

Appeal Decision

Site visit made on 15 November 2021

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref. APP/J1915/D/21/3279825

Land on Wrenbrook Road to the west of 24 Havers Lane, Bishop's Stortford CM23 3PH

- 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 Benjamin Baxter against the decision of East Hertfordshire District Council.
 - The application ref. 3/21/1085/FUL, dated 10 May 2021, was refused by notice dated 15 July 2021.
 - The development proposed is described on the application form as "*Garage to be rebuilt after previous garage was demolished for being unsafe*".
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The appellant was not present for the access required site visit which had been scheduled. As I could see what I needed to from public land, I proceeded with the site visit on an unaccompanied basis.
3. I have taken the site address in the heading above from section 4 of the application form. When compared with the Council's decision notice and the appeal form, it more accurately describes the exact location of the site.
4. Different descriptions of the proposed development appear on the Council's decision notice and the appeal form. The former refers to a "*Detached single storey garage/workshop*". The latter refers to a "*Safe secure garage for storing a vehicle/trailer in*". In these circumstances I see no reason for departing from what was offered at section 3 of the application form.

Main issue

5. I consider the main issue in this appeal to be the implications of the proposed garage for the proper planning of the area with regard to its potential effects upon the living conditions of the neighbouring occupiers at 24 Havers Lane, highway safety and an oak tree subject to a Tree Preservation Order (TPO).

Reasons

6. The appeal concerns an irregular shaped area of hardstanding fronting onto Wrenbrook Road close to its junction with Havers Lane. The surroundings of the appeal site are residential in character.
7. Close to the rear and south-eastern side boundaries of the site is the dwelling and associated garden at 24 Havers Lane. The front boundary is formed by the footway (along Wrenbrook Road) which is about 1.5m wide. Next to the north-western side boundary is the oak tree subject to the TPO. Beyond the tree is a separate hardstanding upon which is a timber-framed structure.
8. The proposed garage would be built to fit the shape of the site, leaving only nominal strips of land alongside each boundary. It would be topped by a mono-pitched felt roof ranging from 2.8m to 3.0m high.
9. Whatever the change in levels between the appeal site and 24 Havers Lane, the ground floor windows in the opposing side elevation of this adjacent dwelling seem to have some form of frosted glass, as indicated by the appellant. This suggests to me that those windows are unlikely to function as primary windows to habitable rooms. In any event, the windows look straight into the boundary fence which is topped by a trellis overgrown by evergreen vegetation reaching well over 2m in height only a short distance away.
10. These factors may explain why the comments on the planning application from the occupiers of 24 Havers Lane raised no concerns about the physical impact of the garage building. I see no basis to find that the scheme would have any significant detrimental impacts on the amenity of the occupiers of this neighbouring property through overbearing effects, a sense of enclosure, harm to outlook or loss of light. There would be respect for Policy DES4 of the East Herts District Plan (EHDP).
11. The appellant says the highway authority "... would like 1m of clearance from the road..." and that this is not possible as it would affect the use of the building as a store for a vehicle/trailer. In fact, in order to minimise danger, obstruction and inconvenience to users of the highway and the premises, at a point that is close to a road junction and a sharp bend in the carriageway, the highway authority, correctly in my view, requires the garage to be set back a minimum distance of 2m from the kerb line in Wrenbrook Road. This would entail the front of the garage being sited about 0.5m back from the front edge of the site. The block plan does not show that this would be achieved.
12. The photograph submitted by the appellant shows that the much smaller former garage was set back from the pavement, with the block plan confirming that it broadly met the 2m requirement. I have no detailed planning information about the other garages on the road. I agree with the local planning authority that the siting of the garage cannot be controlled by a planning condition, given the limited space available on the site for the size of garage proposed and the stated storage needs of the appellant. As things stand, it has not been demonstrated that the proposed garage would benefit from safe and suitable highway access arrangements. This is in conflict with Policy TRA2 of the EHDP.

13. The protected oak tree is mature and substantial in size, prominent in the wider urban surroundings and clearly of some amenity value as confirmed by its inclusion in the TPO. The appellant explains that 3 local tree surgeons have checked the ground and found that the site is clear of roots for up to about "...100cm from the surface...". He states that the concrete raft slab for the garage base only requires a depth of 30cm so there will be no adverse effects on the strength or growth of the tree.
14. The appellant's assertions are not backed up by any written reports from those tree surgeons and are somewhat surprising as it is common to find the majority of tree roots in the top 600mm of soil. The garage would be sited very close to the tree and within its root protection area, as confirmed by the Council's Landscape Officer. No tree survey and arboricultural implications assessment, in line with British Standard 5837: 2012, has been submitted to demonstrate that the garage would not cause damage to the protected oak tree, including its root system. Thus, I cannot be certain about the future of this tree and the positive contribution it makes to the local amenities of the area. The failure to demonstrate how the scheme will retain, protect and enhance this notable landscape feature conflicts with the aims of Policy DES3 of the EHDP and Policy GIP4 of Bishop's Stortford Town Council Neighbourhood Plan for All Saints, Central, South and part of Thorley 2016-2032.
15. Drawing these threads together, I find on the main issue that the proposed garage would not be conducive to the proper planning of the area given the likely adverse effects upon highway safety and an oak tree subject to a TPO.
16. Several interested parties and the Town Council were concerned about the possibility of the proposed building being used for commercial or industrial purposes. Given the recent history of the site, this concern is acknowledged but if the proposal had been acceptable in all respects, it would have been possible to attach a planning condition preventing such uses and limiting the use to the storage of a vehicle/trailer. It would also have been possible to exercise control over materials and the coloured finish to the metal shutter door. There may be restrictive covenants affecting the land but these are private legal matters which fall outside the scope of public planning controls.

Conclusion

17. My finding on the main issue is decisive to the outcome of this appeal. There is conflict with the development plan. The harm cannot be fully mitigated by the imposition of planning conditions and it is not outweighed by other material considerations. For the reasons given above and taking into account all other matters raised and the representations from a local Councillor, local residents and the Town Council, I conclude that this appeal should not succeed.

Andrew Dale

INSPECTOR