



Appeal Decision

Site visit made on 7 February 2022

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd March 2022

Appeal Ref: APP/N5090/W/21/3282013

49 Station Road, New Barnet, Barnet EN5 1PR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Kani Ali against London Borough of Barnet.
 - The application Ref 21/2145/FUL, is dated 16 April 2021.
 - The development proposed is described on the application form as: 'Work is to level part of the frontage and rear garden levels with some ground excavation, new brick boundary wall, hard and soft landscaping works to frontage, removal of a TPO to allow a second driveway and remove trip hazards and assist with DDA compliance where required. This document has also been prepared in line with Vehicle Crossover Application Guidance Notes & London Borough of Barnet Domestic Vehicle Crossover Policy.'
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. It has been brought to my attention that a draft Local Plan is emerging. However, this is at an early stage and currently attracts limited weight. I shall determine the appeal on this basis.
3. For the purposes of determination, I have used the description of development¹ that is set out upon the Council's Decision Notice and the appeal form, as opposed to that stated on the application form. This is because it is clear and concise.
4. It has also been brought to my attention that the intended removal of a protected tree (the Yew tree) is not reflected upon the proposed driveway layout² submitted. The appellant has confirmed at appeal stage that it is his intention to remove the Yew tree. Given the reference to the intended removal contained within the description of development used to advertise the proposal, I am satisfied that no party with a potential interest is prejudiced by me proceeding to determine the appeal on this basis. Furthermore, due to the precise nature of the amendment that would be necessitated, I am content that a corrected layout plan could be suitably secured via planning condition should the appeal be successful.

¹ Alterations to front boundary landscaping to provide a second vehicular access, new hard surfacing and widening of the existing vehicular access. Removal of TPO.

² Ref: 49_LAYOUTS_01 Rev 03

5. The Council has indicated that it would have refused planning permission had it been in a position to do so. Its main concerns relate to the proposal's effects upon existing trees, the character and appearance of the area, and highway and pedestrian safety. I shall formulate the appeal's main issues accordingly.

Main Issues

6. The main issues are:

- The effect upon the character and appearance of the area, including consideration of whether or not satisfactory justification for the intended removal of the Yew tree has been provided; and
- The effect upon highway and pedestrian safety.

Reasons

Character and appearance

7. The appeal property is setback from the highway and to its frontage exists a variety of planted elements. The tallest and most prominent such feature is the Yew tree, which is supplemented by hedging and an unprotected Horse Chestnut tree situated to the site's front boundary. A wide variety of planting of differing species and ages is in place along Station Road, such that a verdant residential character and appearance is readily identifiable local to the site.
8. The Yew tree contributes in no small part to area's sylvan characteristics. Views of its crown are available from a wide range of publicly accessible vantage points. Even when noting the presence of other protected Yew trees locally, it is a specimen of significance to the local townscape. Upon close inspection I witnessed lush growth at low level as well as a crown of vigour. This is despite the crown being less dense to its uppermost part when compared to its lower portion. For a large tree situated in an urban setting, I experienced the Yew tree to be in good health. This is notwithstanding its apparent overdue need for active maintenance.
9. Any suggestion made that the Yew tree is in a dangerous condition and liable to fall if subjected to severe winds has not been robustly substantiated and would be contrary to my own on-site observations. Moreover, notwithstanding the contents of an Arboricultural Report (June 2020), a clear understanding of the extent of excavations that were required to facilitate adjacent groundworks has not been advanced. Furthermore, if a substantial portion of the Yew tree's root system had been removed (as suggested), the abundance of consistent new growth observable to its lower levels would be incompatible with what could realistically have been anticipated.
10. I have noted reference to damage caused to the front steps of the appeal property and to associated water ingress, whilst a structural engineer appointed by the appellant has suggested that there is no doubt that root action is causing subsistence damage to the front steps. Whilst I was unable to pinpoint any noticeable cracking upon external inspection, I acknowledge reference to corrective actions being undertaken on a repeated basis. These, I understand, have included repointing and resealing works. Such actions could have contributed to the lack of clear visual evidence that I encountered.

11. Even so, from the evidence before me, the structural engineer's assertions are not supported by detailed monitoring over time or by actual intrusive analysis of the root system and soil structures in place. These were shortcomings identified by the Council's Principal Tree Officer when reviewing the structural engineer's analysis (when submitted to support a 2020 application³ centred upon the removal of the Yew tree). I find that evidence of subsidence/damage to an extent capable of justifying the Yew tree's removal is not before me. Indeed, robust and convincing justification is reasonably required because it is a specimen that is likely to survive at the site for many years whilst any replacement would take decades to advance to a similar size and visual contribution.
12. My attention has been drawn to a planning permission⁴ granted at Nos 35-37 Station Road where protected trees are in place. However, that scheme did not include plans to remove any such tree, such that it is a permission of limited relevance to my considerations. Similarly, whilst a once protected tree has in relatively recent times been removed to the front of No 47 Station Road in association with driveway works undertaken, it is unclear whether this was protected at the point in time of its removal. In any event, development proposals (including where involving the removal of a protected tree) must be considered upon their own individual merits in accordance with the specific site and case circumstances to hand.
13. Whilst I shall come on to consider highway safety implications, the alterations to front boundary planting necessitated by the intended introduction of a second vehicular access would have a relatively minor effect to be mitigated by replacement soft landscaping. This is even when acknowledging the established nature of the Horse Chestnut tree. When also noting the existence of various open frontages along Station Road, and that the perimeter planting in question is not protected, the intentions for the front boundary of the site do not raise undue concerns in a character and appearance sense.
14. However, for the above reasons, satisfactory justification for the intended removal of the Yew tree has not been provided. Its removal would lead to significant harm being caused to the local area's green residential character and appearance. For the avoidance of doubt, I have come to this finding whilst acknowledging that the intended removal of planting from the front of the site would increase visibility of the appeal property's front façade. As such, the scheme conflicts with Policy DM01 of Barnet's Local Plan Development Management Policies (September 2012) (the DMP) in so far as this policy sets out that proposals should preserve or enhance local character and that trees should be safeguarded.

