
Appeal Decision

Site visit made on 10 April 2017

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/T5720/D/17/3169757

201 Kingston Road, Wimbledon, London SW19 3NG

- 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 Ms R Webb against the decision of the Council of the London Borough of Merton.
 - The application, Ref. 16/P1889, dated 4 May 2016, was refused by notice dated 25 January 2017.
 - The development proposed is a ground floor rear side extension and a side extension to replace an existing garage.
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Decision

1. The appeal is allowed and planning permission is granted for a ground floor rear side extension and a side extension to replace an existing garage at 201 Kingston Road, Wimbledon, London SW19 in accordance with the terms of the application, Ref. 16/P1889, dated 4 May 2016, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision;
 - 2) Prior to the commencement of development full details of the facing materials to be used for the development shall be submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details;
 - 3) The development shall be carried out in accordance with the following approved plans: Series: 201KR: Drawing Nos. 02A; 05A & 06A and / or such other additional or amended plans necessary as a result of any additional procedures carried out having regard to condition no. 4) below and to paragraph 12 of this Decision.
 - 4) Prior to the commencement of development a landscaping plan showing the removal of the yew tree and its replacement with another tree shall be submitted to and agreed in writing by the Local Planning Authority. The tree replacement shall be carried out in accordance with the approved details within the first planting season following the occupation of the extensions or the completion of the development, whichever is the sooner. If within a period of 5 years from the completion of the development the tree dies, is removed or becomes seriously damaged or diseased, it shall be replaced in the next planting season with another of similar size and species.
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Main Issue

2. The main issue is the effect of the proposed extension on a mature yew tree protected by a Tree Preservation Order ('TPO'), and in the event of its future loss whether the character or appearance of the Merton (Wilton Crescent) Conservation Area would be preserved or enhanced.

Reasons

3. The appeal scheme seeks to ensure that the proposed extensions to the dwelling can co-exist with the yew tree, and therefore its felling is not actually proposed. The Council's position is that the protected yew tree and the proposed extensions to the dwelling are essentially incompatible and that at some point the tree is likely to be lost – *'there will be no harmonious or sustainable long-term relationship between the development and tree'*.
4. Notwithstanding the second tree report by 'Down to Earth' dated 2 December 2016, I am minded to agree with the Council's view that both retaining the tree and permitting the extension is not a realistic and sustainable option. That said, I note that the appeal application is a contrived position adopted by the appellant because her tree works application for the yew's felling had earlier been refused – in her view without a fair hearing.
5. On the assumption that if the development were to proceed the tree would not survive, I have considered the effect of this on the conservation area, as indicated in paragraph 2 above. The TPO was imposed on the tree because of its amenity value, but in my view this is moderate rather than good. This is because the yew's surroundings and setting have been somewhat compromised following the severance of the appeal property's original garden and the building of two houses in Kingswood Road.
6. As such, the tree can reasonably be perceived as being uncomfortably large in its constrained position in a relatively small garden and close to the appeal dwelling, with this perception emphasised by the low crown and its particularly dense foliage. A high boundary fence also obscures the lower part of the tree, and taking all these factors together I do not regard it as making a particularly significant contribution to the street scenes of either Kingston Road or Kingswood Road.
7. However, even with these points having been made, I acknowledge that the loss of a mature yew tree visible from the public realm would inevitably constitute at least some loss of visual amenity. As a result this would also cause harm to the character and appearance of the conservation area, albeit not significant. In this context the conservation area is a designated heritage asset as referred to in Section 12: 'Conserving and Enhancing the Historic Environment' of the National Planning Policy Framework 2012 ('the Framework') and the effect of the tree's loss would fall well within the category of 'less than substantial harm' as referred to in paragraph 134 of the Framework.
8. Because of this conclusion I am required as the decision-maker to consider whether the harm caused would be outweighed by the public benefits of the proposal (as indeed was the Council in refusing the application on the basis that the yew tree could be damaged or lost). In this case the appellant's family

include a child with serious disabilities and an elderly parent who also requires care.

9. The appellant has explained that the additional floorspace provided by the extensions is needed in the first instance for the parent and in due course for the child so as '*to provide semi-independent living with a level of support from me that he would be unlikely to obtain or afford elsewhere*'. I am satisfied from this and the further explanation given, including the difficulties of finding a suitable property, that without this facility the child would need far greater support from the relevant publicly funded agencies, but even then with a much reduced benefit to his welfare from being less integrated with the family.
10. There is an additional health and safety consideration in terms of the potential hazard to young children from the toxicity of the yew tree. In this case the yew tree is in a small garden and close to the house and the appellant's youngest child is only a year old. However, whilst relevant and supportive of the appellant's case, the preventative measures available and the ability to explain the dangers to children as they grow older would reduce the hazard to a level that in itself would be unlikely to warrant the tree's removal.
11. Nevertheless, taking paragraphs 9 and 10 together I am satisfied that the appeal proposal is essential for the health and welfare of the appellant's family and that in this instance this is a public benefit that outweighs the 'less than substantial' harm to the conservation area and the conflict with Policies DM O2 & DMD4 of the London Borough of Merton Sites and Policies Plan 2014.
12. I shall therefore allow the appeal and in so doing impose a condition requiring the submission of facing materials to ensure that the extension blends with the host building in the interests of visual amenity. A condition requiring the development to be carried out in accordance with the approved plans is needed for the avoidance of doubt and in the interests of proper planning. However, in this case an amended plan was prepared with the extension's corners cut off to reduce the effect on the yew tree's root system. With the tree to be removed these cut offs are no longer necessary and the appellant may wish to take advantage of the minor amendment procedures (which the Council can explain if necessary) to resolve the issue.
13. Finally, a condition requiring landscaping, including the removal of the yew tree and its replacement, will reinstate and perpetuate the amenity of the site. The species of the replacement tree and its exact position can be the subject of discussion with the Council and decided on a mutual basis of amenity and practicality.

Martin Andrews

INSPECTOR