

REPORT OF THE HEAD OF COMMUNITY AND PLANNING SERVICES

SECTION 1: Planning Applications SECTION 2: Planning Appeals

In accordance with the provisions of Section 100D of the Local Government Act 1972, BACKGROUND PAPERS are the contents of the files whose registration numbers are quoted at the head of each report, but this does not include material which is confidential or exempt (as defined in Sections 100A and D of that Act, respectively).

1. PLANNING APPLICATIONS

This section also includes reports on applications for: approvals of reserved matters, listed building consent, work to trees in tree preservation orders and conservation areas, conservation area consent, hedgerows work, advertisement consent, notices for permitted development under the General Permitted Development Order 1995 (as amended) responses to County Matters and submissions to the IPC.

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When moving that a site visit be held, Members will be expected to consider and propose one or more of the following reasons:

1. The issues of fact raised by the Head of Community and Planning Services' report or offered in explanation at the Committee meeting require further clarification by a demonstration of condition of site.
2. Further issues of principle, other than those specified in the report of the Head of Community and Planning Services, arise from a Member's personal knowledge of circumstances on the ground that lead to the need for clarification that may be achieved by a site visit.
3. Implications that may be demonstrated on site arise for consistency of decision making in other similar cases.

Item 1.1

Reg. No. 9/2013/0092/FM

Applicant:
Mr R Hosking
1 Pall Mall Cottages
Pall Mall
Breadsall
DE21 5LU

Agent:
Mr Darryn Buttrill
Bi Design Architecture Ltd
79 High Street
Repton
Derbyshire
DE65 6GF

Proposal: **THE ERECTION OF REPLACEMENT DWELLING AND
THE CHANGE OF USE OF EXISTING PADDOCK TO
DOMESTIC CURTILAGE AT THE CROFT BROOK LANE
SUTTON ON THE HILL ASHBOURNE**

Ward: **HILTON**

Valid Date: **25/02/2013**

Members will recall deferring this case to enable a site visit to take place prior to the current meeting. There have been no changes to the report.

Reason for committee determination

Part of the application site lies outside the village confine for Sutton-on-the-Hill and as such the expansion of the residential curtilage is potentially contrary to the provisions of the Development Plan and a Committee determination is required.

Site Description

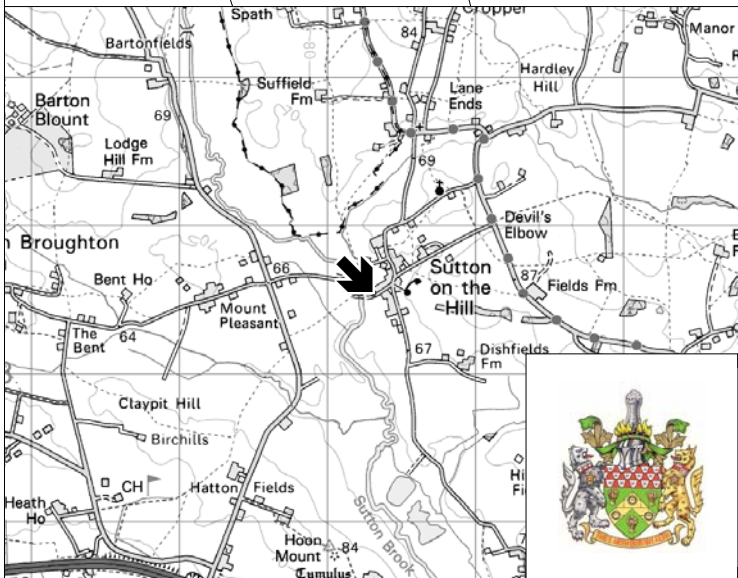
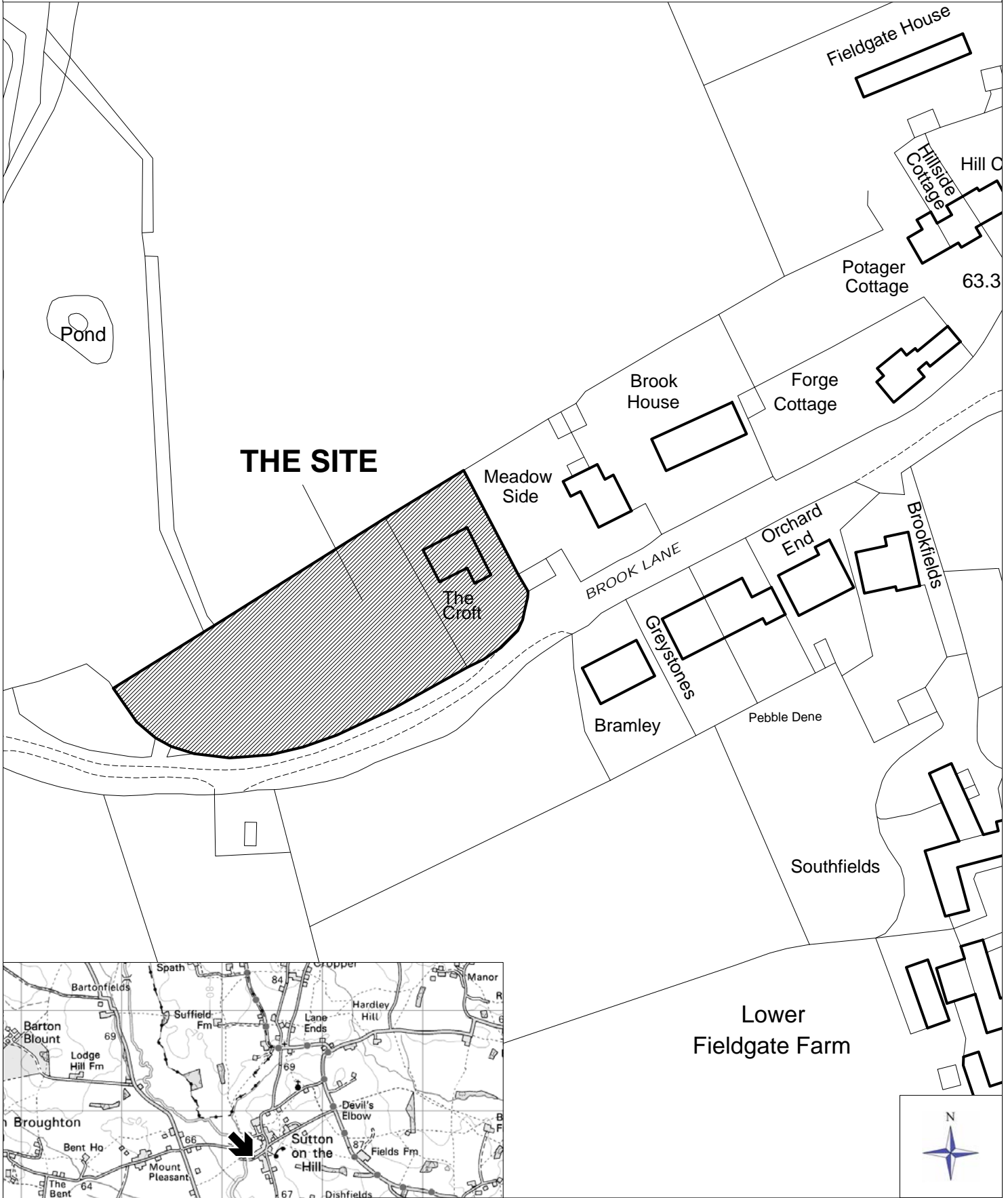
The site comprises the existing dwelling and, following an amendment to the plan, a part of the paddock next to the existing curtilage that extends west from the house curtilage.

Proposal

The existing dwelling on the site would be demolished and replaced by a 1.5 storey dwelling across the whole width of the existing curtilage. The site is the last plot on Brook Lane, to the east is a property 'Meadow Side, the house itself is some 16m from the common boundary between the properties.

There is a 1.8m high fence along most of this boundary with the exception of a short length of the hedge next to the access to The Croft. There is an existing roadside hedge across the front of The Croft on Brook Lane that extends along the frontage of

9/2013/0092 - The Croft, Brook Lane, Sutton on the Hill, Ashourne,
Derby DE6 5JA



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the paddock that would be incorporated into the curtilage were planning permission granted. To the north is a hedge some 1.5m high to the smallholding occupying the adjacent field. The existing residential curtilage on the west of the house would be removed and replaced by new hedge with a grassed slope down towards the original boundary of the residential curtilage.

Applicants' supporting information

It is argued that the existing dwelling is of a poor design that contributes little to the character of the village. The new dwelling would be a bespoke family dwelling of a design that reflects the local character in terms of materials of construction and picking up on the local vernacular such as gable widths and window design but taking advantage of glazing to provide a more modern twist to some of the gables that face west.

Planning History

The planning permission granted in the 1970s is the only relevant planning history albeit the applicants have argued that the whole of the paddock was originally included in the curtilage, the separation only being inserted when a previous occupier found the garden too large.

Responses to Consultations

The County Highway Authority and the Environmental Health Manager have no objection subject to conditions; Severn Trent Water has no objection.

Responses to Publicity

Two letters have been received one objecting to the development and the other commenting on the need to maintain access to adjacent property during the demolition and construction of the new dwelling, others also use the lane to access the sewerage works and other fields.

The objections can be summarised as follows:

- a) The scale and massing of the new dwelling are such that they are out of proportion with the area and amounts to overdevelopment of the site. This means it is contrary to the provisions of Housing Policy 5 of the Local Plan.
- b) The footprint of the proposed dwelling is outside the area occupied by the existing dwelling.
- c) The side garden to Meadowside is the only substantial area of beneficial garden the property enjoys. The large gable on the immediate boundary to the two properties would impinge on the enjoyment of that garden area, as a two-storey gable would replace an existing single storey extension.
- d) The garden extension would effectively extend the development boundary to the village contrary to the provisions of the Local Plan.

Development Plan Policies

The relevant policies are:

Local Plan: Housing Policies 5 & 11. Environment Policy 1

National Guidance

NPPF – Paragraphs 7, 14, 17 and 215.

Planning Considerations

The main issues central to the determination of this application are:

- The Development Plan and the NPPF.
- Impact on adjacent dwellings.

Planning Assessment

The NPPF at paragraph 215 states that where Local Plan policies are out of date but comply with the objectives of the NPPF, then those policies can continue to carry weight in determining planning applications. It is considered that Housing Policies 5 & 11 and Environment Policy 1 accord with the objectives of the NPPF.

Housing Policy 5 states that housing development is acceptable within the settlement boundaries defined on the Proposal Map. The existing house and curtilage lies within the settlement boundary for Sutton-on-the-Hill and the proposed dwelling would extend as far as that existing settlement boundary.

The next consideration is whether the proposal is of a scale and character in keeping with the settlement. There are a variety of house types within the village that reflect its development over the years. The existing dwelling is one of its time but, given the design and appearance of the existing house, is not worthy of retention. The new dwelling would be larger in mass but the way the project has been designed, the apparent mass of the building has been reduced through the use of small-scale elements that help to brake down to the overall appearance of the new dwelling. The neighbour has concern that the development is out of scale and in assessing the application the conclusion is that whilst this would be a substantial dwelling the mass and scale of the house is acceptable on the basis that there are other houses in the village of similar scale and mass that would make it difficult to sustain a reason for refusal on these grounds.

The requirements of Housing Policy 11 are that new housing should be of a standard that does not affect the residential amenity of neighbours, highway safety, and is of a safe and functional layout. To assist in assessing these issues, the Housing Design and Layout SPD has been adopted by the Council. This requires minimum separation distances between habitable rooms and ensure that private amenity space is not affected by new housing in a manner that would be unduly detrimental to the occupation of the adjacent dwelling. In this case there is a blank elevation, save for wet room, utility room and toilet windows can be required to be obscure glazed. Whilst the neighbouring property has windows looking towards the site these are some 16m from the end gable in the new dwelling. This exceeds the minimum separation distances required in the SPG.

