



# Appeal Decision

Site visit made on 5 April 2005

by **David Harrison BA Dip TP MRTPI**

an Inspector appointed by the First Secretary of State

The Planning Inspectorate  
408 Kite Wing  
Temple Quay House  
2 The Square  
Temple Quay  
Bristol BS1 6PN  
☎ 0117 372 6372  
e-mail: enquiries@planning-  
inspectorate.gsi.gov.uk

Date **29 APR 2005**

Appeal Ref: APP/X5210/A/04/1167568

8 - 9 Oak Village, London NW5 4QR

- 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 Danewood Housing Ltd against the decision of the Council of the London Borough of Camden.
- The application Ref: 2004/3065/P, dated 14 July 2004, was refused by notice dated 17 September 2004.
- The development proposed is the demolition of existing storage/garages and the erection of a two-storey office building (B1) including integral garage.

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

## Site description and background to the appeal

1. The site is occupied by a row of four dilapidated lock-up garages. There is a recently built three-storey commercial/residential building to the north on the corner of Oak Village and Mansfield Road. To the south is an area of land which appears to be in use as an allotment. This is identified as a Borough Site of Nature Conservation Importance. To the rear of the site is a railway embankment on which a number of trees are growing. One ash tree (T1) is about 3.5 m to the rear of the garage building. It is about 17 m high and overhangs the garages. It was made the subject of a Tree Preservation Order in October 2003, after the submission of an earlier application to redevelop the site. The rest of Oak Village is mainly residential.
2. There have been various proposals to redevelop the site since a two-storey office building was approved in 1988. In March 2004 planning permission was refused for a two-storey office building on the grounds that it would damage the adjoining site of Nature Conservation Importance and the ash tree (T1). The current proposal incorporates 150 m<sup>2</sup> of office space and two garages, one of which is proposed to be used for storage. The building is 1.8 m lower than the previously refused scheme, and would occupy the same footprint as the existing garages.

## Planning policy

3. The development plan comprises the Camden Unitary Development Plan (UDP) 2000. Policies in the plan broadly aim to secure a high standard of built development. Policy EN1 seeks to ensure general environmental protection and improvement. Policy EN14 is concerned with the setting of new development, including the impact of proposals on existing views and skylines. Policy EN16 requires that site layout should have regard to various factors including the presence of trees. Policy EN56 states that the Council will oppose development which would result in the destruction of or damage to Borough Sites of

Nature Conservation Importance. Policy EN61 states that the Council will protect and enhance the Borough's tree canopy and vegetation. The site is within the Hampstead and Highgate Area of Special Character, but does not lie within a conservation area.

#### **Main issues**

4. The main issues are whether the development would be likely to lead to the loss of the Ash tree to the rear of the garages (T1), and if it would, whether the presence of the building, and the absence of the tree would be harmful to the appearance of the area.

#### **The Council's case**

5. The Council recognises the importance improving this neglected site and considers that the design is compatible with the bulk and massing of neighbouring buildings. The proposal is acceptable in land use terms but the Council is concerned that the proposal would result in the loss of T1 and would also restrict views of the nature conservation area and the trees on the embankment. In its representations the Council sometimes refers to "the tree" in the singular and at other times to "trees". I have assumed that references to "the tree" are references to T1.
6. The Council is concerned that there would be significant excavation and construction near to the trees and this would have a severe impact upon the canopy and roots and the long term health and stability of the trees. The retention of the trees is considered to be important because of their significant amenity value and their contribution to the appearance and character of the street. There is no indication of detailed construction methods or how the trees would be protected during the demolition and building process. British Standard BS5837:1991 *Trees in relation to construction* would require protective fencing at about 4 metres which could not be achieved. The soil level is mounded around the trunk and along the rear of the existing garages, about 2 m above pavement level. There are likely to be structural roots in this area which would affect the tree's stability if disturbed.
7. Even though the current proposal is for a lower building the canopy would still need to be cut back. This would involve the removal of structural branches which could affect the health and stability of the tree. If T1 were to be retained (after crown lifting), it would still overhang the building and would cause problems with leaf drop, blocked drains, and branches scraping on the roof. If T1 is retained, the two-storey building would itself screen it from view to the detriment of the appearance of the locality.

#### **The appellant's case**

8. The appellant maintains that there is no reason why T1 should be lost (after trimming and crown lifting) but if it were lost there would be no significant visual impact as there would still be other trees in the background and the new building would itself bring about a major improvement to the appearance of the area. To overcome objections to the earlier scheme the building has been lowered to reduce the extent to which the canopy of T1 would need to be cut back, and the building is to be erected on piles to limit root damage.
9. The appellant relies on the arboricultural report by Jonathan Cocking Associates that was submitted with the previous application for a taller building, and also a second report by John Cromar's Arboricultural Company relating to the impact of the proposed pile foundations. In the first arboricultural report T1 is described as a mature specimen. Its condition is good and it is of average vigour. It is an attractive specimen, but the crown is

one-sided towards the garages, with a low crown extending over the roof. It falls within retention category "B" as set out in BS 5837:1991 *Trees in relation to construction*, that is to say, its retention is desirable. The trees along the railway embankment contribute collectively to the amenity value of the area, but individually they have lower amenity value than when considered as part of the group.

10. The report recommends the removal of ivy and dead wood, and a crown lift for T1, to provide 7.5 m clearance (of a higher building than currently proposed). It concludes that although pruning of the tree would be required, rather than causing the tree to become unbalanced, it would actually improve the form of the crown. Pruning of T1 would be necessary whatever redevelopment took place on the site of the garages. The use of pile foundations would help to ensure that root systems of T1 were not significantly affected.
11. The second arboricultural report describes two trial pits which were dug in order to establish the likely extent of root damage caused by the proposed pile foundations, which revealed that construction would cause approximately 1% root damage. The report recommends the placing of a continuous exclusion fence 2m high around the tree 1 m from the rear elevation of the garages to form a root protection zone. It is also recommended that piles should be installed using a rig that does not foul the retained tree branches. This need be no more than 3m high in order to install 250 mm piles. The existing building should be demolished using hand held power tools where it is within 5 m of any part of T1.
12. Provided the recommendations in both reports are carried out the appellant maintains that T1 should survive, and there is no sound reason to refuse planning permission.

#### **Assessment**

13. The Council has not produced any detailed evidence to counter the conclusions of the two arboricultural reports submitted by the appellant. It is not possible to comply with the suggested distances for protective fences set out in BS 5837 but, on the basis of the evidence I have seen, I believe there is a good chance that T1 may survive and remain as an asset to the area if appropriate measures are taken to protect it during construction. There remains a risk that it will be lost, but in my view this is worth taking as the benefit of redeveloping this long neglected site with an attractive building outweighs the harm caused by the possible loss of the tree. There is a positive advantage in developing the site, and there would still be a backdrop of trees on the embankment, even without T1.

#### **Conditions**

14. The Council has suggested a number of conditions which might be imposed if consent were to be granted. The appellants have not commented on the suggestions, but there are recommendations in the arboricultural reports which could be incorporated into conditions. I have considered the suggested conditions in the light of the advice in Circular 11/95.
15. The Council suggests the submission of samples of external materials and the use of a stock brick for the gable end of the building in order to tie in with the predominant material in the street. This seems reasonable and I will impose a condition requiring samples of all external materials to be agreed, and for the development to be carried out in accordance with the submitted plans. A condition requiring one of the garages to be kept available for parking is necessary in order not to increase parking pressure in the surrounding streets.

16. It is suggested that details are submitted indicating measures to protect T1 during construction work. I agree that these matters should be made the subject of planning conditions, although I will modify the wording suggested by the Council.
17. From the submitted plans it appears that the appellants do not own any of the land to the side or rear of the existing building where the trees are growing. The rear of the building would be partly below ground level and the external blockwork is proposed to be painted, so agreement to gain access to the adjoining land will be necessary. There will need to be a working area to the side and rear of the building and this should be confined as close to the building as possible to allow maximum clearance from the trunk of T1. A scheme should be submitted indicating a schedule of proposed work to T1 including the removal of branches, the position of a suitable protective fence between the building and T1, measures to avoid compaction within the root zone and measures to protect the branches which are to be retained from damage during construction.

### **Conclusion**

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed subject to conditions.

### **Formal Decision**

19. I allow the appeal, and grant planning permission for the demolition of the existing storage/garages and the erection of a two-storey office building (B1) including integral garage at 8-9 Oak Village, London NW5 4QR in accordance with the terms of the application, Ref: 2004/3065/P, dated 14 July 2004 and the plans submitted therewith, subject to the following conditions:
  - 1) The development hereby permitted shall begin before the expiration of five years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used for the facing of the building hereby permitted (including the use of brickwork on the southern gable wall) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
  - 3) A scheme indicating the proposed work to be carried out to T1 in order to enable the construction of the building hereby approved and of measures to protect it during building operations, shall be submitted to the local planning authority for approval and the approved scheme shall be implemented in accordance with an agreed timetable prior to the commencement of development. No work shall be carried out on T1 other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any approved tree work shall be carried out in accordance with B S 3998 *Recommendations for tree work*. The scheme should include the following provisions:
    - i) Details of the design and location of an appropriate fence to protect the tree trunk and to prevent materials from being stored in the protected area.
    - ii) Measures for the prevention of additional soil compaction around the root zone.
    - iii) A schedule of works to T1 to be undertaken, including measures to protect retained branches overhanging the site.

- iv) Details of the rig to be used for the installation of the pile foundations. This should not include the use of a rig more than 3 m high unless otherwise agreed in writing with the local planning authority.

The erection of the approved fencing for the protection of T1 shall be undertaken in accordance with the approved details before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

- 4) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 001-10, 001-30, 001-31, 001-32, 001-40, 002-10, 002-20, and 002-30, except as required to comply with condition 2 above.
- 5) The northernmost garage hereby permitted shall be kept available for the parking of a car at all times.
- 6) The existing building should be demolished using hand held power tools where it is within 5 m of any part of T1.

*David Hamson*

Inspector