

Parish: Sproughton

Location: Part Gardens of 26 & 28 Church Crescent

Proposal: Erection of detached one and a half storey dwelling and construction of new vehicular access without compliance with Condition 3 of p.p. B/07/00554/FUL (requiring details of works to and around the Maple Tree).

Applicant: Mr M Fenwick

Case Officer: Ben Elvin

Date for Determination: 01/08/08

This application is referred to Development Committee at the request of the Ward Member.

THE SITE

1. The site is formed from parts of the gardens of two adjoining properties within a 1960s housing estate.

THE PROPOSAL

2. The application proposes the erection of a dwelling previously approved on appeal under application reference B/07/00554/FUL, without compliance with Condition 3 of that permission, which required details of the following;
 - a. The method and construction of the access drive
 - b. The depth and extent of any proposed excavation within the crown spread of the Maple Tree in the front garden of No.26
 - c. Any works above ground level to that tree
 - d. Any proposed alterations in existing ground levels
 - e. The specification and position of fencing and of any other measures to be taken to ensure its protection from damage before or during the course of development, and its longer term health and ability to reach maturity.
3. The Maple Tree that is referred to in the condition has been removed and a sapling Maple planted in replacement elsewhere within the front garden of No.26.

RELEVANT HISTORY

4. B/07/00544/FUL – Erection of detached one and a half storey dwelling and construction of new vehicular access (Allowed on Appeal)
5. B/05/01428/FUL – Erection of 1 No. detached dwelling. Construction of new vehicular access and a new pedestrian access – Refused.
6. B/05/00869/FUL – Erection of detached dwelling with living accommodation in the roof space. Construction of new pedestrian access. Construction of parking area – Withdrawn.

NATIONAL GUIDANCE

7. **PPS1** Delivering Sustainable Development
8. **PPS3** Housing.

PLANNING POLICIES

9. The Development Plan comprises the East of England Plan, adopted 2008, saved policies in the Suffolk Structure Plan, adopted 2001, and the Babergh Local Plan (Alteration No. 2) adopted 2006. The following policies are relevant to this proposal:

East of England Plan, 2008

- **SS1** (Achieving Sustainable Development)
- **ENV7** (Quality in the Built Environment)

Babergh Local Plan (Alteration No.2) 2006

- **CN01** (Design)
- **HS02** (Villages)
- **HS28** (Infilling)
- **HS30** (Design of New Houses)
- **EN04** (Trees)

The relevant documents can be viewed via the internet. Please see Page 4 for details.

OBSERVATIONS

10. PC – will be reported verbally when received.

REPRESENTATIONS

11. 2 letters of objection has been received which makes the following points;
 - The tree had been growing for over twenty years.
 - They assume that the Council will prosecute the applicant given that the tree forms part of our heritage.
 - The conditions on the appeal decision did not prevent the tree from being cut-down.
 - Concerns regarding what other rules and permissions the applicant may choose to disregard.

PLANNING CONSIDERATIONS

12. The principle of this development has been established through the grant of permission by the Inspector. The application proposes the removal of Condition 3 (as detailed at paragraph 2 above) as the Maple tree has now been removed. The applicant has not provided justification for the removal of the tree.

13. In considering the likely impact on the Maple Tree, the Inspector stated that *“I have more serious concerns about the life and health of the semi-mature variegated maple tree in the front garden of No.26. Both the Parish Council and a local resident have referred to the very positive contribution this makes to the street scene. The houses in Church Crescent and Beech Close have large, open front gardens and I can appreciate the public amenity value of this tree, said to have been planted as part of the original landscaping of the estate. The proposed site layout plan shows the driveway to the new house extending right up to the trunk of this tree and running underneath a significant part of its branch spread. I have no details of the proposed construction of the driveway but it seems likely that a conventional construction would necessitate the cutting and removal of a substantial part of its roof structure and has the real potential to jeopardise its health, stability and life expectancy. This could have a significant harmful effect upon the character and appearance of the area, contrary to Local Plan Policies HS02 and HS28”*.
14. However, the Inspector concluded that these matters would need to be the subject of further consideration and imposed Condition 3, providing that *“It may be that the chosen construction methods will satisfy the Council that the tree is afforded adequate protection, or it may be that the position of the driveway will need to be altered to enable the development to take place and safeguard the life and health of this tree”*.
15. The tree was not offered adequate protection by the appeal decision, despite the Inspectors obvious concerns about the impact of the development on the tree. It was also not made the subject of a Tree Preservation Order, and therefore its removal is not something that falls within the control of the Local Planning Authority. It is apparent that the requirements of the condition are no longer necessary, and its requirements would no longer meet the tests within Circular 11/95 (Use of Conditions in Planning Permission).
16. The applicant has provided a replacement variegated Maple tree within the front garden of No.26 in the form of a sapling. Whilst this will take some time to mature, the replacement is welcomed.
17. The application proposes only the removal of the condition 03 of planning permission B/07/00554/FUL. Following legal advice it is understood that we must consider this application as if it were a stand-alone application rather than an amendment to the original planning permission. As such it is therefore necessary to impose all of the other conditions on the original permission and seek an obligation under Section 106 for the open space contributions.
18. In conclusion, as the development has the benefit of conditional planning permission, and whilst the loss of the tree is unfortunate, there does not appear to be sufficient grounds to warrant the retention of the condition.

REASON FOR APPROVAL

The proposed development is considered to be in accordance with policies CN01, HS02, HS28 and HS30 of the Babergh Local Plan Alteration No.2 (2006) by reason of the scheme constituting acceptable infill development in terms of its scale, density and relationship to adjoining development.

RECOMMENDATION

- (1) That, the Solicitor to the Council be authorised to secure a planning obligation agreement under Section 106 of the Town and Country Planning Act, 1990, to ensure:
 - Open Space Provision

- (2) That, subject to the completion of the planning obligation in Resolution (1) above being secured the Chief Planning Control Officer be authorised to grant planning permission subject to the following conditions:

As per B/07/00554 being;

- Materials
- Landscaping
- Protective fencing to all retained trees
- Removal of PD rights for windows in first-floor of eastern and western gable ends
- Details of revised positions of openings in the southern elevation.

- (3) That, in the event of the planning obligation referred to in Resolution (2) above not being secured, the Chief Planning Control Officer be authorised to refuse planning permission for the following reason:

- Lack of open space provision, contrary to HS32.