



Appeal Decision

Site visit made on 3rd June 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/K3415/W/19/3243210

7 Beech Gate, Little Aston, Sutton Coldfield B74 3AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Sarwan Samrai against the decision of Lichfield District Council.
 - The application Ref 19/00139/FUL, dated 24 January 2019, was approved on 21 November 2019 and planning permission was granted subject to conditions.
 - The development permitted is the variation of condition 2 of permission 16/00779/FUL relating to approved plans/landscaping.
 - The condition in dispute is No 4 which states that: Within 6 months of the date of this permission, the measures within the Arboricultural Method Statement, which relate to works within the Root Protection Area of T11, shall be carried out in full and thereafter retained.
 - The reasons given for the condition is: In the interest of the health and wellbeing of the tree, in accordance with Policies Core Policy 3, Core Policy 14, and NR4 of the Local Plan Strategy, the Supplementary Planning Documents: Sustainable Design and Trees, Landscaping and Development and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref 19/00139/FUL for the variation of condition 2 of permission 16/00779/FUL relating to approved plans/landscaping at 7 Beech Gate, Little Aston, Sutton Coldfield B74 3AR granted on 21 November 2019 by Lichfield District Council, is varied by deleting condition 4 and substituting for it the following condition:
 - 1) Within 6 months of the date of appeal decision APP/K3415/W/19/3243210, the measures within the Arboricultural Method Statement, which relate to works within the Root Protection Area of T11, shall be carried out in full and thereafter retained.

Background and Main Issue

2. Planning permission was granted to demolish the previous dwelling on the appeal site and to construct a new dwelling. Subsequently, an application to make minor material amendments to the approved scheme was submitted and granted permission, which included the imposition of the condition subject to this appeal. The main issue is whether the condition is necessary and reasonable in the interests of the health and wellbeing of the tree in question.

Reasons

3. The appeal site is located within the Little Aston Conservation Area (CA), whose significance is defined at least in part by substantially sized residential

properties of various ages and designs located on large plots, within a mature and established landscape. The tree to which the condition refers (T11) is located within the curtilage of the adjacent residential property, but it is positioned in close proximity to the common boundary with the appeal dwelling. T11 sits at a lower ground level than that of the rear garden of the appeal dwelling.

4. The tree is a mature and visually dominant specimen that contributes positively to the character and appearance of the area and to that of the CA. Its loss would be to the detriment of the surrounding area and would result in harm to the CA. The original planning permission which permitted the replacement dwelling included a condition to protect the trees on and adjacent to the appeal site, but the Council state that this condition was breached. The Council consider that as a result of this breach, works that have been undertaken have potentially caused harm to the health and wellbeing of T11.
5. In this context, I am satisfied that the imposition of Condition 4 was relevant to planning and relevant to the development permitted. It was also relevant to ensure that the appeal scheme preserves the character and appearance of the CA by ensuring that T11 is retained and that the works that have taken place to implement the development do not risk harm to the health and wellbeing of the specimen. The condition clearly sets out what is required to be done and the timescale for doing it, meaning that it is both precise and enforceable. Therefore, its imposition meets four of the six tests set out in Paragraph 55 of the National Planning Policy Framework (The Framework). The appellant's case is that to carry out the measures specified in the condition would cause further damage to the tree, in effect meaning that the condition is not necessary or reasonable, and therefore does not meet the remaining two tests set out in The Framework.
6. The appellant relies on a letter from the Council's Principal Planning Officer (Enforcement) which refers to the breach of the tree protection measures that occurred. In summary, this letter states that there are no practical remedial measures that can be taken to remedy the breach and that it is possible that, in attempting to rectify the breach, further damage may be caused. However, this is an opinion offered by a Council Officer and it does not represent a formal decision of the Council.
7. The appellant subsequently submitted an Arboricultural Method Statement (AMS) in support of their minor material amendment planning application. The AMS refers directly to T11. It sets out a scheme to investigate and then, as needed, address the possible compaction of soil within the root protection area of T11 that may have occurred during the redevelopment of the appeal site. That the appellant's own AMS recommends such a scheme of works be undertaken provides compelling evidence that such works are both necessary and reasonable to safeguard the health and wellbeing of T11. The comments of the Council's Arboricultural Officer made during the course of the application also state that the AMS is acceptable, and they raise no concern that the works it proposes would result in further damage to the tree.
8. I have not been provided with any substantive evidence to counter the clear agreement between the two parties' arboricultural experts that the works outlined in the AMS are both necessary and reasonable. Therefore, on the basis of the information I have before me, the condition also meets the tests of being

necessary and reasonable, and collectively it satisfies all six of the tests that are set out in The Framework. Accordingly, the requirements set out in the condition should be retained.

9. However, the 6 month period for compliance with the condition commenced from the date on which the decision notice was issued. This period has now elapsed and whilst I have found that the condition should be retained, it is reasonable to allow the appellant a further 6 months to meet its requirements. Procedurally this means that the appeal must be allowed, with the original condition substituted with one that runs from the date of this appeal decision.
10. For the reasons set out above, I conclude that the condition meets the six tests set out in the Framework. The measures it sets out are required to be undertaken in the interests of the health and wellbeing of the tree and to ensure that the development accords with the objectives of Core Policies 3 and 14 and Policy NR4 of the Lichfield District Local Plan Strategy 2015, the Trees, Landscaping & Development Supplementary Planning Document 2016 and The Framework, all of which seek to safeguard the character and appearance of localities.
11. The Council's reason for the condition also refers to a Sustainable Design Supplementary Planning Document, but I have not been provided with a copy of this. This omission does not however have any bearing on the outcome of the appeal.
12. The appeal is therefore allowed, with the planning permission varied as set out in the formal decision.

Graham Wraight

INSPECTOR