



Appeal Decision

Site visit made on 23 September 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 October 2019

Appeal Ref: APP/G1250/D/19/3235423

15D Canford Avenue, Bournemouth BH11 8RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr Jason Dell against the decision of Bournemouth Borough Council.
 - The application Ref 7-2019-17001-K, dated 4 April 2019, was refused by notice dated 5 July 2019.
 - The development proposed is described on the application form as a 'single storey side extension to bungalow'.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 the former Councils of Bournemouth, Christchurch and Poole combined to form a single Authority. Nevertheless, until superseded, the existing development plan documents of former Councils remain extant. Notwithstanding a review underway, in this instance the development plan includes policies of the Bournemouth Core Strategy (adopted 2012, the 'CS') and certain saved policies of the District Wide Local Plan (adopted originally in 2002, the 'DWLP'). I have also had regard to various other material considerations, including the National Planning Policy Framework ('NPPF'), the Planning Practice Guidance ('PPG') and Bournemouth Council's Residential Development Design Guide (dated September 2008, the 'Design Guide').
3. The appeal is not made in relation non-validation under article 12 of the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended ('DMPO'). Nevertheless the substance of the dispute between the main parties is similar, with the onus falling principally on the applicant to substantiate their case.¹ The Council's decision notice, in summary, explains how the evidence is insufficiently clear to enable an accurate determination of the effects of the development proposed. Regarding appeals in respect of validation, the PPG guides that the appeal will consider both the merits of the validation dispute and of the development proposed.² That is the context in which I have approached this appeal.

¹ Section 62 of the Town and Country Planning Act 1990 as amended.

² Reference ID: 14-053-20140306.

Main issues

4. The main issues are (i) the effect of the proposal on local character and appearance, and (ii) whether or not it has been demonstrated that the development proposed would adequately safeguard the wellbeing of a protected tree.

Reasons

Character and appearance

5. No 15D is a relatively modern bungalow of understated design. It is the westernmost of four similar properties created following grant of planning permission in 1993 (Ref 7/93/17001/A). It has an attached garage extending to the western boundary of the plot demarcated by a close-boarded fence. Beyond that fence the ground steps down slightly to a footpath/ access lane, apparently serving outbuildings associated with other properties along Canford Avenue and Walliscott Road.
6. I understand that permitted development rights related to No 15D are intact. I also understand that the present garage was constructed to replace another.³ It does not appear that the principle of converting the garage to integral accommodation is in dispute; there is space available for parking within the plot of 15D and along Canford Avenue (albeit that is not integral to my reasoning, or determinative). The Council sets out, and the appellant does not appear to specifically dispute, that the footpath/ access lane falls within the relevant statutory definition of a highway. If that is so the development proposed would not be permitted development (on account of the limitation in Schedule 2, Part 1, Class A(A.1)(e)(ii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended, the 'GPDO'). There is also no certificate of lawfulness before me.⁴
7. I am told that various other nearby properties have converted former garages into accommodation. The area is not protected on account of the character of its built environment. There is some variety in the age, form and design of properties nearby (and how they have been altered over time). It appears that, externally, the conversion of the existing garage would entail little other than installing a window in place of a garage door and making good around it. Photomontages show the appellant's intention to use brickwork, which could be conditioned so as to broadly match that which is already present.
8. Certain photomontages appear to show that the rear extension would project beyond the western side elevation of the garage, and that it would be broadly level with the eaves of the existing property with a monopitched roof. That would add to the bulk and prominence of No15D, particularly from the adjacent path and also from certain glimpsed views along Canford Avenue. However being partially screened by the existing property, its boundary fence, or other boundary and natural features in the area, and also inevitably seen in conjunction with varied development nearby, a rear extension of some form would not be inherently unacceptable in my view.

³ Via the disapplication of a condition to permission Ref 7/93/17001/A via permission Ref 7/91/17001/A.

⁴ Section 192 of the Town and Country Planning Act 1990 as amended.

9. However the plans are, in certain respects, unclear or contradictory. Although dimensions are annotated on the floorplans, one version shows a side-facing window and another does not. On occasions an existing conservatory, projecting some 3m or so beyond the rear elevation of No 15D as originally constructed, is not shown on the plans. The footprint of the proposed extension appears to differ in other plans, and its relationship to the boundary.⁵ Photomontages do not appear to be to scale, and only a rough illustration of the finished proposal.
10. Three dimensional drawings are to a non-standard method of projection. Similarly, as noted in the Council's officer report, elevation plans variously show the dwelling as between 11.7m and 12.2 metres in length and the ridge height above the eaves is depicted as varying between 2.9m and 4.3m (with 15D set on broadly level ground and of conventional, symmetrical design). Plans must accurately reflect the development proposed.⁶ Moreover, in practice, they should be sufficiently precise so as to enable an enforceable condition to be imposed on the grant of permission (as opposed to leading to uncertainty for both the appellant and Council as to what is permissible).
11. Therefore notwithstanding my reasoning above, based on the evidence before me I am not satisfied that the proposal would integrate appropriately with local character and appearance. Its effects cannot be accurately assessed. The proposal therefore fails to accord with the relevant provisions of CS policy 41 'Quality Design' and NPPF paragraph 127. Both, in brief and amongst other things, seek to ensure that all development is informed by, and integrates appropriately with, its surrounding context.

