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## Appeal Decisions

Site visit made on 23 December 2021

**by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 January 2022**

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### **Appeal A: APP/N2739/C/21/3272816**

**118 Main Street, Monk Fryston, Leeds, West Yorkshire LS25 5DU**

- 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 James Dawson against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 12 March 2021.
- The breach of planning control as alleged in the notice is the carrying out of engineering operations including the removal of trees, depositing of materials, the laying of hard standing and the erection of block work walls for the purpose of creating a tennis court in the garden area to the rear of the property.
- The requirements of the notice are:
  - Step 1: Cease the importation of materials on the land in relation to the development of a tennis court.
  - Step 2: Remove the block work walls and hardstanding situated in the rear garden forming the tennis court area of the Land.
  - Step 3: Remove all materials associated with the development of a tennis court from the Land.
  - Step 4: Regrade the land to its original state prior to the engineering operations which have taken place.
- The periods for compliance with the requirements are:
  - Step 1: Immediately from the date on when the notice takes effect.
  - Step 2: 3 months from the date on when the notice takes effect.
  - Step 3: 3 months from the date on when the notice takes effect.
  - Step 4: 6 months from the date on when the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: No further action is taken.**

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### **Appeal B: APP/N2739/W/21/3269682**

**118 Main Street, Monk Fryston, Leeds, West Yorkshire LS25 5DU**

- 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 James Dawson against the decision of Selby District Council
- The application Ref: 2020/0654/HPA, dated 25 June 2020, was refused by notice dated 8 December 2020.
- The development is for engineering operations to allow the installation of a tennis court with associated boundary treatments and landscaping.

**Summary of Decision: The appeal is dismissed.**

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### **Preliminary Matters**

1. The time for compliance with Step 1 is "*Immediately from the date on which the notice takes effect*". The periods for compliance with the Notice start to

run from the date when the EN comes into effect. Since a compliance 'period' must be specified under s173(9), a Notice which does not contain any period, or does not set out a time which could amount to a period, is likely to be a nullity. The courts have held<sup>1</sup> that 'immediately' is not a period for the purposes of s173(9) and a failure to specify a compliance period would make a Notice a nullity.

2. Consequently, the Council's requirement for immediate compliance constitutes a failure to specify an actual period of time within which the first requirement of the Notice should be complied with. This means that the enforcement notice is a nullity and no further action can be taken with respect to Appeal A.
3. Since planning permission was refused, on 20 July 2021 the Government published its revised National Planning Policy Framework (the Framework) which represents the Government's up-to-date planning policies for England and how they should be applied. I have taken account of the revised Framework in the determination of Appeal B.
4. As the proposal is in a conservation area and relates to the setting of a listed building I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). In addition, I have had special regard to the provisions of section 16(2) of the Act.
5. I note from the application and my observations on site that the application is part retrospective. The tennis court with associated boundary treatments and hard standing area have been partly built at the property.

### **Application for costs**

6. An application for costs with respect to the appeal against the Enforcement Notice was made by Mr James Dawson against Selby District Council. This application is the subject of a separate Decision.

### **Appeal B**

7. The ground of appeal is that planning permission should be granted. In this case the main issues are:
  - i. whether the principle of the development is acceptable in the open countryside;
  - ii. whether adequate weight has been given to effect of the development on the significance of designated heritage assets;
  - iii. the extent to which the development would preserve or enhance the character or appearance of the Monk Fryston Conservation Area, the setting of nearby Grade II\* listed Monk Fryston Hall and a non-designated heritage asset Monk Fryston Hall Historic Park and Garden; and
  - iv. the effect on the living conditions of the occupants of an adjacent residential property, The Park, with particular reference to noise and disturbance.

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<sup>1</sup> R (oao Lynes & Lynes) v West Berkshire DC [2003] JPL 1137

## Reasons

8. The appeal site comprises part of the residential curtilage of 118 High Street which is a modern detached dwelling. The dwelling benefits from a large, elongated garden, the northern part of which has been the subject of various operations relating to the construction of a tennis court and associated infrastructure. To the immediate north is another residential property known as The Park which is separated from the appeal site by a dense and tall hedge. To the east of the site are elongated gardens associated with other residential properties, beyond which is Monk Fryston Hall and its extensive grounds.
9. The site is situated within the Monk Fryston Conservation Area and, approximately 200 metres to the south east of Monk Fryston Hall. The Hall's park and gardens are allocated in the Selby Local Plan as a locally important park and gardens and are a non-designated heritage asset.

