



Appeal Decision

Site visit made on 24 May 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2023

Appeal Ref: APP/Z4718/D/23/3315898

11 Smithy Close, Lindley, Huddersfield HD3 3ZB

- 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 Ray Dougherty against the decision of Kirklees Metropolitan Council.
 - The application Ref 2022/62/92237/W, dated 1 July 2022, was refused by notice dated 12 January 2023.
 - The development proposed is described as a single-storey garage attached to the side of the existing dwelling and a new drive from the highway.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on trees protected by a Tree Preservation Order.

Reasons

3. The appeal site comprises a detached dwelling within a large new-build residential development. Its rear lawned garden extends to the side of the dwelling, and the proposal is for an attached single-storey double garage within this area accessed via a new driveway. The garage would be constructed using specialist foundations, and have a perimeter French drain.
4. Mature trees protected by a Tree Preservation Order (TPO)¹ lie directly beyond the fenceline of this side boundary. The TPO indicates that these trees were specifically identified as having a value deemed worthy of protection. Trees have many benefits, which I noted on my site visit includes their significant visual contribution to the area's character and appearance, reflecting the contribution of trees to the otherwise built-up environment. The House Extensions and Alterations Supplementary Planning Document (HEA SPD) (2021) also identifies that trees play a key role in supporting a sustainable natural environment, climate change mitigation, health and well-being, and in enhancing biodiversity.
5. The proposed garage would be situated within the root protection areas (RPAs) of two of these trees, with their canopies also significantly overhanging. The appellant's Tree Report² undertaken by a suitably qualified arboriculturist, identifies that there would be encroachment into the RPA of 2 trees, to a minor

¹ Kirklees Council reference: 18/87a1

² Arboricultural Report and Impact Assessment, AWA Tree Consultants Ltd, September 2022

and a significant extent. The foundations have been proposed specifically with the intent to limit groundworks so as to avoid tree root damage. However, this would not fully avoid the need for excavation, with the Report also identifying that there would be a 150mm reduction in ground levels to form the slab. The French drain would also require a trench. The Council's Arboricultural Officer considers that unavoidable root severance and soil compaction within the RPA would therefore occur.

6. While the proposed drainage would be directed towards the trees with no water loss overall, these trees already have a restricted rooting area within the gardens from which they originate, and the new dwelling itself is already very close to the RPA. The Arboricultural Officer further identifies that changes to the available rooting environment and water tables often take considerable time to manifest in mature trees, and so any negative effects from the recent construction of the property may yet still become apparent. This suggests a further need for a precautionary approach. The Report's Impact Assessment conclusion is only that the retained trees should remain largely unaffected by the works. Overall, I do not have sufficient confidence that the trees would come to no harm.
7. Furthermore, it is not unreasonable to assume that dissatisfaction with the trees could occur over time regarding falling debris and honeydew, direct contact from branches, and fears regarding tree safety. Although these are existing conditions, I find a marked difference between such aspects occurring onto a garden space, and onto a built structure which requires maintenance and cleaning. While the trees are not in the appellant's ownership, there is still therefore a risk of this dissatisfaction leading to pressure for reduction of some of the trees, which could be difficult at that point for a reasonable Local Planning Authority to resist.
8. In conclusion therefore, the proposed development has the potential to cause harm to trees protected under a TPO. This would be contrary to Policies LP24 and LP33 of the Kirklees Local Plan (2019), and Key Design Principle 13 of the HEA SPD. These seek to promote good design, retain valuable and important trees which make a contribution to public amenity, distinctiveness, and the environment, and identify that permission will not be granted for developments which directly or indirectly threaten trees. The proposal would also conflict with the National Planning Policy Framework (2021) paragraph 131, which requires that trees should be retained wherever possible, as they make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change.

Other Matters

9. While the property may benefit from permitted development rights, I have seen no suggestion that the proposed garage and hardstanding could be constructed on the basis of those rights. Whether nearby dwellings have undertaken permitted development within the RPA is therefore not directly relevant.
10. The appellant also refers in support to permissions for proposals proximate to TPO trees. However, I do not have any detailed information before me to allow for a full comparison. Even if I did, a proposal's potential impact on trees is based on specific site circumstances and context, and so these examples would not have a direct bearing on my decision.

Conclusion

11. The scheme conflicts with the development plan as a whole. With no other material considerations indicating otherwise, for the reasons given above I conclude that the appeal is dismissed.

L Hughes

INSPECTOR