



Appeal Decisions

Site visit made on 8 November 2023

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 14th February 2024

Appeal A Ref: APP/X0360/C/23/3323314

Appeal B Ref: APP/X0360/C/23/3323315

12 Butler Road, Crowthorne RG45 6QY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Sunil Sharma and Appeal B is made by Yogita Agnihotri-Sharma against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 2 May 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding and the provision of hardstanding both shown in the approximate location cross-hatched in blue on the attached plan.
- The requirements of the notice are
 - i) Demolish the outbuilding in the approximate location edged pink on the attached plan and hardstanding shown in the approximate position cross-hatched in blue on the attached plan from the land and in accordance with the Arboricultural Method Statement provided at Appendix 1
 - ii) Remove all resultant materials from the Land
 - iii) Restore the Land to its previous condition.
- The period for compliance with the requirement is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decisions

Appeals A and B

1. It is directed that the enforcement notice be varied by:
 - i) Deleting the first requirement in full and replacing it with 'Demolish the outbuilding and associated hardstanding shown cross-hatched in blue on the attached plan from the Land and in accordance with the Arboricultural Method Statement provided at Appendix 1.
 - ii) Deleting "3 months" from the period of compliance and replacing it with "5 months."

Appeal A

2. Subject to the variations, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Appeal B

3. Subject to the variations, the appeal is dismissed.

Preliminary Matters

4. Since the appeal was made, a revised National Planning Policy Framework (the Framework) has been published in December 2023. However, the document has not raised any new matters which are determinative to this appeal.

The Notice

5. The Inspector has a duty to put the notice in order. The requirements should flow from the allegation. The Council has highlighted an error in the notice as the first requirement refers to pink edging and there is no pink edging on the enforcement plan. The Council has therefore suggested the deletion of the first requirement and substituting it with 'Demolish the outbuilding and associated hardstanding shown cross hatched in blue on the attached plan from the Land and in accordance with the Arboricultural Method Statement provided at Appendix 1'. The appellant does not consider that the proposed amendment causes any injustice and I will vary the requirement accordingly.

Appeal A and B under ground (c)

6. An appeal under ground (c) is that the breach of planning control has not occurred. The burden of proof is on the appellant based upon the balance of probabilities. The appellant considers that the exterior hardstanding benefits from permitted development rights as a separate engineering operation to the outbuilding. Class F of the (General Permitted Development) (England) (Order) 2015 ('the GPDO') permits 'the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such or the replacement in whole or in part of such a surface.'
7. However, no information has been provided to show when the hardstanding was provided and that it is not part of the outbuilding which it serves. The hardstanding provides a link between the original hardstanding that covers the wider garden area and the outbuilding. However, even if I considered that two separate operations had been undertaken, it has not been demonstrated that the hardstanding was constructed for a purpose incidental to the enjoyment of the dwelling house. On the information before me, the appellant has not shown on the balance of probabilities that the hardstanding benefits from permitted development rights under Class F of the GPDO. The appeal under ground (c) therefore fails.

Appeal A under ground (a) and the deemed planning application (DPA)

Main Issue

8. The main issue is the effect of the development on the character and appearance of the area particularly its effect on protected trees.

