

Appeal Decision

Site visit made on 28 August 2024

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2024

Appeal Ref: APP/F1040/W/24/3341276

121 High Street, Woodville, Swadlincote DE11 7DU

- 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 Peter Jackson against the decision of South Derbyshire District Council.
 - The application Ref is DMPA/2020/1346.
 - The development proposed is a residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the living conditions of neighbouring occupiers; and,
 - the character and appearance of the surrounding area with particular regard to the removal of the protected Ash Tree (Tree Preservation Order (TPO) 245).

Reasons

Living Conditions

3. The appeal site comprises a large garage and some associated land to the rear along with a portion of an existing car park serving properties facing on to High Street. To the side and rear of the existing garage are a number of various trees including the above noted TPO. The existing garage is a deep but low building served by a mock pitched roof at the front. It is sat on land lower than those properties on High Street.
4. Given its low height and positioning on lower land it does not impose upon the outlook from the rear windows or garden of no 123 High Street (as identified on the appellant's submissions). I consider no 123 is afforded a pleasant and open outlook over the appeal building and onto the mature vegetation and trees surrounding it. Given the shallow depth of the garden at no 123, I consider the opportunity for sideways outlooks from the garden area more limited.

5. The proposal would introduce a two-storey dwelling set back within the site from the front of the existing building. This proposed positioning would locate the dwelling more directly behind the rear elevation of no 123. Given its location and increased height, I consider the proposed dwelling would harm the neighbour's outlook from their rear windows and garden. The outlook from no 123 would be restricted primarily to the proposed side elevation of the first-floor and gable end which would be a prominent and intrusive feature.
6. Although the proposal would introduce two upstairs windows, one to either side, in the event the appeal were to be allowed a condition could be imposed requiring that they be obscure glazed. I find that this would be sufficient to prevent any unacceptable overlooking to the neighbours of either side. Such a condition would not be necessary on the ground floor side windows given the presence of boundary treatments and the change in land levels. These features would screen the windows and prevent overlooking.
7. Nevertheless, the location and height of the proposed dwelling would be detrimental to the living conditions of the neighbouring occupiers at no 123 High Street by way of a loss of outlook. The proposal would therefore conflict with Policy BNE1 of the South Derbyshire Local Plan Part 1 (the LP1) which requires developments to be well designed so as to enhance people's quality of life and not cause undue harm to neighbouring occupiers amenity. The proposal would also conflict with National Planning Policy Framework (the Framework), particularly under Paragraph 135(f) which seeks for developments to promote well-being and provide a high standard of amenity for existing and future users. It would also conflict with the guidance contained within the South Derbyshire Design Guide: Design Supplementary Planning Document (the SPD).

Character and Appearance

8. As noted above there is a mature Ash tree that sits to the rear of the site, this is protected under Tree Preservation Order 245. At the time of my visit it was a significant feature and appeared to be the largest within the surrounding area. The tree is most clearly visible from Station Road but can also be seen behind properties from High Street. I consider its importance stems from its scale and the visual benefit it provides to the surrounding area.
9. Although the appellant has submitted an arboricultural report, it does not include any reference to the tree being protected. There is also no justification as to why the tree is considered to be in only a fair condition. Therefore, whilst the tree has been graded as being category C, I cannot be confident that the tree is not of a greater quality given my observations on site and its status as a protected tree. Although I note the appellant has stated this category was chosen because of the tree's susceptibility to Ash Dieback, no evidence has been provided showing whether the tree is affected or how likely it is to be affected in the near future.
10. The proposal would result in the complete removal of the tree and it is not clear from the submissions before me whether any consideration has been had to its retention. I also find from the information before me that it would not be possible to provide suitable replacement planting at the appeal site to mitigate the loss of this tree. Consequently, there would be a complete loss of the amenity benefits which would not be mitigated.

11. The proposal would result in the removal of an existing garage that is of a simple and retiring appearance. I do not find that this building is harmful to the character or appearance of the surrounding area. Although the proposed replacement dwelling would be in keeping with the surrounding area it would result in the complete loss of visually important tree to the detriment of the character and appearance of the surrounding area.
12. The removal of TPO 245 would therefore unacceptably affect the character and appearance of the surrounding area and has not been justified or mitigated. The proposal would conflict with LP2 Policy BNE7 which requires developments to take account of, amongst other issues, the amenity and landscape value of trees and provide replacements of an appropriate number, species, size and location. The proposal would also conflict with the Framework, particularly Paragraphs 136 and 180(b) which set out the importance of trees to urban environments and seek for their retention wherever possible. It would also conflict with guidance on trees as set out within the SPD.

Conclusion

13. The Government's objective is to significantly boost the supply of housing and the proposal would provide one new dwelling. It would also lead to a small and time-limited economic benefit during the construction phase, as well as some limited social and economic benefits resulting from future occupiers. Given the small scale of the proposal these matters would at most attract moderate weight.
14. Conversely, the proposal would result in harm to the living conditions of neighbouring occupiers and to a protected tree in conflict with the development plan taken as a whole. This attracts significant weight and outweighs the benefits associated with the proposed development.
15. The proposal would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict. Therefore, for the reasons outlined above, I conclude that the appeal should be dismissed.

Samuel Watson

INSPECTOR