



Appeal Decision

Site visit made on 14 July 2020

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2020

Appeal Ref: APP/C2741/W/19/3239424

2 St Aubyns Place, York YO24 1EQ

- 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 The Handa Family against the decision of City of York Council.
 - The application Ref: 19/00557/FUL, dated 20 March 2019, was refused by notice dated 12 September 2019.
 - The development proposed is described as: Replacement of existing dwelling with new 4 bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of existing dwelling with new 4 bedroom dwelling at 2 St Aubyns Place, York YO24 1EQ in accordance with the terms of the application, Ref: 19/00557/FUL, dated 20 March 2019, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by The Handa Family against City of York Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - The effect of the proposed development on the setting of the adjacent Elm Bank Hotel which is a Grade II* Listed Building, and the settings of the Central Historic Core Conservation Area and the Tadcaster Road Conservation Area; and
 - Whether the existing dwelling should be retained and reused having regard to the policies in the National Planning Policy Framework.

Reasons

The effect of the proposed development on the setting of nearby heritage assets

4. The appeal site comprises of an extended bungalow type dwelling, dating from approximately the 1930's, and its associated garden, situated at the junction of St Aubyns Place and the A1036 (known at this point as Mount Vale). The appeal proposal involves the demolition of the existing dwelling and its replacement by a two storey dwelling of a contemporary design with a shallow pitched roof partly concealed behind a parapet.

5. The existing dwelling on the appeal site is not listed or identified by the Council as being locally listed. It is adjacent to the Grade II* Listed Elm Bank Hotel and also adjacent to, but beyond the boundaries of, both the York Central Historic Core and Tadcaster Road Conservation Areas. Due to its physical proximity, the appeal site is within the setting of these heritage assets.
6. The National Planning Policy Framework (the Framework) defines the setting of a heritage asset as the surroundings in which a heritage asset is experienced.

The effect on the setting of the Listed Building

7. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.
8. The Elm Bank Hotel is a substantial brick built property, dating from around 1870 and originally constructed as a house. Although only two storeys in height, it occupies an elevated location above the main road and this, combined with the tall floor to ceiling heights of each storey, results in it having a commanding presence on the main road. This is reinforced by the large, semi-circular, ground floor, bow window with a balcony above on the side elevation facing Mount Vale. The building is in an Italianate style with an impressive columned entrance porch on the principal elevation to Driffeld Terrace and a four storey tower to the rear elevation projecting above the roofline. The Council identify the distinctive buff brick work, horizontal string and eaves courses, wide bow window and tall linear tower as important architectural features.
9. An elevated terrace to the rear of the building overlooks the gardens of the houses in St Aubyn's Place and forms the boundary between the hotel and the dwellings. The supporting wall of the terrace and a number of undercroft elements are visible within the gardens of the neighbouring houses. Several, Twentieth Century, flat roofed, additions have been made to the side and rear of the building. The building is Listed Grade II*.
10. From the evidence in the Design and Access and Heritage Statement, the appeal site and the land now occupied by the dwellings on St Aubyn's Place previously formed part of the grounds of the house and this is evidenced on the ground by the survival of a number of stone staircases, now blocked off, that lead from the terrace of the hotel into the gardens of the adjacent houses. One such staircase is within the appeal site and would be retained in the appeal proposals.
11. The house was designed by a firm of local architects and subsequently remodelled to include an Art Nouveau interior, which is recognised as the only extensive example of such in York and one of the best in England. The significance of the building, in so far as it is relevant to this appeal, is that the building represents a substantial house, built for a clearly wealthy client and illustrates the architectural tastes and style of the time it was built, and the continuing influence of classical and European architecture on British residential buildings.

12. Whilst the appeal site is within the setting of the listed building and within an area that at one time formed part of its grounds, the original historic setting of the listed building has been substantially altered by the construction of the street now known as St Aubyn's Place. This earlier development has removed most of the previously extensive grounds associated with the building, leaving more recent residential curtilages hard up against the boundary. The dwelling on the appeal site was within the setting at time of listing, however, there is no evidence that would indicate that the present bungalow dwelling was considered an important part of the setting. Nor is there any evidence that would support the proposition raised by a third party that the layout of the St Aubyn's Place development, with a bungalow sited on the appeal site behind an area of open space, was a deliberate design decision to create a view to the listed building behind.
13. It is not in dispute that the proposed new dwelling would have a lower overall height than the existing dwelling. It would be located closer to the front boundary of the site, however, due to the lower height, the perceived view of the rear elevation of the listed building would not be noticeably altered. The front elevation of the new dwelling would be slightly longer than that of the existing house, which would slightly reduce the views past the new dwelling to the lower floor of the listed building. Nevertheless, this would only prevent views of a modern, flat roofed, rear addition to the building. Views to the four storey tower, which contributes substantially to the hotel's landmark qualities on one of the principal entrance routes into York, and to the upper floor the building would be unaltered.
14. As a result of the position of the current dwelling on the appeal site, the presence and position of trees within the grounds of the hotel, and the hotel itself being set back from, and above the level of, the highway, the contribution made by the curved ground floor bow window on the side elevation to the architectural composition of the building only becomes apparent once the appeal site is passed. This would not be altered by the appeal proposal.
15. Overall, the appeal proposal would not affect any of the elements identified by the Council as important features of the building and although the appeal proposal would change the appearance of the setting of the listed building, the effect on the setting would be a neutral one.

The effect on the adjacent conservation areas

16. The York Central Historic Core Conservation Area covers an extensive area that includes the historic city centre and original settlement. The Character Appraisal for the York Central Historic Core Conservation Area notes that the part of the conservation area closest to the appeal site, due to its relatively late development and distance from the city centre, has a distinctly more suburban character and appearance than other parts of the conservation area. It is comprised of largely Victorian and Edwardian buildings, with some more recent insertions into the older built fabric, and is generally residential in character.
17. Towards its southern end, along The Mount, the buildings are substantial and set back from edges of the tree lined main road and often elevated above it. The Elm Bank Hotel is located at the extreme edge of the conservation area, adjacent to the boundary, and is identified in the Character Appraisal as a landmark building due to its street presence and tower. The significance of the conservation area, so far as it relates to this appeal, is that it is illustrative of

- the Nineteenth Century expansion of York beyond the confines of the city walls and the local architectural styles of the time.
18. The Tadcaster Road Conservation Area is a largely linear area running along one of the principal historic routes into York and through the once separate settlement of Dringhouses. Buildings are primarily located on the west side of Tadcaster Road with the east side of the road being open space. This conservation area is also largely residential, with houses dating from the Seventeenth Century onwards. Its significance for the purposes of this appeal is in the evidence it provides of the linear form of the original village of Dringhouses and the Nineteenth Century development that would eventually lead to the coalescence of that settlement with the expanding city of York. The views across the open space towards the Terry's chocolate factory are also noted as important to the character of the area.
 19. The two adjacent conservation areas were designated in 1968 and 1975. The boundaries meet outside the appeal site. The appeal site was not included in the conservation area when the Central Historic Core Conservation Area was designated. From the maps I have been provided with and from what I saw when I visited the site, it is clear that when the Tadcaster Road Conservation Area was designated, a decision was made to exclude St Aubyn's Place and other areas of similar 1930's residential development from both conservation areas. This is particularly evident from the way the boundary has been drawn to omit properties of this age and type that front onto Tadcaster Road.
 20. Although the areas of grass verge at the junction of St Aubyn's Place and Mount Vale are included within the conservation area, the group of 1930's houses outside the boundary creates a distinct visual break, in a different architectural style and of a different scale, between the Elm Bank Hotel and the Victorian terraced houses to the south. These buildings are not unattractive, however, there is no substantive evidence before me that would indicate that they contribute to the understanding or appreciation of the significance of either conservation area. In this context the demolition of the present dwelling on the appeal site would have a neutral effect on the character, appearance and significance of the conservation areas.
 21. As a result of its contemporary design, and different massing to the existing bungalow, the proposed new dwelling would undoubtedly change the appearance of the appeal site. That said, change does not necessarily equate to harm. The Design and Access Statement sets out in some detail how the design of the proposed new dwelling was evolved and it is evident that the proportions and architectural detailing have been arrived at through a thorough analysis of the nearby dwellings which form the domestic scale context of the site. Whilst the proposed building would have a different form and massing to the existing house, the use of design cues from the surrounding residential properties and the use of a red facing brick similar to the properties on St Aubyn's Place would integrate it with the surroundings.
 22. The proposed built form of the new dwelling, integrating a canted façade, would also serve the same visual function as the existing bungalow of turning the corner between St Aubyn's Place and Mount Vale.
 23. I accept that the proposal would involve some remodelling of the landform of the appeal site to accommodate the design of the replacement dwelling and that the new dwelling would be closer to the front boundary of the site than the

present building. However, the new dwelling would still appear to be set back from the highway and in a slightly elevated position. As such it would maintain a similar presence in relation to the highway as the present building and other properties on Mount Vale and the Mount.

24. There are views into the conservation areas from St Aubyn's Place although, as a result of the configuration of the street and surrounding buildings, these are confined to linear views following the alignment of the street until the junction with Mount Vale is approached and the triangular grass verges open out the view to the main road. It would not be until this point that the proposed development would enter the line of sight. Although the new dwelling would be present in views from this position, the Council have not identified in what way these views are important to the understanding of the conservation areas or how this would be diminished by the presence of the proposed new dwelling. From what I saw during the site visit, the views from St Aubyn's Place do not focus on buildings of particular importance and oblique views of the proposed new building would not detract from the impression gained of the conservation areas when experienced from this position.
25. Taking the proposal as a whole, I conclude that the effect of the development on the setting of the conservation areas would be a neutral one.

Conclusion on heritage assets

26. Emerging Policy DP 3 of The City of York Local Plan - Publication Draft 2018 (the CYLP) expects, among other matters, that new development respect and enhance the historic character of York and to create locally distinctive development that relates well to the surrounding area and its historic character. The CYLP has yet to be adopted and is still in the process of being examined. As such, little weight can be given to the emerging policies within it. This notwithstanding, from the evidence before me and from what I saw when I visited the site, I do not find that the proposal would offend the relevant requirements of this policy.
27. The Framework seeks to ensure that new development is of a high standard of design that has regard to its context. It also expects great weight to be given to the conservation of heritage assets. The appeal proposal was supported by a comprehensive Design and Access Statement that clearly sets out the design evolution of the scheme, the steps taken to appraise the context of the proposed development, and how the design of the development takes that context into account.
28. Whilst the proposed new dwelling would have an external appearance that does not match other buildings in the area, it is nonetheless clear that it has been designed to incorporate the building proportions, architectural detailing and materials that are present in the surrounding area. From what I saw when I visited the site, and from the submitted drawings and other supporting information, there is nothing in the Council's evidence that would demonstrate that the design and architectural composition of the proposed new dwelling is intrinsically poor.
29. I therefore conclude that the proposed development would not cause harm to the setting of the adjacent Elm Bank Hotel which is a Grade II* Listed Building, and the settings of the Central Historic Core Conservation Area and the Tadcaster Road Conservation Area. It would not conflict with the relevant

requirements of emerging Policy DP3 of the CYLP or the relevant requirements of the Framework.

Whether the existing dwelling should be retained.

30. The Council accept that there is not a specific development plan policy that requires the appellant to demonstrate that the existing building cannot be reused rather than demolished. I have noted that Emerging Policy CC2 of the CYLP seeks to promote the use of sustainable design and construction. As set out above, due to the stage that the CYLP is at in the adoption process, little weight can be given to its draft policies at this time.
31. The Framework expects new development to be sustainable and sets out three overarching and interdependent objectives, economic, social, and environmental, to be pursued through the planning system. I have found that the proposed development would not have an adverse effect on the historic environment. Whilst resources, both in terms of energy and materials, will have been expended in the construction of the original dwelling, and the Framework seeks to minimise waste, it does not specifically prioritise the retention of existing dwellings that are not Listed or otherwise protected, nor does it require the conservation of energy or resources that are embedded in existing buildings. There is no evidence before me that would indicate that the retention of the existing dwelling on the site is a more effective use of the land than the proposed development.
32. There is also no evidence that would support the Council's contention that the modern design of the proposed new dwelling would fail to maximise the levels of sustainable construction expected by emerging Local Plan Policy CC2.
33. I therefore conclude that having regard to the National Planning Policy Framework, there is no policy requirement to give priority to retaining and re-using the existing dwelling, or to demonstrate that it cannot be retained and re-used.

Other matters

34. I have had regard to the points raised by the occupier of the neighbouring property at 4 St Aubyn's Place with regard to potential overlooking and loss of privacy. When I visited the site, I had the opportunity to view the appeal site from within the garden of this property. The proposed new dwelling would have windows at first floor level on the rear elevation that would look towards the garden of the property at number 4.
35. The relative positions of the proposed new dwelling and number 4 are such that these windows would not have line of sight to windows in the rear elevation of the neighbouring house. Only one of the proposed new windows would serve a habitable room with the other providing light to the stairwell in the proposed dwelling. This window to a habitable room would provide some potential opportunities for causal overlooking of the garden of the neighbouring property. However, this is not uncommon in a residential area and I saw that there are upper floor rear windows in the adjoining house at number 6 and also windows in the Elm Bank Hotel that present similar opportunities. I accept that there are presently no windows in the rear of the existing dwelling on the appeal site, nevertheless, the appeal proposal would not result in a degree of overlooking that is significantly different from the current situation.

36. I have also noted the representations that have been made by local residents in respect of the original planning application and the appeal. However, none of these points either individually or collectively lead me to a different conclusion on the main issues.

Conditions

37. I have had regard to the list of conditions that have been suggested by the Council. In order to provide certainty in respect of what has been granted planning permission, I have attached a condition that specifies the approved drawings. I have noted that the appellant has advised that the drawing numbers on several drawings, relating to site levels and sections, duplicate the drawing numbers used on drawings relating to the boundary treatments. I have not been provided with drawings showing the correct drawing numbers and I do not know whether the Council has been provided with drawings that have been renumbered. Consequently, in the list of approved drawings, I have cited both the drawing number, which has been taken from the drawings I have been provided with, and the drawing title, in order that the drawings with duplicate numbers can be differentiated.
38. The appeal site is located in an area that is recognised as being of archaeological importance, particularly in respect of the Roman period. It is therefore necessary to include a condition requiring an archaeological watching brief during the groundworks phase of the development to ensure appropriate investigation and recording of any archaeology uncovered.
39. Due to the appeal site being adjacent to sensitive heritage assets and in order to ensure that the development maintains the design quality set out in the supporting information it is necessary to attach conditions requiring details of the proposed materials and the detailed design of the proposed windows, doors and railings.
40. The submitted landscaping plan contains only limited information in respect of the proposed landscaping and planting of the site. In the interests of the appearance of the area, it is necessary to impose a condition requiring further details to be submitted for approval and subsequently implemented.
41. The appeal site is located adjacent to a busy main road. The Council has suggested that a condition is required to ensure that the building is constructed in a manner that provides suitable attenuation against noise from the road. I have not been provided with a copy of the noise assessment that is referred to. However, I have noted the comments of the Council's Environmental Protection Officer in respect of road traffic noise and which accept the findings of the noise assessment. From my observations at the site I am satisfied that this condition is necessary in order to ensure that the new dwelling provides a suitable internal noise climate for the future occupiers.
42. Having regard to the comments made by the Water Authority and the Council's Flood Risk Management Team, I am satisfied that it is necessary to impose conditions requiring details of foul and surface water drainage arrangements to be submitted for approval, and requiring that the approved scheme be implemented prior to the occupation of the dwelling.
43. Mount Vale is subject to waiting restrictions in the form of double yellow lines which extend around the junction onto St Aubyn's Place. St Aubyn's Place is

also subject to a permit controlled parking scheme. I saw when I visited the site that parked vehicles restricted the width of the carriageway and the presence of driveways reduced the available opportunities for on-street parking. Within this context, it is necessary to attach a condition requiring the proposed off-street parking arrangements for the new dwelling to be constructed and made available before the dwelling is occupied.

44. The appeal proposal involves the demolition of an existing garage and its replacement with a boundary wall between the appeal site and the neighbouring property at 4 St Aubyn's Place. In order to ensure that the privacy of the occupiers of the neighbouring property is preserved it is necessary to impose a condition requiring that the new boundary walls are erected prior to the new dwelling being occupied.
45. The Framework requires that new development should be designed to enable charging of plug-in and ultra-low emission vehicles. It is therefore necessary to include a condition requiring that provision is made for this.
46. The Council have suggested a condition is required in respect of unexpected ground contamination being encountered during the development. There is no substantive evidence that would suggest that the appeal site is likely to be contaminated and I have also noted that the Council's Public Protection Manager has not recommended that such a condition is required. I have therefore not included this condition.

Conclusion

47. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

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: 15036-EDA-XX-01-DR-A-1011-Existing L1 Plan; 15036-EDA-XX-02-DR-A-1012-Existing LR Plan; 15036-EDA-XX-GF-DR-A-1010-Existing L0 Plan; 15036-EDA-XX-XX-DR-A-1001-Existing Block Plan; 15036-EDA-XX-XX-DR-A-1020-Existing Elevation 1 (W); 15036-EDA-XX-XX-DR-A-1021-Existing Elevation 2 (S); 15036-EDA-XX-XX-DR-A-1022-Existing Elevation 3 (E); 15036-EDA-XX-XX-DR-A-1023-Existing Elevation 4 (N); 15036-EDA-XX-XX-DR-A-1024-Existing Elevation 1 (W); 15036-EDA-XX-XX-DR-A-1025-Existing Elevation 2 (S); 15036-EDA-XX-XX-DR-A-1026-Existing Elevation 3 (E); 15036-EDA-XX-XX-DR-A-1027-Existing Elevation 4 (N); 15036-EDA-XX-XX-DR-A-1030-Existing Section (AA); 15036-EDA-XX-01-DR-A-2001-Proposed L1 Plan (1); 15036-EDA-XX-XX-DR-A-2023-Proposed Elevation 4 (N); 15036-EDA-XX-XX-DR-A-2024-Proposed Elevation 1 (W) (line drawing); 15036-EDA-XX-XX-DR-A-2025-Proposed Elevation 2 (S) (line drawing); 15036-EDA-XX-XX-DR-A-2026-Proposed Elevation 3 (E) (line drawing); 15036-EDA-XX-XX-DR-A-2027-Proposed Elevation 4 (N) (line drawing); 15036-EDA-XX-XX-DR-A-2020-Proposed Elevation 1 (W) (1); 15036-EDA-XX-02-DR-A-2002-Proposed LR Plan (1) ;15036-EDA-XX-GF-DR-A-2000-Proposed L0 Plan (1); 15036-EDA-XX-XX-DR-A-2021-Proposed Elevation 2 (S) (1). 15036-EDA-XX-XX-DR-A-1700-Boundary Treatment_ As Existing; 15036-EDA-XX-XX-DR-A-1701-Boundary Treatment_ As Existing; 15036-EDA-XX-XX-DR-A-2700-Boundary Treatment_ As Proposed; 15036-EDA-XX-XX-DR-A-2701-Boundary Treatment_ As Proposed; 15036-EDA-XX-XX-DR-A-2702-Boundary Treatment_ As Proposed; 15036-EDA-XX-GF-DR-A-2090-Landscape Plan_ As Proposed (1); 15036-EDA-XX-XX-DR-A-2030-Proposed Section (AA); 15036-EDA-XX-XX-DR-A-2700-Level Sections_ As Existing and Proposed; 15036-EDA-XX-XX-DR-A-2701-Level Sections_ As Existing and Proposed; 15036-EDA-XX-XX-DR-A-2702-Level Sections_ As Existing and Proposed; and 15036-EDA-XX-XX-DR-A-2703-Level Sections_ As Existing and Proposed.
- 3) No groundwork shall commence on site until the applicant has secured the implementation of a programme of archaeological work (a watching brief on all ground works by an approved archaeological unit) in accordance with a specification approved by the Local Planning Authority. This programme and the archaeological unit shall be approved in writing by the Local Planning Authority before any below ground work commences (but can be agreed following demolition of above ground elements of the bungalow). Thereafter the works shall be implemented in accordance with these approved details.
- 4) Large scale details of the items listed below shall be submitted to and approved in writing by the Local Planning Authority prior to erection on site. Thereafter, they shall be fabricated and installed in accordance with these approved details.
 - Proposed Windows at a scale of 1:20
 - Proposed Doors at a scale of 1:20
 - Proposed Railings at a scale of 1:10

- 5) The materials shall be as generally specified in the Design, Access and Heritage Assessment - additional information dated 08.07.2019 and as on the approved drawings. Prior to any above ground construction, samples of the external materials to be used shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out using the approved materials. Samples shall include, but not be limited to: bricks, external roofing materials, aluminium framed windows, external doors and hard landscaping.
- 6) The development shall not be occupied until there has been submitted to, and approved in writing by, the Local Planning Authority a detailed landscaping scheme which shall illustrate the number, species, height and position of trees and shrubs, retaining walls and levels. The details shall be in accordance with the approved landscape plan. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five 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 a similar size and species, unless alternatives are agreed in writing by the Local Planning Authority.
- 7) The building envelope of the dwelling shall be constructed to achieve internal noise levels of 30 dB LAeq 1 hour (23:00 - 07:00) in bedrooms, and 35 dB LAeq 1 hour (07:00 - 23:00) in all other habitable rooms. These noise levels shall be achieved following the implementation of the mitigation work, including the use of the glazing specifications as outlined in the noise report by Blue Sky Acoustics reference: 189/V01/2019, and with the windows shut and other means of acoustic ventilation provided. The detailed scheme shall be approved in writing by the local planning authority and fully implemented before first occupation of the development.
- 8) The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles and cycles have been constructed and laid out in accordance with the approved plans and, thereafter, such areas shall be retained solely for such purposes.
- 9) Prior to first occupation of the development, the site boundaries shall have been erected in complete accordance with the approved plans.
- 10) Prior to, or following demolition of the bungalow, but before any below ground work commences, details of the proposed means of foul and surface water drainage, including details of the separation of foul and surface water drainage, any balancing works, and any off site works, shall be submitted to for approval in writing by the Local Planning Authority.
- 11) Unless otherwise approved in writing by the local planning authority, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no buildings shall be occupied or brought into use prior to completion of the approved foul drainage works.
- 12) The development hereby approved shall incorporate sufficient capacity within the electricity distribution board for one dedicated radial AC single phase connection to allow the future addition of an Electric Vehicle Recharge Point (minimum 32A) within the garage space (or parking area) if desired.