
Appeal Decision

Site visit made on 26 January 2023

by H Lock BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2023

Appeal Ref: APP/U5930/W/22/3302983

12 C Gables, Falmouth Avenue, Chingford, E4 9QN

- 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 R Goodwin against the Council of the London Borough of Waltham Forest.
 - The application Ref. 221125 is dated 12 April 2022.
 - The development proposed is revised gates, piers and crossover with drop kerb.
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Decision

1. The appeal is dismissed and planning permission is refused for revised gates, piers and crossover with drop kerb.

Procedural Matters

2. The appeal is against non-determination of the application, but the Council's appeal statement sets out some refusal reasons. I have taken these to be the decision which the Council would have made had it been empowered to do so.
3. In its appeal statement the Council refers to two London Plane Trees fronting the appeal site on Falmouth Avenue, but subsequently agreed with the appellant's assessment that they are Lime Trees.

Main Issues

4. The main issues are the effect of the proposal on (1) the character and appearance of the area, with particular reference to street trees; and (2) the potential for surface water flooding.

Reasons

Effect on Trees

5. The appeal property is a detached house on a corner plot enclosed by a wall with railings. Set within this wall are a pair of wide gates onto the Falmouth Avenue frontage, although there is no vehicular access serving the property. The area behind the gates is surfaced with slate chips.
6. This is an appeal against non-determination, but the Council does not oppose the replacement of the piers and gate with a wider opening. The Council's concerns relate to the creation of the vehicular crossover to facilitate use of the said gates to access on-site parking, and the treatment of the parking area.

7. Trees set within pavements are a feature of the street scene in Falmouth Avenue and surrounding roads, and they make a significant and positive contribution to the visual amenity of the area. The spacing of trees is not uniform, with some stretches of evenly spaced specimens and others more sporadic. Vehicular crossovers are also an established part of the street scene, and their distance from tree trunks vary, with some constructed so close as to be within root areas. Given the age of some of these trees it would suggest that there is some tolerance to compaction caused by the construction and use of vehicular crossovers.
8. The proposed crossover would be sited between two trees. The proposal is supported by an Arboricultural Method Statement (AMS) which at section 1.8 advises that the existing tarmac surface will be undisturbed and that the kerbstones will be replaced like for like in the same location. However, Section 6 of the AMS sets out a number of restrictions "if it becomes necessary to replace the existing hard surface over Root Protection Areas" (RPAs); the Planning Statement also refers to the potential for slightly lowering and repairing the tarmac.
9. In the absence of a detailed specification or plans of the proposed works there is some uncertainty about the extent of the excavation involved. Although the appellant advises that there is no evidence that the existing surface of the footway to be crossed over is substandard and will not bear the weight of vehicles, there is equally no evidence that it will. Notwithstanding the proposal for hand-digging and other protective measures to apply within the RPAs, I consider that the consequences of the existing surface proving inadequate could be significant for the neighbouring trees.
10. I note the Council's objection in principle to works within the RPA, although I am also mindful that the tree species involved have a reasonable degree of tolerance to disturbance and other pressures, and that there is an existing pavement over the RPAs. Replacement kerb stones alone may not have a significant impact on the health and longevity of the trees, but more extensive resurfacing could have a greater effect, particularly considered cumulatively with other excavations and resurfacing work undertaken in recent years. Whilst I note the appellant's view that those works have not harmed the trees, damage may not be instantly apparent, and may be compounded by further disturbance of the root systems.
11. Furthermore, although the AMS addresses the physical construction works, it does not assess the effects on the trees of long term use of the crossover, and use of what is now a footway by vehicles rather than pedestrians.
12. A primary purpose of the proposal is to enable on-site charging of an electric vehicle. This weighs in favour of the proposal, but any environmental benefit in this regard would be offset by harm to and potential loss of street trees which make a positive contribution in terms of biodiversity, but also to the character and appearance of the area. The appellant has drawn attention to paragraphs of the National Planning Policy Framework relating to sustainable transport and highway matters, but these are only one aspect to be considered in the planning balance; paragraph 131 of that document also outlines the important contribution that trees make to the character and quality of urban areas and in adapting to climate change.

13. I therefore conclude that, on the basis of the information supplied, it has not been demonstrated that the proposal would be acceptable in its impact on the root systems and health of the trees, to the potential detriment of the character and appearance of the street scene and biodiversity. This would be contrary to Policy CS5 of the Waltham Forest Local Plan Core Strategy 2012 (CS), which seeks to protect and enhance green infrastructure and biodiversity in the Borough, by measures including the protection of existing healthy trees. The potential loss of trees and consequent impact on biodiversity would also be contrary to Policy DM35 of the Waltham Forest Development Management Policies Local Plan 2013 (DM) and Policy G6 of The London Plan 2021. On this point, I find no conflict with CS Policy CS4.

Flood Risk

14. The Council considers that on-site parking is an integral part of the appeal proposal. However, this is not included in the description of development and the appellant advises that the intention is to use the area that exists on site for this purpose. Whilst there may be some doubt over the robustness and suitability of a slate chip surface for vehicle parking, the proposed crossover and gates are therefore intended to facilitate use of an existing facility.
15. On this basis, the revised gates, piers and crossover with drop kerb would not add to the risk of surface water flooding, and would comply with CS Policy CS4 (H) and The London Plan Policies SI 12 and SI 13.
16. DM Policy DM4, which relates to residential extensions and alterations to buildings, and The London Plan Policy G6, which relates to biodiversity and access to nature, do not appear to be of direct relevance to this matter.
17. I have placed limited weight on Policies 81 and 93 of the Submission Draft Waltham Forest Local Plan due to the stage in the Examination process.

Conclusion

18. For the above reasons, I conclude that the appeal should be dismissed.

H Lock

INSPECTOR