
Appeal Decision

Site visit made on 25 June 2019

by J Wilson BA Hons BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 15th July 2019

Appeal Ref: APP/P2114/W/19/3221802

land adjacent to 22 and to the rear of 12, 14 and 16 Marlborough Road, Ryde, Isle of Wight PO33 1AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Ms Sarah Robbins against the decision of Isle of Wight Council.
 - The application Ref P/00916/18, dated 31 July 2018, was refused by notice dated 20 December 2018.
 - The development proposed is 5 No. new dwellings and access and double garage for No 14 Marlborough Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is an outline submission with access, layout and scale to be determined now. Only matters of appearance are reserved for subsequent approval. As such the layout plans are integral to my consideration of the scheme. The plans also include typical details of the two storey properties and those details are relevant in so far as they relate to the scale of the buildings proposed.
3. Since the appeal was lodged the National Planning Policy Framework (the Framework) has been updated, references throughout this decision relate to the 2019 Framework.

Main Issues

4. The main issues are: a) the effect of the development on the character and appearance of the area and whether the development preserves or enhances the character or appearance of the Ryde, St Johns Conservation Area (CA) and the setting of Listed Buildings at 14 and 16 Marlborough Road; and b) the effect of the development on protected trees.

Reasons

5. The site is formed from two distinctly different parts of land which form the garden to the host property No.14 Marlborough Road (No.14). The southern part of the site where the access would be formed, and where two bungalows are proposed, is relatively open. This part of the site is outside the CA. The rear part of the site where three houses are indicated is a wooded area of garden

within which there are a number of significant trees and many smaller self-seeded trees. All of these trees are covered by an Area Tree Preservation Order dating from 2008. That part of the site which is more densely planted is within the CA boundary.

Conservation Area and Listed buildings

6. The size, type and number of mature trees makes a significant contribution to the character of the CA in this part of Ryde and particularly from Marlborough Road. The mature trees are of substantial height and size with several species of trees within this area. The character appraisal for the CA recognises that these trees make a significant visual impact and give the character of the area a significantly different feel to the more urbanised part of Ryde.
7. An arboricultural impact assessment report indicates that four mature trees which are grade B would be removed as part of the proposal, this is a matter to which I will return. Their loss would have a clear and detrimental impact on the character of the area wider than just the appeal site. It would dilute the visual impact that this group of trees has in the CA and erode the wooded character and undermine the reasons why the trees were protected. It would result in the removal of a substantial part of the green backdrop in the street scene and thereby adversely affect the character and appearance of the CA and to a more limited extent the verdant setting and character to the rear of the Grade II Listed Buildings at 14 and 16 Marlborough Road. Whilst the development would enable the retention of a reasonable amount of retained garden to No.14 the overall resulting effect of the development; in particular the position and effect of plots three, four and five would neither preserve nor enhance the character of the Conservation Area even though, in the words of the Framework, that harm would be less than substantial.
8. For these reasons the proposal would conflict with Policies SP5, DM2, DM11 and DM12 of the Island Plan Core Strategy¹ and to the aims of the Framework. These policies seek to positively conserve and enhance the special character of the Island's historic and built environment balancing these with environmental characteristics, reflecting the aims and objectives of the landscape character assessment and which seeks to enhance features of interests and have regard to existing trees.

Effect of the development on Protected trees

9. The proposal would remove four category B trees which are specified as being trees with moderate quality and value and a lifespan of more than 20 years. The appellants tree report comments that if the proposed development requires the removal of higher-grade B trees it must be shown that the loss of the public amenity benefits and value of the trees can be suitably mitigated. It is argued that the majority of the trees are internal to the site and not of any significance within the wider context. I disagree, and for the reasons already explained I consider the trees make a visual contribution wider than the appeal site.
10. It is clear from the detailed plans that the internal access road is proposed to be located close to the trunks of two mature protected trees and well within the

¹ Full title – Island Plan Isle of Wight Core Strategy (including Waste and Minerals) and Development Management Development Plan Document March 2012)

root protection areas (trees T8 and T9²). These trees would also require crown lifting in order to provide enough bough clearance for vehicles along the proposed access. This arrangement would, in my view, be excessively close to the protected trees such that both the immediate plans to crown lift the tree and the pressure for longer term work to these trees would present a significant risk to their future health and long term retention. There is no certainty that the health of the trees adjacent to the proposed drive would not be compromised in the short or long term by the proposed development.

11. It is widely recognised that development should be located outside RPAs of important trees that are to be retained. Where there is an overriding justification for works within the RPA, technical solutions might be available that prevent damage to trees. In this case there are very limited options available to access this parcel of land. The close proximity would, despite a proposed 'no-dig' method of construction, coupled with the need to substantially crown lift the trees, result in a significant risk of long term harm and/or serious damage during construction. Such work would conflict with the aims of the Framework in protecting veteran trees and is a significant and material issue in relation to trees which are afforded statutory protection.
12. Similarly, the close proximity of three of the five plots to those significant trees which would be retained would carry a high risk in the longer term of occupiers applying to the Council to seek permission to heavily prune or fell these trees. If this were to arise it could be difficult for the Council to resist such works which would in turn be likely to further erode the character and appearance of the site and this adds further weight to the argument for withholding permission.
13. Landscaping is not a reserved matter and I note inconsistencies between the proposed site plan Drawing No 1608 10a and the mitigation planting on drawing number TCP/S/02. I consider that the mitigation planting would be wholly inadequate to offset the loss of the four mature trees together with the removal of further understorey planting which would result from the proposal.
14. Therefore, I consider that the case made for the removal of these trees has not been adequately or robustly justified. Additionally, the proximity of the proposed dwellings on plots 3, 4 and 5 would present an ongoing threat to the future of the retained trees which would also constrain the amenity value of the site for future occupiers.
15. For these reasons the proposal would be harmful to the protected trees in conflict with Policies SP5, and DM2 of the Island Plan Core Strategy and to the aims of the Framework. These policies seek to conserve the natural environment, protect trees which significantly contribute to the character of an area and which safeguard the retention of veteran trees.

Other matters

16. Comment has been made regarding the loss of the section of brick boundary wall to Marlborough Road to form the access however the Council have confirmed that there is less historical significance to this section of wall which lies outside the Conservation Area and based on this evidence I have no reason to disagree.

² The 'T' numbers refer to appellants reports and not to the TPO schedule which is an Area TPO.

17. My attention has been drawn by the appellant to protracted negotiations with the Council and the tree officer which he says indicated that the principle of the development would be acceptable. However, it is the decision articulated by the Council in the reasons for refusal which this appeal must consider rather than the advice given prior to that decision.
18. Two unilateral undertakings have been submitted setting out contributions to the mitigation works required as a result of the proximity of the site to the Special Protection Area and in relation to payments for off-site affordable housing, these matters are not in dispute with the Council.
19. The development would add to the provision of housing in the locality and would contribute to the provision of housing elsewhere via an affordable housing contribution; these are benefits of the scheme which should be afforded some weight in the planning balance.

Planning Balance

20. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, before reaching a decision on an appeal, I must pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. For the reasons given above the appeal proposal would not achieve that aim.
21. The Framework makes clear at paragraph 196 that where a development proposal causes less than significant harm to a designated heritage asset, in this case the CA, the harm should be weighed against the public benefits of a proposal. Public benefits are defined in the PPG³ as "*of a nature or scale to be of benefit to the public at large and should not just be a private benefit*". In this case no public benefit has been identified to outweigh the harm which would be caused to the heritage asset.
22. Furthermore, the Framework⁴ specifically details that "development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists". In this case exceptional reasons have not been demonstrated and the benefits which would accrue are insufficient to outweigh the harm which I have identified nor have adequate mitigation planting proposals been advanced.

Conclusion

23. For the reasons given, and having had regard to all other matters raised, the appeal is dismissed.

Janet Wilson

INSPECTOR

³ Planning Practice Guidance

⁴ Paragraph 175 c) of the National Planning Policy Framework 2019