



Appeal Decision

Site Visit made on 21 September 2021

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 1st November 2021

Appeal Ref: APP/P2365/W/21/3274406

Land Rear of The Rookery, 98 Cottage Lane, Ormskirk, Lancashire L39 3NJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Lee Collins of Lulworth Developments Ltd against the decision of West Lancashire Borough Council.
 - The application Ref 2020/0524/OUT, dated 15 June 2020, was refused by notice dated 6 January 2021.
 - The development proposed is described as: detached 2-storey dwelling with integrated garage. Proposals to be in the form scale, height and materials of the adjacent mews development. Access from the courtyard serving the existing mews development.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application relates to an outline proposal with details of access, layout and scale applied for and matters of appearance and landscaping reserved. Plans have been submitted which show the external elevations, but I have treated these as illustrative only insofar as they relate to the reserved matters.
3. The appeal is supported by a Planning Sunlight, Daylight and Overshadowing Report dated March 2021. The Council and interested parties have commented on it and I have taken account of it in my determination of the appeal.
4. Amended plans have been submitted with the appeal to illustrate different parking arrangements, intended to integrate the scheme with the neighbouring Rookery Mews development. However, the appeal process should not be used to evolve the scheme and it is important that what is considered is essentially what was considered and consulted upon by the Council. I cannot be certain that if I accepted the amended plans, no party would be prejudiced by my so doing. Consequently, I have determined the appeal on the basis of the plans that were considered by the Council.

Main Issues

5. The main issues are:
 - i) The effect of the proposal on the character and appearance of the area bearing in mind the special attention that should be paid to the desirability of preserving the setting of the nearby Grade II listed building;
 - ii) Whether the proposal would provide adequate living conditions for future occupiers, with particular regard to daylight and sunlight; and

- iii) The effect of the proposal on the natural environment, with particular regard to protected trees.

Reasons

Setting of the listed building

6. The Rookery Grade II listed building is a substantial detached dwelling probably dating from the early 19th century. It is a double-depth double-fronted property with a full height 2 storey canted bay, a sandstone ashlar porch and a shallow rear extension. It is in a Tudor gothic style, finished in pebble dashed render with a hipped slate roof and 2 chimney stacks with tall clustered octagonal chimneys. It has casement windows with arched lights and quoined surrounds, rusticated quoins, sill bands, string-course and parapet.
7. The Rookery was originally set in large grounds bounded by Cottage Lane, the rear boundaries of properties on Redgate and the side boundaries of Nos 104 and 92 Cottage Lane. Both the listed building and its grounds have been altered since it was first listed. Nevertheless, the significance of the heritage asset derives in part from its external architectural details and appearance and its extensive historic landscape grounds.
8. The proposal would not directly affect the listed building. However, it would be within the historic garden of The Rookery and it would affect the setting of the listed building. The revised National Planning Policy Framework (the Framework) defines the setting of a heritage asset as the surroundings in which that asset is experienced. Accordingly, elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate the significance or may be neutral.
9. The appeal site is in separate ownership to the listed building and it has been fenced off from The Rookery. The dividing close-boarded boundary makes a negative contribution to the setting of the historic listed building. However, the fence is not conspicuous or readily visible above the roadside boundary fence or side boundary wall of The Rookery. In views from the surrounding area including the public realm, the appeal site with its mature tree canopies appears contiguous with and it is part of the landscaped grounds of the listed building. By virtue of its visual and historic relationship with the building, the appeal site makes a positive contribution to the asset's significance.
10. The proposal would be a substantial detached 2 storey dwelling with an attached garage. Irrespective that it would be finished in brick and slate to match the Rookery Mews development, the proposal would introduce contemporary built development into the historic grounds and the setting of the heritage asset. Although well separated from the listed building, neither the relatively modest single storey garage building nor the timber boundary fence would screen the proposal or integrate it with The Rookery. Moreover, although it would be backland development, the dwelling would be visible and conspicuous from surrounding private and public locations, including Cottage Lane. It would be visually poorly-related to, and it would compete with and detract from, the heritage asset and its historic landscape setting.
11. Paragraph 189 of the Framework emphasizes that heritage assets are an irreplaceable resource and they should be conserved in a manner appropriate to their significance. In this regard, I have a duty under Section 66(1) of the

Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.

12. The scheme is in outline and detailed appearance would be a reserved matter. Irrespective, it would introduce a significant quantum of development, eroding the historic landscape grounds and enclosing the heritage asset. Taking into account the importance of the asset, I conclude that the proposal would not preserve the character or appearance including its setting, and hence the significance, of the designated heritage asset. I find the harm would be less than substantial but nevertheless of considerable importance and weight.
13. Paragraph 202 of the Framework states that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposals. The Planning Practice Guidance sets out that public benefits could be anything that delivers economic, social or environmental objectives as described in the Framework, and that they should be a benefit to the public at large and not just be a private benefit. In this case, the scheme would primarily deliver private benefits. It would make a minimal contribution to the delivery of housing and there would be minimal economic and social benefits associated with the construction and occupation of 1 dwelling.
14. Given the above, and in the absence of any defined significant public benefit, I conclude that on balance the proposal would fail to preserve the setting of the Grade II listed building. The proposal would fail to satisfy the requirements of the Act, the heritage protection policies in the Framework and it would conflict with Policy EN4 of the West Lancashire Local Plan 2012-2027 Development Plan Document Adopted October 2013 (the LP), which seeks to preserve and enhance heritage assets including listed buildings and their settings. The proposal would not be in accordance with the development plan.
15. I am aware that the former grounds of The Rookery have already been reduced in extent by recent residential development. The full details of that scheme are not before me. However, even if the proposal would be visually well-related to the mews courtyard development, the earlier development does not provide a justification for further development within the setting of the listed building.

Living conditions

16. The Council provided pre-application advice in 2019 (ref PRE/2019/0538/MIN) in respect of a detached dwelling to the rear of The Rookery. Among other things, it raised concerns about the likely adverse effects on future occupiers as a result of shading from the mature trees in and adjacent to the appeal site.
17. I visited the site on 21 September, on a dry and reasonably bright day, when the trees were fully in leaf. I saw that the appeal site is largely surrounded by mature trees with dense canopies. By virtue of its orientation, the proposal would receive sunlight over the roofs of the neighbouring mews development in the morning. However, it would relatively quickly become shaded, and it would stay that way for much of the day, due to the mature trees in the garden of The Rookery and along the side boundary of the appeal site.
18. On this basis, the dwelling, including its habitable room windows, and its garden would receive little direct sunlight and it would be in shade for much of

the day and through the year. The low light levels to internal and outdoor areas would not provide a high standard of living conditions and it would be detrimental to the health and well-being of future occupiers.

19. The Planning Sunlight, Daylight and Overshadowing Report seeks to demonstrate that overshadowing would be within BRE guidelines and therefore acceptable. In this regard, the shadow path analysis plans illustrate light and shade on 21 March and 21 September. However, it is not clear that the report takes into account all surrounding trees, most notably in the garden of The Rookery as shown in the Appendix 2 site photos. The BRE guidance is in any case apparently not intended to assess shading by trees which is not constant through the year. Furthermore, the plans appear to illustrate that the dwelling would cast disproportionately long shadows compared to buildings of a similar scale nearby, which may suggest inconsistencies in the assessment. Consequently, the evidence fails to demonstrate that the proposal would not be significantly overshadowed for much of the day and the year.
20. Therefore, the proposal would not provide an adequate standard of living conditions for future occupiers, with particular regard to daylight and sunlight either in the dwelling or its private outdoor space. It would conflict with the residential amenity aims of LP policy GN3 in that it would not create reasonable levels of amenity for future occupiers. It would conflict with the residential amenity aims of the Supplementary Planning Document Design Guide Adopted January 2008 (the SPD) in relation to unacceptable overshadowing. It would conflict with the Framework insofar as it would not promote health and well-being nor provide a high standard of amenity for future users.

The natural environment, including protected trees

21. Several of the trees in and around the appeal site are protected by a Tree Preservation Order (TPO No 90, 2004). The TPO includes the trees along the boundary with No 104, trees within the garden of The Rookery, and the tree (referred to as T2 in the arboricultural assessment) that would be felled to facilitate the proposal. The group along the boundary comprises trees of moderate quality and value and it forms a distinctive landscape feature. Tree T2 is a mature beech tree, of moderate quality and value and it makes a significant contribution to the tree population locally.
22. Although set back from the road, the mature TPO group that includes tree T2 is visible from locations in the surrounding area. The group appears as a conspicuous wooded area within the townscape, including when viewed in juxtaposition with the mature trees to the rear of nearby Redgate. The group interrupts and softens the hard built environment and it provides a visual connection and link to the tree canopies that characterise the wider townscape. Consequently, the tree population in this area, including the TPO trees, makes a strong positive contribution to sense of place and local distinctiveness.
23. Irrespective that the proposal could integrate with the nearby mews dwellings, the felling of tree T2 and the increased quantum of built development would erode and it would diminish the TPO group. I agree with the arboricultural assessment, in that there would be insufficient space around the new dwelling to accommodate adequate replacement tree planting. In the absence of compensatory planting, the proposal would result in significant and permanent harm to the TPO group and the wooded character and appearance of the area.

24. I have considered whether off-site mitigation tree planting could be addressed by the imposition of a planning condition. However, there is little before me to demonstrate that there would be any adequate off-site tree planting in the locality to compensate for the loss of the protected tree. Moreover, it has not been demonstrated that a condition would be the appropriate mechanism to secure tree planting on land elsewhere not within the control of the appellants. Therefore, this is not a matter that could be addressed by condition.
25. The retained neighbouring trees, including TPO trees, would overshadow the dwelling and its garden. There would be a significant management burden due to leaf fall, and future occupiers would be likely to consider superficial roots and overhanging branches and canopies to be hazardous. Consequently, the retained TPO trees would come under future pressure to either be significantly crown lifted, pruned or removed altogether.
26. Therefore, the proposal would harm the natural environment, with particular regard to protected trees. It would conflict with LP policy EN2 which requires, among other things, that the unavoidable loss of significant trees should be compensated by adequate replacement tree planting either on site or in the locality. It would conflict with the SPD in relation to protecting trees that have an amenity value. It would conflict with the Framework, including in relation to the important contribution that trees make to the character and quality of urban environments and to climate change mitigation and adaptation.

Other Considerations

27. The appeal site is in the Key Service Centre of Ormskirk with Aughton, which is a suitable location for new residential development. The location is accessible in relation to services and facilities and sustainable transport. However, compliance with policies in the development plan and the Framework in this and other respects does not outweigh the harm I have found.
28. The planning application was not refused on grounds relating to the living conditions of neighbouring residential occupiers. However, the neighbours are understandably concerned by the extent of overshadowing of their dwelling and garden as illustrated by the daylight assessment. However, as I am dismissing the appeal it is not necessary for me to consider this matter in detail.

Conclusion

29. The proposal would harm the designated heritage asset. It would not provide an adequate standard of living conditions for future occupiers. The loss of the protected tree, and the future pressure on retained trees, would harm the environment and the character and appearance of the area. There are no material considerations to outweigh that harm and the conflict with the development plan.
30. Therefore, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR