Appeal Reference 6002038

Town and Country Planning Act 1990 (as amended).

Appeal by Harington Homes Limited

Site at The Drive, Mill Lane, Salvington, Worthing,

West Sussex BN13 3DF

Local Planning Reference: AWDM/1396/24

Statement of Case of the Local Planning Authority

Rebuttal of Appellants grounds of appeal

The Officer's Delegated report to the Development Control Manager sets out the case for refusal. This statement is therefore intended to address the appellant's grounds of appeal and where necessary elaborate further upon the Council's reasons for refusing planning permission for the appeal proposal, amplifying issues highlighted in the officer's report for AWDM/1396/24

Reasons for refusal

1. The Turkey Oak Tree (T2 of 2013) is an established feature which contributes positively to the local character and landscape of the area. The retrospective garage is within close proximity of the tree and well within the root protection area. The position of the extended garage has an impact on the canopy, future growth and pressure on the tree and without evidence to the contrary potential damage to the tree roots and viability of the tree. The proposal is therefore contrary to policies DM5 and DM18 of the Worthing Local Plan (2023) and the relevant policies of the NPPF.

2. The retrospective extended garage by reason of its size and siting has resulted in a cramped overdevelopment of the plot having a detrimental impact on the character and visual amenity of this small group of houses off Mill Lane. The garage extension furthermore does not provide the TPO Turkey Oak its appropriate setting within its "sylvan character' as part of the original planning consent. The proposal would therefore be contrary to policies DM5 and DM18 of the Worthing Local Plan (2023) and the relevant paragraphs of the NPPF.

Relevant Planning History:

AWDM/0262/11-Outline application for the development of 1 No. detached chalet-style house and 1 No. detached bungalow (including partial re-plan of planning permission WB/05/0216/FULL encompassing chalet-style house) on land comprising part of rear garden of Dunloran Mill Lane; land to the north of Dunloran the subject of planning permission WB/05/0216/FULL and southern part of The Drive and allied driveway off Mill Lane.

AWDM/0784/12-Development of 1 no. detached dropped-eaves house following planning permission AWDM/0262/11

AWDM/0615/13; *Demolition of 'The Drive' and redevelopment to provide four detached houses, together with access road, parking and landscaping (including felling of trees/replacement planting)* which was granted in October 2013. This comprised the redevelopment of the (still existing and occupied) inter war chalet house known as 'The Drive' and its large woody plot by building four new large detached houses in a cul de sac off Mill Lane.

AWDM/1566/13-Redevelopment to provide 4 detached houses (AWDM/0615/13); Amendments to Plot 4 (variation of conditions 2, 3, 4 and 8) including removal of garage and provision of car port; extension to ground floor (south elevation) and pergola; creation of porch and solar panels on roof ; insertion of two fixed shut obscure glazed windows in upper floor of west flank and rooflight in front slope and resiting chimney to east flank AWDM/1566/13)

AWDM/1678/16; Amendment to previously approved AWDM/1566/13. Amendments to approved four bedroom detached house with single garage (plot 4) to a four bedroom detached house of a different form with double garage- refused

AWDM/1107/15-Redevelopment to provide 4 detached houses as amended under AWDM/1566/13; New Amendments to replace 1 x four bed house on Plot 3 at western end of site with 2 x four bed detached houses and allied variation of conditions 2, 6 and 14.

AWDM/0216/17 *Replacement of approved four bedroom detached house with single garage (Plot 4) under Planning Permission AWDM/1566/13 with a four bedroom detached house of a different form with single garage. (Revised application to previously refused AWDM/1678/16)* was approved in January 2017

AWDM/0216/17 was identical to the approved scheme under AWDM/1566/13 except in respect of changes made to plot 4 (and that the changes agreed under AWDM/1107/15 to subdivide plot 3 to two detached houses were erroneously shown).

Under AWDM/0216/17, the changes to plot 4 compared to *AWDM/1566/13* were that the form of the house and enclosed parking were materially changed.

AWDM/1773/17- The changes to plot 4 are identical to that approved under AWDM/0216/17, save that the proposal now included retention of an upper floor window in its west elevation and proposed a new double garage, identical to that proposed under AWDM/1678/16. The application is presented as a free standing application to plot 4 only and not as an amendment to AWDM/0615/13.

