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# Appeal Decision

Site visit made on 20 February 2023

**by Elaine Benson BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 April 2023**

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**Appeal Ref: APP/K3605/W/22/3303375**

**Street Record, Fair oak Close, Oxshott, Leatherhead KT22 0TJ**

- 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 Birds Hill Oxshott Estate Company against the decision of Elmbridge Borough Council.
  - The application Ref 2021/3616, dated 10 December 2021, was refused by notice dated 9 February 2022.
  - The development proposed is described as 'to add additional entrance walling and a pier to the existing gate and pier at the entrance to Fair oak Close. Incorporated into the walling will be a road name stone plate reading 'The Crown Estate, Fair oak Close'`.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. These are the effect of the appeal proposal on a hornbeam tree and the impact of this, if any, on the character and appearance of the surrounding area. The Council raises no objection to any other aspect of the appeal proposal, and there are no reasons to disagree.

## Reasons

3. The appeal site is at the entrance to Fair oak Close where there is a security gate supported by two piers, adjacent fencing and a pedestrian gate. The proposal is to construct an additional wall adjacent to the east pier. It would be around 1.4m high and would comprise matching materials with a plaque to identify the street. The wall would be angled to allow the road name to be seen from approaching traffic. Fair oak Close is part of Oxshott's Crown Estate and the proposed entrance wall would be similar to the other estate entrances.
4. The hornbeam tree in question is an early-mature, multi-stemmed tree, about 18m tall, with a lean to the south. It is one of a row of 12 mature hornbeams and stands within the grounds of a house, Bridestone, on its boundary with the entrance to the estate. The group of trees makes a significant contribution to the character or amenity of the area, along with many other trees on the estate. It is not protected by a Tree Preservation Order and does not stand within a conservation area. Nonetheless, trees with no statutory protection can often play a part in the amenity of an area. In my judgement the appeal tree is important to the amenity of the surrounding area as part of the group and because it is the closest to the entrance. It has an imposing and attractive

appearance and there is no indication of any defects that may shorten its life expectancy or vigour.

5. The appeal application was accompanied by an Arboricultural Impact Assessment and Method Statement (the Assessment). The proposed wall would be sited entirely within the canopy area and root protection area (RPA) of tree T1, the hornbeam. The Assessment indicates that the use of strip foundations could result in the premature decline of tree T1 and a loss of stability. Accordingly, the Assessment proposes that all works be carried out by hand within the tree's RPA and that pad and ground beams be used to avoid large roots with a diameter of 25mm or more. However, the Assessment and submitted drawings do not include at the planning application (appeal) stage of the process 'details for all special engineering within the RPA and other construction details', as advised by British Standard 5837:2012<sup>1</sup>. Such details should in my view include the proposed foundation design. Whilst the proposed ground protection and other measures indicated may help to protect the wider area around the site of the development, there is little consideration of how excavation and foundation work would avoid harming the root system immediately beneath the proposed wall. In the absence of the required level of detail, it would be unacceptable to impose any other arboricultural conditions as is suggested.
6. As indicated above, the hornbeam tree is not subject to a TPO and does not stand within a conservation area. However, there is a statutory duty to consider the protection of trees when granting planning permission. The potential effect of development on trees, whether statutorily protected or not, is a material consideration when determining planning applications and appeals. As a fallback position, the appellant company indicates that it could remove the tree as it is unprotected. Whilst this may well be the case, given the appellant company's obvious and commendable intentions to preserve the environmental quality of the estate, I do not consider this to be a realistic fallback position.

#### *Other matters*

7. There is no technical evidence to support the suggestion that the nearby hornbeam would quickly fill in the missing canopy should tree T1 be damaged or die due to the proposed construction work. In my judgment it would take many years for the neighbouring tree to compensate for the resulting loss of amenity.
8. The 2004 and 2005 grants of planning permission for the development of Bridestone and Oak House permitted the removal of several hornbeams. Although the full circumstances leading to those planning permissions are not before me, I am nevertheless required to determine this appeal on the basis of the evidence before me, the contribution to amenity made by the remaining trees and my own observations at the site visit.
9. The appellant is unhappy with many aspects of the planning process followed by the Council. This is in itself not a justification for granting planning permission. These matters are more appropriately considered under the Council's own internal procedures and processes.

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<sup>1</sup> Trees in relation to design, demolition and construction - Recommendations

*Conclusion*

10. I conclude that inadequate information and detail has been provided to justify development within the RPA of the hornbeam tree. The works could harm its root systems, leading to a loss of the tree's good health and vigour, thereby leading to harm to the character and appearance of the surrounding area. The proposal would not comply with Policy DM6 of the Development Management Plan 2015 which among other things seeks to ensure that there is no loss of, or damage to, trees that are, or are capable of, making a significant contribution to the character or amenity of the area, whilst development should adequately protect existing trees, including their root systems prior to, during and after the construction process.
11. Accordingly, the appeal is dismissed.

*Elaine Benson*

INSPECTOR