The Planning Inspectorate

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/19/3239368
Briar House, Carbery Lane, Ascot SL5 7EJ

- 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 Dr Kim Bolland against the decision of Council of the Royal Borough of Windsor and Maidenhead.
- The application Ref 19/01496, dated 29 May 2019, was refused by notice dated 26 July 2019.
- The development proposed is a garage with first floor gym.

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant's evidence includes reference to the validity of a Tree Preservation Order (TPO) applied to an Oak tree present within the appeal site. For the avoidance of doubt, this decision is based on the current TPO status and does not consider the merits, or otherwise, of the TPO.

Main Issues

3. The main issues are the effect of the development on:

   - the character and appearance of the area having specific regard to the scale and design of the building and the health and wellbeing of a protected tree; and,
   - the living conditions of neighbouring residents.

Reasons

Character and appearance

4. The area is characterised by mixed age, individually styled, residential properties set along private roads. The properties vary in size and design and are generally set in spacious mature gardens providing an open and verdant setting to development. Within this context the appeal property is a large two-storey villa with a generous rear garden.

5. The proposed siting of the garage would be set back within the plot such that it would not feature strongly in views along the shared access road. However, due to the combination of its substantial height, large footprint and the full-height projecting gables to the roof, it would have significant bulk and be readily visible from other properties within the surrounding cluster of houses. Although the building would be subordinate to the size of the host dwelling, it

would represent a significant incursion into the space between Briar House and Orchard House that, taken with its visual bulk would jar with the surrounding spacious character of development.

6. The appellant has referred to other examples of garages within the locality. Whilst there is variation in the scale and form of detached outbuildings, these don't appear to combine the significant height, footprint and extended gabled roof form apparent in the proposed development. From the examples visible locally, gable or dormer features appear smaller and are set down such that they don't dominate the main roof slope and provide less bulk at height. Furthermore, of the larger outbuildings visible, these benefitted from more spacious settings.

7. Within the garden there is a significant Oak tree of some age subject of Tree Preservation Order ref. 017/2005. Whilst there is disagreement between the parties as to the age and classification of the tree, I saw that it appears as a healthy example that is visible from the surrounding area and contributes greatly to it.

8. Although the garage would substantially lie outside the existing reduced canopy spread of the tree and below the height of its lower branches, the main parties agree that it would encroach into its root protection area (RPA) – the minimum area about a tree sufficient to contain rooting volume to maintain its viability. The proposal, including a fringe pathway, will encroach more than halfway into the radius of the RPA identified in the appellant's Revised Arboricultural Impact Assessment and Method Statement (AIA). Development in this area will have the potential to sever roots and result in contamination and/or compaction of the soil during use and construction.

9. When considered with other incursions into the RPA, including a neighbour's garage/annex, a shed, wood store, hard surfacing and other small structures, and taking into account the more limited ability of mature trees to tolerate disturbance, the proposal has capacity to cause harm to the long term health of the tree.

10. Within the submitted AIA 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 beam, or similar, foundations in such circumstances, these have not been structurally proven for the development in question. In the absence of 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.

11. In addition, the presence of the building within such close proximity to the tree would inevitably increase future pressures to resolve concerns that might arise from safety, high levels of maintenance or light impacts arising from it. Any die-back or additional works to the tree consequent to the development are likely to prejudice its long-term health and therefore the significant contribution it makes to the character and appearance of the locality.

12. It is acknowledged that the removal of a Norway Spruce from within the RPA of the Oak may have given rise to some benefit in terms of that part of the rooting area. Additionally, the part removal of other trees close by may provide other such opportunities, however, in either scenario there is little evidence to

demonstrate the extent of any such benefit. In support of the proposal, the appellant states that the development is justified based on previous decisions including the grant of planning permission[1] of a smaller garage in a similar position on the site and the presence of garages elsewhere. In this respect, the appellant has provided examples of outbuildings constructed in close proximity to trees in the area.

13. In the absence of full details of those cases within the evidence, I am unable to ascertain the circumstances of those decisions or draw direct comparisons from them. 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 instance or lead me to alter my findings on this issue.

14. For the above reasons, I conclude that the building would cause harm to the character and appearance of the area through excessive scale, bulky design and having a high potential to adversely affect a protected tree. It would therefore conflict with saved Policies DG1, H14 and N6 of the Royal Borough of Windsor and Maidenhead Local Plan 1999 (incorporating alterations adopted in June 2003) (LP) and Policies EN2 and DG3 of the Ascot, Sunninghill & Sunningdale Neighbourhood Plan (2014) as they relate to securing high quality design of development and preserves the health of existing trees of amenity value and so contribute to the character and appearance of the locality.

Living conditions

15. According to the appeal plans, the proposed garage would be located about 1m from the common boundary line with Orchard House, a neighbouring residential property orientated such that rear ground and first floor windows of habitable rooms address the boundary at short distance. The boundary is defined by a close-board timber panel fence that would be lower than the eaves height of the proposed building.

16. Although the eaves of the building have been lowered in comparison to a previously submitted scheme[2], the overall height of the building is shown to be 6m tall such that, notwithstanding the roof pitching away from the boundary, the large roofscape and upper part of the rear wall of the garage would appear high above the fence line to dominate the outlook from the rear windows of the neighbouring dwelling. Despite the fact that some of these windows serve through-rooms, or serve an en-suite and dressing room, the reduction to the existing open aspect would overbear on those outward views and result in an adverse impact on the living conditions of occupiers of that residence.

17. Consequently, the combination of the size and siting of the building would conflict with saved Policy H14 of the LP and paragraph 127 of the National Planning Policy Framework as they seek to protect neighbouring residential amenity.

Other Matters

18. The appellant refers to an outbuilding has been granted a certificate of lawfulness by the Council that would encroach into the Oak tree's RPA. Buildings falling within the criteria specified within the relevant part of the Town and Country Planning (General Permitted Development) (England) Order

[1] 07/2176/FULL
[2] 18/03084/FULL

2015 (GPDO), benefit from a deemed grant of planning permission. They are not therefore subject to the requirements of s.38(6) of the Town and Country Planning and Compulsory Purchase Act 2004 where in making any determination under the planning Acts, regard is to be had to the local development plan. Such development may, nevertheless, require additional consent under the Town and Country Planning Act 1990 (as amended) as it relates to its effect on trees subject of a TPO.

19. For that reason, any fall-back position arising from permitted development rights under the GPDO, should they exist at the property, attracts limited weight in this appeal.

20. I have noted the objections from local residents and third parties to the proposal. However, in the light of my findings on the main issues of the appeal, my decision does not turn on these matters.

21. I also note the frustrations expressed by the appellant in relation to consistency of decision making and the accuracy of reporting from the Council leading up to this appeal. However, this is not a matter for this appeal which I have determined on its own merits.

Conclusion

22. For the above reasons the appeal should be dismissed.

R Hitchcock

INSPECTOR