



Appeal Decision

Site visit made on 24 August 2022

by Mr R Walker BA HONS DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2022

Appeal Ref: APP/E2734/W/22/3298208

Fair View, Main Street, Little Ouseburn, York, North Yorkshire YO26 9TD

- 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 Malcolm Gudgeon against the decision of Harrogate Borough Council.
 - The application Ref 22/00032/FUL, dated 30 December 2021, was refused by notice dated 23 March 2022.
 - The development proposed was originally described as detached bungalow in part of garden Fair View, Main Street, Little Ouseburn. Demolition of outbuildings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development, including any potential effects on the long term health of trees, would preserve or enhance the character or appearance of the Little Ouseburn Conservation Area (CA);
 - The effects of the proposal on bats as a protected species; and
 - Whether the proposal provides adequate parking arrangements.

Reasons

Little Ouseburn Conservation Area (CA)

3. The appeal site is located near the edge of, but within, the CA along Back Lane (the Lane), which runs parallel with Main Street in the village. The village has a predominantly linear character with housing fronting onto Main Street. The Council's CA appraisal describes how Back Lane was originally the 'commercial' access road serving the steadings that fronted Main Street.
4. The Lane has since evolved and there is now a mix of properties, farm buildings, converted farm buildings and outbuildings along the Lane. Despite the twentieth century housing development, the mix of buildings, informality of their arrangement and neighbouring fields, maintains a distinctly rural quality. This reflects the village's agricultural historical roots.
5. The appeal site is prominent from the Lane and is located at a corner where a footpath joins the Lane. The informality and scale of the outbuildings at the site, and the size and attractive appearance of the Walnut and Oak Trees, are in keeping with the rural qualities of the Lane. The trees make a positive

- contribution, in combination with the prevalence of other mature trees nearby to the verdant landscape character of this part of the CA.
6. The proposal would introduce a dormer bungalow, which would, with its proportions, chimney stack, dormers and other fenestration, have a distinctly modern domestic appearance. This would be compatible with the modern twentieth century development along the Lane such as at Plantation House. However, in doing so it would further incrementally erode the historical pattern of development and the more rural qualities of the site. Replacing the proposed UPVC windows with timber as put forward by the appellant would not fundamentally alter this. There would, in this regard, be an erosion of the verdant qualities of this part of the CA to the detriment of its character and appearance.
 7. The proposed dwelling would be in close proximity to both the Walnut and Oak Tree. The appellant indicates that the majority of the Oak's roots would be in the adjacent field. However, no evidence is provided to substantiate this. Moreover, although the appellant has had advice from a tree surgeon regarding the health of the Walnut Tree there is no substantive evidence before me of this.
 8. Paragraph 5.3.1 of BS 5837:2012 states that "*the default position should be that structures are located outside the Root Protection Areas (RPAs) of trees to be retained. However, where there is an overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the tree*". Moreover, BS5837:2012 states that mature trees recover slowly, if at all, from damage to their woody roots. Damage to, or death of the root system affects the health, growth, life expectancy and safety of the entire tree.
 9. The trees make a positive contribution to the CA and the loss of either one, either by felling or indirectly through damage to the root system, would not preserve or enhance this part of the CA. There is no substantive evidence before me of the RPAs, an assessment of the trees health and condition or of the potential effects from the proposal. As such, I conclude that the proposal would result in the risk of significant harm to them. This risk to the trees would add to the harm I have identified to the CA from the proposed dwelling in this location.
 10. To conclude on this main issue, the proposal would not preserve or enhance the character or appearance of the CA. Heritage assets are irreplaceable and great weight should be given to their conservation. The harm would be localised along this part of the Lane and in short range views to the east. As such, the effects would be less than substantial in the context of paragraph 202 of the National Planning Policy Framework (the Framework). In accordance with paragraph 202, I must balance that less than substantial harm against the public benefits of the proposal.
 11. Given that one dwelling is proposed, the associated social and economic benefits to the area would be limited. I have come to this conclusion having regard to the importance that the government places on boosting the supply of housing and making effective use of land. Moreover, whilst I accept that falling catkins and leaves may be a nuisance to the appellant, removing the tree to alleviate this issue is not a public benefit. Accordingly, there are no public

benefits that outweigh the less than substantial harm to the CA and the great weight given to its conservation.

