



Appeal Decision

Site visit made on 16 August 2022

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2022

Appeal Ref: APP/C2741/W/22/3298538

The Lord Nelson, 9 Main Street, Nether Poppleton, York YO26 6HS

- 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 ACT York Ltd against the decision of City of York Council.
 - The application Ref 20/02513/FUL, dated 22 December 2020, was refused by notice dated 17 February 2022.
 - The development proposed was originally described as erection of 2no. dwellings with integral garages, associated garden curtilages and other associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2no. dwellings on land to the rear of the Lord Nelson public house at The Lord Nelson, 9 Main Street, Nether Poppleton, York YO26 6HS in accordance with the terms of the application, Ref 20/02513/FUL, dated 22 December 2020, subject to the attached schedule of conditions.

Preliminary Matters

2. The description of development in the formal decision above has been taken from the Council's decision notice and the appeal form, with the omission of "(resubmission)". This is because it is a more accurate reflection of the development for which permission is sought than that given on the application form and 'resubmission' does not amount to an act of development.

Main Issue

3. The main issue is the effect of the proposed development (including the scale of the proposed plot 1 dwelling and the design of the proposed plot 2 dwelling) on the character and appearance of the surrounding area, having regard to the Nether Poppleton Conservation Area (CA) and the setting of the Grade II listed building (Poppleton House).

Reasons

4. The appeal site is located within the CA and is adjacent to a Grade II listed building (Poppleton House). The site forms rising land to the rear of The Lord Nelson Public House. It comprises a mix of grassed land and tarmac hardstanding. The appellant highlights caravans have previously been stored in the site, and an extant permission remains for that use.
5. The proposed plot 1 would comprise a part 2 storey, part 1.5 storey dwelling. It would be located towards the front of the site and would have largely a traditional appearance. The proposed plot 2 would comprise a single-storey,

flat-roofed dwelling. It would be located towards the rear of the site with a contrasting, contemporary design and sedum roof.

Conservation Area

6. The Council state that the character of the CA derives from the semi-rural character around St Everilda's Church and Manor Farm and their associations with the origins of the current settlement, which gives way to 18th and 19th century development along Church Lane and Main Street. The long narrow plot to the rear of The Lord Nelson Public House is characteristic of historic development in the village, either as a remnant of earlier burgage plots or 18th century development. The spacious character of the plot contributes to the village character and the linear, narrow shape plot form is a tangible link to its historic development. The appeal site therefore makes a positive contribution to the character and appearance of the CA.
7. It has been drawn to my attention that the plot represents one of the last historic, long, spacious plot forms in the CA. The traditional form of plot development in the CA is a house towards the front of the plot with ancillary agricultural buildings to the rear. The Lord Nelson Public House forms a frontage building to Main Street.
8. Dwellings situated on Hallgarth Close, which is accessed from Main Street, are adjacent to the site and represents a more recent development in the CA which does not reflect the historic settlement pattern. Furthermore, the area to the south west of the site, which lies outside the CA, is characterised by relatively dense suburban development. This includes dwellings on Littlefield Close which are adjacent to the site.
9. The scheme, to a degree, follows the traditional form of plot development in the CA with the two-storey dwelling at the front of the site. However, the proposal would introduce two dwellings behind the frontage building. The dwellings would have a large footprint, particularly plot 2, nonetheless the density helps to retain the character of the site as well as reflecting the character and appearance of the CA and presence of the listed building.
10. The proposal would introduce built development within the site which is currently of an open nature and has some historic value. The use of low hedging would assist in maintaining the open aspect of the site. Having said that, the introduction of two, relatively large dwellings and subdivision of the plot would be at odds with the historic character of the site. This would result in harm to the character and appearance of the CA due to the loss of the site's openness and spacious character.

Listed building

11. Poppleton House is a large, detached house constructed of red brick, with ashlar dressings and a mix of slate and pantile roof tiles, set within its own grounds. It is three-storey with two-storey and single storey additions. Mature trees and vegetation as well as a high boundary wall separate the listed building and the appeal site. It appears that historically Poppleton House and the appeal site have always been segregated. The appeal site makes a moderate contribution towards the spacious setting of Poppleton House.
12. The dwellings would be situated adjacent to Hallgarth Close, and orientated to follow the linear site alignment, which would provide a clear separation

between the proposed scheme and the setting of Poppleton House. Therefore, there would be a large gap between the proposed dwellings and Poppleton House, and also the public house.

13. However, plot 1 is a relatively large, two-storey dwelling, and its principal elevation would face towards Poppleton House. The scheme would diminish the spacious and open setting of the listed building. For these reasons, Plot 1 would have an adverse effect on the setting of the listed building.
14. The Council does not raise concern in respect of plot 2 and the setting of the listed building or regarding the scheme's impact on other listed buildings within the vicinity of the site. Based on the evidence presented, I have no reason to disagree. Plot 2 would not cause harm to the significance of Poppleton House due to the separation distance, mature trees and height of the proposed dwelling. Similarly, I am satisfied that the scheme would not harm the setting of other nearby listed buildings and would preserve the special interest of those heritage assets. This is because of the separation distance between the appeal site and those listed buildings, as well as intervening built development and mature vegetation.

Scale of Plot 1

15. The proposal would significantly increase the amount of built development within the site. The development would be more noticeable from the surrounding area than the extant permission, particularly due to the height of the plot 1 dwelling.
16. Having regard to the drawings submitted, including the photographs and images presented by local residents, as well as the height of the proposed dwellings and rising land levels, there would be limited glimpsed views of the scheme. The limited views of the proposal would be seen in the context of the surrounding area which contains both traditional and more recent dwellings, including dwellings of a similar height and scale. Furthermore, the proposed design and materials of the dwelling at plot 1 would also help to ensure that the dwelling would not stand out significantly.
17. Accordingly, although the dwelling at plot 1 would change the character and appearance of this part of the CA, it would not be unduly prominent due to the height and scale of the surrounding built development, mature vegetation and trees as well as the set back from the highway.

Design of plot 2

18. My attention has been drawn to the Poppleton Village Design Statement which sets out design guidelines. The contemporary design of the proposed dwelling at plot 2 would not reflect the existing character of the CA or dwellings within the locality. Nonetheless, the design statement makes provision for modern design within the village.
19. The use of glazing and single-storey height would help the dwelling appear lightweight and subservient to the surrounding area. The dwelling would not be conspicuous from the surrounding area due to surrounding built development, mature tree and hedge planting, as well as its set back from the highway and proposed plot 1.

20. I am satisfied that the contemporary design, including sedum planted roof and proposed materials, would complement and be in sympathy with existing building character. Therefore, in this regard, the design of proposed plot 2 would not cause harm to the character and appearance of the CA.
21. Residents are concerned that approval of the scheme, and the contemporary design of plot 2, would set a precedent. However, each development proposal must be considered on its own merits. Whilst I have found this scheme to be acceptable, it does not follow that further contemporary designed schemes would be permitted elsewhere in the CA and local area.

Heritage balance

22. For the reasons given above, I have found that the scale of the plot 1 dwelling and the design of plot 2 would be acceptable. However, the proposal would cause harm to the character and appearance of the CA, and it would also have an adverse effect upon the setting of the listed building. Accordingly, the proposal would fail to preserve or enhance the character or appearance of the CA or preserve the setting of the adjacent listed building.
23. Framework 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 (and 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. Framework paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where there is less than substantial harm, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
24. The level of harm would be at the low end of the spectrum of less than substantial harm. This is due to the scale of the proposal within the context of the CA as a whole, limited public views, distance to the listed building, height of the proposed dwellings in relation to Poppleton House as well as the siting and scale of development, and mixed character of housing surrounding the site. Nonetheless, mindful of my statutory duties¹, this is a matter to which I attach considerable importance and weight.
25. The appellant highlights social, economic and environmental benefits of the scheme including the creation of two 4-bedroom, uniquely designed dwellings suitable for families, which incorporate sustainable technologies, on a brownfield site in a sustainable and built-up location. In addition, the Council are unable to demonstrate a five year supply of housing and the scheme would help to meet the housing needs of the area. The appellant sets out the Council's housing supply position, and the Council has not disputed those figures.
26. Although the scheme is only for two dwellings, small sized sites can collectively make an important contribution to meeting the housing requirement of an area and ultimately the proposal would make a contribution towards the provision of housing. Applying the balancing exercise set out in the Framework and Policies

¹ 16(2), 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990

D4 and D5 of the Council's Local Plan- Publication Draft (2018) (LP), I find that the less than substantial harm to the heritage assets is clearly outweighed by identified public benefits set out above. I am therefore satisfied that there would be clear and convincing justification for the harm that would result to the significance of designated heritage assets.

