
Appeal Decision

Site visit made on 18 November 2019

by Gary Deane BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th December 2019

Appeal Ref: APP/A2335/W/19/3234919

**Land adjacent to Westbourne Road, Sunny Hill, Westbourne Road,
Lancaster LA1 5LJ**

- 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 David Howard against the decision of Lancaster City Council.
 - The application Ref 18/01605/FUL, dated 8 December 2018, was refused by notice dated 11 February 2019.
 - The development proposed is the erection of a three-storey building comprised of 6 two-bed apartments (C3) with associated parking, landscaping and creation of a pedestrian access.
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Decision

1. The appeal is dismissed.

Procedural and preliminary matters

2. The appellant has requested that the appeal be determined on the basis of revised plans¹, which are supported by an Appeal Heritage Statement, dated August 2019, and an Arboricultural Impact Statement prepared by Jon Oliver Arboriculture (AIA). The AIA includes, amongst other things, an updated survey of existing trees, a constraints plan, tree protection measures and a new planting scheme. This additional information seeks to resolve the Council's objections in its reason for refusal.
3. Compared to the proposal before the Council when it determined the application, the revised plans show a loss of more existing trees within the site and a different landscape scheme is proposed. The Council also states that the finished floor levels of the new building and the external courtyard have been raised by 600mm in relation to the site and the rear boundary wall.
4. The *Procedural Guide: Planning Appeals - England* advises that the appeal process should not be used to evolve a scheme. It adds that what is considered at appeal should essentially be what was before the local planning authority, and on which interested people's views were sought. In this case, the development sought has clearly changed. The Council and others have, however, had the opportunity to consider and comment on the revised plans and supporting details, to which I have had regard. In those circumstances, I do not consider that anyone would be prejudiced if I were to take the revised plans and the accompanying information including the AIA into account.

¹ Drawing numbers P 001 Version K1 – P 013 Version K1 (inclusive)

5. The site has a lengthy planning history, which includes an outline planning permission² for a detached dwelling on the site that was granted in 2010 and approval³ on appeal in the same year to remove some protected trees⁴. In 2018, 2 schemes for a similar form of development on the site to the proposal before me were both dismissed at appeal⁵. While I have taken these decisions into account, along with all of the submitted evidence, I have assessed the proposal on its own merits.

Main issues

6. The main issues are:

- whether the proposed development would preserve or enhance the character or appearance of the Cannon Hill Conservation Area (CA); and
- whether the proposal would provide satisfactory living conditions for future occupiers with particular regard to visual impact and light.

Reasons

Character and appearance

7. The site consists of an area of sloping land that includes trees and a derelict garage with access from Westbourne Road. It falls within the CA, which is mainly residential in character and contains buildings with spacious and well-planted gardens. The CA Appraisal refers to the area as a good example of a low-density residential suburb. It adds that the landscape value of the CA is high with mature trees and shrubs important to the area and in giving it a wooded character. From my observations, I agree with that assessment.
8. According to the appellant, the footprint of the new building and the area for access and vehicle parking, as a proportion of the plot size, would compare favourably with other nearby properties on Westbourne Road and Sunny Hill. While interested parties have queried that finding, I consider that the proposed site coverage with built form and hard surfaces would not be overly intense among the generally spacious and often leafy plots nearby. On that basis, the proposal would not constitute overdevelopment of the site. However, the main determining factor in this appeal is the effect of the proposal on the character and appearance of the CA. That assessment takes into account other factors including the effect on trees.

Existing Trees

9. Trees within and just beyond the site are protected by Tree Preservation Orders (TPOs), the most recent of which was issued in March 2018 and covered 4 groups containing a total of 14 individual trees. TPOs offer a mechanism for providing legal protection to trees of significant amenity value, particularly where they are considered to be under threat. Other trees are also protected from indiscriminate felling given their location within the CA.

