



Appeal Decision

Site visit made on 22 December 2021

by Richard Newsome BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 February 2022

Appeal Ref: APP/C2741/W/21/3282402

Land at Shilton Garth Close, Earswick, York YO32 9SQ

Grid Ref Easting: 461921 Grid Ref Northing: 457174

- 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 & Mrs Widdrington against the decision of City of York Council.
 - The application Ref 21/00194/FUL, dated 20 January 2021, was refused by notice dated 28 June 2021.
 - The development proposed is detached 2 storey dwelling with associated garaging, landscaping, new site access & air source or ground source heat pump.
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Decision

1. The appeal is allowed and planning permission is granted for a detached 2 storey dwelling with associated garaging, landscaping, new site access & air source or ground source heat pump at land at Shilton Garth Close, Earswick, York YO32 9SQ (Grid Ref Easting: 461921 Grid Ref Northing: 457174) in accordance with the terms of the application, Ref 21/00194/FUL, dated 20 January 2021, subject to the conditions set out in the attached Schedule.

Procedural Matters

2. Following the Council's determination of the planning application the revised National Planning Policy Framework (the Framework) was published. However, there are no substantive changes in the Framework relevant to the appeal before me and so I have not reverted to the parties for further comments on the revised Framework, which I take into account where relevant below.
3. Whilst the emerging City of York Local Plan - Publication Draft (2018) (CoYLP) has been submitted for examination this process is ongoing with a number of outstanding objections to be considered. Therefore, having considered the provisions of paragraph 48 of the Framework I have afforded limited weight to Policy H3 of the CoYLP.

Main Issue

4. Whether the proposed development would provide appropriate accommodation required to meet local housing needs.

Reasons

5. The appeal site is currently vacant land save for some wooden sheds. It is located in a residential area predominantly comprising large detached 2-storey dwellings and bungalows set in generous plots with large gardens. The proposal is for a detached 2-storey, 4-bedroom dwelling with associated works.

6. The area is covered by the made Earswick Parish Neighbourhood Plan (2019) (EPNP) which is part of the development plan for the area. This includes Policies ENP1 and ENP2. Policy ENP1 relates to windfall housing and states that development proposals for small scale (normally a single dwelling) infill development which is consistent with the sustainability of the Parish will be supported subject to meeting several criteria. These include criterion 2) meeting a clearly identified need for the Parish.
7. Policy ENP2 relates to housing mix and states that new development will be required to demonstrate how it relates to the existing need for smaller homes (3 bedrooms or less), or the needs identified in an up-to-date assessment of housing need.
8. As the proposal is for a 4-bedroom dwelling it would exceed the identified need for dwellings of 3 bedrooms or less as set out in the EPNP. There is also no further housing needs assessment evidence that has been prepared after the making of the EPNP which would amend the need set out in Policy ENP2.
9. Therefore, the proposal conflicts with Policies ENP1(2) and ENP2 of the EPNP. However, the harm caused by this conflict would be limited given that the threshold would only be exceeded by one bedroom in respect of a single dwelling. I also note that the Parish Council which prepared the EPNP supports the proposal and advises that the Policies were not created with the intention of precluding development of single dwellings such as the proposal.
10. Addressing the adverse impacts of the development, I note that the Council did not provide any other refusal reasons. Therefore, the adverse impact of the proposal would be limited to the conflict with Policies ENP1 and ENP2 of the EPNP.
11. The benefits of the proposal would include the provision of an additional house which would be a social benefit. The sustainable construction and features proposed would also represent environmental benefits. I also acknowledge that there is some local support for the proposal from parties who would like to see the appeal site developed as it is currently considered to be unattractive. There would also be economic investment from both its construction and subsequent occupation. Whilst these benefits are tempered by the development being for a single dwelling, and the economic benefits during construction would only be temporary, they nevertheless carry moderate weight in favour of the development.
12. Both the Council and the appellants agree that the Council cannot demonstrate a 5-year housing land supply. Consequently, in accordance with footnote 8 of the Framework the presumption in favour of sustainable development is triggered in accordance with paragraph 11(d)(ii); whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework as a whole. Therefore, Policies ENP1 and ENP2 are deemed to be out-of-date. However, whilst these policies are out-of-date, they are considered to be consistent with the Framework and therefore carry moderate weight.
13. As the proposal relates to the provision of housing, it must be considered in light of paragraph 14 of the Framework. This provides, that subject to all four criteria applying, the adverse impact of allowing development that conflicts with a neighbourhood plan is likely to significantly and demonstrably outweigh

the benefits. As the EPNP was made in June 2019 it became part of the development plan more than two years ago. Therefore, as the provisions of paragraph 14(a) are not met the provisions of paragraph 14 as a whole do not apply.

14. In the context of paragraph 11 of the Framework, there would be no adverse impacts of the development that would significantly and demonstrably outweigh the identified benefits. Therefore, the presumption in favour of sustainable development applies which points towards the grant of planning permission.
15. As a result, I conclude that whilst the proposal is contrary to Policies ENP1 and ENP2 of the EPNP, these policies are out-of-date. Although these policies are consistent with the Framework and therefore carry moderate weight, the provision of a single 4-bedroom dwelling rather than it being for 3 bedrooms or less would result in limited harm. As paragraph 11(d)(ii) of the Framework is engaged and there would be no significant or demonstrable adverse impacts that would outweigh the benefits of the proposal, I find that the presumption in favour of sustainable development applies. This outweighs the limited harm caused by the conflict with the development plan.

