



Appeal Decision

Site visit made on 13 December 2019

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 10 January 2020

Appeal Ref: APP/U1430/D/19/3238364

19 Rafati Way, Bexhill-on-Sea TN40 2EX

- 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 C Clapshoe against the decision of Rother District Council.
 - The application Ref RR/2019/1740/P, dated 19 July 2019, was refused by notice dated 12 September 2019.
 - The development proposed is detached garage.
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Decision

1. I allow the appeal and grant planning permission for detached garage at 19 Rafati Way, Bexhill-on-Sea TN40 2EX in accordance with the terms of the application Ref RR/2019/1740/P, dated 19 July 2019 and subject to the following conditions;
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans; 6243/19/LBP and 6243/19/1.
 - 3) The materials to be used in the construction of the external surfaces of the garage are to match those used on the existing bungalow.
 - 4) The development is to be carried out only in full accordance with the recommendations of the Mayhew Consultancy Arboricultural Report (AR/54917 – Dated June 2019).

Reasons

2. The main issue is the effect of the proposed development on a mature oak tree, as part of the character and appearance of the area. Rother District Local Plan Core Strategy Policy EN3 seeks high design quality by testing against the key design principle of the landscape setting of building as set out in part (ii)(e). Biodiversity and green space are the subject of Policy EN5 and part (ix) requires developers to avoid adverse impacts on biodiversity or habitat. Policy OSS4(ii) & (iii) requires development to respect and not detract from the character and appearance of the locality.
3. The bungalow is relatively newly built, one of two permitted under reference RR/2018/1838/P. The Council surmise that the construction of the bungalow would have likely affected the oak tree although the health and future well-being of the tree would have been a consideration in the decision to grant

- permission for the bungalow, and were an adverse effect feared, permission could have been refused or conditions attached. The fact that permission was granted for the bungalow indicates an acceptable situation regarding the tree.
4. There is no substantive evidence of harm having occurred due to that development and although the arboricultural study in support of the application results from a survey in December 2017, the study is dated June 2019 subsequent to the building of the bungalow and a further Appeal Statement from the same consultant sets out to address the Reason for Refusal.
 5. The oak tree is classified as B Grade under BS 5837:2012 '*Trees in relation to design, demolition and construction – Recommendations*' being of moderate quality with an expected future life of at least 20 years. The Report goes into detail on the extent of the likely root protection zone, and the need for protection works during construction, as well as specifying the use of a raft or slab method of construction rather than deeper footings, or trench foundations, only under the walls. Being a garage, and the dwelling has already been built, there should be no greater pressure for harmful works due to apprehension over the proximity of the tree and its behaviour.
 6. The conclusions of the Report are that the scheme is acceptable in arboricultural terms and that the subject tree can be protected according to current standards, providing the recommended mitigation measures are adopted. Those measures can be secured by condition.
 7. The later Appeal Statement makes the point that although the original grant of permission for the bungalow removed certain permitted development rights Class F, hard surfaces incidental to the enjoyment of the dwellinghouse, was not removed. The consultant states that this omission would allow a hard surface to be placed without control over construction in the same location as the proposed garage or closer to the tree, and of the same size or larger. This is a 'fall-back' position that should be given significant weight.
 8. The Council had not suggested any conditions and having been given the opportunity to reconsider that stance, suggesting a pre-commencement condition regarding tree protection. In the event, the Arboricultural Report, which is a significant factor in this Decision, provides the detail sought and avoids the need for a pre-commencement condition, which as stated in paragraph 55 of the Framework should be avoided unless there is clear justification, notwithstanding that the appellant accepted its use.
 9. To conclude, with a condition ensuring that the development is carried out in accordance with the Mayhew Consultancy Arboricultural Report (AR/54917 – Dated June 2019), which was specific to the appeal proposal, no harm should befall the oak tree, and its expected future life would not be compromised. It would remain as a positive feature of the character and appearance of the area and the aims of Policies EN3, EN5 and OSS4 would be met. For the reasons given above it is concluded that the appeal should be allowed.

S J Papworth

INSPECTOR