



Appeal Decision

Site visit made on 2 December 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/M5450/C/18/3215628

Excelsior Apartments, 1 Northwick Park Road, Harrow HA1 2NY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John O'Brien against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 26 September 2018.
 - The breach of planning control as alleged in the notice is 'without planning permission: the erection of a single storey garage on communal garden land, the erection of a picket fence (approximately 1m high) and gate; the annexation of the remaining communal garden for the sole use of the leaseholder and occupiers of flat 2 of Excelsior Apartments ("The Unauthorised Development")'.
 - The requirements of the notice are:
 - 1) Demolish and remove from the Land the Unauthorised garage;
 - 2) Demolish and remove from the Land the Unauthorised picket fence and gate;
 - 3) Remove from the Land all materials and debris arising from compliance with steps 1 and 2 above;
 - 4) Cease to use the communal garden situated on the Land as private garden for the sole use of the leaseholder and occupiers of flat 2 of Excelsior Apartments.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
-

Decision

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (a)

Main issues

2. The main issues in this case are:
 - The effect of the garage on the character and appearance of the area with particular reference to the effect on the reduction in the communal amenity area and the effect on the preserved Monterey Cypress tree¹; and

¹ Which is identified as Tree T1 in the Tree Preservation Order No 903:Gayton Road (No. 5) Greenhill (TPO tree).

- Whether there is adequate amenity space retained for the 9 x 2 bed flat development to meet adopted standards and provide a good quality development.

Reasons

3. The appeal site is located towards the southern end of Northwick Park Road on the south western side of the road. Planning permission was granted in September 2015 (reference P/3012/15) (the 2015 permission) for 9 x 2 bed flats and the flat block has been built out.

Effect on the character and appearance of the area

4. Prior to the flat development there are aerial photographs showing the site was almost entirely covered with concrete slabs. The existing site plan of the 2015 permission shows a residential unit roughly in the centre with a garage under the canopy of the preserved tree and two sheds behind No 49 Gayton Road. There is a note saying 'yard' on the plan. The 2015 permission granted a flat block facing Northwick Park Road with a vehicular access from the road around the side of the building to a car park at the rear. Eight parking spaces are shown on the approved plans with the area around the tree landscaped to provide a communal amenity area for the flat development. No garaging is shown.
5. The garage that has been erected is red brick and concrete with a white metal garage door facing towards the car park and a white pedestrian door to the side. It is stated to measure 7.1m in length by 7m in width and 3.32m high². The rear wall of the garage is stated to be on the slab which has been on site since 1999 and the original wall erected in September 1999.
6. The TPO tree is a mature Monterey Cypress, which has been reduced and crown lifted in the past. The tree is about 17m in height³ with a canopy extending 6m to the north, 8.5m to the east, 7.5m to the south and 10m to the west⁴. It is viewed from Gayton Road between houses and from the rear gardens of all the adjacent properties. It is an important and visually significant tree within the immediate area.
7. The appellant has submitted the following evidence:
 - an Arboricultural Appraisal dated 22 October 2018 prepared by Completetreecare Contracting and Consultancy. The scope of the report was to assess the condition of the TPO tree and determine whether the construction of the garage has had any detrimental effect on the tree, its amenity value, health and the life expectancy of the tree;
 - a letter dated 19 October 2018 from Barrell Tree Consultancy. The letter addresses whether or not the works have had a negative impact on the TPO tree's health or stability and whether any remedial works are recommended to maintain it for the future.; and

² Paragraph 3.7 Bell Cornwell statement.

³ Height stated in both the Completetreecare and Harrison Arboriculture submissions.

⁴ The canopy dimensions are taken from the Harrison Arboriculture submission. I note that in the Completetreecare submission the canopy spread is recorded as 4m radius to the north east and 7m radius in other directions.

- an Arboricultural Assessment dated 26 October 2018 by Harrison Arboriculture. The terms of reference for the report are to provide an assessment of the current health of the tree and the long-term impact of the garage that has been erected

All of these submissions are assessing the development and tree after the garage was erected.

8. The evidence shows that prior to the construction of the flats and the garage there was significant hard surfacing and a smaller garage close to the TPO tree. The arboricultural evidence submitted by the appellant concludes that the tree is showing no adverse effects as a result of a larger garage being erected which extends 1.2 m towards the tree⁵. The flat and garage development may well have improved some areas with regard to new root growth and it has the capacity to thrive in the long term. All three submissions indicate that removal of the garage structure has the potential to damage the tree, but little explanation is given in this regard.
9. The submission from Barrell Tree Consultancy it refers to the tree having a fungal infection that indicates it has been under stress for a period of time but that it is not likely as a result of the construction of the garage. In the author's view removal of the garage could result in much more overall harm to the tree's health through disruption through digging and removing or reconstruction a foundation. There is nothing before me to demonstrate what reconstruction of a foundation would be required. All the evidence states that in building the garage it appears that no significant harm was done to the tree and thus on the limited evidence available it has not been demonstrated how removal of the garage would result in harm to the tree. Although I appreciate that care would need to be taken in the removal of the garage to safeguard the tree. The evidence about harm to the tree resulting from the removal of the garage is not clear and convincing.
10. While the Council have raised concerns in relation to the health of the tree and the effect of the garage on it there is no evidence to counteract the submission of the appellant. Although I note it is acknowledged by the appellant that because the structure of the garage is closer there is potential for future issues through direct contact to the foundations or upper parts of the structure which may cause damage⁶. This is unusual but could occur and it is advised that the crown of the tree is contained at its current size in the future to prevent the risk of significant damage to the garage.
11. On the evidence available, I consider that while the garage is larger and has been erected in very close proximity to the TPO tree there is no substantiated evidence that this has resulted in harm to the tree.
12. However, the garage that has been erected is larger than the one it replaced. It is in very close proximity to the tree and is dominant due to its height and width in views of the tree. In my view the garage the subject of the appeal, due to its bulk and mass, detracts to a greater degree from the visual amenity of the tree than the previous smaller prefabricated garage. In addition, I consider that due to the size of the garage and the proximity to the tree there would be likely to be pressure to carry out further works to the tree to reduce

