



Appeal Decision

Site visit made on 22 July 2019

by Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 3rd September 2019

Appeal Ref: APP/K0235/W/19/3227620

Lavender Lodge, 42 Main Road, Biddenham, MK40 4BE

- 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 S Newton against the decision of Bedford Borough Council.
 - The application Ref 19/00051/FUL, dated 8 January 2019, was refused by notice dated 22 March 2019.
 - The development proposed is the erection of new dwelling, associated garage and access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of new dwelling, associated garage and access at Lavender Lodge, 42 Main Road, Biddenham, MK40 4BE in accordance with the terms of the application, Ref 19/00051/FUL, dated 8 January 2019, subject to the conditions set out at the schedule at the end of this decision.

Main Issues

2. The main issues in this case are i) the effect of existing trees on the living conditions of future occupiers; and ii) the long-term future of the existing mature trees.

Reasons

Living conditions of future occupiers

3. The appeal site is largely dominated by mature trees, including 2 fully mature Giant Redwood; these are the subject of Tree Preservation Orders (TPOs) as are 4 Yews. In terms of the effect on the living conditions of future occupiers of the proposed house, it is the Giant Redwoods that have largely dictated its siting and form. In order to keep some distance from these 2 trees and to minimize their influence on light reaching the house, it has been set into the most open area of the site, to the north of the Redwoods, and has taken on a 'Z' plan form, comprising 2 integrated wings: the northern wing being set behind and to the west of the southern wing.
4. Furthermore, the design of the proposed house includes a large amount of glazing to maximise daylight. In terms of garden amenity area, there are 2 open areas, 1 to the north of the dwelling and 1 to the west.
5. To answer the concerns of the Council, an overshadowing analysis of the

proposed development has been carried out by a specialist consultancy, using 3D computer software. This analysis assessed the daylight received by all main habitable rooms, sunlight received by windows serving living areas and sunlight received by the gardens. All rooms, apart from one bedroom, pass the daylight criterion. Trees are not the issue for the bedroom which does not meet the standard, since it falls just short even when no trees are present. It is also demonstrated that sunlight to both windows and amenity areas comfortably meets standard criteria.

6. I find this evidence compelling, since it does not rely on subjective analysis. However, the Council continues to consider that the reality is, by reason of its siting, orientation and proximity, the existing trees would have a significant adverse impact on the living conditions for the potential future occupants of the dwelling. This would be in terms of overshadowing, poor outlook to habitable rooms and heavily shaded and unsuitable private amenity areas. I see no reason to consider that there would be a poor outlook from the habitable rooms since the sitting, family and dining rooms have outlooks that are not dominated by the 2 Giant Redwoods, over what should be garden areas designed to give visual delight. The same applies to the bedrooms. The other concerns of the Council are adequately answered by the overshadowing analysis.
7. I therefore conclude that the existing trees would be unlikely to have a deleterious effect on the living conditions of future occupiers of the appeal dwelling due to overshadowing, poor outlook to habitable rooms and heavily shaded and unsuitable private amenity areas. The appeal development is therefore not in contravention of the objectives of saved Policies NE4 and BE9 of the Bedford Borough Local Plan.

The long-term future of the existing mature trees

8. The general character of the area is residential with large detached properties recessed behind vegetated front hedges and low walls, accessed by driveways, some of which are gravelled. Main Road, to which the appeal site fronts, has wide grass verges and a pedestrian footpath on the northern side. The site is within Biddenham Conservation Area. The Biddenham Conservation Area Character Appraisal and Management Plan 2016 clearly identifies that the existing trees and landscaping provide important green infrastructure and contribute to the green and tree-lined historic road system. The properties are generally set back from the road in large well established verdant plots with open spaces between buildings which create a sense of openness.
9. Therefore, from the point of view of the statutory requirement to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, the long-term future of the existing mature trees on site is of considerable importance.
10. This second issue revolves around, not just subjective analysis, but the individual sensibilities and concerns of unknown future occupiers. From my assessment of the first issue, I do not regard overshadowing and poor daylight and sunlight as being likely to lead to future threats to the trees. Relying on its experience of these matters, which I do not undervalue, the Council states that it is regularly approached by owners seeking to reduce or fell trees that are

perceived as harming the reasonable enjoyment of their property. The reasons put forward include leaf and branch drop (leading to damage to cars or slippery conditions underfoot), sap drop (due to aphid attack or other physiological conditions) damaging vehicles or property, and root damage (both to buildings and hard surfaced areas), as well as the overshadowing point that I have dealt with.

