Planning Inspectorate

Appeal Decision

Site visit made on 3 February 2026

by J Heppell BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th March 2026

Appeal Ref: 6002038
The Drive, Mill Lane, Salvington, Worthing, West Sussex BN13 3DF

- 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 Ryan Flippance on behalf of Harlington Homes Ltd against the decision of Worthing Borough Council.
- The application Ref is AWDM/1396/24.
- The application sought planning permission for *demolition of The Drive and redevelopment to provide four detached houses, together with access road, parking and landscaping (including felling of trees/replacement planting)* without complying with a condition attached to planning permission Ref AWDM/0692/20, dated 18 May 2021.
- The condition in dispute is No 1 which states that:
  The development hereby permitted shall be carried out in accordance with the following approved plans unless specified otherwise in a subsequent condition imposed on this decision notice.

Reference/Drawing Number	*Version*	*Date Rec*
SITE LAYOUT PLOTS 3(A) & 3(B)	*PL-010 Rev P6*	*06.04.2021*
PLOTS 3A & 3B FLOOR PLANS, ELEVATIONS & SECTION	*PL-011 Rev P4*	*06.04.2021*
DESIGN & ACCESS STATEMENT APRIL 2020	*5278/C01*	*25.08.2020*
Cover Letter	*Dated 28 April 2020*	*25.08.2020*
LOCATION PLAN	*LOC-001 Rev P1*	*25.08.2020*
TREE CONSTRAINTS PLAN	*PL-012 Rev P4*	*25.08.2020*

- The reason given for the condition is:
  For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for demolition of The Drive and redevelopment to provide four detached houses, together with access road, parking and landscaping (including felling of trees/replacement planting) at The Drive, Mill Lane, Salvington, Worthing, West Sussex BN13 3DF in accordance with the application Ref AWDM/1396/24, without compliance with condition number 1 previously imposed on planning permission Ref AWDM/0692/20 dated 18 May 2021 and subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal relates to the property described as Plot 3a The Drive and now known as Treetops. I was able to view the appeal site from both the turning head and the adjacent property 12A Woodland Avenue (No 12A).

3. Planning permission was originally granted under Ref AWDM/0615/13 for the development described in the banner heading, and subsequently varied by permission Ref AWDM/0692/20 to enlarge the dwelling footprints. For clarity, I

have used the original description of development in the banner heading and decision.

Background and Main Issues

4. The planning permission granted under Ref AWDM/0692/20 was subject to a number of conditions, including No 1 which required adherence to the approved plans listed. The reason for the condition was for the avoidance of doubt and in the interests of proper planning.

5. The appellant now wishes to make a further amendment to the approved scheme to retain a double garage at Plot 3a. It is this proposed change, and the associated variation to condition 1 of planning permission Ref AWDM/0692/20, which is the subject of this appeal. The Council has advised that it recently prosecuted the appellant for non-compliance with a Breach of Condition Notice in respect of the garage.

6. The main issues are the effect of varying the condition to allow for the retention of a double garage at Plot 3a on arboricultural interests and on the character and appearance of the host property and the area.

Reasons

Arboriculture

7. The appeal site is located in a residential area characterised by generous, well landscaped gardens. Plot 3a is part of a recent development of four detached dwellings. A single garage was consented on the side of the dwelling, but a double garage has been built, approximately between September and November 2023. The garage is close to a turkey oak tree in the garden of No 12A which is identified as T1 in Tree Protection Order 2 of 2013. The topography of the area is such that levels fall in the direction of No 12A.

8. The tree has been assessed by the appellant as Category B[1], which I consider a fair assessment based on my observations. My site visit was undertaken in winter when the tree was not in leaf, but I saw that owing to its height and sizeable crown, the tree is prominent against the skyline when viewed from Woodland Avenue and makes a notable contribution to the character and appearance of the area, notwithstanding the generally sylvan character of the area. I have been advised that other protected trees were consented to be removed as part of the original planning permission, which underscores the importance of retaining those mature trees which are in a healthy condition.

