



Appeal Decision

Site visit made on 17 August 2023

by Chris Couper BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2023

Appeal Ref: APP/R5510/D/23/3317900

9 Long Drive, Ruislip, Hillingdon HA4 0HH

- 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 Alan Bonnell against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 77227/APP/2022/1321, dated 19 April 2022, was refused by notice dated 9 September 2022.
 - The development proposed is described as the 'erection of a first floor extension above ground floor extension approved under application reference 688/APP/2021/4555'.
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Decision

1. The appeal is allowed and planning permission is granted for a two storey extension at 9 Long Drive, Ruislip, Hillingdon HA4 0HH, in accordance with the terms of the application, Ref: 77227/APP/2022/1321, dated 19 April 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: 4D-201A E 00, 4D-201A P 01, 4D-201A P 02, 4D-201A P 03, 4D-201A P 04, 4D-201A P 05, 4D-201A P 06 and 4D-201A P 07.
 - 3) The materials to be used in the construction of the external surfaces of the development shall match those used in the existing building, and shall be retained as such thereafter.

Procedural Matters and Background

2. The description of the proposal in my banner is taken from the application form and refers to an approved application on the site, Ref: 688/APP/2021/4555. That application, was for a Certificate of Lawful Use or Development for a single storey ground floor rear extension ('the LDC scheme'). I observed on my visit that the LDC scheme has not been built. Consequently, this proposal is more accurately described as a two storey extension, and that is what I have used in my formal decision.
3. The application form cites the appellant as Mr Graham Holmes (4D Planning). However, having regard to the appeal form and other submitted evidence, it is clear that Mr Holmes was the agent, and that the appellant is Mr Alan Bonnell.
4. In its reason for refusal the Council states that the proposal does not make adequate provision for the protection and long-term maintenance of a valuable,

protected, Council-owned tree. It continues that the site is in a tree protection area, which is covered by Tree Preservation Order No 193 ('the TPO'). However, having regard to paragraph 2.2 of the Council's appeal statement, and the relevant plan and schedule, it is clear that the sycamore tree central to this appeal is not protected by the TPO.

5. The appellant submitted a Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement and Tree Protection Plan by Hayden's Arboricultural Consultants Limited ('the Tree Survey'). Whilst the Council states that the Tree Survey was not provided as part of the planning application, it has had an opportunity to consider its findings and to respond to them during the course of the appeal.
6. Finally, the appellant has requested that the appeal is stayed until such time as a nuisance claim relating to the sycamore tree has been resolved. However, that is a matter dealt with by a separate legal regime, and I have determined the appeal before me on its planning merits.

Main Issue

7. The main issue is the effect of the proposal on the character and appearance of the area, with particular regard to its impact on the sycamore tree.

Reasons

Character and appearance

8. The sycamore tree, as identified on drawing no. 4D-201A P 01 and described as T001 in the Tree Survey, is sited at the edge of a public car park, in a location where its trunk abuts a timber boundary fence, and a significant proportion of its canopy overhangs the appeal site.
9. The Tree Survey found the sycamore to have a fair form, and to be in a fair condition, but not without defects, including a cavity and wound, and that its root environment is trapped within a narrow area of soil between tarmac and concrete.
10. I observed that the tree is sited some way back from Long Drive, and that there are large trees much closer to the highway frontage, which make a more significant contribution to the streetscene. There is also a substantial belt of trees and landscaping on the opposite side of the public car park adjacent to the railway line. The sycamore is moderately sized, but with a slightly lopsided, multi-stemmed form. In that context, and having regard to the Tree Survey, I consider it to be of fairly low quality, and that it makes a limited, but nonetheless positive, contribution to the visual amenity of the area.
11. Thus, whilst the Council asserts, with reference to its Tree Officer and to BS:5837:2012, that the sycamore is a category B specimen, I agree with the more detailed evidence in the Tree Report that it is a category C1 tree.
12. The extension would be located to the rear of the host building, with its side wall abutting the car park boundary. As shown on drawing no. 4D-201A P 01 this would bring it very close to, or even abutting, the trunk of the sycamore. Given the siting of the proposed extension, relative to the tree's canopy and its likely root spread, I agree with both principal parties that implementation of the scheme would almost certainly result in the loss of the tree.