⁵ Information recorded in the introduction to the Completetreecare Arboricultural Appraisal.

⁶ See letter from Barrell Tree Consultancy.

the potential of damage to the garage. As such, the garage is likely to increase works to the tree which may result in its earlier demise than would otherwise be the case, as it is recognised as posing a risk of significant damage to the garage.

13. In addition, due to the size of the garage it visually dominates the rear area of the flat block. It fails to relate to the architectural form of the flat block and detracts from the setting of the flat scheme. While there are other outbuildings within nearby plots it is the combination of a parking area, limited landscaping and the size of the garage within the rear area of the appeal site which I consider detracts significantly from the character and appearance of the area.
14. I therefore find that the erection of the garage reduces the quality of the flat scheme and detracts from it, which in turn harms the character and appearance of the area. This is contrary to Policies 3.5 and 7.1 of The London Plan (March 2016) which seek the highest quality internally and externally in housing developments and new buildings and require the creation of spaces which reinforce or enhance the character of the neighbourhood. It is also contrary to Policy DM 22 of Harrow Council Development Management Policies (July 2013) which requires hard and soft landscaping to provide a suitable visual setting for the building and to be appropriate to the character of the area.

Provision of amenity space

15. The Council has produced the Supplementary Planning Document entitled 'Residential Design Guide' (adopted December 2010) (SPD) which states that the amount of amenity space to be provided in a residential development will be informed by the London Plan Standards. The Mayor of London's Housing SPG sets out as standard 26 a minimum of 5 sqm of private outdoor space for 1-2 person dwellings and an extra 1 sqm for every additional occupant. It goes on to state that the resultant space should be of practical shape and utility and offer good amenity.
16. The flat development comprises 9 x 2 bed units. The appellant states that this results in a minimum level of amenity space of 45 sqm which equates to two occupiers per flat. However, I think this is an underestimate as the occupancy of a two bed flat may well be 3-4 persons. If there were three to four occupants per flat the minimum level of amenity space would be 54 to 63 sqm. The appellant states that as currently laid out there is provision of 130.29 sq m of communal amenity space which equates to 14.48 sqm per flat. The 2015 permission is stated to have had 170 sqm of communal garden area. The provision of amenity space does exceed the minimum standard of provision. I therefore find it complies with The London Plan Standards in area terms.
17. However, DMP Policy DM 27 requires amenity space to be appropriate in both form and amount. The amount of space is to be informed by the Mayor's London Housing Design Guide and to have regard to, amongst other things, the character and pattern of existing development in the area and the quality of the space proposed. DMP Policy DM 22 requires landscaping to be appropriate to the area and well laid out in terms of access, car parking and the living conditions of future occupiers and neighbours.
18. The retained area of amenity space is fenced off and as such appears to be linked with the occupation of a ground floor flat. While I note that the

appellant explains that the gate is open and that occupiers of the flats other than Flat 2 may use the space, the layout, reduction in amenity area and relationship with Flat 2 along with the erection of fencing and gate, results in it appearing as a private area for Flat 2. In the 2015 permission due to the size of the amenity space provided it would have, in my view, created a stronger identity of communal space and users of the space would be able to be a reasonable distance from the rear elevation of Flat 2. Due to the reduction in the size and the erection of the fencing the space is more private than communal in appearance.

19. While the amount of amenity space provided is greater than the minimum required by standards it fails to have regard to the character and pattern of existing development in the area and provides a poor quality of space which if used communally would result in poor living conditions for the occupier of Flat 2, as users would inevitably be close to the rear elevation of that flat due the reduction in size of the amenity space. As such, I find the amenity area in appropriate in form and poorly laid out which is contrary to DMP Policies DM 22 and DM 27.

Conclusion on ground (a)

20. While there is some limited evidence that the removal of the garage may cause harm to the tree, I am not satisfied that this will necessarily be the case. Moreover, the possibility of harm to the tree does not outweigh the harm to the character and appearance of the area of the garage or the poor quality of the amenity area. The appeal on ground (a) therefore fails.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Hilda Higenbottam

Inspector