

Appeal Decision

Site visit made on 26 October 2016

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 10 November 2016

Appeal Ref: APP/X5990/W/16/3154461
5 Northwick Close, London NW8 8JG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Frank Hunter against the decision of City of Westminster Council.
 - The application Ref 15/03554/FULL, dated 23 April 2015, was refused by notice dated 4 March 2016.
 - The application sought planning permission for erection of rear extension at ground floor level, alterations to rear elevation and roof level windows without complying with a condition attached to planning permission Ref 11/03438/FULL, dated 14 October 2011.
 - The condition in dispute is No 1 which states that: "The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter".
 - The reason given for the condition is: "For the avoidance of doubt and in the interests of proper planning".
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Decision

1. The appeal is dismissed.

Procedural matter

2. I saw at my site visit that the rear garden of the appeal property has been developed in a manner which varies from the layout in the approved plans. The application form indicates that this aspect of the development was completed on 27 February 2015. Thus as the matter to which this decision relates is retrospective I will approach the appeal as against a refusal of planning permission under section 73A of the Town and Country Planning Act 1990 (as amended).

Background and Main Issue

3. As the appeal property's garden has been developed in a different manner to that shown on the approved plans the appellant seeks to vary Condition (1) of the original planning application in order to substitute plans to reflect the scheme as implemented. Whilst the reason for the condition given by the Council is "for the avoidance and doubt and in the interests of proper planning" the garden of the appeal dwelling is in close proximity to a sycamore tree, that
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is subject to a tree preservation order (TPO). Moreover, the appeal property and the tree are both within the St John's Wood Conservation Area.

4. Accordingly, the main issue in the appeal is whether or not the removal of the disputed condition would preserve or enhance the character or appearance of the St John's Wood Conservation Area, in terms of its effect on the protected sycamore tree at 16 Cunningham Place.

Reasons

5. Situated within the St John's Wood Conservation Area the appeal dwelling is part of a short terrace with the character of a mews. The back garden of the appeal dwelling is of modest proportions, and is bounded to the side and rear by the long back garden of 16 Cunningham Place. Brick walls mark this boundary, and immediately adjacent to the side wall, within the garden of No 16, there is a mature sycamore tree which is substantial in size, and an attractive specimen that makes a positive contribution to the visual amenity of the area, as recognized by its inclusion in a TPO. Due to its substantial size, the tree is visible from the front of Northwick Close, and in the context of other trees in gaps between buildings on St John's Wood Road, as well as in other private viewpoints, and contributes strongly to the leafy character of the conservation area, and its significance as an arcadian suburb.
6. The appeal concerns the changes to the landscaping in the garden of No 5. At my site visit I saw that impermeable pavement had been installed up to the boundary wall with 16 Cunningham Place, close to the protected tree. The submitted plans show that beneath this paving the ground level has been raised in the vicinity of the tree from the ground level that received planning approval. The drawings also show that beneath the paving there is around 100mm of lean concrete bedding mix, and beneath that a further 100mm of deep concrete footing laid over concrete bedding mix. Further into the garden there are two panels of granite setts. Submitted details show setts with a depth of 100mm, jointed with a cement and mortar mix and laid over 100mm of lean concrete bedding mix. Close to the rear of the appeal dwelling the ground level is cut away both to provide steps to access the property and a soft landscaped area abutting the boundary wall with No 16 which is bounded by brick on its other sides. A further bed for soft landscaping is provided in the corner of the side and rear boundary walls, with two more similar plots adjacent to that rear wall.
7. The above-mentioned changes to the appeal dwelling's garden are all within the root protection area (RPA) of the protected sycamore as identified in the Tom La Dell Tree Survey ('the Tree Survey') submitted by the appellant with the original planning application for the scheme. Whilst conscious of the comments in the *Arboricultural Consultant's Appeal Statement* ('the Statement') that site specific features on the ground may mean that the RPA is skewed more to the garden of No 16, I have been supplied with no updated mapping of its potential extent in line with *British Standard 5837:2012- Trees in relation to design, demolition and construction- Recommendations* ('the British Standard') paragraph 4.6.2. Moreover, whilst I have been supplied with a photograph of a trial pit adjacent to the side wall, it does not show the entire length of this wall, and some roots are visible within it. I am thus not persuaded that this conclusively demonstrates that no significant roots were present under the appeal site.