Other Matters

16. I acknowledge that there have been objections to the proposal from a number of local residents, particularly from occupants of dwellings on The Village adjacent to the appeal site. These relate to a number of concerns including the effects on the character and appearance of the area, living conditions of occupants of neighbouring dwellings, and on the trees and hedges on and close to the site.
17. Whilst I acknowledge that the adjacent properties located on The Village are bungalows, with one having a dormer, the proposal is broadly consistent in scale and form with the other large 2-storey detached dwellings in the area and would not represent over-development of the plot which is of a generous size. The dwelling would be set back from the highway and screened by the retained trees and hedge on the site boundary. Therefore, it would not detrimentally affect the character and appearance of the street scene or the area.
18. I note that objections have raised concerns regarding the height of the proposal relative to restrictions on the previous outline planning permission in respect of the same site (Ref 18/01923/OUT). However, I do not have full details of that application before me. Notwithstanding this, I have determined this appeal on its individual planning merits and against the most up to date local and national planning policies and consider the height of the proposal to be acceptable.
19. I appreciate the concerns raised by objectors that the proposal would be overbearing and cause overshadowing of the gardens of dwellings on The Village. However, I consider that whilst the development would change the current relationship between the site and the existing dwellings on The Village by virtue of its scale, design, height, and location it would not result in demonstrable harm to living conditions of the existing occupants of dwellings on The Village in respect of being overbearing to or overshadowing their gardens.

20. I am aware that concerns have also been raised by objectors regarding the effect on privacy and overlooking from the proposal. Whilst there would be an en suite bathroom window and 3 sets of roof light style windows, including one to a shower room, facing the neighbouring dwellings on The Village these would have limited outlook towards them. I consider that these would not result in detrimental overlooking and effects on the privacy of the occupants of dwellings on The Village. It is acknowledged that there would be potential for the flat roofs which form part of the proposal to be used as balconies which would overlook neighbouring dwellings. However, the appellants have indicated that they are willing to accept the imposition of a condition preventing such use which would make the development acceptable.
21. I recognise that there are two trees, one on-site and one adjacent to it, that are subject to a Tree Preservation Order and the importance of their protection. The proposal would be located outside the root protection areas of the trees which can be protected, along with other trees and hedges to be retained, during relevant work on-site through appropriate protective measures.

Conditions

22. I have considered the conditions suggested by the Council and appellants against the tests set out in paragraph 56 of the Framework and the Planning Practice Guidance (the Guidance). In addition to the standard commencement condition, I consider a condition in respect of the development being in accordance with the approved plans is necessary. These have been applied for the avoidance of doubt as to what has been approved.
23. I have imposed a condition relating to the submission and approval of details of the design of surface and foul water drainage. This is necessary in order to ensure satisfactory drainage from the site and to ensure that it does not damage any retained trees and hedges.
24. I consider that the imposition of a condition is necessary in respect of the submission and approval of external materials in order to ensure the acceptable appearance of the development.
25. A condition requiring the setting out of the areas for the parking and manoeuvring of vehicles has been imposed as it is necessary for highway safety.
26. Conditions requiring the submission and approval of details of the proposed landscaping and protection of retained trees and hedges have been imposed. These are necessary to ensure that the landscaping elements of the scheme are acceptable and that retained trees and hedges are suitably protected during relevant work on-site.
27. Conditions controlling the removal of vegetation and buildings, and compliance with biodiversity mitigation measures have been imposed. These are necessary to ensure that the development protects and enhances biodiversity.
28. A condition has been imposed in relation to electric vehicle charging infrastructure in the interest of securing sustainability features at the site.
29. A condition relating to actions required if contamination is found during the construction has been imposed in the interests of protecting human health and the environment.

30. A condition restricting the use of flat roof areas of the proposal has been imposed in order to protect the privacy of occupants of neighbouring dwellings.

Conclusion

31. For the reasons given I conclude that the appeal should succeed.

Richard Newsome

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:

W108.01.02	Location and block plan
W108.01.01 B	Site plan
W108.01.03 D	Floor plans
W108.01.04 D	Elevations
- 3) Prior to the commencement of the installation of any foul and surface drainage infrastructure the details of the proposed means of foul and surface water drainage, including details of any balancing works and off site works, shall be submitted to, and approved by the local planning authority. There should be separate systems of drainage for foul and surface water on-site and combined off-site. The site should be developed in accordance with the approved drainage details.
- 4) No construction shall be carried out above foundation level until details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 5) The building shall not be occupied until the areas shown on the approved plans for parking and manoeuvring of vehicles have been constructed and laid out in accordance with the approved plans, and thereafter such areas shall be retained solely for such purposes.
- 6) No site clearance, preparatory work or development involving excavations shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 7) No development shall be carried out above foundation level until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land and identify those to be retained as part of the development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 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 similar size and species.
- 8) No removal of vegetation or demolition of the timber buildings on site shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a detailed check of vegetation and buildings for active birds' nests immediately before the vegetation is cleared and buildings are demolished and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation shall be submitted to the local planning authority.
- 9) The recommendations for mitigation and biodiversity enhancement measures made within Chapter 7 of the Ecological Impact Assessment (MAB Environment & Ecology Ltd (January 2021) Reference: 2021-1062), for the provision of native planting, bat and bird boxes and for the consideration of hedgehogs shall be carried out prior to first occupation of the development.
- 10) The development 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. Prior to the construction of the dwelling above foundation level the applicant shall submit a drawing for the written approval of the local planning authority which identifies the proposed location for a future electric vehicle recharge point and shall ensure that prior to occupation of the dwelling that any necessary trunking/ducting is in place to enable cables to be run to the specified location.
- 11) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.
- 12) The flat roof areas of the ground floor of the development hereby permitted shall not be used as a balcony, roof garden, or similar amenity area.

End of Conditions