
Appeal Decision

Site visit made on 17 January 2017

by Mike Fox BA (Hons) DipTP MRTPI

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

Decision date: 27 January 2017.

Appeal Ref: APP/G1250/D/16/3163860
19 East Avenue, Bournemouth, BH3 7BS

- 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 Mike Jones against the decision of Bournemouth Borough Council.
 - The application Ref 7-2016-18030-H, dated 27 July 2016, was refused by notice dated 2 November 2016.
 - The development proposed is alterations, demolition of garage and erection of a single storey extension to dwelling house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would preserve or enhance the character or appearance of the Meyrick Park and Talbot Woods Conservation Area, with particular regard to any impacts on a nearby protected tree.

Reasons

3. The appeal property is a detached dwelling within a Conservation Area. The surrounding established residential neighbourhood is characterised by distinctive trees, many of which are protected by Tree Preservation Orders (TPOs). These trees contribute significantly to the character and appearance of the Conservation Area.
4. The proposed extension is located in close proximity to one of these protected trees, a mature walnut tree, about 10-12 m high, which is protected by a 1972 Area TPO. It is located about 1m from the edge of the appeal property within the curtilage of the next door house at no. 17, to the east. Although the tree is located back from the road frontage, it is nonetheless visible from the public domain, and in my judgment it contributes to the character and appearance of the Conservation Area. Some of its branches overhang the edge of the Appellant's curtilage, close to the proposed development. The Appellant's Tree Report states that there would be no damage to the roots of the walnut tree, and the Appellant points out that a trial borehole within the RPA shows no roots.
5. The walnut tree is located about 1.5m from the proposed extension, and the Council estimates that approximately 50% of its footprint would be located within the Root Protection Area (RPA) of this tree. From my own observations

and reading the Appellant's Tree Report, I agree with this estimate. I also consider, from studying the site plan and the spread of the tree¹, that it is highly likely that some of the outer branches of the walnut tree would have to be pruned in order to enable the construction of the proposed extension². Moreover, walnut trees are considered to have a poor tolerance of root loss and mechanical injury³.

6. Both main parties refer to the British Standards technical document BS5837:2012 *Trees in relation to design, demolition and construction – Recommendations*⁴, which states that the RPA indicates the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability and where the protection of the roots and soil structure is treated as a priority⁵. Both main parties agree that the walnut tree is a category B tree as defined in BS5837:2012, indicating trees of moderate quality with material conservation or other cultural value, and I see no reason to disagree with this assessment.
7. Because of the proximity of the outer branches of the walnut tree to the proposed extension, above-ground damage to the tree could also occur through the continuous whipping of the branches against the external wall of the proposed extension. Whilst this consideration, on its own, is not a reason for dismissing the appeal, it adds to my concerns about the impact of the proposal on the wellbeing of the tree.
8. Taking into account all of the above considerations, it is my view that the impact of the proposed development on the walnut tree would not conform to the standards set out in BS5837:2012, which advises that intrusion into the soil within the RPA is generally not acceptable⁶. I cannot therefore be satisfied, based on the evidence before me, including my own observation of the trial hole, that the proposed development would not have a harmful effect on the walnut tree, especially in the longer term. Consequently its loss would detract from the character and appearance of the Conservation Area.
9. The statutory requirement for development to either preserve or enhance the character or appearance of Conservation Areas⁷ is a strict test and it applies to both buildings and other land within Conservation Areas. Whilst acknowledging the Appellant's Tree Report and trial hole, I am not persuaded that there is sufficient evidence before me to conclude that the proposed development, in such close proximity to the walnut tree, would not have a harmful effect on the tree, for example in relation to incremental root growth. Also, with reference to BS5837:2012, I am not persuaded that there is an overriding justification for construction within the RPA⁸.
10. It is therefore my view that the proposal would neither preserve nor enhance the character or appearance of the Conservation Area and as such it would be contrary to the above mentioned statutory requirement. The proposal would also be contrary to policies 4.4 (development proposals in Conservation Areas)

¹ Appellant's Tree Report – Appendix 1 Plan shows extent of the RPA and spread of the tree.

² This point is accepted in Appendix 1 to the appellant's Tree Report, which refers to 'access facilitation pruning'.

³ Source: Plant User Guide, adapted from Matheny and Clark.

⁴ BS5837:2012 is a British Standards publication which gives technical advice on the likely impact of development on trees, including their RPAs.

⁵ BS5837:2012, paragraph 3.7.

⁶ Ibid, paragraph 7.2.1.

⁷ The Planning (Listed Buildings and Conservation Areas) Act 1990, Section 72(1).

⁸ BS5837:2012, paragraph 5.3.

and 4.25 (development proposals in relation to trees) of the Bournemouth District Wide Local Plan (February 2002) and policies CS39 (development in relation to designated heritage assets) and 41 (design quality) of the Bournemouth Plan: Core Strategy (October 2012).

11. The Appellant states that the walnut tree cannot be seen from the street view. Whilst I accept that the tree is not as prominent in the streetscene as those on the street frontage, as illustrated in the Appellant's photograph contained in his letter of 2 November 2016 to the Council, nevertheless the walnut tree can be seen from the public footpath and in my judgment it contributes positively to the character and appearance of the area.
12. The Appellant also states that the proposed foundations are expected to require digging to only 4cm below the existing hardcore which is in place below the block pavements, and that the dig would be by hand. However, much of the soil near the surface generally contains most of the nutrients that are essential for the tree's wellbeing, and my understanding of the emphasis in BS5837:2012 is that there have to be exceptional circumstances to justify development within the RPA of a protected tree. I am not persuaded that these exceptional circumstances exist in relation to the appeal.
13. Turning to the Appellant's concerns regarding the Council's handling of the application, these relate to procedural matters and have no bearing on my consideration of the planning merits of the case.

Conclusion

14. I find that the location of the proposed extension, about 50% of which would fall within the RPA of the protected walnut tree, would not conform to the standards set out in BS5837:2012. Taking both this and the other evidence before me into account, I am not persuaded that the proposed development, in such close proximity to the walnut tree, would be unlikely to harm the tree. The loss of the tree would in turn fail to preserve or enhance the character or appearance of the Conservation Area, contrary to statutory requirement and the development plan. No other considerations outweigh my conclusion that the appeal should be dismissed. For the reasons given and having regard to all other matters proposed, I conclude that the appeal should fail.

Mike Fox

INSPECTOR