



Appeal Decision

Site visit made on 28 November 2024

by David M H Rose BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2024

Appeal Reference: APP/C1055/W/24/3349254

Land south of 8 Blagreaves Lane, Littleover, Derby, DE23 1BU

- 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 KF and TM Ellis against the decision of Derby City Council.
 - The application Reference is 23/01533/FUL.
 - The development proposed is described in the Application for Planning Permission as: 'Residential development (one dwelling) on a currently empty plot of land south of 8 Blagreaves Lane.'
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Decision

1. The appeal is dismissed.

Main Issues

2. Having regard to the Tree Preservation Order that relates to the site, and the Sycamore tree T1 in particular, the main issues are: firstly, the effect of the proposal on the longevity and well-being of protected trees; and secondly, whether the proposed dwelling would have an unacceptable living environment.

Reasons

The effect on protected trees

3. Derby City Council (10 Blagreaves Lane, Littleover) Tree Preservation Order 1984 No. 25 specifies eight individual trees immediately to the north of Hill Cross Drive, as it runs from Blagreaves Lane, and to the south of 8 – 12 Blagreaves Lane.
4. Three protected trees are relevant to my consideration namely a Sycamore (T1) within the site and a Sycamore (T7) and Pine (T2) bordering the site. These, and other trees in the locality, give this part of Blagreaves Lane and Hill Cross Drive a strong and imposing verdant character.
5. The Appellants' Tree Survey and Arboricultural Impact Assessment ('Tree Report') identifies T1 as some 20 metres high with a crown spread varying between 6 – 9 metres. It is recorded as Category B: a tree of '*moderate quality and value, including public visual amenity value. Such trees should be considered for retention*'. The life expectancy of the tree is estimated as 40+ years.
6. T7 is recorded in a similar manner. T2 is recorded as 30 metres high, with a crown spread of 5 metres, retention Category B and a life expectancy of 20 – 40 years.

7. With regard to T1, I give greater weight to the Arboricultural Consultant's report¹ than the claim made by the Appellants that *'the tree is quite old and we don't feel it has a long term future'*.
8. Overall, I consider that these trees make a significant and important contribution to the character and appearance of the area and can be expected to continue to do so for many years to come.
9. Although the design of the dwelling has been carefully conceived in terms of its scale and design, the Appellants' Tree Report confirms that *'practically the whole site is within the Root Protection Areas of the protected trees'*.
10. Whilst the Appellants claim that *'our arboriculturist confirmed that we can build a small property next to the tree without causing any damage to it'*, the Tree Report is worded as: *'If the planning application is approved then the following process must be followed'*. That process consists of a detailed arboricultural method statement.
11. Given the overall constraints that this would impose, I am not convinced that the construction of the proposed dwelling (noting the specification of specialised foundations), the laying out of parking and turning facilities and the provision of services, even with all of the measures outlined, could be implemented without inevitable risk to the health and well-being of T1 in particular.
12. On this issue, I conclude that the proposal would have an adverse effect on the expectancy of longevity and well-being of protected trees with the greatest risk applicable to T1.
13. Whilst none of the policies cited by the Council expressly relate to the protection of trees, CP16(m) of the Core Strategy requires the impact on green infrastructure to be clearly understood. The evidence before me unambiguously points to serious and unacceptable harm to important landscape elements in and adjacent to the site.

Living conditions

14. Moving on to the living environment of the proposed dwelling, the accommodation would have dual aspect to the east and west. The outlook to the rear would be of dominant and imposing trees arising from their height and spread.
15. As demonstrated in the Tree Report, T1 and T7, in particular, when in leaf, would shade the entirety of the rear curtilage and the west facing living space. Whilst dapple shade may be an advantage, the extent of shading from combined canopies would be intense and overbearing resulting in an unacceptable living environment for future occupants.
16. In such circumstances, the inevitable conclusion is one of a strong likelihood of future pressure to prune (or even remove) the protected tree within the appeal site to provide more natural light and sunlight. This would be at odds with the purpose of a Tree Preservation Order and the public amenity benefits that protected trees can provide.
17. Reference has been made to an appeal decision at Whitaker Road. As the effect of trees on living conditions is of necessity site specific, comparison does not draw support.

¹ I note that it is strictly 'out of date' as it was valid for 12 months from October 2022 – however, it provides the best evidence before me and the Appellant relies on it

18. Finally, in relation to the development plan, Saved Policy GD5 of the Local Plan Review calls for a satisfactory level of amenity within a site or building. It is evident that would not be achieved by the appeal proposal.

Other Matters

19. Whilst not central to the main issues, the Tree Report sets out that as the trees have reached maturity, and the dwelling is relatively low rise, there should not be issues with branches having to be regularly pruned. I agree.
20. As to leaves blocking gutters, the Tree Report indicates that this could be reduced by fitting gutter guards. Nonetheless, significant leaf fall within the curtilage as a whole is likely to be an inconvenience to future residents.
21. I note from the Appellants' Design and Access Statement that '*..... the sycamore causes loose branches and debris to fall on Hill Cross Drive'*. That risk must apply equally to the appeal site itself, and in that vein future residents of the proposed dwelling would be likely to experience apprehension of potential damage and danger particularly in strong winds.
22. The Design and Access Statement also records the benefit of providing a dwelling which would secure the future maintenance of the appeal site with additional planting. This is reinforced by the Appeal Statement which suggests that the proposal would benefit the community and could be rented at a fair rent. Whilst these factors are material to my decision, the contribution of a single dwelling to housing land supply, and the other considerations, carry no more than moderate weight.
23. The Local Planning Authority has cited a number of development plan policies, generally of a strategic nature, and with little or limited explicit applicability to the appeal proposal. Nonetheless, from the two policies identified in the consideration of the main issues, the proposal would be contrary to the development plan read as a whole.
24. It is evident that the Council has a significant shortfall in housing land supply and the proposal is to be determined against paragraph 11 d) ii. of the National Planning Policy Framework which requires permission to be granted unless '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*'
25. In this particular case, I attribute very significant weight to the effect of the proposal on protected trees and the unacceptable living environment that would be experienced by the occupants of the proposed dwelling, having regard to the Tree Preservation Order that relates to the site and the Sycamore tree T1 in particular.
26. This leads me to the conclusion that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits described above when assessed against the policies in the Framework as a whole. As such the proposal would not benefit from the presumption in favour of sustainable development. I am satisfied that there are no other material considerations to indicate that my decision should be taken otherwise than in accordance with the development plan.

Conclusion

27. For the reasons given above the appeal is dismissed.

David MH Rose Inspector