
Appeal Decision

Site visit made on 31 October 2017

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 27th November 2017

Appeal Ref: APP/L5810/W/17/3180451

The Malborough, 46 Friars Stile Road, Richmond TW10 6NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mrs Jane Holme (Young and Co.'s Brewery Plc) against the decision of the Council of the London Borough of Richmond-upon-Thames.
 - The application Ref 16/3220/DD01, dated 28 November 2016, sought approval of details pursuant to conditions titled as U13542 NS01 and U13544 of a planning permission Ref 16/3220/FUL, granted on 31 October 2016.
 - The application was part approved (condition U13542 NS01 –trees) and part refused (condition U13544 –soft landscaping scheme) by notice dated 6 June 2017.
 - The development proposed is the “retention of works to the rear garden including the installation of artificial grass, stone paving, the creation of a new raised patio area, like-for-like repairs to existing pergola structure and the erection of lightweight canopy structures”.
 - The details for which approval is sought are: soft landscaping scheme (condition U13544) and tree planting (replacement tree planting) (condition U13542 NS01).
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Decision

1. The appeal is dismissed and the approval of the details is refused, insofar as it relates to the soft landscaping scheme details submitted in pursuance of condition U13544 attached to planning permission Ref 16/3220/FUL, granted on 31 October 2016. The appeal is allowed and approval of details given, in so far as it relates to the replacement tree planting in pursuance of condition U13542 NS01 attached to planning permission Ref 16/3220/FUL, granted on 31 October 2016, and the associated plans and details submitted with it.

Procedural Matters

2. The application Ref 16/3220/DD01 comprised details relating to two planning conditions for a soft landscaping scheme and replacement tree planting. The Council approved the details relating to tree planting but refused details relating to soft landscaping. However, I have to deal with the application as if it had been made to me in the first instance, and therefore my consideration relates to both conditions and associated details.
3. For the avoidance of doubt, landscaping plan, drawing number 3415/103 Rev. A, is considered here in respect of the soft landscaping scheme.

Main Issues

4. The main issues are whether the landscaping details provide adequate biodiversity value, having regard to local and national planning policy, and the tree planting adequately replaces removed trees.

Reasons

5. Retrospective planning permission was granted for external works, including the replacement of lawn with artificial turf, to the rear garden of the public house under ref 16/3220/FUL. The reason for imposing the landscaping condition was to ensure that the proposed development does not prejudice the appearance of the locality and to preserve and enhance nature conservation interests.
6. Photographs show bare earth hardened patches within the original grassed lawn which is caused by use of the garden as a pub garden and the impact of large canopied trees. To discharge the landscaping scheme condition, the submitted details show raised planting beds with twenty-six Cherry Laurels to be introduced along two boundaries of the public house garden. They would be expected to mature in height at between approximately 3m and 3.5m, and in width at approximately 1.25m. Such planting is purported to increase biodiversity.
7. However, the photographs still show grassed areas, including partly overgrown areas, especially adjacent to trees and shrubs, and the original garden with grassed areas would have been extensive given its size. Furthermore, the laurel is the only species chosen and being non-native, the biodiversity value of the scheme would be likely to be limited. There is an absence of any information to prove otherwise. In this regard, the Council's Tree Officer has not elaborated on why the laurel provides nature conservation gains.
8. The laurel would provide a durable and hard-wearing species that requires less maintenance than other species. Once mature, the laurel hedge would provide a visual barrier between neighbouring properties and the public house garden. Nevertheless, there is no detailed evidence to indicate that other species providing better biodiversity benefits could not be planted whilst at the same time providing a visual barrier. It has not been demonstrated that they would be significantly more costly in their initial planting and maintenance. Therefore, these considerations do not amount to justifiable circumstances to exempt provision for biodiversity.
9. The laurel would not prejudice the character and appearance of the locality which is within the St Matthias Conservation Area, a view shared by the Council, but other species providing biodiversity benefits could equally achieve this. The original soft landscaping condition was not specific in requiring native species. However, specifying types of species would be over prescriptive and conflicting with the unreasonable test laid down within paragraph 203 within the National Planning Policy Framework. Thus, the absence of such a specific requirement does prejudice the consideration of the biodiversity.
10. In summary, biodiversity would not be maintained with the laurel planting and the loss of grassed areas. In so far as being relevant to a proposal to discharge details pursuant to a planning condition, the proposal would not be supported by policy DM OS 5 of the Council's Development Management Plan

(DMP) 2011, which amongst other matters, states that all developments will be required to enhance existing and incorporate new biodiversity features and habitats into appropriate design and landscaping schemes with the aim to attract wildlife and promote biodiversity, where possible, and that consideration should be given to the use of native species.

11. Turning to the replacement tree planting, the Appellant's Revised Tree Planting specification (ACS (Trees) Consultanting) (received by the Council 12.04.17) shows plane and lime tree species following agreement with the Council's Tree Officer. These trees would replace diseased sycamore and lime trees. Given the arboricultural views of the tree officer and the Appellant's consultant, these details should be approved in connection with condition U13542 NS01.

Conclusion

12. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed in so far as it relates to the details submitted to discharge the landscaping scheme condition and allowed in so far as it relates to the details submitted to discharge the tree planting condition.

Jonathon Parsons

INSPECTOR