



Appeal Decision

Site visit made on 25 February 2020

by Robert Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2020

Appeal Ref: APP/T0355/D/19/3239932

Wellington House, Rise Road, Ascot SL5 0AT

- 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 Kohler against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 19/01579, dated 10 June 2019, was refused by notice dated 16 August 2019.
 - The development proposed is a single storey rear and side extension.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council's reason for refusal includes reference to emerging Policy NR2 of the Royal Borough of Windsor and Maidenhead Borough Local Plan 2013-2033 Submission Version. The plan was submitted for independent examination following a period of public consultation from 30 June to 27 September 2017. The Borough Local Plan has yet to be found sound and limits the weight which can be afforded to this emerging policy, which I will therefore not refer to in my decision.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area with specific regard to its effect on protected trees.

Reasons

4. The appeal site comprises a large detached modern two-storey dwelling within a modest plot. The property is set on rising ground within an area characterised by predominantly residential development of mixed age, styles and arrangement. The area benefits from a verdant character on account of a high proportion of tree cover. The site accommodates trees to its frontage that are subject to a Tree Preservation Order¹ (TPO) and lies adjacent to a tree belt along its south-eastern boundary. This wooded area is protected by a Woodland TPO².
5. Wellington House lies close to the boundary line with the adjacent woodland which contains various species of trees of mixed age and size. Of particular note is a large Oak, identified as T7 in the appellant's Arboricultural Assessment Report (AAR), which has a significant presence within the grouping, is highly visible in the vicinity of the site and contributes positively to the area's character and appearance.

¹ TPO 029/2001

² TPO 050/2006/W1

6. The proposed development consists of an infill link extension in the area of an existing patio, and a single storey extension projecting into the rear garden and sideways up to the south-eastern boundary of the site. On account of the natural fall of the land toward the woodland, the edge of the site between the dwelling and the boundary has previously been terraced along its slope and graded up to meet the levels within the rear garden area. Consequently, this side of the house is supported by a deep wall below the finished floor height to its foundation, estimated by the Council to be about 680 mm. The patio area is supported by a retaining wall reducing in height towards the rear garden area.
7. Notwithstanding that the proposal is at a distance of 1.5 metres further away from the stem of tree T7 than a previous proposal³ on the site, the parties agree that the footprints of the extensions would encroach into the calculated root protection area (RPA) of the Oak and smaller trees within the appeal site. It is notable that a local substation and Wellington House have previously encroached into the RPA. Due to its closer proximity and large area, the ground excavations and formation of the foundations of the house would doubtlessly have resulted in some adverse impact on roots within a large part of the calculated rooting area.
8. Although part of the site of the extension is currently covered by impermeable paving and the patio retaining wall, the necessity to provide greater support and more substantial foundations for the extensions will potentially cause increased disturbance to any roots below the existing patio area and wall. However, it is possible that, due to the excavation to level the area between the retaining wall and the boundary, this impact would be limited due to the previous incursions into the RPA.
9. If that were the case, then it is likely any subsequent compensatory root growth would be in the vicinity of the proposed main element of the extensions where the ground appears less disturbed from its natural level and within an area benefitting from topsoil retained about the roots of the garden trees. As the Council suggests, if this were the case, then the calculated RPA would likely be skewed toward the rear garden of the appeal site.
10. Consequently, the level of incursion of the proposed development into the RPA would be greater than estimated by the appellant. However, it has not been possible to obtain the relevant consent to carry out ground investigations or demonstrate the extent of rooting within the area of the proposal and therefore the effect is inconclusive.
11. The appellant suggests that the rear garden areas of properties on Park Crescent are more likely to accommodate compensatory root growth than the rear garden area of the appeal site. However, I saw that these areas have been covered to various extents by structures including large sheds and decks that were occasionally terraced into the natural slope. Although these may have a lesser impact than more permanent forms of development, taken with the previous and proposed incursions into the RPA, which is defined as the minimum area about a tree sufficient to contain rooting volume to maintain its viability, I find that the cumulative effect is likely to be significant. There is little within the evidence to substantiate the appellant's claim that it is unlikely that roots would be revealed in the area of the development.
12. Within the submitted AAR reference is made to less impactful methods of foundation construction when compared to the potential effects that might arise from traditional build methods. Whilst it is a common approach to utilise pile and

³ 17/00013/FULL

beam, or similar, foundations in such circumstances, these have not been structurally proven for the development in question or demonstrated to provide mitigation such as facilitating gaseous exchange and irrigation below it. Without confirmation of the viability of a specialist foundation, any limitation as to the effects of the proposed development on the RPA and subsequent long-term health of the tree are unclear. Although the appellant's arboricultural advisor suggests a supervised excavation of the relevant area could be provided, this is not accompanied by any undertaking to cease works or alternatively clarify how construction would proceed in the event that significant root damage is likely to arise.

13. For the above reasons, I conclude that insufficient evidence is provided to demonstrate that the extension would not cause harm to the health and longevity of the protected tree and subsequently protect the character and appearance of the area. The proposal therefore conflicts with saved Policies DG1 and N6 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations adopted in June 2003) and Policies EN2 and DG3 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan (2014) as they relate to preserving the health of existing trees of amenity value and so protects their contribution to the character and appearance of the locality.

Other Matters

14. Whilst the main parties agree that the extension is policy compliant in all other respects, these are not matters that outweigh the harm identified.
15. The appellant has directed me to an appeal decision⁴ where development was permitted within the RPA of a protected tree. However, inspection trenches enabled assessment of the root extents in that case which were not available in this instance. Nevertheless, the existence of development elsewhere does not represent an appropriate reason to find in favour of a proposal that would cause harm in this case or lead me to alter my findings on the issue.
16. I note the proposed development has been revised since an earlier appeal scheme⁵ on the site and have taken it into account. I also note the appellant's concerns in respect of the outcome of the recent appeal⁶ relating to a proposal to investigate root locations through use of air spade techniques and the potential benefits to tree health arising therefrom. However, I do not consider that these circumstances provide justification for overcoming the harm I have identified here; a proposal which I have considered on its own planning merits.

Conclusion

17. For the above reasons, the appeal should be dismissed.

R Hitchcock

INSPECTOR

⁴ APP/T0355/D/17/3167767

⁵ APP/T0355/D/17/3188276

⁶ APP/TPO/T0355/7066