



Appeal Decision

Site visit made on 21 August 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2023

Appeal Ref: APP/J1915/W/22/3313455

4 Rushleigh Green, Bishop's Stortford, CM23 4JH

- 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 James Groom against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1899/FUL, dated 8 September 2022, was refused by notice dated 23 November 2022.
 - The development proposed is change of use of amenity land to residential garden. Demolition of porch, erection of two storey side extension and porch to front.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of amenity land to residential garden. Demolition of porch, erection of two storey side extension and porch to front, at 4 Rushleigh Green, Bishop's Stortford, CM23 4JH, in accordance with the terms of the application, Ref 3/22/1899/FUL, dated 8 September 2022, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: AZ/RG4/PL/001, AZ/RG4/PL/005, AZ/RG4/PL/006 and AZ/RG4/PL/007.
 - 3) The external surfaces of the extensions hereby permitted shall be constructed in materials that match those of the existing dwelling.
 - 4) No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall: i) identify the existing landscaping to be retained and set out measures for its protection throughout the course of development; and ii) include planting plans and a schedule of planting, noting species, planting sizes and proposed numbers/densities. The new landscaping works shall be carried out in accordance with the approved details within the first available planting season following the change of use and enclosure of the garden extension.
 - 5) Any trees or plants forming part of the approved soft landscaping works, which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

Preliminary Matters

2. The description of development on the application form states: "*change of use of amenity land to residential curtilage*". As curtilage is not a use of land, I have amended this part of the description to: "*change of use of amenity land to residential garden*".
3. The Council does not object to the design or scale of the proposed two-storey side extension or to the replacement porch, which I note would both be located within the existing curtilage of the dwelling. As such I have not considered these matters further.

Main Issues

4. The main issues are the effect of the development on i) the character and appearance of the area and ii) trees that are protected by a Tree Preservation order (TPO).

Reasons

Character and appearance

5. The appeal site comprises a two-storey end of terrace dwelling, with a detached garage to the front, and private garden space to the front, side and rear. The side and rear garden areas are bound by a brick wall. Beyond the wall there is a small area of soft landscaping, which forms a buffer between the existing garden boundary, the adjacent shared parking court and the public footpath to the rear of the site.
6. It is proposed to extend the existing garden into the adjacent area of land to the side, which is owned by the appellant. I am advised that this area is shown as a landscaped area on the original planning permission for the housing estate, and that a condition exists to protect this. I have not been provided with a copy of the original planning permission, any plans identifying landscape areas, the full conditions or the reasons for them. I have also not been made aware of any conditions relating to landscape maintenance or management.
7. From the evidence before me, the landscaped area is not being managed or maintained in the public interest. Given its size, and its private ownership, the current use of the land is of very limited public benefit. Although the existing greenery creates a break between buildings and softens the appearance of the adjacent boundary wall and car parking area, the use of the land as garden, with some retained and some additional new landscaping, would achieve the same.
8. It is proposed to enclose the extended garden area with 1.8-metre-high close boarded fencing. The fencing would be inset from its two boundaries adjacent to the car parking area, enabling the retention of some of the existing vegetation, which would soften its appearance. A new area of planting is also proposed to the front of the side extension, which would replace the gravel area to the front of the existing boundary wall. Landscaping details can be agreed and secured by appropriate planning conditions.
9. I saw many fences similar to that proposed in visually prominent locations in the immediate surrounding area. There are other fences hard up to the edge of public footways adjacent to the gardens of 5 and 11 Rushleigh Green and to

the rear of 12-19 Rushleigh Green. Fences along the rear gardens of other houses on Rushleigh Green, which back onto Friedberg Avenue are set back from the road and have soft landscaping adjacent to them.

10. I note that the supporting text to local plan policy NE4 states that gardens also contribute to urban green infrastructure. Consequently, the change of use of this small privately owned amenity space to private garden, which would continue to contribute to the landscape and biodiversity value of the area, would have a negligible effect on the wider green infrastructure network.
11. I therefore conclude that the proposal would not be harmful to the character and appearance of the area. It would therefore accord with Policies HOU12, NE4, DES4 and DES3 of the East Herts District Plan (October 2018), which seek amongst other things to ensure the enclosure of amenity land and changes of use to residential garden, would not have an adverse effect on the surrounding area and landscape, and would include appropriate landscaping and boundary treatment.

Protected trees

12. The nearest protected trees are a Beach Tree (T33), which is to the front of 11 Rushleigh Green, a Lime Tree (T34), which is located behind the garage in front of 4 Rushleigh Green, and the group of trees (G16), which are located along the opposite side of the public footpath that runs behind the appeal property.
13. The front porch extension would replace an existing porch of similar size and in the same position. It would be no closer to any protected trees. The two-storey side extension would be set back from the front elevation of the existing dwelling and would be in line with the existing rear elevation. Due to the orientation of the building, the footway and the landscape belt running alongside it, the rear corner of the extension would be slightly closer to the group of protected trees than the existing dwelling. I note that adjacent Nos. 5 and 6 Rushleigh Green are located much closer to the trees, as are various brick outbuildings.
14. The trees located on the opposite side of the footway to the site are relatively small. The canopy of one of the larger hedgerow trees, which is leaning towards the site, is just above the site boundary. The proposed extension would be set in some distance from this boundary.
15. Given the size and nature of these trees, their distance from the proposed extension and the intervening areas of hardstanding, the proposal would be unlikely to have any adverse impact upon them.
16. The proposal would therefore accord with Policy DES3 of the East Herts District Plan, which requires the retention and protection of existing landscape features of amenity and biodiversity value.

Conditions

17. In addition to the standard time limit, I have imposed a condition listing the approved drawing numbers for the avoidance of doubt. A condition to ensure the external materials of the extensions would match those used in the existing dwelling, is necessary to ensure a satisfactory end appearance. Landscaping conditions are necessary to ensure the character and appearance of the area is preserved.

Conclusion

18. For the reasons given above I conclude that the appeal should be allowed.

R Bartlett

INSPECTOR