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## Appeal Decision

Site visit made on 21 June 2022

**by M L Milliken BA(Hons) MPlan MRTPI**

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

**Decision date: 07 July 2022**

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**Appeal Ref: APP/C2741/W/22/3291862**

**1 Cherry Lane, York YO24 1QH**

- 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 Gladman Retirement Living Ltd against the decision of City of York Council.
  - The application Ref 20/00507/FULM, dated 5 March 2020, was refused by notice dated 7 September 2021.
  - The development proposed is the erection of 60no. retirement apartments with care, communal facilities, parking, landscaping and associated amenity space following demolition of existing 3no. bungalows.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. A Unilateral Undertaking (UU) has been submitted by the appellant, dated 23 June 2022, which makes provisions for highways contributions, an off-site sport contribution and details the care profile which would be implemented, including an age restriction of occupants to age 70 and over. I am satisfied that the Council have had the opportunity to comment on the obligation in evidence and that it is fit for purpose as a deed. I am therefore proceeding to determine the appeal on that basis.
3. I note that, during determination of the planning application, changes were made to both the applicant's name and the description of the proposed development. For clarity the banner above reflects the wording used by the Council on its decision notice.
4. Furthermore, I note from the evidence that there has been some dispute between the parties with regard to the use class of the proposed development, principally whether it falls under C2 (residential institutions) or C3b (dwelling house with up to six people living together as a single household and receiving care) of the Town and Country Planning (Use Classes) Order 1987.
5. The distinguishing factor for C2 accommodation is that occupants are deemed in need of care. The appellant has provided detailed evidence regarding the proposed care model, together with examples of C2 accommodation elsewhere, including a number of appeal decisions and a judgement<sup>1</sup> that indicates that C2

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<sup>1</sup> Rectory Homes Ltd v SSHCLG and South Oxfordshire DC [2020] EWHC 2098 (Admin)

development can include accommodation in the form of dwellings, including flats, with the facilities one would expect for private, or independent, domestic existence.

6. Accordingly, I am satisfied that the proposed development would comprise C2 development, wherein care would be provided to meet the needs of the occupant(s). I am therefore proceeding to determine the appeal on that basis.
7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Council does not have a formally adopted local plan, and examination of the emerging City of York Local Plan - Publication Draft (2018) (the emerging Local Plan) is ongoing.
8. With regard to the development plan situation, and in light of the Council's position statement regarding Five Year Housing Land Supply (5YHLS), I find that paragraph 11d of the National Planning Policy Framework (the Framework) is engaged and it is upon that basis I am proceeding to determine the appeal. Notwithstanding this, the emerging Local Plan policies are a material consideration in the determination of this appeal.

### **Main Issues**

9. The main issues are:

- i) The effect of the proposed development on the special historic interest of heritage assets, including nearby listed buildings, with particular regard to their setting and whether or not the proposed development would preserve or enhance the character or appearance of the Tadcaster Road Conservation Area (the CA);
- ii) The effect of the proposed development on the character and appearance of the surrounding area, with particular regard to the streetscene; and
- iii) The possible operational implications for York Racecourse, with particular regard to the working environment of the adjacent stables in relation to any noise and lighting.

### **Reasons**

#### *The effect on Heritage Assets*

10. The appeal site is located immediately adjacent to the CA and within close proximity to a number of listed buildings. These include the Grade II listed Numbers 52 and 54 and Branch Library, 52 and 54 Tadcaster Road, which is located directly opposite to the appeal site. The Council have provided me with a copy of the Listing Description, which outlines that, prior to being divided into three separate properties, the single building served as a school for the settlement of Dringhouses. I observed and appreciated the Listed Building during my site visit, including its single storey form with attic dormers and low hanging eaves, which, in part, contributes to its significance.
11. With regard to the CA, from the evidence before me its significance appears to broadly relate to the linear form of the original settlement, with buildings lining the street and historic, narrow perpendicular plots, mature trees on the

roadside, views across the Knavesmire and the presence of large villas set within their own grounds along Tadcaster Road. Whilst I noted during my site visit that the presence of some modern development, including that of the Holiday Inn, has to some extent eroded the historic character of the former settlement, much remains and is appreciable. I also noted that the nearby Calcaria Court development, although modern, includes stepped down elements and architectural detailing that reflects the character and appearance of the CA. I observed on my site visit that views along Tadcaster Road, including those within the vicinity of the appeal site, enable the special historic and architectural interest of the CA to be understood, with the linear historic built form of the settlement being evident in the view.

