



Appeal Decision

Site visit made on 26 September 2025

by **P Burley BA (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 October 2025

Appeal Ref: APP/M2270/W/25/3368750

Dormers, Top Floor Flat, 9 Nevill Park, Tunbridge Wells, Kent TN4 8NW

- 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 Mrs Louise Myers-Lampsey against the decision of Tunbridge Wells Borough Council.
 - The application Ref is 25/00401/FULL.
 - The development proposed is described as 'Removal of section of earth bank to form parking area and bike enclosure. Extension of retaining wall'.
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Decision

1. The appeal is allowed and planning permission is granted for 'removal of section of earth bank to form parking area and bike enclosure, and extension of retaining wall' at Dormers, Top Floor Flat, 9 Nevill Park, Tunbridge Wells, Kent TN4 8NW in accordance with the terms of the application, Ref 25/00401/FULL, and subject to the conditions in the attached schedule.

Preliminary Matters

Availability of Appeal Documents for Comments

2. The Council has referred to the submission by the appellant of an updated tree report (AR/4435b/jq, dated 18 June 2025) that was not submitted as part of the original planning application and which seeks to address the tree-related reason for refusal. It has said that this was not available to the Council at the application stage and had it been, the Council would have re-consulted local residents on the revised report and taken it, and their comments into account in the determination of the application. The Council has recommended that I should not accept this document but that if I do it has said that it reserves the right to provide comments on the report prior to the determination of this appeal and to apply for an award of costs.
3. Clear guidance is available in relation to the written representations appeal procedure. This procedure does not provide for an assessment by the Inspector as to whether they will accept or reject documents which have already been accepted by the Planning Inspectorate as part of a valid appeal submission. Rather, the Inspector will form a judgement as to the weight that they consider should be attached to all submissions before them. Thus, it is not for me to subsequently advise any party as to whether or not I have accepted particular documents so that they can then decide whether to make comments on them.

4. In any event the updated tree report directly relates to the substance of the appeal and I do not see any reason why this should not have been accepted; whilst it may differ from the submissions that the Council based its decision on, an appellant is entitled to provide supporting information / evidence which it believes would address a reason for refusal; an appeal does not have to be assessed solely on the basis of the information that was submitted as part of the planning application.
5. The Council was obliged to notify any person who was notified or consulted about the application and any other interested persons who made representations to it about the application, that the appeal had been made. It was also required to tell those parties when and where the appeal documents would be available for inspection and the date by which comments on documents would need to be made. Thus, all parties, including the Council, have been provided with an opportunity to comment on the updated tree report and I consider that no party has been prejudiced by me taking it into account in making my decision.
6. In the case of appeals determined via written representations, any application for costs must be made in writing no later than the final comments stage. However, no applications for costs have been made to me by the Council or any other party.

Conservation Area

7. The appeal site is in the Royal Tunbridge Wells Conservation Area (CA) and, as such, I have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCAA) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

Main Issue

8. The main issue is the effect of the appeal scheme on trees which make a positive contribution to the CA with specific regard to a London plane and a Common lime in the grounds of Field House.

Reasons

9. There are two mature trees in the garden of the property (Field House) to the east of the appeal site. The appeal scheme would be located within the root protection areas (RPA) of these. The nearest is a London plane and to the south of this is a Common lime. Between the proposed development and these trees is a brick wall and the driveway of the neighbouring property to the east of the appeal site. A planted earth bank within the appeal site is retained by the brick wall, and the neighbour's driveway is at a lower level than this bank.
10. The appeal scheme involves the removal of part of the bank so that the proposed parking space would be at the same level as the driveway of 9 Nevill Park and the wall would support (as a retaining structure) the neighbour's driveway which would be at a higher level than the proposed parking space.
11. During the course of the planning application, information was brought to the attention of the appellant's arboriculturist in respect of the need to reposition an electricity cable, leading to a request by the appellant's arboriculturist for the original tree report to be withdrawn from the Council's files. Accordingly, and as reflected in the Council's officer report, at the time of its decision the Council

concluded that it had insufficient evidence to demonstrate that the nearby trees would not be adversely affected by this proposal.

12. An objector to the appeal scheme commissioned an arboriculturist to examine the situation. In their report (dated 24 March 2025) they noted that they had been involved in the inspection and sensitive management of the London plane and the Common lime since being commissioned by the property owner *circa* 2022. With reference to a version of the appellant's arboricultural report dated 13 February 2025 (which did not refer to the relocation of the electricity cable) they stated that it set out a methodology which, based on information available at the time, would have caused minimal harm (acceptable in BS5837 terms) to the two trees, based on the limited excavation below the adjacent ground level and the proposed use of a no-dig cellular confinement system.
13. However, the objector's arboriculturist said that deep excavations to accommodate an electricity cable would wipe out at least a 10m segment of the trees' RPAs, eradicate any rooting to the west of the trench and eliminate 15% of the RPA of the London plane and 8.5% of the RPA of the Common lime. The drawing which accompanied these comments illustrates the author's assumption that the electricity cable would continue to be located along the line of the boundary wall and that the cable may need to be lowered.
14. The appellant's updated tree report (AR/4435b/jq, dated 18 June 2025) clarifies that the electricity cable would be re-routed to follow the western edge of the drive of 9 Nevill Park and the appellant has confirmed that the re-routing would not affect the electricity cable serving 8b Nevill Park as has been suggested by an objector. By following this route the cable would not bisect the RPAs in the location assumed by the objector's arboriculturist. The appellant's report concluded that whilst they did not know the full depth of the drive's surfacing it is likely to be at least 25 centimetres in depth and, as such, the additional excavation depth of some 20 centimetres to achieve the required 450mm depth for the cable is unlikely to cause any significant harm to the roots, whether in terms of overall assimilative function or stability. No party to this appeal has suggested that this conclusion cannot be relied upon.
15. The appellant has also submitted the National Joint Utilities Group's 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees – Issue 2' (NJUG Guidelines) which sets out a precautionary approach to works within a 'protection zone' around trees, including the avoidance of mechanical excavation where necessary and the protection of root systems.
16. On the basis of the information before me, if the electricity cable is re-routed along the western edge of the drive of 9 Nevill Park and the NJUG Guidelines are adhered to during those works (which could be secured by a planning condition), I find it unlikely that either the London plane or the Common lime would be harmfully affected by the appeal scheme.
17. Accordingly, I also find that the appeal scheme would not cause harm to the landscape character, appearance and significance of the CA or to the designated Arcadian Area (AA) and Area of Landscape Importance (ALI) as a result of the potential loss of one or both of these trees. Therefore, the appeal scheme would not conflict with Core Policy 4 of the Tunbridge Wells Borough Core Strategy Development Plan Document (2010) (CS); Policy EN13 of the Tunbridge Wells

Borough Local Plan (2006) (LP); Policy EN12 of the Tunbridge Wells Borough Submission Local Plan (2021) (SLP) and the Tunbridge Wells Alterations and Extensions Supplementary Planning Document (2006) which together seek to conserve the borough's landscape, to protect trees in CAs and to avoid adverse effects on important trees, including in ALIs.

18. Given that the absence of harm would equate to a neutral effect on the CA, I also conclude that, in respect of the main issue, the appeal scheme would preserve both the character and appearance of the CA and, therefore, is consistent with Section 72(1) of the LBCAA.

Other Matters

Other Tree-related Considerations

19. Objectors have expressed concern that information relating to tree preservation orders in the vicinity of the appeal site may be inaccurate and out-of-date, and have said that the Field maple that was planted as a replacement of a TPO-protected Beech tree and which is now proposed to be removed would have assumed the equivalent statutory protection. They have said that the proposed replacement, an Apple tree, is not a suitable replacement for the Beech tree and, even if it were, it would be exempt from TPO status affording it no protection in the future.
20. During my site visit I ensured that I was aware of and observed all trees that could be affected by the appeal scheme so that I could take them all into account in my decision.
21. The appellant has argued that the Field maple is young, it is not appropriate for long-term retention in that location due to its proximity to the boundary wall, that the current position of the Field maple under the canopy of the London plane is not beneficial to its health and that it would be replaced with a native tree in a more sustainable position. Whilst an objector has argued that the Field maple would have a lifespan of at least a quarter of a century and that the removal of the tree is not required to ensure the structural stability of the boundary wall, I am satisfied that its removal and the planting of a native species in a position to the south of the Field maple would not result in a harmful effect on the character and appearance of the CA and therefore would be acceptable. Whilst the replacement tree would not be protected by a TPO, Part VIII of the Town and Country Planning Act 1990 (as amended) nevertheless provides for the preservation of trees in CAs.

Conservation Area

22. As well as the effect that the appeal scheme could have on trees in the CA, interested parties objected on the basis that the appeal scheme would also harm the character and appearance of the CA.
23. In summarising the elements which contribute to the area's character The Royal Tunbridge Wells and Rusthall Conservation Areas Appraisal (2000) notes the boundary walls and dense garden planting of properties in Nevill Park and mature boundary planting which it says is so typical of the 'green leathery walls' that characterise many of the suburban properties within the town centre. The appeal

site also lies within the AA of Nevill Park and in an ALI, designations which also relate to the character and appearance of the area.

24. When I undertook my site visit I noted that the part of the CA within which the appeal site is located is defined by a mature, informal landscape and the significant properties along Nevill Park which are set back in their own mature landscapes and approached via long driveways bounded by mature, planted gardens and earth banks. Parked cars are visible within the curtilages of properties and glimpses of residential buildings and other incidental structures can be seen when looking through various gateways. I also made my own observations of the views from Nevill Park towards the appeal site in light of the artist's impressions / photomontages of the existing and proposed situations that were submitted by objectors.
25. Change in a CA does not inevitably cause harm. Whilst a parked vehicle and the cycle parking / enclosure would be partly visible from Nevill Park, parked cars and incidental structures are present within the curtilages of properties elsewhere in this part of the CA and are not, therefore, uncharacteristic.
26. By way of compensation for the removal of a young Field maple tree, the replacement tree that would be planted between the parking space and Nevill Park would, once established, strengthen the existing landscaping. Planting adjacent to the parking space would also enable the boundary wall to take on a 'green leathery' appearance rather than presenting as bare brick. An appropriate scheme of planting that is consistent with the prevailing character and which ensures that viable species are specified given the relatively narrow area that would be available for planting could be secured by way of a planning condition, as could a requirement for replacement in the event that planting did not thrive.
27. Whilst the appeal scheme would result in removal of part of an earth bank and an overall reduction in the amount of planting in this location, this would not materially affect the character or appearance of the CA, not least given the other planting on the appeal site. Similarly, given the extent of change that is involved, I do not find that there would be a harmful effect in terms of the AA and ALI.
28. Accordingly, I find that the appeal scheme would have a neutral effect on the CA and, as such, it would preserve both its character and appearance. Although it has not been argued by the appellant that the appeal scheme would result in any public benefit, this does not necessarily result in a conflict with national or local policy; public benefits are a matter to be weighed in the balance where harm to designated heritage assets has been identified.
29. Given that the appeal scheme would preserve the character and appearance of the CA, it is consistent with Section 72(1) of the LBCAA. In addition, the appeal scheme would not conflict with LP Policy EN1 and emerging Policy EN1 of the SLP which seek development that is appropriate to its context, or with LP Policy EN5 and emerging Policies EN4 and EN5 of the SLP which together relate to proposals for development within, or affecting the character of, a CA and which say that in meeting car parking and access requirements, the character and amenity of the area should not be adversely affected. Similarly, I do not find that there would be any conflict with LP Policy EN22 or emerging Policy EN16 of the SLP which say that development will only be permitted where no significant harm would be caused to the appearance or landscape character of the designated ALI,

or with CS Core Policy 4 which seeks to conserve and enhance the borough's landscapes and heritage assets.

30. In addition, and given that only part of the appeal scheme would be visible from a very small part of Nevill Park (which is a private road), I find that the appeal scheme would not conflict with LP Policy EN24 or emerging Policy EN17 of the SLP which relate to AA and which say that parking should be well concealed in views from public places.

Parking Standards

31. An objector has referred to Kent County Council's Parking Standards (January 2025), noting that in Table 8 the absolute minimum requirement for a parking space next to a wall is 5m in length by 2.7m in width and that the 2.3m width of the proposed car parking space would be considerably less than the absolute minimum required. That standard is noted as relating to: *"Cars – Abutting hard boundary / vegetation on one side – Minimum"*. However, the related footnote also says: *"Typically in a car park, rather than residents' driveway"*.
32. Draft Policy TP3 of the SLP also says that car parking spaces are expected to be 2.7m wide if the parking space would have a wall on one side. However, the supporting text to the policy says that it applies exclusively to proposals that include the development of a new residential dwelling, or the extension to an existing dwelling that requires full planning permission. This is not the case in respect of this appeal. On that basis, I do not find that the dimensions of the proposed car parking space are contrary to prevailing parking standards or emerging Policy TP3 of the SLP.

Application Details

33. Objectors have said that there are various inaccuracies and discrepancies in the application documentation (for example in respect of the width of the parking space and distance to the boundary wall), that it lacks clarity (for example in relation to the width of the driveway and details to ensure the retention of the existing boundary wall), that details of the proposed bicycle enclosure should have been provided, and that details of boundary planting should have been provided given the amount of space that would be available for landscaping. They have also expressed concerns about references to approximate measurements.
34. Having carefully reviewed all submitted information I am satisfied that the application drawings, which the scheme would have to be built in accordance with, are accurate, that there would be sufficient space to park a car and that the drive would continue to be wide enough for other vehicles. Given the location of the bicycle enclosure I am satisfied that it is proportionate to reserve details by way of a planning condition. Similarly, I am satisfied that it is appropriate to require details of planting by way of a planning condition. Overall, I am satisfied that none of the matters raised by interested parties in respect of the application documentation affect the overall acceptability of the appeal scheme.

Redacted Information

35. An objector has requested that I disregard information that has been submitted by the appellant and uploaded to the Council's online planning records in a redacted form. Whilst redacted documents may have been uploaded to the Council's

records, they have been provided to me in an unredacted form and I have undertaken an inspection of the site and its surroundings. I am satisfied that I have been provided with sufficient information to enable me to undertake a full assessment of the appeal and to enable me to check the accuracy and veracity of all planning-related matters in the submissions, to weigh up the arguments of all parties, and to decide the amount of weight that I should attach to those arguments having regard to any supporting evidence that has been provided.

Relationship with Previous Planning Permission

36. Objectors have argued that the removal of the Field maple tree and other planting that was required as part of a previous consent would breach or over-ride conditions that required the retention of that planting and would undermine the credibility of the previous planning decision that was made in 2018 and the Council's responsibility to ensure that such conditions are complied with. However, there is nothing to prevent planning permission being sought or granted for development which alters or even completely replaces a previously-approved development.

Determination of Planning Application

37. Objectors have noted that they have made a formal complaint to the Council about the way that the planning application was managed and administered and that these issues had impacted on the conclusions drawn in the Council's delegated report. The matters that I am able to take into account in determining this appeal are constrained by legislation and I am unable to take into account the way that the local planning authority handled the planning application. However, I have taken into account all planning-related matters that are in the documents before me.

Precedent

38. Objectors have said that allowing this appeal would weaken the Council's ability to defend the AA designation against future erosion of character, or requests for further parking expansion, at the expense of the mature landscape, and would undermine the credibility of planning conditions across the borough. However, each scheme must be considered on its own merits taking into account the individual circumstances of the site. Therefore, allowing this appeal would not create a precedent.

Alternative Parking Locations

39. An objector has said that the Council did not give due consideration to the proposal being totally unnecessary and I have been asked to consider alternative parking options which have been put forward by other leaseholders of 9 Nevill Park which, in their opinion, would not cause harm to the CA. However, in determining this appeal I may only consider the acceptability or otherwise of the scheme before me; it is not open to me to suggest an alternative scheme to the appellant or to decide that the appeal scheme is unnecessary when policy does not require a need for the development to be demonstrated.

Unauthorised Works / Enforcement History

40. It has been suggested that the appellant has undertaken unauthorised works in the past. Even if this was the case this is not a matter that I am able to take into

account in assessing the merits of the appeal scheme. Similarly, even if previous planning conditions had not been complied with, this does not prevent me from allowing an appeal subject to conditions; if conditions attached to my decision are not adhered to, it would be for the relevant planning authority to consider whether any action should be taken to ensure compliance.

Landowner Matters

41. UK Power Networks (UKPN) has indicated that it would not divert the electricity cable until it has the agreement of all freeholders. Objectors have said that the appeal scheme is not technically implementable because freeholder consent has neither been sought nor granted and that it is not appropriate for the Planning Inspectorate to become involved in, or influence, a private, civil dispute between a leaseholder and the freeholder. However, it is possible for planning permission to be granted for land even if other consents must be sought to enable a development to proceed, and the grant of planning permission does not direct other decision-makers to determine applications for those other consents in a particular way.
42. Similarly, objectors have said that the Planning Inspectorate is being used by the appellant to leverage undue and inappropriate influence on a civil, domestic, matter between one leaseholder and the freeholder. They have requested that I do not proceed with any further action that will mean that I inadvertently influence, or pressurise, and therefore interfere with, a civil, leasehold matter. However, I must determine this appeal in accordance with the relevant legislation, policy and guidance. Civil disputes between landowners in relation to the provisions of leases can have no bearing on my assessment of the planning merits of the proposed development. Furthermore, the acceptability or otherwise of a proposal in planning terms does not pre-empt or fetter decisions that are made within the context of a different legislative framework or by another regulatory regime.

Conditions

43. I have reviewed the conditions proposed by the Council in light of the tests in the National Planning Policy Framework (the Framework) and advice in the Planning Practice Guidance. I also note that the appellant has not made any comments in relation to those conditions.
44. In addition to the standard time condition, I have imposed a condition requiring that the development be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. Similarly, in the interests of certainty I have attached a condition requiring that the development is carried out in accordance with the approved tree report. Whilst not suggested by the Council, I have also specified that the NJUG Guidelines, submitted by the appellant to illustrate how the cable-laying works could be undertaken, must be adhered to so as to minimise the effects of the re-routing of the electricity cable on tree roots.
45. Given the site's location in a CA and the absence of full details in the application submission, it is also necessary to require details of the proposed bicycle enclosure as well as details of landscaping, including of the tree that would replace the existing Field maple. Whilst the appellant has explained that the shed is currently screened with laurel which would remain in place, the inclusion of this

in the landscaping details will enable the Council to require its replacement during the specified period in the event that it is removed or dies.

Conclusion

46. Overall, I conclude the appeal scheme accords with the development plan taken as a whole and there are no material considerations that suggest that planning permission should not be granted. Therefore, for the reasons given above the appeal should be allowed.

P Burley

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.
- 2) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the following submitted plans:
 - Location Plan;
 - 200C Proposed Block Plan;
 - 210C Proposed Plan;
 - 211 Proposed Section A;
 - 212 Proposed Section B;
 - 213 Proposed Section C;
 - 214 Proposed Section D; and
 - 215 Proposed Section E.
- 3) Written details, including source / manufacturer, of materials to be used externally for the hardstanding and wall, and details of cycle storage shall be submitted to and approved in writing by the local planning authority before the above-ground construction work within the development is commenced and the development shall be carried out using the approved external materials, unless otherwise approved in writing by the local planning authority.
- 4) A landscaping scheme for the site, which shall include a planting specification shall be submitted to and approved in writing by the local planning authority before the development is first used. The scheme shall include measures to screen the existing shed and garden area to the north of the site and details of the tree to replace the existing Field maple that will be felled due to this development. All soft landscaping works shall be carried out in accordance with the approved details prior to the first use of any part of the development. Any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority give prior written consent to any variation.
- 5) The approved development, including the re-routing / laying of the electricity cable serving 9 Nevill Park, shall be carried out in strict accordance with the construction methodology set out in the approved tree report (reference: AR/4435b/jq dated 18 June 2025), and the National Joint Utilities Group's 'Guidelines for the Planning, Installation and Maintenance of Utility Apparatus in Proximity to Trees – Issue 2' and the associated Operatives' Handbook, and in such a manner as to avoid damage to the existing trees, including their root systems, and to other planting that is to be retained.

End of Conditions