
Appeal Decisions

Site visit made on 14 September 2016

by Paul Jackson B Arch (Hons) RIBA

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

Decision date: 21 September 2016

Appeal A: APP/A1910/W/16/3149377

Appeal B: APP/A1910/Y/16/3149382

Blue Court, 1 Church Lane, Kings Langley, Hertfordshire WD4 8JP

- The appeals are made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission and under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
 - The appeals are made by Mr Paul Hazell against the decision and failure to give notice of Dacorum Borough Council.
 - The application Ref 4/02578/15/FUL, dated 7 July 2015, was refused by notice dated 12 November 2015. The application Ref 4/02579/15/LBC was dated 7 July 2015.
 - The development proposed is removal of nominal section of curtilage listed wall and common ash tree. Overhaul and re-landscaping of the site.
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Decisions

1. The appeals are allowed and planning permission and listed building consent are granted for removal of nominal section of curtilage listed wall and common ash tree; overhaul and re-landscaping of the site at Blue Court, 1 Church Lane, Kings Langley, Hertfordshire WD4 8JP in accordance with the terms of the applications Ref 4/02578/15/FUL and 4/02579/15/LBC, dated 7 July 2015, and the plans submitted with them, subject to the following conditions:
 - 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
 - 2) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include materials, levels, walling, fencing and a programme. The landscaping works shall be carried out in accordance with the approved details in accordance with the agreed implementation programme.
 - 3) A replacement tree of not less than extra heavy standard size (girth 14-16 cm) shall be planted before the end of the first planting season following the felling of ash tree in accordance with details which shall have been submitted to and approved in writing by the local planning authority prior to the felling of the tree.
 - 4) The development hereby permitted shall be carried out in general accordance with the following approved plans:

MKBS467; Drawing No.01

MKBS467; Drawing No.02
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MKBS467; Drawing No.03
MKBS467; Drawing No.04
MKBS467; Drawing No.05
MKBS467; Drawing No.06
Design & Access Statement

Main Issues

2. The main issues are whether the proposed development would preserve or enhance the character or appearance of the Kings Langley Conservation Area; and the effect of the proposal on the architectural character and historic interest of Blue Court, which is a listed building at Grade II.

Reasons

3. The development plan includes the Dacorum Core Strategy of 2013 (CS) and saved policies of the Dacorum Borough Local Plan 1991-2011 (LP). CS policies CS13 and CS27 seek to protect the quality of the public realm and the quality of the historic environment. Policy CS12 says in part at (d) that important trees should be retained, or replaced with suitable species if their loss is justified. Policy 99 of the LP seeks the preservation of trees, hedgerows and woodlands; it states amongst other things that:

"Encouragement will be given to the preservation of trees, hedgerows and woodlands (including old orchards) throughout the Borough."

and

"A tree preservation order will be made to ensure the retention of visually important trees in urban and rural locations, particularly where they are threatened by development. Consent to lop or remove trees protected by a tree preservation order will not be given unless the Council is satisfied that it would be necessary to overcome a serious safety hazard, nuisance or detriment to local character. Where removal is permitted, appropriate replacements will be required..."

4. Policy 120 advises that there is a presumption against the demolition of any building that contributes to the character of a conservation area. Consent to demolish will not be granted unless it can be proved that the building or structure is incapable of satisfactory repair to ensure a continued and viable use and that replacement which satisfactorily contributes to the character of the conservation area is secured. This is relevant insofar as the retaining wall lies within the curtilage of the listed building.
5. The listed building was originally built as a substantial late Georgian detached house. It later became the Blue Court Hotel and is now offices. It lies on the corner of the High Street and Church Lane opposite All Saints Church at the southern end of the Kings Langley Conservation Area. The area north and north east of Blue Court has been redeveloped with 'The Orchard', an unremarkable estate of 20th century housing; but only the part of the estate facing the High Street lies in the conservation area. A tarmac car park lies immediately to the east of Blue Court. This and other buildings in Church Lane are within the conservation area.

