



Appeal Decision

Site visit made on 13 September 2019

by Jamie Reed DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 October 2019

Appeal Ref: APP/C2741/W/19/3226504

3 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 Andrew Blackburn against the decision of City of York Council.
 - The application Ref 18/02829/FUL, dated 10 December 2018, was refused by notice dated 7 February 2019.
 - The development proposed is the extension of garden curtilage onto land at the rear.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A lengthy description is used on the application form to describe the development, which is retrospective in nature. I have therefore used the description on the Council's decision notice which describes the development in a more clear and concise manner.
3. In reaching their decision the Council has referred to Policies GI1, GI2 and GI3 of the emerging City of York Local Plan – Publication Draft (2018) (Emerging Plan). Whilst the Emerging Plan has been submitted for examination, it has not yet been formally adopted. As such, I have had regard to these policies but have only given them limited weight in my consideration of the appeal, as prescribed by Paragraph 48 of the National Planning Policy Framework (the Framework).

Background

4. The application which is the subject of this appeal has been submitted following the Council's refusal of a previously submitted planning application¹ that was subsequently dismissed at appeal². In this previous appeal, which also included adjoining plots at No's 2³ and 4⁴ Hawthorne Mews, the Inspector found that the development would preserve the Strensall Village Conservation Area and would not have a harmful effect on the setting of adjacent listed buildings and structures. I have paid special regard to the applicable statutory duties in respect of these heritage assets, as well as Chapter 16 of the Framework. I share the view that no heritage assets would lose any significance as a result of the development.

¹ Planning application Ref 17/01848/FUL

² Appeal Ref APP/C2741/W/17/3192253

³ Appeal Ref APP/C2741/W/17/3192020

⁴ Appeal Ref APP/C2741/W/17/3192125

Main Issue

5. The main issue in the appeal is the effect of the development on local biodiversity.

Reasons

6. The appeal relates to a rectangular shaped plot of land that adjoins the bottom of the rear garden of 3 Hawthorne Mews, which is part of a small development of houses that backs onto the River Foss. Until recently, this plot of land, along with ones of a similar size either side, formed a long, continuous strip of land that ran along the southern bank of the River Foss. This strip of land has now been purchased by the appellant and his neighbours and sub-divided to form a number of separate plots of land that adjoin the end of the rear gardens of these properties.
7. The appeal site has been enclosed by planting, wire netting and post and rail fencing, the intention being to form an extension to the property's rear garden. At the time of my visit, the plot largely featured a close mown lawn, apart from a short strip about 2 – 3 m in width at the bottom of the plot, closest to the river. This had been left uncut and was more natural in appearance. Beyond the rear fence lay a further narrow strip of natural vegetation which then banks down steeply towards the river. The enclosure of the land in this manner acts as a barrier to free movement and will be likely to have affected the extent of land along the riverbank that is accessible to wildlife.
8. In the previous appeals, the Inspector concluded that it was not possible to ascertain with any certainty the likely effect that the development would have had upon the habitat provided by the appeal site. In their conclusion, the Inspector referred to Circular 06/2005, which explains it is essential that the presence or otherwise of a protected species and the extent that they may be affected by a proposal must be established before the grant of planning permission. Such a report should effectively demonstrate whether the proposal would have an adverse effect on any protected species and, if so, whether these effects could be overcome by suitable mitigation.
9. A report⁵ to this effect is before me. However, this explains that the survey works took place in October 2018, which is outside of the optimum survey season for water voles and as a result, their presence would be more difficult to detect. Whilst I am mindful that it has been asserted that the conditions were still acceptable for surveying at the time, and that only 5% of the site was inaccessible, this is still outside of the optimum survey season and as such, the results cannot be taken as being truly reflective of there being no water voles in this area. The report also importantly notes that an otter spraint was confirmed about 100 m away from the appeal site. This confirms that the river was being used by otters at the time of the survey, which are territorial animals with large home ranges. Consequently, I cannot be certain that there are no protected species in the area.
10. The appellant has suggested that the footpath on the opposite bank of the river in front of the 'Tannery' development would be likely to deter otters from the area and that their proposal cannot pose any more of a threat to wildlife. Even if this may be the case, this does not overcome the fact that otter activity is

⁵ Preliminary Ecological Appraisal Report R-3758-01, November 2018

nonetheless evident, as set out in the ecology report. Indeed, as suggested by the appellant, the same conditions could in fact arise as a direct result of the changes that have been made to the appeal site. As such, I cannot be satisfied that the protected species or their habitats have not been already been harmed as a result of the development.

11. Furthermore, I am also mindful that the domestic activities that would occur on the appeal site, such as the presence of dogs / people would also be potentially harmful to wildlife utilising the limited space that remains. Other harmful knock-on effects could also occur, including the tipping of garden waste, which has happened previously.
12. The appellant considers the development has included measures that enhance and preserve the semi natural greenspace along the River Foss, such as removing an amount of building materials that had been stored on the site. He is also happy to introduce further measures, including actively managing the site and carrying out the recommendations of the report⁵ amongst other things.
13. Whilst these are acknowledged, this does not alter the fact that there is now a far smaller strip of land that runs along the side of the river for wildlife to use, than there was before. The very nature of its reduced size alone means that even though other biodiversity improvements could arise, whatever previous conditions that were present have already been irretrievably changed.
14. I am also mindful of the concerns raised by the Council that if permission were granted for the land to be used as a garden, there would be no guarantee that the appellant's management measures would remain. I share this view that it would be unreasonable to expect a domestic garden to be managed in the ways proposed in perpetuity and whilst I have acknowledged the appellant's positive intentions, such a regime would be difficult and unreasonable to impose upon future occupants. Whilst it is very clear that the appellant is keen to resolve the matter, I cannot be satisfied that protected species or their habitats would not be harmed by the appeal proposals.
15. Accordingly, I conclude that insufficient evidence has been provided to enable me to categorically determine that the protected species or their habitats would not be harmed by the appeal proposals. Consequently, the appeal proposals would not be in accordance with the provisions of Circular 06/2005 or Paragraph 175 of the Framework. These require proposals to prevent significant harm from occurring to biodiversity and where this cannot be avoided, then adequate mitigation or compensation measures are to be put in place. The appeal proposals would also not accord with Policies GI1, GI2 and GI3 of the Emerging Plan. These when read together, seek to protect biodiversity, green infrastructure networks and the natural environment.

Other Matters

16. The appellant has suggested that he could erect a fence around his land using permitted development rights. However, whether or not something requires planning permission is not a matter for me to determine in this appeal, which is made under s78 of the Town and Country Planning Act 1990.

17. Whilst I note the frustrations the appellant has experienced with the Council to date in dealing with this matter. This is not a matter that has had any bearing on the decision I have reached in this appeal.

Conclusion

18. For the reasons set out above, the appeal is dismissed.

Jamie Reed

INSPECTOR