### *Principle of the Development*

10. Policy SP2 of the Selby District Core Strategy Local Plan Adopted Version 22 October 2013 (the CS) relates to the Spatial Development Strategy for the District and states that development in the countryside (outside Development Limits) will be limited to specific forms of development including replacement or extension of existing buildings, the re-use of buildings preferably for employment purposes, and well-designed new buildings which would contribute towards and improve the local economy.
11. I understand that it would not be possible for the policy to list all types of development but it is clear to me that the proposal is in conflict with the policy and its overall objectives to limit development outside settlement limits. In addition, no special circumstances have been demonstrated and therefore the development is contrary to Policy SP2 of the LP.
12. The appellant has drawn my attention to Policy SP1 of the LP which relates to the presumption in favour of sustainable development. In my judgement this policy remains broadly in line with national guidance as set out in the up to date Framework. Since the development is in conflict with Policy SP2 it cannot be said to constitute sustainable development.
13. The specific context of the appeal site may well have changed since the CS was adopted in 2013, but that remains part of the development plan for the area and therefore is the basis on which development control decisions should be made. It is not for me to consider whether or not the settlement boundary is likely to be altered in any future review of the development limit of Monk Fryston.
14. The appellant has also drawn my attention to Green Belt policy. The appeal site is not within the Green Belt which is a very specific designation to protect urban sprawl by keeping land permanently open. Any comparison between the current development plan policies and Green Belt policy is therefore misplaced and not relevant to the determination of the current appeal.
15. Therefore, the principle of the development is not acceptable in the open countryside and there is conflict with Policy SP2 of the CS.

## *Heritage*

16. The Framework requires an applicant to describe the significance of any heritage assets affected, including any contribution made to their setting. The level of detail provided should be proportionate to the assets' importance and no more than sufficient to understand the impact of a proposal on their significance. In addition, the Framework also states that when considering the impact of a proposal on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
17. In this particular case the planning application has been submitted for various works to install a tennis court. The application was accompanied by a Heritage Statement which identifies that the appeal site is in the Conservation Area, within the setting of Monk Fryston Hall and within the Monk Fryston Hall Historic Park and Garden. The Statement provides a general description of the appeal site and its physical relationship with designated and non-designated heritage assets and recognises the rich history of the village and the Hall, in particular. The appraisal briefly discusses what heritage interests, archaeological interest historic interest, architectural and artistic interest actually are and goes on to set out the heritage interest of the appeal site. However, in my judgement there is insufficient description and assessment of the heritage significance of the designated and non-designated heritage assets and inadequate assessment of how the proposed development affects that significance. As such the requirements of the Framework with respect to heritage assessment have not been met and there is insufficient evidence that adequate weight has been given to effect of the development on the significance of designated heritage assets.
18. Monk Fryston Hall was first listed in January 1952 as a building with thirteenth century origins with additions and alterations around 1740 and 1897 and a further twentieth century range to the left of the main frontage which has no particular historic interest. It was originally the property of Selby Abbey and was the home of the Master of Works and the Agent for the Abbot supervising the quarrying of stone for the Abbey. It is built of magnesian limestone with a stone slate roof. It is L-shaped on plan with an eighteenth century wing to the right with a nineteenth century extension and infill of various dates. The main block is two storeys with attics and four bays to the left with gable-ended projecting two storey single bay to the right. There are full height projecting outer bays. The outer bays have mullion and transom windows and there is a six light mullion windows to the second bay. At first floor level the outer bays also have mullion and transom windows and to the second bay there is a three light mullion window in double chamfered surrounds. To the second bay there is a three light mullion window in double chamfered surround with chamfered mullions and to the third bay is a lancet window in chamfered surround. The gables have kneelers and ashlar copings. The roof has a nineteenth century diagonal ridge with end stacks. There is one thirteenth century mullion two light window in double-chamfered surround to the left gable.
19. As can be seen from the above description the Hall has significant aesthetic value, historic value through its close connection to Selby Abbey, communal value by and also evidential value in the way it provides evidence of human activity in the area and its association with other important historic buildings. It is my understanding that it was originally built for and owned by Selby Abbey around the thirteenth century and after the closure of Selby Monastery

its history is a little unclear until 1680 when it was bought by David Hemsworth, in whose family it remained until 1947 when it was sold and converted to a hotel. That use remains today.

