



Appeal Decision

Site visit made on 8 July 2020

by S A Schinaia MSc EngD FGS

an Inspector appointed by the Secretary of State

Decision date: 18th August 2020

Appeal Ref: APP/U2615/W/20/3249331

Land to the south of Koolunga House, High Road, Gorleston-on-Sea, Great Yarmouth NR31 0PB

- 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 Kelvin Lovett, Herringfleet Developments Ltd, against the decision of Great Yarmouth Borough Council.
 - The application Ref 06/19/0113/F, dated 13 February 2019, was refused by notice dated 25 October 2019.
 - The development proposed is the construction of one single storey detached dwelling and creation of access to High Road.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) whether the proposed development would preserve the setting of the adjacent listed building and would preserve or enhance the character and appearance of the Gorleston Conservation Area, and (iii) the effect of the development on the green space, including trees and biodiversity.

Reasons

3. The appeal site is within the curtilage of the Koolunga House, a Grade II listed building in Gorleston-on-Sea, and used to be part of the house gardens until it was subdivided from that property in 2017. The appeal site is a substantial plot of densely vegetated land with numerous mature trees. Both properties are within the Gorleston Conservation Area.
4. Following subdivision, the appeal site lost access to public land through the main entrance of Koolunga House and currently does not have an alternative entrance access to public land and the highway, from which is separated by the presence of the wall. Due to the presence of dense vegetation and the limited possibility for machinery to access the site, the land has the appearance of unkempt woodland, and is difficult to walk within due to the presence of fallen tree branches and trunks and pervasive shrubs on the ground.
5. The trees within the appeal site are protected by reason of being in a conservation area. According to paragraph 116 of the Planning Practice Guidance (PPG), trees in a conservation area that are not protected by a Preservation Order are protected by the provisions in section 211 of the Town and Country Planning Act 1990, that provides the planning authority with an

opportunity to consider whether to make a Preservation Order on trees that might be affected by planning permission.

6. Several trees within the appeal are protected by Tree Preservation Orders (TPO): the 1972 TPO was granted to a variety of trees when the property was part of the listed building property; the 2019 TPO was granted during the planning application process of the appeal proposal to a group of 24 elms and two sycamore in the southeast corner of the appeal site to protect them from removal.

Listed building and Conservation Area

7. The proposed development involves the construction of a bungalow, a garage and the creation of a driveway and vehicular access to High Road. In order to gain access to High Road, the proposal includes the demolition of a section of the current wall containing both the appeal site and Koolunga House on their eastern boundaries along High Road. The construction of the dwelling and the creation of the access would also require the removal of 23 of the 60 individual trees and a group currently present in the appeal site, including several trees with TPO.
8. In paragraph 184, the National Planning Policy Framework (the Framework) (2019) advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. According to paragraph 193 of the Framework, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation, irrespective of whether the potential harm amounts to substantial, total loss, or less than substantial.
9. Formerly known as Hill House and Wishbone House, Koolunga House is a substantial two-storey Georgian house built in 1826 by a naval officer. The house was initially listed in 1953 and reassessed in 1998. The significance of the Koolunga House is in its distinctive C19 architecture and in the topography and siting of its wooded and landscaped surroundings that define prominently this historic part of the Gorleston Conservation Area. The house and the garden contained by the wall on the eastern boundary were designed to face the River Yare to the east.
10. Such relationship with the river is still evident today by the presence of a garden sloping from High Road on the cliff facing the river. The garden on the cliff, formerly part of the grounds of the house, was offered by a previous owner to the Great Yarmouth Corporation in memory of her husband, on the condition that it would be kept as a public garden, the 'Williamson's Lookout'. The relationship of the house with the river has been maintained so far as part of the historic legacy of the house. The appeal site, the wall and the gardens are all part of the setting of the listed building, although in different ownerships.
11. The Gorleston Conservation Area has several extensions. The significance of this part of the Conservation Area is in part defined by the combination of heritage buildings with both public and private gardens, from the different architectural stages and social contexts that contributed to the evolution of Gorleston. As described earlier, Koolunga House and its surroundings are a prominent feature of this part of the Conservation Area, due to the local topography and the purposely designed siting of the heritage asset.

12. Several representations claim that the wall is a listed heritage asset. However, there was no evidence of such designation within in the description of the listing designation of the house. Nevertheless, its architectural features define its historical value as an important heritage asset. Furthermore, the wall defined the boundary of the original grounds of the Koolunga House, probably since early stages of its construction, and it has been speculated that its height possibly reflected the high social status of the owners. Therefore, the wall should be considered as an important historical structure within the setting of a designated building.
13. Furthermore, according to paragraphs 063 and 064 of the Planning Practice Guidance (PPG), buildings or structures which are in a conservation area are subject to stricter controls over demolition than when buildings are outside of a conservation area. The partial removal of a wall of 1 m or above next to a highway in a conservation area requires a 'planning permission for relevant demolition in a conservation area'.
14. The appellant maintains that the wall is a structure of visual exclusion at odds with the rest of the street. That would be the case if the wall was modern. The wall is a tall structure, characterised by weathered brickwork with a distinctive finish on its top and a gradual decreasing height from south towards the house access. Although further brickwork at later stage has attempted to repair it in several points and not always in keeping with its original design, the wall maintains a distinctive character in separating the secluded private space from public view.
15. In the case of the appeal site, the wall and the dense and verdant canopies of the trees contribute to the appearance of a historic walled garden, which creates a strong sense of enclosure not only inside the garden but also outside, particularly when approaching the area along High Road from the south. As such, the trees and the wall contribute positively to the street scene along with the terraced houses of different ages on both sides of High Road.
16. According to paragraph 018 of the PPG, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. The paragraph also states that it is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed; the harm may arise from works to the asset or from development within its setting.
17. The proposed demolition of about 5 m on a total length of over 40 m, although apparently relatively small, would still affect the character and appearance of the wall, especially because it would impact its tallest south-eastern section of and break the character of historic walled garden as well as the enclosure appearance in the immediate surroundings. It is difficult to establish whether the height of the wall was a choice to state the high social status of the owner of Koolunga House, simply create a private space or was a design solution to all of those reasons.
18. However, since the partial loss of the wall would affect a characteristic feature that was designed to enclose the private garden and might have reflected social convention at the time, the proposal would amount to considerable harm to the heritage asset and to the setting of Koolunga House. Furthermore, works on such an old wall may result in more extensive damages and the appellant

has not provided any reassurance in terms of construction mitigations to prevent that to happen.

19. The appellant contends that the removal of a small portion of the wall far from the house would not devalue the historic importance of the remaining wall or alter the perception of grandeur of the Koolunga House and that other developments, such as the subdivision of the house into several flats, the flats' car park, a bus stop and a bus stop waiting bay, would have had the most damaging impact on the setting of the listed building. It is not possible to speculate now whether those developments could have been avoided and what their public benefits were at the time of their planning consent. Furthermore, those developments would not provide a reason to allow further damaging effects on the heritage assets.
20. The appellant also contends that the removal of the wall would be necessary to gain access and allow a viable long-term use that would ensure ongoing management of the woodland. However, no alternative options for access to the site have been investigated for access for the management of the woodland.
21. The proposed buildings would be erected within the original grounds and therefore within the setting of the Koolunga House, originally designed to be kept as large gardens to give prominence and grand status to the house in the surrounding area. As such, the proposal would detract from the significance of the heritage asset.
22. The south elevation of the house was designed with large French windows to allow views over the gardens, including other features such as a pond that have been lost over time. I acknowledge that the appeal site has grown into a land with different character and purpose from the original gardens. However, the original grounds of the house had already different land uses and features, and the current woodland character of the appeal site still contributes significantly as a green space to both the setting of the listed building and the character and appearance of the Conservation Area.
23. Although the appeal site is not publicly accessible and mostly hidden from public view, the tree canopies are experienced from within the grounds of Koolunga House as well as from several public areas, included High Road, High Street and the eastern public gardens. The canopies also appear as backdrop behind the properties along Addison Road to the north and west of the house grounds and Graham Road to the south.
24. Several trees to be removed are elms on the south-eastern area of the appeal site. According to the statement of the arboricultural consultant in the objection letter to the 2019 TPO, those elms are of poor quality and are not prominent in the street scene as they grow behind a high wall. However, the crowns of the elms are highly visible as the trees are much taller than the wall and dominate the street scene from several public points, as mentioned earlier. As such, the removal of a high portion of the total number of trees would harm the setting of the heritage assets and the character and appearance of the Conservation Area.
25. I acknowledge that the proposed bungalow and the garage have been designed to be in keeping with the character and appearance of similar buildings in the surroundings, such as those further north along High Road. In that regard the

detailed design of the proposed buildings would preserve the appearance of the Conservation Area. However, this would not overcome the harm that I have found.

