



Appeal Decision

Site visit made on 7 June 2022

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Appeal Ref: APP/C2741/D/22/3298040

3 The Grove, YORK, YO24 1XD

- 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 Mrs Sau-Wing Leung against the decision of City of York Council.
 - The application Ref 21/01966/FUL, dated 13 August 2021, was refused by notice dated 24 March 2022.
 - The development proposed is 'single storey side extension'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the area, with particular regard to its effect on protected trees.

Reasons

3. The appeal site consists of a detached house with private garden to the side and rear, within which there are a number of trees including two that are subject to a Tree Preservation Order (TPO). These two mature trees are a sycamore and a lime.
4. The TPO trees are of significant height, standing taller than other trees within this part of the tree belt, which forms a natural barrier between The Grove / Chessingham Gardens and the adjacent college campus to the south. Their height makes them a notable feature, allowing them to be appreciated in views from the surrounding area, particularly from within The Grove. Along with others in the vicinity, the TPO trees positively contribute to the leafy and pleasant nature of the area and maintain its suburban character by obscuring views of the large college building adjacent.
5. The host dwelling was built close to the TPO trees and is separated from them by a paved patio. The plans before me do not articulate the location of the TPO trees in relation to the proposal, nor do they show the root protection area (RPA) or canopy spread, and no tree survey, arboricultural impact assessment or method statement has been provided. The existing patio however, where it is to be replaced by the proposed extension, is partly oversailed by branches. I have no substantiated evidence before me to demonstrate that the trees are not of high quality or would be unlikely to survive on site for many more years.
6. Based on the approximate stem diameters of the TPO trees and the proximity of the proposal, both parties agree that the proposal would extend over the

theoretical RPAs of both trees. The appellant has therefore offered various potential design solutions to minimise any effect on the protected trees, including specialist above-ground construction, self-cleaning glass, replacement of remaining paving with lawn or other permeable surfaces and considerate construction practices.

7. The Council has indicated the proposed mini-pile foundations may be an acceptable method of construction, provided piles can avoid larger tree roots. However, there is no detailed plan or assessment before me that demonstrates this can be achieved and that there would be no harm to the protected trees. Additionally, no information has been provided on the extent of any additional utility runs.
8. This information is fundamental to the acceptability of the scheme and given the ambiguity in the proposals, the use of a condition to resolve these matters after permission is granted would not comply with the legal duty under Section 197 of the Town and Country Planning Act 1990 to make adequate provision for protection of trees through conditions.
9. Even if full details of construction were provided and agreed, given the close proximity of the proposal to the TPO trees and the glazed nature of its design, it is reasonable to anticipate that this would increase pressure to alter or remove the trees, particularly if the property were to change ownership within the natural lifespan of the trees. Measures such as self-cleaning glass and leaf guards for the gutters and gully would mitigate this to some extent, and ultimately the Council can control works to TPO trees. However, it will be difficult to resist applications to prune or fell the trees in circumstances where safety is at issue, or where damage is being sustained.
10. The proposal therefore fails to adequately protect the TPO trees and, given their positive contribution as described above, any premature decline or loss of the trees would have an adverse impact on the character and appearance of the area. The proposal would therefore be contrary to paragraphs 130 and 131 of the National Planning Policy Framework, with regard to achieving well-designed places, and paragraph 174, with regard to conserving and enhancing the natural environment. The proposal also conflicts with emerging policies D2 and D11 of the City of York Local Plan – Publication Draft 2018. These policies seek to protect and sustain trees that are desirable for retention.

Conclusion

11. For the reasons given above, having had regard to the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Ryan Cowley

INSPECTOR