8. Given the location of the works I am mindful of the guidance contained within the British Standard, the relevant sections of which were brought to my attention by the Council. Paragraph 7.2.1 of the British Standard states that "To avoid damage to tree roots, existing ground levels should be retained within the RPA". Section 7.4 of the British Standard gives more detailed advice on permanent hard surfacing within the RPA and states that "Raising levels should be achieved by use of a granular material which remains gas- and water-permeable throughout its design life. Due to the highly alkaline leachate produced during the curing of wet concrete, concrete should not be poured within the RPA unless an impermeable liner has been installed" (paragraphs 7.4.4.4-7.4.4.5).
9. I have been supplied with no substantive details that would suggest that an impermeable liner has been used in the landscaping of the site. Moreover, the details that I have been supplied with clearly show that the materials employed are not granular and I am thus not persuaded that they would meet the British Standard in terms of either gas or water permeability. Furthermore, the ground levels have clearly been altered to a considerable degree in the RPA as plotted by the Tree Survey, both in terms of the build-up of hard surfacing and in the cutting away of ground adjacent to the rear wall. Consequently, the landscaping scheme as delivered would clearly be at variance with the British Standard in these regards, a matter to which I attach considerable weight in the overall planning balance.
10. The landscaping now in situ at the appeal site seems to have replaced a paved area adjacent to the side boundary wall with No 16, as shown in Figure 1 of the *Trees and Paving* report submitted with the application that led to this appeal. However, whilst it is unclear, the photograph seems to show a much softer landscaped edge where the garden abuts the boundary wall. A further photograph submitted with the appeal documents shows the extent of paving apparently prior to 2006, although the area immediately adjacent to the boundary wall is obscured to a considerable degree by garden furniture. Thus I am not persuaded that the site coverage of this older scheme was to the same extent as the current scheme.
11. In this regard, I am mindful of the conclusions the Statement, that there has been little change to the rooting environment of the tree as a result of the development, as the butt-joints in the pavement of the former hard surface could have filled with fines, reducing its water permeability. However, I am also conscious of the *Trees and Paving* report which suggested that the former area of paving due to the jointing employed was more permeable than the existing scheme, and that there would be a consequent reduction in water infiltration to the sycamore's roots as a result of the implemented scheme. Thus due to the nature of the photographic evidence submitted, and the contradictions between the Statement and the *Trees and Paving* document, I am not persuaded that there are no material differences between the current scheme and the previous garden surfacing.
12. I note the appellant's comments that the details of landscaping in the approved plans is limited and that the Council could have attached a condition requiring submission and implementation of a more detailed scheme. However, the plans clearly and unambiguously show that permeable surfacing would be employed adjacent to the tree, and consequently, I consider that in this regard they are sufficiently detailed.

13. Whilst to some extent the annotation on the approved plans establishes the principle of the of the cut away section adjacent to the rear of the property, I am mindful of the Council's comments in regard to possible discrepancies from the approved levels. In any event, this cut away element, when taken together with the extensive impermeable surfacing employed means that there is a significant proportion of the originally mapped RPA affected by development, which clearly was not the intention of the garden layout plan as originally submitted.
14. I note that the tree is apparently in good health currently; a matter on which the appellant and Council concur. However, I am conscious that the current hard surfacing scheme has only been installed relatively recently, and that it could take a number of years for damage to roots to manifest themselves in the health of the tree, and in these regards I am mindful of the findings of the Tree Survey, which suggest that the sycamore has a life expectancy of 40+ years. Consequently, and whilst mindful of the moderate robustness of sycamores in terms of development impacts, I am not persuaded that the current state of the tree conclusively demonstrates that the deployment of the hard landscaping has not had, or will not have, any harmful effects on the rooting environment and health of the tree. I note the comment in the statement that deployment of permeable surfacing at the appeal site would not necessarily improve the health of the tree. However, a lack of substantive evidence in this regard leads me to attach this matter only very limited weight.
15. Harmful effects to the health of the tree could lead to increased pressure to lop, top or fell the tree. These alterations could erode the sylvan character of the St John's Wood Conservation Area in the environs of the tree, which would be of harm to its significance as an arcadian suburb. The National Planning Policy Framework ('the Framework') establishes that, in respect of designated heritage assets such as conservation areas, "when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation" (paragraph 132). Whilst, given the relatively localised extent of the effects caused to the tree, I consider that it would cause less than substantial harm to the significance of the conservation area, the Framework makes it clear at paragraph 134 that "where a development proposal will lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."
16. In the current case I have no evidence before me to suggest that the changes to the garden have secured the optimum viable use of the property. Moreover, I have been supplied with details of no public benefits of the proposal, and any modest economic or social gains delivered as a result of the landscaping scheme would only attract very limited weight in the overall planning balance. Consequently, I can find no material considerations in this regard that outweigh the potential harm to the significance of the conservation area, a matter to which I attach considerable weight.
17. The development thus runs contrary to the provisions of the Framework. Moreover, due to its potential harms to the protected sycamore tree the development could be harmful to its visual amenity, and its contribution to the character and appearance of the conservation area. The landscaping scheme is thus contrary to Policy ENV16 of the *City of Westminster Unitary Development Plan* (adopted January 2007) which seeks to safeguard trees subject to TPOs

and within conservation areas and ensure that loss or damage caused as a result of development are avoided. Furthermore, through the potential harm to the tree and concomitant reduction to its amenity value the landscaping scheme has not met the statutory requirement imposed by section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 in that it could fail to preserve or enhance the character or appearance of the conservation area.

Other Matter

18. I note the appellant's comments with regard to other alterations including to the rear elevation and the roof level windows. However, as the application form focussed on the changes to the garden layout, I concur with the Council that these other alterations are not within the scope of this appeal.

Conclusion

19. The appeal scheme is contrary to the development plan insofar as the policy that has been brought to my attention is concerned. No material considerations have been advanced that outweigh this conflict. Thus for the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

G J Fort

INSPECTOR