The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2011

by R P E Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 August 2011

Appeal Ref: APP/Y3805/A/11/2150556
42 Crabtree Lane, Lancing, West Sussex BN15 9PQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr N Minsky of J Minsky & Sons against the decision of Adur District Council.
- The application Ref ADC/0486/10, dated 29 November 2011, was refused by notice dated 17 February 2011.
- The development proposed is described as: Three bedroom detached house at rear (facing First Avenue) (42 and 44 Crabtree Lane).

Decision

1. The appeal is dismissed.

Main Issue

2. The main issues are considered to be: what effect the removal of two protected trees would have on visual amenity; and whether the two retained protected trees would be at risk of harm as a result of the development, including any threat of future removal or significant reduction, with consequential effects on their contribution to visual amenity.

Policy Context

3. Of particular relevance to the main issue is saved Policy AB25 of the Adur District Local Plan 1996 (the LP) which provides in summary that planning permission for development which would adversely affect existing trees will only be granted where the trees are in poor health or of poor appearance and little public amenity value. It also provides that sufficient space should be left around retained trees to avoid threatening their survival and that applications should include an accurate survey showing the precise location and canopy spread of all existing trees. National objectives for the planning system set out in Planning Policy Statement 1 'Delivering Sustainable Development' include effective protection of the environment and protecting the natural environment. The Government has recently published the draft National Planning Policy Framework but this remains at an early stage and may change and is thus accorded little weight.

Reasons

Tree Removal

4. The appeal site fronts First Avenue. The proposed dwelling and garden would occupy about half of the present curtilage of Nos 42 and 44 Crabtree Lane.

The remainder of the curtilage would include the retained existing end-of-terrace shop and first floor accommodation.

5. The site for the proposed dwelling is occupied by an area of garden, a store building with concrete driveway, an unprotected elder tree (which would be removed) and four silver birch trees that are the subject of a recent Tree Preservation Order (TPO). The submitted application drawings appear to pre-date the making of the TPO and they do not accurately show any of the trees. This suggests that the development was first designed on the assumption that all 4 silver birches would be removed.

6. The proposal would now include the removal of only two of the silver birch trees (T2 and T3). This would be directly necessary to implement the proposed development.

7. All four trees comprise a group of the same species. This reinforces their group value. The Appellant submitted a tree survey which assessed the two trees to be removed according to the method advised by *BS 5837:2005 Trees in Relation to Construction – Recommendations.* It concluded that they were in Category C 'Those of low quality and value' which 'will not usually be retained where they would impose a significant constraint on development'. This is disputed by the Council who consider all four trees to be Category B 'Those of moderate quality and value.'

8. The T1 and T4 trees to be retained are the largest and most prominent. The Appellant's Arboriculturalist accepts that they make 'an unquestionably significant contribution to the visual amenity of the locality'. However I consider that the group as a whole is of significant amenity value in a suburban street where these are the largest trees and there are few other trees. The merged canopies also help to soften and screen unattractive views from the street towards the rear of the shops.

9. The proposed loss of the large unprotected elder from the appeal site would further diminish that screening. It would reduce the number of trees in the vicinity and increase the importance of the silver birches. Whilst replacement tree planting for the 2 lost silver birches is suggested on another part of the property close to the shop, they would not contribute to the group value. It would take several years for those trees to reach maturity and to make a significant contribution to the streetscene. No separate replacement is proposed for the elder.

10. Because the trees are closely grouped, they have not developed symmetrical individual forms. Consequently the removal of T2 in particular would reveal the unbalanced shape of T1.

11. In terms of LP Policy AB25 the trees proposed for removal are of good appearance and significant public amenity value and they are not demonstrated to be in poor health. It is concluded that they merit Category B status and that their removal would significantly diminish the overall visual amenity currently provided by this group of protected trees.

Retained Trees

12. The Appellant has submitted a method statement which proposes detailed measures to protect the retained trees during construction. This would reduce the risk of harm. However the space available for construction would be

cramped and work would be needed within the defined root protection area to include a likely need for scaffolding beneath or adjacent to the tree canopies and for works to create a new path to the front door across land within the main root spread of T4. Thus there would remain a risk of damage to both roots and to branches during construction.

13. A more enduring threat to the retained trees would be that they would significantly constrain sunlight and daylight entering several windows to habitable rooms, including bedroom windows, resulting in poor living conditions within the property. They would also overhang the parking area. There would be a risk of nuisance from leaf fall blocking gutters or drains. Whilst the Appellant has not provided a plan showing the spread of the tree canopies (as required by LP Policy AB25), there may be physical contact between the tree branches and the building as branches grow towards the building. These considerations would affect living conditions at the property or cause nuisance to the occupiers.

14. In the arboricultural appeal statement one of the retained trees (T4) is proposed to be pruned and reference is made to minor tree surgery to tree T1 although no further details are given. The Appellant states that the Council's Parks Manager raised no objection to reducing the 'over-extending branches' in the crown of T4 'subject to further information'. However as these works to trees T1 and T4 are not demonstrated to be necessary to implement the development they would require a separate consent. Whilst they may improve the shape of the retained trees, the works would inevitably add to the short term loss of visible vegetation caused by the removal of the other silver birches and the elder and would further diminish its benefit in softening and screening unattractive views of the rear of the shops.

15. The proposed pruning would need to be severe if it were to significantly reduce the likely nuisance and loss of light caused by the close proximity of the trees to the house. That would further diminish the visual amenity value of the trees. If the trees were not so pruned then the likely problems would remain and there would be future pressure for similar works.

16. In terms of LP Policy AB25 it is concluded that insufficient space would be left around the retained trees to ensure their survival and continued significant contribution to visual amenity in the short and long term.

Other Matters

17. Account has been taken of other representations including those of a neighbour at 38/40 Crabtree Lane who objects that she would experience a loss of privacy and sunlight in her garden and that the proposed vehicular access from the rear service road would obstruct parking, waste collection and shop deliveries. Similar objections were considered by the Council but were not endorsed.

18. As the house would be to the north west of the garden, it would not shade the garden except late in the evening in mid summer. Even then only a very small part of the garden would be shaded as most of the shadow would fall on the adjacent garage buildings. The existing trees already cause some shading of the garden. No windows are proposed in the west elevation and the only first floor window in the south elevation would be an obscure glazed bathroom window. Consequently there would be minimal overlooking and no significant loss of privacy.

19. The proposal includes an access from the private service road to the proposed garage. Use of that access could cause some inconvenience to neighbouring occupiers. However what rights may or may not exist for access, parking and the siting of waste bins on the service road is a private legal matter and not of public interest. Neither these nor the other matters raised by the neighbour would be reasons to dismiss the appeal.

20. It is acknowledged that there are no other objections to the design of the dwelling, that it is in a sustainable location within the built up area, and that the development would make a modest contribution to the supply of housing with associated economic benefits. However these considerations do not here outweigh the main issues.

Conclusion

21. For the above reasons it is concluded that the proposal would contravene development plan objectives to protect trees for their visual amenity and national policy for the protection of the environment. The appeal should therefore be dismissed.

R P E Mellor

INSPECTOR