
Appeal Decision

Site visit made on 4 February 2020

by C Coyne BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd April 2020

Appeal Ref: APP/C2741/W/19/3240282

'Festiniog', 40 Horseman Lane, Copmanthorpe, York YO23 3UE

- 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 Jaga Properties Ltd against the decision of City of York Council.
 - The application Ref 19/01200/FUL, dated 3 June 2019, was refused by notice dated 24 September 2019.
 - The development proposed is new 2 bedroom single storey dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant has stated that the Council Landscape Architect's comments in relation to the original application (dated 7 August 2019) do not take into account comments made by the appellant in response to them (dated 23 August 2019) and the fact that slight revisions were made to the proposal to reduce its footprint, plant an additional hedge and reposition drainage pipes/services and the soakaway. However, based on the evidence before me I am satisfied that the Council's Landscape Architect took these revisions and the appellant's comments into account as stated in their email dated 20 September 2019.
3. When on my site visit, I observed that the proposed boundary fence and hedgerow between the appeal site and the rest of the rear garden to no. 40 Horseman Lane had already been installed. Notwithstanding this being in place, I have considered the appeal based on the plans submitted to and considered by the Council, which form the basis of the scheme that is before me. This is in the interests of impartiality and fairness in accordance with the principles of natural justice.
4. York City Council does not at this moment in time have a formally adopted statutory development plan. However, the overall aims of Policies GP1, GP4a, GP10, GP15a, H4a and NE1 of the York Development Control Local Plan (Approved April 2005) (DCLP) are to ensure that residential amenity, the natural environment, landscape and local character are protected which are consistent with the overall aims of the *National Planning Policy Framework* (the Framework). Nonetheless, and given the status of the DCLP, I afford it and its policies limited weight as a material planning consideration. Similarly, I have also afforded limited weight to emerging policies DP3, D1, D2, G14, ENV2 and ENV5 of the York Local Plan Publication Draft February 2018 (PDLP) something which both parties appear to agree upon.

Main Issues

5. The main issues are:

- the effect of the proposed development on the character and appearance of the area, including its effect on protected trees; and
- the effect of the proposed development on the living conditions of its future occupiers having particular regard to the availability of light in relation to the position of protected trees.

Reasons

Character and Appearance

6. The appeal site is situated within the rear garden of a two-storey semi-detached dwelling. The rear garden contains several trees (the majority of which are mature) that are protected as are several trees close to the shared boundaries which can be seen from Horseman Lane. The surrounding area is predominately residential comprising a mixture of detached and semi-detached two-storey dwellings and bungalows many of which have similar large back gardens also containing mature trees visible from Horseman Lane. Some of the larger trees are also visible from Horseman Avenue. The size of the plots and large rear gardens containing mature trees together form part of an orderly and regular pattern of development which contributes to a mature landscaped suburban setting and the overall leafy character of the area.
7. Two mature protected trees (a Birch - T5; and Scots Pine - T6) lying within the boundary of the appeal site and one located within the neighbouring garden to the east (a Beech - T12, close to the shared boundary) have been classified as being the most desirable for retention (category A). Indeed, on my site visit I observed that both of these trees are in prominent locations within the site particularly tree T5 which is centrally positioned, which given its size and large spread of branches means that it makes a substantial and positive contribution to the visual amenity of the area. Additionally, whilst tree T6 is situated to the edge of the site close to the shared boundary, its size and height also means that it too makes a positive contribution to the visual amenity of the area. Furthermore, tree T12 is larger than both of these with a more substantial spread of branches which given its height and size, in combination with the other high mature trees and other protected trees in its vicinity make an even greater positive contribution to the visual amenity of the area.
8. I acknowledge that the proposal's infringements on the RPAs of protected trees T6 and T2 would be within the limits set by BS5837. However, the AIA states that the RPAs shown are a 'minimum' and as a result it would be reasonable to think that the proposal could potentially infringe on the RPAs of protected trees T6 and T12 by a factor greater than that stated in the AIA despite the proposed implementation of limited Construction Exclusion Zones. Likewise, the construction of the dwelling could potentially infringe on the RPA of protected tree T5. Similarly, any additional potential adverse impact on the RPA of protected tree T5 resulting from the compaction of the soil by vehicles using the proposed driveway would also likely be greater given that the proposed mitigation measures (air-excavation and incorporation of organic matter to improve the tree's root zone and having a Tree Precautionary Zone) would also be less effective. Furthermore, for comparable reasons the potential adverse impact that the construction of the proposed drainage system on the RPAs of these protected trees indicated on the AIA would also likely be greater despite the use of a soakaway and horizontal drilling techniques.

9. Additionally, given the number of other protected trees within and surrounding the site (the minimum RPAs of which are also indicated on the AIA) it is also likely that the proposal could potentially have a greater impact on their root systems as well. Consequently, I consider that the proposal would cause unacceptable harm to protected trees thereby having an adverse visual impact on the appeal site and wider area. Moreover, given the size of the site, the scale of the proposal, its location, and 'backland' nature, I also consider it to be a cramped form of development that would be out of keeping with the existing pattern of development in the area.
10. I therefore conclude that the proposed development would cause material harm to protected trees both within and adjacent to the appeal site resulting in an adverse visual impact and that it would be at odds with the existing pattern of development of the area thereby harming its overall character and appearance. As such it would conflict with Policies GP4a, GP10, GP15a, H4a and NE1 of the DCLP and emerging draft Policies DP3, D1, D2, G14 and ENV5 of the York Publication Draft Local Plan 2018 (PDLP) which aim to reflect, conserve and enhance local character, encourage sustainable drainage, and protect trees and landscape features, amongst other considerations. It would also conflict with paragraph 130 of the Framework which promotes good design.

Living conditions of future occupiers

11. Given the size of the site, the scale of the proposal, its orientation and its proximity to the mature protected trees (and the extent of their canopies) I consider that it would likely have an adverse impact on the living conditions of its future occupiers with particular regard to overshadowing. Furthermore, whilst the Council would not be compelled to grant consent for any future works to the protected trees, it would nonetheless be difficult for them to refuse to do so given the likelihood that future occupiers would undertake such works to reduce this adverse impact and potential harm to their living conditions.
12. As a result, I find that the proposal would cause unacceptable harm to the protected trees and also to the living conditions of future occupiers with particular regard to loss of light. Therefore, I conclude that it would conflict with Policy GP1 of the DCLP and Policy ENV2 of the PDLP which aim to enhance the amenity of the public and prevent adverse environmental impacts on residential amenity amongst other considerations. It would also conflict with paragraph 127 (f) of the Framework which aims to ensure the creation of places with a high standard of amenity for existing and future users.

Other Matters

13. In support of the proposal the appellant has stated that the proposal would provide a benefit in that it would deliver an additional dwelling to the local housing stock in a sustainable location. However, given the small scale of the proposal any potential benefit would be limited. Therefore, it would not be of sufficient weight to outweigh my conclusions on the main issues.

Conclusion

14. For the reasons set out above I conclude that the appeal should be dismissed.

C Coyne

INSPECTOR