



Appeal Decision

Site visit made on 16 March 2020

by Martin Chandler BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 April 2020

Appeal Ref: APP/Q3115/W/19/3236343

12 Norreys Close, Didcot, OX11 0AT

- 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 Matthew Mackenzie and Miss Briony Malden against the decision of South Oxfordshire District Council.
 - The application Ref P19/S0304/FUL, dated 28 January 2019, was refused by notice dated 10 July 2019.
 - The development proposed is proposed erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the appeal was submitted, the Secretary of State has directed the Council to progress its emerging plan with the aim for adoption by the end of 2020. As a consequence, the South Oxfordshire Local Plan 2034 is now progressing to examination.
3. Paragraph 48 of the National Planning Policy Framework (the Framework) confirms that weight can be given to emerging plans according to the state of preparation, the extent to which there are unresolved objections, and the degree of consistency of the relevant policies with the Framework. In this instance, because the plan has not yet been through examination and I am unaware of any unresolved objections, I have not given any weight to the emerging policies in my assessment of the appeal.

Main Issues

4. The main issues are:
 - i) whether the proposal would provide suitable living conditions for future occupants;
 - ii) whether the proposal would give rise to future requests for tree works, and if so, the effect of such requests on the character and appearance of the area; and
 - iii) the effect of the proposal on the Root Protection Areas of the trees.

Reasons

Living conditions for future occupants

5. The appeal site is located at the corner of a short cul-de-sac. Due to its corner location, the site benefits from a generous sized garden, the south eastern boundary of which is bounded by five large and protected Oak Trees. The trees occupy much of the shared boundary and due to their size and location, they are an imposing and dominant feature when viewed within the site.
6. The proposal would subdivide the existing garden and introduce a new dwelling. The new property would be set further back into the site than the existing building and also closer to the south eastern boundary. As a consequence, the location of the proposed building would be close to the large protected trees. Although only one opening would face towards them, the private amenity space that would be associated with the proposed dwelling would also be bounded by the imposing trees.
7. Due to the subdivision of the appeal site, the associated amenity space for the new dwelling would be substantially smaller than the garden which serves the existing dwelling. As a consequence, the presence of the trees would be acutely experienced by future occupants. I accept that people experience the presence of trees in different ways. However, this is a collection of substantial trees and due to their size, number and location, the trees and their large canopies would entirely overwhelm the reduced garden area. This would have the harmful effect of severely reducing the daylight received in this space, and in my view, the trees would significantly and demonstrably reduce its functionality. This would be to the considerable detriment of future occupants and would reduce the enjoyment of the dwelling and its associated private garden to an unacceptable degree.
8. As a consequence, I conclude that the proposal would fail to provide suitable living conditions for future occupants. It would therefore fail to accord with Policy H4 of the South Oxfordshire Local Plan (2006) (LP) which seeks housing development where, amongst other things, there are no overriding amenity or environmental objections.

Requests for tree works and character and appearance

9. The appellant has provided details of research carried out in relation to requests for tree works in an alternative local authority based on a 5 year period. The findings imply that where trees are protected, Councils have the ability to refuse requests for inappropriate pruning or tree removal. I do not dispute this observation. However, the research also demonstrates that in many cases, works were permitted, including the felling of trees.
10. I do not have the full details of all of the cases referred to by the appellant before me, and therefore I am not aware of the relationships of the trees and the affected dwellings. However, as identified above, if this proposed development were to proceed, the effect would be to allow a new dwelling with a garden space that would be entirely dominated by the trees in a manner that would severely affect its functionality.
11. I note permission has been previously given for a side extension to the existing dwelling which would have increased the size of the property closer to the trees. However, the amenity space would have remained substantially larger

than the proposed dwelling. Therefore, the effect of the trees would not be as acute. However, if this development were to proceed, the garden space would be completely overwhelmed by the trees. Accordingly, I find that allowing the development to proceed would result in inevitable requests for tree works to improve the functionality of the proposed garden.

12. The height and location of the trees ensure that they are prominent when viewed from within the road. The canopy of the trees can be readily seen above the roof tops of the existing houses and due to their height, they have a striking presence. As a consequence, the group of trees make a positive contribution to the character and appearance of the area. It is impossible to foresee the nature of future tree works, however, due to the imposing presence of the trees, there is every reason to consider they could be significant. Moreover, due to the severe effect on living conditions, and despite the research provided by the appellant, such works would be difficult for the Council to resist. Accordingly, they could have the effect of reducing the prominence of the trees in the wider locality in a manner that would be harmful to the character and appearance of the area.
13. Consequently, for the reasons identified above, I conclude that the proposal would give rise to future requests for tree works which in turn would be harmful to the character and appearance of the area. It would therefore fail to comply with Policy CSEN1 of the South Oxfordshire Core Strategy (2012) (CS) and Policy C9 of the LP. Taken together, these seek amongst other things, development which protects landscape features and does not adversely affect the character of the area.

Root protection areas

14. Due to the presence of protected trees, the appeal has been accompanied by a Tree Survey and Impact Assessment. It has also been accompanied by a tree constraints plan which identifies the location of the root protection areas (RPAs) and based on the evidence before me, the proposed dwelling would be located within the RPAs of the Oak Trees. Due to this location, the appellant has sought to provide details of a technical solution for the proposed foundations to prevent damage to the trees. The system would involve a suspended raft and mini-pile system to span the RPAs with the aim of avoiding the need for continuous trench excavation, thereby seeking to avoid significant root loss.
15. Although this would result in the dwelling being sited partially within the RPAs of the trees, I have no compelling evidence before me that the proposed foundation design would result in specific harm. Accordingly, I am satisfied that it would comply with best practice. Moreover, if I were minded to allow the appeal, the matter could be adequately controlled through a suitably worded planning condition.
16. The evidence does not confirm how drainage and other service runs would be catered for. However, there would be space to the other side of the proposed dwelling that could enable such provision and I am satisfied that this would also be matter could be controlled by a suitably worded condition. In addition, although much of the RPAs are located beyond the appeal site, due to the nature of the foundation design proposed, based on the evidence before me, soil mitigation work would be unnecessary.

17. Therefore, for the reasons identified above, I am satisfied that in relation to the RPAs, the proposed foundation design would comply with best practice in a manner that could be adequately controlled. Accordingly, I conclude that the proposal would not harm the RPAs of the trees. On this basis, it would comply with Policy CSEN1 of the CS and Policy C9 of the LP. Taken together, these seek amongst other things, development which protects landscape features and does not adversely affect the character of the area.

Other Matters

18. The proposal would make use of a large garden for a new dwelling that would be in a sustainable location. However, due to the scale of the proposal, such benefits would be very limited. Consequently, I attach them very little weight. In addition, the proposal would not harm the living conditions for the occupants of neighbouring dwellings or give rise to highway safety concerns. Nevertheless, the lack of harm is not the same as a benefit and consequently, these matters do not attract any weight in my assessment of the appeal.

Conclusion

19. I have found that the proposal would not harm the RPAs of the protected trees. However, I have also found that the proposal would give rise to significantly poor living conditions for future occupants. This is a matter of overriding concern to which I attach a significant level of weight. Moreover, in my view, due to the poor living environment that would be created, future requests for tree works would be inevitable and these could well have a deleterious effect on the character and appearance of the area. As a consequence, the appeal should be dismissed.

Martin Chandler

INSPECTOR