



Appeal Decision

Site visit made on 1 April 2025

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th April 2025

Appeal Ref: APP/E3335/W/24/3351992

Flat 3, 91 Hendford Hill, Yeovil, Somerset BA20 2RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Elaine Jillian Jones against the decision of Somerset Council.
 - The application Ref 24/00923/FUL was approved on 23 August 2024 and planning permission was granted subject to conditions.
 - The development permitted is erection of freestanding double carport in existing gravelled car parking area.
 - The condition in dispute is No 3 which states that: *"Prior to the commencement of the development hereby approved (including demolition and all preparatory work), a scheme for, the protection of the retained trees, in accordance with BS 5837:2012, including a tree protection plan(s) (TPP) and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. This shall include, but may not be limited to the following; -*
 - a) Location and installation of services/utilities/drainage.
 - b) Methods of demolition within the root protection area (RPA as defined in BS 5837: 2012) of the retained trees.
 - c) Details of construction within the RPA or that may impact on the retained trees.
 - d) where appropriate, details of the no-dig specification and extent of parking areas and driveways to be constructed using a no-dig specification.
 - e) Detailed levels and cross-sections to show that the raised levels of surfacing, where the installation of no-dig surfacing within Root Protection Areas is proposed, demonstrating that they can be accommodated where they meet with any adjacent building damp proof courses.
 - f) A specification for protective fencing to safeguard trees during construction phases and a plan indicating the alignment of the protective fencing.*The development thereafter shall be implemented in strict accordance with the approved details."*
 - The reason given for the condition is: *"Required prior to commencement of development to satisfy the Local Planning Authority that the trees to be retained will not be damaged during demolition or construction and to protect and enhance the appearance and character of the site and locality, in accordance with Policy EQ2 and EQ3 of the South Somerset Local Plan, as well as the National Planning Policy Framework (2023)."*
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Decision

1. The appeal is allowed and the planning permission Ref 24/00923/FUL for erection of freestanding double carport in existing gravelled car parking area at Flat 3, 91 Hendford Hill, Yeovil, Somerset BA20 2RE granted on 23 August 2024 by Somerset Council, is varied by deleting condition 3 but substituting for it the following condition:

(3) Prior to the commencement of the development hereby approved, a scheme for the protection of the retained trees, in accordance with BS 5837:2012, including a Tree Protection Plan and an Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. This shall include, but may not be limited to the following:

(a) Location and installation of services/utilities/drainage.

(b) Details of construction within the root protection area (as defined in BS 5837: 2012) or that may impact on the retained trees.

(c) A specification for protective fencing to safeguard trees during construction and a plan indicating the alignment of the protective fencing.

The development thereafter shall be implemented in strict accordance with the approved details.

Preliminary Matter

2. Since the decision of the Council, a revised National Planning Policy Framework (the Framework) has been published. Although I have made my determination against the updated national policy context, the relevant changes to the Framework are not fundamental to matters which are determinative to the outcome of this appeal.

Background and Main Issue

3. The planning permission granted consent for the erection of a free-standing double car port within the surroundings of 91 Hendford Hill, a building divided into flats. The site of the car port currently consists of gravelled hardstanding, and is adjacent to mature trees. Many of the trees are protected by Tree Preservation Orders and the site is within the Hendford Hill Conservation Area (CA).
4. The car port would be a pre-fabricated kit constructed using timber posts. Its erection would require the creation of six holes into the ground, to a depth of around 0.6m. Only limited details in respect of the effect of the proposal on trees were provided at application stage, and so this information has been sought by way of the disputed condition.
5. The main issue is whether the information required by condition 3, including in respect of a Tree Protection Plan (TPP) and an Arboricultural Method Statement (AMS) is necessary and reasonable in the interests of the character and appearance of the area, including the CA.

Reasons

6. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. Relevant to the appeal, the significance of the CA is its green and verdant appearance.
7. Options for the construction of the car port include spiked or screwed-down post holders, or ground anchors concreted into place. However, no one method has been demonstrated to be acceptable or preferable for the health of the trees. A hole dug adjacent to one side of the gravelled area revealed roots said to be from laurel hedging. Even so, the roots of the large mature trees here, such as the conifer on the other side of the gravelled area, may well extend into the area subject to the proposed works.
8. I understand that the appellant has no wish to harm the trees. That said, I have little substantive evidence, such as from a professional arboriculturist through a TPP and AMS, to confirm that the details of the proposal would not have an

adverse effect on the trees, and thus the wider CA, or how to mitigate any effects. Nor do I have detailed information about the location of existing and proposed services, such as surface water drainage. These factors could have implications for the long-term health of the trees. The location of temporary fences is also necessary to ensure the protection of the trees during construction.

9. That said, the condition as worded appears to be aimed at much larger building projects. In this case, no demolition, new driveways or surfacing are proposed, and it would not be of a 'no dig' specification. Nor would it be of a large enough size to be constructed in phases. As a result, these elements of the condition as originally worded are unnecessary.
10. Nevertheless, I conclude that at least some of the information required by condition 3 is necessary and reasonable in the interests of the character and appearance of the area, including the CA. Imposing a condition requiring such information would accord with policies EQ2 and EQ3 of the South Somerset Local Plan, adopted March 2015, which require proposals to preserve the character and appearance of the area and to safeguard heritage assets. It would also accord with the similar requirements of the Framework and the statutory duty.
11. In accordance with the Framework, I give great weight to the preservation of the CA as a designated heritage asset. In the language of the Framework, the harm to the CA from the proposed removal of the condition would be less than substantial. Accordingly, I will weigh this harm against the public benefits of the proposal, below.

Other Matters

12. Obtaining the TPP and AMS would result in delay and expense to the appellant. Until the information is provided, the car port cannot be erected. This would mean that the appellant and other occupiers, some of whom are aged and have mobility issues, would have to continue carrying water down flights of stairs, to clean their cars of debris and mess from the trees and birds. Nevertheless, this is essentially a private benefit to the occupiers.
13. In reaching my decision, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, including the protected characteristics of age and disability. Article 8 of the Human Rights Act 1998 requires that decisions ensure respect for private and family life and the home. I have kept these interests at the forefront of my mind, but they are qualified rights, and interference may be justified where in the public interest.
14. My decision may well result in a prolonging of the current arrangements, adversely affecting individuals with protected characteristics. I have had due regard to the need to eliminate discrimination and promote equality of opportunity, and the benefits to the individuals, but protection of the trees requiring the relevant information is necessary and proportionate in the public interest. Consequently, I conclude that there are no public benefits of the proposal sufficient to outweigh the less than substantial harm to the CA.
15. The site lies within the hydrological catchment of the Somerset Levels and Moors Ramsar Site and Special Protection Area (SPA). This is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Habitats

Regulations). The levels of phosphates in the SPA exceed the water quality objectives and the designated site is therefore in an unfavourable condition.

16. Nonetheless, the Council has confirmed that the proposal would be connected to foul mains, as required by the Building Regulations. Furthermore, the car port would have an inherently open design, meaning that it could not be used for overnight accommodation. This would prevent an increase in phosphate pathways, for example from a toilet. The Council conclude that the proposal would not increase phosphate pathways within the relevant area, and I share this view. As such, an Appropriate Assessment under the Habitats Regulations is not required.

Conditions

17. For the reasons already given, I shall delete the original condition, but impose another condition with revised wording, requiring submission of the TPP and AMS, including details of services, construction and protective fencing. I shall exclude areas where unnecessary information was sought, such as in respect of demolition, new driveways, raised surfacing and references to a 'no dig' specification.

Conclusion

18. I conclude that the appeal should be allowed and the planning permission amended as set out in the formal decision.

O Marigold

INSPECTOR