



Appeal Decision

Site visit made on 1 November 2022

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 5 December 2022

Appeal Ref: APP/G5180/W/22/3301342

205 Petts Wood Road, Petts Wood, Orpington BR5 1LA

- 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 Mohamed El ghailani against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/21/04587/FULL1, dated 16 September 2021, was refused by notice dated 22 April 2022.
 - The development proposed is a single storey rear extension with extract duct and cycle and refuse stores.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect that the proposed development would have on the oak tree adjacent to the site.

Reasons

3. The appeal site comprises of a restaurant and associated back yard area located within a row of other units in commercial use with flats above. The proposed extension and alterations would be located to the rear of the existing restaurant and would face towards a service road. There is a mature oak tree located outside of the appeal site boundary, but directly adjacent.
4. Both parties have identified that the oak tree was assessed by the Council during the consideration of a previous planning application but due to the future nuisance potential and lack of visibility of the tree from the public domain that the tree would not merit being covered by a Tree Preservation Order (TPO). Whilst the oak tree is not subject to protection by means of a TPO and has limited benefits in terms of the visual amenity of the area, Policy 73 of the London Borough of Bromley Local Plan Adopted January 2019 (LBBLP) requires that the impact of new development has to take account of existing trees on the site or on adjoining land with regard to wildlife habitat. No evidence is provided to demonstrate why the tree does not provide a benefit in relation to wildlife habitat.
5. The location of the oak tree is not shown on the submitted drawings. I note the appellant states that there would be a reasonable setback between the proposed extension and the tree, however when viewing on site I found that the oak tree would be in very close proximity to the proposed extension. I have no arboricultural assessment before me that sets out the exact location of the

tree in relation to the proposed extension, the root protection area, the health or potential longevity of the tree or details of any nuisance that the tree currently creates. I therefore find that insufficient evidence has been provided to demonstrate that there will not be a harmful impact on the oak tree, or if appropriate mitigation could be put in place to ensure the impact on the oak tree is limited to an adequate level.

6. Policy 73 of the LBBLP goes on to state that when trees have to be felled, the Council will seek suitable replanting. The appellant states that whilst they consider that the proposal will not have a significant impact on the oak tree, the tree could be replaced or regrown. No scheme is provided identifying where a replacement tree could be planted. The appellant has suggested that planning conditions or obligations could be used to resolve the matter if planning permission were granted. However, given that the findings of an arboricultural assessment could affect the siting of an extension, the design of its foundations or the layout of services, it is not a matter that could be dealt with by condition.
7. In conclusion, I cannot conclude that the development would not have an unacceptable impact on the tree. As such, the proposal conflicts with the requirements of Policy 73 of the LBBLP as set out above. I note that the Council also refer to Policy 37 of the LBBLP which relates to the general design of development, however I do not find conflict with this policy in this case, given the lack of impact on the character and appearance of the area, as set out above.

Other Matters

8. The appellant has provided four other examples in the local area where single storey rear extensions have been permitted by the Council. None of the submitted information identifies that there is a mature tree which has the same close relationship with the appeal site that is present in this appeal.
9. The Council have not raised the principle of an extension to the building, the design of the proposed extension, the design and position of the extract duct or the proposed cycle and refuse stores, or the effect on the living conditions of occupiers of neighbouring or nearby residential properties as reasons for the application to be refused and I have no reason to disagree with their findings.
10. I note that the appellant seeks to enlarge the existing commercial unit to optimise the potential of the business use and that this is supported in principle by the Council and is in accordance with the National Planning Policy Framework (the Framework), in particular under section 6. However, this does not outweigh the harm I have found as a result of the lack of evidence regarding the impact on the oak tree.

Conclusion

11. The proposal is contrary to the development plan as a whole and there are no other considerations, including the Framework, which outweigh the harm. The appeal is therefore dismissed.

G Dring

INSPECTOR