



Appeal Decision

Site Visit made on 16 February 2021

by S Harley BSc(Hons) M.Phil MRTPI ARICS

an Inspector appointed by the Secretary of State

Decision date: 19th February 2021

Appeal Ref: APP/D1265/W/20/3253888

Land adjoining No. 11 Brook Lane, Corfe Mullen BH21 3RD

- 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 Robin and Barry Wilcox against the decision of Dorset Council.
- The application Ref 3/19/2404/FUL, dated 9 December 2019, was refused by notice dated 27 May 2020.
- The development proposed is erect a detached dwelling with car parking and garaging.

Decision

1. The appeal is dismissed.

Main Issue

2. The appeal site is a small part of the wider County of Dorset (Corfe Mullen No.2) Tree Preservation Order 1965 (the TPO)¹. This is an area TPO which protects the trees standing at the time it was made. The main issue for this appeal is the effect of the proposed development on the character and appearance of the local area taking particular account of the effect on protected trees.

Reasons

3. Since the TPO was made a number of dwellings have been constructed within its boundary and some trees have been felled with consent². The character of Brook Lane on the appeal side is now mainly that of individually designed dwellings set back from the road side many with trees in the front gardens. Opposite there are dwellings in generally narrower plots. The Council raises no objections in principle to a dwelling³ of the design and size proposed and, based on the evidence, I see no reason to disagree.
4. The appeal site contains many trees providing an attractive mixed woodland grouping. It, and the adjoining gardens, slope steeply up from Brook Lane to the dwellings on Croft Close behind. The trees are visible along Brook Lane and can be seen in longer distance views from across the valley above the roofs of dwellings opposite the appeal site. Together the trees have a prominent and attractive appearance in the local area and contribute to the local sense of place.

¹ The East Dorset District (Croft Close, Corfe Mullen, No. 3) Tree Preservation Order 2011 further protects trees on the adjoining land at No 29 Croft Close.

² For example on the appeal site Ref 3/17/1925 and associated Appeal Ref APP/TPO/U1240/6404

³ Outline planning permission was granted in 1982 for three dwellings on a larger site that included the appeal site. Two of these have been built.

5. Works for access and construction and engineering could take place within a relatively restricted part of the site – referred to by the appellant as a 'site within a site'. I see no reason to suppose that trees further away from the proposed 'site within a site' works than those referred to below would be unduly harmed.
6. As shown on Plan 1801.11 the proposal would require the removal of eleven trees to facilitate the development. Five of these would not require consent to fell by virtue of post dating the making of the TPO or having died⁴. The remainder are classified in the Tree Survey 24 September 2019 as of low quality or unsuitable for retention in the longer term by virtue variously of suppression/etiolation/damage.
7. The value of the trees on the site resides both in the individual trees and the combination of trees as a woodland group. The felling of the trees identified for removal would result in some loss of the tree cover which would be harmful to the character and appearance of the area. However, given their suppressed growth and provided other trees between them and the site boundaries were to be retained, the overall harm would be relatively modest.
8. The proposal recognises the need to safeguard the other protected trees during the construction period. Plan Ref 1801.11 indicates a protective fence line at the 'perimeter of root protection area'. This appears to be indicative and based on crown spread rather than in line with the provisions of BS5837:2012⁵. Inside the protected fence line, on the same plan, is an area coloured pink and identified as 'ground protection area around excavation zone' (the zone).
9. However, the footprint/extent of the building/garage/engineering and other works is not shown clearly on the same plans which show the tree protection measures or on the cross sections. Plan Ref 1801.12* appears to show part of the footprint of the proposed house would be close to/on the inner edge of the zone which, if it is the case, could undermine its likely effectiveness in ground protection terms. In the absence of more detailed cross sections showing the existing and proposed levels/foundations/positions of piles/ proposed depth and extent of excavations etc in relation to trees the full effect of the proposal cannot be confidently determined.
10. Moreover it would appear that the proposed terrace and steps would encroach past the zone and the protective fence line towards and/or beneath the crown spreads of trees T24, T26 and T27. The yellow cross section shown on Plan 1801.16* does not appear to allow for the proposed terrace or its relationship with retained trees. The footprint of the building would also appear to encroach the crown spread of T27. The cross sections shown on Plan 1801.15* do not identify the relationship of the proposed works to T27. Nor does T27 appear on the red NW elevation cross section 1801.14* or the 'sketch view from north' although trees that are further away from the proposed house are shown. Plan Ref 1801.16* has two separate annotations of protective fencing. One of these appears in about the same position on Plan 1801.11 but the other does not and appears to be positioned somewhere within the zone on the latter plan. These inconsistencies/omissions would give rise to uncertainty in terms of any

