



Appeal Decision

Site visit made on 2 October 2019

by I A Dyer BSc (Eng) MIHT

an Inspector appointed by the Secretary of State

Decision date: 18 October 2019

Appeal Ref: APP/G5180/D/19/3233345 55 Forest Drive, Keston BR2 6EE

- 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 Tony McElligott against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/19/02025/FULL6, dated 9 May 2019, was refused by notice dated 5 July 2019.
 - The development proposed is erection of single storey fitness/treatment room within front garden (reduced design to that previous dismissed on appeal).
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Decision

1. The appeal is dismissed.

Procedural Matter

2. There has been a previous appeal against the refusal to grant permission for an outbuilding within the appeal site, in September 2018¹ (the 2018 scheme). Given that this decision relates to similar development on the same site this is a material consideration of significant weight.

Main Issue

3. The main issue is whether the proposal would preserve or enhance the character or appearance of the Keston Park Conservation Area (the CA) with particular reference to the tree in the front garden of the site and the siting of the building.

Reasons

4. The appeal site is located within a gated residential area and lies within the Keston Park Conservation Area. The local area is characterised by substantial dwellings of varying architectural styles set well back from the road within generous landscaped plots and the significance of the CA derives from its spacious street scene dominated by verdant mature landscaping.
5. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in making decisions on planning applications and appeals within a CA, special attention is paid to the desirability of preserving or enhancing the character or appearance of the area. In addition, Paragraph 193 of the Framework requires when considering the impact of a proposed development

¹ PINS ref: APP/G5180/D/18/3207104

- on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
6. The dwelling within the appeal site is, itself, set well back within the plot, in keeping with the general pattern of development in the area. The roadside frontage has recently been planted with screening trees. The ground level within the site in the vicinity of the location of the proposed building is substantially lower than that of the road.
 7. To the front of the site is a mature oak tree. This tree is prominent in the street scene and makes a positive contribution to the amenity of the area. The application was accompanied by a revised arboricultural report (AR) seeking to address the concerns previously raised by the Inspector in the 2018 scheme.
 8. There have already been works to install a concrete floor slab and alter ground levels, and the AR acknowledges that the installed slab has already intruded into the root protection area (RPA) of the oak by 11%.
 9. Whilst this damage has already occurred, there is disagreement between the parties as to whether the further damage would result from the proposal, and whether this would compromise the retention of the tree.
 10. The AR suggests that the tree is of a species that will recover well from the damage caused by the incursion of the floor slab into the RPA and the alteration of the ground levels that has already taken place. However, I have little evidence before me to demonstrate the degree to which the damage to the tree's roots has already recovered, or the timescale of recovery.
 11. There would be risk of further damage to the tree's roots during building operations and from the installation of surfacing works, the potential mitigation of this impact by the use of no-dig construction and permeable materials notwithstanding. I cannot be satisfied that, given the previous damage and uncertainty of the impact of that on the health of the tree and its recovery, that any further damage would not result in the loss of this tree. Given the importance that I have placed on the verdant character of the CA, the loss of this prominent tree would result in harm to the character and appearance of the CA.
 12. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. As a consequence, the loss of the tree would have a harmful impact on the CA insofar as it would neither preserve nor enhance the character or appearance of the CA. The proposal would not lead to the loss of any buildings that make a positive contribution to the character or appearance of the CA. However, the loss of the tree would result in harm to the verdant character and appearance of the CA and that any remedy would require a significant time to realize. As such, whilst material, I find that the harm would be less than substantial. Paragraph 196 of the Framework directs that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
 13. The appellant is disabled and there is no doubt that he needs access to a treatment room and that it is most appropriate for this to be situated at his home. The proposal would fulfil this need. However, there is little evidence before me that all other options for locating this facility have been fully

explored. There would be likely minor public benefits to the local economy in terms of short term employment in the construction industry. There is support for the development from local residents and the Keston Park Association. Taken together these benefits carry moderate weight.

14. On the evidence before me I therefore conclude that, notwithstanding the personal circumstances of the appellant, the public benefit, in this case, has not been demonstrated to outweigh the less than substantial harm identified to the CA.
15. The adjacent property, 57 Forest Drive has a modest garage located close to the boundary, to the front of the plot. Similarly, there is an outbuilding to the front of Crendon, which lies opposite the appeal site. However, generally outbuildings associated with the dwellings in the area are set back away from the roadside, closer to their host dwelling and this garage is exceptional to the general pattern of the street scene.
16. The proposed outbuilding would be a single storey building with a flat roof, of similar floor area to the garage of No 57. The floor level would be set below the level of the adjacent road and, although recently planted, the hedge alongside the road provides a screen to this area and this, combined with the incorporation of a green roof to the building would reduce the visual impact and screen the proposal so that it is not prominent in the street scene.
17. However, this is reliant upon the retention of the screening planting as, without this, the building, despite the reduction in size compared to the 2018 scheme, would be prominent within the street scene and an incongruous feature in the general pattern of development that I have identified above.
18. Were I minded to support the proposal, the retention of the hedge could have been secured by the imposition of a planning condition.
19. Drawing these matters together, whilst the effects of the siting of the building could be made acceptable, the loss of the prominent tree would result in harm to the character and appearance of the CA.
20. I therefore conclude that the proposal would not preserve or enhance the character or appearance of the Keston Park Conservation Area. This would be contrary to Policies 43 and 73 of the Bromley Local Plan -2019-(the Local Plan) which together seek to avoid damage or lead to the loss of important trees in a Conservation Area and retain trees of visual amenity. The effects of the siting of the proposal could be made acceptable by the imposition of a suitable planning condition so that it would comply with Policy 41 of the Local Plan, in as much as the proposal respects the layout of existing buildings and spaces.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

I Dyer

INSPECTOR