
Appeal Decision

Site visit made on 2 September 2022

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/J1915/D/22/3299433

4 The Orchard, Tonwell SG12 0HR

- 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 Chonnor Dowd against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/3073/HH, dated 9 December 2021, was refused by notice dated 1 March 2022.
 - The development proposed is the erection of a single storey detached double garage.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The name of the appellant is given as Mrs Faye Dowd on the planning appeal form, whereas the name appearing on the application form lodged with the Council is Mr Chonnor Dowd. As the right of appeal rests solely with the original applicant, I have proceeded on the basis that Mr Chonnor Dowd is the appellant in this case.
3. The reason for refusal refers to Tree Preservation Order (Ref TPO 119 T1). I have assumed this is a typographical error because the reference given on the Tree Preservation Order before me is (No 19) 1976.
4. The appellant has made an application for costs against the Council. This application is the subject of a separate decision.

Main issue

5. The main issue is the effect of the proposed development on the amenity, character and appearance of the local area, with particular regard to the protected oak tree adjacent to the site.

Reasons

6. An oak tree, which is referred to hereafter as the tree, is situated just beyond the front garden of the appeal property. It is protected under Tree Preservation Order (No 19) 1976 (TPO). TPOs offer a mechanism for providing legal protection to trees of significant amenity value, particularly where they are under threat. As an attractive specimen and a substantial and prominent feature within the street scene to which No 4 belongs, the tree makes a significant and positive contribution to the visual amenity of the local area.

7. While the tree is outside the site, the proposed garage would be within its root protection area (RPA) and beneath the canopy, as would most of the new hard surface area leading to it. The RPA is regarded as the minimum area around a tree that contains sufficient roots and rooting volume to maintain the tree's viability. It is an area where the protection of the roots and soil structure is to be treated as a priority.
8. The excavation work required for the building's foundations, drainage and laying of services, if necessary, would all take place within the RPA of the tree, which could cause significant damage to its roots. The stability of the ground that currently anchors the tree could also be disrupted by the development. For all these reasons, the proposal has the potential to cause harm to the tree.
9. The appellant has therefore sought specialist advice and submitted an Arboricultural Method Statement (AMS). The AMS includes a tree survey (TS), a tree protection plan (TPP) and an Arboricultural Impact Assessment (AIA). The AMS states that it has been prepared in accordance with the BS 5837:2012¹. The TS places the tree into category A1.2, which includes trees of high quality with a remaining lifespan of at least 40 years. Any reasons to justify mitigating harm to the tree must, therefore, be convincing.
10. The AIA recommends that protective barrier fencing and temporary ground boarding are put in place around the new addition, as shown on the TPP. It also states that the foundations of the new garage should be designed to an engineering specification with arboricultural advice with any excavation carried out under arboricultural supervision. While I have no doubt that the types of foundation design and general methods of construction outlined in the AIA can be a reasonable form of mitigation against tree damage, the evidence does not clearly demonstrate which particular method would be achievable in this case given local conditions and the development proposed.
11. With a concrete base on compacted clean hardcore to a certain depth, as proposed, so close to the tree, it is difficult to see how its roots, most of which are likely to be in the top 600mm of soil, would not be affected. Damage may also be caused by compaction of the soil structure or from the diversion of rainwater under the built footprint. Based on the evidence before me, therefore, I cannot be certain that the new development would not result in root damage to the tree given the extent of construction within its RPA.
12. I have carefully considered whether a condition could be imposed to ensure that the development is constructed in a way to safeguard the tree. However, it would be inappropriate to secure the fundamentals of construction by condition without reassurance beforehand that the specific method proposed can be delivered on site.
13. There is an existing single storey building just beyond the front garden of No 4, which is also close to the tree and also falls within its RPA. From what I saw, this building appears to have been in place for some time and the circumstances that led to its construction are not before me. Therefore, I share the Council's opinion that the existing building does not, in itself, set a precedent for further development within the RPA not least because additional harm cannot be justified on the basis that some harm may already exist.

¹ BS 5837:2012 *Trees in relation to design, demolition and construction – Recommendations*

14. Overall, the evidence points to an uneasy and discordant relationship between the tree and the proposed development. From the submitted evidence, the appeal scheme could cause significant harm to the health and longevity of the tree. Such harm has the potential to significantly reduce the positive contribution made by the tree to the visual amenity, character and appearance of the local area. Accordingly, the appeal scheme conflicts with Policy DES3 of the East Herts District Plan, which states that development proposals must demonstrate how they will retain, protect, and enhance existing landscape features that are of amenity value. It is also at odds with an aim of BS 5837:2012, which is to ensure that a harmonious relationship between trees and structures is achieved that maintains in the long term.
15. The appellant has indicated a willingness to revise the scheme and alter the size and location of the proposed garage in the light of any concerns raised. However, the *Procedural Guide: Planning Appeals - England* advises that the appeal process should not be used to evolve a scheme. It adds that what is considered at appeal should essentially be what was before the local planning authority, and on which interested people's views were sought. My remit is therefore to assess the proposal as it is shown on the plans and detailed in the written evidence.

Conclusion

16. For the reasons set out above, and having regard to all other matters raised, which includes a representation in support of the proposal, I conclude that the development sought would be contrary to the development plan when taken as a whole. There are no material considerations to suggest a decision other than in accordance with the development plan. Therefore, the appeal is dismissed.

Gary Deane

INSPECTOR