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## Appeal Decision

Site visit made on 15 July 2019

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 August 2019**

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**Appeal Ref: APP/C2741/W/19/3226138**

**2 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 Wayne Dixon against the decision of City of York Council.
  - The application Ref 18/02813/FUL, dated 27 November 2018, was refused by notice dated 11 February 2019.
  - The development proposed is seeking the change of use of paddock to domestic garden.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of the application, which is made retrospectively, on the application form is a lengthy one and accordingly I have shortened it in the banner heading above. The proposal involves a material change of use of the land to domestic garden.

### Main Issue

3. The appeal site lies within the Strensall Conservation Area and close to the listed building that is Strensall Bridge. The desirability of preserving the importance of designated heritage assets acquires considerable importance and weight in assessing development proposals, and I have paid special regard to the applicable statutory duties in this respect, as well as to Chapter 16 of the National Planning Policy Framework ('the Framework'). I concur with the main parties however that no heritage assets would lose any significance as a result of the proposals. The main issue arising in the appeal is the effect of the proposal on the natural environment of the nearby River Foss, particularly the effects on protected species.

### Reasons

4. 2 Hawthorne Mews lies in the village of Strensall, located to the north of York. The property lies in a small mews development to the south of the River Foss, which flows south towards the Ouse where it joins it at York. Until recently, the property and its two eastern neighbours had relatively modest north-facing rear gardens, bound by a tree line to the north. Beyond this lay an area of what has been described as uncultivated scrub land that met the river bank to the north.

5. The appellant together with his neighbours at Nos 3 and 4 has purchased this northern patch of land, and much of it has since been transformed into domestic gardens, elongating the gardens that previously existed beyond the tree line and close to the river bank. At the time of my site visit the site at No 2 was laid to a very well-manicured lawn bound by fencing, wire netting and mostly laurel hedging. Some small trees had been planted towards the northern end of the enlarged garden. Football goal posts had evidently recently been moved from the new part of the garden, leaving an impression on the grass. Visibility was limited into No 3 but I saw that No 1 did not appear to be part of the scheme to change the use of the land, with the patch beyond the tree line to that site retaining the appearance of having been left to run rather wild, where I observed plenty of butterflies and insects.
6. There are no presently-adopted local planning policies for the area that are relevant to the appeal, but the Framework emphasises that planning decisions should contribute to and enhance the natural environment including by minimising impacts on and providing net gains for biodiversity.
7. Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that *it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*. It advises that surveys should be carried out before planning permission is granted, and presupposes that this will be before development is carried out.
8. The local Development Control Local Plan (DCLP) although not adopted policy was approved for development management purposes in the City in 2005. Chapter 3 of the DCLP has as an objective ensuring that new development is compatible with nature conservation and biodiversity. Policy NE6 requires development proposals, where relevant, to show that no demonstrable harm to protected species or habitats would arise. Policy NE7 requires development proposals to retain important natural habitats and, where possible, include measures to enhance or supplement these and to promote public awareness and enjoyment of them.
9. A draft Local Plan was submitted for examination in May last year, and its emerging policies may attract some weight in the determination of proposals. A number of policies relate to 'green infrastructure'. Policy GI1 seeks to maintain the integrity of 'green corridors'; GI2 seeks to maintain and enhance (amongst other things) the waterway and the banks of the River Foss for their biodiversity and nature conservation value; and GI3 seeks to protect and enhance local green infrastructure networks.
10. A previous application for the same development, also made retrospectively, was refused and subsequently dismissed on appeal. It appears this was because insufficient ecological survey information had been provided to enable the previous Inspector to assess the impact of the development on protected species. A survey has now been provided, which also relates to the 3 adjacent properties at 3, 4 & 5 Hawthorne Mews, although it seems commissioned by the occupiers of Nos 2, 3 & 4.