There would be no overlooking of the side garden of Meadowside. The new dwelling would come to a nearest point of 2m from the common boundary but with the degree of separation referred to above it is not considered that the new dwelling would

unreasonably overbear on neighbours amenity. In addition the new dwelling is situated to the south west of the adjacent house and as such the garden areas would continue to enjoy sunlight in the morning and well into the afternoon. There would be some loss of daylight to the side garden area into the evening particularly during the winter months.

Environment Policy 1 of the adopted South Derbyshire Local Plan requires that development in the countryside should be essential to a rural based activity or unavoidable in the countryside and that the character of the countryside, landscape quality, wildlife and historic features should be safeguarded. If meeting these criteria then development should be so designed and located such that its impact on the countryside is minimised.

The extension of the residential curtilage into the countryside is necessary intrusion when it abuts a residential curtilage where and expansion of that curtilage into the countryside is unavoidable. Whilst not necessary for an established rural activity, the expansion of a curtilage to a long established dwelling is not likely to be harmful particularly where existing an boundary hedge provides a high degree of screening from Brook Lane. In this case provided that built development is controlled, the material impact of the garden expansion on the character and appearance of the countryside would be minimal given that the adjacent paddock already has a close-cropped appearance.

A condition is recommended to require that a new boundary fence and hedge be planted on the new edge to the garden as illustrated on the amended plans and that new garden buildings require planning permission prior to their erection so that they can then be considered on their merits. These conditions would further mitigate the insignificant impact of the development on the wider countryside. The planting of the hedge on the boundary has the potential to increase the wildlife interest of the area.

The materials of construction are specified on the amended drawings and these are considered acceptable. Foul water would be disposed of via the sewer and surface water disposal would be to a soakaway.

In the light of the above, planning permission is recommended subject to conditions.

Recommendation

GRANT permission subject to the following conditions:

1. The development permitted shall be begun before the expiration of three years from the date of this permission.

Reason: To conform with Section 91(1) of the Town and Country Planning Act, 1990 (as amended by section 51 of the Planning and Compulsory Purchase Act 2004).

2. This permission shall relate to the following drawings: 1050H/ 01&/06

Reason: For the avoidance of doubt, the original submission being considered unacceptable.

3. Prior to the development hereby approved commencing, details of the finished floor levels of the buildings hereby approved and of the ground levels of the site relative to adjoining land levels, shall be submitted to, and approved in writing

by, the Local Planning Authority. Thereafter, the development shall be constructed in accordance with the agreed level(s).

Reason: To protect the amenities of adjoining properties and the locality generally.

4. If during development any contamination or evidence of likely contamination is identified that has not previously been identified or considered, then the applicant shall submit a written scheme to identify and control that contamination. This shall include a phased risk assessment carried out in accordance with the procedural guidance of the Environmental Protection Act 1990 Part IIA, and appropriate remediation proposals, and shall be submitted to the LPA without delay. The approved remediation scheme shall be implemented in accord with the approved methodology.

Reason: To protect the health of the public and the environment from hazards arising from previous contamination of the site which might be brought to light by development of it.

5. No Development shall take place until a scheme for the prevention of the ingress to the property of ground gas has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the dwelling hereby permitted.

Reason: Records indicate that a pond was infilled with unknown material and as the site lies within the influencing distance of the filled ground a precautionary approach is required to ensure that future occupiers are not affected by the ingress of ground gas.

6. No gates shall be erected within 5m. of the highway boundary and any gates elsewhere shall open inwards only.

Reason: In the interests of highway safety.

7. Prior to the first use of the development hereby permitted, parking facilities and manoeuvring space as illustrated on Drawing 1050H/06 shall be provided so as to accommodate two cars within the curtilage of the dwelling. Thereafter, (notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995), two parking spaces, each space measuring a minimum of 2.4m x 4.8m, shall be retained for that purpose within the curtilage of the site.

Reason: To ensure that adequate parking/garaging provision is available.

8. The new boundary fence illustrate on Drawing 1050H/06 shall be erected prior to the first occupation of the dwelling hereby permitted and in the first planting season following the completion of the development (March to September) a hedge shall be planted beneath the fence made up of the species specified on the drawing as above. Thereafter the hedge and fence shall be retained in place for the duration of the development.

Reason: In order to define a new boundary to the dwelling in the interests of the appearance of the area.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008, no buildings and no gates, walls, fences or other means of enclosure (other than as

shown on the plan no 1050H/06) shall be erected on the application site without the prior written approval of the Local Planning Authority.

Reason: To ensure that any such structures are appropriate to the character and appearance of the building.

Informatives:

Where development is proposed, the developer is responsible for ensuring that development is safe and suitable for use for the purpose for which it is intended. The developer is thus responsible for determining whether land is suitable for a particular development or can be made so by remedial action. In particular, the developer should carry out an adequate investigation to inform a risk assessment to determine:

- whether the land in question is already affected by contamination through source - pathway - receptor pollutant linkages and how those linkages are represented in a conceptual model;
- whether the development proposed will create new linkages, e.g. new pathways by which existing contaminants might reach existing or proposed receptors and whether it will introduce new vulnerable receptors; and
- what action is needed to break those linkages and avoid new ones, deal with any unacceptable risks and enable safe development and future occupancy of the site and neighbouring land.

A potential developer will need to satisfy the local authority that unacceptable risk from contamination will be successfully addressed through remediation without undue environmental impact during and following the development. In doing so, a developer should be aware that actions or omissions on his part could lead to liability being incurred under Part IIA, e.g. where development fails to address an existing unacceptable risk or creates such a risk by introducing a new receptor or pathway or, when it is implemented, under the Environmental Liability Directive (2004/35/EC). Where an agreed remediation scheme includes future monitoring and maintenance schemes, arrangements will need to be made to ensure that any subsequent owner is fully aware of these requirements and assumes ongoing responsibilities that run with the land.

The applicant is advised to seriously consider the installation of a sprinkler system to reduce the risk of danger from fire to future occupants and property.

Further to Condition 5 above, the use of a heavy gauge membrane in the foundations and beneath the building slab may be sufficient to meet the requirements of this condition.

Item 2.1

Reg. No. 9/2013/0166/TP

Applicant:
Mrs P Seal
41 Hillside
Findern
Derby
DE65 6AW

Agent:
Mr D Mahon
Mwa Arboriculture
Bloxham Mill Business Centre
Barford Road
Bloxham
Banbury
OX15 4FF

Proposal: **THE 30% REDUCTION OF CROWN VOLUME OF AN OAK TREE COVERED BY SOUTH DERBYSHIRE DISTRICT COUNCIL TREE PRESERVATION ORDER NUMBER 359 AT 41 HILLSIDE FINDERN DERBY**

Ward: **WILLINGTON & FINDERN**

Valid Date: **04/03/2013**

Reason for committee determination

This application is brought to committee because under the legislation the Council may be open to a claim for compensation.

Site Description

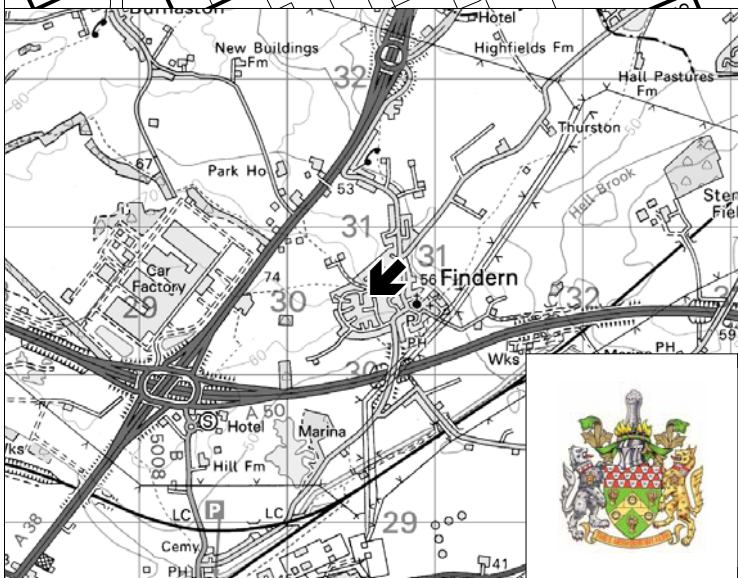
The applicant's property is a detached house of traditional brick and tile construction built in the 1970s. The house has an attached garage which was added in the late 1980s and a conservatory later still. The oak tree in question is located in the rear garden and predates the house by many decades. The tree lies some 21 metres from the garage and 18 metres from the conservatory.

Applicants' supporting information

The applicant claims that the oak is the cause of clay shrinkage and therefore subsidence damage to the property. The application is accompanied by a technical report (with addendum), a site investigation and laboratory report, an arboricultural report and level monitoring survey.

The conclusion from the reports is that whilst felling is preferred, a 30% crown reduction would be sufficient to bring about stability.

Planning History



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Records show that the original integral garage was converted to a dining room and a replacement garage added in 1982. A further extension to the garage was authorised in 1986. Permission under the Building Regulations was granted in both cases. However, there is no record of any permission for the erection of the conservatory.

Responses to Consultations

The Council's Tree officer states that this is a fine example of an English Oak and one of the few remaining trees predating the developed area. It has a high Conservation value (allied to insects and lichen) and gives it monetary value in excess of £50,000 (using the CAVAT method).

He reports that the proposed crown reduction to mitigate subsidence is flawed; quoting the results of the ODPM sponsored research undertaken by HortLINK at East Malling Research (Hipps 2004), which shows that pruning within arboricultural industry guidelines is ineffective in controlling water use. That research clearly demonstrates that only a crown reduction of over 70 per cent by volume, which equates to a 35 per cent crown reduction, has any effect and then it is for one season only and that the reduced tree uses more water in the following season to sustain the shoot extension and epicormic growth, with the new shoots growing more rapidly and producing larger leaves.

In summary, he questions why other remedial measures have not been considered such as root pruning, a root barrier or an alternative civil engineering solution as these are seen to offer a longer term solution without impact adversely on the trees existing amenity value.

Responses to Publicity

None

Development Plan Policies

The relevant policies are:
Local Plan: Environment Policy 9.

National Guidance

NPPF Paragraph 17 and Chapter 11.

Planning Considerations

The main issue central to the determination of this application is whether the proposed work should be undertaken (to the detriment of the tree) because of past and future damage suffered by dwelling.

Planning Assessment

National and local planning policy favours the safeguarding of trees of amenity value which can be exercised through the tree preservation legislation.

In order to come to a view on the future of the tree, a report has been commissioned from a specialist Consulting Structural Engineer which concludes that: "... movement to the rear of the garage is seen to be minimal and that to the conservatory at 3.2mm over the period of monitoring is more significant but not great. It is also noted that the prevailing weather conditions during the monitoring period were not particularly dry and as such actual shrinkage of the founding strata has likely been restricted during 2012. The primary cause of movement is seen to be root induced volume change of the founding clay strata and the oak tree ... the prime contributor. However, the oak tree predates the construction of the property and later conservatory and therefore consideration of its impact should have been taken in deriving the foundation solution at the time of construction. Looking ahead, some seasonal movement could be expected to affect the conservatory and to a lesser extent the rear of the garage. Removal of the oak would ease progression of potential damage and in time net heave may result as ground recovers, however at 20 metres distant we would not expect this to unduly affect the property."