12. The eastern side of Tadcaster Road contains a number of buildings set back from the highway, including that of the appeal site, which creates a sense of openness along the route. Whilst I do not consider that the existing built development on the appeal site contributes positively to the setting of Nos 52 and 54 and Branch Library and the CA in terms of its overall design and form, the mature vegetation present serves to focus views towards the opposite side of Tadcaster Road and towards the Listed Building, allowing for enhanced legibility of the assets. For this reason, I find that, in this aspect, the appeal site contributes positively to the setting of the Listed Building and the CA.
13. The appellant asserts that the proposed development would provide an opportunity to move the building line closer to the road, creating a feature frontage that they consider would address, frame and accentuate sequential views along Tadcaster Road, into and out of the CA. I accept that road-fronting development could reflect the historic grain of linear development, and that three storey development would not, in principle, be completely out of character in the context of the local area. However, in my opinion the proposed development, by virtue of its single block form and its position directly opposite a designated heritage asset of a distinctly smaller scale, would have an adverse effect on the setting of the Grade II listed Nos 52 and 54 and Branch Library and harm its significance, as by comparison the proposed development would be overbearing.
14. I consider that the extent to which the building would extend along Cherry Lane, would, due to its design and proximity to the CA boundary, detract from the character and appearance of the CA. Furthermore, I consider that the repeated architectural form and style of the proposed development, together with its massing, would contrast adversely with the surrounding built form and serve to alter the historic context to the detriment of the character and appearance of the CA.
15. Design features, including the use of articulation and recessed, glazed links to fragment the building are noted, together with the use of external materials and fenestration that would seek to echo the local vernacular. However, in overall terms I do not find that the inclusion of these elements would break up the massing of the proposed development and, as a result, I consider that the resulting building would appear incongruous and out of context. Whilst some mitigation planting would be provided, such planting would not, in my view, address these concerns. As a result, the proposal would adversely affect the character and appearance of the CA and the setting of the adjacent Nos 52 and 54 and Branch Library.

16. Overall, it is my judgement that the proposed development would result in less than substantial harm to the significance of the Grade II listed Nos 52 and 54 and Branch Library and thus would have an adverse effect upon the significance of a designated heritage asset. For the same reasons, the proposed development would fail to preserve or enhance the character or appearance of the CA and would result in less than substantial harm to its significance.
17. In addition to Nos 52 and 54 and Branch Library there are a number of other designated heritage assets in the surrounding area, including Pinfold (Grade II), Nos 64 and 66 Tadcaster Road (Grade II), Goddards (Grade I) and the non-designated heritage assets of the Fox and Roman public house and York Racecourse Stables. Whilst the proposed development would be visible from a number of these assets, due to the presence of intervening development and screening provided by existing vegetation I consider that the effect on the setting of these assets would be very limited.
18. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 199 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
19. Paragraph 202 of the Framework requires that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
20. I accept that the proposed development would result in some public benefits, including the provision of 60 dwellings comprising specialist, extra care accommodation, the local need for which is clearly outlined in evidence submitted by the parties. I find the provision of the specialist housing to be a considerable benefit of the proposal, particularly in light of the Council's inability to demonstrate a 5YHLS.
21. Other benefits proposed by the appellant include a financial contribution to improve the pedestrian crossing point on Tadcaster Road, a contribution to support the process to change Traffic Regulation Orders in the area, including the introduction of resident parking zones and a contribution towards the provision of outdoor sport within the area, together with the redevelopment of brownfield land, releasing housing stock back into the market, environmental benefits in the form of the building achieving a BREEAM excellent rating, the potential to reduce the financial burden on adult social care and NHS budgets and the more general social and economic benefits associated with new housing development of the nature proposed.
22. However, whilst I find that the proposed development would deliver a number of public benefits, the proposed development would fail to preserve or enhance the setting of Nos 52 and 54 and Branch Library and the character and appearance of the adjoining CA. The proposal would therefore not comply with the requirements of Sections 16(2) and 72(1) of the Planning (Listed Building

and Conservation Areas) Act 1990, which require that, when considering a proposal that would affect a listed building or its setting, special regard needs to be given to the desirability of preserving the building or its setting (section 16(2)) and that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area (section 72(1)), together with the guidance contained within the Framework.

23. Overall, I do not find that the public benefits proposed by the appellant outweigh the scale of the harm that I have identified in this case.

#### *Character and Appearance*

24. The appeal site is located on Tadcaster Road and extends to the south east, along Cherry Lane. Tadcaster Road contains buildings of varying heights in a range of architectural styles and materials, with side streets and cul-de-sacs leading away from the main road on either side. Existing development on the appeal site comprises single storey development, set back from the frontage with Tadcaster Road, with mature vegetation present. Developments to either side of the appeal site are also set back from the highway and, as a result, some longer distance views along Tadcaster Road are present, giving an open feel to this section of the route.
25. The proposed development would comprise a single block totalling three storeys in height. By virtue of its form and massing, it would, in my view, be out of character with developments within the surrounding area and would be overly prominent in the street scene, particularly in views along Tadcaster Road when approaching from the north. Whilst I note that some three storey development is present within the local area, such development is generally punctuated by buildings of a lesser height and scale, such as can be seen along Tadcaster Road.
26. For reasons stated elsewhere in this decision, I find the proposed planting and design elements would not reduce the visual prominence of the building that I have highlighted previously or would not overcome my concerns regarding bulk, mass and design and the adverse effect that this would have on the character and appearance of the streetscene.
27. Overall, I find that the proposed development would harm the character and appearance of the surrounding area. I agree that the Holiday Inn development does not contribute positively to the character and appearance of the area. However, I do not consider that this would set a precedent for the development as proposed.
28. For the reasons given, I find the proposed development to be contrary to Paragraph 130 of the Framework, which requires development to, amongst other things, add to the quality of an area, be visually attractive and be sympathetic to local character and history.

#### *The effect on York Racecourse*

29. The appeal site is located adjacent to York Racecourse, with the stable blocks being located beyond the southern boundary of the site, providing a place for horses to stay before and after races, in transit to and from their home stables.

30. The Council asserts that York Racecourse stables are a particularly sensitive receptor, and that operations would be directly affected by the proposal.
31. The appellant has provided further evidence in the form of a Noise Assessment and Lighting Assessment, dated January 2022, in support of the appeal. These documents conclude that noise and lighting effects associated with the proposed development would not be unacceptable and that the operations of the nearby stables would not be adversely affected.
32. I note a letter of objection from York Racecourse, which outlines concerns including, but not limited to, the potential for overlooking and noise. I am satisfied, however, from what I have seen and read, that the proposed development would have an acceptable effect in relation to the matters in question, subject to the imposition of appropriately worded planning conditions.
33. Overall, I find that the proposed development would not result in harm to the operations of York Racecourse, by virtue of noise or lighting effects. As a consequence, the Council's assertions regarding the economic prosperity created by the Racecourse being threatened would not arise. For this reason, the proposed development would accord with Paragraph 187 of the Framework, which advocates that new development should integrate effectively with existing businesses.

### **Other Matters**

34. The appellant has provided me with a planning obligation in the form of a UU dated 23 June 2022, containing a number of obligations to come into effect if planning permission is granted. Whilst I have had regard to the obligation, as I have found the proposal to be unacceptable for the reasons outlined, I am not required to consider it further. Therefore, whilst I note there is dispute between the parties regarding the off-site sports contribution, even if I were to accept that it met the CIL tests and would be provided, for reasons already stated this benefit would not, taken together with all the other benefits identified, outweigh the conflict I have found with the Framework.
35. The appellant asserts that the Council were originally supportive of the development proposals and that the application was initially recommended for approval, prior to being recommended for refusal. A draft Officer Report has been provided in evidence by the appellant in this regard. Whilst I have had regard to the report, and I acknowledge the appellant's disappointment on the matter, it is clear to me that the Council's Conservation Officer had longstanding concerns about the proposal. Indeed, and notwithstanding the change in recommendation, the planning committee were entitled to refuse the application for the reasons cited on the decision notice.
36. I have had regard to a number of appeal decisions and high court judgements as presented, where these relate to matters pertinent to this appeal. However, I consider that the circumstances for the appeals in question differ to the appeal site and, whilst I have had regard to the decisions, they do not lead me to a different conclusion in this case. Whilst I have had regard to the judgements in coming to my decision, they do not persuade me to alter my findings in relation to the main issues.

37. It is an accepted position that the LPA does not have an up-to-date Local Plan and that Paragraph 11d of the Framework is subsequently engaged. The parties have provided evidence relating to the status of the emerging Local Plan, including the wording of policies that can be found on the Council's decision notice.
38. I note from the parties' submissions that the emerging Local Plan is at an advanced stage of preparation, and whilst there are unresolved objections to the policies listed, it is likely that these will be dealt with by a number of main modifications in order to meet the test of soundness. Notwithstanding this, the emerging Local Plan is a material consideration in the determination of this appeal.
39. I have had regard to the emerging Local Plan policies presented and overall I find harm in relation to policies D1, D4 and D5, which relate to design, developments within CAs and development affecting Listed Buildings. Although the emerging policies presented do not affect my starting position in determining the appeal in accordance with the Framework, I nevertheless attribute little weight to them.

### **Conclusion**

40. The statutory duty in Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is a matter of considerable importance and weight. The proposed development would harm the setting of a Listed Building and would fail to preserve or enhance the character or appearance of the CA. The harm I have identified would not be outweighed by public benefits.
41. With reference to 11d) Part i) of the Framework, my conclusions in relation to the above matter provides a clear reason for refusing the development proposed. The proposed development would also harm the character and appearance of the area.
42. For the reasons given, and having had regard to other matters raised, the appeal is dismissed.

*ML Milliken*

INSPECTOR