Reasons

9. The appeal site consists of a detached dwelling in a residential area. The surrounding established residential neighbourhood is characterised by distinctive trees, many of which are protected by Tree Preservation Orders. The garden to the rear of the appeal dwelling includes five mature trees, 2 Scots Pine, an oak tree and two beech trees which are the subject of a Tree Preservation Order (TPO) which was made on the 3 February 1994. These protected trees are significantly higher than surrounding buildings and are visible from Butler Road above the roofs and between the buildings. Due to their height and appearance, both individually and as a group, the TPO trees are attractive and striking mature specimens which make a significant contribution to the character and appearance of both the appeal site and the wider area.
10. The development consists of a single storey outbuilding which encloses two of the TPO trees namely the oak tree and a Scots Pine tree at ground level. There are two circular cut outs at ceiling level to accommodate the trees. The oak tree is substantial in size with a wide spreading base. It is located towards the front of the outbuilding. The second Scots Pine tree is towards the side of the building and has a more cylindrical shape. A section of the roof at eaves level has also been cut out of the side of the outbuilding to accommodate the stem of the second Scots Pine tree which abuts the outbuilding.
11. With two TPO trees located inside the building and a third next to it, the outbuilding has been built within the Root Protection Area (RPA) of at least those three trees. The appellant has referred to the British Standards technical document BS5837:2012¹. This defines the RPA as the minimum area around a tree deemed to contain sufficient roots and rooting volume to maintain the trees' viability and where the protection of the roots and soil structure is treated as a priority.² The document also refers to the need for overriding justification for construction within the RPA.³ No such justification has been provided by the appellant.
12. The appellant has described the method of construction as inserting timber posts into shallow holes using hand tools. No concrete foundations were installed and the internal surface is made up of slabs on sharp sand on a fabric membrane. The appellant's expert indicates that the method of construction provided by the accords with the installation of boundary fencing that would accompany a planning application.
13. The appellant states that 'low impact construction in the vicinity of trees is entirely possible without adversely impacting trees. There is ample evidence of structures and projects such as decking areas, tree top walks, boarded walkways through woodlands and treehouses to demonstrate this.' However, those examples and installing boundary fencing are not comparable to the development where TPO trees are enclosed within a permanent structure.
14. The retrospective nature of the development does not remove the need for the appellant to show that enclosing TPO trees in this manner has not caused harm and is unlikely to cause harm in the future. Damage can be caused to roots by cutting roots, compaction of soil structure or by pollution. Whilst the appellant

¹ Trees in relation to design, demolition and construction -Recommendations

² BS5837:2012 paragraph 3.7

³ BS5837:paragraph 5.3

states that the nature of construction has not damage tree roots, a permanent building for daily domestic use has been constructed within the RPA of the trees and those roots are now covered over.

15. Around 2.6 metres of the lower parts of two trees (an oak and a Scots Pine) are now enclosed within the building. Access to rainwater is diminished and the base of the trees are covered with a mixture of tarmac and sand with hard surfacing to the rest of the internal floor area more likely than not extending over the rooting area of the trees. At the point where the two trees are in line with the ceiling, the tree trunks have a ring of expandable foam to fill the gap between the trees and the rest of the ceiling.
16. The appellant's expert has recommended removal of both the expanding foam and the tarmac at the base of trees. He states that over time the bark may rot and cause ring barking. The foam also removes a source of water where water runs down the trunk after rainfall. I do not share the appellant's view that the protected trees will have adjusted to a roofed structure being present as there were two sheds at the appeal site previously. The size and location of the modest sheds in relation to the protected trees are not comparable to the development.
17. Even without foam, the Council has concerns about how the tree growth is impacted by the presence of the ceiling and the exposure of woody tissues will allow for ingress of decay which will shorten the life expectancy of the trees. Lack of water due to the presence of the outbuilding and hard surfaces extending over the rooting area of the trees will also be detrimental to the long term health of the trees.
18. Although removal of the tarmac and sand and some paving is proposed by the appellants, no details are provided as to proportion of hard surfacing to be removed. The RPA is likely to include most if not all of the building. No details are provided of what the new surface would be or how it would preserve the TPO trees and also be suitable for day to day family use and not result in compaction of the tree roots.
19. Photographs provided show chairs and other domestic items stored against one of the trees within the building. The appellant proposes safety barriers around the trees to prevent storage touching the tree trunks. No details are provided of the design or nature of safety barriers and whether the construction of permanent safety barriers in close proximity to the trees is going to have any impact upon the trees and the RPA.
20. The appellant has proposed that any perceived harm could be addressed by conditions. Whilst removal of the foam is proposed, the outbuilding would not be watertight with gaps at ceiling level and no details are provided of what would replace the foam. There is no practical solution as to how the tree at ceiling level can be unrestricted in terms of future growth whilst providing a watertight building. It is also not clear how safety barriers would work in a domestic setting and whether a condition requiring such internal barriers to be erected and maintained is enforceable and would not cause harm to the protected trees.
21. In my view, it would not be reasonable to impose conditions that would render the building not watertight or place restrictions within the building of useable floor space as suggested by the appellant. Furthermore, conditions would not

address the harm in relation to the covering over of the rooting area and the resultant harm to the preserved trees.

