Appeal Decision

Hearing held on 3 October 2013
Site visit made on 3 October 2013

by Nigel Harrison BA (Hons) MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 October 2013

Appeal Ref: APP/L3245/A/13/2190478
27 Ludlow Road, Bridgnorth, Shropshire, WV16 5AH

- 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 and Mrs J Roberts against the decision of Shropshire Council.
- The application Ref: 12/00412/FUL dated 27 January 2012, was refused by notice dated 9 July 2012.
- The development proposed is erection of 5 dwellings following demolition of existing dwelling; formation of vehicle access (amended description).

Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the proposed development above differs from that given on the application form where it is described as “demolition of existing house and 6 new residential units”. However, whilst being considered by the Council the number of dwellings was reduced to 5; a detached dwelling in the south-west corner being substituted for two semi-detached dwellings originally proposed. A revised Design and Access Statement reflects this, incorporating construction method and tree protection information. Other supporting documents submitted include Solar Shading Plans, a Tree Health/Visual Tree Assessment Report, and a Development Site Tree Report. Interested parties were re-consulted, and I am satisfied that no injustice will result. I have therefore considered the appeal on this basis.

3. The dwellings and plots have not been numbered on the submitted plans. Therefore, for ease of reference I shall refer to them as follows: Plot 1 (western dwelling on road frontage); Plot 2 (eastern dwelling on road frontage); Plot 3 (western dwelling at centre of site); Plot 4 (eastern dwelling at centre of site); and Plot 5 (dwelling in south-west corner of the site).

Main Issues

4. The Council has raised no objections in principle to demolition of the existing dwelling and the proposed dwellings at Plots 1-2. These would follow the building line established by neighbouring properties on Ludlow Road, and would respect the street scene. I find no reason to take a contrary view.

5. I therefore consider there are two main issues in this case. Firstly, the effect of the proposal on the appearance and life expectancy of the protected oak tree;
and secondly, the effect of the proposal on the character and appearance of the surrounding area.

Reasons

Effect of the proposal on the appearance and life expectancy of the Oak tree

6. The large Common Oak (Quercus Robur) within the site is protected by a Tree Preservation Order. It is an exceptional specimen, at least 200 years old, and about 24-26m high with a stem diameter of about 1.56m. It has been assessed by a number of qualified arborists as having good form and condition. Although there is some fungal decay at the base, this is not unusual for a tree of this age and species. The Bartlett Tree Health and Visual Assessment Report recommends that some crown thinning and crown lifting be undertaken, but it was agreed at the Hearing that this work was not essential in the short term or necessary to facilitate the development. Recent tree surgery has removed a number of dead and decaying upper branches.

7. British Standard BS 5312: 2012 Trees in Relation to Design, Demolition and Construction sets out the factors to be taken into account to maximise the probability of future tree retention. Section 5.3.4 says ‘the relationship of buildings to large trees can cause apprehension to the occupiers, resulting in pressure for the removal of trees. This is reinforced by Government guidance in the DETR publication Tree Preservation Orders: A Guide to the Law and Good Practice (commonly known as the “Blue Book”). Although new Regulations were introduced in 2012 it remains a relevant advice source. It explains that “the proximity of trees to dwellings is an important consideration because incoming occupiers will want trees to be in harmony with their surroundings, without casting excessive shade or otherwise interfering with their prospects of reasonable enjoyment of their property”.

8. The amenity or aesthetic value of any protected tree will generally depend on its form, size, height, prominence from public vantage points and its setting. This Oak is a particularly fine example of its kind, and is worthy of retention and protection for the amenity value it possesses. Although on private land it is visible from nearby gardens, and is particularly prominent from Ludlow Heights. It is a well-recognised natural asset that makes a valuable contribution to the character and appearance of the area. Trees of such age, appearance, and condition cannot easily be replaced, particularly within the urban environment.

9. The Council is broadly satisfied that the proposed development could be implemented without causing significant immediate damage, providing appropriate precautions and controls to protect the tree, its roots, and the ground around it are put in place. Based on the comprehensive measures identified in the Bartlett Tree Protection Plan, I find no reason to disagree. The root protection area and the construction exclusion zone have been appropriately calculated and set out.

10. The Council has accepted the principle of some backland development following the approval of a dormer bungalow in November 2010. Based on the previously approved footprint, the dwellings proposed for plots 3-4 would be located in approximately the same position and alignment. However, the large single garden associated with the approved scheme would now be shared by

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1 Ref: 10/03774/FUL
the three dwellings. Cumulatively, I consider the higher occupancy levels and more intensive use of three gardens would inevitably mean that the tree will have a significantly greater impact. It will for example need to be shared by three sets of occupiers with increased compaction from general footfall and garden use, and is more likely to be actively used rather than just be seen as an ‘amenity’, given that the more private gardens of plots 3-4 will be shaded throughout much of the day by the dwellings.

11. At my site visit I noted that the outlook from the front-facing windows of the plot 4 would be totally dominated by the oak, which would occupy much of the available width of its “notional” front garden. For this dwelling especially the tree may come to be seen as a nuisance rather than an asset to future occupiers by reason of its size and dominance of the south aspect. The outlook of Plot 3 would also be similarly affected, though due to its off-set position the tree would not be quite so dominant. My concerns also apply to Plot 5. Although south-west of the tree and therefore affected by shading to a lesser degree, its side garden area would be dominated by the presence of the oak tree, with a significant proportion of it being beneath the canopy.

12. Therefore, due to increased use of the garden areas around the oak tree, the effects of shading, and the issue of outlook, I am concerned about possible threats to its continued good health and longevity arising from pressure to fell or prune from future occupiers. Such pressures are likely to occur because of real householder concerns relating to restriction of light and overshadowing, dominance, and perceived danger from falling limbs. This is notwithstanding any other potential issues which may arise in terms of falling debris or branches, blocked gutters, interference with underground services, or simply in relation to its overbearing presence.

13. The appellant says ongoing responsibility for management of the oak could be met through the establishment of a Community Interest Company (CIC) involving future residents and any other parties who may have a role in the tree’s upkeep. However, I am unclear how many persons would be party to the CIC, or whether it would solely be restricted to the occupiers of the three dwellings who would share the ‘communal’ garden around it. In any event, the interests and priorities of occupiers will differ, particularly as the occupation and ownership of property varies with time.

14. Whilst protection afforded by the TPO would enable the Council to control any future tree work, I consider it would be more difficult for it to refuse an application to cut-back or even remove a tree that was threatening the safety of the occupiers, or having a harmful effect on their enjoyment of the property. There can be no certainty that such pressures could be reasonably resisted.

15. The appellant has referred to a recently published article which records data collected another Council in relation to the proximity of trees to properties. It explores the frequency of complaints arising from shading and loss of light, and concludes that trees within 25m of the south side of dwellings are expected to result in some complaints about loss of light. The frontages of the dwellings at plots 3-4 lie within a range of approximately 22-25m to the north of the tree, and on this basis it would seem likely that some complaints would arise.

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2 J J Hopcraft: Arboricultural Journal Volume 34 No 3, 2012
16. Trees protected by a TPO merit special care, and this tree is no exception. If its appearance were to be stunted by further pruning, its amenity value would be diminished and the appearance of surrounding area would suffer as a result.

17. Therefore, on balance, I conclude on this issue that the proposal is likely to lead to increased pressure to carry out works to the oak tree, which in turn may have a detrimental effect on its future appearance and life expectancy. As such, it would conflict with Policies CS6 and CS17 of the Shropshire Local Development Framework Core Strategy which require development to protect and conserve the natural environment and its assets. It also fails to meet the objectives of Government policy in Paragraph 118 of the National Planning Policy Framework which says local planning authorities should refuse planning permission for development resulting in the loss or deterioration of irreplaceable habitats including veteran or aged trees.

Effect of the proposal on the character and appearance of the surrounding area

18. CS Policy CS6 requires high quality development of appropriate scale, density, pattern and design, and for it to take into account the local context and character and contribute to local distinctiveness.

19. The detached dwellings fronting Ludlow Road (to the east of and including No 27) occupy wide plots with generous rear gardens. Those to the south of the appeal site, on the north side of Conduit Lane also occupy generous plots, and again have lengthy rear gardens. In marked contrast, the Ludlow Heights development to the west comprises much more closely-spaced dwellings in modest-sized gardens, and has a markedly higher density.

20. The Council says the appeal site more closely relates to the low-density area to the east and south, and assessment of character should relate to the urban grain and character established by this lower density development. The appellant takes a contrary view, and says the density and pattern of the proposed development should relate to the context of the surrounding residential area when taken as a whole.

21. I share the Council’s opinion that the appeal site is visually much more closely related to the lower density area to the east and south; and there is a clear demarcation from the Ludlow Heights development, due in part to the dense screening and significant change in levels along the western boundary of the site. However, the distinct character and pattern of development of the area to the east of the appeal site has been irrevocably changed by the recent ‘backland’ development at Ludlow Gate, which occupies a large part of the rear garden environment. Furthermore, the granting of planning permission for a dormer bungalow has established the principle of backland development on the appeal site itself, and as stated above the dwellings now proposed at Plots 3 -4 would occupy approximately the same position. These are important material considerations which have influenced my reasoning on this issue.

22. Turning to the proposed dwelling at Plot 5, pre-application advice from the Council appears to accept the principle of a dwelling in this position, saying that it would not be out of character with the area (notwithstanding the separate issue concerning its proximity to the oak tree which I have dealt with above). I find no reason to disagree with that assessment.

23. Therefore, I conclude on this issue that the proposed development would not significantly harm the character and appearance of the surrounding area.
Conclusion on the main issues

24. In summary, and notwithstanding my findings regarding the effect of the proposed development on the character and appearance of the area, my conclusion relating to its effect on the appearance and life expectancy of the protected Oak tree represents a significant, substantial and overriding objection which must be decisive.

Section 106 Agreement

25. CS Policy CS11 says all open market housing proposals should make acceptable contributions to the provision of local needs affordable housing in accordance with the prevailing target rate set out in the Shropshire Viability Index. This was referred to in the Council’s report, although the absence of a Section 106 agreement or developer contribution to this effect at the application stage was not a reason for refusal.

26. A signed and dated Section 106 Agreement has now been submitted which includes for a commuted sum £58,500 to be paid to the Council to assist in the delivery of off-site affordable and/or supported housing within the Council area. Paragraph 204 of the Framework says planning obligations must be necessary to make the development acceptable in planning terms, and fairly and reasonably related to it in scale and kind. As the development is also chargeable development, the S106 needs to satisfy the corresponding tests in Regulation 122 of the Community infrastructure Regulations 2012 (CIL).

27. Having regard to the representations made, I consider the relevant CS Policy and CIL legal tests have been satisfied. Nonetheless, resolution of the affordable housing contribution matter does not outweigh the harm that I have already identified to the site’s protected oak tree, and my conclusion that the appeal should fail.

Overall Conclusion

28. Therefore, for the reasons given above, and having regard to all other matters raised, including the comments made in representation by local residents and the Town Council, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR
APPEARANCES

FOR THE APPELLANT:

David Cashman
Michael Harris
Andrew Rumble
Stephen Roberts
Jayne Roberts

FOR THE LOCAL PLANNING AUTHORITY:

Lynn Parker
Martin Sutton
Dougald Purce

INTERESTED PERSONS:

David Coe (on behalf of Ludlow Heights residents)
Margaret Brown
James Gittins

DOCUMENTS

1 Shropshire Council Community Infrastructure Levy Charging Schedule

PLANS

A Drawing No Pre/167/103: Site layout showing 6 dwellings (superseded)
B Application Ref: BR/APP/FUL/02/0615: Erection of seven detached two-storey houses: Site layout plan (refused 16 October 2002)
C Application Ref: 10/03744/FUL: Erection of dormer bungalow with integral garage and new access (granted 10 November 2010)