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# Appeal Decision

Site visit made on 28 March 2024

**by A Edgington BSc (Hons) MA CMLI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10<sup>th</sup> April 2024**

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**Appeal Ref: APP/C1055/W/23/3330814**

**Land at St Josephs RC Church, Burton Road, Derby DE1 1TJ**

- 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 Michael Coulton of Optune Homes Limited against the decision of Derby City Council.
  - The application Ref is 22/00892/FUL.
  - The development proposed is Construction of a detached single-storey dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are the effects of the development on:
  - The living conditions of future occupiers with particular regard to external amenity space, outlook and light, noise and disturbance; and,
  - The character and appearance of the area, with particular regard to protected trees.

## Reasons

### *The appeal site and context*

3. The site of St Joseph's Church and its associated parking and grounds is a large and quite steeply sloping open space in Derby's inner city, and contains mature trees of varying age and condition. This gives the plot a distinctive sylvan appearance when the site is viewed from Burton Road, which contrasts with the dense building pattern typical of the surrounding area.
4. The church's site and its grounds are covered by an Area Tree Preservation Order (TPO). Area TPOs cover all those trees standing at the time that the order was made.
5. The triangular appeal site sits to one side of the church's grounds, and is contained by the church's access road, the church's side site boundary and the car park of Birch View, which is flatted accommodation. Collectively the dense grouping of trees on the appeal site frames the church's distinctive contemporary architecture, and also makes a highly positive contribution to the area. Some of the trees within the appeal site are also prominent in the street scene as a consequence of their height, notably the sycamores (T5, T6 and T7).

*Living conditions*

6. The single storey dwelling would be located towards the top of the appeal site and orientated so that its front elevation would look out towards Burton Road, and its rear elevation would look towards Birch View's car park.
7. The windows on the front elevation would face a belt of retained trees at a distance of a few metres and due to the dwelling's elevated position and the low canopies of these trees, when in leaf these trees would both obstruct outlook and also reduce light entry into the dwelling. Moreover, some of these trees would be sycamore which have dense foliage. This would aggravate the light loss. The appeal statement advances the argument that there would be light coming into the room from the rear. However, the tree survey shows a large tree near the willow (T1) which is not identified in the survey, and which would be very likely to obstruct light entry through the rear windows. In any case, even if I conclude that light entry would be sufficient, this does not alter my reasoning with regard to outlook from the front elevation. Although the dwelling would be elevated, it would not be taller than the trees, some of which are clothed to near ground level.
8. The appeal site is very steep in places. The sections and contours suggest that the land at the front of the dwelling is flatter than that at the side or rear, but even then the drawings suggest that the land at the front would not be very usable as amenity space as a consequence of its gradient, as well as the encroachment of large, mature trees. Whilst I appreciate that urban dwellings do not always have significant external amenity space, the layout suggests that this would be a dwelling for up to four people and the only area of flat external space would appear be a small area of decking accessed from steps up to the front door.
9. My experience is that many people occupy dwellings in proximity to protected trees without being fully aware of the implications. I appreciate that there may be potential occupiers who wish to live in shady conditions and my previous experience of people who are intolerant of the proximity of trees or shade may be unrepresentative. Nonetheless, the additional maintenance associated with leaf litter, debris and moss growth and having inadequate light in the dwelling or amenity areas is not always welcomed or accepted. Over time those concerns can outweigh the perceived advantages of nearby trees.
10. As such, I agree with the Council that there is likely to be increased pressure for the removal of some of these trees in the future, particularly as they are not particularly fine specimens when considered individually. The trees likely to be obstructing light loss and outlook are those that are more visible from the road and include the large sycamores. This is discussed further below in relation to the character and appearance of the area.
11. The dwelling would face the church car park entrance and at my visit the church grounds were filled to more than its designed capacity with parked cars for a religious event. To the rear, the dwelling would be within a few metres of the Birch View car park at one end. There would be activity arising from vehicle movements on two sides of the triangular site. The sole available external amenity space would also be close to the car park access road. Although this is an inner city environment where ambient noise levels are generally high, I am unable to conclude that future occupiers would not experience noise nuisance to the detriment of their living conditions. Moreover, it seems likely with regard

to the church, that the noise would be associated with festivals and holidays outside the normal working week. As such, there would be little respite.

12. Individually my concerns in relation to external amenity space, outlook and light, and noise and disturbance carry moderate weight only. However, in combination I conclude that the development would have an adverse effect on the living conditions of future occupiers. This would be contrary to Policies GD5 and H13 of the Local Plan (LP), and Paragraph 135 of the National Planning Policy Framework (the Framework) which taken together require development to provide satisfactory amenity and a high quality living environment amongst other considerations.

#### *Character and appearance*

13. The trees at the top of the appeal site contribute to the vegetated buffer between the church's site and the building pattern of Lime Avenue and the Birch View car park. Some of these trees are visible on the skyline from within the church's car park.
14. Of the trees to be removed, the willow, (T1), is described as a small tree with little merit in the landscape. With a height and canopy spread of up to 12 metres I would disagree that it is a small tree, and the tree survey also sets out that observed structural defects could be addressed by selective pruning. Other trees to be removed would include two mountain ash which appear from their overall size to be at early maturity and which do not have significant structural or physiological defects. It is unclear why these are considered to have a life expectancy of only 10+ years. Their stem diameter suggests that they post-date the TPO and are therefore not protected. I also noticed a small cherry tree near the birch, T11, but this is also unlikely to be protected. However, even if these trees are not protected their removal would reduce the impact of tree cover across the site and their contribution to the character and appearance of the area.
15. The field maple and horse chestnut are in poor health and would probably require removal irrespective of the outcome of the appeal.
16. For the reasons set out above, I conclude that it is very likely that there would be pressure for more trees to be removed, or to be subject to extensive pruning, particularly in relation to the trees closer to Burton Road. This would open up views through the site to the dwelling, which would be on elevated ground relative to Burton Road and therefore more visible.
17. The development would therefore lead to an adverse effect on the character and appearance of the area, contrary to LP Policies CP16, CP3 and CP4 which taken together are concerned with general design principles, green infrastructure, and placemaking.

#### *Other matters*

18. It is suggested that the trees are contributing to structural damage to boundary walls associated with dwellings on Lime Avenue. However, although there is cracking on a wall shown in the tree survey, the tree survey also indicates that consent was granted for works in 2017 but that the consent has expired. I have no further information to explain why the works were not undertaken, but conclude that the apparent cracking does not add weight to the arguments now before me in relation to this appeal.

19. Interested parties have also raised concerns in relation to anti-social behaviour and staff access. It is unclear to me why the dwelling should necessarily require staff or generate anti-social behaviour, and this has carried no weight in my reasoning.
20. The Council does not object to the principal of development or the dwelling's proposed design. However, the lack of harm does not weigh in favour of the appeal.

### **Planning Balance and Conclusion**

21. The Council does not have a five year housing land supply. Paragraph 11d) of the Framework sets out that where the policies which are the most important for determining the application are out-of-date, permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
22. In this case, the policies that are most important for determining the application, are LP Policies GD5 and H13 which are concerned with residential amenity for future occupiers, and LP Policies CP3, CP4 and CP16 which are concerned with place-making. There is nothing before me to indicate that these policies are inconsistent with the Framework and therefore in accordance with Paragraph 225 of the Framework, which states that due weight should be given to policies that pre-date the Framework according to their degree of consistency with the Framework, I conclude that they are not out-of-date and that they carry significant weight.
23. Moreover, even if I gave these policies lesser or no weight, the adverse effect of the dwelling on future living conditions and the likely adverse effects on the character and appearance of the area would significantly and demonstrably outweigh the benefits of one small dwelling.
24. The development would therefore be contrary to the local development plan and the Framework and there are no material considerations of such weight to lead me to conclude otherwise. The appeal is dismissed.

*A Edgington*

INSPECTOR