



Appeal Decision

Site visit made on 20 June 2023

by Chris Couper BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/L5240/W/23/3315418

Podina House, 16B Highfield Hill, Upper Norwood, Croydon, London SE19 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Tahir (16B Highfield Hill Limited) against the decision of Croydon Council.
 - The application Ref 22/03628/CONR, dated 7 September 2022, was refused by notice dated 15 December 2022.
 - The application sought planning permission for one 4 bedroom detached house and four 2 bedroom flats, including associated car parking and landscaping, without complying with conditions attached to planning permission Ref 17/05867/FUL, dated 8 March 2018.
 - The conditions in dispute are Nos 1 and 19 which state that:
 1. *The development shall be carried out entirely in accordance with the documents and approved drawings listed on this decision notice.*
 19. *The communal amenity/garden areas shall remain for communal use by residents of the site and shall not be separated into private amenity/garden areas.*
 - The reasons given for the conditions are:
 1. *To ensure an acceptable standard of development.*
 19. *To ensure an acceptable standard of development with regards preserved trees.*
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Decision

1. The appeal is allowed and planning permission is granted for one 4 bedroom detached house and four 2 bedroom flats, including associated car parking and landscaping at Podina House, 16B Highfield Hill, Upper Norwood, Croydon, London SE19 3PS in accordance with the application Ref 22/03628/CONR, dated 7 September 2022, without compliance with condition Nos 1 and 19 previously imposed on planning permission Ref 17/05867/FUL, dated 8 March 2018, and subject to the conditions on the attached schedule.

Background and Main Issue

2. The house and flats permitted under application Ref: 17/05867/FUL have been constructed and are occupied. However, rather than having two separate areas of communal garden, as was permitted and is currently provided, it is proposed to divide those spaces to provide separate gardens for flats 1 to 4.

3. The Council considers that that would be highly likely to have a detrimental impact upon the health of protected trees, leading to their potential loss. In its appeal statement it clarifies that the trees it considers would be impacted are T2 in Tree Preservation Order ('TPO') No 38 (1988) (although based on the submitted evidence I believe that this should be TPO No 37 (1988)) (No T04 in the submitted Arboricultural Report and Arboricultural Impact Assessment) ('the AR'), and T1 in TPO No 12 (2017) (T02 in the AR).
4. The main issue is therefore the effect of the proposal on the character and appearance of the area, with regard to its impact on protected trees.

Reasons

5. The properties at 16B Highfield Hill, and others in the locality, sit amongst trees and landscaping, which contribute to the area's attractive character. Trees T02 and T04, as identified in the AR, are a Holm Oak and a Pedunculate Oak respectively. Both are large specimens, and are recorded as being in a fair to good structural and physiological condition. Given their size, species and prominence, they make a significant contribution to the sylvan feel of the site and the immediate area.
6. The existing communal gardens would be divided roughly in half. According to the Arboricultural Method Statement by Arbor Cultural Limited ('AMS'), if fence posts are to be installed close to T04, this would be done using handheld tools. The Council does not raise a specific objection to the proposed boundary treatment, and on this basis I concur that its impact would be acceptable.
7. The principal parties agree that the communal gardens are in regular use, and I observed on my visit that they are well maintained, with some ornamental beds, shrubs, paths, and domestic paraphernalia, such as pots, barbeques and seating.
8. Although there appears to be some informal subdivision of the gardens based on their accessibility to the individual flats, in my view formally dividing them to provide private areas may result in the occupants of each household keeping additional domestic paraphernalia on their part of the land. However, even if that were to be the case, typical lightweight and moveable features, such as children's play equipment and seating, could be placed on the land without requiring any significant excavation; and I have no cogent evidence that such features, or additional landscaping, would significantly harm these trees.
9. As more significant structures within the flats' gardens would typically constitute operational development, and thus require planning permission, and the trees are protected by TPOs, the Council would retain control over such works which could impact their root systems and their health.
10. Whilst T04 is located on sloping land, I have no cogent evidence that, as a result of this proposal, there would be a significantly increased pressure for excavation works or ground levelling; nor, having regard to a representation by an interested party, that the scheme would be likely to lead to increased land instability.

11. Policy DM28 of the Croydon Local Plan 2018 seeks to protect and enhance the borough's trees, including those which are formally protected, by not permitting development that could result in their future loss, or excessive pruning. For the above reasons, I conclude that, compared to the current situation, the proposal would be unlikely to have a significant impact on the health of these trees, and it would not conflict with that approach.
12. Thus, irrespective of whether, since the original planning permission, there has been a shift in development plan policies towards the provision of private amenity space, I conclude that the scheme would not harm the character and appearance of the area. The appeal will therefore be allowed, and I will grant a new planning permission, varying condition No 1 and without condition No 19 of the original planning permission.
13. My condition No 1 is necessary in the interests of certainty, to ensure that the development is carried out in accordance with the approved plans.
14. Turning to other conditions, the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. In its appeal statement, the Council has suggested which of those it would be appropriate to restate, having regard to previous discharges of conditions. For the sake of clarity, I have considered these in the same order as the Council.
15. As the Council's suggested conditions 2 and 6, regarding the removal of permitted development rights, are identical, I have omitted one from my decision.
16. My conditions 2, 3, 7, 15, 16, 17, 18, 19 and 20 are not in dispute. I have very limited information on these matters, and some of their requirements may already have been implemented, but some clearly remain necessary due to retention clauses. The same applies to my conditions 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, and 21 which refer to matters which I understand have been subject to discharge of conditions applications.
17. In the interests of ensuring that the trees are suitably protected during the course of the development, my condition 22 requires that the boundary treatment be implemented in accordance with the AMS. Finally, the Council has suggested the standard time limit for commencement, but as the development has already been implemented, that condition is neither necessary nor appropriate.
18. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development shall be carried out entirely in accordance with the following approved drawings: 3124/L/04, P100, P101, P102 and TPP-01 Rev A.
2. Notwithstanding anything contained in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof, no enlargement of the dwelling(s) (including the erection or enlargement of a garage or any other building or enclosure within the curtilage of the dwelling) shall be carried out without the express permission of the Local Planning Authority.
3. The roof area of the structure hereby permitted shall not be used as a balcony, roof garden or similar area, and notwithstanding anything contained in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015, or any amendment or replacement thereof, no alterations shall be carried out to create access to it.
4. The improvement works to the access track shall be carried out wholly in accordance with details approved under application 18/02089/DISC.
5. The construction of the development shall be carried out wholly in accordance with the Construction Logistics Plan approved under application 18/02089/DISC.
6. All external materials, green roofs and window reveal depths shall be carried out in accordance with the details approved under application 18/02091/DISC and shall be retained for as long as the development remains in existence.
7. The development shall be carried out entirely in accordance with the submitted document "BS5837 Tree Survey, Arboricultural Impact Assessment & Arboricultural Method Statement" (ref 17016/A1_AIA_Rev.B, by Indigo Surveys, dated October 2017).
8. The layout and specification of the hard and soft landscaping shall be carried out in accordance with the details approved under application 18/02253/DISC, and shall be retained for as long as the development remains in existence.
9. The development shall be carried out wholly in accordance with Fire Appliance or Dry Riser Provision details approved under application 18/02089/DISC and shall be retained for as long as the development remains in existence.
10. The development shall be carried out wholly in accordance with the Ecology Survey approved under application 18/02161/DISC and any enhancement measures shall be retained for as long as the development remains in existence.
11. The site/security lighting details shall be implemented in accordance with the details approved under application 20/01097/DISC and shall be retained for as long as the development remains in existence.
12. The development shall be carried out wholly in accordance with the Waste Management Plan approved under application 20/00514/DISC and shall be retained for as long as the development remains in existence.

13. The bin store details for House 1 shall be carried out in accordance with the details approved under application 18/02253/DISC and shall be retained for as long as the development remains in existence.
14. The development shall achieve a reduction in carbon dioxide emissions in accordance with the details approved under application 20/00514/DISC and any carbon emissions reduction measures shall be retained for as long as the development remains in existence.
15. The parking area (including disabled space) and cycle storage as specified in the application and the provision of electric vehicle charging (compliant with London Plan 2016 standards) shall be provided before any part of the development is occupied and shall be retained for so long as the development is in existence.
16. The development shall achieve a water use target of 110 litres per head per day.
17. The development shall be carried out entirely in accordance with the Flood Risk Assessment (by Lanmor Consulting, dated October 2017, ref 170859/FRA/MK/KBL/01) and the Technical Note Drainage Strategy (by Lanmor Consulting, dated January 2018, ref 170859/DC/JR/01).
18. The shrub planting at the rear of flats 1 and 2 and on the boundary to the garden of House 1 shall be provided as shown in the application documents and shall be retained for as long as the development remains in existence.
19. The Sustainable Urban Drainage System as specified in the application shall be provided on site prior to occupation and shall be retained and maintained for as long as development remains in existence.
20. The noise level from the any air handling units, mechanical plant, or other fixed external machinery shall be at least 10dB below existing background noise levels.
21. The development shall be carried out in accordance with the tree works details approved under application 18/02161/DISC.
22. The boundary treatments as approved by this application shall be implemented wholly in accordance with the recommendations contained within the Arboricultural Method Statement created by 'Arbor Cultural Ltd' (Ref: AC.2022.573) dated 14 November 2022 and the details shown on Drawing No: TPP-01 Rev A.