



Appeal Decision

Site visit made on 24 September 2024

by E Grierson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/J1535/W/23/3335793 78 Bracken Drive, Chigwell, Essex IG7 5RD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Jasminder Walia against the decision of Epping Forest District Council.
- The application Ref is EPF/2224/23.
- The application sought planning permission for a new detached single family dwelling to replace existing bungalow without complying with conditions attached to planning permission Ref EPF/2132/19, dated 21 October 2019.
- The conditions in dispute are Nos 5 and 7 which state that: 'No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement, and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction – Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents 2 unless the Local Planning Authority gives its written consent to any variation' and 'Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) and implementation programme (linked to the development schedule) shall be submitted to and approved in writing by the Local Planning Authority. These works shall be carried out as approved. The hard landscaping details shall include, as appropriate, and in addition to details of existing features to be retained: proposed finished levels of contours; means of enclosure; car parking layouts; other minor artefacts and structures, including signs and lighting and functional services above and below ground. The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers / densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.'
- The reasons given for the conditions are: 'To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990, and to enable full and proper consideration be given to the impact of the proposed development on existing trees / hedges, so as to safeguard and enhance the visual amenities of the area and to ensure a satisfactory appearance to the development in accordance with policy LL10 of the adopted Local Plan and Alterations 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF 2019' and 'To comply with the duties indicated in Section 197 of the Town and Country Planning Act 1990 so as to ensure that the details of the development of the landscaping are complementary, and to ensure a satisfactory appearance to the development, in accordance with policies CP2

and LL11 of the adopted Local Plan and Alterations 1998 & 2006, policies DM3 and DM5 of the Local Plan Submission Version 2017, and the NPPF 2019.'

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect that amending condition 5 and condition 7 would have on the protected trees on the appeal site.

Reasons

3. Planning permission¹ has been granted on the appeal site to allow for the replacement of an existing bungalow with a new two-storey dwelling. The appeal seeks to vary conditions 5 and 7, relating to the provision of a tree protection plan, arboricultural method statement and site monitoring schedule and details of hard and soft landscaping works including tree planting, of the original permission. This is to remove the pre-commencement/prior to any above ground works clause from the conditions as the development is complete and therefore such conditions cannot now be discharged.
4. Based on the evidence provided by both parties and the presence of a number of protected trees on the site, the pre-commencement/prior to any above ground works nature of these conditions was necessary to ensure that the trees remain unharmed during the construction process and from any landscaping works proposed, in order to safeguard the trees contribution to the character and appearance of the site and the surrounding area.
5. Whilst the works for the development and the associated landscaping have now been completed and no construction is now taking place on the appeal site, any damage to the roots of the trees may not be evident for some time. There is no information before me which adequately demonstrates that the development has had no impact on the health of the trees or that their health is no longer a concern. As such, without evidence to suggest otherwise, I cannot be satisfied that the works on the site have not resulted in harm to the protected trees and would not impact upon their contribution to the character and appearance of the site and the surrounding area in the future.
6. It is noted that the appellant seeks to amend the conditions to reflect the facts on the ground and that any harm to the trees, through error, has been remedied so far as possible. However, regardless of the current situation, this does not negate the need for such conditions to be carried out prior to the commencement of works, for the reasons outlined above. Furthermore, I see no reason as to why the amended conditions would protect the remaining trees on the appeal site any more than in their current form. Issues relating to enforcement action are a matter for the Council and are not relevant to the appeal before me.
7. I therefore conclude that amending conditions 5 and 7 would harm the protected trees on the appeal site and would conflict with Policy DM5 of the Epping Forest District Plan 2011-2033 (2023). This policy seeks to ensure that

¹ EPF/2132/19 (the original permission)

development proposals have been designed to retain existing green infrastructure assets including trees.

Conclusion

8. For the reasons given above, I conclude that the appeal should be dismissed.

E Grierson

INSPECTOR