⁴ Decisions on applications 3/20/1774 and 3/20/1842

⁵ The appeal evidence does not include a detailed Root Protection Area Assessment that follows the principles of BS5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations in terms of plotting of root protection areas - radius x stem diameter modified by an assessment of likely root distribution, topography, soil, tree species etc or mitigation measures for encroachment.

conditions requiring development to take place in accordance with plans and in terms of what would be required to ensure the retention of protected trees.

11. The house would be on stepped up the slope such that it would appear as three floors to the front and two floors to the rear. The garage would be at a lower level and closer to Brook Lane. The proposal is to construct the building of pre-fabricated SIP panels craned into position over a concrete basement level. Plan Ref 1801.16* indicates how a telescopic crane could swing within the site. However, on that plan the swing arc of the crane appears close to the trunks of some of the trees. The SIP panels could be as large as 6m long and 1.2m wide. In the absence of more detailed information I cannot confidently conclude that the manoeuvring of such large panels would not harm the trunks of nearby trees most particularly T27.
12. There is no doubt that a house amongst trees can provide an attractive living environment and that areas of shade can be welcomed by occupants. Nevertheless there is just as likely to be a requirement for sunny areas for outdoor domestic activities which may include the growing of decorative plants and vegetables. Notwithstanding the tall straight trunks and high canopies of some of the trees and the outlook across the Stour Valley there appears to be relatively little level space on the appeal site that would be free of tree cover and shade.
13. Accordingly it seems to me there would be a realistic prospect of pressure from future occupiers of the proposed dwelling for works to reduce the extent of tree cover. If successful, this would further harm the character and appearance of the area. From what I have seen the appeal site would retain a more extensive tree cover than the neighbouring properties and these examples do not lead me to any different conclusion on the appeal before me. In this context I also acknowledge the support from neighbours at No 11 Brook Lane for removal of trees to improve natural light to their property and I recognise that Douglas Firs are likely to drop limbs as they mature potentially leading to pressure for felling or removal of branches.
14. Due to the lack of detailed information, inconsistency between plans, and the position of proposed works, I cannot conclude with confidence that the trees which should be retained would be unaffected by the proposal or that satisfactory tree protection measures could be secured by condition. T27 in particular, a Scots Pine, is prominent and in good condition with an estimated life of 40 years or more, and is identified as one of the few Category A trees on the site and could be severely impacted by the proposed works.
15. For the reasons set out above I conclude that the proposed development would have a significant and harmful negative impact on the protected trees and therefore on the character and appearance of the local area. Accordingly there would be conflict with Policies HE2 and HE3 of the Christchurch and East Dorset Local Plan 2014 which seek high quality development that is compatible in relation to mature trees and enhances the landscape character of the area. It would also conflict with those principles of the National Planning Policy Framework (the Framework) and the National Planning Practice Guidance that seek good design that is sympathetic to local character and that seek to protect valued trees.

Other Matters

16. The Council could more clearly have explained what the anomalies in the submission are considered to be and what further technical information should have been provided. Nevertheless, as set out above, I have been unable to confidently conclude that the proposal would not have an unacceptable effect on the protected trees and hence the character and appearance of the area.
17. The proposal before me was prepared in response to an earlier refusal of permission by the Council for a similar scheme. However, this in itself does not lead me to conclude the proposal before me is acceptable.

Planning Balance and Conclusion

18. The Council indicates that a five year supply of deliverable housing land cannot be demonstrated for the purposes of this appeal. The provision of a house would add to the local housing supply, would provide economic benefits during the course of construction and from spend by future residents, albeit it in a limited way. This attracts weight in favour of the proposal. However, I have found that the proposal would have a significant and harmful negative impact on protected trees and therefore on the character and appearance of the area and would conflict with the development plan in this respect. Nor can I confidently conclude that conditions could satisfactorily mitigate this. These matters together outweigh the benefits of the proposal.
19. I conclude that the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The appeal is dismissed.

S Harley

INSPECTOR