22. Guttering is recommended by the appellant but it is not clear if redirecting rain water via a leaky pipe under the paving slabs inside the building will impact the building itself in the absence of any foundations and provide sufficient water for the trees. No suggested wording has been proposed for any of the proposed conditions and it is not clear how any of these matters can be overcome by conditions whilst providing a functional building.

Fallback

23. The appellant seeks to rely upon a fall-back position which relies upon permitted development rights to construct an outbuilding pursuant to Class E of the GPDO. The appellant accepts that the existing building does not benefit from permitted development rights. While there may be a different building that can be constructed under Class E of Part 1 of Schedule 2 of the GPDO, it has not been demonstrated that such a building would have a similar or worse effect than the appeal outbuilding.
24. The outbuilding the subject of this appeal has adverse effects on the future health of the preserved trees due to the foam collars and the interruption of water reaching the roots of the trees. This may lead to the loss of the trees and which in turn would impact upon the character and appearance of the area. On the basis of the evidence before me, I cannot conclude that a building constructed under Class E would be similar or worse to the effect of the outbuilding on the trees. As such, I can only give this fallback limited weight.

Other Matters

25. Whilst a local councillor and a neighbour support the development, their comments do not alter my findings.

Conclusion on ground (a)

26. On the information before me, the outbuilding the subject of this appeal has adverse effects on the future health of the preserved trees due to the foam collars and the interruption of water reaching the roots of the trees. This may lead to the loss of the trees and thus harm to the character and appearance of the area.
27. The development is therefore contrary to Policy CP3 of the Core Strategy 2010 (the Core Strategy) which requires development to maintain or enhance the ability of the site to support fauna and flora including protected species. It is also contrary to Policies CCO3 and TB21 of the Managing Development Delivery Local Plan 2014 (the Local Plan) which, amongst other things, require development to protect and retain existing trees and retain or enhance the condition, character and features that contribute to the landscape.
28. The development is also contrary to Policies CP1 of the Core Strategy and Policy TBO6 of the Local Plan which collectively seek to protect and enhance and protect the character of an area which includes the retention of protected trees. The development conflicts with the development plan as a whole and there are no material considerations to indicate a decision should be made other than in accordance with the development plan. The appeal under ground (a) fails.

Appeal A and B under ground (f)

29. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
30. The appellant's argument under this ground is that the requirement is excessive as no injury to amenity has occurred. However, as the requirement of the notice is to remove the outbuilding and hardstanding, the purpose of the notice is to remedy the breach and not to remedy injury to amenity.
31. The appellant has proposed reducing the height of the building to 2.5 metres or less to comply with Class E of the GPDO as noted in the statement of the arboricultural consultant. However, that document refers to a reduction to 2 metres in height subject to a *suitable* (my emphasis) arboricultural method statement but no wording is proposed for any amended requirement. Any alternative wording needs to be precise and unambiguous as non-compliance can lead to criminal proceedings.
32. In any event, the GPDO does not retrospectively grant permission for development that has already been carried out. Reducing the scale of the development does not achieve the purpose of the notice which is remedying the breach and the requirement to demolish is therefore not excessive. The appeals under ground (f) fails.

Appeal A and B under ground (g)

33. An appeal under ground (g) is that the time allowed for compliance is too short. The appellant considers that a period of compliance of three months is too short and that nine months will be required to hire a reputable builder under supervision of an arboricultural consultant to remove the development. The actual work to remove the building is unlikely to take longer than 3 months. However, I accept that finding a reputable builder may take a longer period than 3 months. In the absence of any further information to support a period of 9 months which appears excessive, I consider 5 months to be a reasonable period. The appeals under ground (g) succeeds to that extent.

Conclusion

34. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (Appeal A).

E Griffin

INSPECTOR