The Planning Inspectorate

Appeal Decision

Site visit made on 10 April 2017

by Nicola Davies BA DipTP MRTPI

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

Decision date: 28 April 2017

Appeal Ref: APP/L3625/W/17/3167615
Development site at the former Frenches Club, The Frenches, Redhill RH1 2HF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Mark Hendy of Shanly Homes Limited against Reigate & Banstead Borough Council.
- The application Ref 16/02251/F, is dated 28 September 2016.
- The development proposed is two additional dwelling plots comprising two, 2-bed maisonettes with associate landscaping, vehicular access and parking.

Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The site address provided on the planning application form is different to that provided on the appellant's appeal form. I note that the Council's Statement has used the address provided on the planning application form and, for consistency, I have employed it here. From the details submitted, I am satisfied that this is a clerical discrepancy, which has not affected the understanding of any party on the location of the appeal site.

Main Issue

3. The Council failed to determine the planning application within the prescribed period. The Council has submitted a statement that sets out its grounds for refusal had they been in a positon to determine the application. The appellant's statement of case and final comments documents are consistent in that they deal with the matters raised by the Council.

4. Bearing this in mind, I consider that the main issue in determining this appeal is the effect of the proposed development on the character and appearance of the area, with particular regard to protected trees.

Reasons

5. Trees that are subject to a Tree Preservation Order (TPO) RE1141 are located along the western boundary of the appeal site. Section 197 of the 1990 Act as amended imposes a duty on the decision-maker to ensure that adequate provision is made for the preservation of trees.

6. The proposed development seeks a two storey building within an area that has been set aside as communal outdoor space within a recently constructed residential development. The Council's Tree Officer explains that the proposed development would be positioned close to a group of TPO trees identified by the Order as 'G1'. The appellant's Arboricultural Impact Assessment & Method Statement indicates this group comprises of nine trees, two of which are trees of particular visual importance as arboricultural and/or landscape features. These are a Copper Beech and a Wellingtonia, referenced as T11 and T14 respectively within the Assessment.

7. I observed that this collection of TPO trees are grouped together upon a raised bed which gives them an elevated position to that of the adjacent area of grassed outdoor space. This collection of trees has a prominent siting within the existing residential development. The Copper Beech, to the south of the group, is of considerable size with a wide canopy and large trunk. The Wellingtonia is a tall narrow tree projecting from the leafy canopy of the tree group. Collectively, these two tall trees along with the other trees of mixed species and varying heights make a significant contribution to the setting of the new development and make a considerable contribution to the verdant feel of the area. They are clearly visible to surrounding occupiers and their canopies can been seen both between existing buildings and in skyline views over rooftops. For this reason the trees are visually significant.

8. The proposed maisonette development would be positioned adjacent to this group of trees and would be within close proximity to them. I acknowledge that the footprint of the proposed building would not be within the canopy spread of the Copper Beech or the Wellingtonia. The proposed development would not encroach on the root protection area of the trees, nor would its construction directly affect these trees. Nonetheless, I consider that the orientation of the proposed residential maisonettes to the north east of the trees and the proximity of branches would have a significant effect on outlook and daylight/sunlight.

9. The trees, given their height and proximity to the proposed development would have canopies that would shadow the kitchen/living areas and bedrooms of the proposed maisonettes. This living accommodation of the dwellings would be gloomier as a result of heavy shading. It is not disputed by the appellant that shading would affect windows and internal living space at different times. However, even with the dual aspect windows, overall, due to the orientation of the proposed dwellings to this tree group, the internal living space would likely be in shadow for a large part of the afternoon and evening.

10. I note that the amenity area and landscaping could be held under the control of a Management Company. Furthermore, works to the protected trees would be controlled by the TPO. Nonetheless, due to the resulting proximity of the proposed dwellings to these trees, I consider it very likely that the Council would be under increased pressure from occupiers of the proposed dwellings for the trees to be removed or reduced in size, to reduce shading and improve light for enhanced enjoyment of their homes, which it may find difficult to resist in these circumstances despite the maisonettes having dual aspect.

11. The appellant's Arboricultural Impact Assessment indicates that the expected life of the Copper Beech and the Wellingtonia is 40 years plus and further growth of these trees is anticipated. This further supports my view that there

would be an increased likelihood of pressure for the trees to be removed or to be substantially pruned, if the development were to proceed. Either way, this would significantly reduce the visual amenity value of the trees. This pressure would not be so intense if the communal outdoor space were to remain undeveloped.

12. The applicant has drawn my attention to the single common oak tree that is subject to TPO (shown as T25 within the Appellant's Arboricultural Impact Assessment & Method Statement) and its relationship to the maisonettes that are already built. I observed that this is a large tree but it does not form part of a group like that of G1. Although I accept there would likely be some impact upon the living conditions of the occupiers of Block 6&7, as illustrated on the Appellant's supporting plan, it would not, in my opinion, have as significant an impact upon the occupants of that building and their internal habitable living space. In any event, the existence of development elsewhere does not represent an appropriate reason to find in favour of the proposal that would cause harm, or lead me to alter my findings above.

13. The applicant has advised that the conditions suggested by the Council are considered to be appropriate. However, whilst some of those suggested conditions seek the protection of the trees during construction, none would provide any meaningful measures that would overcome the issues that I have identified above.

14. For these reasons I conclude that the proposal would be harmful to the character and appearance of the area, due to its likely adverse impact on the protected trees in the long term. The proposed development would be contrary to saved Policy Pc4 of the Reigate and Banstead Borough Local Plan 2005, which seeks to protect, conserve and enhance the tree cover in the Borough, amongst other matters.

15. With regard to paragraphs 214 and 215 of the Framework, saved Policy Pc4 pre-dates the Framework but relevant policies of existing plans should be given due weight according to their degree of consistency with the Framework. Paragraph 61 of the Framework seeks to secure high quality and inclusive design and address the connection between people and places and the integration of new development in the natural environment. I consider Policy Pc4 that seeks to protect and conserve existing trees, to be in line with the integration of new development into the existing natural environment at the appeal site, therefore I give Policy Pc4 significant weight.

Other Matters

16. Paragraph 49 of The National Policy Framework (the Framework) and Policy CS1 of the Reigate and Banstead Local Plan: Core Strategy 2014 require decisions to be made with regard to the presumption in favour of sustainable development. Accordingly I have considered whether the appeal proposal would be consistent with the social, economic and environmental dimensions of sustainable development, as set out in paragraph 7 of the Framework. Paragraph 8 of the Framework specifies that these three elements of sustainable development need to be considered together and are mutually dependant and should be sought jointly.

17. I have found that the proposed development would be very likely to result in harm to protected trees placing it in conflict with the environmental dimension

of paragraph 7. Whilst the principle of residential development may be acceptable in this well-established residential area and make efficient use of land, the positive housing supply benefits of the creation of two homes of appropriate living standards that would contribute toward economic growth do not outweigh the environmental harm that I have identified above. Furthermore, having considered all of the policies drawn to my attention, the harm to trees of visual significance which would arise from the development leads me to conclude that there would be conflict with the development plan as a whole and I find the scheme would not be sustainable development.

18. Local concern has been raised on other matters, such as, the effect on the amenity space, highway maintenance and safety, design, density and covenants. It is not necessary for me to consider these concerns further as they would not lead me to alter my findings above.

Conclusions

19. For the reasons given above, I conclude that the appeal should be dismissed.

Nicola Davies

INSPECTOR