



Appeal Decision

Site visit made on 4 July 2019

by Mark Caine BSc (Hons) MTPL MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2019

Appeal Ref: APP/C2741/W/19/3226505

4 Hawthorne Mews, Strensall, York, YO32 5RR

- 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 Dennis Wright against the decision of the City of York Council.
 - The application Ref 18/02834/FUL, dated 12 December 2018, was refused by notice dated 7 February 2019.
 - The development proposed is described as the "Extension of garden curtilage onto land at the rear (resubmission)"
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the description of the development proposed from the Council's decision notice. Although it differs from that stated on the application form it more clearly and concisely describes the proposal. The proposal is retrospective, as the development has already taken place in accordance with the submitted details. I have determined the appeal on this basis.
3. The Government published its revised National Planning Policy Framework (the Framework) on 19 February 2019. However, in relation to the main issues in this appeal, the revisions have not changed national planning policy.
4. The Council has referred to Policies GI1, GI2 and GI3 of the City of York Local Plan – Publication Draft February 2018 (Emerging Plan). Although the Emerging Plan has been submitted for Examination, it has not been formally adopted. Therefore, whilst I have had regard to these policies in my determination of this appeal, in accordance with paragraph 48 of the Framework, I have given them limited weight as material considerations.

Main Issues

5. The main issues are:
 - (i) The effect of the development on the natural environment of the River Foss, with particular regard to the presence of the protected species of water voles and otters.
 - (ii) Whether the development preserves or enhances the character or appearance of the Strensall Village Conservation Area, and its effect on the setting of adjacent listed buildings and structures.

Reasons

Protected species

6. The appeal relates to a roughly rectangular shaped area of predominantly lawned and enclosed land that extends outwardly from the original rear garden of 4 Hawthorne Mews to within a few metres of the bank of the River Foss. On my site visit I noted that similar developments have been carried out to the rear of 2 and 3 Hawthorne Mews.
7. The appellant has questioned whether an area of land with a frontage of approximately 100 metres, situated adjacent to a main road and with a housing development within metres of the opposite river bank can provide habitat of significant ecological importance. I also appreciate that some areas of land, specifically in between the development and the River Foss, and towards a nearby footbridge remain untouched.
8. However, it is clear from the main parties' evidence that a large area of natural vegetation has been significantly reduced by the development. I am also mindful of the previous appeal decisions for this site and the adjacent land at Nos 2 and 3 (Ref: APP/C2741/W/17/3192125, APP/C2741/W/17/3192253 and APP/C2741/W/17/3192020). In these cases the Inspector concluded that without the necessary survey information it was not possible to ascertain the likely effect of the alterations to the habitat provided by the appeal sites.
9. In reaching a conclusion on this matter the Inspector referred to Circular 06/2005, which provides administrative advice on the application of the law relating to planning and nature conservation as it applies in England. This states that in circumstances in which protected species are present and are likely to be affected by the development then the appellant/applicant should provide more detailed survey evidence in respect of the species of concern. This should be up to date, seasonally specific and undertaken by an appropriately qualified individual. It should also enable the decision maker to determine whether the proposal would have an adverse effect on any protected species and, if so, whether such an adverse effect could be overcome by any proposed mitigation measures.
10. In order to address these concerns Brooks Ecological Ltd were commissioned by the appellant and his neighbours to carry out a Preliminary Ecological Appraisal Report (PEAR). The non-technical summary in the PEAR concludes that prior to management the site comprised habitat of low ecological value, that the current management of the site is considered to have little impact on commuting otters, and that no signs of water vole were noted. On this basis, no further surveys were considered to be necessary.
11. However, the PEAR took place in October 2018, which despite the long summer, is outside of the optimum survey season for water voles and therefore at a time when they would be harder to detect, even for an experience ecologist. Furthermore, whilst no water vole burrows, otter holts, couches and haul outs, feeding remains, and foot and tail prints were evident during the walkover survey, I am mindful that the PEAR's findings are based on the conditions of the site that were reasonably visible and accessible at that date. The PEAR also states that dense overhanging vegetation prevented a

- clear view of the southern bank closest to the site, which raises doubts and uncertainty over the accuracy of its conclusions.
12. The appellant contends that the most recent records of the presence of water voles in the area were taken in 1999 and argues that no signs of water voles were noted during extensive survey work, which was carried out by their ecologist, in 2012 for the "Tannery development" on the opposite side of the river. However, I do not have this survey work before me, which limits the weight that I can give to it as a material consideration. Moreover, I am aware that in the previous appeals (Ref: APP/C2741/W/17/3192125, APP/C2741/W/17/3192253 and APP/C2741/W/17/3192020) the Inspector had regard to this information and considered it to indicate the presence of water voles and otters.
 13. It is also argued that the public footpath which runs along the north bank alongside the new Tannery development, is likely to cause regular disturbance and deter otters from holting in this area. However, the same logic could be applied to disturbance from the users of the development which includes domestic animals such as dogs.
 14. In light of the above, I do not consider that the lack of evidence of water voles or otters at the time of the walkover survey to be a sufficient basis on which to assume that these species would not be adversely affected by the development. The evidence concerning the effect that the development has had on the protected species of otters and water voles is therefore inconclusive because the site was not surveyed prior to the removal of the natural vegetation and the change of use of the land. Furthermore, an otter spraint was found around 100m away from the appeal site, which, as the PEAR confirms, provides an indication that the river is being used by otters. These are known to be territorial animals with large home ranges. In the absence of any firm evidence to the contrary, I cannot be certain that they were not present in this area prior to the natural vegetation being removed.
 15. Therefore, although the appellant argues that the southern bank was clearly visible from the northern side of the river, and that only 5% of the site was inaccessible, I share the Council Ecology and Countryside Officer's concerns about the reliability of the findings within the PEAR.
 16. As such, I consider it to be necessary for specific surveys for water voles and otters to be undertaken so that a full assessment could be made as to the extent that these species would be affected by the development. Any mitigation measures, such as the erection of post and pig wire fencing that would be set back to provide a 9 metre easement, would need to be informed first by a fuller investigation of the species of concern. As this has not been done, I am consequently unable to determine whether the development would provide appropriate mitigation to ensure the status of these species is maintained.
 17. I appreciate that there have not been any changes to the levels of the land and that no structures, other than for the fencing, which is of a similar design to that used on the borders to the riverbank from Manor Farm, has been erected on the site. On my site visit I saw that native trees and shrubbery have been planted and consider these to provide limited ecological benefits. There were also no signs of any materials having been deposited on the river side of the

fence at the time of my site visit, which the appellant informs me took place prior to their ownership of the land.

18. I have been made aware that the Foss (2008) Internal Drainage Board's objections are dependent on the Council ensuring that its access to the watercourse can be maintained in any consent granted. It has also been put to me that there would be no impact on land stability or pollution and that the appellant has now signed and agreed a restrictive covenant in the Land Registry Deeds. This, I am informed, will prohibit the construction of buildings or other structures on the land, and not allow it to become overgrown or fall into disrepair. Nonetheless, I do not consider these matters to overcome or outweigh the concerns that I have identified above.
19. My attention has also been drawn to a planning permission for an area of land to the rear of West Pit Lane for its use as a dog agility area. However, I have not been provided with the full details that led to this being accepted so I cannot be certain that its circumstances are directly comparable to those which apply for this appeal.
20. Insufficient evidence has therefore been advanced to enable me to find that there would not be material harm caused to the natural environment of the River Foss, with particular regard to the presence of the protected species of water voles and otters.
21. As such the development conflicts with the provisions of Circular 06/2005 and Paragraph 175 of the Framework which state that local planning authorities should promote the protection of priority species and refuse planning permission if significant harm to biodiversity from a development cannot be avoided, adequately mitigated or as a last resort, compensated for. Conflict would also arise with Emerging Plan Policies GI1, GI2 and GI3. Amongst other things these seek to conserve biodiversity, green infrastructure networks and the natural environment. However, as previously noted, I consider these to carry limited weight.

Character and appearance

22. The appeal site is located close to the northern boundary of the Strensall Village Conservation Area. It is also closely adjacent to Strensall Bridge, a Grade II listed structure. In considering this case I have therefore had regard to the statutory duties under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that I pay special regard to the desirability of preserving the setting of a listed building, and Section 72(1) of the same Act which requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
23. Having considered the evidence I find no reason to disagree with the conclusion reached by the previous Inspector in this regard. I thus consider that the development has a neutral effect that, preserves the character and appearance of the Strensall Village Conservation Area, and does not have a harmful effect on the setting of adjacent listed buildings and structures. As such there is no conflict with the statutory tests relating to such heritage assets, or paragraphs 193-196 of the Framework.

Other matters

24. The appellant considers that he is entitled to erect a fence around the boundary of his land under his permitted development rights. Nonetheless, whether or not something requires planning permission is not a matter for me to determine in the context of an appeal made under S78 of the Town and Country Planning Act 1990 (the Act). It is open to the appellant to apply for a determination under sections 191/192 of the Act to determine this matter, and any such application would be unaffected by my determination of this appeal.
25. I also note the appellant's disappointment with the Council's lack of contact and advice during the processing of the planning application. However, this has had no bearing on the outcome of this appeal as I have only had regard to the planning merits of the case that is before me.

Conclusion

26. I have found that the development has a neutral effect which preserves the character and appearance of the Strensall Village Conservation Area and the setting of adjacent listed buildings and structures causing no harm to their significance. However, my conclusion with regard to the potentially harmful environmental impacts of the development on protected species, and the lack of a mitigation strategy, represents a significant and overriding objection which must be decisive. For this reason, the development is not consistent with the principles of sustainable development in the context of the Framework when taken as a whole. Therefore, having regard to all other matters raised, I conclude that the appeal should be dismissed.

Mark Caine

INSPECTOR