² Ref 10/00731/OUT dated 27 October 2011

³ Ref APP/TPO/A2335/911 dated 16 February 2010

⁴ Ref APP/TPO/A2335/911 dated 16 February 2010

⁵ Refs APP/A2335/W/18/3211282 and APP/A2335/W/18/3206765

10. Some trees form a cluster around the derelict garage, which are evident from Westbourne Road and the access that serves 1 and 2 Sunny Hill. When in leaf the interconnecting canopies of these trees would visually accentuate this group. Several other trees within and just beyond the site stand tall and are also visible from public vantage points. Collectively, these trees form a notable area of natural woodland that despite its overgrown and unkempt appearance positively contributes to the visual amenity and character of the local area. As such, the site has an important function within the CA because the trees within and beyond it help to define its sylvan character and appearance.
11. Given the potential effect of the proposal on trees, the appellant has sought specialist advice that includes 3 arboricultural impact assessments, all of which have been carried out to the appropriate British Standard. The AIA identifies no specimens of exceptional value in Category A and neither did the detailed reports prepared by BHA Trees Limited and ACS Consulting beforehand. While the detailed findings of these 3 assessments differ to some extent, a common thread between them is that the existing trees within the site are mainly self-seeded, of low value and in a poor condition that will worsen if left unmanaged.
12. With regard to the appeal scheme, all but 2 of the 19 individual trees identified in the AIA would be removed to make way for the new 3-storey residential building and its associated parking and access road. The retained trees are denoted T14 and T18 in the AIA. An off site group (denoted G1) is also to be retained. The AIA grades all the trees to be removed, as no higher than Category C, which is low quality. Under the original plans that were refused planning permission fewer trees would be removed with 4 trees retained albeit 2 sycamore trees to be kept were also highlighted for possible removal in the longer term.
13. The existing trees are unlikely to be survivors of the formal garden that was previously in place and so their intrinsic historical value is limited. I recognise that each of the trees to be removed is identified in the AIA as being of limited merit. Furthermore, their sporadic locations contrast with landscaped gardens of properties in the local area, which appear to be more formally managed. Nevertheless, these existing trees collectively have a moderate to high amenity value and make an important and positive contribution to the landscape and “wooded character” of the CA, which is locally distinctive. This contribution can be experienced and appreciated particularly from Westbourne Road in the vicinity of the site and from the access to Nos 1 and 2.
14. The AIA warns that the condition of the existing trees will deteriorate given the strong competition for light and nutrients, the constraints on root growth posed by the derelict garage and effect of further ivy spread. Even so, the tree schedule in the AIA indicates that the majority of the existing trees have a life expectancy of more than 20 years and a condition that is regarded as ‘fair’ or ‘good’. Of the 19 identified trees, only 1 specimen is considered in the AIA to be in poor condition (denoted T17). These findings indicate that most of the existing trees are likely to survive for some time with ongoing potential to significantly and positively contribute to visual amenity.
15. Policy DM29 of the Local Plan for Lancaster District 2011-2031 Development Management DPD (DPD) supports the protection of trees that positively contribute, either as individual specimens or as part of a wider group, to the

visual amenity and/or environmental value of the location. For the reasons given, the proposal is at odds with this element of DPD Policy DM29.

New Planting

16. The appeal scheme includes 16 new trees, laurel hedgerows totaling some 45 metres in length and a planter to the rear and side of the new building. From my inspection of the revised plans, there would be limited space around the new building and its car parking area and access road for any additional meaningful planting.
17. The new planting would exceed the requirements of a previous Inspector⁶ to introduce 3 standard oak trees and 3 standard holly trees in place of 6 trees to be removed. It would however, fall short of the ratio that at least 3 new trees should be planted for every mature tree removed, which is set out in the Council's Tree Policy. DPD Policy DM29 supports this approach. While some flexibility should be applied in applying this minimum 3:1 ratio to reflect local circumstances, the proposal would clearly conflict with the Council's Tree Policy and DPD Policy DM29. While the appellant considers that only a small number of the existing trees can be defined as mature, that finding sits uneasily with the appellant's own tree surveys that accompanied the application and appeal schemes, which describe the age of the majority of trees on site in this way.
18. The appellant considers that the quality of tree stock is poor and that it would be greatly improved with enhanced landscape value if the appeal scheme were to come forward. I acknowledge that the 4 extra heavy standards planted along the frontage of the site to Westbourne Road would have an immediate greening effect. A further 12 standard trees would also be planted within the site including yew, cherry, rowan and holly. Together, these trees and other planting would, therefore, go some way to mitigate the significant loss of greenery that would result from the removal of trees, as proposed. Over time, the trees would grow with the finished building appearing as a large building set in landscaped grounds, which is a feature of some leafy plots elsewhere in the CA. However, the new trees would be younger than those to be replaced and in my view would not offer the same collective visual amenity value. By diminishing the wooded character of the CA, I consider that the proposal would have a deleterious effect on the character and appearance of this designated heritage asset, which would fail to be preserved.
19. The CA Appraisal draws attention to the presence of heavy vegetation and the associated drawbacks in that it can obscure views of properties from the road so that their architecture cannot be fully appreciated and can blur the distinction between private and public space. In this case, the existing trees restrict views of Nos 1 and 2 from Westbourne Road, which would be more pronounced when in leaf, as the appellant's photographs show. By opening up the access road with gaps between the new trees along the site's highway frontage the proposal would improve the visibility of Nos 1 and 2 from Westbourne Road, to some extent. However, these existing properties are set back some distance from this highway and the new planting would extend along the site's boundary. Consequently, the overall improvement to the local streetscape and the legibility of existing buildings would be limited.

⁶ Appeal Ref APP/TPO/A2335/911 dated 16 February 2010

20. The appellant places some reliance on the principles established by the outline permission for a detached dwelling on the site in 2010, which involved the loss of some trees and included a modest new planting scheme. The Council says that that permission has now lapsed and from the information provided it differs to the proposal before me in scale, nature and location to the extent that few direct parallels can be drawn between them. A TPO has also been issued in the interim covering a significant number of trees on the site. Therefore, I attach limited weight to this consideration in support of the appeal.
21. The appellant notes that a previous appeal decision⁷ allowed the removal of some trees on site primarily due to poor site conditions, while the Inspector in that case was not able to take a decision on others due to the poor drafting of a previous TPO. However, unlike the proposal before me, that appeal decision involved the removal of 6 trees on site. While the appellant considers that decision to remain extant, there is no definitive evidence before me that the TPO issued in 2018 does not afford protection to a significant number of trees. The effect of removing these trees would be significant. It would have an unduly harmful effect upon the sylvan character and appearance of the CA.
22. According to the Council, there would be a potential risk to the new trees as a result of pressure to fell or inappropriately prune them because of their impact on the reasonable enjoyment of the proposed property by future occupiers. From the revised plans, some new trees would be close to the new pedestrian entrance and the walkway around the side of the new building as well as the refuse and recycling area. Pressure to prune these may result given the potential nuisance from leaf fall with the demand for remedial work likely to increase as the trees grow. Nevertheless, there is no firm evidence that this nuisance would arise or even if it did that the health, longevity and value of the new trees would be unduly diminished as a result.

Conclusion on the first main issue

23. The proposal would not amount to overdevelopment of the site. It would however, result in significant harm to the character and appearance of the CA. As such, it is contrary to DPD Policies DM29, DM31 and DM35. Combined, these policies seek to ensure that proposals preserve or enhance the character and appearance of conservation areas; protect trees that add to the amenity or environmental value of the location; and add to the surrounding landscape and townscape.
24. It is also at odds with the National Planning Policy Framework (the Framework) insofar as it aims to safeguard heritage assets and with the statutory duty. This duty requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA, as required by section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which I have done.

Public benefits

25. The harm resulting from the proposal on the significance of the CA as a heritage asset would be less than substantial. In those circumstances, the Framework requires that the harm should be weighed against the public benefits of the proposal. In this instance, the development sought would add

⁷ Ref APP/TPO/A2335/911 dated 16 February 2010

to the supply and choice of housing in an accessible location. According to the appellant, it would bring into use a neglected parcel of land; make efficient use of the site; improve natural surveillance, facilitate easy commuting and provide a broader demographic profile to the local area. I attach moderate weight to these public benefits.

26. When considering the impact of a proposal on the significance of a designated heritage asset, such as a conservation area, the Framework advises that great weight should be given to the asset's conservation. Having done so, I find that the public benefits do not outweigh the identified harm.

Living conditions

27. At the rear, the main view from the bedrooms of the new ground floor flats would be of the substantial boundary wall with trees in the grounds of The Knoll beyond. When seen from these windows, the proposed boundary wall would appear significant in height and length especially taking into account the notable difference in ground levels. Nevertheless, a reasonable gap would separate the new wall from these windows and the upward angle of view would be largely of the greenery beyond, as would the view from the bedroom windows of the flats above. While the new wall and existing trees would be evident, these would not overly dominate outlook nor would their presence be so imposing as to feel oppressive to future occupiers. Given the orientation of the proposed flats and the separation distance to the proposed wall and trees, sufficient natural light would penetrate into the rooms served by the rear windows of the new building to avoid them feeling gloomy or uninviting.
28. At the front of the new building, the removal of the existing Holly (denoted T4 in the AIA) and Sycamore trees (denoted T8 and T9 in the AIA), as proposed in the appeal scheme, would avoid an obstruction to the outlook from some of the windows of the new flats facing the new car park area. It would also obviate potential problems with shading in the rooms served by these windows.
29. On the second main issue, I conclude that the proposal would provide satisfactory living conditions for future occupiers. Accordingly, it complies with DPD Policy DM35 and the Framework insofar as they aim to ensure a high standard of residential amenity. My favourable finding on this matter does not outweigh the harm that I have identified in relation to the first main issue.

Planning balance

30. The proposal would add to the supply and choice of housing in an accessible location. It would make an efficient use of land. There would also be economic benefits from the sale of materials during the construction phase and from spending by future occupiers. The new planting provides an opportunity to widen species diversity and improve foraging for birds and pollinators. These considerations all weigh in support of the proposal. On the other hand, the Framework states that developments should respond to local character; protect and enhance the local environment; add to the overall qualities of the area; and safeguard if not enhance the significance of heritage assets. The proposal would not comply these important policies.
31. When assessed against the policies in the Framework taken as a whole, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal. Therefore, the proposed

development does not benefit from the presumption in favour of sustainable development. Consequently, the Framework does not indicate a decision other than in accordance with the development plan.

Other matters

32. Interested parties raise several additional objections to the proposal including surface water run off, vehicle parking, traffic congestion, highway safety, the need for more flats, wildlife, access for people with disabilities, light and privacy. These are all important matters and I have taken into account all of the evidence before me. However, given my findings in relation to the first main issue, these are not matters on which my decision has turned.

Conclusion

33. For the reasons given, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR