

Appeal Decision

Site visit made on 20 April 2017

by D Cramond BSc MRTPI

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

Decision date: 16 May 2017

Appeal Ref: APP/P3610/D/17/3168653

132 Reigate Road, Epsom, KT17 3BX

- 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 D McKeown against the decision of Epsom and Ewell Borough Council.
 - The application Ref 16/01110/FLH, dated 19 October 2016, was refused by notice dated 9 January 2017.
 - The development proposed is the construction of a 2m high scalloped brick wall at the front of the property.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I use the date on the application form; the Council then requested additional information prior to registration.
3. I use the Council's description of development which is more concise than the application form.
4. The development has been partly completed; this does not alter my approach to determining the merits of the proposal.
5. The Appellants provided an Arboricultural Report produced by AP Arboriculture and dated 8 November 2016. During the course of the appeal the Council has been given the opportunity to comment on this report and similarly the Appellants have had an opportunity to consider and respond to that correspondence. I have taken all this into account in my considerations.

Main Issue

6. The main issue is the effect of the proposal on trees which are protected by a Tree Preservation Order.

Reasons

7. The appeal property is a detached two storey generously proportioned dwelling set back from the busy Reigate Road in a sizeable and established garden. This stretch of road is characterised by properties of similar scale and varied designs and a key aspect which predominates is the substantial treed frontages
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to the main road which provide an attractive streetscene of local distinctiveness. The proposal is as described above.

8. The expert arboricultural consensus is that the foundation works have significantly damaged the roots of two Lime trees and one Pine and certainly part of this damage is quite readily apparent by looking over and round the part built structure from the highway footway. The trees involved are 3 of 4 surveyed trees within the Appellants' report. That report suggests tree protection measures to assist in preventing further damage to the trees were further works to proceed. It also advocates for safety reasons that one Lime be re-pollard back to original points of pollarding (including removal of epicormic and bole growth) with the Pine being reduced by the lowest two branches on southern side of the crown by approximately 4m and a reduction to the height of tree by approximately 3m. It is further recommended that the trees be inspected again by a suitably qualified and experienced arboricultural consultant a year from the report's date. The Council agrees that this overall approach is necessary and I would not dissent.
9. The Appellants' report comments that "the damage has now largely been done and removing the wall foundation would be likely to simply cause more damage to the rooting systems of the trees". The Council does not specifically comment on that opinion. I have insufficient evidence before me to reach a firm view but would question as to whether there may be a way of removal and provision of fresh growing medium which could improve the root environment for these trees.
10. In any event I simply cannot condone the works which have been undertaken or allow this appeal simply because the wall foundations are in place. It would be reasonable to assume that there would be no prospect whatsoever of a proposal for development along the lines sought being accepted at application or appeal stage had the normal course of seeking permission before commencement been followed. The treed scene along this road is so important to its visual ambience and sylvan character that the need for direct reduction works to two trees, and the uncertainty of all their future long term health, would surely have led the decision maker to reject a wall with these intrusive foundations. The same considerations need to apply in this case. The scheme has caused unacceptable damage to trees covered by a Tree Preservation Order. I cannot support development causing this and the question of 'what happens next' is not for me to determine.
11. Policy DM5 of the Council's Development Management Policies (2015) seeks to protect and enhance the Borough's tree stock for reasons of, amongst other matters, streetscenes and public amenity. I conclude that this scheme would conflict with this policy.

Other matters

12. I sympathise with the Appellants' wish to increase the security at this property and the anxiety related thereto. I note that there was an element of confusion over the question of what scale of enclosure would be 'permitted development' and what works could be started at the site. It does appear that the Council lacked some clarity on these matters but nevertheless the Appellants and their contractors should have been cognisant of the Tree Preservation Order and the need to protect and prevent damage to tree roots by, at the very least, using foundation methodology which would minimise root disturbance. I appreciate

that there will be concern over the materials purchased and the expenditure incurred; however to be fair to all I have to determine matters as I would with a proposal which was not in situ. I have carefully considered all the points raised by the Appellants but these matters do not outweigh the concerns which I have in relation to the main issue identified above.

13. I confirm that policies in the National Planning Policy Framework have been considered; the Council's policy which I cite mirrors relevant objectives within that document.

Overall conclusion

14. For the reasons given above I conclude that the appeal proposal would have unacceptable adverse effects on trees which are protected by a Tree Preservation Order. Accordingly the appeal is dismissed.

D Cramond

INSPECTOR