
Appeal Decision

Site visit made on 2 November 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29/11/2021

Appeal Ref: APP/C2741/C/21/3276996

Land known as St George's Hotel, 6 St George's Place, York YO24 1DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Simon Cowton against an enforcement notice issued by City of York Council.
- The enforcement notice was issued on 15 April 2021.
- The breach of planning control as alleged in the notice is, without planning permission, operational development comprising the erection of 8 greenhouses on the land with associated groundworks and service infrastructure.
- The requirements of the notice are (1) Remove the 8 greenhouses, the associated groundworks and service infrastructure from the land; and (2) Remove all material associated to the unauthorised development from the land and ensure that all material is disposed of lawfully.
- The period for compliance with the requirements is within 3 months after the date on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary matters

1. Policies D1 and D4 of the emerging City of York Local Plan, Publication Draft February 2018 (the emerging plan) are cited in the reasons for issuing the notice. They are consistent with the revised National Planning Policy Framework (the revised Framework) and there is no evidence that either is subject to significant unresolved objections. Accordingly, and while the emerging plan has yet to be found sound, these policies may be afforded limited weight.
2. The appeal is limited to the greenhouses and the associated groundworks and service infrastructure that comprise the alleged breach of planning control described in the notice. Other features, such as a pizza oven, may have been proposed, or removed before the notice was issued, but they do not form part of the deemed planning application (DPA).

The appeal on ground (a)

Main issues

3. The main issues are the effect of the greenhouses, the associated groundworks and service infrastructure on:

- The character and appearance of the area, including the Tadcaster Road Conservation Area (the CA).
- The living conditions of nearby residential occupiers.

Reasons

Character and appearance

4. The CA broadly follows the route of Tadcaster Road, with large villas in their own grounds and mature trees. St George's Place is a quiet, relatively wide road with generous pavements and large buildings set back from the road within landscaped gardens. These characteristics create a sense of spaciousness and a peaceful ambience, which are important aspects of the character and, in spatial terms, the appearance of this part of the CA.
5. The greenhouses are to the rear of the Hotel, beyond a car park. While it is submitted that the Hotel is a 'building of merit' within the CA, the reasons for issuing the notice do not describe the building in this way or identify any harm to it as a heritage asset. Evidence of a formal decision of the Council to identify the Hotel as a non-designated heritage asset, and thus requiring separate assessment in terms of heritage, has not been provided.
6. The greenhouses cannot be seen within the street scene, limiting their effect on the public perception of the appearance of the CA or any other heritage asset. While greenhouses may be expected in back gardens in locations such as this, they and other outbuildings are usually minor features and limited in number. Furthermore, and contrary to the view expressed in the appellant's heritage statement, greenhouses are normally sited toward the edge of the plot. In contrast, those at the appeal site occupy the centre of the back garden, thus dominating and largely filling it, significantly altering its character and reducing the sense of spaciousness. Their use for dining is a source of increased activity that is uncharacteristic of the CA, with the potential for accompanying noise.
7. While it is stated that there will be no internal illumination, the greenhouses have electrical supply and the proposed hours of use, between 0800 and 1800, would require lighting at times, particularly in winter afternoons. Any significant illumination would be uncharacteristic of back gardens in the CA and the greenhouses therefore do not preserve or enhance its special character and appearance or enhance or better reveal its significance.
8. The greenhouses and their associated groundworks and service infrastructure do not sustain or enhance the significance of the CA, are unsympathetic to the surrounding built environment and do not add to the overall quality of the area. They fail to enhance, respect and complement the historic arrangement of street blocks, plots and buildings. For these reasons, they cause less than substantial harm to the significance of the CA as a heritage asset.
9. The appellant identifies economic and environmental public benefits to be weighed against this less than substantial harm. He also identifies a link between the two forms of benefit, in that the economic benefits would allow the environmental improvements to be funded more readily.
10. The economic benefits are the ability to continue to operate within Covid-19 guidelines, given the limited capacity for social distancing in the Hotel's dining room, and the unique offer of greenhouse dining to local tourism. The Covid-19

guidelines have changed since the appeal was made and social distancing is no longer required by Government. While the Hotel may choose to continue with social distancing measures, which may appeal to some visitors, this is not currently a matter of public policy that can be afforded significant weight.

11. The attractiveness of the dining experience offered by the greenhouses may influence personal decisions to stay at the Hotel but no evidence relating to this has been presented. Furthermore, the proposed hours of use exclude evening meals, thereby limiting the contribution greenhouse dining may make to the overall attractiveness of York to potential visitors. In any event, the potential wider benefit in terms of York's tourism offer has not been quantified. Consequently, I am unable to give significant weight to these factors.
12. The environmental benefits are the restoration of the garden, to be initially undertaken through a proposed landscaping scheme. Because the DPA seeks a 5-year permission, after which the greenhouses would be removed, a further submitted scheme would allow full restoration of the garden. Both schemes could be secured by condition if the appeal were to succeed on this ground.
13. The implementation of the initial scheme would make the back garden more verdant, but it would not alter the uncharacteristic nature of the greenhouses and would have only a limited compensating visual effect in the winter months. Furthermore, while the stated aims of the scheme include improved boundaries and screening, there is no evidence that this would mitigate the effect of activity associated with dining on the character of the CA.
14. The final scheme would create a more attractive garden. However, the appearance of the fully landscaped garden would, like the greenhouses, not be seen from public areas. This would limit its effect on the appearance of the CA. The most significant benefit to the CA of the final scheme is that it would replace the greenhouses but that is not a reason to justify their approval. Neither does the benefit of the full landscaping scheme outweigh the less than significant harm that would be caused to the CA over the preceding 5 years.

Living conditions

15. The activity associated with use of the greenhouses for dining has the potential to harm the living conditions of people nearby, particularly in terms of noise. In addition, the greenhouses appear to fill the garden area in views into the site. This is particularly apparent in views from the adjacent back garden of 4 St George's Place, which is set slightly lower than the appeal site. This means the greenhouses have an overbearing effect and fail to promote a high standard of amenity, to the detriment of the living conditions of neighbouring occupiers.
16. I have taken account of the suggested economic and environmental benefits described in the previous main issue, but they have not been demonstrated to outweigh the identified harm to living conditions.

Conclusion on ground (a)

17. For the reasons given, the greenhouses and their associated groundworks and service infrastructure do not sustain or enhance the significance of the CA or make a positive contribution to local character and distinctiveness. Additionally, they cause unacceptable harm to the living conditions of close neighbours. They are therefore contrary to Parts 12 and 16 of the revised Framework and policies D1 and D4 of the emerging plan.

18. Accordingly, the appeal on ground (a) should not succeed.

The appeal on ground (f)

19. For the appeal to succeed on this ground, the appellant needs to show that the steps required by the notice exceed what is necessary to remedy the breach of planning control the notice alleges.
20. It is contended that removing only the 3 greenhouses closest to the northern boundary would result in there being no harm to the CA. However, this lesser step would not fully remedy the breach stated in the notice, which includes the erection of 8 greenhouses, 5 of which would remain. Even if that issue were set aside, the remaining cluster of 5 greenhouses would dominate and fill the central section of the garden, at odds with the prevailing pattern of greenhouses and other outbuildings in the area. This would give rise to the harm identified in the appeal on ground (a), albeit to a lesser extent.
21. The removal of 3 greenhouses would achieve a commensurate reduction in activity within the garden. However, the activity to be expected from use of the remaining 5 would not sustain or enhance the significance of the CA and would still have potential to cause harm to the living conditions of neighbours, particularly at 4 St George's Place.
22. For these reasons the suggested lesser step would cause less than substantial harm to the CA and unacceptable harm to the character of the area and living conditions.
23. The final part of the notice's second requirement, to ensure that all material is disposed of lawfully, is laudable. However, it is excessive because the breach of planning control would be remedied once the lesser step of removing the materials from the land, the first part of the same requirement, has occurred.
24. Subject to a variation of the notice to address this point, the appeal on ground (f) should not succeed.

Conclusion

25. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

26. It is directed that the enforcement notice is varied by deleting the words "and ensure that all material is disposed of lawfully" from requirement 5.2.
27. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Mark Harbottle

INSPECTOR