The Planning Inspectorate

Appeal Decision

Site visit made on 8 January 2018

by Joanna Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 22 January 2018

Appeal Ref: APP/T0355/W/17/3179457
1 Laburnham Road, Maidenhead SL6 4DB

- 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 J Harris-Cohen of Open Property Group against the decision of Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 17/00591, dated 15 February 2017, was refused by notice dated 18 April 2017.
- The development proposed is alterations and extension to existing flats.

Decision

1. The appeal is dismissed.

Main issues

2. The main issues are the effect that the proposed development would have on:
   - The character and appearance of the surrounding area, and
   - The living conditions of the future occupiers of Flats 1 and 3, with regard to outlook.

Reasons

Character and appearance

3. The appeal site is a corner plot by the junction of Laburnham Road with Kings Grove. The appeal building includes a number of flats. At the back, there is a mostly paved courtyard, and a car park beyond it, which are side on to Kings Grove. The proposal includes a pitched-roofed 2-storey back extension that would take up much of the existing courtyard.

4. By the courtyard, the mature lime tree in the adjoining Kings Grove pavement is one of a number of street trees that make a significant positive contribution to the character and appearance of the surrounding area. Whilst the proposal would be set in a little from the street side of the existing building, due to its alignment and depth, it would be close to the side boundary with Kings Grove, and it would roughly align with the tree.

5. The local highway authority is responsible for the management of the tree, but part of its crown overhangs the site, and some of its roots may be within it. As the scale, height, form and crown spread of the tree are important to its high amenity value, and the tree's branches and roots within the site could be cut back to the boundary with the public highway without the need for consent, the

Council made the tree subject to *Tree Preservation Order 017/2017 relating to Kings Grove, Maidenhead, SL6 4DA* (TPO) on 6 December 2017.

6. The appellant's arboricultural evidence, which includes its Arboricultural Implications Assessment and Method Statement with related plans, refers to British Standard BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations* (BS 5837). BS 5837 explains that the root protection area (RPA) is a layout design tool indicating the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the tree's viability, and where the protection of the roots and soil structure is treated as a priority. The default position should be that structures are located outside the RPAs of trees to be retained. If operations within the RPA are proposed it should be demonstrated that the tree can remain viable and that the area lost to encroachment can be compensated for elsewhere, contiguous with its RPA, and mitigation measures to improve the soil environment that is used for tree growth are proposed.

7. The appellant's evidence shows the RPA as a concentric circle around the tree's main stem and it explains that where the existing building and some nearby footings encroach into the RPA this area is assumed to be unavailable for tree rooting. The nearest part of the existing rear outshoot at the appeal building appears to have been built a long time ago, so it could be assumed that the tree's roots have compensated for this. There is little to say when the footings were built or how deep they are, so the area enclosed by them may or may not be available to the tree's root system. Nevertheless, outside both of these areas the proposal would encroach into about 7% of the tree's RPA.

8. The appellant's consultant says that the tree should be able to tolerate this minor incursion into the RPA. However, a considerable proportion of the land within the RPA and contiguous with it is hard-surfaced and likely to be compacted and less permeable, being mainly within the public highway and the car park. So, nearly all of the relatively small more permeable surfaced part of the RPA is within the site. This more permeable area is important to the health and stability of the tree because it is likely to provide the optimum conditions for essential gas and moisture exchange from the tree's roots. As the public highway and car park are likely to provide less favourable conditions for rooting, this makes it all the more important to safeguard the area of more permeable surfacing within the site from development. Because the proposal would significantly reduce the scale of the more permeable surface within the RPA, it would unacceptably endanger the long term health and longevity of the tree.

9. It is argued that the boundary wall footings and the roughly parallel utilities trench in the pavement have prevented most root growth within the site. As there is little information about the depth of any boundary wall footings, as the trench should have been carried out in accordance with National Joint Utilities Group Guidelines, which seek to minimise damage to roots, and because the tree is said to appear to be in reasonable condition and good health, the appellant's consultant's views about the effect of the wall and the trench attract little weight. Previous pollarding of the tree may have increased the potential for future pruning, but there is little evidence to show that this has reduced the volume of root mass needed for the resulting crown. Furthermore, as the tree is mature, it would be less able to tolerate changes within its RPA than a younger specimen.

10. The proposal would provide more living space in some of the flats. However, this would be insufficient to provide an overriding justification for building within the RPA of the tree, and there would be no compensation for the incursion into the RPA elsewhere or mitigation measures to improve the tree's soil environment.

11. Although the tree has previously been pollarded at about 4.5 m and pruned at about 13 m, it makes an important positive contribution to the Kings Grove street scene and to its surroundings. By contrast, part of the proposal would be sited under its canopy, which would fail to allow for the tree's natural development, and crown lifting to 7 m where it overhangs the site would damage its shape. Whilst one-off pruning to allow construction could be acceptable, the frequent remedial pruning that would be needed to maintain clearance around the building would make the tree more susceptible to disease, and the reduction in its canopy would reduce its ability to remain healthy. Because the proposal would be likely to unacceptably harm the long term health and viability of the tree, the proposal would be likely to lead to its loss, which would be to the significant detriment of the character and appearance of the locality.

12. Therefore, I consider that the proposal would harm the character and appearance of the surrounding area. It would be contrary to Policy N6 of *The Royal Borough of Windsor and Maidenhead Local Plan* (LP) which aims for existing suitable trees to be retained, LP Policy DG1 which seeks to not harm the character of the surrounding area through the loss of important features which contribute to that character, and the *National Planning Policy Framework* (Framework) which aims to conserve and enhance the natural environment and to take account of the character of different areas.

Living conditions

13. Due to the siting of the proposal, the tree would be very close to the external door to the lounge in Flat 1 and a window to the bedroom in Flat 3. These rooms have other windows that would overlook the car park, but the future occupiers of these flats would be aware of the nearby tree for much of the time. Whilst a solid door would ensure that the occupiers of Flat 1 would not readily see the nearby tree from inside their home, they would be aware of its presence whenever they open the door, and from hearing the sounds of wind and rain through its branches during blustery weather.

14. The presence of the tree would be unlikely to influence the choice of most people to occupy these flats. Even so, after living close to the tree for some while, and especially after periods of high winds, due of its nearby siting, scale, form and height, some future occupiers could become apprehensive about falling branches or the possible collapse of the tree. The potential for leaves and detritus from the tree blocking gutters could be the responsibility of others. However, their inconvenience and potential slip hazards around the building could also lead to resentment of the tree.

15. Because the tree is subject to the TPO, the Council would have the powers to resist harmful works to the tree or pressure for its felling. However, because the proposal would be so close to the tree, if it were to be permitted, some future occupiers could find the tree unacceptably overbearing and oppressive. Thus, future pressure for the serious reduction or felling of the tree would be

hard to resist because the proposal would be poorly integrated with the natural environment, contrary to the Framework.

16. The street tree in Kings Grove by the front of the existing building is further from the flats than the proposal would be from the nearby tree, and most of the street trees in the nearby part of Kings Grove are much further away from the dwellings. So, they do not provide support for this harmful scheme, which has been dealt with on its merits.

17. Thus, I consider that the proposal would be likely to harm the living conditions of the future occupiers of Flats 1 and 3, with regard to outlook. It would be contrary to the Framework which seeks a good standard of amenity for all future occupants of land and buildings.

Conclusion

18. For the reasons given above and having regard to all other matters raised, the appeal fails.

Joanna Reid

INSPECTOR