26. For the above reasons, I conclude that the proposal would result in less than substantial harm to the significance of the designated heritage assets, because the loss of a section of the wall, the construction of the proposed buildings and the removal of numerous trees would all harm the setting of the listed building. As discussed above, I also conclude that the proposed development, by virtue of the wall demolition and the tree removal, would fail to enhance or preserve the character and appearance of the Conservation Area. As such, the proposed dwelling would not represent the most viable and optimal use of the asset, as suggested by the appellant, due to the harm identified above.
27. Therefore, I conclude that the proposal would be contrary to Policies CS9, CS10 and CS11(m) of the Core Strategy 2013-2030 of the Great Yarmouth Local Plan (2015) (CS), all aiming for well-designed developments that respond to the distinctive natural, built and historic character of the Council's areas and safeguard local heritage assets as well as green spaces and the natural environment. The proposal would also conflict with the policies of the Framework aiming to conserve and enhance the historic environment; and with paragraph 70 of the Framework, which aims to resist inappropriate development of residential gardens, for example where development would cause harm to the local area.
28. According to paragraph 196 of the Framework, where a proposed development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
29. The proposed development would result in very modest social and economic benefits, such as the delivery of a single dwelling to the housing supply and the provision of temporary building contracts. Modest social and environmental benefits would result from the proposal access as it would allow for use of the site, although for private use, and the management of the woodland. However, from the evidence before me it cannot be ascertained that the proposed access would be the only viable option. Therefore, the public benefits of the proposal would be modest and would not outweigh the considerable harm to the heritage assets identified above. As such, I conclude that the proposed development would not accord with national policy.

Green space

30. Policy CS11(m) of the CS requires the identification and assessment of local green spaces to help protect open spaces that are demonstrably special to a local community and hold a particular local significance. The policy is consistent with paragraph 99 of the Framework that allows communities for the designation of spaces deemed important as Local Green Spaces through local and neighbourhood plans, given the criteria set in paragraph 100 of the Framework are met. These criteria require the green space to be in close proximity to the community; to be special to a local community and to hold a particular local significance, for example because of its beauty, historic significance, tranquillity or richness of its wildlife, as in the case of the appeal site; and to be local in character. Local Green Spaces have development policies consistent with those for Green Belts.

31. Although the appeal site would meet the criteria established for Local Green Spaces designation, there is no plan currently in Gorleston for such designation; therefore, the potential for designation has little weight for decision making. However, Policy CS11(m) does not specify formal designation and the character of this open green space of special interest to the community is valuable.
32. Elm trees are rare in the UK due to the Dutch elm disease. The appellant contends that the 23 elm trees to be removed were assessed as being of low value and/or poor quality by the Arboricultural Impact Assessment and that removal would allow for better management of remaining trees. The appellant also argues that the actual net tree loss in the appeal site would amount to 18 as 5 elms would be replaced by trees of different species. I acknowledge that there is disagreement between the professional opinions of the Council and the appellant regarding the value of the elms.
33. Given the rarity of elm trees, the difficulty to overcome the disease, and the possibility that they might be disease-resistant, I am persuaded that the preservation order has its merit to protect them as valuable elements in terms of biodiversity, notwithstanding their contribution to the character of the Conservation Area. Furthermore, the construction works would require the clearing of almost 40% of the total number of trees: although the site would need a certain degree of management, the proposal would result in a harmful domestication and urban infringement on this unique green space.
34. The application did not include an assessment of fauna and there is very little mention of mitigation measures to improve biodiversity, apart those included in the Arboricultural Impact Assessment regarding the flora and the generic recommendations regarding nesting birds and protected species, such as bats and reptiles. A survey was conducted with regard to the suitability of the trees as a bat roost at later stage and provided some insights for nesting birds. If no other harm had been identified, comprehensive assessments of the wildlife flora and fauna would be needed with proposed mitigation measures for biodiversity.
35. For the reasons set above, I conclude that the proposal, because of the removal of protected trees and development in an important open green space, would result in harmful impacts on biodiversity with regard to the trees and, therefore, would be contrary to Policy CS11 of the CS, which in paragraph h) also requires all new development to appropriately contribute to the creation of biodiversity. The proposal would also be contrary to paragraph 170(d) of the Framework that require planning decisions to contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Other Matters

36. Local residents highlighted that the vegetation would not provide enough screening so that the proposal would affect the living conditions of neighbours. Having seen the site, I am satisfied that the distance between dwellings and the proposed tree retention would both avoid loss of privacy and overlooking. I am also satisfied that the proposed highway solutions were part of common agreement between the main parties. However, this does not outweigh the harm I have found.

Planning balance

37. The main parties agree that the Council is unable to demonstrate a five year housing land supply and, as a result, paragraph 11 of the Framework should be engaged. Paragraph 11 states that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as whole or specific policies in the Framework, including policies relating to heritage assets, indicate that development should be restricted.
38. I have already found that the Framework policy relating to heritage assets in paragraph 196 indicates that development should be restricted, and therefore the presumption in favour of sustainable development cannot be applied to this appeal as suggested by the appellant. Furthermore, although the proposal would provide new housing within the Borough, I have found it would not be compliant with the development plan.

Conclusion

39. For the above reasons, I conclude that the appeal should be dismissed.

S A Schinaia

INSPECTOR