27. For the reasons given above, due to the harm found, the proposal would strictly be contrary to the requirements of Policy PNP3 of the Upper Poppleton and Nether Poppleton Neighbourhood Plan 2016-2036 (2017) (NP) and Policy HE2 of the Council's Draft Development Control Local Plan (2005) (DDCLP). However, given the public benefits outweigh the harm and the design of proposed plot 2 would not cause harm, the scheme would accord with Policies PNP4 of the NP, Policies D4 and D5 of the Council's Local Plan- Publication Draft (2018) (LP). In addition, the proposal would accord with section 16 of the Framework, which aims to conserve heritage assets balancing public benefits against any harms identified. I note that the DDCLP and LP have not been formerly adopted, and in line with paragraph 48 of the Framework, I give them limited weight.

Other Matters

28. In addition to matters relating to the main issue, I have considered in detail the objections from residents. The concerns relate to a range of matters including living conditions of occupiers of nearby properties, drainage, The Lord Nelson public house is an Asset of Community Value and a non-designated heritage asset, trees, highway safety including parking at The Lord Nelson, loss of green space, wildlife habitats and archaeology.
29. The Council did not refuse the planning application on these grounds. Furthermore, the archaeology, landscape, public protection, highways and flood risk management officers as well as Ainsty Internal Drainage Board did not object to the proposal, subject to appropriate planning conditions. I am satisfied that the proposed development would not have a harmful impact in terms of the matters raised. Consequently, subject to appropriate conditions, there is no credible evidence before me that would lead me to an alternative conclusion to the Council on the other matters raised or that could justify the dismissal of the appeal on these grounds.
30. As set out above, the proposal would conflict with Policy PNP3 of the NP and Policy HE2 of the DDCLP. In addition, the Council are currently unable to demonstrate a five year supply of housing, and I have no evidence before me to take an alternative view. The Framework is clear that in such circumstances, permission should be granted unless the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Policies in the Framework which protect designated heritage assets is included within the list of policies that protect areas or assets of particular importance and which provide a clear reason for refusing the proposed development.
31. As I have found that the proposal would comply with the Framework, the Framework, as a material consideration, does not provide a clear reason for refusing the development. The adverse impacts of the proposal do not significantly and demonstrably outweigh the benefits, which include the contribution to housing supply.

Conditions

32. I have assessed the Council's suggested conditions in light of guidance found in the Planning Practice Guidance and where necessary the wording has been amended for clarity and precision. The appellant and Council were given the opportunity to comment on the slightly altered wording of the conditions.
33. It is necessary to attach a condition specifying the approved plans as this provides certainty. In the interest of visual amenity as well as the setting of Poppleton House and the character and appearance of the CA, conditions relating to materials, means of enclosure and refuse and recycling facilities are necessary. I also consider a condition restricting permitted development rights is necessary and reasonable, and in line with paragraph 54 of the Framework there is clear justification to do so in order to protect the setting of the listed building at Poppleton House and character and appearance of the CA.
34. In addition, to ensure satisfactory drainage of the site, conditions relating to foul and surface water are necessary. In the interest of highway safety, conditions relating to access, internal drive and turning areas as well as delivery/ service vehicles, parking and manoeuvring are necessary. Conditions relating to an electric vehicle charging point and cycle parking are also reasonable and necessary in order to encourage sustainable solutions and also to reduce the impact of vehicular emissions, in line with the Framework.
35. To preserve and protect existing trees and protect the character and appearance of the area, conditions are necessary relating to trees and a landscaping scheme. A condition is necessary relating to archaeology as the site lies within an area of archaeological interest. In the interest of residential amenity of adjacent residents, a condition is necessary relating to the hours of construction. Furthermore, in the interest of residential amenity of future occupiers of the dwellings and to ensure that the development can integrate effectively with the public house, a condition relating to noise insulation measures is necessary.
36. I note the Council's suggested condition relating to additional technical requirements that exceed the minimum standards required by Building Regulations in respect of emissions and water efficiency. Planning Practice Guidance is clear that such requirements should be evidence-based to justify the setting of appropriate policies in the local plan. In this case, the requirements are rooted in the LP which has not been formally adopted, and of which I have no clear information the current status of Policies CC1 and CC2. Consequently, I give those policies little weight and see no clear justification for the suggested condition.

Conclusion

37. I realise that this decision will come as a disappointment to those who objected against the proposed development. However, I have found that the less than substantial harm to the heritage assets is clearly outweighed by identified public benefits of the proposal. Consequently, for the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal is allowed subject to the attached conditions.

