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# Appeal Decision

Site Visit made on 9 February 2021

**by R E Jones BSc (Hons), DipTP, MRTPI**

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

**Decision date: 15 April 2021**

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## **Appeal Ref: APP/W0340/W/20/3261927**

**Mayberry, Mill Lane, Calcot, Reading, Berkshire, UK RG31 7RS**

- 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 Mrs Alexandra Carlton against the decision of West Berkshire District Council.
  - The application Ref 20/01850/HOUSE, dated 11 August 2020, was refused by notice dated 8 October 2020.
  - The application sought planning permission for the relaxation of a condition relating to planning application number 143454 for the removal and lopping of leylandii trees, without complying with a condition attached to planning permission Ref 03/02590/HOUSE, dated 03 February 2004.
  - The condition in dispute is No 4 which states that: the development hereby approved shall be carried out in accordance with drawing numbers M/41 received on 03 December 2003 unless otherwise agreed in writing by the Local Planning Authority.
  - The reason given for the condition is: to ensure the development is constructed in accordance with the submitted details assessed against Policies LD3 of the Berkshire Structure Plan 1991-2006 and OVS2 of the West Berkshire District Local Plan 1991-2006.
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## **Decision**

1. The appeal is allowed and planning permission is granted for the relaxation of a condition relating to planning application number 143454 for the removal and lopping of leylandii trees at Mayberry, Mill Lane, Calcot, Reading, Berkshire, UK RG31 7RS in accordance with the application Ref 20/01850/HOUSE dated 11 August 2020, without compliance with condition number 4, previously imposed on planning permission Ref 03/02590/HOUSE dated 03 February 2004 and subject to the conditions in the schedule attached to this decision.

## **Procedural Matter**

2. The Council determined the application in accordance with S73A of the Act<sup>1</sup>. This section of the Act relates, in part, to proposals where the terms of the condition of the planning permission are breached by works or development already carried out.
3. In this case the Council refers to a condition of Ref 03/02590/HOUSE, that has not been complied with. Yet, this appeal relates to a separate condition, the terms of which have not been breached as the works the appellant proposes have not occurred to date. Accordingly, I have determined the application in accordance with S73 of the Act which relates to proposals following a refusal of

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<sup>1</sup> Section 73A of the Town and Country Planning Act 1990 (as amended)

an application to carry out development without complying with a condition imposed on a permission. I consider that no party has been prejudiced by the approach I have taken.

### **Background and Main Issue**

4. Planning permission was granted for the demolition of an existing dwelling and the construction of 5 dwellings at the site (Ref 143454 (the 1993 permission)). The Council subsequently issued a new permission in relation to that development (Ref 03/02590/HOUSE) (the 2004 permission). The description of development I have used in the banner heading above refers to the 2004 permission as this is the act of development that the permission subject to this appeal relates to.
5. The 2004 permission approved the relaxation of a condition of the 1993 permission, which restricted the removal of trees relating to the 5 dwellings at the site, in the interests of the area's environmental quality. Specifically, it allowed the occupiers of Mayberry (known then as Shandon), to remove some boundary trees referred to in the drawing number detailed in Condition 4 of the 2004 permission. The reason for that condition included reference to Policies in the previous Structure and Local Plans which related to the protection of the area's character and appearance. In terms of this appeal it is proposed to remove further trees relating to Mayberry, in accordance with the drawing that accompanies the submission.
6. With that background the main issue is the effect of the proposed tree removal on the character and appearance of the area.

### **Reasons**

7. The majority of the trees proposed for removal comprise substantial leylandii located along the appeal dwelling's northern boundary with Nos 4 and 5 Kettering Close. A small group of shorter trees close to the plot's rear boundary are also proposed to be felled. Although no arboriculture report, assessing the health of the trees to be removed, has accompanied the submission, the appellant indicates that the frequent maintenance of these trees is necessitating their removal.
8. Collectively, the trees form an attractive setting and contribute to the verdant appearance of the surrounding area, which is characterised by attractive mature trees and shrubs along the boundaries and frontages of large detached dwellings.
9. The removal of the leylandii trees would create two noticeable gaps in the otherwise contiguous line of trees along the appeal dwelling's northern boundary. Tree loss of the scale proposed would diminish the area's verdant qualities and the gaps created in the appeal property's boundary would appear stark, where they would otherwise be occupied by the vigorous and dense tree covering.
10. Replacement planting is planned by the appellant to address the loss of trees, and whilst I have not seen any detailed tree replacement proposals, the appellant is committed to providing native varieties. It is considered that suitable alternatives could be planted that would mitigate the impact caused by the proposed tree removal, and once successfully established would overcome the impact caused by the gaps in the boundary. Furthermore, the

reintroduction of planting would also sustain the area's verdant qualities, and I am satisfied that this matter could be addressed through the approval of a replanting scheme with the Council by way of a planning condition.

