
Appeal Decision

Site visit made on 6 October 2020

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 3 November 2020

Appeal Ref: APP/X0415/W/20/3245576

10 Charter Drive, Amersham, HP6 6UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Baker against the decision of Buckinghamshire Council.
 - The application Ref PL/19/3783/VRC, dated 2 November 2019, was refused by notice dated 30 December 2019.
 - The application sought planning permission for *erection of a detached house (amendment to planning permission CH/2004/1667/FA)* without complying with a condition attached to planning permission Ref CH/2006/2045/FA dated 16 January 2007.
 - The condition in dispute is No 4 which states that: *Notwithstanding the provisions of Article 3 (1) of the Town & Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order), no development falling within Classes A to C of Part 1 of Schedule 2 to the said Order shall be erected, constructed, or placed within the application site unless planning permission is first granted by the Local Planning Authority.*
 - The reason given for the condition is: *In order that the Local Planning Authority can properly consider whether any future proposals will constitute overdevelopment of the site or will in any other way be detrimental to the character of the locality.*
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Decision

1. The appeal is dismissed.

Procedural matters

2. On 1 April 2020 Chiltern District Council was merged with other local planning authorities into a new Unitary authority named Buckinghamshire Council. While the original application was submitted to Chiltern District Council, the authority's new name has been referred to in the banner heading above.

Main issue

3. The main issue is whether condition 4 is reasonable and necessary having regard to the character of the area and the close proximity of a tree subject to a Tree Preservation Order.

Reasons

4. The appeal site comprises a modern, 2-storey detached dwelling at the end of a cul-de-sac. The rear garden is approximately rectangular and of modest size.

A single, mature horse chestnut tree stands adjacent to the garden's side boundary fence. The tree is situated towards the end of an avenue of similar horse chestnut trees that continues beyond the rear of the garden and which is protected in its entirety by Tree Preservation Order No 22 (1989)(the 'TPO').

5. Two recent applications to extend the house have been dismissed at appeal^{1,2} because of the harmful effect of the proposals on the protected tree. According to the appeal decision letters, the garden originally contained 2 horse chestnut trees, but removal of the other tree was allowed at appeal in 2014. A subsequent appeal to remove the remaining tree was reportedly dismissed in 2017.
6. The appeal seeks to enable the property to benefit from the specified permitted development ('PD') rights and details are therefore not provided as to how these rights would be used. However, in the recently dismissed appeals the appellant sought to build an extension on the back of the house of 3 and 3.5 metres depth. Using PD rights, it would be possible to extend beyond the rear wall of the original dwellinghouse by at least 4 metres. I therefore consider it reasonably foreseeable that a structure of approximately this size would be built on the rear of the house if allowed PD rights.
7. Any substantial extension would result in the remaining garden being dominated by the canopy of both the tree in the garden and the associated horse chestnut tree beyond the rear fence. This would result in a lack of daylight in the rear amenity space and house, and potential concerns regarding safety and tree debris.
8. I consider it highly likely the consequence of this is that an application to carry out works to the tree would be necessary to render the amenity space usable. The likely harm to private amenity means that, on balance, I consider there is a strong possibility that the tree would need to be removed or significantly reduced in size.
9. The avenue of horse chestnuts makes a positive contribution to the character of the area and the crown of the tree in the rear garden of 10 Charter Drive can be seen in this context from the wider public domain. Removal or significant reduction of the tree would therefore be detrimental to the character of the area.
10. Saved Policy TW3 of the Adopted Chiltern District Local Plan 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011, seeks to prevent development that would have a significant adverse effect on the appearance or health of protected trees, for the purpose of protecting the character of an area. For the reasons above, I consider it highly likely that removal of condition 4 would lead to a significant adverse effect on the protected tree and harm to the character of the area, in conflict with Policy TW3.
11. The appellant argues that condition 4 was not originally necessary to make otherwise unacceptable development acceptable. I do not have details of the Council's reasoning at the time before me. However, given the realised risk to protected trees from the development, in these exceptional circumstances I

¹ APP/X0415/D/19/3222125 (May 2019)

² APP/X0415/D/20/3245574 (July 2020)

consider that the original proposal would not have been acceptable in the absence of condition 4.

12. Regardless of this, although unusual, the Council may now argue that the condition is necessary for different or additional reasons and my consideration of the appeal must be based on present circumstances.
13. I have had regard to the appeal decision at Clevehurst Close in Slough, which the appellant brought to my attention. In this case, no exceptional circumstances were demonstrated, and it is therefore not directly relevant to the current appeal.

Conclusion

14. For the reasons above, and having regard to all other matters raised, the appeal should be dismissed.

B Davies

INSPECTOR