12. The proposal would therefore conflict with the requirements of Policies HP2, HP3, NE4 and NE7 of the Council's Local Plan (2020) (LP) and the Framework insofar as they are relevant to this main issue. These say, amongst other things, that new development should be designed to ensure a satisfactory relationship between buildings and existing trees, which both safeguards the future health of the trees and avoids unacceptable impacts on residential amenity.

Protected species

13. Bats are legally protected species and Circular 06/2005¹ (the Circular) states that the presence of protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it '*...is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision*' (paragraph 99). Consequently, it advises that surveys should only be required by a condition on a planning permission in exceptional circumstances. This is reinforced in advice within the Planning Practice Guidance.
14. I recognise that the appellant has personal knowledge of the site and understand the personal circumstances in seeking to reduce up-front costs. However, such matters do not override the need to provide evidence and do not constitute exceptional circumstances. Given the number of trees, hedge lined fields, lack of street lighting nearby along the Lane and the position of the existing outbuildings there would, in my view, be potential for the presence of bats.
15. The circumstances in this instance are not of such an extraordinary nature as to warrant a different course of action to that outlined in national policies and advice. As such, in the absence of any survey work to understand the potential effects on protected species, I am unable to conclude that the proposal would not have a harmful effect on such species. The proposal would therefore conflict with the requirements of Policy NE3 of the LP and the Framework in this regard. These say, amongst other things, that proposals that protect and enhance features of ecological and geological interest and provide net gains in biodiversity will be supported.

Parking

16. The application form indicates that three parking spaces would be provided. However, the proposed plan does not demonstrate how this would be achieved. A single area is shown on the plan which, the Council indicate, based on its measurements of the plan, would be large enough to accommodate a single car. The appellant disagrees with this but has provided me with no information to substantiate this. Based on the measurements provided by the Council and the information before me I can not be satisfied that the three spaces indicated on the application form would be provided.

¹ Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System

17. The proposal would, on this basis, not accord with the County Council's parking standards. In this regard, the proposal would conflict with the requirements of Policy TI3 of the LP, which refers to the policies set out in the North Yorkshire County Council Parking Strategy in determining the level of parking provision proposed. However, the Council's reason for refusal does not articulate what unacceptable effects it considers there to be from this conflict.
18. The Lane is narrow and uneven, as such, I do not consider that vehicles would travel at a high speed along it. Moreover, there is no firm evidence of any highway or pedestrian safety problems here. However, with a shortfall in on-site vehicle parking spaces, it would likely mean that some residents or visitors would need to park off-site.
19. The Lane is not wide enough to park a vehicle without obstructing it. However, Main Street is a short walk from the appeal site, is wide enough and at the time of my afternoon site visit there was on-street parking occurring along it. However, there was also spaces available. Where there were parked vehicles, the carriageway was sufficiently wide to enable other vehicles, including larger vehicles, to pass. As such, it would be possible for additional vehicles associated with the appeal site to park on-street without causing an obstruction.
20. My site visit represented a snapshot in time and the level of parking would likely be different in the evenings and weekends. However, there is no substantive evidence before me as to whether there is an existing problem with the capacity of on-street parking along Main Street, which is a short walk from the appeal site. Any additional movements from a single dwelling would be modest and would not cause an unacceptable level of additional noise, disturbance, or inconvenience to residents.
21. To conclude on this matter, whilst the proposal would conflict with Policy TI3 of the LP insofar as it relates to the quantum of parking proposed, I do not find any unacceptable harm from this shortfall. As such, I find that the proposal would provide adequate parking arrangements.

Other Matters

22. The appellant's personal circumstances are not matters that alter or outweigh the planning merits of the appeal. The absence of harm in relation to the proposed parking or any other considerations are neutral matters that weigh neither for, nor against, the proposal.

Conclusion

23. For the reasons given above, the proposal would conflict with the development plan and there are no material considerations that would outweigh that conflict. Therefore, the appeal is dismissed.

Mr R Walker

INSPECTOR