



Appeal Decision

Site visit made on 30 August 2024

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/P2365/W/24/3341031

The Rookery, 98 Cottage Lane, Ormskirk L39 3NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by L & C Developments Ltd against the decision of West Lancashire Borough Council.
 - The application Ref is 2022/1371/FUL.
 - The development proposed is proposed single storey dwelling and detached garage on existing redundant site to the rear of The Rookery.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is whether the proposal would provide adequate living conditions for future occupiers, with particular regard to natural daylight.

Reasons

3. The appeal site is enclosed by a close boarded fence, formed by part of the original garden of The Rookery, a substantial Grade II listed detached dwelling.
4. Several of the trees in and around the appeal site are protected by a Tree Preservation Order (TPO No.90, 2004). This includes a group of trees (a mixture of Beech and Sycamore) along the length of the shared boundary with No.104 Cottage Lane and a Beech tree in the north-west corner of the appeal site. There is a mature Beech tree (T1) which has been surveyed by the appellant's arboriculturist as around 23m in height, with a substantial canopy spread covering much of the eastern corner of the appeal site. It is proposed to construct a single storey detached dwelling along the boundary of the site (shared with No.96a Cottage Lane) which would extend within the Root Protection Area and canopy spread of this tree, which would be retained.
5. I note that the Arboricultural Impact Assessment (of April 2023) submitted with the planning application considers that, in this case, the shade from the existing trees would not be excessive, and that the presence of trees would not constitute an unacceptable nuisance, for example from leaf or fruit drop. I accept that it is almost inevitable that trees will cast shade on parts of a site and that the acceptability, or otherwise, of this depends to an extent on the occupier of a dwelling.

6. However, I visited the appeal site on 30th August at 9am, a sunny summer's morning when the trees (both those on and off site) were in full leaf. My observations were that the canopies are dense and the appeal site was heavily dominated by the trees, with most of the site in shade. The appellant has provided a 'Suntracker 3D Model', which modelled the trees (and their canopy spread) and itself shows their dominance. This also models shading of the site in the months of June and October at 9am, midday and 4pm and shows that save at 9am in June, the proposed garden and/or the proposed dwelling would be in shade for much of the day. A high level of shading is also shown in the appellant's panoramic photographs of the site, dated 23 May 2022; so it would be shaded in the spring as well as summer months, when it would be reasonable to expect good levels of natural daylight.
7. The dwelling has been designed with a centrally located lounge, dining and kitchen area which would be open plan front to back, with large glazed sliding doors to the south-east elevation. There would further be full height windows to each of the 3no. bedrooms on the south-east and north-west elevations, and a single Velux rooflight in the proposed front and rear roofslope. Whilst the design of the windows would maximise the natural light afforded to the proposed dwelling, the high degree of shading would nonetheless result in the living accommodation being dark, and somewhat oppressive, with an over reliance on artificial lighting. I find this would severely restrict the reasonable enjoyment of the dwelling and result in a poor standard of amenity for future occupiers.
8. The Proposed Site Plan and Elevations show that the main entrance to the proposed dwelling would be on the south-east elevation, and adjacent this would be an area of external seating, accessed directly from the lounge, dining and kitchen area. There would also be a garden to the rear. Much of the external amenity space would be under the canopies of the on and off site trees, and notably the seating area to the front would be dominated by both the on and offsite Beech trees (T1 and T4), located to the south-east. Whilst these areas would be afforded some natural daylight throughout the course of a day, I share the Council's concerns that, because of their dominance, the existing trees (including those off site), and notwithstanding the TPO, would come under future pressure to be either significantly crown lifted, pruned or removed altogether.
9. I have had regard to the guidance at paragraph 129(c) of the National Planning Policy Framework (the Framework), drawn to my attention by the appellant, which requires, when considering applications for housing, a flexible approach in applying policies or guidance relating to daylight and sunlight, where they would otherwise inhibit making efficient use of a site. This guidance also, however, requires that the resulting scheme would provide acceptable living standards. For the reasons already given, I have found the proposal fails to achieve this. The appellant's Statement of Case also refers me to the Building Research Establishment's guidance '*Site Layout Planning for Daylight and Sunlight: A guide to good practice (2022)*' in relation to the number of hours of sunlight the site achieves, but I have no further evidence before me on this, nor indeed an assessment of the proposals based on this guidance.
10. Therefore, I conclude on the main issue that because of shading from the existing trees the proposal would not provide adequate living conditions for future occupiers, with regard natural daylight.

11. Consequently, the appeal proposal would conflict with Policy GN3 of the West Lancashire Local Plan 2012-2027 (2013) (LP) because it would not retain or create a reasonable level of amenity for occupiers of the proposed properties. It would further conflict with the Council's Supplementary Planning Document: Design Guide (2008) in so far as it requires new development to respond to the characteristics of a site, and its surroundings. Finally, it would conflict with paragraph 135 of the Framework because it would not create a place which promotes health and well-being, with a high standard of amenity for future users.
12. Because LP Policy EN4 referred to in the Council's decision notice relates to preserving and enhancing West Lancashire's cultural and heritage assets, it is not relevant to the main issue before me.

Conclusion

13. For the reasons given above, I conclude that the appeal should be dismissed.

R. Jones

INSPECTOR