

Appeal Decision

Site visit made on 16 September 2016

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 11 October 2016

Appeal Ref: APP/Q1445/W/16/3152711

2 The Conifers, Tongdean Avenue, Hove BN3 6TN

- 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 Ms N Mutawa against the decision of Brighton & Hove City Council.
 - The application, Ref. BH2015/03876, dated 26 October 2015, was refused by notice dated 26 April 2016.
 - The development proposed is the demolition of the existing house and garage and the erection of two dwelling houses and detached garages.
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was formally amended and additional information made available during its consideration by the Council, but I consider that the changes made were not such as to preclude my determination of the appeal on this revised basis. For the avoidance of doubt, in terms of siting I have made my decision on the basis of Drawing No. TA 899/11H and the amended Arboricultural Report.

Main Issue

3. The main issue is whether the proposal would preserve or enhance the character or appearance of the Tongdean Conservation Area having regard to the proposed development's effect on trees, including those covered by a Tree Preservation Order (TPO).

Reasons

4. The Council acknowledges that the principle of the replacement of the existing house with two new dwellings is acceptable but considers that the appeal scheme has had insufficient regard for the constraints imposed by the existing trees both within the site and on adjoining land. Clearly, in coming to any informed assessment as to the weight that should be given to these constraints, it is necessary to take into account not only the siting of the dwellings but also their scale and design, as all three factors are capable of affecting the relationship between the buildings and retained trees.
-

5. In this regard reference has been made by both the Council and the appellant to the relevant British Standard, B.S. 5837: 2012. This includes guidance on the necessity to take account of the future growth of trees and the need for them to be maintained; the effect of retained trees on the living conditions for the occupiers of dwellings, and a consequential potential pressure for tree removal.
6. Applying these considerations to the appeal scheme and turning firstly to House B, the more northerly of the two proposed dwellings, the Council determined the application on the information shown on Drawing No. TA 899/11G. This shows that the northern corner of the house would touch the crown of a large tree. However, amended Drawing No. TA 899/11H shows the removal of this tree for health and safety reasons and the Council accepts the validity of this requirement.
7. Notwithstanding this improvement, House B would still be close to retained trees in the northern and eastern parts of the site, with the outlook from the north facing windows of the kitchen and a bedroom particularly affected due to the proximity of the tree screen. The impact of the sense of enclosure; the limited garden space, and at least some loss of light (albeit limited because of the northward position) would all have the potential to increase the pressure from future occupiers for the removal of the trees.
8. However, of even more significance is the relationship of House A to the retained trees. In contrast to House B it is the position of the front of the proposed dwelling in relation to the trees, in particular the two Monterey Cypress now shown as being retained on the amended plans, which poses a significant constraint on the living conditions for occupiers of the dwelling.
9. These trees are located to the south west of the house in close proximity to the windows of the living room on the ground floor and the windows and balconies of the bedrooms on the first and second floors. With the combination of their very large size and dense evergreen foliage, the Monterey Cypress trees would severely restrict both the outlook from the dwelling and the daylight and sunlight it would receive to an extent that would be untenable.
10. Even if I were to accept the appellant's submission that there would be no harm to the health of these trees as a result of the dwelling's construction or any longer term adverse effects, I am satisfied that the proximity of a new large building (albeit with a slightly improved siting in the amended plans) would not be consistent with the constraints of B.S. 5837 summarised in paragraph 5 above.
11. Returning to the main issue, the combined effect of trees to be removed in any event as part of the proposal and the potential threat to the health and retention of the trees to the south west and north east of Houses A and B respectively, would be such as to at some point in the future significantly change the appearance of the site and its positive contribution to the character and appearance of the conservation area.
12. In this regard I agree with the Council's view that the substantial increase in the scale and bulk of built form, particularly at first floor and roof levels (the latter comprising a third floor of accommodation), compared to the single existing dwelling would be inappropriate for this 'backland' site. Whilst not disagreeing

with the principle of the site's redevelopment for two new dwellings, I consider that their large size, together with the siting and design of the current proposal, pay insufficient regard to the constraints of the existing trees and the harmful effects of their actual or potential removal. Accordingly, because the extent of tree cover cannot be relied on to preclude views of the unduly large houses from outside the site, the character and the appearance of the conservation area would not be preserved.

13. I also consider that the concerns of neighbours in terms of the effect of the proposal on such matters as their outlook and privacy are for the most part well founded and reinforce my reservations as to the size of the properties, including the additional bulk at first and second floor levels. Moreover, although the existing tree cover would to some extent mitigate any adverse effects, for the reasons explained this could not be relied upon in perpetuity.
14. Overall, I conclude that there would be a harmful conflict with Policies HE6, HE8, QD15, QD16 & QD27 of the Brighton & Hove Local Plan 2005 (Retained Policies 2016); Policies CP12 & CP15 of the Brighton & Hove City Plan Part One 2016; the Council's Supplementary Planning Document 06: 'Trees and Development Sites' 2006, and Government policy in Section 7: 'Requiring Good Design' in the National Planning Policy Framework 2012.
15. I have taken account of all other matters raised for the appellant but have found nothing to alter my conclusion on the main issue.
16. For these reasons the appeal is dismissed.

Martin Andrews

INSPECTOR