In such circumstances where the main dwelling itself is not claimed to be in jeopardy, and the fact that the reduction proposed may not resolve the stability issues, there can be no justification for overriding the community benefit gained from the tree in its present form. Although not volunteered by the applicants, it is considered that remedial measures (including those mentioned by the tree officer) should be considered in preference to the crown reduction and should prevent any further damage.

Recommendation

REFUSE permission for the following reason:

1. This oak tree is protected by Tree Preservation Order No 359. Having regard to the provisions of Environmental Policy 9 of the adopted South Derbyshire Local Plan and 'Tree Preservation Orders' (the Blue Book) that seeks to protect trees and woodland of high amenity value, the Local Planning Authority is not prepared to sanction the pruning works proposed here as it is unlikely that a 30% crown reduction will provide a long term solution to the ground stability concerns whilst having a damaging impact on the health and wellbeing of this excellent specimen, of significant age and prominence in the area. In this location it has the prospect of at least 100 years of life remaining given its current condition.

Item 2.2

Reg. No. 9/2013/0196/FO

Applicant:
Mr & Mrs Philip Mason
142 Doles Lane
Findern
Derby
DE65 6BA

Agent:
Mr Jeff James
Montague Architects Ltd
9 Vernon Street
Derby
DE1 1FR

Proposal: **OUTLINE APPLICATION (ALL MATTERS EXCEPT FOR ACCESS TO BE RESERVED) FOR THE ERECTION OF DETACHED DWELING AND GARAGE WITH ASSOCIATED ACCESS AT ADJACENT TO 142 DOLES LANE FINDERN DERBY**

Ward: **WILLINGTON & FINDERN**

Valid Date: **13/03/2013**

Reason for committee determination

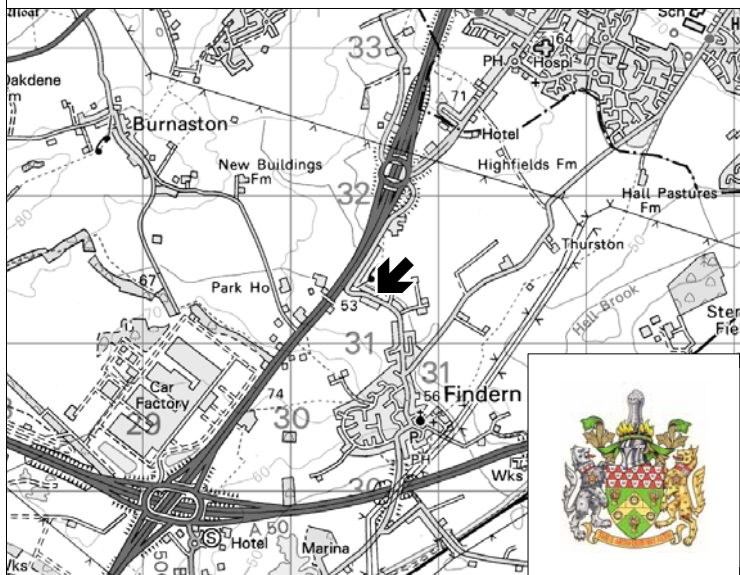
This item is reported to the Committee at the request of Councillors Ford and Hood on the grounds there are special circumstances that Members need to take into consideration.

Site Description

The site forms one half of the residential curtilage to 142 Doles Lane, which in itself is the last property in a continuous ribbon of development to this side of the highway. To the southern side of the road is a similar ribbon, ending a short distance beyond this property. The land is generally flat with a slight slope away from the highway, and is surrounded by mature hedgerow and trees to the eastern boundary, mature but well trimmed hedgerow to the highway boundary, and further planting along a watercourse at the rear boundary. A number of small outbuildings exist on this site with some of the land used for a vegetable patch.

The existing house is a large extended detached dwelling of 1940s origin. Traditional materials are used. A further hedgerow divides the intended site from that which will be retained with number 142, with this hedgerow turning to a post and panel fence to the front portion of the plot, leading towards the highway. Doles Lane carries a 40mph speed restriction with a footway on the southern side, whilst the footway on the northern side ends at number 142. Open fields lie to the east and north beyond the confines of the site.

9/2013/0196 - Land adjacent to 142 Doles Lane, Findern, Derby DE65 6BA



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Proposal

The proposal is in outline, with all matters reserved except for access which is to be considered under this application; for the erection of a single two-storey dwelling with garage and associated access.

Applicants' supporting information

The applicant is supported by the following documentation:

- Design and Access Statement – March 2013.

The Design and Access Statement reflects the site description above and considers this part of Findern to have a distinctly “suburban” character. It details that a separate drive will be provided to the dwelling with suitable visibility in either direction, as detailed on plans originally received; and identifies possible conflict with saved policy H6 of the Local Plan for which the Planning Statement is provided to address this.

- Planning Statement – February 2013.

The Planning Statement identifies that pre-application advice outlined the conflict with saved policy H6, with it being the last dwelling in the ribbon of properties. Whilst noting it lies beyond the village confines, they consider the site to be in a sustainable location, close to the village, which in itself is on the outskirts of Derby, and close to the A50 and A38 links. The village and site benefit from regular bus services, with the nearest stop some 100 metres distant. There are a range of services within the village, such as shops, a pub, village hall, a post office, church and other facilities; with schools and colleges in nearby settlements.

The statement goes on to outline save policy H6 in detail, with particular focus on the supporting text to that policy. It recognises the proposal does not comply with the policy, but considers there are material circumstances which lead to a conclusion that the proposal causes no additional harm. They note that the Preferred Growth Strategy 2012 (PGS) envisages some 5,506 dwellings on new sites needs to be found in the next 20 years, with also a need to accommodate housing that Derby City cannot provide within its own confines. This proposal is considered to add to that housing stock, with it harmonising with the local character and streetscene as an extension to an established community and ribbon development. They pose that it is for the Council to demonstrate a harmful consequence that outweighs the sustainable benefits of the scheme. Discussion then moves to the National Planning Policy Framework where they consider the proposal to benefit from particular support in that the lawful use of the garden sets an existing character and the provision of a dwelling upon it would have no harm to the open countryside.

