

Appeal Decision

Site visit made on 30 October 2023

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15.11.2023

Appeal Ref: APP/K3605/D/23/3328100

21 Tower Gardens, Claygate, Esher, Surrey KT10 0HB

- 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 Lee James Pendleton against the decision of Elmbridge Borough Council.
 - The application Ref 2023/0813, dated 17 March 2023, was refused by notice dated 5 July 2023.
 - The development proposed is a summer house/ancillary residential accommodation in the back garden.
-

Decision

1. The appeal is dismissed.

Preliminary matter

2. The description of proposed development set out above is taken from the application form rather than from the Council's unilaterally altered description as listed on its decision notice. I have made one alteration, omitting reference to the *retention* of the building because retention is not an act of development. The building was in place and in use for the accommodation of relatives at the time of my site visit.

Main issue

3. The main issue is the effect of the proposal on the character and appearance of the local area including consideration of the use of the building and its effect on an existing oak tree.

Reasons

Character and appearance

4. 21 Tower Gardens is a detached house on a reasonably sized plot, in a modern development of similar houses within a verdant setting including mature trees. The appeal building is a single storey outbuilding, with a low mezzanine area, set in a section of the rear garden that was already partitioned off by a brick wall before the building was constructed. That section of garden is accessible through a gate from the main garden and through another gate (closed off at the time of my visit) from the street. The building provides an en suite

bedroom space with a small side kitchenette area including a sink, a refrigerator and a few cupboards. At the time of my visit this side area contained a couple of minor kitchen gadgets but did not have enough space for a wider range of kitchen appliances. The overall amount of space within the building is also somewhat restricted.

5. The Council's concern about the use of the appeal building is that it is not genuinely ancillary to the main house, partly based on evidence indicating that the building has in the past been let as separate holiday accommodation. As set out above, however, the application proposal is for a summer house/ancillary residential accommodation. I see no reason in this case to dispute this or set it aside. Although the building is in a separated area of garden, it is within the overall property and planning unit, just as this area of garden was within the planning unit before the appeal building was constructed. The building does not provide a level of accommodation or facilities that would normally indicate use as a separate dwelling and future use could be controlled by a planning condition. The use of the building as ancillary accommodation would not have any significant effect on local character.
6. This part of Tower Gardens is a cul-de-sac that bends around the garden of No 21 so that the appeal building sits next to the street, where its upper section is visible behind a timber fence and a recently planted row of evergreen hedging. It is a modestly sized, low structure which does not block any important views and has little visual impact. The spacious character and appearance of the area is not significantly affected.
7. There is an oak tree, protected by a Tree Preservation Order (TPO), very close to one side of the appeal building, which sits under its canopy and within its rooting area. An arboricultural report submitted during the application process confirms that the tree is an 'early mature' specimen with 40+ years of life expectancy and a likely prospect of increasing in stem diameter and crown spread over time. It notes that this is a high quality tree that appears to remain in good condition despite some inevitable damage from the development of the estate. The oak tree is undoubtedly an attractive specimen that contributes substantially to the leafy character of the area. It could continue to do so for a very long time.
8. The appellant's arboricultural report considers that although the building is positioned within the tree's root protection area, it is not a significant constraint on the tree's health due to factors including the lack of underground footings, the allowance for air to reach the soil and the lack of any guttering or drainage to take rainwater away.
9. To my mind the arboricultural report does not adequately address the future impact on the tree, however. Although water would drip through the decking and off the roofs, the upper soil layers of the main area under the building would likely become much drier. No indication is given of the extent of rooting area already lost through development, but building over a large percentage of the remaining rooting area appears to further and substantially reduce the useful rooting area of the tree, potentially prejudicing its health and vitality. There could also be pressure to prune lower branches in future as they grow and the canopy expands. Finally, I also note that the tree's trunk is positioned very close to the building's roof, so that as the tree continues to grow it could

easily come into direct contact with the roof, setting up another conflict that would create pressure for tree works.

10. In summation on this issue, I find no harm from the proposed use of the building or from its presence in the street scene. I do, however, consider that there is insufficient evidence to show that the continuing presence of the building would not unacceptably harm the TPO oak tree, undermining its important contribution to Tower Gardens. For this reason, I conclude that the proposal would unacceptably harm the character and appearance of the local area. It conflicts with the shared aims of policies DM2, DM6 and DM10 of the Elmbridge Local Plan Development Management Plan, policies CS11 and CS17 of the Elmbridge Core Strategy, the Supplementary Planning Documents *Design and Character* and *Companion Guide - Home Extensions* and the National Planning Policy Framework, to ensure high quality and sustainable design that integrates sensitively with the townscape, avoiding damage to trees that make a significant contribution to local character and the quality of the urban environment.

Other matters

11. I have taken account of all other matters raised, including the comments of neighbours. In particular, the appeal building is reasonably low and set far enough away from neighbouring houses so that it would not be intrusive or overbearing on their outlook. I understand that some users of the appeal building have parked on street. This is, however, a quiet, private road with no discernible pressure on the unrestricted on-street parking. I see no highway safety issue arising.
12. I note that a lower outbuilding could be constructed here under permitted development rights without the need for a planning application. Such a building would, however, be restricted to uses *incidental* to the enjoyment of the dwellinghouse. *Incidental* uses do not include primary accommodation such as bedrooms, so such an outbuilding would be a much different development. I give this possibility little weight as a fall-back position.

Conclusion

13. Although I find in favour of the proposal in some respects, my concerns regarding the potential effects on the TPO tree, and thus on local character, are sufficiently compelling for me to conclude that the appeal should not succeed.

Les Greenwood

INSPECTOR