11. I conclude that the proposed tree removal works would not cause unacceptable harm on the character and appearance of the area. Accordingly, the proposal would accord with Policies CS14, CS18 and CS19 of the West Berkshire Core Strategy (2006-2026). These, amongst other things, require proposals to respect the character and landscape of the surrounding area. The proposal would also comply with the Council's Quality Design Supplementary Planning Document Quality Design (June 2006) where it requires tree loss at sites to be addressed through replacements.

### **Other Matters**

12. The occupier of No 5 Kettering Close (No 5) has raised concerns regarding the effect of the tree removal on his privacy. However, there is an existing boundary fence between the appeal dwelling and No 5 that is of a height to adequately mitigate any overlooking from the appeal dwelling towards No 5. Furthermore, the appellant's intention to provide re-planting would re-introduce some landscape screening along the boundary between the two properties.
13. Any future tree removal works, within the boundary of this cul-de-sac of dwellings, would be controlled by planning condition and require assessment by the Council. In respect of tree felling at properties on Kettering Close, I have not been made aware of whether there are any restrictions in place here, nor whether any future works are proposed. Therefore, I have not given the matter of precedent, any significant weight in my assessment.

### **Conditions**

14. I have had regard to the Council's suggested conditions, amending them where necessary for clarity and to ensure compliance with the tests set out in paragraph 55 of the Framework. I also sought comments from the Appellant to the pre-commencement condition.
15. In light of my conclusion on the main issue, I have varied the former condition No 4 to include reference to the revised drawing relating to tree removal at Mayberry. This condition also has the continued effect of ensuring that any future work to existing trees and shrubs on the wider site, as defined and modified by previous approvals, requires permission from the local planning authority. The condition is necessary to safeguard existing landscape features that contribute towards the area's character and appearance.
16. The plans condition is necessary so that the approved tree removal is completed in accordance with the listed drawing.
17. A pre-commencement planning condition requiring approval of a replanting scheme is necessary in the interests of the area's character and appearance. A tree replacement condition is also considered necessary for the same reason.
18. In relation to the above condition, the appellant has queried what form the process of obtaining written approval from the Council would take, and whether a timeframe could be applied to this, given previous delays. Whilst I appreciate that the appellant would want the requirements of the condition to be

determined expediently, this would be a matter for the Council to determine in accordance with their own procedures and timescales relating to the discharge of conditions.

19. The appellant has also raised concerns, that the requirement for this condition would undermine the appeal process as it would require the submission of further details. However, these details would be required to mitigate the proposed tree removal and make the proposal acceptable, consequently, its imposition is also reasonable.
20. A condition requiring the retention of parking and turning areas within the site is necessary in the interests of highway safety. This condition related to the previous approved development at the site and is still subsisting.

### **Conclusion**

21. For the reasons given above, and having considered all matters raised, I conclude that the appeal should succeed. I have granted a new planning permission without the disputed condition but substituting it with another and reinstating those undisputed conditions that are still subsisting and capable of taking effect.

*RE Jones*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be carried out in accordance with the following approved drawing ref: Site Plan 90m x 90m (Scale 1:500).
- 2) Notwithstanding the details on the approved drawing ref "Site Plan 90m x 90m (Scale 1:500)", all other existing trees and shrubs on the site (as defined or modified by planning refs 143454 and 03/02590/HOUSE), shall not be lopped, topped, felled, lifted, removed or disturbed in any way without the prior permission in writing of the Local Planning Authority.
- 3) The tree removal hereby approved, shall not commence until a full specification of all proposed replacement tree planting has been submitted to and approved in writing by the local planning authority. The specification shall include the quantity, size, species, and positions or density of all trees to be planted, how they will be planted and protected and the proposed time of planting. The tree planting shall be carried out in accordance with the approved specification.
- 4) If, within a period of 5 years from the date of planting, any replacement tree is removed, uprooted, destroyed or dies or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.
- 5) The vehicle parking and turning spaces at the site shall be retained and kept available for those purposes at all times in accordance with the approved plan.

**\*\*\*End of Schedule\*\*\***