



Appeal Decision

Site visit made on 15 October 2019

by William Walton BA MSc Dip Env Law LLM CPE BVC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th March 2020

Appeal Ref: APP/G5180/W/19/3233665

21 Cromwell Avenue, Bromley BR2 9AG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
 - The appeal is made by Mr Chris Tew against the decision of the London Borough of Bromley.
 - The application Ref 18/15157/FULL1, dated 9 November 2018, was refused by notice dated 20 March 2018.
 - The development proposed is the erection of a detached three-bedroom dwelling house comprising basement, ground floor and first floor level, creation of residential curtilage, vehicular access, associated car parking, cycle parking and refuse storage for the new dwelling. Retaining wall lining the eastern border of the site to be recessed and existing garage removed to create additional private amenity space. Alterations to host dwelling including reduced balcony at rear and repositioning of existing patio doors.
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Decision

1. I allow this appeal, and grant planning permission for the erection of a detached 3-bedroom dwelling house comprising basement, ground floor and first floor level, creation of residential curtilage, vehicular access, associated car parking, cycle parking and refuse storage for the new dwelling with the retaining wall lining the eastern border of the site to be recessed and existing garage to be removed to create additional private amenity space, with alterations to the host dwelling including a reduced balcony at the rear and the repositioning of the existing patio door at 21 Cromwell Avenue, Bromley BR2 9AG in accordance with the terms of the application 18/05157/FULL1, dated 9 November 2018, subject to the conditions set out in the Schedule to this decision.

Main Issue

2. The main issue in the determination of this appeal is whether the proposed development of a detached dwelling would prejudice the retention of a high value tree subject to a Tree Preservation Order (TPO).

Reasons

3. The appeal site is roughly triangular in shape bounded by Cromwell Avenue, Cromwell Close and a neighbouring property. Cromwell Avenue is an established residential area comprising mainly detached houses. A substantial detached house sits at the southern base of the triangle. At the northern top of the triangle, which sits at a slightly elevated position in comparison to the rest of the site, is a large mature beech tree measuring around 15 metres in height.

4. The development proposal subject to this appeal is a detached house in the garden area between the tree and the existing dwelling. At its closest the new dwelling would be about 10-15 metres from the trunk of the tree. A small area of garden is provided behind the proposed dwelling and a further patio / seating area would be located to the side, beyond a retaining wall aligned broadly east to west, close to the tree.
5. The beech tree is subject to a TPO (ref. 2491/2012). Because of its location at the apex of the junction between two quite wide roads the tree is very prominent and can be seen in its entirety by those passing along these thoroughfares.
6. The tree's Root Protection Area (RPA) is approximately twice the radius of the tree's crown spread. According to the arboricultural report prepared by the appellant's consultant ('the AGB report'), the RPA extends south beyond the east-west retaining wall across around half of the footprint of the proposed new dwelling. However, the AGB report makes clear that due to previous excavation and the construction of a retaining wall most of the site is unlikely to be affected by the presence of the tree's roots close to the surface. The AGB report estimates that the loss of roots through development would be less than 5% of the system.
7. By incorporating the tree into a second, much smaller garden it is possible that the area underneath its canopy will be subject to greater occupancy than at present where it is at the opposite end of the site from the existing dwelling. The Council believes that this could prejudice the integrity of its structure. In the absence of any firm evidence of any link between increased occupancy and structural integrity I am not convinced that this presents any material risk. Further, I note that the main garden for the proposed dwelling would be behind the house and that the elevated area under the canopy would only be accessible via steps which, I suspect, would discourage high levels of occupancy.
8. The falling distance of the tree is taken to be equivalent to its height to the top of the crown from the base of the trunk, meaning that the proposed new dwelling would be at risk were such a failure event to occur. According to the appellant the most likely source of high winds in excess of 33 knots would be the south west or south by south west. On this basis the proposed dwelling lying south of the tree would not be at risk in the event of tree failure. I have not seen any evidence from the Council contesting this argument.
9. I recognise that the tree would cover a significant part of the garden of the proposed new dwelling. It is possible that this could lead to an increase in applications to the Council by future occupants to prune the tree to prevent overshadowing, but it should be noted that it would not be in the path of the sun for most of the year.
10. I note the point made by the Council's tree officer that an increase in the number of applications for pruning might, in practice, make their refusal more difficult to sustain. Nevertheless, I come to the view that the Council would be able to utilise its powers to refuse or approve subject to conditions.
11. For the above reasons I conclude that the proposed dwelling would not prejudice the retention of a high value tree subject to the TPO. Thus, I find that the appeal proposal is compliant with Policy 7.21 of the London Plan 2016

which seeks to ensure that trees of value are protected and maintained. Further, the proposal is also compliant with Policy 73 of the Bromley Local Plan 2019 which requires development proposals to take particular account of existing trees.

Other Matters

12. The proposed 2-storey detached dwelling would have a small front garden and a rear garden and the style and design would be in keeping with the area. I do not think that the proposal would present any threat to highway or pedestrian safety due to the location of the access point, and I note that the Council did not raise any such concern. Finally, I have seen no evidence to indicate that the proposal would cause any damage to the pavement.

Conclusion and Conditions

13. For the reasons set out above I allow this appeal subject to the conditions set out in the Schedule of Conditions below. In addition to the standard implementation condition I have attached a condition requiring implementation in accordance with the submitted plans in the interests of certainty. I have also attached conditions to ensure compliance with the London Plan, the Bromley Local Plan and the Unitary Development Plan in regards to protecting neighbouring amenity, visual impact, parking, refuse storage, sustainable drainage, the protection of trees and construction method.

William Walton

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision notice.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the following plans unless previously agreed in writing by the Local Planning Authority: 1836-350 A; 1836-352 A; 1836-351 A; 1836-353 A; 1836-150 D; 1836-151 D; 1836-152 D; 1836-250 B; and 1836-353 A.
3. Prior to commencement of above ground works details of treatment of all parts on the site not covered by buildings shall be submitted to and approved in writing by the Local Planning Authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after completion or first occupation of the development, whichever is the sooner. Details shall include:
 - a. A scaled plan showing all existing vegetation to be retained and trees and plants to be planted which shall include use of a minimum of 30% native plant species of home grown stock (where possible) and no invasive species:
 - b. Proposed hardstanding and boundary treatment;

- c. A schedule detailing sizes and numbers of all proposed trees / plants;
- d. Sufficient specification to endure successful establishment and survival of new planting.

There shall be no excavation or raising or lowering of levels within the prescribed root protection area of retained trees unless agreed in writing by the Local Planning Authority.

Any new tree(s) that die(s), are/is removed or become(s) severely damaged or diseased shall be replaced and any new planting (other than trees) which dies, is removed, becomes severely damaged or diseased within five years of planting shall be replaced. Unless further specific permission has been given by the Local Planning Authority, replacement planting shall be in accordance with the approved details.

- 4. Before commencement of the use of the land or building hereby permitted parking spaces and/or garages and turning space shall be completed in accordance with the details as set out in this planning permission and thereafter shall be kept available for such use and no permitted development whether permitted by the Town and Country Planning (General Permitted Development) Order (England) 2015 (or any Order amending, revoking and re-enacting this Order) or not shall be carried out on the land or garages indicated or in such a position as to preclude vehicular access to the said land or garages.
- 5. (a) Details of arrangement for storage of refuse and recyclable materials (including means of enclosure for the area concerned where necessary) shall be submitted to and approved in writing by the Local Planning Authority prior to construction of any above ground works.

(b) The arrangements as approved under part (a) shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 6. (a) Details of arrangements for bicycle parking (including covered storage facilities where appropriate) shall be submitted to and approved in writing by the Local Planning Authority prior to construction of any above ground works.

(b) The arrangements as approved under part (a) shall be completed before any part of the development hereby permitted is first occupied, and permanently retained thereafter.
- 7. No development shall commence on site (including demolition) until such time as a Construction and Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. As a minimum the plan shall cover:
 - (a) Dust mitigation and management measures.
 - (b) The location and operation of plant and wheel washing facilities.
 - (c) Measures to reduce demolition and construction noise.
 - (d) Details of construction traffic movements including cumulative impacts which shall demonstrate the following:

- (i) Rationalise travel and traffic routes to and from the site as well as within the site;
- (ii) Provide full details of the number and time of construction vehicle trips to the site with the intention and aim of reducing the impact of construction related activity;
- (iii) Measures to deal with safe pedestrian movement.
- (iv) Full contact details of the site and project manager responsible for day-to-day management of the works.
- (v) Parking for operatives during construction period.
- (vi) A swept path drawings for any tight manoeuvres on vehicle routes to and from the site including proposed access and egress arrangements at the site boundary.
- (e) Hours of operation.
- (f) Other site specific Highways and Environmental Protection issues as requested on a case by case basis.
- (g) The development shall be undertaken in full accordance with the details approved under Parts a-f.

8. (a) Surface water from private land shall not discharge on to the highway.

(b) Prior to commencement of above ground works details of the drainage system for surface water drainage to prevent the discharge of surface water from private land on to the highway shall be submitted to and approved in writing by the Local Planning Authority.

(c) Before any part of the development hereby permitted is first occupied, the drainage system shall be completed in accordance with the details approved under Part (b) and shall be retained permanently thereafter.

9. (a) Prior to commencement of the development hereby approved (excluding any ground clearance or demolition) a scheme for the provision of surface water drainage shall be submitted and approved in writing by the Local Planning Authority.

(b) Before the details required to satisfy Part (a) are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system (SuDS) to ground, watercourse or sewer in accordance with drainage hierarchy contained in London Plan Policy 5.13 and the advice contained within the National SuDS Standards.

(c) Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period and intensity, the method employed to delay (attenuate) and control the rate of surface water discharged from the site as close to greenfield runoff rates (21/s/ha) as reasonably practicable and the measures taken to prevent pollution of the receiving groundwater and/or surface water.

(d) The drainage scheme approved under Parts a, b and c shall be implemented in full prior to first occupation of the development hereby approved.

10.(a) Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for the protection of the retained trees, in accordance with BS5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. Specific issues to be dealt with in the TPP and AMS:

(a) Location and installation of service / utilities / drainage.

(b) Methods of demolition within the root protection area (RPA as defined in BS5837: 2012) of the retained trees.

(c) Details of construction within the RPA or that may impact on the retained trees.

(d) A full specification for the installation of boundary treatment works.

(e) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads, parking areas and driveways to be constructed using no-dig specification. Details shall include relevant sections through them.

(f) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.

(g) A specification for protective fencing to safeguard trees during both demolition and construction phases and a plan indicating the alignment of the protective fencing.

(h) A specification for scaffolding and ground protection within tree protection zones.

(i) Tree protection during construction indicated on a TPP and construction activities clearly identified as prohibited in this area.

(j) Details of site access, temporary parking, on site welfare facilities, loading and storage of equipment, materials, fuels and waste as well as concrete mixing and use of fires.

(k) Boundary treatments within the RPA.

(l) Methodology and detailed assessment of root pruning.

(m) Arboricultural supervision and inspection by a suitably qualified tree specialist.

(n) Reporting of inspection and supervision.

(o) Methods to improve the rooting environment for retained and proposed trees and landscaping.

(p) Veteran and ancient tree protection and management.

(b) The development thereafter shall be implemented in strict accordance with the approved details.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order amending, revoking and re-enacting this Order) no building, structure, extension, enlargement or alteration permitted by Class A, B, C or E of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be erected or made within the curtilage(s) of the dwelling(s) hereby permitted without the prior approval in writing of the Local Planning Authority.
12. The development hereby permitted shall not commence until a report on land stability and detailed structural drawings and calculations of any retaining walls demonstrating how they will battle gravity or offset lateral forces of the slope in relation to the public footpath. The plans should be submitted by a competent person such as a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct. E) and approved in writing by the Local Planning Authority. The development shall be carried out in complete accordance with the approved details.
13. Prior to commencement of development (excluding demolition) details of the proposed slab levels of the building(s) and the existing site levels shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed strictly in accordance with the approved levels.
14. While the development hereby permitted is being carried out a suitable hardstanding shall be provided with wash-down facilities for cleaning the wheels of vehicles and any accidental accumulation of mud off the highway caused by such vehicles shall be removed without delay and in no circumstances be left behind at the end of the working day.