



Appeal Decision

Site visit made on 11 February 2020

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2020

Appeal Ref: APP/Y2736/W/19/3241398

Derwent Mount, 6 York Road, Malton YO17 6AX

- 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 B Abbott against the decision of Ryedale District Council.
 - The application Ref 18/01035/FUL, dated 25 September 2018, was refused by notice dated 25 June 2019.
 - The development proposed is described as a 'proposed dwelling and garage'.
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Decision

1. The appeal is allowed and planning permission is granted for a two bedroom dwelling at Derwent Mount, 6 York Road, Malton YO17 6AX in accordance with the terms of the application, Ref 18/01035/FUL, dated 25 September 2018, subject to the conditions set out in the schedule attached to this decision.

Procedural Matter

2. The description of development used in the banner heading is taken from the planning application form. However, during the application the proposal was revised several times so that, among other things, it no longer included a garage. The Council considered the application as it had been amended, and I have determined the appeal on the same basis. I have therefore used the revised description from the Council's decision notice and the appeal form so that my formal decision above more accurately describes the development.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area, having particular regard to its location within the Malton Conservation Area and to the proposed loss of a Norwegian Acer tree.

Reasons

4. The appeal site sits within the Malton Conservation Area (the Conservation Area). I therefore have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the National Planning Policy Framework (the Framework) states that they should be conserved in a manner appropriate to their significance (paragraph 184). It goes on to advise that any harm or loss requires clear and convincing justification (paragraph 194) and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 196).

5. The Conservation Area covers much of the centre of Malton. The part of the Area including the appeal site includes many large Victorian detached and semi-detached villas on the western edge of the town centre, although there are also a number of newer dwellings nearby. Houses are mostly built either of stone or brick with grey slate or red tiled roofs. The generally spacious and mature gardens make an important contribution to the pleasant character and verdant appearance of the area.
6. No 6 York Road, known as Derwent Mount, is a large semi-detached house part of which is in use as a veterinary office. It sits in a large L-shaped plot, and the appeal site forms part of its side and rear garden. The proposal is to erect a bungalow with an L-shaped footprint towards the northern corner of the site. Access to the proposed dwelling would be from York Road via the driveway at the side of Derwent Mount which, while within the 'red line' boundary of the appeal site, would also continue to serve the existing property.
7. The proposed development would be a single storey, and its relatively modest scale and restrained detailing would give it a form and appearance akin to a converted outbuilding such as a stable or garage block. It would therefore be a building of a size and style which would not be unexpected or incongruous when found in the space to the rear of a large Victorian house, and its position behind the neighbouring properties means that it would not be prominent in the street scene. The information before me indicates that it would be built of stone with a slate roof and, although precise materials specifications have not been provided, a condition could be used to ensure that the materials complement the surrounding buildings and the wider area.
8. The garden of Derwent Mount is of a size and shape such that dividing it into two plots would still provide both the existing house and the proposed dwelling with an adequate amount of useful outdoor space. Given the particular circumstances of the proposal, I consider that the proposed dwelling could be accommodated without it having a cramped appearance, and the spacious character of this part of the Conservation Area would be retained.
9. The appeal site contains several mature trees which contribute to the pleasant character of the area, and a small number would be lost as a result of the proposed development. The reason for refusal referred specifically to the loss of a Norwegian Acer tree, which the Council indicates is readily visible from York Road. At the time of my site visit however, while I acknowledge that this was a snapshot at a time when the tree was not in leaf, this tree did not appear prominent when viewed from outside the appeal site, and it was primarily seen among and against the other mature trees around the site. The Council estimates that the Acer would have a further 60 to 80 years of life remaining during which time it would continue to add to the quality of the Conservation Area. However, in my view its size and position are such that it makes only a modest contribution to the verdant character of the Area. Its loss could be mitigated by the use of a condition requiring a landscaping and planting scheme to be agreed and implemented. A condition could also protect the contribution the existing boundary hedges make to the site's green character.
10. Taking the above points together, I conclude that the proposal would not be harmful to the character and appearance of the area, and the character of the Malton Conservation Area would be preserved. The proposal therefore complies with the requirements of Policies SP2, SP12, SP16 and SP20 of the 2013

Ryedale Plan Local Plan Strategy (the RPLPS), which together seek to ensure that development proposals preserve or enhance the character, appearance and setting of heritage assets. For the same reasons it complies with the requirements of the Framework relating to conserving and enhancing the historic environment, in particular paragraphs 192 and 193. As I do not find that the proposal would cause harm to the heritage asset, it is not necessary to apply the public benefit test set out in paragraph 196 of the Framework.

Other Matters

11. The proposed dwelling would be set approximately 2.6m from the north western site boundary, and around 4m from the north eastern site boundary. All windows and doors would face into the site, with the exception of a pair of bedroom windows on the north western elevation. These two windows would look out onto the boundary fence and the rear of a double garage beyond, and so would not give rise to any overlooking which would be harmful to the privacy of neighbouring occupiers. Because of their height, the roof angle and their positions on the inward-facing roof slopes, the proposed roof lights would also not give rise to any harmful overlooking of neighbouring occupiers.
12. Interested parties expressed concern about the possible effects of the proposed dwelling on neighbours' living conditions. I visited a neighbouring property at the time of my site visit, and given the separation distances between the proposed dwelling and the windows of neighbouring houses, as well as the limited height of the proposed bungalow, I am satisfied that there would be no harmful overshadowing or restrictions on outlook arising from the development which would be detrimental to neighbours' living conditions. However, given the proximity of the proposed dwelling to the garden boundary, and the fact that the houses to the north east are at a slightly higher elevation, I consider that a restriction on permitted development rights which would prevent roof lights or other alterations being made to the roof without planning permission is necessary to protect the living conditions both of neighbouring residents and the future occupiers of the proposed dwelling.
13. Several interested parties also referred to surface water run-off causing occasional flooding of the driveway of St Andrew's Lodge, which lies to the north of the appeal site. However, no substantive evidence has been provided to demonstrate that this existing problem would be exacerbated by the appeal proposal, and I note also that the Council was satisfied with the proposed drainage arrangements for the development.
14. The appeal site is described as a 'backland site', and it does not fall into any of the categories specified within Policy SP2 of the RPLPS, which identifies sources of new homes which will contribute to the district's housing supply. In particular, as a residential garden in a built-up area it does not meet the definition of previously developed land set out in the Framework, nor does its location behind the surrounding houses fit the RPLPS definition of infill development, in that it is not an open site in an otherwise continually built-up frontage. However, it is clear from the supporting text that Policy SP2 is not intended to be read as being exhaustive or exclusive, and that not all housing is expected to come from the planned supply of sites identified in the policy. Both Council and appellant have referred to examples nearby and elsewhere within Malton where small-scale residential development has been approved on backland sites. While I do not know the precise details of these cases, this

indicates that such proposals are not treated as conflicting with the development plan 'in principle', and are being determined on their own merits. I have found that this proposal accords with the development plan as a whole.

Conditions

15. I have considered the planning conditions suggested by the Council in the light of paragraph 55 of the Framework and the advice in the Planning Policy Guidance. In addition to the standard time limit condition (1) in the interests of certainty it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans (2).
16. A condition requiring the approval of arrangements for contractor parking and the storage of construction materials is necessary to ensure that the development can be carried out without detriment to highway safety or living conditions of neighbouring occupiers (3). In order to ensure that the appearance of the dwelling is satisfactory conditions requiring approval of finished floor levels (4), materials (5), and details of the design of doors and windows (8) are necessary. Conditions requiring the approval, implementation and maintenance of a landscaping and planting scheme (6) and the retention of the existing boundary hedges (7) are necessary to preserve the green character and appearance of the area, although I have used a different wording to that suggested for condition 7 so that it is not a pre-commencement condition. A condition requiring the provision and retention of parking spaces in accordance with the approved plans is necessary to ensure that the dwelling has adequate off-street parking (9).
17. In order to preserve the spacious character of the Conservation Area, restrictions are necessary to prevent extensions and other development including porches, ancillary buildings, and external hard surfaces which could otherwise be carried out without specific planning permission. As I have described above, I also consider that it is necessary to control alterations to the roof in order to ensure that the living conditions of neighbouring occupiers are protected. Restrictions on these permitted development rights are clearly justified by the circumstances of the case, and I have therefore imposed a condition accordingly (10). I am mindful of the advice in paragraph 53 of the Framework that 'planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so'. Enlargements consisting of additions or extensions to the roof are not permitted development on 'Article 2(3) land' which includes Conservation Areas, so no restriction is necessary. The Council has also suggested that restrictions should be imposed on chimneys and microwave antennas. However, in my view no clear justification has been made for such a restriction, and I have therefore not incorporated it into the condition.

Conclusion

18. For the reasons given above the appeal is allowed.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Drawing No. PD227-01-F – Proposed ground floor plan Revision F
Drawing No. PD227-02-F – Proposed elevations Revision F
Drawing No. PD227-04-G – Location plan and site block plan Revision G
Drawing No. BA6149AIA – Impact Assessment and Tree Protection Plan
- 3) No site compound shall be established and there shall be no excavation or other groundworks except for investigative works, or the depositing of material on the site in connection with the construction of the dwelling hereby approved, until proposals have been submitted to and approved in writing by the local planning authority for the provision of:
 - (i) on-site parking capable of accommodating all staff and sub-contractors' vehicles clear of the public highway; and
 - (ii) an on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times construction works are in operation. No vehicles associated with on-site construction works shall be parked on the public highway or outside the application site.
- 4) No excavations shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 5) No development above slab level shall take place until details and samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved details.
- 6) Before the end of the first planting season (November to March inclusive) following the commencement of development, a scheme showing details of landscaping and planting shall be submitted to and approved in writing by the local planning authority. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed where appropriate to the development. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs including existing items to be retained. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) The existing hedges along the southern and eastern boundaries of the site shall be retained. In the event of any of the existing hedges being

removed without the prior consent of the Local Planning Authority or dying within 5 years of the completion of the development hereby approved, they shall be replaced to a specification that shall first have been approved in writing by the Local Planning Authority. Any new hedgerow plants shall be maintained for a period of 5 years from being planted and replaced if they die or become diseased by plants of similar size and species unless the Local Planning Authority gives written consent to any variation.

- 8) Prior to their installation, the details of the design of all windows and doors including means of opening, depth of reveals and external finishes shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 9) The dwelling hereby permitted shall not be occupied until parking spaces have been laid out within the site in accordance with drawing no. PD227-04 F. The parking spaces shall thereafter be maintained clear of any obstruction and kept available for their intended purpose at all times.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development of the types described in the following Classes of Schedule 2 shall be undertaken without the express consent in writing of the local planning authority other than those expressly authorised by this permission: Part 1, Class A, C, D, E, F.

--End of schedule of conditions--