
Appeal Decision

Site visit made on 13 January 2017

by Helen Heward BSc (Hons) MRTPI

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

Decision date: 7 February 2017

Appeal Ref: APP/Z5630/D/13/3159121

6 High Coombe Place, Warren Cutting, Kingston Upon Thames

- 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 David & Lelia Pissaro against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 16/14623/HOU, dated 16 June 2016, was refused by notice dated 11 August 2016.
 - The development proposed is described as 'Erection of part single storey, part two storey side extension to create private art studio with a swimming pool plus some family facilities'.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The proposed extension would require a Scots Pine (T23) to be removed and would extend into the root protection area (RPA) of a large mature oak (T21). Both are protected by a Tree Preservation Order (TPO).
3. T23 has basal damage and is not in good health. The Council's Arboricultural Officer raises no objection to the loss of this tree and from the evidence before me and my observations on site, nor do I.
4. Therefore the main issue in this case is the effect of the development proposed upon the character and appearance of the locality with regard to the potential effect upon T21.

Reasons

5. The property is located within a residential area characterised by large dwellings set in spacious grounds. A distinctive feature of the area is its well wooded characteristic which substantially screens built form and provides a verdant mature wooded landscape. Some roads are private and public access is limited. Nonetheless, from a nearby lane close to a golf course I observed that the canopy of this mature oak is partially visible and adds to the depth of tree coverage and the well wooded character of the locality which is of wide public benefit. Within the garden T21 is seen to stand on the edge of a lawned area. Large limbs extend out over the grassed area and the tree is a magnificent mature specimen. In these ways I find the tree makes a valuable contribution to the character and appearance of the site and locality.
-

6. The appellant's Tree Impact Assessment, June 2016 (AIA) has been prepared by TMC Arboricultural consultants and a fully qualified arboricultural consultant with over 30 years of experience. The AIA categorises T21 as B.1. A Tree Survey and Constraints Plan indicate the Root Protection Area for T21. The Arboricultural Consultant confirms it is based upon calculations for a technical minimum rooting area to cater for all possibilities, in accordance with British Standard 5837 '*Trees in relation to design, demolition and construction, 2012*' (the BS). I have no reason to doubt that the RPA shown has an area of 685m², a radius of 14.8m and is compliant with advice at paragraph 4.6.1 of the BS in these ways.
7. The appellant submits that healthy trees are generally able to withstand the loss of some roots up to a maximum of 20% of their rooting area without noticeable adverse effects.¹ That may be so but I agree with the Council that the impact of any loss for a mature fully grown tree such as this is likely to be greater than for a younger tree. Moreover, paragraph 5.3 of the BS states that the default position should be that structures are located outside of the RPAs, and goes on to state that '*however where there is an overriding justification for construction... technical solutions might be available that prevent damage to the tree(s)*'.
8. In this case the appellant is an artist and her subjects include landscapes, trees and water. A personal statement and other documents evidence her work and her close family connections to the renowned artist Camille Pissarro. They explain that art is a way of life to the appellant and her need for a variety of working spaces where she can work in a number of mediums and move freely between her home spaces and working spaces. In addition how she finds inspiration for her abstract water subjects is explained in some detail.
9. The swimming pool extension and the various spaces would be of great benefit to the appellant's artistic expression and way of life, and that of her family who have shared interests. I am assured of the appellant's love of trees and the garden, and that she intends to retain T21. However, I am not persuaded that any of these matters amount to a robust justification for why the proposed extension has to intrude into the RPA of the Oak. I am strengthened in this conclusion by a lack of evidence of what alternatives have been considered.
10. The appellant proposes a technical construction using a 'mushroom' structure for structural support. I am informed that in this way only 29% of the footprint of this structure would require standard excavation/foundations and that they would be limited to 38m² or 5.5% of the RPA.
11. The illustrated circular RPA is based on a radius calculated from the stem of the Oak and appears to accord with advice in the BS for initial plotting. Nonetheless, paragraph 4.6.2 of the BS explains that the shape of the RPA could be modified by pre-existing site conditions or other factors which could cause asymmetrical rooting.
12. The Council's Arboricultural Officer contends that in this case it would be reasonable to estimate a substantially larger area taken up by the roots of the protected trees. On my visit I observed that that the tree is at the edge of a belt of trees which extend out and along the perimeter of the garden. I also observed that the Oak has three large buttress roots with the potential to

¹ Arboricultural Advisory and Information Service, Practice Note 12, 2007 and Helliwell and Fordham 1992

extend toward the area which would be occupied by the proposed extension. From what I saw it appears that the Council's assessment is reasonable and that this is a case in which the actual RPA may well be asymmetrical and extend significantly further, into the open area of undisturbed ground under the lawn where there is likely to be less competition from other tree roots. In which case the proposal could affect a significantly larger area of T21's roots than 5.5%.

13. Section 7.5 of the BS provides advice for use of special engineering for foundations with an RPA. A drawing titled 'The Mushroom Structure' at page 36 of the appellant's Design and Access Statement (D&A) indicates additional potential flexible piling areas outside of the excavated mushroom base which might be required to stabilise the cantilevered structure. The D&A informs me that the cantilevered wings are designed to be built with very light materials to reduce the loads and that only a few additional piles might be required which would be a very flexible and minor piling scheme.
14. Paragraph 7.5.1 of the BS advises that in order to arrive at a suitable solution site specific and specialist advice regarding foundation design is taken. The D&A indicates that a Structural and Geotechnical Engineer have yet to be instructed to undertake a full assessment and that prior to construction works the scheme would be studied in conjunction with an Arboricultural Consultant. Without evidence from the results of such work, I have no way of being able to conclude whether the proposal before me would be suitable, including the extent of piling that would or would not be required and the overall effect of excavations and construction upon T21.
15. The removal of the Scots Pine (T23) would provide some room for new root growth, but from my observations the Oak is a mature tree and I expect its ability to recover from the potential significant loss of feeding and anchor roots may be limited.
16. The cantilevered section of the proposed extension which would be above ground could enable natural ventilation to be maintained, careful attention could be paid to hydrological conditions and rainwater could be collected from the roof and directed to soil under the extension in a diffused system. However, in the absence of more detailed evidence I am not persuaded that there is sufficient certainty that the proposed structure would not result in a loss of water, oxygen and nutrient levels to the roots of the Oak once covered by the extension.
17. From my observations and having studied the submitted plans I find that branches of the tree would directly overhang parts of the extension. Whilst the appellant may not intend to cut it back, I consider that the very close relationship would be likely to result in such pressure. Moreover, I note that paragraph 6.1 of the AIA indicates that '*access facilitation pruning*' would be required to provide safe access and adequate clearance from buildings. These additional concerns add further weight against the proposal.
18. I conclude that the proposed construction would potentially significantly adversely affect a significant area of the roots, and irreversibly damage the health of T21, a mature oak which is the subject of a TPO. Potential losses to limbs and branches add to these concerns and I am not persuaded that there is an overriding justification for such effects. I further conclude that the proposal would be harmful to the character and appearance of the locality and that the

proposal conflicts with Policy DM10 of the Kingston upon Thames Local Development Framework Core Strategy, 2012, with seeks, amongst other things, that trees that are important to an area are not adversely affected by development.

Other Matters

19. The appellant questions if the tree is worthy of a TPO and refers to advice in the Planning Practice Guidance on such matters. However, this is an appeal under section 78 of the Town and Country Planning Act 1990 for development and I found the tree does contribute to the character and appearance of the locality and is of public benefit.
20. It is submitted that benefits of the scheme would include construction to the highest standards of sustainability and building performance, preserving and developing the historic cultural and artistic heritage of the Pissarro family, providing a better quality of life for the family, improving accessibility within the home, creating a healthier and safer space.
21. The Council does not object to the felling of a number of other trees on the site and the scheme includes replacement and new planting.
22. The Council do not raise any other objections and the appellant has set out how the proposal satisfies development plan policies in other respects, and I have no reason to disagree.
23. I find that none of these matters add weight in favour of the proposal; rather they are neutral in effect.
24. The appellant refers to pre-application advice, but I know little of the details of that process and I have determined this appeal on the basis of the application submitted to, and the decision made by, the Council.
25. Given the potential harms I have identified and mindful of the advice in the BS to which I have referred, I am not persuaded that planning conditions would provide satisfactory safeguards.

Conclusions

26. For the reasons given, in paragraph 18 above, and having taken all matters into consideration, including concerns regarding construction traffic routes, I conclude that the proposal would be harmful to the future health of T21 and the character and appearance of the locality. Accordingly, the appeal should be dismissed.

Helen Heward

PLANNING INSPECTOR