Highway and pedestrian safety

15. The site contains a single dwelling and an annexe occupied by members of the same family. The single vehicular access point that is in place serves a paved forecourt area (the forecourt) that is bound by a low-level brick wall and planted elements to the site's frontage. It is the intention to remove part of this wall to offer a second point of access.

³ TPF/0479/20

⁴ 19/4424/FUL

16. Whilst a gap in excess of 2.4m would be achieved between the existing and new accesses, the scheme would introduce a further point of potential conflict between different highway users and the Highway Authority (the HA) has confirmed that it would not support the provision of two crossovers for the same property and instead suggest that a single crossover should be sufficient. This is a matter of importance as the HA are responsible for the safety of users of the local highway network.
17. Extracts from the Council's Domestic Vehicle Crossover Policy appear before me, where it is set out that, normally, only one crossover will be permitted per property. The circumstances where a second crossover may be permitted include when it would enable vehicles not to have to reverse onto or off the highway, and when it would allow additional vehicles to be parked on a forecourt.
18. Whilst the scheme would allow separated access and parking arrangements to avail for the main dwelling and for the annexe, it has not been demonstrated that the proposal would promote vehicles not having to reverse onto or off the highway. Furthermore, I observed the absence of a second access not to prejudice the forecourt's comprehensive use for parking purposes. Indeed, two vehicles were stationed to the eastern side of the forecourt in a manner not obstructive to a further vehicle attaining direct access to the annexe. It has not been clearly demonstrated that the proposal would offer additional on-site parking when compared to existing circumstances. Moreover, the proposed driveway layout indicates that merely a single space would be served off each access.
19. My attention has been drawn to the existence of wide driveway accesses serving other close by sites. However, I have not been made aware of any local instance of a single property being served by two separate points of access. Indeed, to the immediate east of the site, the separate accesses in place serve different properties. It is also relevant to note that the existing access could be widened to 4.2m in width whilst still achieving compliance with the HA's relevant standard. This would promote visibility and useability improvements when compared to present site circumstances.
20. For the above reasons, in the absence of convincing evidence to the contrary, the proposal would prejudice highway and pedestrian safety and thus cause harm. The scheme conflicts with Policy DM17 of the DMP in so far as this policy seeks to ensure that the safety of all road users is taken into account and that proposals that unacceptably increase conflicting movements on the road network shall be refused.

Other Matters and the Planning Balance

21. The scheme is motivated, at least in-part, by a desire to improve access arrangements for disabled/elderly members of the appellant's family that reside in the annexe. Nevertheless, as was apparent upon inspection, it is already possible to park adjacent to the annexe in conjunction with other forecourt parking. Whilst I accept that entry to or exit from the site would be unattainable at times when an ambulance or large service vehicle is in situ, such inconveniences would only realistically apply (for brief periods) to occupiers of the main dwelling and other visitors to the site. I note that similar inconveniences could still avail even should the newly proposed access arrangements be installed.

22. Furthermore, any distortions in the forecourt's existing paving were observable as minor and could be repaired or resurfaced independent of the proposals that are before me. Indeed, in the absence of clear evidence to demonstrate otherwise, it would be possible to repair/resurface the forecourt in a durable and smooth manner without forming a steep slope or necessitating significant excavations likely to prejudice the Yew tree's long-term health. Thus, whilst I have had regard to the equalities implications and associated duties that arise⁵, I attach limited weight to any potential accessibility improvements that would result from the scheme.
23. As could be observed on site, the property's front boundary wall is showing signs of cracking and leaning. In this sense, noting the proximity of a pavement used by pedestrians, its removal alongside the associated omission of the Horse Chestnut tree would deliver a health and safety benefit. However, when noting the limited height of the wall and the absence of any obvious sign to suggest that it is at risk of imminent collapse, I attach limited weight to this benefit.
24. It is the case that views into/over the front portion of the site are already available (at least in part) via the site's existing access point and upper floor openings in the locality. Any improvements brought forward in a surveillance/security sense would be limited and attractive of commensurate weight as a scheme benefit.
25. The Yew tree's removal would promote greater availability of outlook and daylight for the appeal property's occupiers. Nevertheless, it is not a single aspect property, and the tree is not so domineering to entirely impair access to natural light nor opportunities for frontward outlook. I attach limited weight to the scheme's benefits in this sense.
26. Any biodiversity enhancements potentially obtainable through new planting would be minimal and attract limited weight. This is especially when noting that the proposal involves the removal of established planting.
27. The scheme's benefits, even when considered cumulatively, would be modest and would not outweigh the considerable harms and associated policy conflicts that I have identified. The proposal conflicts with the development plan when read as a whole, and material considerations do not lead me to a decision otherwise.

Conclusion

28. For the above reasons, the appeal is dismissed.

Andrew Smith

INSPECTOR

⁵ through the Public Sector Equality Duty contained in section 149 of the Equality Act (2010)