13. Given my findings regarding the tree, and its contribution to visual amenity, the scheme would therefore cause a modest degree of harm to the character and appearance of the area. As a result, there would be a limited conflict with Policies DMHB 11 and DMHB 14 of the Hillingdon Local Plan Part Two: Development Management Policies (2020), and with Policies G1 and G7 of the London Plan 2021 ('LP').
14. Amongst other things, these recognise the contribution that trees make to the environment; require development to be to the highest design standards, having regard to matters such as landscaping in order to protect and enhance amenity; and seek to retain trees of value wherever possible and, where they are to be removed, to make provision for new planting.
15. There would also be a modest conflict with Chapter 12 of the National Planning Policy Framework 2023 ('Framework'), including at paragraph 131, its recognition of the important contribution that trees can make to the character and quality of urban environments.

Other matters

16. Turning to the LDC scheme, the Council states that, in principle, this could potentially be built without damage to the tree. However, whilst the LDC scheme is for a single storey extension, it would have the same footprint as the proposal before me, and would thus abut the site boundary next to the sycamore tree in the same manner as this proposal. Consequently, even if no-dig foundation methods were to be used, as suggested by the Council, I agree with the Tree Survey's findings that to implement the LDC scheme the tree would also need to be felled.
17. The Council rightly points out that under the provisions of Schedule 2, Part 7, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), it could not consider the impact on trees in the LDC scheme. Be that as it may, I have no cogent reason to doubt that the LDC scheme would be implemented should this appeal be dismissed. The LDC scheme is thus a legitimate fallback, deserving of weight in my decision.
18. The Council states that the applicant would be liable for harm caused to the sycamore as a result of implementation of the LDC scheme. However, even if that is so, I see no reason why that would not apply equally to the proposal before me; and the appellant responds that the Council is bound by a common law duty to refrain from creating a nuisance by encroachment onto land belonging to another. In any event, these arguments do not affect the planning merits of the case.
19. In appeal decision Ref: APP/R5510/W/22/3308996 at Rofant Road, which is referred to by the Council in its statement, the Inspector apportioned substantial weight to the loss of trees. However, unlike here, that case involved the removal of two category B street trees, and to my knowledge there was no fallback option. Consequently, there are material differences between that case and this one.

Planning Balance, Conditions, Planning Obligation and Conclusion

20. Summing up, I have found that the sycamore tree is of fairly low quality and that it makes a limited contribution to the visual amenity of the area. It would need to be removed to implement the proposal, but that would result in only a modest degree of harm to the character and appearance of the area. Nevertheless, there would thus be a limited conflict with the development plan considered as a whole.
21. However, the existence of a fallback with similar impacts is a material consideration that overcomes that limited conflict. The appeal will therefore be allowed.
22. Turning to the matter of conditions, I have considered those suggested by the Council against the tests in the Framework. The time limit for commencement is necessary, as is, in the interests of certainty, a condition requiring that the development be carried out in accordance with the approved plans. In the interests of good design, I have also imposed a condition requiring that the extension be faced in matching materials.
23. The Council has not suggested a condition requiring new planting, but at Appendix 4 of its statement states that a S106 agreement is required to secure a financial contribution of £15,305 for replacement tree planting in the public realm. This, it says, is based on a CAVAT assessment, but I have no further details regarding how that sum was calculated, nor where such a contribution would be spent.
24. No such planning obligation is before me, and I cannot be certain, from the very limited evidence, that the requested amount would be necessary, or that it would be fairly and reasonably related in scale and kind to the development. It would not therefore meet all the tests at Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.
25. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

INSPECTOR