20. The historic park and garden forms a very important part of the setting of Monk Fryston Hall. The Yorkshire Gardens Trust undertook a detailed assessment of the significance of the landscape in 2018 which sets out that the park has aesthetic, historic, communal and evidential value. In particular, its significance lies in its late eighteenth and early twentieth century origins and is considered to be an important part of the village, itself, and the Conservation Area. The Hemsworth's Christian philanthropy is thought to have shaped the gardens which included a lake, private zoo, concert rooms and playing fields which are all features that would normally be found in public parks or gardens rather than private land. Historic documents describe social events and sporting gatherings that took place in the grounds of the Hall on invitation by the Hemsworth family. It is my understanding that archaeological excavations between 2012 and 2016 uncovered various archaeological remains, including road surfaces, buildings, pottery and other high status artefacts from the Medieval period.
21. The Conservation Area is centred on the Hall and comprises properties along the High Street and the park and garden surrounding Monk Fryston Hall which give the asset a semi-rural character. A large part of the Conservation Area comprises the soft landscaped parts of the historic gardens and parkland and provide a high quality setting to the village itself. With particular reference to the built-up parts of the Conservation Area, historic mapping shows that the village was divided up into burgage plots which are narrow pieces of land. Elements of those burgage plots are still evidence today, including the appeal site and existing residential plots to the east, situated between the appeal site and Monk Fryston Hall.
22. The historic landscape and verdant character and appearance of the site, including trees and shrubs and its immediate surroundings makes a positive contribution to the aesthetic value of the Conservation Area and the wider parkland setting of Monk Fryston Hall. The loss of trees from the appeal site has had a harmful effect on the important parkland setting of the Grade II\* listed Hall and the Conservation Area which it is an integral part of. Replacing the trees with hard surfacing and other hard features such as retaining walls has resulted in an urbanising effect on the semi-rural landscape, unsympathetic within this historic setting. The development fails to demonstrate sympathy with and consideration of the historic context and harms the character and appearance of the Conservation Area and setting of the Hall.
23. The completed tennis court would constitute a visually intrusive and incongruous feature within and across the Conservation Area. The overall design, layout and materials to be used do not adequately address the concerns expressed in the reasons for refusal of the previous scheme for the site.
24. Paragraph 193 of the Framework advises that when considering the impact on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. Given the above I find

the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.

25. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. In this case there are no clear definable public benefits and consequently, given the above and in the absence of any significant public benefit, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Monk Fryston Conservation Area and the setting of nearby Grade II\* listed Monk Fryston Hall. This would fail to satisfy the requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Framework and conflicts with Policies SP18 and SP19 of the CS and Policy ENV25 of the Selby District Local Plan Adoption Draft – Part 1 General Policies February 2005 (the LP).

In addition, the proposal would result in less than substantial harm to the non-designated heritage asset Monk Fryston Historic Park and Gardens. The Framework states that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will need to be made with regard to the scale of any harm or loss of significance. In this case the harm to the non-designated heritage asset would be unacceptable as a consequence of the loss of trees which has changed the openness of which harmfully affects the character and appearance of the non-designated heritage asset which is contrary to Policies SP18 and SP19 of the CS, Policies ENV16 and ENV25 of the LP and the Framework.

#### *Living Conditions*

26. The closest residential property to the development is The Park which is only approximately 12 metres away from the common boundary between the two residential gardens. The tennis court would be situated very close to the common boundary and would introduce a more formal sporting activity into an informal garden setting. The proposed tennis court would be situated very close to the common boundary with The Park and, in response to previous concerns, the appellant has amended the proposal to include a higher acoustic fence.
27. However the use of a tennis court is likely to result in noise from the impact of a ball on a racquet and raised voices. Such noises may be difficult to mitigate through an acoustic barrier which may itself cause noise when a ball hits it. A combination of restricting the hours of use, restricting the use to ancillary residential purposes only with no commercial activity whatsoever and the implementation of an acoustic barrier could all be the subject of suitably worded conditions and, were I minded to approve the development, would adequately mitigate potential harm.
28. Therefore, on this issue I conclude that subject to conditions the development would not be harmful to the living conditions of the occupants of an adjacent residential property, The Park with particular reference to noise and disturbance. As such I find no conflict with Policies ENV1 and ENV2 of the LP and the Framework.

#### *Conclusion*

29. Although I have found there to be no harm with respect to living conditions, the principle of the development is unacceptable and the development would fail to preserve or enhance the character or appearance of the Conservation Area, the setting of the Grade II\* listed building and the historic park and garden. Therefore, taking into account all other matters I conclude that the development is in conflict with the development plan as a whole.

## **Formal Decisions**

### **Appeal A**

30. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the local planning authority should consider reviewing the register kept under section 188 of the Act. By virtue of section 171B(4)(b) of the 1990 Act the Council is not prevented from taking further enforcement action on this matter.

### **Appeal B**

31. The appeal is dismissed.

*A A Phillips*

INSPECTOR