



Appeal Decision

Site visit made on 2 September 2019

by Adrian Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/A5840/W/19/3222212

32a Penton Place, London SE17 3JT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms Ebele Muorah against the Council of the London Borough of Southwark.
 - The application Ref 18/AP/2723, is dated 16 August 2018.
 - The development proposed is extension to studio flat.
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Decision

1. The appeal is dismissed and planning permission for extension to studio flat is refused.

Application for costs

2. An application for costs was made by Ebele Muorah against the Council of the London Borough of Southwark. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal results from the Council's failure to determine the planning application within the prescribed period. Since the appeal was submitted the Council has indicated that had it been in a position to determine the application it would have refused planning permission. The Council's appeal statement refers to concerns over the effect of the proposed development on the living conditions of other residents in the block in respect of their use of and access to the communal garden, and also in relation to the extension's style and integration with the surroundings.
4. A Tree Preservation Order (TPO) was placed on a Lime tree within the appeal site during the course of the Council's consideration of the application and has subsequently been confirmed.
5. Interested parties made a number of comments during the course of the application, including in relation to the effect that the proposed development would have on the communal garden area, trees, and the character and appearance of the area. I have drawn on these concerns, together with the other evidence before me, to inform the main issues in this appeal.
6. Interested parties also made reference to a Walworth Neighbourhood Plan. However, the Council has recently clarified that whilst there is a designated

Neighbourhood Area and Forum, there has been no formal draft plan submitted for consultation, and therefore, I cannot afford it any weight in the appeal.

7. The application was subject to minor fenestration revisions during the course of consideration by the Council and the appeal was made with the amended plans. I am satisfied that no party would be prejudiced by my consideration of the amended scheme, and I have determined the appeal on that basis.

Main Issues

8. In light of the above, I consider that the main issues in this appeal are the effect of the development on:
 - i) the character and appearance of the host building and area,
 - ii) trees; and
 - iii) the living conditions of neighbouring residents, with particular regard to garden space and outlook.

Reasons

Character and appearance

9. The appeal property is a ground floor flat within an L-shaped, pitched roof, two-storey building with dormer roof accommodation. It is part of the wider Alberta Estate. The buildings of the Alberta Estate are of uniform scale and appearance, arranged in a regular pattern around communal access paths and a mixture of both private and communal gardens with small pitched roof outbuildings. All of this combines to create a strong visual coherence and pleasant verdant setting within what is otherwise a generally dense residential environment.
10. The Southwark Council 2015 Technical Update to the Residential Design Standards Supplementary Planning Document 2011 (SPD) sets out the standards of design expected for all forms of residential development in Southwark. Among other things, it requires extensions to existing dwellings to harmonise with the architectural style of the original building and to read as if it were a part of the original dwelling in order to successfully integrate with the surroundings. The aims of the SPD are consistent with the design aims of the National Planning Policy Framework (the Framework) and therefore I give it significant weight.
11. The single storey extension would project approximately 5.3m from the existing porch, which would be considerable in the context of the overall length of the garden and unaltered character of the block. The flat roof design of the extension would not be in keeping with the design and form of the host building and there is no indication that it would have a 'green roof' as suggested in one of the representations; not that a 'green roof' would have rendered it acceptable in any event. The overall scale and lack of architectural subtlety in the design of the extension would result in a bulky and discordant addition to the host building.
12. Given its siting to the rear, the views of the extension would primarily be from neighbouring properties and Berryfield Road to the south west. As such, the effect would be reasonably localised, but it would, nevertheless, diminish the uniform and cohesive character of the host building and immediate area in an

unacceptable manner and thereby cause harm to the character and appearance of the area.

13. I conclude, on this issue, that the development would by reason of its design and scale, cause unacceptable harm to the character and appearance of the host building and surrounding area. This would be contrary to the SPD in this regard. It would also be contrary to paragraph 127 of the Framework, which seeks to ensure new development is visually attractive and adds to the overall quality of the area.