11. I understand that further appeals by all 3 occupiers (i.e. of Nos 2, 3 & 4) are presently in progress. My considerations in this appeal are limited to this appeal site. Although I note the appellant's suggestion of moving the rear garden fence further away from the river, I am considering the proposal as it is, which is to say the development as it has been carried out.
12. The survey deals with the sites as a whole rather than discretely, and thus not all of its findings are applicable to the present appeal site. By way of example, it discusses wildflower grassland having been seeded at Nos 3 & 4, and refers to the presently unmanaged nature of No 5. The report is based on a desk study of designated wildlife sites and records of protected or notable species, and an extended Phase 1 Habitat Survey and Bat Roost Suitability Assessment carried out in October 2018.
13. The key findings of the survey report include that prior to the recent changes by the occupiers of the adjoining properties, the 'Site' (consisting of the land adjacent to Nos 2 – 5) comprised habitats of low ecological value in a state of natural succession. The management regime now active on the Site may have a beneficial impact through the maintenance of areas of wildflower grassland and the provision of new trees, shrubs and hedgerows. Habitat immediately adjacent to the River Foss remains undisturbed. Current management of the Site is considered to have little impact on commuting otters, and no signs of water vole were noted.
14. Otters and water voles are species protected by the Wildlife and Countryside Act 1981 (as amended) and the likelihood of their presence is a material consideration in planning decisions. The appellant refers to water voles having been recorded in the vicinity in 1999, but that no signs of them were noted in a 2012 survey (which has not been provided, but is said by the appellant to have been an otter survey). The Council notes that the ecological survey was carried out in October 2018, a time of year that is not within the optimum survey season for water voles, and further that vegetation had caused views of the river bank to be restricted.
15. The October 2018 survey noted that a clear view could be seen of the north bank of the river and there was no evidence of water voles in the form of burrows. The author reports that timber piling and short mown vegetation are potential barriers to water vole becoming establishing in this area. The report also notes the presence of a water vole predator having been recorded in 2002, which may have affected the subsequent presence of water voles.
16. It is reported that no evidence of water vole was noted during the walkover survey, and the author considers that the riparian habitat present on either side of the River Foss is sub-optimal for this species, and so water voles are considered unlikely to be present on this stretch of the river. Owing to the restricted views of the river bank and the timing of the survey, however, I am unable to have sufficient confidence in this analysis to be satisfied that the presence of protected species in the vicinity of the site can safely be excluded.
17. Otters were in evidence in the vicinity, however, with a spraint around 100m west of the appeal site. A public footpath lies opposite the appeal site which, as the appellants contend, may discourage otters from holting in the area but, as the Council says, otters are clearly active on this stretch of the river. The survey author suggests that otters are commuting through the area.

18. Whilst the development in its present form may mean that harm to otters or their habitat is unlikely, the survey report's finding that the change of use of the appeal site is highly unlikely to impact on the local otter population appears to be dependent upon the particular management regime presently in force and particularly the absence of artificial lighting.
19. Therefore, because of the uncertainties arising from the timing of the walkover survey, the restricted views encountered and the reliance on existing management measures, I cannot be satisfied that protected species or their habitats would not be harmed as a result of the appeal proposals. Consequently I consider that the appeal proposals would not contribute to enhancing the natural environment, as required by the Framework, and would also be contrary to DCLP policy NE6 and to the green infrastructure policies of the emerging Local Plan.

### **Other matters**

20. As the Council points out, granting permission for a change of use of land to residential garden land can carry no guarantee that the management measures presently in force will remain. I concur with the Council that it would be unreasonable, if the use as garden land were permitted, to seek to then control it in some of the ways suggested in the ecological survey report, for example the requirement to allow the grass to grow to a certain length on certain parts of the appeal site, or to avoid the use of artificial lighting. Whilst mindful of the appellant's positive intentions, to impose conditions of this nature would be difficult to enforce against future occupiers, and would substantially remove the benefit of the permission that would be granted and so would not fairly relate to the permission.
21. Again I note the suggestion of the appellants that the site boundary could be moved southwards to overcome concerns, but this would need to be the subject of a different application. I have also considered the reference to permitted development rights to erect a fence, which may exist where a fence provides a means of enclosure. However, without the use being permitted, the appellant has not suggested any reason why the fence would nevertheless be retained, or what it would enclose. Given the requirement of Schedule 9 of the Wildlife and Countryside Act 1981, I do not consider that the change in land use has any beneficial impact in respect of Himalayan Balsam, as the obligations in that Act apply to landowners irrespective of the use to which the land is being put.
22. The appellant considers that the Council have not been helpful by not advising on the issue of conservation or protected species. However, the conduct of the Council is not a matter for my determination in this appeal.

### **Conclusion**

23. For the above reasons I am unable to conclude that the appeal proposal would not harm protected species or their habitats. There are no material considerations that have been raised in the appeal that would outweigh this potential harm, and so the appeal is dismissed.

*Laura Renaudon*

INSPECTOR