11. To a large extent, the occupiers of any building with trees within or adjacent to its curtilage may seek to reduce or fell trees for the sort of reasons quoted by the Council: it is necessary to consider the layout of the proposed development to assess the likelihood of this occurring in the present case.
12. In this case the main trees to be concerned about are the 2 Giant Redwoods and the 4 Yews since they are subject to the TPOs. I do not consider that the Yews are at risk from the problems anticipated by the Council because they are along the boundary of the site away from the proposed house and overhang areas that are likely to be little used on the appeal site, and the broad verge beyond. The exception to this is the Yew that has a small overhang to the large gravelled area providing manoeuvring and parking space where the new access enters, serving the garage. However, in my view this is unlikely to lead to any significant risk of damage to vehicles or other property, from such things as sap drop or bird droppings.
13. The Giant Redwoods are described as 'mature', although they are likely to continue to grow. However, the nature of their columnar trunk and branch spread means that they are unlikely to produce materially more overshadowing. Furthermore they are not situated in the areas of the garden that are most likely to be used for outdoor sitting, sunbathing etc. The shedding of lower branches, slowly overtime, is unlikely to cause serious damage. In my experience this only affects the area beneath the canopy. Their cones may be a slight nuisance, extending beyond the canopy, but that is unlikely to lead to a successful application for tree surgery under the TPO regime. Since the appeal is for a new building, the design of the foundations should ensure that both the integrity of the trees and the structure should not be at risk.
14. There is also concern about the Evergreen Oak in the northern corner of the site. Due to its position and relationship with the proposed dwelling it is unlikely to produce the issues that the Council highlights, such as leaf fall, as possibly leading to an application for works to address amenity issues.
15. The Council mentions that it may have difficulty in dealing with an application for work to the trees because it has published its view that there is conflict between the continued healthy existence of the trees and the presence of the new dwelling. This decision should counter that fear.
16. I conclude that the long-term future of the existing mature trees should not be put at risk by the development of the appeal dwelling and that the development would not be contrary to saved Policies H24, NE4, BE9, BE11, and BE30 of the Bedford Borough Local Plan 2002; Policies CP21, CP23 and CP24 of the Core Strategy and Rural Issues Plan 2008; and Policy AD43 of the Allocations and Designations Local Plan 2013.

Other matters

17. I have taken account of all other matters, including the fact that the appeal site is within the Biddenham Conservation Area, and that Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. My conclusion is that the character or appearance of the conservation area will be preserved or enhanced, taking that duty into account. I have also taken account of the fact that the War Memorial at the front of the site is a non-designated heritage asset. In my opinion, this and the listed buildings and their settings in the near vicinity of the appeal site, will not be harmed by the development.
18. I am satisfied that the design, size and siting of the proposed dwelling is acceptable and would reflect the size and scale of neighbouring dwellings in the streetscene and the wider locality. Nor would there be any significant impact on the living conditions of neighbouring houses. I note that the site has a function in terms of the 'Urban Open Space Area', but with the conditions that I deal with below, this function should not be jeopardised.
19. I have had my attention drawn to appeal reference 3203148; however I have not been provided with the details or its precise circumstances. In any event, each proposal must be determined on its individual merits, which my conclusions and decision address in this case.

Conclusions

I have concluded that the appeal proposal would provide suitable living conditions for future occupiers and would not be subject to undue overshadowing, poor outlook to habitable rooms or heavily shaded and unsuitable private amenity areas. Nor would the long-term future of the existing mature trees be put at risk by the development. I will therefore allow the appeal, subject to the conditions that I deal with below.

Conditions

20. A number of conditions have been suggested by the Council. I have considered these in the light of Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG I have amended some of the text.
21. The conditions are necessary for the following reasons: 2 is to provide certainty of what is being permitted; 3, 4, 6, 7 and 8 are to ensure the satisfactory appearance of the development so that the character or appearance of the conservation area is preserved or enhanced; 5 and 10 are to ensure the protection of the existing trees that are to be retained during the course of the development so that the character or appearance of the conservation area is preserved or enhanced; 9 is to ensure an energy efficient and sustainable development; 11 is to ensure a satisfactory arrangement for the parking of cycles to encourage the use of non-motorised forms of transport; and 12 is to safeguard archaeological assets within the approved development boundary from impacts relating to any groundworks associated with the development scheme and to ensure the proper and timely preservation and/or investigation,

recording, reporting and presentation of archaeological assets affected by the development

22. I have not found it necessary to impose conditions regarding a survey of existing trees etc, or a scheme for car parking, since the submitted details are sufficient.

