



Appeal Decision

Site visit made on 14 July 2025

by **Nicola Davies BA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2025

Appeal Ref: APP/H2265/W/25/3364008

43 London Road, Laybourne, West Malling, KENT ME19 5EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Nurhan Huseyin against the decision of Tonbridge & Malling Borough Council.
 - The application Ref is TM/24/02076/PA.
 - The development proposed is the construction of an outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of proposed development from the Council's decision notice as this clearly and succinctly describes the act of development only.
3. The planning application form indicates that the development has already taken place and I was able to view the outbuilding at the time of my visit.
4. It has been advised that there are outstanding enforcement investigations ongoing at the site. Those investigations include unauthorised outbuildings and garage, amongst other matters. For the purposes of clarity my consideration is limited to that of the outbuilding that is the subject of this appeal.

Main Issues

5. The main issues raised by this appeal are the effect of the development on trees that are protected by a Tree Preservation Order (TPO) and the character and appearance of the host dwelling and the area.

Reasons

Trees

6. Along this part of London Road trees line either side of the highway. The appeal property is one of two dwellings nestled within this green landscape. Overall the area hosts a rural character, noting the site falls within a countryside location. The mature trees are an attractive feature within the street scene and are of high visual amenity value for this reason. The TPO that is in place affords protection to a number of trees adjacent to the site. This makes it all the more important to protect the trees from harm to ensure their longevity is not undermined. The premature

loss of any of these TPO trees would have a negative and significant visual impact on the street scene.

7. A Tree Survey Report & Retrospective Arboricultural Impact Assessment has been submitted in support of the appeal. The Assessment supports the retention of the trees as the removal of any trees would have an amenity impact.
8. The appellant comments that no significant roots were damaged or severed in the process of construction the outbuilding. However, the Assessment comments that underground service routes are likely to have caused severance of roots and root clusters and the Council contends that it is too soon to determine what damage may have taken place to the trees. Indeed, the Assessment notes that insufficient time has elapsed since the construction of the outbuilding for any related physiological impacts to manifest. The Assessment comments that soil compaction will have taken place across the ground area relating to the outbuilding and discusses mulch being added to the soil and aeration to aid growth and recovery of roots. To my mind these issues suggest there to have been some damage to tree roots, despite no visual signs of any decline having been observed as yet.
9. The Assessment does not advocate the removal of the structure as this would not address any root loss incurred during their construction. It is suggested that dismantling the concrete pads would exacerbate soil disturbance and add to existing compaction. However, the Council comments that the removal of the outbuilding, if carried out appropriately, would offer a better environment for the trees to recover that would bring about better long-term benefits for the trees. However, this would require a tree protection plan and method statement to be provided to the Council to ensure that it is carefully undertaken.
10. The Assessment does not provide certainty that the TPO trees have not been harmed as a result of the development. It is possible that the outbuilding has and will cause direct damage to root and stem growth. The trees need space to naturally develop their width, height and canopy spread. Whilst mitigation has been suggested the Council contends that the appropriate removal of the outbuilding would offer a better environment for the trees to develop. This would be more likely to ensure the long term protection of trees. Further to this, tree debris falling on the outbuilding and branches oversailing the structure could add pressure to fell trees to improve the living environment for the occupiers. This, in turn, could result in a significant negative impact on the street scene. This, along with the damage that has likely to have occurred to the trees, would be an erosion of the statutory protection placed upon the trees by the serving of the TPO.
11. The Appellant has expressed a willingness to accept an appropriately worded planning condition to safeguard the future of the trees. It is suggested that targeted, enforceable conditions and continued arboricultural oversight would offer a clear and proportionate means of managing potential risks while preserving the character, vitality and longevity of the tree cover. However, I see no clear certainty that this would or could achieve this outcome. As such, it would not be appropriate to rely on planning conditions as there is no clear indication that these would safeguard the future of the trees.
12. For these reasons, I conclude that the development is harmful to the trees that are protected by a TPO. The development would, therefore, conflict with Policy NE4 of

the Managing Development and Environment Development Plan Document and the provisions of the National Planning Policy Framework (Framework). That policy requires, amongst other matters, the extent of tree coverage to be maintained and any development to be refused where it would result in the deterioration of woodland.

Character and appearance

13. The outbuilding has a forward siting to that of the host dwelling. Nonetheless, it would not breach the front building line of the neighbouring property. It is a modest structure in terms of its overall size. From the adjacent public highway, it is only visible in the immediate environs of the site. It is not a substantially obtrusive feature that causes significant visual harm to the appearance of the house or the character of the local street scene or the wider countryside in which the host dwelling is located.
14. For these reasons, I conclude that the development would not be harmful to the character and appearance of the host dwelling or the area. The proposal would, therefore, not conflict with Policies CP14 and CP24 of the Tonbridge and Malling Borough Core Strategy, Policy SQ1 of the Managing Development and Environment Development Plan Document and the provisions of the Framework. These policies seek, amongst other matters, development to be well designed, be of a character and appearance that would respect the site and its surroundings and protect the countryside

Conclusion

15. Whilst I have found in favour of the appellant in terms of the second main issue, this does not overcome the identified harm in relation to the first main issue.
16. Having regard to the above findings, the appeal should be dismissed.

Nicola Davies

INSPECTOR