

Appeal Decision

Site visit made on 8 November 2016

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 06 December 2016

Appeal Ref: APP/X1545/W/16/3153508

**Land adjacent to MackMurdo's, Beacon Hill, Wickham Bishops, Essex
CM8 3EB.**

- 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 & Mrs P & M Jennings against the decision of Maldon District Council.
 - The application Ref FUL/MAL/16/00330, dated 23 March 2016, was refused by notice dated 19 May 2016.
 - The development proposed is the erection of a shed (retention of).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a shed (retention of) at Land adjacent to MackMurdo's, Beacon Hill, Wickham Bishops, Essex CM8 3EB in accordance with the application Ref FUL/MAL/16/00330, dated 23 March 2016 and subject to the condition below:
 - 1) The shed shall only be used for purposes incidental to the enjoyment of the dwelling known as Mackmurdo's and the maintenance of the woodland within which the shed is located and for no other purpose (including any other purpose in Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Procedural Matter

2. The development has been carried out.

Main Issues

3. The main issues are the effect of the development on i) the character and appearance of the area and ii) the well-being of protected trees within the immediate vicinity.

Reasons

Character and Appearance

4. The appeal site is within an area of low density residential development which is characterised by large dwellings, set back from the road within spacious well
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planted grounds. The dwellings are relatively informally sited in their plots and there is an absence of a strong uniform forward building line.

5. A majority of the shed building, subject to this appeal, is situated within an undeveloped area of mature woodland. This wooded area separates the dwelling known as Mackmurdo's from the adjacent property to the west. The shed is generally well screened in relation to views from the main road at the front of the site, by an existing boundary hedge. However, the structure can be seen via gaps in the hedge, notably adjacent to the access point of the recently constructed additional driveway to Mackmurdo's.
6. Despite encroachment into the wooded area, the shed is viewed from the main road to the front against established mature planting along the southern boundary of the site. The presence of the planting serves to visually absorb the shed, ensuring that it does not appear as isolated development within otherwise open surroundings. In addition, its relatively squat form and construction in timber panelling with a dark brown coloured finish, give the shed a high quality robust yet recessive appearance, sympathetic to its woodland surroundings. Furthermore, though the shed is not sited as close to the Mackmurdo's dwelling as it could be, it does not appear at odds with the relatively loose and informal siting of buildings in the wider settlement.
7. For the above reasons the structure does not appear obtrusive within the context of its surroundings. I conclude that the shed does not result in harm to the character and appearance of the area. Accordingly it would not conflict with Policies S2, CC6, CC7 and BE1 of the Maldon District Replacement Local Plan 2005 (LP) and the National Planning Policy Framework (the Framework) which seek to promote high quality design in keeping with its surroundings, whilst ensuring that the countryside and landscape character is protected. Policy CC23 of the LP is concerned with extensions to residential gardens and is not therefore relevant to the appeal proposal.
8. The proposal would also accord with Policies S1, S8, D1 and H4 of the emerging Maldon District Local Development Plan (LDP) insofar as they seek to promote good design and sustainable development which has regard to its location and setting, protecting the character of its surroundings.

Tree protection

9. Many of the trees situated within the grounds of Mackmurdo's and close to the appeal site are subject to the protection of a tree preservation order. It is undisputed that the site of the shed encroaches within the root protection areas of at least two Oak trees.
10. A concrete slab, raised above ground level, has been constructed to support the shed. From my visit it was apparent that the building itself is positioned on a series of timber beams, presumably to allow air to circulate between the concrete and the base of the structure.
11. The guidance in BS 5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations (BS) advises that the default position should be that structures are located outside the root protection areas of trees intended for retention. However, it does not preclude development there, subject to the use of an appropriate engineering methodology.

12. With regard to hardstandings for minor structures such as sheds, the BS states that the slab should not exceed an area greater than 20% of the unsurfaced ground area within the RPA. There is no dispute between the parties that the development meets this requirement.
13. The BS also states that the development should bear on existing ground level and should not require excavation of the soil, other than the removal using hand tools of any surface vegetation. The Council raises concerns that the supporting evidence for the shed construction was provided following completion of the development and that therefore it cannot be ascertained that the correct construction methodology was utilised and that the trees will not have sustained damage.
14. I have a great deal of sympathy with the Council's position in this respect. However, I have had regard to the fact that the raised profile of the slab and positioning of the shed on timber beams would tend to indicate that the development has been undertaken to conform with the ground level and has not required intrusive excavation work. On the balance of probability, I consider it likely that the development has been carried out in conformity with the BS guidelines.
15. Whilst it would be possible to relocate the structure to an alternative position within the garden, outside any root protection areas, I am concerned that the presence of machinery and activities associated with demolishing the structure and base, albeit that this could be professionally supervised, would pose a degree of risk to the well-being of nearby trees. I therefore give some weight to this concern in my decision.
16. I conclude, on balance, that the development would have sufficient regard to the well-being of protected trees in the vicinity. Accordingly it would be in keeping with Policies BE1 of the LP, D1 of the LDP and with the Framework insofar as they seek to protect the character of the area including landscaped surroundings.

Conclusion

17. For the above reasons and having considered all other points raised, the appeal should succeed and planning permission be granted.
18. I have considered the Council's suggested condition, limiting the use of the shed to purposes ancillary to the maintenance of the woodland. However it is apparent that the shed could also reasonably be used for storage purposes in connection with the adjacent dwelling known as Mackmurdo's, without resulting in any harm to the living conditions of nearby residents. I therefore consider that the suggested condition would be overly restrictive and have altered the wording accordingly.

Roy Merrett

INSPECTOR