AWDM/0090/19-Revisions to approved four-bedroom detached house with double garage (Plot 4). Amendment to planning permission AWDM/1773/17 Amendment: enlarged size and position of double garage and installation of window to south-east elevation of the garage –Approved

AWDM/0692/20-Amendment to planning permission AWDM/1107/15 to develop 2no. 4-bedroom detached houses on Plot 3 of consented scheme AWDM/1566/13. Amendments involve larger dwelling footprints -APPROVED

AWDM/1442/21- Application for variation of condition to Approved AWDM/0692/20; Condition 3 (landscaping)- APPROVED

AWDM/0448/22- Erection of 4no. 3-bedroom semi-detached houses on Plots 1 and 2 of previously consented scheme under reference AWDM/0615/13- REFUSED- DISMISSED ON APPEAL

1. The proposed four dwellings on the site of approved two dwellings would by reason of their height, bulk, massing, design and siting on this constrained backland site result in a cramped, overdevelopment and have a detrimental effect on the character and visual amenity of this small group of houses off Mill Lane. The proposal would therefore be contrary to Policies, 8 and 16 of the Worthing Core Strategy, the Guide to Residential Development SPD 2013, DM1, DM2 and DM5 of the Submission Draft Worthing Local Plan (As Modified) and the relevant paragraphs of the National Planning Policy Framework

2. Taking account of the topography of the site the proposed dwellings by reason of their size, siting, form, massing and design would unacceptably harm the amenity of the neighbouring residents in terms of overlooking, loss of light, overbearing effect and general noise and disturbance from domestic activities associated with the intensity of development, in particular, Raddison House, Plot 4, Plot 3B Mill Lane, as well as 1 and 2 High View. The proposal would therefore be contrary to saved policy H18 of the Worthing Local Plan, Policy 16 of the Worthing Core Strategy, the Guide to Residential Development SPD 2013, Policy DM5 of the Submission Draft Worthing Local Plan (As Modified) and relevant policies of the National Planning Policy Framework.

Enforcement Report September 2023

The recommendations in the report:

i) A Breach of Condition Notice (BCN) is served to require the developer to rectify the breaches of conditions 3,4,8,9, and 11.

ii) The developer is requested to apply to vary condition 12 to remove the requirement for off site biodiversity improvements and to meet the requirements of the first part of the condition in the meantime..

iii) An enforcement notice is served requiring the removal of the unauthorised double garage

iv) Members to note that subject to satisfactory evidence and consultation with the Head of Legal prosecution action to be pursued in relation to damage to the preserved tree.

The committee agreed the recommendation and approved that a Breach of Condition Notice be served and an enforcement notice in relation to the unauthorised construction of a double garage and to delegate possible prosecution action

Prosecution action was successful and a further breach of conditions has been issued and is currently subject to appeal

AWDM/1395/24- Application to partially vary condition 4 of AWDM/0692/20 to remove requirement for obscure glazed and non-openable south facing roof light windows within Plot 3a. [Planning permission AWDM/0692/20: Amendment to planning permission AWDM/1107/15 to develop 2no. 4-bedroom detached houses on Plot 3 of consented scheme AWDM/1566/13. Amendments involve larger dwelling footprints.]- REFUSED

'Without evidence the contrary the south facing roof light windows to plot 3A without being obscure glazed and non-openable would cause detrimental overlooking and loss of amenity of the residents of 12A Woodlands Avenue. The proposal is therefore contrary to policy DM5 of the Worthing Local Plan and relevant policies of the NPPF'.

The application was dismissed on appeal

AWDM/1396/24- Application to vary condition 1 (approved plans) of AWDM/0692/20 to retain double garage on Plot 3a- REFUSED- Subject to the current appeal

1. The Turkey Oak Tree (T2 of 2013) is an established feature which contributes positively to the local character and landscape of the area. The retrospective garage is within close proximity of the tree and well within the root protection area. The position of the extended garage has an impact on the canopy, future growth and pressure on the tree and without evidence to the contrary potential damage to the tree roots and viability of the tree. The proposal is therefore contrary to policies DM5 and DM18 of the Worthing Local Plan (2023) and the relevant policies of the NPPF.

2. The retrospective extended garage by reason of its size and siting has resulted in a cramped overdevelopment of the plot having a detrimental impact on the character and visual amenity of this small group of houses off Mill Lane. The garage extension furthermore does not provide the TPO Turkey Oak its appropriate setting within its "sylvan character' as part of the original planning consent. The proposal would therefore be contrary to policies DM5 and DM18 of the Worthing Local Plan (2023) and the relevant paragraphs of the NPPF.

AWDM/0530/25- Erection of 3no. 3-bedroom detached dwellings with associated landscaping on Plots 1 and 2 of the previously consented scheme- APPROVED.

AWDM/1123/25-Application to vary Condition 12 (No occupation of plots 1, 2 or 3a or 3b shall commence unless and until The Drive has been demolished) of approved AWDM/0692/20 to No occupation of plots 1 or 2 shall commence unless and until The Drive has been demolished- REFUSED

1. The continued siting of ‘The Drive’ on the site not in accordance with condition 12 of AWDM/0692/20 has a detrimental impact on the amenities of the occupants of particularly plot 3b in terms of detrimental visual impact and loss of light but also plots 3a, 4 and Radisson House, 77 Mill Lane in terms of visual impact and use and operation of the site. The variation of the condition would protract the harm to the amenity of the occupants contrary to policy DM5 of the Worthing Local Plan and relevant policies of the NPPF

Response to reasons for Refusal and the appellants grounds of appeal

The inspector will note the officers report and the extensive history above.

For context please see below the site plan of plots 3A and 3B within the site, the siting of the TPO tree and relationship to 12A Woodland Avenue.



The inspector will note that 3A is within close proximity of the boundary with the rear of 12A Woodland Avenue.

What the site plan does not convey is the drop of the land from plot 3A to No 12A. The photos below show the relationship of these windows to 12A taken within the garden

of 12A and the relationship of the tree on the boundary and to extended garage on plot 3A




19/3/2025


19/3/2025







First Reason for refusal

The appellants indicate that '*The Council did not seek to review any supporting arboricultural information relating to construction methods prior to approving development within the RPA of the TPO tree by 14sqm and is now seeking to rely on a note contained within drawing no. PL-010 Rev P6 which states that that foundations within the RPA of the tree should be hand dug to determine the presence of roots:*

In response the LPA would advise the planning inspector that Application AWDM/0692/20 (which included the single garage and notes) clearly set out in condition 3 in full below:

Notwithstanding the submitted plans, no dwelling hereby approved shall be occupied unless and until there has been submitted to and approved in writing by the Local Planning Authority a scheme of soft landscaping and allied management plan for a 10 year period following first planting. The soft landscaping scheme and allied management plan shall include:-

a) indications of all existing trees, bushes and hedgerows on the land and details of those to be retained, together with measures for their protection in the course of development and management thereof; and

b) proposals for new planting and management thereof

With particular reference to retaining and enhancing the boundary planting to screen the development from adjacent dwellings and gardens; compensatory planting for the TPO trees felled as part of the approved scheme; and maintaining the sylvan character of the site as viewed from the public realm. In particular no occupation of plot 3a or 3b shall take place unless and until a scheme for boundary screen planting has been submitted to and agreed by the Local Planning Authority and implemented accordingly such that the said planting provides a continuous screen between the site and boundary with Nos 15 and 16 Hayling Gardens of at least 5 ms in height. This shall be retained as such thereafter, unless agreed otherwise in writing by the Local Planning Authority.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, or in advance as set out in the agreed Management Plan, and any trees or plants which, within a period of 10 years of first planting, are removed, die or are diseased or damaged shall be replaced as soon as practicable with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

No dwelling hereby approved shall be occupied unless and until a scheme for the hard landscaping and boundary treatment has been submitted to and approved in writing by the Local Planning Authority and has been implemented in accordance with any such approval. The approved details of hard landscaping and boundary treatment shall be retained thereafter.

Reason: *In the interests of visual amenity and the environment and to prevent nuisance to future occupiers of the development and to comply with policy 16 of the Worthing Core Strategy and saved Worthing Plan H18*

The area highlighted in red has never been received, along with all the rest of the information required by the condition.

In relation to the note on the plans- this is part of the 'Approved' plans and set out above protection and a management plan was requested.

The LPA has not been party to or received a 'Construction Management Plan' for the dwellings in connection with application AWDM/0692/20.

No details were supplied of a raft foundation with excavations to a depth of 225-300mm as indicated by the appellant and no evidence has been provided that there were no roots. Surely something the applicant would have provided as part of the submission of AWDM/1396/24.

No details have been supplied that the Building Inspector signed off the system on this basis.

The inspector will note that the comments of the Council's Arboriculturist in appendix E dated June 2024 followed a visual inspection of the tree from a site visit at 12a Woodland Avenue on the '28th November 2023'. They confirm at this stage that there are no signs of damage . This is expected as damage to major roots could take up to two to three years to have effect. The inspector is advised that these comments were made prior to the submission of the appeal application and the appellants independent arboriculture report and was provided for evidence for a prosecution.

Following the submission of the application and arboriculture report and further inspection with the appellants arboriculturist the council's officer provided further advice, having then had further information to assess the scheme.

It is noted that The Council's tree officer had consistently advised that the building was too close to the tree and would not have been given consent irrespective of any evidence or proof of root activity within its footprint. They then advised that the investigation works stated in the report should be carried out to confirm the current status of the tree.
A later physical inspection of the tree took place on site from which they advised that in their opinion the garage needs to be removed or reduced to the originally permitted building line. They indicate that this would allow a buffer zone between the tree and the garage roof, so that the growth of the tree's crown is not restricted. It would also reduce possible future pressure for tree reduction.
They further advise that from looking at the base of the tree there does not appear to be a root buttress to the Northeast or East, suggesting that any damage would be to smaller non anchoring roots and if the building is removed or reduced, any damage that has occurred would not be affected.
The inspector will also note the comments of the independent arboriculturalist statement submitted as part of the retrospective application States:

*The precise construction methods within the RPA of T1 are unclear. The 2015 Tree Retention and Protection plans annotates that the garage foundation for the single garage will be '**canter levered with no dig foundation**'. Details have been provided for structural engineering calculations for a raft foundation for the garage. The former method would have had a greatly reduced impact, the latter, although not a strip foundation will have involved excavations to a depth of 225 – 300mm.*

Harlington Homes Ltd have stated they encountered no roots when excavating for the raft foundation, though this was not carried out under Arboricultural supervision

The arboricultural report concludes that:

Both the approved and the unapproved development has intruded into the RPA of T1 a category B Turkey Oak subject of a TPO.

The RPA of T1 has not been amended or redrawn to take into consideration the existing structures. Despite the close proximity of T1 to the garage. It has been anecdotally reported that no roots were encountered during excavations

The default position within the BS5837: 2012 document recommends that any development is situated outside of the RPA of any retained tree. However, where there is a requirement to construct within it, it is required to demonstrate the tree can remain viable and that the area lost can be compensated for elsewhere. With the exception of the built area, the open garden areas at all other cardinal points provide a good rooting environment to compensate for the potential loss.

The true rooting environment of T1 is unknown. It would be possible to excavate a 600mm deep trench around the garage right up the boundary fence to investigate the presence of roots. This would need to be carried out under Arboricultural supervision and a person(s) who has the ability to identify tree species from roots. The excavations would need to be carried out by air spade to prevent damage to any roots. A report of the findings, and/or joint inspection with the local authority tree officer would help to determine the true extent of the impacts. This process would need to be carried out in accordance with an approved Arboricultural Method Statement as the tree is the subject of a TPO and must not be wilfully damaged.

A clear concern that further investigation is required and only and only anecdotal reports that no roots were encountered during excavations.

Second reason for refusal

The impact on visual amenity is clearly set out in the officer report. The property is within a site of detached properties with good space about them within a green ‘sylvan Character’ setting. The approved plans for the single garage showed good space to the boundary with 12A Woodland Avenue and additional landscaping the southern boundary.

Although there are examples on this small residential estate with development to the boundaries, the requirement of space to the boundary and providing good separation was to partly accommodate and embrace the TPOs setting. As the inspector will note on site and shown on the images above the setting for this tree and the ensuing visual impact has been eroded to the detriment of the character of the area.

The garage as built is virtually up to the southern boundary and does not allow for any additional landscaping or relief on the boundary, it does not provide the TPO Turkey Oak tree its appropriate setting within its "sylvan character’ as part of the original planning consent. As such the extended garage would be an over development of the site and have an impact on the visual amenity, character of the property and wider site.

Update

The inspector is advised that the Local Planning Authority has recently successfully prosecuted the appellant, amongst other conditions, over the non compliance of a Breach of Condition Notice for the failure to comply with condition 1 of AWDM/0692/20 with respect to the extension to the garage to plot 3A.

Other material considerations

The inspector will be aware of the three overarching objectives of economic, social and environmental. It is noted that the NPPF indicates that these objectives should be delivered through the preparation and implementation of plans and the application of policies in the framework, they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.

The LPA would contend that the assessment of the appeal proposal has taken place using adopted policies, guidance and the NPPF and that the proposal fails to achieve social or environmental gains by failing to improve the conditions in which people live. The adverse impacts of allowing the appeal would therefore significantly and demonstrably outweigh the benefits, when assessed against policies and the NPPF taken as a whole

Conclusion

The Council contends that the appeal should be dismissed as the development fails to achieve social or environmental gains by failing to improve the conditions in which people live. The adverse impacts of allowing the appeal would therefore significantly and demonstrably outweigh the benefits, when assessed against policies and the NPPF taken as a whole.