The applicant then moves to provide an assessment of the proposal. That discussion is incorporated into the assessment below.

Planning History

9/2003/0469 – Erection of a two-storey rear extension – granted 10 June 2003.

Responses to Consultations

The County Highway Authority raised an initial objection on the grounds that the submitted layout plan depicting visibility splays did not properly reflect the position and width of highway verges and adjacent hedgerow, such that it was uncertain as to whether visibility could be achieved without crossing third party land. Subsequent discussions between the applicant and Highway Authority officers has resulted in an amended access solution – that is to share the existing access to number 142 and improve the visibility in an easterly direction by removing hedgerow fronting the site.

Severn Trent Water has no objection and has no comments to make.

Responses to Publicity

No responses have been received although any late representations will be reported to Members at the meeting.

Development Plan Policies

Local Plan: Housing Policies H6 and H11, and Transport Policy 6

National Guidance

National Planning Policy Framework (NPPF): Paragraphs 14, 17, 32, 39, 49, 55, 123, 186, 187, 215

Planning Considerations

The main issues central to the determination of this application are:

- The principle of development
- Access and highway safety
- Likely impact on neighbouring amenity and ability to achieve a satisfactory layout and design

Planning Assessment

It is first necessary to establish the status of Local Plan policies in so far as they are relevant to this application. The NPPF was published in March 2012 and has now taken “full effect” in that where policies are considered to be out-of-date, the presumption in favour of sustainable development applies (paragraph 14 of the NPPF). However attention is also given to paragraph 215 of the NPPF which allows the Council to give due weight to relevant policies in the Local Plan according to their degree of consistency with the NPPF. In brief the more “in sync” Local Plan policies are with NPPF policies, the greater the weight that can be attributed to them.

The Principle of Development

Particular attention is given to paragraph 49 of the NPPF which highlights that relevant housing policies should not be considered up-to-date if a five-year supply of deliverable housing sites cannot be demonstrated – presently the case in South Derbyshire. The presumption in favour of sustainable development would therefore normally apply. However paragraph 14 makes particular note that planning should not be granted where

"specific policies...indicate development should be restricted". Paragraph 55 does just that, recognising that isolated homes in the countryside should be avoided unless there are special circumstances.

There is some argument as to whether this proposal is actually isolated. The NPPF fails to provide guidance on exactly what is "isolated". It is acknowledged there is merit in the location, with it outlined above there are key services and facilities within reach. Nevertheless it can be equally viewed as isolated by way of it not being considered as part of the allocated village confines under the Local Plan. The applicant argues that it is not an isolated location and draws attention to a recent appeal decision to the opposite end of this ribbon of development. The Inspector considered that site not to be isolated *"...because of its position within this line of development"*. On face value this would infer the application site should be acceptable too. However the Inspector's statement follows a previous paragraph where he also concluded that the proposal was infill, for the purposes of Housing Policy 6. This results in the use of the word "within" in the above quote. In applying this to the application site, there are material differences. The key is that it is not *within* a line of development, and does not represent infilling (see below). Attention also needs to be given to the part of paragraph 55 that states *"unless there are special circumstances"*. Whilst a slightly lower "bar" than the "very special circumstances" expected under Green Belt policy; special circumstances infers a higher test than material considerations, and the use of "unless" means it must meet that test.

The NPPF provides a list of suggested special circumstances, including circumstances already reflected in Local Plan policies – notably Housing Policies 7 and 8; but none are applicable here.

Local Plan Housing Policy 6 offers a further special circumstance. That is the *"infilling of a small gap...within small groups of houses...in keeping with the scale and character of the settlement"*. The combination of the words emphasised strongly infer there must be existing houses either side, and that the character of the settlement is important in establishing how large the gap can be. When having regard to the ribbon form along Doles Lane, and the size of respective plots, the gap between 142 and 118 is out of keeping with the character of the settlement such that this is not infilling. Properties to the southern side of the highway are not considered to provide sufficient "framing" to otherwise alter this opinion. Members will be aware of recent items presented to the Committee where discussion and resulting decisions have focussed on similar points.

In light of the above there is conflict with local and national policy, and points towards refusal of the proposal in principle. Nevertheless the applicant provides counter opinion; and regard needs to be had to other material factors. To alter the opinion reached, other material considerations will need to outweigh the reason for refusal, either individually or collectively to a degree to constitute special circumstances.

The housing needs for South Derbyshire are only considered to afford modest weight given the wider sustainability benefits arising from this development will be limited (i.e. the economic benefits would be limited and it will not materially decrease the need for large housing allocations elsewhere, thus providing an environmental benefit by reducing the level of greenfield land which needs to be built upon). Indeed there would be a need to travel to meet employment, education and health needs for occupants of this dwelling. There would be a degree of harm brought about both in terms of allowing further, albeit limited, encroachment into the countryside out from existing built form. This harm also has wider ramifications if to be accepted – potentially leading to harm on

a much greater scale. Members may wish to consider how, in allowing this, they would resist sequential applications adjacent to the proposed dwelling all the way up to number 118 (and beyond towards Findern). Indeed this would allow the more sustainably located and served ribbons of development across the District to extend until they meet some other constraint – whether it be policy based or another ribbon or settlement. Hence whilst a policy harm per se, the effect of relaxing this policy on this occasion would likely have a considerable degree of harm in the long term. As such the harm arising here is considered to be greater than the benefit of providing just a single dwelling from the much larger strategic need.

As the land concerned forms part of the existing residential curtilage, regard is given to the effect of both extending number 142 and to replacing it. The applicant's planning statement alludes to a side extension and multiple outbuildings being possible without permission, and this is not disputed. However minimal weight is attached to this on the basis that it could only be single storey development, any total of built form would unlikely be comparable to that of a new dwelling, and moreover there is no evidence of an intention to pursue this (i.e. a Lawful Development Certificate and that it represents a reasonable alternative to achieving the desired development).

In terms of creating a replacement to number 142 on the site before, then seeking an infill between that new number 142 and 144; Housing Policy 8 requires that the dwelling be on substantially the same site as the old – clarified as substantially the same footprint as the original. In this light an application to "move" 142 across to the application site would likely be refused. It is also argued that as the land is domestic curtilage, that it should be the preferred location for new housing. This status does not necessarily mean that the site is acceptable for development in principle, with NPPF paragraphs 53 and 55 supporting this stance.

The applicant argues that the site is well screened by way of vegetation to the eastern boundary. Notwithstanding that this boundary does offer considerable screening, there would be an inevitable balance to be struck when constructing the proposal and ensuring appropriate standards of living for prospective occupiers. The likelihood is that some of this boundary would need to be reduced in height, thus suppressing any perceived benefit it presently affords. Conditions are not considered reasonable in enforcing the retention of the hedgerow to this height given it, combined with the proposed and existing dwelling, would lead to northern facing windows always being in shade. In any case, it is not considered appropriate in planning terms to "hide" development that is considered unsuitable in principle.

A further appeal decision at another local authority has been advanced. This has been reviewed and there are considered to be key differences between the proposals. In any case each proposal must be assessed on its merits, not on the basis of previous planning decisions, and that is the case here.

Access and highway safety

Initial concerns related to the ability to achieve visibility splays from the access in an easterly direction. A mature hedgerow sits close to the carriageway edge, limiting views for drivers leaving the proposed site. Moreover to achieve the visibility, third party land would be required along with extensive or total removal of hedgerow along the length of the splay.

Amended plans now propose to provide a connection to the existing driveway within the curtilage of number 142 and utilise the existing access. This would result in the removal of the hedgerow fronting the site, but only requires cutting back of the hedgerow fronting the adjacent field. The County Highway Authority has reviewed these revised proposals and now raises no objection subject to conditions.

Likely impact on neighbouring amenity and ability to achieve a satisfactory layout and design

With the proposal in outline, consideration needs to be given to whether the site is sufficient to hold an additional dwelling without adverse impacts. There is sufficient width to hold a single detached dwelling and it can be positioned so to still achieve suitable parking and turning space. In terms of amenity impacts, there is unlikely to be a loss of privacy to other properties. However consideration is given to a ground floor side-facing window at number 142. This could be regarded as a secondary window to a habitable room allowing a closer proximity, and any eventual detailed designs of the proposed dwelling could likely account for this in a satisfactory manner.

None of the other matters raised through the publicity and consultation process amount to material considerations outweighing the assessment of the main issues set out above.

Recommendation

REFUSE permission for the following reason:

1. The proposal is considered to represent a new dwelling in an isolated location, bringing about harm to the open countryside by way of encroachment beyond the existing envelope of built form and setting an undesirable trend that could be repeated in the locality and across the District. When having regard to whether special circumstances exist, either collectively or individually, none of those set out in the National Planning Policy Framework (NPPF) are considered to apply. When having regard to Local Plan policy, the proposal does not represent infilling within an existing group of houses, instead this site being on the end of an existing group. Whilst the provision of a single dwelling contributes to the rolling five-year housing supply and there is some screening which assists in limiting the visual impact of the proposal; collectively there are not considered to be wider sustainability benefits or special circumstances which outweigh the degree of harm brought about. The proposal is therefore considered to be contrary to saved Housing Policy 6 of the South Derbyshire Local Plan and paragraph 55 of the NPPF. Notwithstanding this refusal the Council has worked proactively and positively with the applicant to overcome highway issues and in an attempt to overcome the above matters, such that it has complied with paragraphs 186 and 187 of the NPPF.

2. PLANNING AND OTHER APPEALS

(References beginning with a 9 are planning appeals and references beginning with an E are enforcement appeals)

Reference	Place	Ward	Result	Cttee/Delegated
9/2012/0460	Willington	Willington/Findern	Dismissed	Delegated
9/2012/0659	Aston	Aston	Dismissed	Delegated



Appeal Decision

Site visit made on 2 April 2013

by **M J Single DipTP, MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 April 2013

Appeal Ref: **APP/F1040/A/12/2186595**

Homeware, 45 Beech Avenue, Willington, Derby, DE65 6DB

- 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 Barry Henry against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0460 dated 28 May 2012 was refused by notice dated 11 September 2012.
 - The development proposed is change of use from hardware shop to a hot food takeaway outlet.
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Decision

1. The appeal is dismissed.

Main Issue

2. I consider there to be one main issue in this appeal, namely the effect of the proposal, in respect of odour emission, on the amenities and living conditions of the occupiers of adjoining dwellings.

Reasons

3. The appeal property comprises a shop unit at the end of a parade of commercial units each with two floors of residential accommodation above. A previous appeal was dismissed in December 2011 with the Inspector concluding that potential noise emissions could be addressed by the imposition of planning conditions. Whilst I note that third parties continue to express concern at the potential for noise and disturbance to nearby residents in the evening the Inspector considered that there was no substantive evidence that the limited opening hours proposed would lead to material harm. I see no reason to come to a different conclusion on these matters.
4. That appeal failed essentially on two grounds, the first being the unacceptable visual impact of an external flue on the end gable of the shop. This would be overcome in the present proposal by the provision of an internal flue taken up through the flat above to a flue pipe on the roof. This would not exceed the height of the building and would be visually acceptable. However, that appeal was also dismissed because of the Inspector's concern that odours cannot be readily controlled by the imposition of planning conditions, as odours may escape through the shop door and any windows. Furthermore, he found that extraction equipment is rarely totally effective in eradicating odour emissions. Whilst this may not

be a particular problem where a proposal is sited within a town or district centre I consider there to be a difference where a proposal relates to an isolated shop within an entirely residential area. The appeal site is within a residential estate some distance from the village centre. It is bounded on all sides by dwellings and in such a location I consider these to be potentially more susceptible to odour emissions that they have not previously experienced

5. Policy S3 of the adopted South Derbyshire Local Plan supports shopping proposals provided they would not affect the amenities of neighbouring properties. A considerable number of objections have been received from residents of the estate. In my experience of such proposals, even where extraction equipment cannot give total protection, odours dissipate very quickly and I am satisfied that the presence of the premises would not have a harmful effect on all of the residents that have expressed concern.
6. The appellant submits that the proposal has been amended by the incorporation of an internal entrance lobby and that further filters could be fitted to the extraction system. The former is not shown on drawing no.2/11 submitted with the appeal which still shows a single door to the customer area. Further filters may assist but the additional information supplied by a specialist provider indicates that this would neutralise 95% of odour. Whilst I acknowledge that this would give a significant level of protection there remains, in my judgement, a very substantial risk that the proposed use would lead to unacceptable odour nuisance to those residents living in the immediate vicinity, above the adjoining shops and on the opposite sides of Beech Avenue and Oaks Road. This could be a very real issue and potential source of nuisance in such a location, particularly when the door would inevitably be kept open on warm days, common practice with Class A5 uses.
7. Response and reaction to odour is a subjective matter, and the introduction of a potential new source of smell into the midst of a residential area, with neighbouring properties very close, could lead to local residents being materially affected by even a very small escape of odour. This is not an exact science and much depends on the effectiveness, and regular maintenance of the equipment and the changing of filters. Even with modern extraction systems some fumes may be emitted and, in this village location, may be particularly noticeable and cause detriment to nearby residents.
8. In my judgement there would be a risk that the proposal would lead to an adverse impact on the amenities, and living conditions of the occupiers of adjoining dwellings, by reason of the emission of odours, even if these may be largely, but not entirely, eliminated by the proposed extraction system. Adjoining dwellings are in close proximity and I consider it appropriate to take a precautionary approach to this matter. I conclude, in this regard, that this would be contrary to one of the aims of Local Plan Policy S3 to safeguard residential amenity.

Martyn Single

INSPECTOR



Appeal Decision

Site visit made on 9 April 2013

by B Doward BSc BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 April 2013

Appeal Ref: APP/F1040/D/13/2191799

9 Maple Drive, Aston on Trent, Derbyshire, DE72 2DG

- 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 Simon Pitt against the decision of South Derbyshire District Council.
 - The application Ref 9/2012/0659/FH, dated 31 July 2012, was refused by notice dated 6 November 2012.
 - The development proposed is an extension.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The planning application subject of this appeal sought consent for the proposed extension. The Council considers that the development would be permitted but it is concerned that the work would be in close proximity to two protected trees. However, whether or not planning permission is required is not a matter for me to determine in the context of an appeal made under Section 78 of the Town and Country Planning Act 1990. It is open to the appellant to apply for a determination under sections 191/192 of the Act, to determine this matter, and any such application would be unaffected by my determination of this appeal. I have determined the appeal on the basis of the development on the planning application.

Main issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the area, particularly in relation to the health and long term future of two protected lime trees.

Reasons

4. The appeal property is a relatively modern detached dwelling on an estate of similar dwellings. A significant feature of the estate is the belt of trees, subject to a Tree Preservation Order (TPO), which runs through it forming an established landscape element and contributing to its character and appearance. Two protected lime trees are located to the side of the appeal property, one in the front garden and the other in the rear garden. They are substantial in size and make a significant and positive contribution to the appeal site and to the character and appearance of the wider area, in near and more distant views from within the estate.

5. The appellant has submitted an Arboricultural Survey Report and Method Statement which indicates that both trees are considered to be of moderate quality and value, including public visual amenity value and, as such, should be considered for retention. It also indicates that both the trees are in the middle third of their life span. The tree in the front garden is in a fair condition, whilst the tree in the rear garden is in a fair/poor condition and is now declining, although it still has a life expectancy of between 10-20 years.
6. Measures are proposed to protect the roots and the canopies. However, the proposed single storey side extension would be built under parts of the canopies of both trees and within their root protection areas (RPAs). Consequently, I am not convinced that significant damage to the roots could be avoided. This is particularly so given that the appellant considers that the use of special foundation design, as detailed in the Arboricultural Survey Report and Method Statement, which would limit excavation within the RPA and thereby minimise root damage, would not be appropriate. Given the potential for damage to the trees it is likely that the health and survival of the trees would be prejudiced.
7. The current occupiers of the dwelling appreciate the trees for their amenity value. However, the proposed extension would be in close proximity to the trees. This would be likely to lead to problems associated with shading to the windows on the proposed extension, possible damage from branch whipping and tree roots, tree litter and honey dew drop. I recognise that the Tree Preservation Order provides statutory control over the trees. Nonetheless, I remain unconvinced that these problems would not, over time, lead to pressure from the occupiers or future occupiers to fell or lop the trees which would be difficult to resist. Should this occur, the contribution that the trees do and could continue to make to the character and appearance of the area would be significantly diminished or lost altogether.
8. The extension would provide increased space for a growing family and a youth group which is run at the dwelling as well as providing ground floor living accommodation for the care of elderly parents. However, this does not outweigh my findings that the proposed development would be harmful to the health and long term future of the two protected lime trees, thereby causing material harm to the character and appearance of the area. Accordingly, it would be contrary to Environment Policy 9 of the South Derbyshire Local Plan May 1998 which presumes against development which would lead to the loss of areas of woodland or specimen trees of value to their landscape setting. In this respect it would also be contrary to the core planning principles of the National Planning Policy Framework that planning should contribute to conserving and enhancing the natural environment and take account of the character of different areas.
9. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed

Beverley Doward

INSPECTOR