



Appeal Decision

Site visit made on 7 January 2020

by Martin Small, BA (Hons), BPI, DipCM, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th January 2020

Appeal Ref: APP/A2280/D/19/3236155

20 Slade Close, Lordswood, Chatham, ME5 8RD

- 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 and Mrs M Negus against the decision of The Medway Council.
 - The application Ref: MC/19/0124 dated 16 January 2019, was refused by notice dated 12 July 2019.
 - The development proposed is the removal of existing garage, construction of 2-storey side extension and loft conversion, new side entrance.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area, with particular regard to trees.

Reasons

3. The appeal property has a number of trees and shrubs within the garden, including 3 mature beech trees and 2 common yews. These trees contribute significantly to the character and appearance of the area due to their form and, in the case of the beech trees, substantial height. The trees are very visible from Slade Close and, together with the woodland to the rear of the appeal property, provide a sylvan setting for the property and that part of Slade Close in which it is located.
4. The contribution of the 3 beech trees to the amenity of the area is recognised by their being covered by a Tree Preservation Order (TPO). In accordance with Table 1 Cascade chart for tree quality assessment in *BS5837:2012 'Trees in relation to design, demolition and construction – Recommendations'* (BS 5837), these trees are assessed as Category B in the Arboricultural Impact Assessment (AIA) by Greenwood Arboriculture submitted by the appellant. A yew in the front garden is also categorised as B.
5. Category B trees are those that are of moderate quality with an estimated remaining life expectancy of at least 20 years. These four trees therefore have the potential to continue contributing positively to the character and appearance of the area for many years to come and their retention and protection is thus important.

6. The proposed development includes the demolition of an existing garage attached to the side of the main dwelling between the dwelling and the closest of the 3 beech trees, and the construction of a 2-storey extension in its place. The submitted plans indicate that the extension would be constructed within the footprint of the existing garage with the side wall of the extension slightly further away from the beech trees.
7. Nevertheless, although the 3 beech trees are not indicated as being to be removed on the Tree Protection Plan, the Plan shows that the proposed extension would be within the Root Protection Area (RPA) of each of the 3 trees, and that of the yew to the front of the property, as is the existing garage. Paragraph 2.3.1 of the AIA indicates that the RPA should be regarded as a 'construction exclusion zone', which should be considered 'sacrosanct'. Table 2 'Summary of Arboricultural Impacts' of the AIA identifies only the erection of protective fencing within the RPA as potentially affecting the Category B trees.
8. However, from the evidence before me, excavation will need to take place within the RPA to construct the foundations of the proposed extension. The email from the appellant's architect dated 12 June 2019 confirms that the intention is to retain the footings of the garage in situ and construct new footings for the proposed extension closer to the dwelling. Paragraph 3.1.5 of the AIA and Drawing 521 Rev A both refer to excavation within the RPA being carried out following an arboricultural method statement and under arboricultural supervision.
9. However, I have no detailed drawings of the existing foundations of the garage or the proposed foundations of the extension or other information regarding their nature and depth. Nor is there any specific consideration within the AIA of the potential effect on the trees on the site of the excavation for and construction of the foundations for the proposed extension.
10. Table B.1 of BS 5837 advises on the appropriate level of information required to enable a local planning authority to properly consider the implications and effects of a development proposal. The advice is categorised as 'Minimum detail' and 'Additional information', the latter being further details that might reasonably be sought, "especially where any construction is proposed within the RPA". The 'Additional information' includes "Details for all special engineering within the RPA and other relevant construction details". From the evidence before me, these details have not been provided.
11. The appellant suggests that details of the foundations could be the subject of a condition were permission to be granted. However, BS 5837 indicates that these details should be provided before an application is determined, and I consider it necessary to do so to demonstrate satisfactorily that the foundations of the proposed extension could be constructed without harm to the trees on the site.
12. The appellant refers to "Building Near Trees", which is Chapter 4.2 in the NHBC Standards and contains guidance on foundations when building near trees. The appellant has not drawn my attention to any specific guidance in this chapter but I note that the guidance on tree roots in sub-section 4.2 - D3 (b) refers to BS 5837 for further guidance. The guidance in this chapter does not provide the specific information that I have identified above is required in relation to the proposed development before me.

13. Whilst the Council has not provided its own arboricultural evidence that the trees would be harmed, in my view the onus is upon the appellant to provide sufficient information to demonstrate that the proposed development would not significantly adversely affect the trees on the site in accordance with BS 5837. This information should be provided so that an informed decision can be made having regard to the potential effect on the trees, regardless of whether the Council has the capability to assess such information in-house or would need external advice to do so.
14. I have considered whether a planning condition requiring the proposed development to be undertaken in accordance with the recommendations in the AIA as suggested by the Council were planning permission to be granted would provide adequate safeguards for the protected trees. However, in my judgement, the advice on development in RPAs within the AIA is generic and insufficiently specific regarding the foundations of the proposed development for me to be confident that such a condition would be effective in protecting the trees from possible harm arising from excavations within their RPA.
15. I therefore conclude that, notwithstanding the conclusion of Greenwood Arboriculture that the overall impact of the proposed development would not be detrimental to the retained trees' condition or amenity value provided the recommendations in the AIA are followed, the appellant has not satisfactorily demonstrated how the proposed development would avoid significantly adversely affecting these important trees through excavation and the construction of foundations within their RPA.
16. Without that demonstration, I cannot be confident that the development would comply with Policy BNE45 of the Medway Local Plan (2003), which requires development to seek the retention of trees that provide a valuable contribution to local character, and with paragraph 170 of the National Planning Policy Framework, which requires planning decisions to contribute to and enhance the natural and local environment by, amongst other things, recognising the benefits of trees.

Other Matters

17. I note that the Council considered a site visit with the Council's Tree Officer to not be necessary as set out in the email from the Council's Planning Officer to the appellant's architect dated 19 June 2019. I am not persuaded that a site visit in the absence of the information requested by the Council would have led to the proposed development being approved and I therefore give the refusal for a site visit little weight in my determination of this appeal in this instance.

Conclusion

18. For the reasons given above, and having regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR