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## Appeal Decision

Site visit made on 21 January 2020

**by N Holdsworth MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 March 2020**

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**Appeal Ref: APP/B1550/W/19/3240133**

**Land rear of 18 Ashingdon Road, Rochford, SS4 1NJ**

- 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 Flowers of Hecray Company Limited against the decision of Rochford District Council.
  - The application Ref 18/00578/FUL, dated 12 June 2018, was refused by notice dated 25 September 2019.
  - The development proposed is a one bedroom bungalow.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are
  - i) The effect of the proposal on the character and appearance of the area, with particular regard to the protected Oak tree ("the tree") that falls within the site; and
  - ii) Whether or not the proposed development creates an acceptable standard of living accommodation for future occupants, with particular regard to outlook, privacy and external amenity space.

### Reasons

#### *Character and Appearance*

3. The site comprises land to the rear of No 18 Ashingdon Road, currently used as vehicular parking and open space. The tree has grown to a significant size. It sits on the rear boundary, surrounded by a residual area of garden, and its branches partially overhang the site of the proposed building. To the rear of the site is a hospital, and there is also residential development each side of the site, which appears to have taken place on former back garden land.
4. The tree provides a verdant screen between the residential development and the hospital beyond. Its size means that it makes a significant contribution to the verdant character of the area, helping to soften an otherwise dense built environment. The arboricultural report confirms that it is in a healthy condition. Whilst it assesses the tree as category B, on inspection I agree with the Council that its ongoing retention is most desirable and a higher grading would be justified; also reflected in the fact that it benefits from a tree preservation order.

5. Proximity of building to the tree. Whilst not ultimately reflected in the reason for refusal, the Council's tree officer raised concern about the long-term impact of the proximity of the proposed building to the tree. I consider this to be a main issue and gave the appellant a further opportunity to comment on this matter in the course of the appeal.
6. The proposed building would be partially constructed underneath the existing canopy of this tree, around 4 metres away from the trunk at the closest point. Whilst the initial amount of crown lifting would be minimal, there is a high likelihood that there would be nuisance and damage to the new building from the tree, particularly through branches hitting the building in windy conditions, and seasonal leaf fall. It is reasonable to expect that the tree will continue to grow, so the issue would become more apparent over time.
7. Consequently, it is likely that there will be future pressure to remove the tree, either in part or in full. Whilst the appellant may not currently have any intention of making such requests, the building would be in situ for a considerable amount of time, and planning permission would run with the land. Future occupants may well have a different perspective. Given the potential for property damage arising from the future growth of the tree, such requests would be very difficult for the Council to resist; even taking account of the preservation order on the tree.
8. Design measures could be introduced to help mitigate the effects of leaf fall, such as gutter guards, and these could be initially secured by condition. However, to be effective they would need to be maintained for the lifetime of the development, along with other steps taken to ensure the tree is pruned back to the point where it does not conflict with the building.
9. A planning condition requiring a specific maintenance regime for both the residential building and the tree, carried out in perpetuity, would be prohibitively difficult for the Council to enforce. This is because it would be likely to require continuous inspection and monitoring of the site. Such a condition would therefore fail the test of enforceability, as set in paragraph 55 of the National Planning Policy Framework ("the Framework"). There is no other mechanism before me that would ensure the development does not lead to conflict with the tree, for the duration of its life.
10. Accordingly, there is a high probability that granting planning permission for the proposed building would ultimately lead to the partial or complete loss of this tree. This cannot be prevented through planning conditions, and would result in significant harm to the verdant character and appearance of the area.
11. Root Protection Area. There is a dispute between the parties over the extent of the root protection area around the tree. However, it is clear that, under either scenario, the new building falls partially within it.
12. As noted previously there is a clearance of around 4 metres between the building and the trunk. The arboricultural report confirms that excavation works would be carried out by hand tools initially to a depth of 600mm, then finished using a mechanical digger under supervision by an arborist, who would prune and cover any roots. It has been subsequently confirmed that the building would be constructed using a shallow raft construction system, designed to avoid significant intrusion into any roots. This method of construction, and the other suggested tree protection measures could be secured by planning

conditions, which could also ensure that services and soakaways are located away from the tree.

