
Appeal Decision

Site visit made on 30 January 2017

by Graeme Robbie BA(Hons) BPI MRTPI

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

Decision date: 28 March 2017

Appeal Ref: APP/E2734/W/16/3161642

**3 Church Farm Buildings, Main Street, Kirk Deighton, North Yorkshire
LS22 4EB**

- 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 and Mrs Bousfield against the decision of Harrogate Borough Council.
 - The application Ref 6.136.104.F.FUL, dated 25 October 2015, was refused by notice dated 19 July 2016.
 - The development proposed is the erection of a detached dwelling with associated access, lateral reduction (3m) of 1 Ash, and crown lifting (1.5m) and lateral reduction (6m) of 1 Elm tree within Kirk Deighton Conservation Area.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached dwelling with associated access, lateral reduction (3m) of 1 Ash, and crown lifting (1.5m) and lateral reduction (6m) of 1 Elm tree within Kirk Deighton Conservation Area at 3 Church Farm Buildings, Main Street, Kirk Deighton, North Yorkshire LS22 4EB in accordance with the terms of the application, Ref 6.136.104.F.FUL, dated 25 October 2015, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The appeal site address set out above is as given on the planning application forms. Whilst the appeal site is also additionally referred to in both parties' submissions as Deighton Meadows, I shall, for the purposes of clarity and consistency, refer to the appeal site address in the terms set out above.
 3. I have adopted the development description set out on the Council's decision notice, and subsequently adopted by the appellants in their submissions, which I find to be usefully more detailed. I have considered the appeal accordingly.
 4. A signed unilateral undertaking was submitted with the initial appeal submission in respect of a commuted financial contribution towards the provision of open space. However, having regard to the Order of the Court of Appeal, dated 13 May 2016 reaffirming legal effect to the policy set out in the Written Ministerial Statement of 28 November 2014, the Council have subsequently confirmed that they do not wish to seek a tariff-style contribution. The appellants have confirmed that they no longer wish to rely upon the previously submitted unilateral undertaking. As this matter is not a
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point of dispute between the parties, I have not considered the unilateral undertaking, or its provisions, further.

Main Issues

5. The main issues are the effect of the proposed development on:
- Trees within appeal site; and
 - The living conditions of future occupiers of the proposed dwelling, with particular reference to daylight and outdoor amenity space.

Reasons

Impact on Trees

6. The proposed dwelling and associated garden plot would be located within part of the front garden area of 3 Church Farm Buildings. The dwelling itself would be largely positioned on the existing access driveway of No. 3, albeit its footprint would also extend northwards into the existing area of lawn between the driveway and the evergreen hedge that separates the garden of No. 3 from the access driveway to 2 Church Farm Buildings.
7. The appeal site contains three trees, two of which I am advised are subject to a provisional Tree Preservation Order (TPO); those being an ash (T1) that is situated within the area of lawn close to the hedge, and an elm (T3)¹. The third tree, a willow-leaved pear (T2), is also located within the existing lawn at the front of No. 3. The trees are between 4.5 metres (T3) and 19 metres (T1) in height. T1 has a significant visual presence from Knaresborough Road to the north due to its height and location, its canopy forming part of a larger, and highly visible, canopy with two trees located between the adjacent driveway serving No. 2 and Knaresborough Road. All three are noted in the appellants' Arboricultural Report as being in good physiological and structural condition, with life expectancy of more than 40 years (excluding the potential effects of ash dieback (T1) and Dutch elm disease (T3)).
8. The Council refer to an extract from the Kirk Deighton Conservation Area Character Appraisal (CACA) which states that "mature trees feature strongly within the village and are very important to its character". From my observation of the site and its surroundings, that certainly seems an apt description of the approach and entry to the village from the northwest, and T1 makes an important contribution to the sylvan character along this part of Knaresborough Road. In the context of the well-stocked shrub border of domestic appearance and character that runs along the south-western boundary of the appeal site, T3 is less significant in terms of its contribution to the character and appearance of the conservation area, whilst T2 is rendered largely hidden from public vantage points by the well maintained and dense evergreen hedgerow that forms the garden boundary at the front of No. 3.
9. The proposed dwelling would be located between T1 and T3. It is not proposed to remove either tree, and there is no dispute that the dwelling itself would be located outwith the root protection areas (RPA) of both. Nor have the Council objected to the extent of crown lifting or lateral reduction proposed as part of the proposal. I see no reason to disagree and conclude that the construction of

¹ Arboricultural Report on the proposed development at Deighton Meadows, Kirk Deighton, LS22 4EB

the proposed dwelling would not impinge upon, or adversely affect, either T1 or T3. However, the re-aligned driveway access to No. 3 would cross the RPA of T1 and it remains a matter of dispute as to the extent that the construction of the driveway would impact upon the root structure and RPA of T1.

10. However, it seems to me that the appellant has taken every reasonable precaution in designing and specifying the driveway details to minimise any potential impact upon T1. From my observations of the lawned area underneath the canopy of T1, there were no obvious visible manifestations of T1's root structure, nor indeed were there within the existing driveway that leading towards No. 2. From the evidence before me, I am satisfied that the proposed specification for the turf stripping is sufficiently shallow to allow the construction of the upstand driveway without adversely affecting the RPA of T1, whilst the remaining area of lawn at No. 3 and the areas of lawn within the garden plot of the proposed dwelling would provide acceptable rooting conditions for T1.
11. Thus, for the reasons set out, I am satisfied that the proposal makes adequate provision for the retention and protection of T1 and T3, during and post-construction of the dwelling and the re-aligned access driveway to No. 3. Together with additional planting in public facing areas of the site to supplement the existing tree cover, the proposal would provide appropriate succession planting to maintain the character and appearance of the site, and the contribution that it and its trees makes to the surrounding area and the approach to Kirk Deighton. In this respect, I conclude that the proposal would accord with policy EQ2 of the Harrogate District Local Development Framework: Core Strategy (CS).
12. I note the Council's concerns that the proposal would be likely to lead to pressures in the future to prune or remove the trees. However, the trees, particularly T1, are located within an existing domestic setting and I am not convinced that the proposal would present any greater risk of proposals for future works than the existing setting already presents. This matter does not alter my conclusions, above, in respect of this main issue.

Living Conditions

13. The proposed dwelling would be positioned between T1 and T3 that presently lie within and around the front garden area of the appeal site. The canopies of both trees would be close to the north and south elevations, respectively, of the proposed dwelling. However, whilst the Council have identified that the shading of outdoor areas and internal living spaces should be given consideration, the extent to which this is a concern in this instance has not been developed beyond generalised assertions regarding the implications of this degree of proximity in terms of shading and light to outdoor amenity areas and internal rooms.
14. Externally, the largest amenity area would be the lawn to the north of the dwelling. Whilst a portion of this would be directly under the canopy of the ash tree, areas to the west and, more significantly, the east would not. The area to the east would also incorporate a terraced area, opening out from the open-plan living area within the building, and would provide an area for sitting out that would not be subject to shading from that tree or be located under its canopy. There is no objection to the amount of outdoor amenity area that would be provided within the overall development and, from my observation of

the site and its surroundings, the proposed external layout would provide a variety of garden environments and locations that would be appropriate in both quantitative and qualitative terms.

15. With regard to internal spaces and the effect of these trees on light levels internally, T1 (to the north) would not, despite its size, directly cause shading to the open-plan living area. I acknowledge that T3, to the south of the building, might have some effect but I am satisfied that the open-plan living area would incorporate multiple window openings on three elevations to offset any impacts arising from the proximity of T3. This would, I conclude, provide sufficient levels of daylight throughout the day so as to avoid the interior of the proposed dwelling having an oppressive feel.
16. The sole CS policy cited in the Council's refusal reason is CS policy EQ2. It does not however appear to relate directly to matters relating to living conditions. Although the Council's officer report does not explicitly refer to any other development plan² policies in this respect, I have been provided with a number of other development plan policies, including saved policy HD20 of the Harrogate District Local Plan (2001, as altered 2004) (LP). I am satisfied however that the proposal would provide acceptable and appropriate living conditions for future occupiers of the proposed dwelling in the terms set out above, and would not, for the reasons also set out, be in conflict with LP policy HD20, nor would it be contrary to CS policy EQ2.

Other Matters

17. I am statutorily required³ to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. I note that the Council are satisfied that the proposed development would reflect the character of the surrounding area in terms of its size and design, and conclude that it would have a neutral effect on the character and appearance of the conservation area.
18. It is noted that neighbours object to the proposal on a number of grounds, including that the proposal would be crammed in on a tight site and would be out of character with the surrounding area. However, from my observations of the village, I am satisfied that there is variety in the size, form and layout of housing in the immediate area, and within the Conservation Area as a whole, and that the proposal would merely add another variable to that mix. It would, however, do so in a manner and form that I find would retain the sylvan surroundings experienced from the roadside at the northern entrance to the village, whilst also reflecting the pattern of development at this point with buildings and dwellings set back from the roadside, behind verdant and well stocked landscaped grounds.
19. I am therefore satisfied that the proposal would have a neutral effect on the character and appearance of the conservation area and agree with the Council's conclusions in this respect. The proposed development would thereby preserve the character and appearance of the Conservation Area, the desirability of which the National Planning Policy Framework (the Framework) and statute³ requires that I give special attention to.