Trees

14. The extension would be constructed in very close proximity to a Lime tree at the end of the garden, which is protected by a TPO, and would also necessitate removal of an unprotected Bay tree within the garden.
15. The Bay tree is small and has limited visibility so its loss could be suitably mitigated by replacement planting within the garden. However, the Lime tree is a large specimen of over 15m in height. Both of the appellant's tree reports assess this tree as Category B with no serious defects and a life expectancy in excess of 30 years.
16. The Lime tree can be seen from Penton Place to the north east, Berryfield Road to the south west, and from the surrounding properties. Despite being heavily pruned in the past, its size and visibility makes a significant positive contribution to the distinctive verdant character of the Alberta Estate and therefore warrants its TPO status. With a life expectancy of 30+ years it has the potential to add to the quality of the area for a long time to come.
17. The tree reports acknowledge that the extension would be constructed within the Root Protection Area (RPA) of the Lime tree. The estimated incursion ranges from between 12% and 14% in the reports. Pile and beam foundations have been recommended to avoid roots being severed, along with protective fencing and ground protection to prevent damage during construction.
18. However, even if a pile and beam foundation design were used, the construction process would still be likely to cause significant disturbance within the RPA. I also note that there would be no working space between the end of the extension and protective fencing, thereby increasing the risk of the protection not being retained and construction damage occurring. Furthermore, even if the construction were carried out carefully, there is still the potential in the future for roots to undermine the foundations of the extension and damage the structure of the building.
19. The default position in section 5.3 of BS 5837:2012 is that structures should be located outside of RPAs, and only where there is an overriding justification for construction within the RPA should technical solutions be considered to prevent root damage. I have not been provided with such an overriding justification for the proposed extension to be taken into the RPA.
20. Furthermore, above ground, there would be a requirement for regular pruning of overhanging branches and the extensive epicormic growth away from the end bedroom window to prevent shading and also damage to both the building and tree, thereby placing a considerable maintenance burden on the occupant. However, even with such works, the outlook from the end bedroom window would always be dominated and shadowed as a result of the proximity to the

tree. BS 5837:2012 advises that such factors should be taken into account in the design process to maximise the chances of successful tree retention.

21. Therefore, notwithstanding the technical construction solutions suggested, the construction of the proposed extension so close to the protected Lime tree and within its RPA, would be likely to result in damage to its root system and to the extended property, with consequent harm to the long term health of the tree, and potentially leading to its eventual removal to the detriment of the character and appearance of the area.
22. I conclude, on this issue, that the development would have an unacceptable effect on the long term health and retention prospects of the protected Lime tree. This is contrary to Southwark Core Strategy 2011 (CS) Strategic Policy 11 (Open Spaces and Wildlife) where it aims to protect trees and improve the greenness of places.

Living conditions

23. From the information before me, it appears that the appeal site formed part of the communal gardens, but is now in private ownership. The appellant keeps the gate locked and the fence shown on the drawings has already been erected to fully enclose the land and prevent public access onto and through it to the remaining communal garden. According to the Council and other interested parties, there is no other access to the communal garden, except for the adjoining ground floor flat. That is consistent with my observations during my site visit and I have no evidence to the contrary.
24. However, there is nothing before me to suggest that the fence does not benefit from permitted development. Furthermore, there has not been any change of use, as regardless of whether the garden is used privately or communally, its use remains a garden. Therefore, even if I were to accept that the other residents of the flats were being deprived of something they should have access to, it is a matter to be resolved by other means through private law rather than through the planning process.
25. Whilst the extension itself would result in the loss of garden space, it would not be on a large scale and there is no evidence before me to demonstrate that this would leave the communal garden, or the appeal property, with insufficient remaining garden space.
26. Furthermore, the extension, in terms of its siting and scale, would not have an overbearing effect on the outlook of the other flats, and given the small proportion of overall garden area that it would occupy, I do not accept this change in character would be harmful to the outlook of the other neighbouring residents in that respect.
27. Therefore, I conclude on this issue, that the extension would not be harmful to the living conditions of neighbouring residents, having particular regard to its effect on garden space and outlook. As such, the proposal would not conflict with Southwark Plan 2007 saved Policy 3.2 (Protection of amenity) and the aims of the SPD in this regard.

Other Matters

28. I recognise that the proposal would be likely to improve the accommodation within the appellant's property because of its small size currently, and I have

had regard to the comments in respect of privacy and smoking outside bedroom windows in the communal garden. However, these matters do not outweigh the significant harm that I have identified so it does not alter my decision.

29. The manner in which the Council allegedly handled the application and other matters is between the appellant and the Council, and therefore, has not had a bearing on my consideration of the planning merits of the appeal.

Conclusion

30. For the reasons above, I conclude that the appeal should be dismissed.

Adrian Caines

INSPECTOR