13. Whilst the Council suggest that this approach does not accord with the relevant British Standards, it has not provided a detailed explanation of exactly why this would be the case in its submissions with this appeal. Nor has it been explained how the proposed system of construction would harm the tree. In the absence of such a critique, it is reasonable to rely on the submitted tree protection details, which I note were prepared by an appropriately qualified professional in 2018. These indicate that the building could at least initially be built without damaging the tree.
14. Character and Appearance – other issues. In all other respects the proposed building would follow the prevailing pattern of built development found to the rear of the properties along Ashingdon Road. It would benefit from an existing vehicular access and would not significantly add to the hardstanding around this area. Visually, its low height means that it would be subservient to the dwellings found along Ashingdon Road. There would also be a reasonable amount of visual space around the building, which would be appropriately partitioned into external amenity space and parking, which means that this would not appear as a cramped development.
15. Overall, the proposal is acceptable in terms of its appearance, and on the evidence before me appropriate provision would be made for tree protection during the build. However, the proximity of the development to the tree means that the proposal is likely to ultimately lead to its partial or complete loss, which would result in unacceptable harm to the character and appearance of the area. As such, the proposal conflicts with policy DM25 of the Rochford District Council: Development Management Plan (2014) (“Development Management Plan”). This requires, amongst other things, that development should seek to conserve and enhance existing trees.

*Living conditions of future residents*

16. The new building would be located adjacent to a common parking area which would be shared with the existing residents of 18 Ashingdon Road. However, the residual landscaped space around the parking area would otherwise be enclosed and used as a private garden by residents of this building. On the measurements provided by the appellant the total amount of external space would exceed 100 sqm, split in to two areas around the building. The most important windows within the proposed building would look out on to this private amenity space.
17. There would also be windows that face on to the communal parking area. However, these would serve an entrance door, a bathroom, a hallway and a secondary window attached to a bedroom which also benefits from patio doors facing out to the garden. None of these are windows of principal importance; future occupants could install privacy screening were they to be concerned about the proximity to the parking area without detriment to their living conditions, which would remain acceptable when the development is considered as a whole.
18. Any noise and disturbance associated with the parking area would be occasional. It would not give rise to material harm to future occupants of the proposed dwelling.

19. Concerns are also raised about the shade provided by the tree and its potential effect on the building. However, notwithstanding the issues previously explored, a separate area of garden would be provided away from the tree and free from its shade. Many of the windows in the new building would face away from the tree. The overall standard of natural light within the development would be satisfactory in planning terms, when the development is considered as a whole.
20. Overall, the effect on the living conditions of future residents would be satisfactory, with particular regard to outlook, privacy and external amenity space. There is no conflict with policy CP1 of the Rochford District Council: Core Strategy (2011), nor policies DM1 and DM3 of the Development Management Plan, which, amongst other things, seek to promote a good standard of design where new residential development is proposed.
21. My finding above means that the shade from the tree would not compromise the overall standard of living accommodation to the point where the refusal of planning permission would be justified. However, future residents would still experience other types of nuisance from the tree, due to proximity; this would create a threat to the tree as has been discussed previously in this decision.

#### *Other Matters and Conclusion*

22. An additional dwelling would be provided, with an acceptable standard of residential accommodation in close proximity to services and public transport links. It would have appropriate levels of parking and amenity space, making effective use of land within an urban area, helping to improve the supply of housing. Sustainability features would be incorporated into the build. In these respects the proposal accords with a number of policy objectives set out in the Framework.
23. However, the proposal would be likely to lead to the partial or complete removal of a mature tree of significant amenity value, which currently makes a positive contribution to the area. In this respect, the proposal would fail to conserve or enhance the natural environment. I attach substantial weight to the harm that would arise, in consequence. On this occasion the considerations that weigh in favour of the proposal do not, even cumulatively, outweigh the harm that would occur to the character and appearance of the area.
24. Overall, whilst the effect on the living conditions of future residents would be acceptable, the proposal would lead to unacceptable harm to the character and appearance of the area. The proposal conflicts with the development plan, when it is considered as a whole, and there are no other considerations that outweigh this finding. The presumption in favour of sustainable development does not apply.
25. Whilst the other similar development has been approved in the surrounding area, in this case the proximity of the tree justifies a different approach. Whilst concerns are raised about the conduct of the Council in handling the planning application that led to this appeal, this has no bearing on the material planning considerations involved this decision.
26. For the reasons given above, the appeal should be dismissed.

*Neil Holdsworth*

INSPECTOR