9. British Standard BS5837:2012 is a material consideration, and advises that development should be situated outside the root protection area (RPA) of retained trees, but allows for 20% of a RPA to be covered with new hard surfacing subject to the method of construction. Such hard surfacing could potentially be constructed using permitted development rights granted by Schedule 2 Part 1 Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015. The double garage encroaches by twice as much into the RPA as the consented single garage, albeit less than the maximum 20% allowance for hard surfacing. Even so, a raft foundation was used, requiring deeper excavation than a

[1] Tree Development Report dated 19 March 2024 by Connick Tree Consultants

no dig cantilevered foundation, and I have afforded limited weight to the fact that the encroachment is less than the 20% allowance for hard surfacing.

10. BS5387:2012 advises that where there is a requirement for construction within a RPA, it must be demonstrated that the tree can remain viable and that the area lost can be compensated for elsewhere. As the Council has permitted works to be undertaken within the RPA in connection with a single garage, a requirement to construct within the RPA exists. It is common ground between the main parties that the rooting environment of the tree is unknown: whilst there is a buttress root parallel with the garage, there is no indication of buttress roots extending under the garage, suggesting that smaller non anchoring roots could have occupied this area. The appellant has stated that no tree roots were found when the garage was constructed, although this has not been formally evidenced, and nor has the rooting environment been confirmed by excavating a 600mm deep trench around the garage.

11. No evidence has been presented that the removal of the garage would benefit the health of the tree, and in the worst case scenario such a course of action has the potential to harm tree roots. The Council has argued that a buffer zone between the tree and the garage – which the approved single garage would have provided – would ensure that the growth of the crown would not be restricted, and thereby reduce possible future pressure for tree reduction. However, from my observations, the crown is offset towards No 12A, meaning there would be limited benefits to the tree from imposing the suggested buffer zone.

12. I have had regard to the fact that it could take between two and five years from the construction of the garage for damage to the roots of the tree to take effect. However, I have not been advised of evidence of declining health and nor did I see obvious evidence on site, though I recognise that the impact could yet become apparent in future years. The remaining rear garden areas of Plot 3a and No 12A provide an open environment which has the potential to compensate for the area of RPA which has been built on, in accordance with BS5387:2012. The appellant has offered to be bound by a condition that should damage to the tree become apparent within five years, compensatory planting would be undertaken. Whilst it would not be possible to replant the tree in exactly the same location since it is just outside the appeal site, replacement planting could be undertaken close to the existing tree within the appeal site.

13. Bringing together the main points, a degree of encroachment into the tree's RPA was accepted by the Council when granting permission for a single garage, and it is likely that the additional impact of the double garage is likely to have been on smaller non anchoring roots. In such circumstances, the benefits of excavating a trench to investigate the rooting environment are not clearcut. The open environment around the remainder of the tree affords it the opportunity to potentially compensate for the loss of rooting environment. No evidence has been presented that removing the double garage would benefit the tree's health.

14. I therefore conclude that varying the condition to allow for the retention of a double garage at Plot 3a would not harm arboricultural interests, and would accord with policies DM5 and DM18 of the Worthing Borough Council Local Plan 2020-2036 Adopted 28th March 2023 (WBCLP). Together these policies require all new development to respect the existing natural features of the site, including the protection and integration of existing trees into new development, and to protect

biodiversity. The development satisfies paragraph 136 of the National Planning Policy Framework (the Framework), which advises that trees make an important contribution to the character and quality of urban environments.

Character and appearance

15. Plot 3a is situated within a group of four detached dwellings, three of which (including Plot 3a) have double garages and one (Plot 3b) has a single garage. Whilst the other double garages are detached and the garage on Plot 3a is attached, double garages are characteristic of the immediate area. The double garage on the appeal site is visible when entering the site from Mill Lane, but by virtue of being set back from the front of the house and being located on a lower part of the site, it does not dominate the appearance of the immediate area.

16. The garage is situated close to the boundary with No 12A, which is a common feature of the garages nearby, and not out of character. Although the garage is close to the tree, it does not block views of its trunk since it is screened by the boundary fence, and nor does it block views of its crown, which is significantly above the garage. As such, neither the setting of the tree nor the sylvan character of the area are adversely affected. Whilst the area where the garage has been enlarged could potentially have accommodated additional planting, I find the appearance of the double garage as built to be appropriate to its surroundings.