Effect on a protected tree

12. Established around the same time as Nos 15A-D were permitted, the plot of No 15D is covered by a Tree Preservation Order (Ref 279/1991, the 'TPO'). The TPO applies both to a group of trees close to the rear boundary of the property and to a single tree identified as 'T1', which is stated to be a *Cedrus deodara*. That is a fine mature specimen. It represents a valuable natural feature of the area, softening the character of the built environment, and is widely visible from public vantage points (including in conjunction with the rugged nature of Turbary Park on the opposite side of Canford Avenue). The appellant does not question its value; indeed the extensively-landscaped garden of No 15D has incorporated it as a central focal point.
13. The plans show that the proposed extension would, at its nearest, fall some 11-11.33m away from T1. The appellant explains that no roots of the tree were encountered in constructing the conservatory referred to above, and that the remains of the former property here demolished to facilitate construction of Nos 15A-D may also have impeded root growth. However there is no evidence before me in that respect, or as to whether the foundations necessary to construct the development proposed would be comparable. There are two letters before me from arboriculturalist Steve Lomas. T1 is therein identified, however, as a *Cedrus libani*. The first letter, of 1 May 2019, appears to state that the drip line, of T1 is some 11 metres away from the proposed development.

⁵ Contrasting plans annotated 252187 and TQRQM19109234305278.

⁶ Noting the provisions of Article 7 of the DMPO.

14. However that does not appear to be correct. I saw that the crown of T1 extends to approximately level with the rear elevation of the conservatory. That suggests a separation distance from the closest element of the extension proposed of around three metres. It is commonplace for tree roots to extend significantly beyond their canopies. The proposal in the second letter is that the drip line of T1 be enclosed with security fencing during construction. That may prove difficult, or unworkable, given the proximity of the development proposed, and may not be sufficient to prevent all root loss in any event (on account of the foregoing reasoning). That lack of clarity is exacerbated by the variances in the plans described above, particularly in relation to the depth of the existing property. There is no detailed information in respect of the circumstances at No 91, or evidence relevant in that instance to allow direct comparison (referenced by the appellant as an example of development closer to a tree than would arise here).
15. Whilst I acknowledge that the arboricultural evidence was undertaken by a professional, and planning must operate proportionately, it is not undertaken in compliance with industry standard guidance (the Council refer to British Standard 5837:2012, Trees in relation to design, demolition and construction, recommendations in that context). Whilst a survey in accordance with BS5837:2012 is not a direct requirement of DWLP saved policy 4.25, that nevertheless explains how relevant proposals should be accompanied by 'an accurate tree survey'. Section 3.11 of the Council's Design Guide also refers expressly to that publication.
16. More broadly there is a duty upon me, where appropriate, to make adequate provision via the imposition of conditions for the preservation of trees.⁷ Given the reasoning above, the evidence before me is inadequate to discharge that duty, i.e. to be satisfied that the wellbeing of T1 could be adequately safeguarded during construction. Therefore, although it is only likely that a small proportion of the root system of T1 would be directly affected by undertaking the development proposed, and measures could theoretically be taken to reduce potential adverse effects, based on the evidence before me it has not been demonstrated that the proposal would adequately safeguard the wellbeing of a protected tree. That brings the scheme into conflict with the relevant provisions of DWLP policy 4.25 and NPPF paragraph 170, the latter setting out that planning should contribute to and enhance the natural and local environment.

Other matters

17. There are various representations before me attesting to the conversion of garages nearby and expressing support for the scheme in that context. I accept that the proposal would undoubtedly be beneficial to the occupants of 15D. However the evidence in support of application Ref 7-2019-17001-K is, as explained above, inadequate to enable an accurate determination of its effects, including in respect of T1, and to ensure that via condition. Moreover the benefits of the scheme would be essentially private, whereas planning operates principally with regard to the public interest. No other matters are therefore sufficient to justify allowing the appeal relative to the harm that may result.

⁷ Section 197 of the Town and Country Planning Act 1990 as amended.

Conclusion

18. For the above reasons, having considered the development plan as a whole, the approach in the NPPF, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR