

INSPECTOR