17. I conclude that varying the condition to allow for the retention of a double garage at Plot 3a would not harm the character or appearance of the host property or the area, and would accord with policies DM5 and DM18 of the WBCLP. Together these policies require all new development be of a high design quality and to respect and enhance the character of the site and the prevailing character of the area. The development accords with the advice in paragraph 135 of the Framework that developments should be sympathetic to local character, including the surrounding built environment and landscape setting.

Other Matters

18. Whilst the roof of the double garage is closer to the boundary with No 12A than the single garage would have been, and is visible above the boundary hedge, it is not so prominent as to harm the living conditions of the occupier of No 12A.

19. The future maintenance of the guttering on the garage and the boundary fence beside the garage is a private matter. The fact that the occupiers of Plot 3a now have to access their rear garden via their house or garage is a matter of private choice, as is the location of their bins.

20. Interested parties have criticised the actions of the appellant in erecting a double garage without planning permission, but this have not played a part in my decision-making. Non-compliance with other conditions attached to the original permission is a matter for the Council and is being actively pursued according to the Council's Statement of Case.

Conditions

21. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. The Council has provided a list of suggested conditions reflecting those imposed on planning permission Ref

AWDM/0692/20. I have reviewed these conditions and agree that they are still relevant. I have therefore reattached all the conditions, apart from a duplicate materials condition, using the same numbering for clarity.

22. I have varied the condition listing the approved plans to refer to the double garage. I have substituted amended conditions relating to materials, construction management and surface water drainage to reflect the fact that the original conditions had been discharged. Notwithstanding that the tree is covered by a Tree Protection Order, I have attached an additional condition requiring a replacement tree to be planted in the event that the tree is removed.

Conclusion

23. As I have concluded that the condition can be varied without harm to arboricultural interests or the character and appearance of the host property or the area, the appeal is allowed.

J Heppell

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans unless specified otherwise in a subsequent condition imposed on this decision notice.

Reference/Drawing Number	Version	Date Rec
SITE LAYOUT PLOTS 3(A) & 3(B)	PL-010 Rev P7	13.11.2024
PLOTS 3A & 3B FLOOR PLANS, ELEVATIONS & SECTION	PL-011 Rev P5	13.11.2024
DESIGN & ACCESS STATEMENT APRIL 2020	5278/C01	25.08.2020
Cover Letter	Dated 28 April 2020	25.08.2020
LOCATION PLAN	LOC-001 Rev P1	25.08.2020
TREE CONSTRAINTS PLAN	PL-012 Rev P5	13.11.2024

2. The development shall be carried out in accordance with the architectural details, materials and finishes submitted and approved under application AWDM/0572/23 and details shown on the approved drawings unless otherwise agreed in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.
3. 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. This shall be retained at 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.

4. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), no new windows shall be inserted in the upper floors or roof of any of the following elevations:
   a) Plot 1: north; east; west
   b) Plot 2: north; east; west
   c) Plot 3a: north; south; west
   d) Plot 3b: north; south; west
   e) Plot 4: west; east; south

   The following upper floor windows shall be obscure-glazed and non-opening up to a height of 1.7 measured from finished floor level:
   a) Plot 1: west elevation
   b) Plot 2: east elevation
   c) Plot 3a: north; south
   d) Plot 4: west; east

   The following windows shall be obscure glazed and non-opening:
   a) Plot 3a south facing landing/stair window, south facing first floor bedroom window (bedroom 4/study), south facing rooflight windows, west facing rooflight window, north facing first floor (bathroom).
   b) Plot 3b first floor north (bathroom), south facing rooflight windows, west facing rooflight window.
5. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), the proposed dwellings shall not be extended or altered or any incidental building over 5 cubic metres in volume erected within its curtilage, except as required to provide for cycle or domestic waste storage or solar/pv panels as agreed by the Local Planning Authority in writing.
6. No dwelling hereby approved shall be occupied until the allied garage, car port, open parking and garden has been provided in accordance with the approved drawings.
7. The development shall be carried out in accordance with the Construction Method Statement submitted and approved under application AWDM/0572/23 and details shown on the approved drawings unless otherwise agreed in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.
8. No dwelling shall be occupied unless and until details of siting and design of domestic waste/recycling storage and access for refuse collection vehicles has been submitted to the Local Planning Authority and provided in full compliance with any such approval. Thereafter the facilities shall be retained.
9. No dwelling shall be occupied until the parking spaces and turning space shown on the approved plans have been provided and constructed. The parking facilities and turning space so provided shall not thereafter be used for any purpose other than the parking and manoeuvring of vehicles correspondingly.
10. No dwelling shall be occupied unless and until details of the access from the site to Mill Lane including its design, lighting, surface, visibility splays, sight lines and allied turning heads have been submitted to and approved by the Local Planning Authority. The development shall not be built other than in full accordance with any such approval.
11. No demolition, development or other site clearance works shall take place other than in full compliance with the following measures:

a) No removal of trees or shrubs shall be carried out on site between March to August inclusive in any year, unless otherwise approved in writing by the Local Planning Authority. Where vegetation must be cleared during the bird breeding season a check for nesting birds by a suitably qualified ecologist will be required. Any vegetation containing occupied nests will be retained until the young have fledged. The location details of the compensatory nesting provision to be supplied to the Local Planning Authority for approval prior to their erection.
b) To avoid the possibility of harming slow-worms, A.fragilis, or other protected species, the site should be cleared in stages.
c) During site clearance and building work the ground within the development should be kept clear of vegetation or debris, to prevent colonisation by reptiles from surrounding areas. The land should be maintained as bare ground or very short vegetation (under 5 cm tall) until all work is complete (including landscaping planting etc.).
d) Where reptile habitat needs to be cleared, this should be done so as not to harm protected or important species.
e) Clearance should be done in warm weather, when reptiles are active.
f) Clearance should be done by strimmer, cutting a strip initially close around the house of up to three metres wide to a height of about 10 cm, removing cut material. Animals exposed by this will then move to the nearest remaining cover.
g) After at least a day of further warm weather, this strip should be mown as short as possible, and a further strip cut to 10 cm.
h) Cutting should proceed progressively, starting from the house until the site boundary is reached in stages.
i) Any rubble or debris piles located within the site should be cleared by hand on warm days and any animals encountered allowed to escape into the surrounding gardens.
j) Clearance of breeding bird habitat should be done so as to avoid harm to breeding birds. Such habitat includes any dense vegetation such as brambles, bushes, hedges, or nettles under scrub, as well as larger trees.

No dwelling shall be occupied until a scheme for the ecological enhancement (including provision for its implementation in a timely manner) of the adjacent Site of Local Nature Importance, known as the Gallops, or other nearby site agreed by the Local Planning Authority, has been submitted to and approved by the Local Planning Authority and secured to the satisfaction of the Local Planning Authority.

12. No occupation of plots 1, 2 or 3a or 3b shall commence unless and until The Drive has been demolished.
13. The development shall be carried out in accordance with the surface water drainage scheme for plots 3a and 3b submitted and approved under application AWDM/0572/23 and details shown on the approved drawings unless otherwise agreed in writing by the Local Planning Authority and the development shall be completed in accordance with the approved details.
14. Immediately following implementation of the approved surface water drainage system and prior to occupation of any part of the development, the developer/applicant shall provide the local planning authority with as-built drawings of the implemented scheme together with a completion report prepared by an independent engineer that confirms that the scheme was built in

accordance with the approved drawings and is fit for purpose. The scheme shall thereafter be maintained in perpetuity.

15. If, within a period of 5 years, the turkey oak tree within the garden of 12A Woodland Avenue is removed, uprooted, destroyed or dies or becomes seriously damaged or defective, another tree of the same species and of a size of least an extra heavy standard 14-16cm girth in a minimum of 80 litre container or equivalent shall be planted in an agreed location within the first planting season following the removal, uprooting, destruction or death of the original tree.

End of schedule