
Appeal Decision

Site visit made on 19 November 2019

by Jonathon Parsons MSc BSc (Hons) DipTP (Cert Urb) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th February 2020

Appeal Ref: APP/R3650/W/19/3236547

5 Dormers Close, Godalming GU7 2QX

- 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 Iain Brown against the decision of Waverley Borough Council.
 - The application Ref WA/2019/0756, dated 29 April 2019, was refused by notice dated 27 June 2019.
 - The development proposed is "to demolish a single skin attached garage to the side of the property, and construct a 2 storey side extension (the footprint stepping back slightly to that of the existing garage, and the ridge stepping down). More than a metre boundary and access is retained. In addition a modest depth single storey rear extension is proposed (stepping back further to one corner to retain ample distance from an Oak tree in clients garden)."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of the application refers to the proposed development. It does not refer to the nearby tree protected by a Tree Preservation Order (TPO), arboricultural specialist reports or that the proposal has been designed from the outset following arboricultural advice. These matters relate to the merits of the proposal which are discussed under reasoning in this decision.
3. The appeal was originally considered under the Household Appeal procedure. However, additional technical arboricultural evidence was submitted at the appeal stage. In the interests of fairness, the Council and third parties were given further opportunity to comment upon this. The appellant was also given an opportunity to make final comments on their representations.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area, having regard to a tree protected by a TPO.

Reasons

5. The appeal site comprises a two storey detached dwelling with attached garage and a mature oak tree, reaching a height of approximately 19m, to the rear. The tree's trunk lies just inside the common boundary with a neighbouring property. The canopy covers the garden and patio of the appeal property and some of the garden of the neighbouring property. The tree is visible from the

Close and wider landscape, due to its size and position, and thus, it makes a significant contribution to public amenity and landscape character.

6. The proposed two storey extension would be to the side of the existing dwelling, mainly overlapping with the footprint of a garage which would be demolished. It would be stepped back from the rear of the dwelling. The single storey staggered extension would be to rear of the dwelling overlaying the existing patio area. The extension would have extensive rear openings serving ground floor living areas, including a section of slide and fold doors. Only some epicormic growth of the tree would be required to be removed to allow the construction of the extension.
7. The extension would be within the tree's Root Protection Area (RPA), as is almost all of the existing dwelling. It is stated that the proposed extensions would fit outside of the current crown spread of the tree in the appellant's Arbtech rebuttal letter (ARL) dated 28 August 2019. However, the ARL does acknowledge that the upper crown will sail over the proposed side extension. Based on the various updated ARL's arboricultural plans and my site visit observations, it is evident that the south eastern storey part of the single storey extension would be within the canopy spread of the tree, albeit this is at high level. The tree's main crown height is indicated to be approximately 7.6m.
8. The property at No 5 is south facing. A plan shows the shading arc from the tree and shade cast over the garden in accordance with professional industry guidance. The eastern side of the existing habitable structure is already within the shading arc and the previous tree works, granted over 10 years ago, has resulted in some thinning of the crown. As a result, there would be some dappling effect on sunlight during the summer.
9. However, the extended floorspace would be closer to the tree and has been designed to be open plan with large glazed door openings which would face out to external space outside. The tree has an extensive canopy in terms of width and height, as indicated on the updated plans accompanying the ARL, and is multi branched indicating significant structure and leaf coverage. The plans show the canopy spreading a significant distance south towards the bottom of the garden. All of these factors would indicate significant overshadowing of the rear of the extended dwelling.
10. Building Research Establishment (BRE) advice indicates people have preferences for shading. During hot weather, the overshadowing could serve a useful purpose in keeping occupants cool and comfortable. However, the layout and design of the single storey extension would indicate a preference for light into a dining area and most people would want this in the summer. No plotting of the sunlight on the ground at spring equinox (21st March) as per methodology contained within this BRE document has been undertaken. In any case, much of the quoted advice from the BRE relates to how to assess the impact of buildings on sunlight rather than trees on living areas.
11. Based on the evidence, taking into account the higher position of the sun in the summer, it has not been demonstrated that the overshadowing would not be adverse when the tree is in leaf. Similarly, it has not been demonstrated that the loss of ambient light would not lead to lack of natural light and gloomy internal conditions for occupants within the ground floor of the extended space.

12. The appellant has no intention of seeking to undertake further tree works, other than the cutting back of the epicormic growth. The Council would also retain formal control over requests for tree works to the protected tree, even if submitted. A previous application to crown lift the tree has been refused following the earlier mentioned approval. However, it is likely to be difficult for the Council to resist pressure for tree works in the long term, in practice, because of the extension's close proximity to the tree.
13. Furthermore, the circumstances of the occupants can change for any number of reasons. For instance, views on light needs might alter once the extension is built and the floorspace has been brought into use. The property could also change hands with new occupants coming to a different view as to the acceptability of light reaching living areas. Pruning, cutting back or lopping/felling of this substantial tree would adversely affect its shape and its visual qualities, and its contribution to the character and appearance of the area.
14. BS5837:2012 Trees in relation to design, demolition and construction – recommendations states that the default position should be that structures are located outside of tree RPAs. The ground test excavations and detailed foundation construction measures demonstrate that damage to the tree's roots and its overall health could be prevented. Thus, the Council would be able to resist pressure to undertake works on the grounds of structural damage on the health of the tree. The BS further requires overriding justification for construction within the RPA. Even if I considered the appellant's personal circumstances to be overriding, this would not overcome the significant concerns about the unrealistic pressure that the Council will be in, in resisting works to the tree, on the basis of the loss of light to the new floorspace areas of the dwelling.
15. Nuisance from leaf, seed and twig/branch fall would not be a significant issue given the suggested mitigation, but this would not address the substantive objections to this proposal. Any planning condition or mitigation would not be able to compensate for the loss of such a significant tree. In this regard, the details of possible mitigation are too generalised to be of any merit.
16. For all these reasons, it has not been demonstrated that detrimental tree works would not take place and therefore, it can only be concluded that the proposal would harm the character and appearance of the area. Accordingly, the proposal would be contrary to policies D1, D4 and D7 of the Waverley Borough Local Plan 2002 and policies NE1 and NE2 of the Waverley Borough Local Plan (Part 1) (LP1) 2018.

Conclusion

17. The proposal would provide additional living space for the occupiers of the dwelling but the harm to the character and appearance of the area would be significant and permanent. The tree is of significant public value due to its prominence. It would take a substantial time period for an equivalent tree in stature to replace the tree, if it disappeared. For all these reasons, the proposal would be contrary to the development plan taken as a whole and material considerations would not be of sufficient weight or importance to determine that the decision should be taken otherwise than in accordance with the development plan. Therefore, planning permission should be refused.

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

Jonathon Parsons

INSPECTOR