6. The ash tree in question is self-sown and lies between the southernmost house in The Orchard, No. 46, and the car park. Although of substantial size (and bearing in mind the crown has been reduced recently) the tree is difficult to see from the High Street behind buildings and does not obviously contribute to its character or appearance. Although visible from Church Lane across the car park, it is closer to the modern house at No.46 than the listed building. Although within its curtilage, the architectural and historic interest of the listed building does not benefit significantly from the tree, the car park having been constructed in recent times. Its value lies in the crown that can be seen above the roof tops in longer views and from The Orchard and Church Lane. The area is generally rich in mature trees but The Orchard is lacking in this regard. For this reason, the tree is understandably held in considerable esteem by those living locally.
7. However, the tree is rooted in soil which in general terms is well above the level of the adjacent car park. A brick retaining wall, built in the 1980s when the tree would have been much smaller, has been severely damaged by its growth and is temporarily propped. The enlarging and spreading roots have raised the level of paviers in the car park in the vicinity of main drains, evidenced by two inspection chambers. The tree is in relatively good health and has not yet reached maturity; and is very likely to cause further damage in the future. The proposal is to replace the tree with a smaller, less vigorous variety in a planted bed and regularise a long standing discrepancy in the boundary line by replacing part of the brick retaining wall and erecting a new timber fence with new railings for the benefit of the occupants of No.46.
8. Whilst recognising the amenity value placed on the tree, confirmed by its designation under a Tree Protection Order in 2015, all trees need management and control for the sake of their continuing health and the amenity of nearby occupiers. The cost and inconvenience dealing with potential problems such as rebuilding nearby walls, relaying surface materials, repairing drains and continuing maintenance of the tree has to be balanced against its amenity value. In this case, the tree has established itself in a position where competing interests have subsequently encroached. Now, to allow for the future growth of the tree, new pile and beam foundations for the wall would be required which by their nature are likely to affect the health of the tree to some extent. New fence posts would also be necessary, further interfering with the root system. Given careful digging and execution, a successful outcome might be possible, as acknowledged by the appellant, but there is a significant risk to the stability and health of the tree. I give little weight to the damage to the car park surface; repairs to loose laid paviers can be made from time to time when necessary.
9. The remaining significant difficulty in this case arises in the potential for damage to sub-surface drains which lie well within the root protection area within which the major tree roots are active. Displacement of brickwork in one of the 2 inspection chambers near the tree is evident. In my view it is inevitable that root activity will pose a future risk to the on-going stability of these drains, possibly requiring major repair works and further potential damage to the root system.
10. Removal of the tree would have a temporary negative impact on the amenity of local occupiers in The Orchard, but in the meantime high quality mature trees in All Saints Churchyard on the opposite side of Church Lane would be more

visible. In time, in my view, the proposed replacement birch would provide similar amenity value to the existing ash, which is not a species of particularly high value or rarity. In saying this, I have taken account of the likely spread of 'ash dieback', but no evidence has been provided on the local prevalence of the disease. The balance lies in favour of its replacement.

Other matters

11. I have taken into account all the other matters raised including the remarks made by third parties in connection with retaining adequate access to houses at Nos. 44 and 46, the relocation of wheelie bins and the maintenance by others of land belonging to the appellant. I am satisfied on the evidence presented that the boundary line is in the location indicated by the appellants; and that in the details of the proposal, arrangements can be made to provide adequate access for the existing occupiers. A condition is imposed requiring details of the levels and materials to be used for landscaping the access.

Conclusion

12. I conclude that the limited amenity value of the ash tree in the conservation area and its very limited value in contributing to the setting and architectural interest of the listed building is outweighed by the potential for harm to its health and wellbeing that would be caused by substantial works that are necessary in a very constrained location to ensure the safety of users of the car park and to prevent damage to sub-surface drains. The replacement of the ash tree with a more suitable species will provide a similar level of amenity in time. The proposed replacement walling and fencing together with new planting including a replacement tree does not conflict with the development plan, read as a whole, but in particular the relevant aims of LP policy 99 or CS policy CS12(d). Nor would there be any conflict with the aims of the National Planning Policy Framework.

Conditions

13. Details of hard and soft landscaping need to be approved in order that the replacement wall, fencing and planting are appropriate in the curtilage of the listed building; the wheelie bin storage arrangements are adequate and the access to No. 46 is safe and of sufficient width for normal domestic purposes. A replacement tree is necessary of an appropriate size to rapidly provide a point of interest in The Orchard. The development needs to be constructed in accordance with the application drawings for the avoidance of doubt and in the interests of good planning.
14. For all the above reasons the appeal should be allowed.

Paul Jackson

INSPECTOR