
Appeal Decision

Site visit made on 3 July 2019

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal Ref: APP/M2270/W/18/3215552

Land to the rear of Fairfax Lodge, Pembury Road, Tunbridge Wells, Kent TN2 3QS

- 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 PMMR Developments Ltd against the decision of Tunbridge Wells Borough Council.
 - The application Ref 18/01835/FULL, dated 31 July 2018, was refused by notice dated 18 September 2018.
 - The development proposed is 4 x 3 bedroom semi-detached properties and associated access, parking, timber bin store and amenity space, amendment to the existing parking layout and retrospective consent for a utility building.
-

Decision

1. The appeal is allowed, and planning permission is granted for is 4 x 3 bedroom semi-detached properties and associated access, parking, timber bin store and amenity space, amendment to the existing parking layout and retrospective consent for a utility building at land to the rear of Fairfax Lodge, Pembury Road, Tunbridge Wells, Kent TN2 3QS in accordance with the terms of the application, Ref 18/01835/FULL, dated 31 July 2018 subject to the conditions set out in the attached schedule.

Main Issues

2. The main issues are the effect of the proposal on protected trees and on the character and appearance of the area.

Reasons

Trees

3. Fairfax Lodge is a former care home that has recently been converted to flats by the appellant (their phase one development). Access is from Pembury Road and leads to parking spaces at the side of Fairfax Lodge. The proposal is to extend the access into extensive open grounds to the rear of the building where the houses and new parking would be provided (phase two). The Tunbridge Wells Conservation Area includes Fairfax Lodge, Charles Court alongside it, and land to the front of these buildings fronting Pembury Road; it does not include the open land at the rear of the site. There is a long-standing Tree Preservation Order (TPO) relating to land adjacent to Pembury Road that covers mature trees on the front part of the site and adjacent sites. A more recent blanket TPO covers the whole appeal site, introducing protection to the rear part of the site where building works are proposed.

4. The proposal is informed by the appellant's tree survey, Arboricultural Impact Assessment (AIA), Arboricultural Method Statement (AMS) and proposed landscape measures. It would involve the loss of one substantive tree, several small trees, including fruit trees, and ground works close to other trees. The Council's concerns relate to 5 specified areas at the site.
5. Area 1 relates to the felling of a yew tree (T66) located about 5 metres from the south-eastern corner of Fairfax Lodge. The appellant has submitted structural surveys recommending the removal of the tree as it shades the property, is closer to the property than would be recommended for its height and may cause damage to the foundations by root ingress or to the property itself if it were to fall. However, there is no firm evidence that the yew tree has caused any structural damage to date or is likely to in the near future.
6. The AIA describes the yew as a category B tree, early mature and about 11m in height. It is located towards the northern end of a row of trees to the site's eastern boundary and has a pleasing appearance when viewed from within the development site to the south-west of the tree. However, its visibility and amenity value is significantly reduced in views from land within the conservation area to the north and east by the presence of buildings and other trees. In particular, there is a sweet chestnut tree, (category A and 18m high according to the AIA) positioned about 5m to the east in the adjacent site. This suppresses the yew to some degree encouraging growth towards Fairfax Lodge and the garden behind it. The removal of the yew would result in some loss of visual amenity within the site but there would remain a verdant appearance to the eastern boundary given the wealth of other trees. The harm arising from the loss of the tree needs to be weighed against the benefits arising from the proposal.
7. Area 2 relates to the continuation of the driveway alongside the planting to the eastern boundary. The appellant proposes a "no dig construction process" to protect the roots of nearby trees, but the Council queries this as sectional drawings show a small reduction in ground levels for the road. The new road would involve construction within the root protection areas for some trees, but having regard to the separation distances to the trees, the extent of remaining undisturbed areas and the measures proposed for the protection of the trees within the AMS, I am satisfied that the proposal would be unlikely to result in any significant harm to the trees in Area 2.
8. Area 3 concerns a concentration of trees towards the site's south-eastern corner that would cast a shadow towards the nearest house in morning hours. The AIA identifies most of these trees as Norway Spruce and whilst up to 15m in height, they have limited branch spread. The form of these trees and their separation from the nearest house would not result in excessive shading for occupiers. Any pressure from future residents to prune or fell any of these trees is likely to be directed to a management company, as the trees would not be included within the garden curtilage to the nearest house. Given the TPO, the Council would also be able to resist unreasonable requests for tree works.
9. Areas 4 and 5 are close to T11, a Lawson Cypress tree, about 16m high and prominent in views across the site. A road and turning area would be close to the tree, potentially impacting on its root protection area. However, there is evidence on site of a large hard surfaced area close to this tree relating to a former building at the site. This would not appear to have impeded the growth

or health of the tree. The protection measures highlighted in the AMS would limit the impact of work in undisturbed ground even with inclusion of the bin storage area alongside that the appellant has sought to retain within the proposal. The proposal would be unlikely to adversely affect the longevity of the tree.

Character and appearance

10. The Council's second refusal reason covers a range of issues. Their appeal statement clarifies their concern that the accumulation of these issues amounts to poor design and overdevelopment of the site. The proposal would involve rearrangement of and a reduction in parking spaces to the side of Fairfax Lodge to extend the access to the rear part of the site. Notwithstanding this, refuse and service vehicles would still pass close to the building's entrance. The retention of a small utility building on the eastern boundary would also oblige the path of traffic to be close to the building as would the proximity of trees that creates a pinch-point in the extended access. The Council also reiterate concerns about the impact on trees on the five areas specified above as indication of poor design and overdevelopment.
11. However, the Council do not object to overall parking provision given the site's location near to the centre of Tunbridge Wells. The utility building is small, unobtrusive and does not materially impact upon the appearance of the site. The pinch-point would not unduly impede vehicles entering or leaving the rear part of the site, but removal of the yew tree would ease negotiation of the pinch-point. Given the low volumes and slow speed of traffic generated by the proposal, the absence of a separate pedestrian access is unlikely to unduly impact on the safety of pedestrians along the access or those entering and leaving the entrance to Fairfax Lodge. I have examined the impact on trees in the previous section.
12. The internal layout and design of the proposed house would be satisfactory, and each house would have an adequate private garden. The retention and landscaping of an open amenity area between the houses and the back of Fairfax Lodge would ensure a pleasing mutual outlook for all occupiers. Notwithstanding the Council's concerns on the details of the layout set out in paragraph 10, my findings are that the proposal would not amount to poor design or an overdevelopment of the site and would not adversely affect the character and appearance of the area. As such it would be compatible with Policy EN1 of the Tunbridge Wells Borough Local Plan (2006) (LP) and Policies CP4 and CP5 of the Tunbridge Wells Borough Core Strategy (2010) (CS) that collectively require development to not cause significant harm to the character of an area, including the natural environment, or to the amenities of future and adjoining occupiers. There would not be conflict with Section 12 of the National Planning Policy Framework in achieving well designed places.

Other matters

13. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires with respect to any buildings or other land in a conservation area that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the area. Most of the appeal site is outside the Tunbridge Wells Conservation Area, but the access to Pembury Road and the altered parking layout and the utility building are located within it. The yew tree is close to the conservation area boundary.

14. The access to Pembury Road would not change. The changes to the parking layout and retention of the utility building would make only a minor change to the appearance of the site. The new dwellings would be positioned some distance from the conservation area and would not be readily visible from many open positions within it. The loss of the yew tree would have a negligible impact on land inside the conservation area in view of the tree's limited visibility from the north and the screening by other trees to the east. The tree does not make an important contribution to the visual amenity and setting of the conservation area.
15. As such, the proposal would not change the Arcadian nature of the surrounding conservation area or the green setting of Fairfax Lodge. It would therefore sustain the significance of the conservation area. The proposal would result in a neutral impact and would satisfy the special duty to preserve the character or appearance of the conservation area.
16. The Council cannot currently demonstrate a five year housing land supply. The presumption in favour of sustainable development at Paragraph 11(d) of the Framework is triggered and planning permission should be granted unless, *"the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed"*. Footnote 6 lists *"designated heritage assets"*, such as conservation areas, as amongst the designations in which the presumption in favour of sustainable development may not apply. However, as my findings are that the proposal would preserve the character or appearance of the conservation area, the presumption in favour of sustainable development does apply.
17. The proposal would result in 4 satisfactory dwellings in a sustainable location not far from the centre of Tunbridge Wells. This would make a small but still valuable contribution towards meeting local housing need. The harm arising to visual amenity from the loss of the yew tree would be greatly outweighed by the benefits arising from the proposal. Moreover, the removal of the tree would also facilitate improvements to a pinch-point in the access to the houses.
18. The proposal would be in accordance with LP Policy EN13 as the desirability of the proposed development would outweigh the amenity value of the protected yew tree. There would also be compliance with LP Policy EN5 as the proposal would preserve buildings and related spaces which combine to form the character and appearance of a conservation area. In view of the many retained trees and additional landscape measures the proposal would be compatible with CS Policies 4 and 9 that seek to conserve and enhance the landscape, heritage and biodiversity assets of Royal Tunbridge Wells.
19. The appellant has prepared a draft unilateral undertaking in relation to the provision of affordable housing. This would be a "top up" contribution in addition to that made in the appellant's phase one development. However, the Council have confirmed that they are not seeking a contribution to affordable housing from the current proposal. Whilst the proposal is within the same site as the phase one development, it is severable in relation to its different form and the separating distances. The proposal would be below the threshold set in CS Policy 6 and a contribution towards affordable housing is not required.
20. I have noted the representations against the proposal from residents at Patagonia House adjacent to the site. Disturbance during building works would be temporary but in my judgement the separation to the new buildings and

open parking areas would not result in a material loss of amenity for residents here. Other points raised have been addressed above.

Conclusion and Conditions

21. The proposal would have an acceptable effect in relation to the impact on protected trees and on the character and appearance of the area. For the reasons given, and having regard to all other matters raised, the appeal is allowed subject to conditions.
22. The Council has suggested several planning conditions in the event that the appeal is allowed. I have had regard to these and to the advice on conditions set out in Planning Practice Guidance. In addition to the statutory condition limiting the time period for commencement of the development, a condition is needed to list the plan numbers in the interests of certainty, for example in relation to the parking layout, and to enable submission of minor material amendments should this be necessary. A condition is also necessary to ensure that the approved layout of parking and turning areas is provided and retained to ensure the satisfactory operation of the site.
23. A condition is also necessary to approve materials to be used above ground level for the development to ensure a satisfactory appearance for the site. For the same reason, conditions are necessary to require implementation of the approved landscape measures and to protect retained trees and other significant vegetation on site during the course of building operations. In the event that contamination is discovered during building operations, a condition is needed to ensure that this is satisfactorily remediated. Finally, a condition is necessary to ensure that the ecological integrity of the site is safeguarded.
24. The Council has suggested conditions to remove several national permitted development allowances from the proposed dwellings but has not provided reasoning for doing so. The blanket removal of such allowances is contrary to guidance in Planning Practice Guidance. The size of the gardens to the houses is not so small or the relationship of the houses to other houses so close as to warrant the removal of permitted development allowances. The suggested conditions fail the test of necessity.

Rory MacLeod

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing numbers 728/PL/01 (existing block plan); 728/PL/01A (site location plan); 728/PL/02 (proposed ground floor plan); 728/PL/02A (proposed block plan); 728/PL/03 (proposed first floor plans); FL/PL/04 (proposed elevations 1 of 2); FL/PL/05 (proposed elevations 2 of 2); 728/PL/06 (proposed plan & frontage); 728/PL/07 (bin store); 728/PL/08 (section plan); 728/PL/09 (existing sections); 728/PL/10 (proposed sections); 728/PL/11 (section 4); Topographical Survey 1 of 1; 3107 & 3108 (service building); 0662 001D and 0662 002D (landscaping).

Arboricultural Method Statement dated 25/05/18

Arboricultural Survey dated 06/04/17

Arboricultural Impact Assessment dated 25/05/18

Soft Landscape Specification (Rev A) dated 12/06/18
- 3) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 728/PL/02A for cars to be parked and for the turning of vehicles. The spaces shall thereafter be kept available at all times for the parking and turning of vehicles by occupiers of and visitors to the site.
- 4) No development shall commence above ground level until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

The approved landscape scheme shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 6) All the trees and hedges shown on the landscaping plans 0662 001D and 0662 002D as "to be retained" shall be protected by strong fencing in accordance with the approved Tree Protection Plan and Arboricultural Method Statement before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority. No fires shall be lit within the spread of branches or upwind of the trees and other vegetation. No trenches for underground services shall be commenced within the Root Protection Areas of trees which are identified as being retained in the approved plans, or within 5m of hedgerows shown to be retained without the prior written consent of the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 7) If any retained tree is cut down, uprooted or destroyed or dies another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 8) Notwithstanding the submitted details, prior to the first occupation of the development an ecological enhancement strategy shall be submitted to and approved in writing by the local planning authority. The strategy shall follow the recommendations of the submitted Preliminary Ecological Appraisal dated 01/06/17, the letter from PJC consultancy regarding bat presence dated 03/07/18 and the Great Crested Newt Non Licensed Method Statement dated 17/07/18. All works shall then proceed in accordance with the approved strategy unless otherwise agreed in writing by the local planning authority.