Terrence Kemmann-Lane

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: 016:021.PA01, 016:021.PA02, 016:021.PA03, 016:021.PA04, 016:021.PA05, 016:021.PA06, 016:021.PA07, and Site Location Plan ref DE-W/Wdb 016.21.
- 3) No development shall take place, other than the protective measures around the 'Construction Exclusion Zones' shown within the Tree Survey Report written by Robert C Yates in October 2018, until there has been submitted to and approved in writing by the Local Planning Authority a scheme of landscape works, which shall include details of the following:
 - a) Planting proposals giving location, species, number, density and planting size.
 - b) Areas of grass turfing or seeding and other surface materials.
 - c) Details of all hard works, paving materials, etc.The no-dig driveway should be installed at the same time as the tree protection fencing to reduce the impact of activities within the Root Protection Area of the protected trees.
- 4) All planting, seeding or turfing comprised in the approved details of landscaping 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; and 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.
- 5) The development shall adhere to the Tree Survey Report written by Robert C Yates in October 2018.
- 6) No development above ground floor slab level shall take place until full particulars of the external materials to be used (to include walls, roof, doors, windows and external gutters and pipework) have been provided for inspection (on site where possible) and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details or particulars.
- 7) No development above ground floor slab level shall take place until a sample panel of masonry using the bond, mortar and jointing/pointing proposed has been made available on site for inspection by the Local Planning Authority and approved in writing. The development shall thereafter be carried out in accordance with the approved details and the panel shall be retained on site during building works as a reference for the new masonry.
- 8) No development above ground floor slab level shall take place until detailed drawings of the windows and doors have been submitted to and

approved in writing by the Local Planning Authority. Such drawings shall include sections showing the position of the window/door in relation to the face of the wall, depth of reveal together with arch and sill details. The development shall thereafter be implemented in accordance with the approved details or particulars.

- 9) The building shall not be occupied until an energy statement has been submitted to and approved in writing by the Local Planning Authority relating to the building. The energy statement shall include:
 - a) an assessment of the actual effect on carbon dioxide emissions demonstrating the measures previously set out in the approved Sustainability Statement have achieved a reduction of at least 10% in carbon emissions below the normal requirement set by the Building Regulations.
 - b) A statement of how the layout, orientation, design and materials used in the development have actually been influenced by the approved Sustainability Statement.
- 10) Notwithstanding the submitted details, no development shall take place other than the protective measures around the 'Construction Exclusion Zones' shown within the Tree Survey Report written by Robert C Yates in October 2018, until all the details of the junction of the proposed vehicular access with the highway have been submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the junction has been constructed in accordance with the approved details.
- 11) No development shall take place above slab level until a scheme for cycle parking (with access thereto) in accordance with Bedford Borough Council's Parking Standards for Sustainable Communities: Design and Good Practice 2014 has been submitted and approved in writing by the Local Planning Authority. The approved scheme shall be implemented and made available for use before the development is occupied and the cycle parking areas shall not thereafter be used for any other purpose.
- 12) No development shall take place, other than the protective measures around the 'Construction Exclusion Zones' shown within the Tree Survey Report written by Robert C Yates in October 2018, until an archaeological strategy for evaluation and if necessary, a further mitigation strategy based on the outcome of the evaluation, have been submitted to and approved in writing by the Local Planning Authority. The archaeological mitigation strategy shall include a timetable and the following components (the completion of each to the satisfaction of the Local Planning Authority will result in a separate confirmation of compliance for each component):-
 - (i) fieldwork and/or preservation "in situ" of archaeological remains;
 - (ii) a post-excavation assessment report (to be submitted within six months of the completion of fieldwork);
 - (iii) a post-excavation analysis report, preparation of site archive ready for deposition at a store approved by the Local Planning Authority, completion of an archive report, and submission of a publication report (to be completed within two years of the completion of fieldwork).The archaeological mitigation strategy shall be carried out in accordance with the approved details and timings.