



Appeal Decision

Site Visit made on 24 May 2021

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 July 2021

Appeal Ref: APP/P3610/W/21/3269414

Rear of Fairbriar Court, Hereford Close, Epsom KT18 5DZ

- 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 Miss H Hanks (Fairbriar Court Residents Association Ltd) against the decision of Epsom and Ewell Borough Council.
 - The undated application, Ref 20/00952/FUL, was refused by notice dated 19 January 2021.
 - The development proposed is described as, "Removal of tree as indicated on attached sheet which is too close to the neighbouring property, and is now of great concern in that it could damage the said neighbouring property; and to take this opportunity to create a further parking space adjacent to those existing, thus providing each flat with its own space, and freeing up space in the roadway".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of development shown above is taken from the planning application form. It differs from that shown on the decision notice which identifies the proposed development as, 'Felling of a Silver Birch in Fairbriar Court adjacent to the flank wall of No. 22 The Parade. Create a further parking space where the tree is located for additional parking space'. I have used this description in my consideration of the appeal since it best describes the proposed development in precise and concise terms. It does not fundamentally alter the development which is the subject of this appeal.

Main Issue

3. The main issue in this appeal is whether the proposal would preserve or enhance the character or appearance of the Church Street Conservation Area and whether the setting of Melrose Cottage would be preserved.

Reasons

Conservation area

4. The appeal site comprises an area of land to the rear of Fairbriar Court. The site is within the Church Street Conservation Area (conservation area). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s72(1) that with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

5. The significance of the conservation area, as a whole, as a designated heritage asset is derived predominantly from the high quality architecture and the aesthetically-pleasing materials incorporated in the many listed buildings, locally listed buildings, and positive buildings, and also its notably verdant character. The site contributes to the significance of the conservation area primarily by the presence of a Silver Birch tree (the tree) within the site. The tree is located close to Melrose Cottage, which is a Grade II listed building.
6. The Arboricultural Report supplied states that the tree is in good overall physiological condition and fair overall structural condition. I observed that, although the tree is not protected by a Tree Preservation Order, it is aesthetically-pleasing and it contributes to the verdant character of the conservation area. It follows that, whilst the site could support existing wildlife if the tree were to be removed, the proposal to fell the tree itself would harm the significance of the conservation area.
7. As the harm would be localised, the proposal would (using the terminology found in the National Planning Policy Framework (the Framework)) cause less than substantial harm to the significance of the conservation area as a designated heritage asset, but nevertheless this harm is of considerable importance and weight. The Framework advises that such harm should be weighed against the public benefits of the proposal, which are considered below.

Setting of the listed building

8. The appeal site is within the setting of Melrose Cottage (a Grade II listed building), i.e. the surroundings in which the heritage asset is experienced. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s66(1) that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
9. I observed that the significance of Melrose Cottage derives in part from the historic period of its construction, its tiled roof, and its colourful rendering. The setting, including the appeal site and the tree within the site, contributes to the significance of Melrose Cottage by adding to the verdant backdrop that surrounds Melrose Cottage, which complements the visual experience of Melrose Cottage when viewed within its setting.
10. The proposed removal of this aesthetically-pleasing tree would reduce the quality of the verdant backdrop around Melrose Cottage, meaning that the visual experience of Melrose Cottage when viewed within its setting would be negatively affected. In this respect, the contribution that the setting makes to the significance of Melrose Cottage would be compromised by the proposal. Whilst the harm to the setting of Melrose Cottage would be less than substantial, this harm is of considerable importance and weight. This harm must be weighed against the public benefits of the proposal, which are considered below.

Public benefits and balance

11. The Arboricultural Report makes clear that although the tree is within the distance that 90% of subsidence damage cases were recorded within the Kew

Survey, there is little circumstantial evidence that subsidence will be a damaging factor to Melrose Cottage.

12. Furthermore, although the report recommends that the tree should be removed to avoid conflict with Melrose Cottage and the continual costs associated with alleviating any nuisance, the report notes that the tree has undergone and will require periodic pruning to maintain it within the dimensions that will not cause nuisance or damage to Melrose Cottage. In this regard, and taking account of the appellant's reference to spacing guidelines, I have not been provided with evidence which demonstrates that pruning could not be undertaken in the future, which would thereby protect Melrose Cottage. Therefore, based on the evidence before me, I find that this public benefit offers only minimal support for the proposal.
13. The proposal would offer another public benefit in that it would create one parking space in connection with Fairbriar Court, which would reduce on-street parking in Hereford Close and the surrounding area, thereby potentially creating an extra on-street space for public use. However, even taking account of the fact that parking near the town centre is at a premium, as only one parking space is proposed, this benefit also offers only minimal support for the proposal.
14. The Framework makes clear that great weight needs to be given to designated heritage assets' conservation. I give moderate weight to the benefits of the proposal and find that they do not, either individually or cumulatively, amount to public benefits which outweigh the harm that would be caused to the significance of the conservation area and the setting of Melrose Cottage.
15. I therefore find that the proposal would neither preserve nor enhance the character or appearance of the conservation area and it would fail to preserve the setting of the Melrose Cottage. It would conflict with Policies DM8, DM9, and DM10 of the Development Management Policies Document (adopted 2015) which collectively provide that, amongst other things, every opportunity to conserve and enhance heritage assets should be taken by new development. It would conflict with Policy CS5 of the Core Strategy (adopted 2007) which provides that, amongst other things, decision-makers must protect and seek to enhance the Borough's heritage assets, including conservation areas. It would also conflict with section 16 of the Framework, which seeks to conserve and enhance the historic environment.

Other Matters

16. I note that there have been no objections from local residents (including from the residents of No 22 The Parade), and I have carefully considered all the representations submitted in support of the proposal. Nevertheless, on the main issue I have found that the proposal would not preserve the character or appearance of the conservation area and the setting of the Melrose Cottage, and this would remain the case notwithstanding the views of interested parties. Concerns relating to how the planning application was dealt with by the Council are not matters that I can assess in the context of a planning appeal. Accordingly, none of these matters changes my findings on the main issue.

Conclusion

17. For the reasons given above I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR