

Appeal Decision

Site visit made on 24 April 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 19th May 2017

Appeal Ref: APP/J1915/W/17/3168120

7 Chadwell Rise, Ware, Hertfordshire SG12 9LA

- 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 Michael Irving against the decision of East Hertfordshire District Council.
 - The application Ref 3/16/2334/FUL, dated 15 October 2016, was refused by notice dated 22 December 2016.
 - The development proposed is one new dwelling.
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Decision

1. The appeal is dismissed

Procedural Matter

2. On the 6 January 2017, subsequent to the refusal of planning permission and prior to this resulting appeal, the Council served Tree Preservation Order (TPO) 607 (No 1) 2017 for the three oak trees T1, T2 and T3 sited along the southern boundary of the escarpment at 7 Chadwell Rise. I have had regard to this TPO, which was duly confirmed on 15 February 2017, in my decision.

Main Issue

3. The main issue is the effect the new dwelling would have on the adjacent mature trees and, relative to this, the character and appearance of the surrounding area.

Reasons

4. The dwelling is proposed within the side garden to the south of No 7; a detached bungalow at the end of Chadwell Rise. This narrow suburban road is a cul-de-sac which rises steeply up from the main road to the north and serves a small amount of sparsely arranged housing. The side garden is mainly lawn and slopes upwards quite gently to the foot of a steeper embankment which runs along the south side of No 7 and contains the three mature oaks which are now subject to the TPO.
 5. The well-vegetated embankment, with the three tall mature oak trees dominant features, provides a verdant backdrop to the housing on both sides and forms an important component of the wooded areas which interlace this attractive, low-density area of suburban development. These three oak trees consequently possess high visual amenity value and are an important part of the character and appearance of this area.
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6. In summary, the Council's concerns are that the construction of the dwelling would harm a significant amount of the root networks supporting these oak trees and its subsequent occupation could lead to pressure for them to be thinned, branches to be lopped or even removed due to the over-shadowing caused to the property. The Council now has greater control over the protection of these trees through the TPO that has been confirmed.
7. I have considered the Arboricultural Impact Assessment¹ (AIA) produced by SES which accompanied the planning application, and the further advice provided by John Cromar Arboricultural Company Limited (JC) submitted with the appeal, against the recommendations in BSI Standards Publication BS 5837:2012 *Trees in relation to design, demolition and construction* (BS5837).
8. Whilst growing in the adjacent embankment, the canopies of these three mature trees extend over a substantial part of the garden area to No 7 and would appear, from the plans submitted, to come close to the proposed dwelling and extend over small parts of it. The Root Protection Areas (RPAs) for these trees shown in the SES report would intersect with around a half of the footprint of the proposed dwelling. From my visit to the site and viewing the proximity of the trees to the proposed dwelling I find there to be reasonable foundation to the Council's concerns and reasons for refusal.
9. The RPAs assumed in the JC report have a lesser degree of overlap with the proposed dwelling. However, I accept there to be a reasonable basis for assuming this modified RPA in relation to topography and tree-mechanics, whereby trees might typically developed shorter 'prop' type roots on the downhill side and more extensive roots on the uphill side. I agree that the modified RPAs in the JC report correspond with the observations made in paragraph 2.4.1 of the SES AIA that it is likely that the majority of the significant roots are confined to the gradient of the steep embankment.
10. Nevertheless, both reports show a significant overlap of the RPAs and the built footprint of the dwelling and I have concerns with the level of detail of the arboricultural assessments and methods proposed. Although the Council has not produced detailed arboricultural evidence, I am persuaded by the landscape advice given that the default position ought to be that building works should take place outside the RPAs. This follows the advice in paragraph 5.3.1 of BS5837 which also refers to technical construction solutions that might be available that prevent damage to trees but qualifies these as applicable only where there is an overriding justification for construction within the RPA.
11. The AIA has not been based on the accurately measure topographical survey and soil assessment recommended by BS5837 which should have then underpinned a design and access statement for the development. There is no detailed evidence of the amount of land cut required to provide the dwelling proposed and the effect this would have on the root systems likely to be present in the upper soil layers within the assumed RPAs. The AIA has relied on repeating generic advice from BS5837 in respect of protection measures and assumed that special pile and beam measures for the foundations would be acceptable, without any detailed investigation of the extent of the RPAs or

¹ Arboricultural Impact Assessment – Land at 7 Chadwell Rise, Ware, SG12 9LA by Southern Ecological Solutions dated 5 September 2016.

- specific details over how the foundations for the dwelling might be designed and the development implemented without significant harm to these trees.
12. The Council had in this case provided earlier pre-application advice agreeing to the principle of an infill dwelling in this location, its appearance in the street-scene and satisfactory relationship with the general grain of development in this area. However, this would have been without prejudice to the eventual decision on a formal planning application and where the effect on the mature oak trees was subsequently found to be material consideration resulting in permission being refused.
 13. It would be an option to allow the appeal subject to a condition which requires that the development be undertaken in accordance with the tree protection measures and Arboricultural Method Statement provided. However, the close proximity of this proposal to the three oak trees, and the likely extent of their RPAs affected by the development, requires that a precautionary approach towards their protection be adopted. The Arboricultural Method Statement provided does not provide the details necessary to demonstrate that in this case the dwelling could be constructed with minimal risk to the protected trees.
 14. The trees lie to the south of the proposed dwelling and the design minimises the degree of fenestration on this elevation. Nevertheless the oak trees would be likely to restrict daylight to the main living room and bedroom window on the west elevation of the proposed dwelling and place much of its back garden in shade.
 15. Whilst the TPO provides legal protection to these trees, and future residents should be made aware of this, a dwelling in this position would be likely to result in applications to thin the tree canopies or to lop overhanging limbs. Such future applications might be difficult for the Council to resist, particularly if safety was raised as a concern.
 16. The three oak trees are a prominent feature, visible from public and private vantage points, in the surrounding suburban housing area. I am not persuaded that the proposed construction, in close proximity to these trees, would be unlikely to have a materially adverse impact on their life span and survival and not accelerate their demise. The potential loss of these mature trees, which have taken many years to reach their current size, would be harmful to the character and appearance of this area.
 17. Future occupation of a dwelling in this location would likely lead to pressure for a thinning and reduction of the canopy extent of these trees which would harm their appearance. As a consequence the proposal would conflict with Policy HSG7 of the East Herts Local Plan Second Review of April 2007 (LP) as an infill housing development within this settlement which would result in the loss of important landscape features.
 18. The scheme would not meet the aims of LP Policy ENV1 for the design of all developments to minimise loss or damage of any important landscape features and of LP Policy ENV2 to retain and enhance those that exist. The new dwelling would not satisfy the objectives of LP Policy ENV11 to ensure maximum retention of existing trees in all development proposals.

Conclusion

19. The evidence does not persuade me that the dwelling might be constructed and occupied without the likelihood of immediate or future harm to these trees. These trees contribute significantly to the attractively verdant landscaped setting of the housing in this area. Consequently this proposal would detract from the character and appearance of the surroundings and, having taken into account all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR