



Appeal Decision

Site visit made on 20 September 2022

by J Reid BA(Hons) BArch(Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 5 October 2022

Appeal Ref: APP/D3830/W/21/3283193

7 Oldfield Drive, Haywards Heath RH17 7TF

- 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 James Kennedy against Mid Sussex District Council.
 - The application Ref DM/21/2223 is dated 10 June 2021.
 - The development proposed is extension to the east side of property at 7 Oldfield Drive.
-

Decision

1. The appeal is dismissed and planning permission for extension to the east side of property at 7 Oldfield Drive is refused.

Procedural matter and main issues

2. The Council's main concerns relate to a tree (T1), which is situated in the front garden of the appeal dwelling, and the outlook of the occupiers of 1 Primrose Way. With this in mind, the main issues are:
 - the effect that the proposed development would have on T1, and
 - its effect on the living conditions of the occupiers of 1 Primrose Way regarding outlook.

Reasons

The tree, T1

3. The appeal site includes a pitched roofed detached dwelling that is sited on the roughly north east side of Oldfield Drive, which is a private road reached from Lewes Road. The site is also within the Lewes Road Conservation Area, which is mainly characterised by good-sized dwellings in a range of ages and styles that are set well back from Lewes Road in spacious leafy grounds. The mostly traditional forms and materials of the buildings, and the greenery by and in most of their gardens are important to its appearance.
4. The site includes several trees near its common boundary with 1 Primrose Way and 7a Oldfield Drive. The appellant's arboricultural consultant's Arboricultural Report dated 30 July 2021 (report) includes an assessment of some of the trees at the site and recommendations for their management. The report includes a visual tree assessment in accordance with British Standard BS5837:2012 Trees in relation to design, demolition and construction - Recommendations. It explains that a large, mature oak (T1), located in the front garden appears healthy with good vigour, and that, due to the level change between the front and side gardens, the consultant would not expect to

find any roots in the area designated for the proposal's foundations. The report was revised during the application process to include measures to minimise incursion into the calculated root protection area of T1.

5. There are other trees with stems that may be of sufficient diameter to be subject to the conservation area notification process in the front garden close to and roughly south of the main stem of T1 that are not shown on the Tree Constraints Plan, and for which there is no data in the report. Whilst the report says that T1 has an unbalanced crown, it states that its structural condition is good. However, it does not deal with the influence of the nearby trees to roughly south on the canopy of T1.
6. Due to its form and scale, T1 makes an important positive contribution to the character and appearance of the surrounding area. From the report, T1's present canopy would extend over much of the proposed extension. As T1 is a living organism, it is likely to continue to grow, but its maturity could restrict its ability to respond to pruning.
7. Due to the siting of T1 in relation to the proposal, and the inconvenience of dealing with twigs, leaves, and other detritus associated with the tree blocking gutters and so on, and future occupiers' fears about matters including falling branches or the tree's collapse, and overshadowing, the Council would be likely to come under repeated pressure in future for T1 to be severely pruned or felled. Aside from the potential for the tree's loss, pruning pressure would be likely to seek the removal of much of T1's present canopy, to the detriment of the tree's form and health. So, whilst T1's life expectancy is stated to be over 40 years, and in the light of its maturity and the other trees close by, severe and repeated pruning would be likely to unacceptably diminish its future health and longevity. The severe reduction or premature loss of T1 would be detrimental to the character and appearance of the surrounding area.
8. The appellant says that, previously, the Council did not object to T1 being pruned, and that the development next door to roughly east included the pruning of some trees by the site's east boundary. However, as little information about these matters has been put to me, they attract little weight.
9. Therefore, I consider that the proposed development would be likely to harm or cause the loss of T1. It would be contrary to Policy DP37 of the Mid Sussex District Plan 2014-2031 (LP) which aims to not permit development that will damage trees, and Policy E9 of the Haywards Heath Town Council Neighbourhood Plan (NP) which seeks respect for natural features such as trees. It would also be contrary to the National Planning Policy Framework (Framework) which aims for existing trees to be retained wherever possible.

Living conditions

10. Due to the lie of the land, the dwelling at 1 Primrose Way is sited at a much lower level than the appeal dwelling. The ground floor of the proposal would be lower than the ground floor of the appeal dwelling, but it would be above the ground floor of the dwelling at 1 Primrose Way. There would be some space between the proposal and the tall fence by the common boundary, and the extension would project further into the back garden than the back wall of the appeal dwelling close by. Having regard to the distances and relationships between the proposal and the dwelling at 1 Primrose Way, the upper part of the extension would be seen from the back of the dwelling at 1 Primrose Way

and its back garden. However, due to its height, scale and siting, the proposal would not be so overbearing or so oppressive that it would significantly harm the outlook of the occupiers of 1 Primrose Way.

11. Thus, I consider that the proposal would not harm the living conditions of the occupiers of 1 Primrose Way regarding outlook. It would satisfy LP Policy DM26 and the thrust of NP Policy H9 which aim for development to not cause significant harm to the amenities of existing nearby residents.

Other matters

12. The Council has not raised concerns about the Conservation Area. Because the proposal would broadly respect the form and siting of the nearby dwellings, and the important openness above it would be conserved, it would preserve the character and the appearance of the Conservation Area, so I agree.
13. The appellant says that the proposal would screen overlooking from windows in nearby dwellings to roughly east. However, reasonable privacy could be achieved by other means, including planting or fencing, subject to obtaining any necessary consent from the Council in the first place.

Conclusion

14. Whilst the outlook of the occupiers of 1 Primrose Way would not be harmed, the likely harm to or loss of T1 is a compelling objection to the scheme.
15. I have found that the proposed development would be contrary to the Development Plan when taken as a whole. The other considerations in this case, including the Framework, do not outweigh that conflict.
16. For the reasons given, the appeal should be dismissed.

J Reid

INSPECTOR