



Appeal Decision

Site visit made on 4 June 2024

by Beverley Wilders BA (Hons) PgDurp MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2024

Appeal Ref: APP/F1040/W/23/3328785

125 Penn Lane, Melbourne, Derbyshire DE73 8EP

- 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 C Collins against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2023/0299, dated 5 March 2023, was refused by notice dated 17 August 2023.
 - The development proposed is create new highway entrance and driveway, including excavation of external land for landscaping. Install an electric car charging point and turning area, removal of T1, T2, T3 and T4 trees. Restoration and conversion of semi derelict barns to useable, habitable rooms, restoration of roof and rainwater goods.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. As stated in the heading above, the proposal includes the felling of four trees on the appeal site (T1 – T4). However, following the Council's decision and during the course of the appeal, two of the four trees have been felled due to health and safety concerns (T3 and T4). Notwithstanding the description of development used in the heading above, I have therefore considered the appeal on the basis that the two remaining trees are to be removed (T1 and T2).
3. A revised National Planning Policy Framework (the Framework) was published in December 2023. However, given the scale and nature of the proposal and the scope of the changes to the Framework, I do not consider them to be material to my decision. In any event, the parties have had the opportunity to comment on the revised Framework either within statements or final comments.

Main Issue

4. The main issue is the effect of the loss of the trees on the character and appearance of the area including whether the proposal would preserve or enhance the character or appearance of the Melbourne Conservation Area (CA).

Reasons

5. The appeal site comprises an existing dwelling, attached outbuildings and surrounding garden area located in a prominent corner position within the CA. The appeal site is historically associated with Chantry House, a grade II listed

building located to the west of the site. The dwelling and outbuildings are curtilage listed buildings within the setting of Chantry House. Insofar as is relevant to the appeal, the significance and special interest of Chantry House derives from its age and architectural composition.

6. The site is located centrally within the CA which is described within the Council's character appraisal¹ as one of the best preserved historic settlements in Derbyshire. The appraisal states that its distinctive characteristics include a series of distinct enclosed spaces framed by buildings and tight knit, dense development, which contrasts with looser, spacious character and substantial gardens. With regard to Chantry House, reference is made to its enclosed garden being an important open space that contributes to the quality of views and the setting of important historic buildings.
7. The two remaining trees which are to be felled are an Austrian Pine (identified as T1 in the submitted arboricultural assessment²) and a Horse Chestnut (identified as T2). The Austrian Pine has been assessed as being category A(i), that is a tree of high quality with an estimated life expectancy of at least 40 years with potential to make a lasting contribution whilst the Horse Chestnut has been assessed as category B(i), a tree of moderate quality with a life expectancy of at least 20 years. The two trees (T3 & T4) which have already been felled, were assessed as category C(i) trees, trees of low quality with a remaining life expectancy of at least 10 years. The remaining trees form part of a Tree Preservation Order (TPO) covering Chantry House and are also protected by virtue of being within the CA.
8. The appellant's own assessment of the retained trees identifies them as being of high and moderate quality with a life expectancy between 20 and 40 years. Whilst they do form part of a much larger group of trees at Chantry House, they are slightly separated from them. They are highly visible from various vantage points within the CA due to their scale and position and make a significant positive contribution to the character or appearance of the CA. In the absence of any clear justification for their removal, their loss would not be adequately mitigated for by the proposed planting of replacement trees.
9. At my site visit I saw that ground levels have been raised within the garden area of the property, around the trees. However, the arboricultural assessment and tree officers at the Council and the County Council consider that the trees appear to have adapted to these raised ground levels and do not appear to be being unduly affected by them. Furthermore, the recent removal of some of the trees on and nearby the site should allow more light onto the site and encourage more vegetation growth in the garden area.
10. Whilst reference has been made by the appellant to the likelihood of the root system of the retained trees being adversely affected by the removal of nearby trees, there is no substantive evidence before me to support this view. Neither is there any compelling evidence to suggest that either of the retained trees have suffered any damage or disease that is likely to imminently and significantly affect their future survival and affect the health and safety of the occupiers of the property and nearby properties. I note that the Council's tree consultant suggests that a climbing inspection ought to be carried out on T1 to further investigate the likely effect of any damage to it.

¹ Melbourne Conservation Area Character Statement 2011

² FPCR Arboricultural Assessment July 2022

11. I acknowledge that there is some disagreement between the respective tree consultants on the contribution made by the retained trees. However, having regard to all of the above, I conclude that the loss of the retained trees would be significantly harmful to the character and appearance of the area, including the character or appearance of the CA. The harm to the CA would be less than substantial. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect on the CA in accordance with Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Paragraph 208 of the Framework states that where a proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.
12. The removal of the trees is required to enable the provision of a vehicular access and parking area at the property. It is said that this is required to facilitate the restoration and conversion of the curtilage listed former outbuilding adjacent to the house. The building has recently been placed on the Council's 'at risk' register and at my site visit I saw that it is in need of repair.
13. Whilst the re-use and repair of the building would be welcomed, I am not convinced, based on the evidence before me, that this would require a new permanent access and parking area to be provided at the site with the consequential loss of trees that would ensue. I note that there is a cart door entrance onto Church Steet and although this is narrow and offers limited visibility with a narrow door opening to pass through within the rear courtyard area wall, the evidence before me does not indicate that the possibility of using this option for machinery and materials has been fully explored. In the absence of this, as the formation of the access and parking and associated loss of trees is not directly linked to the restoration and conversion of the listed outbuilding, I attach limited weight to this public benefit.
14. The provision of parking within the site would relieve pressure on existing on-street parking nearby and would enable the appellant to install an electric vehicle charging point. I attach moderate weight to these benefits.
15. The limited to moderate public benefits associated with the proposed loss of trees would not outweigh the harm to the area and CA identified. Taking the above matters into consideration, I conclude that the proposal would fail to preserve the character or appearance of the CA and would not meet the requirements of section 72(1) of the Act. For the same reasons it would not accord with policies BNE1 and BNE2 of the South Derbyshire Local Plan Part 1 adopted June 2016 and policies BNE7 and BNE10 of the South Derbyshire Local Plan Part 2 adopted November 2017. These policies, amongst other things, require development to be well designed, to conserve and enhance heritage assets including Conservation Areas and to have regard to the effect on trees.

Other Matters

16. In reaching my decision I note that in refusing the application, the Council raised no concerns regarding the works to the outbuilding or to the physical works to form the vehicular access. However, I note that some concerns are raised regarding the effect of the formation of the access and loss of walling in the Council's appeal statement. I also note that no accompanying application for listed building consent has been submitted for the works and that the application was not accompanied by a heritage statement setting out in detail the effect of the proposed works on the significance of the listed buildings.

17. Given that I am dismissing the appeal based on my findings in relation to the loss of trees and under the circumstances set out above, I have not considered the effect of the physical works to the wall on the area including the CA or the effect of the wider proposal on the setting of nearby listed buildings. This is because it would not alter my decision as I have already found harm resulting from the proposal, including to heritage assets.
18. My attention has been drawn by the appellant to the formation of a similar vehicular access to Chantry House, adjacent to the appeal site and to the conversion and re-use of other outbuildings in the area. I do not have any specific details regarding these other developments and whilst I observed the access at Chantry House at my site visit, I do not have any details regarding its formation. In any event, I have assessed the proposal on its own merits and have found it to be harmful for the reasons stated.

Conclusion

19. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR