



# Appeal Decision

Site visit made on 2 December 2008

by **J S Morris BA, DipTP, MPhil, MRTPI**

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

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**Decision date:**  
**13 January 2009**

## Appeal Ref: APP/J0540/A/08/2080100

### 95 Thorpe Road, Peterborough, PE3 6JQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr P Maycock against the decision of Peterborough City Council.
- The application Ref 08/00602/OUT, dated 28 April 2008, was refused by notice dated 26 June 2008.
- The development proposed is the erection of a single dwelling (outline).

## Decision

1. I dismiss the appeal.

## Procedural Issues.

2. The application was submitted in outline with the principle, access, layout and scale to be determined at this stage. I have dealt with the appeal on this basis as these are the issues identified on the application form, although in various correspondence the appellant has indicated that the layout could be altered. I have however considered the appeal on the basis of it being for a bungalow as it is clear from correspondence that the proposal was changed from a split level dwelling to a bungalow prior to consideration by the Council.

## Reasons

3. The main issues are the effect of the proposed development on;
  - 1 the character and appearance of the area,
  - 2 the living conditions of the occupiers of the proposed and neighbouring dwellings, and
  - 3 wildlife including protected species

### *1 Character and Appearance.*

4. The appeal site is part of a large rear garden containing a substantial number of trees. One of the trees in the appeal site, a large horse chestnut, is the subject of Tree Preservation Order (Peterborough City Council (95 Thorpe Road, Peterborough) Tree Preservation Order No. 8 1987). To the south is a watercourse that adds to the almost rural character of the area. To the west are other similarly large and wooded gardens. To the east are the rears of four

- more recently built dwellings. The appeal site is thus at the boundary of two areas of significantly different character.
5. I consider that being at the boundary between an area that has a remarkable sense of rural tranquillity within a busy urban area, and a more typical urban area, makes this a sensitive site. The combination of a substantial number of large mature trees forms a very important element of the character and appearance of this area.
  6. Although the appeal site can not be seen in public views from Thorpe Road, it would be visible from the rear of a significant number of houses and their gardens on Thorpe Road, Fairmead Way and Riverside Gardens. The visibility of the site from the rear of many of these houses is increased by the substantial slope running from Thorpe Road down to the watercourse at the ends of the gardens.
  7. The proposed development would be for a bungalow set within a treed area of the garden and partially obscured from views from nearby dwellings and gardens by trees and other landscaping.
  8. The proposal would not affect the protected horse chestnut and the majority of trees would be retained. However the proposed removal of some of the trees, even though these are in poor condition, would make the proposed location of the building more visible from the rears of neighbouring properties on Thorpe Road.
  9. The combination of the size of the footprint of the proposed development, the separate garage building to the front, the nearness of the western elevation to the garden boundary along with the loss of trees to the north would give the appearance of a building intruding into a tranquil wooded area.
  10. While I consider that the appropriate use of landscaping could mitigate the intrusive appearance of the development to some degree, the size of footprint and its proximity to the western boundary would still result in a development that is too visually intrusive to effectively create the transitional character between the smaller and harder urban gardens to the east and the larger, wooded garden areas to the west.
  11. While the appellant has indicated that they would be willing to move the siting of the proposed dwelling, it is not clear that this would involve a reduction in the footprint of the proposed buildings and without this it would not be feasible to move the dwelling far enough from the western elevation to avoid the harm I have identified above. In any event I have dealt with the application on the basis that it was submitted.
  12. I therefore conclude that the proposed development would conflict with those aspects of policies DA1, DA2 and DA6 of the Peterborough Local Plan (First Replacement) adopted in July 2005 (LP) that require tandem and other development to respect the character and appearance of the area.
  13. I do not however consider that the area can reasonably be described as adjoining the countryside and therefore do not consider that it would conflict with LP Policy LNE4.

## 2 *Living Conditions*

14. The Council has argued that the proposed dwelling would provide inadequate living conditions for its occupiers due to the extent to which the garden, as well as the dwelling, would be overshadowed by existing trees including the large chestnut tree which is the subject of the TPO. The appellant's arboricultural report identifies that the whole of the appeal site would be within the shadow footprint of existing trees. While the proposed removal of some trees, mainly to the north of the appeal site, would reduce the effect of shadowing, the whole of the southern elevation would still be affected by shade. It may be possible to design dwellings that though overshadowed make the maximum use of available natural light sources to ensure a satisfactory level of natural day and sunlight. However in the particular circumstances of this case I consider that it would be impractical to produce a design that would provide a reasonable level of natural daylight and sunlight to the southern elevation without further removing trees, possibly including the tree subject to the TPO, and this would be harmful to the character and appearance of the area and to the tree that is the subject of the TPO.
15. The design and access statement has indicated that windows would not be provided in either the east or west elevations to protect the living conditions of the occupiers of neighbouring dwellings. The provision of appropriate landscaping to the north of the site, so as to reduce the impact of the proposed development on the character and appearance of the area, would be likely to exacerbate the problems of natural light reaching the north elevation of the house possibly to the extent that it would not be possible to design the dwelling in such a way that it had adequate natural day and sunlight.
16. The proposed garden would still be substantial in size and there would be the potential for access to a reasonable quality of amenity space to both the north and south of the building albeit heavily shaded. However, this could well create future pressure to remove trees from the site. While the tree that is the subject to the TPO could be protected others would not be so protected. Any further loss of trees would be damaging to the character and appearance of the area.
17. The appellant's arboricultural report indicates that the proposed development would not impact on the root protection zone for the tree and the Council has not challenged this. I consider that the proposed development would not in itself lead to harm to the protected tree. However the degree of overshadowing to the rear of the property could lead to future pressure to remove the protected tree. While I do not consider this threat to be strong enough in itself to be a reason to refuse the appeal it adds to my concerns about the impact on the character and appearance of the area.
18. Concerning the impact on the neighbouring occupiers the Council has also argued that the location of the access would result in excessive noise from vehicles entering and leaving the site. While I accept that such noise would have a greater impact because of the tranquillity of the nearby rear gardens to the west, I consider that it would be possible to include sound attenuating barriers along the access and sound minimising surfaces that would reduce the

impact of such noise to an acceptable level. Such treatment could be required by a condition.

19. The occupiers of No. 6 Riverside Gardens and No 101 Thorpe Road have raised concerns about overlooking and loss of privacy. The proposed development would be a considerable distance from either of these properties and would not in my opinion result in any unreasonable level of overlooking or other harm to the living conditions of the occupiers of these dwellings.
20. I conclude that the proposed development would not be harmful to the living conditions of the occupiers of neighbouring dwellings and would not therefore conflict with those aspects of LP policies DA2 and DA6 that require development not to harm the living conditions of the occupiers of neighbouring dwellings. However I consider that without causing even greater harm to the character and appearance of the area it would conflict with the requirements of LP policy H16 that residential development should have a satisfactory standard of daylight and sunlight and a convenient area of private garden, and would thus be harmful to the living conditions of the occupiers of the proposed dwelling.

### *3 Wildlife Including Protected Species*

21. Evidence has been provided of the existence of protected species and vulnerable wildlife in the vicinity of the site. Although provided by a nearby resident, this resident is qualified and experienced in undertaking ecological surveys. He provides details of sightings of protected and vulnerable species in the vicinity of the appeal site. I acknowledge that this evidence does not demonstrate that the protected species would necessarily be adversely affected by the proposed development. However it provides sufficient evidence to demonstrate the reasonable possibility of there being protected species in or dependent on the use of the appeal site and that they might be adversely affected by the proposed development.
22. I do not consider that the Council's suggestion of a full ecological survey being required as part of a condition would be appropriate. The results of the survey are a material consideration that should be considered in advance of the granting of planning permission.
23. Notwithstanding that the Council has not raised this issue as a reason for refusal, I conclude that the appellant has failed to provide evidence in relation to the presence or otherwise of protected species or of appropriate measures that would be taken to protect any such species. This conflicts with the requirement of Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and their impact within the Planning System* and Planning Policy Statement 9 *Biodiversity and Geological Conservation (PPS9)*, that where there is a reasonable possibility of a development adversely affecting protected species, such information be provided and its implications be assessed in advance of planning permission being granted other than in exceptional circumstances. I am aware of no such exceptional circumstances in this case.
24. I conclude that the proposed development would conflict with Circular 06/2005 and PPS9.

*Other Material Considerations.*

25. Although I have received copies of consultation responses requesting that specified amounts for particular services should be included within a S106 contribution, I have no evidence from the Council as to the specific needs that would arise as a direct consequence of this development and would not be provided without a contribution from the proposed development. In the absence of such evidence I conclude that the proposed development would not conflict with the requirements of LP policy IMP1 that infrastructure, services and facilities that are necessary, as a direct consequence of development should be secured.
26. Nearby residents have raised a large number of additional issues. These include breach of covenants, and hedge maintenance, which should if necessary be addressed through other legislation, as could the issue of disabled access to the proposed building, although this may also be considered at the detailed stage. As far as the potential for flooding is concerned I have no information that the appeal site is within a designated flood plain.

*Conclusions*

27. I acknowledge the appellant's argument that the site is in a highly sustainable area and would make better use of brown-field land as encouraged by Planning Policy Guidance Statement 3 *Housing*. However, I consider that the benefit from this aspect along with the lack of demonstrated harm to local services and lack of detriment to the living conditions of the occupiers of neighbouring dwellings does not outweigh the negative impacts identified above. These negative impacts are the harm to the character and appearance of the area, the probable harm to the living conditions of the occupiers of the proposed dwelling, and the potential harm to vulnerable wildlife and protected species due to the lack of information on the ecology of the site and any necessary measures to control the impact of the proposed development on protected species.
28. For the reasons given above and taking all other matters into account I conclude that the appeal should be dismissed.

*J S Morris*

INSPECTOR

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