
Appeal Decision

Site visit made on 23 July 2019

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2019

Appeal Ref: APP/R0335/W/19/3222184
177 New Road, Ascot SL5 8PU

- 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 Patrick Ruddy Homes against the decision of Bracknell Forest Borough Council.
 - The application Ref 18/00552/FUL, dated 23 May 2018, was refused by notice dated 13 December 2018.
 - The development proposed is erection of 9no. flats with associated parking following demolition of existing buildings.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Patrick Ruddy Homes against Bracknell Forest Borough Council. This application is the subject of a separate Decision.

Main Issues

- The main issue is the effect on the character and appearance of the area, with particular regard to the likely long-term effect on protected trees.

Reasons

3. The appeal site contains a vacant public house, which I understand was last used several years ago, as well as substantial areas of hardstanding. To the rear of the site and setback from New Road there is a grassed garden area that contains and is bound to its outer perimeter by various planting. This planting includes 3 trees protected by Tree Preservation Orders, which are comprised of a Scots Pine (T5) and Sycamore (T3) to the south-eastern end of the garden area and a Common Oak (T7) to the north-western end. From the evidence before me, it is apparent that the Council's objections in a tree-related context are focussed upon specimens T5 and T7.
4. T7 has been described by the Council as a landmark specimen. It was apparent from inspection that it is considerable in size and readily visible from a variety of different viewpoints. It significantly exceeds the height of the vacant public house that sits before it in the New Road street scene such that a substantial extent of its crown is widely visible. T7 is extremely prominent and makes an important contribution to the character and appearance of the area.

5. It is disputed by the main parties whether T7 should be categorised as a category A tree of high quality or a category B tree of moderate quality. The appellant has referenced epicormic growth, a thinning of the outer crown and stress indications that they consider lends the tree to be categorised as moderate quality. Whilst it is not my role to specifically categorise tree T7, I observed that it appeared to be in general good health. It exhibited a strong overall form and fresh leaf growth was evident across the tree's crown. It is clearly a specimen worthy of protection that can realistically be expected to make a long-term contribution to the area. I have considered the appeal on this basis.
6. The proposed development involves, in-part, the reconfiguration of existing hard surfaced areas on-site. These proposals include the laying of new surfacing in proximity to T7. The scheme is helpfully supported by a site coverage plan, referenced 17-J1703-106, that illustrates a direct comparison between existing and proposed areas of hardstanding. It is apparent that a part of the proposed parking court, albeit limited in extent, would be laid out in proximity to T7 and on land that is not currently hard surfaced. Indeed, these works would take place inside T7's calculated root protection area (RPA), which is set out within the appellant's revised Arboricultural Impact Assessment and Method Statement (August 2018) (the Arboricultural Assessment).
7. I acknowledge that a no-dig construction technique is proposed where hard surfacing is to be newly constructed or replaced. Cellular confinement systems would be used to create such areas, which the appellant has stated would not involve excavation nor lead to damage to tree roots through installation. It is the Council's position however that a no-dig approach simply helps to mitigate the impact of development on rooting environments and does not avoid impact altogether. The laying of a hard surface over a formerly natural rooting area will alter a tree's natural growing environment, they state. Indeed, as acknowledged in the Arboricultural Assessment, the ground conditions beneath a no-dig surface would change post-installation.
8. I accept that the resultant change in ground conditions necessitated by the installation of a no-dig surface could, when considered in isolation, potentially be relatively limited in extent and would be expected to occur over time. Whilst these changes would only occur in selected parts of the RPA, I must consider the proposal in the context of the site-specific circumstances at hand. The position of the intended works so close to the tree itself and the presence of other existing developments within the tree's RPA raises significant concerns. Indeed, it is evident that pressures have already been placed upon the tree by past developments that have occurred in its immediate proximity. These include the construction of buildings and the laying of hard surfaced areas within the RPA.
9. I do not accept that the tree's current apparent good health justifies the proposed change in ground conditions as tolerable. Indeed, as referenced by the Council's Tree Officer, the most reliable way to ensure that a tree and its soil structure take priority is to preserve its RPA completely undisturbed. From the evidence before me, I consider that the ground condition changes necessitated by the proposed works inside T7's RPA would likely compromise the long-term health of the tree. Given that T7 is such a prominent specimen that makes a valuable contribution to the character and appearance of the area, this is an important finding.

10. Tree T5 has a far more discreet presence on the site when compared to T7. Indeed, I noted from inspection that its visibility from vantage points outside of the site were far more limited. I nonetheless observed that it makes a positive contribution to the character and appearance of the area. I also noted that it appeared to be in decent health with no obvious defects and the potential for future growth.
11. The proposed building, which would contain 9 flats, is proposed to be L-shaped in footprint such that to the south-eastern side of the site the building would be located close to the site's rear garden area and where T5 is located. It is however the case that the building's position would not conflict directly with the tree, nor with its calculated RPA.
12. I acknowledge that Council has concerns that the building's position does not allow for the anticipated future growth of the tree and that this would lead to potential conflict with the building and future pressure for the tree to be removed. From inspection however, I do not consider that T5's relationship with the proposed building would be unduly close. Indeed, the separation would allow for a degree of future outward growth without any clear associated management or maintenance requirement. I also see merit in the appellant's argument that a Scots Pine tree would be expected to take a conical and narrow form.
13. I am satisfied that the proposal would be unlikely to have an adverse effect on T5, even during the construction phase when I am content appropriate and robust protection measures could be put in place without unduly impeding internal circulation arrangements within the site.
14. However, for the above reasons, the proposal would be likely to cause harm to the character and appearance of the area, with particular regard to the long-term effect on protected tree T7. The proposal conflicts with saved Policies EN1 and EN20 of the Bracknell Forest Borough Local Plan (2002) (the Local Plan) and Policy CS7 of the Core Strategy Development Plan Document (February 2008) (the Core Strategy) in so far as these policies state that planning permission will not be granted for development which would result in the destruction of trees and hedgerows which are important to the retention of the character and appearance of the landscape or townscape and that new development will be in sympathy with the appearance and character of the local environment.

Other Matters

15. The site lies in the proximity of the Thames Basin Heaths Special Protection Area (the SPA) and therefore I must consider the appeal against The Conservation of Habitats and Species Regulations 2017. These regulations require that, where the project is likely to have a significant effect on a European site (either alone or in combination with other plans or projects), the competent authority must make an appropriate assessment of the implications of the project in view of the relevant site's conservation objectives. This is consistent with the various requirements of retained Policy NRM6 of the South East Plan, Policy EN3 of the Local Plan and Policy CS14 of the Core Strategy.
16. I note from the evidence before me that the Council, in the process of determining the planning application that is now the subject of this appeal, undertook its own appropriate assessment. This ultimately identified a total

SPA-related financial contribution for the proposal of £36,395, which Natural England has raised no objection to. A completed legal agreement dated 1 August 2019, which has been signed by both the appellant and the Council, is before me which secures the relevant financial contributions set out in the Council's evidence. This has allowed the Council to formally withdraw its second reason for refusing to grant planning permission.

17. For the purposes of this appeal, I am the competent authority and must, before the grant of planning permission, undertake my own appropriate assessment prior to considering the issue of mitigation. Whilst, from the evidence before me, I have no reason to question the Council's findings with respect to the SPA, I have found the appeal proposal unacceptable for other reasons such that it is not necessary for me to pursue this matter any further as part of this decision. For the avoidance of doubt, if I had done so and a positive outcome had ensued it would not have affected the planning balance or my conclusions on this appeal.
18. I am aware that numerous objections to the proposal have been raised by interested parties to the appeal, which cover a variety of different matters including the loss of a public house/asset to the community, a potential overdevelopment of the site, loss of sunlight and effects upon highway safety and parking. However, as I have found the proposed development unacceptable for other reasons, it is not necessary for me to explore these matters further as part of this decision.
19. The appellant has highlighted several development plan policies they consider relevant to the determination of this appeal. I acknowledge that Policy CS1 of the Core Strategy promotes the efficient use of land and buildings and that Policy CS2 of the Core Strategy supports, in principle, the development of previously developed land in defined settlements. Indeed, the National Planning Policy Framework (February 2019) (the Framework) also promotes an effective use of land and states that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes.
20. I acknowledge that the proposal would deliver 9 additional residential units and that the Framework reaffirms the Government's objective of significantly boosting the supply of homes. However, the contribution of 9 dwellings, which I acknowledge would be sited on previously development land in a location well served by local facilities and services, would be relatively modest and would not outweigh the significant harm identified to the character and appearance of the area due to the likely long-term effect of the development upon a particularly prominent and important protected tree. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

21. For the reasons set out above, the appeal is dismissed.

Andrew Smith

INSPECTOR