² The development plan consists of the Harrogate District Local Development Framework: Core Strategy and the Harrogate District Local Plan (2001, as altered 2004)

³ Section 72(1) Planning (Listed Buildings and Conservation Areas) Act 1990

20. With regard to the further comments and submissions of local residents regarding alterations to the access to the site from Knaresborough Road, the re-alignment of the access within the site and the location of the proposed parking spaces, I note that the Highway Authority have did not formally object to the proposal. Moreover, I also note that such matters did not form one of the Council's reasons for refusal. I am satisfied that the proposals, including the slight increase in width of the existing driveway entrance on to Knaresborough Road, would provide sufficient manoeuvring space within the site without compromising the free flow of traffic along Knaresborough Road. I have had regard to the concerns of local residents regarding recent traffic flows through the village, but I have not been presented with any evidence to substantiate these matters, or to lead me to conclude that the proposal would otherwise result in any significant increase in risk to highway safety.
21. Local residents object to the proposal on a wider basis, including loss of privacy for occupiers of adjacent properties, the impact upon amenities of future occupiers arising from the proximity of an agricultural building to the south of the proposed dwelling, instances of flooding on land adjacent to the site and alternative access to No. 3 from Knaresborough Road, opposite All Saints Church. Matters relating to access are private matters for the parties involved and I afford them limited weight. With regard to these other matters, they did not form part of the Council's reasons for refusal and the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be over-riding issues warranting dismissal of the appeal.

Conditions

22. I have considered the Council's list of suggested conditions in light of the Framework and Planning Practice Guidance and have, where necessary, amended the conditions in the interests of precision and accuracy.
23. In addition to the time limit condition, a condition specifying the approved plans is necessary in order to provide certainty. I agree that a condition relating to the submission of details of the external materials to be used in the construction of the hereby approved dwelling is reasonable and necessary in the interests of the character and appearance of the surrounding area, and the Kirk Deighton Conservation Area. I have altered the wording of the suggested condition however, in order to ensure clarity and precision over the timing of the submission of such details. A condition to ensure the installation, and retention, of obscure glazing in the first floor windows on the south west facing elevation is also necessary in the interests of the amenities of occupiers of the adjacent property.
24. The appellant has submitted an Arboricultural Method Statement (AMS), the content and provisions of which the Council have not disputed. I have therefore substituted the suggested condition with one that requires development to be carried out in accordance with the submitted (AMS).
25. I note that the Highway Authority has also recommended a condition regarding the provision and retention of the parking spaces shown on ground floor plan / site layout drawing⁴. Whilst not included in the Council's list of suggested conditions, the Highway Authority's response was set out in the committee report, the provisions of which the Council have relied upon in lieu of a

⁴ Ground Floor Plan / Site Layout: DWG No 10 Rev E

subsequent statement of case. I consider that such a condition is in the interests of highway safety and have therefore imposed it here.

Conclusion

26. For the reasons set out, and having regard to all other matters raised, I conclude that this appeal should be allowed.

Graeme Robbie

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Existing Site Layout: DWG No 02 Rev A; Ground Floor Plan / Site Layout: DWG No 10 Rev E; Proposed South West and North West Elevations: DWG No 07 Rev A; Proposed South East and North East Elevations: DWG No 08 Rev A and First Floor Plan: DWG No SK02 Rev A.
- 3) Samples of the materials it is intended to use externally in the construction of the roof and walls of the development hereby permitted shall be made available on site for the written approval of the local planning authority prior to the construction of the external walls and roof of the development. The development shall thereafter be carried out in strict accordance with the agreed details.
- 4) The first floor windows in the south west elevation of the dwelling hereby permitted shall be obscurely glazed, in strict accordance with the approved drawing Proposed South West and North West Elevations: DWG No 07 Rev A and shall thereafter be maintained and retained as such.
- 5) The development shall be carried out in accordance with the Arboricultural Method Statement by A Whitehead Associates Ltd, dated 7 October 2016, including the Method Statement Plan and Method Statement – phase 2 plan, and the recommendations contained within the Arboricultural Report by A. Whitehead Associates Ltd, dated 25/10/2015.
- 6) The hereby approved dwelling shall not be occupied until the parking facilities have been constructed in accordance with the details set out on the approved drawing Ground Floor Plan / Site Layout: DWG No 10 Rev E. Thereafter, these parking areas shall be maintained clear of any obstruction and retained for their intended purpose at all times.