L Wilson

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: 748_P001 A (LOCATION AND SITE PLANS), 748_P230 B (PROPOSED PLANS PLOT 2), 748_P232 B (PROPOSED ELEVATIONS PLOT 2), 748_P233 D (PROPOSED SITE SECTIONS), 748_P234 A (PROPOSED PLANS PLOT 1), 748_P235 A (PROPOSED ELEVATIONS PLOT 1) 748_P236 E (PROPOSED SITE PLAN GROUND FLOOR PLANS) and 748_P238 B (PROPOSED SITE ROOF PLAN).
- 3) Notwithstanding any proposed materials specified on the approved plans or in the application form submitted with the application, samples of the external materials to be used shall be submitted to the local planning authority for approval prior to the commencement of the construction of the dwellings above foundation level. The development shall be carried out in accordance with the approved samples.
- 4) All windows and external doors of the dwelling at plot 1 as identified on the approved plans shall be made of timber.
- 5) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 6) No development shall take place until details of the proposed means of foul and surface water drainage, including details of any balancing works and off site works, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained thereafter.
- 7) There shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works and no dwelling shall be occupied prior to completion of the approved foul drainage works.
- 8) Prior to construction of any above ground works details of refuse and recycling facilities shall be submitted to and approved in writing by the local planning authority. No dwelling shall be occupied until the refuse and recycling facilities have been provided within the site in accordance with the approved details and shall be retained thereafter.
- 9) Prior to construction of any above ground works details of the access, internal drive and turning areas shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details before any part of the development is first occupied. Thereafter the internal drive and turning areas shall be retained free of all obstructions and used solely for the intended purpose.
- 10) No dwelling shall be occupied until details of the cycle parking areas, including means of enclosure, for the dwellings and the public house have been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the cycle parking areas and means of enclosure have been provided within the site in accordance with the approved

details, and these areas shall not be used for any purpose other than the parking of cycles.

- 11) Prior to any alterations to the access being undertaken, provision shall be made within the public house site for accommodation of delivery/service vehicles in accordance with the approved plans. Thereafter all such areas shall be retained free of all obstructions and used solely for the intended purpose.
- 12) No dwelling shall 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.
- 13) Before the commencement of development, an Arboricultural Method Statement and scheme of Arboricultural supervision regarding protection measures for existing trees adjacent to the application site shall be submitted to and approved in writing by the local planning authority. This statement shall include details and locations of protective fencing, ground protection, a schedule of tree works if applicable, site rules and prohibitions, phasing of protection measures, site access during demolition/construction, types of construction machinery/vehicles to be used (including delivery and collection lorries and arrangements for loading/off-loading), parking arrangements for site vehicles, locations for stored materials, and means of moving materials around the site, locations and means of installing utilities, location of site compound. The document shall also include methodology and construction details where specialist construction techniques are required for a change in surface material within the potential root protection area of existing trees. A copy of the document will be available for reference and inspection on site at all times. The development shall be implemented in accordance with the approved details.
- 14) No dwelling shall be occupied until there has been submitted to and approved in writing by the local planning authority a landscaping scheme. The scheme shall illustrate the number, species, height and position of trees and shrubs. This scheme shall be implemented within a period of six months of the completion of the development. Any trees or plants which within a period of five 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 a similar size and species.
- 15) A programme of post-determination archaeological evaluation specifically trenching on the footprint of the dwellings hereby permitted shall be carried out for the site. It shall comprise 3-5 stages of work. Each stage shall be completed and approved by the local planning authority before it can be approved/discharged.
 - A) No trenching or development shall take place until a written scheme of investigation (WSI) has been submitted to and approved in writing by the local planning authority. The WSI should conform to standards set by the Chartered Institute for Archaeologists.
 - B) The site investigation and post investigation assessment shall be completed in accordance with the programme set out in the WSI approved under stage (A) and the provision made for analysis, publication and dissemination of results and archive deposition will be secured. This part of the condition shall

not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI.

C) A copy of a report on the evaluation and an assessment of the impact of the development hereby permitted on any of the archaeological remains identified during trenching shall be deposited with City of York Historic Environment Record to allow public dissemination of results within 6 weeks of completion or such other period as may be agreed in writing with the local planning authority.

D) Where archaeological features and deposits are identified proposals for the preservation in-situ, or for the investigation, recording and recovery of archaeological remains and the publishing of findings shall be submitted as an amendment to the original WSI. It should be understood that there shall be presumption in favour of preservation insitu wherever feasible.

E) No development shall take place until:

- details in Part D have been approved and implemented on site;
- provision has been made for analysis, dissemination of results and archive deposition has been secured; and
- a copy of a report on the archaeological works detailed in Part D should be deposited with City of York Historic Environment Record within 6 months of completion or such other period as may be agreed in writing with the local planning authority.

16) Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order), development of the type described in Classes A to E of Schedule 2 Part 1 of that Order shall not be erected or constructed.

17) Notwithstanding the information contained within the approved plans, details of all means of enclosure (e.g. walls and fences) shall be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details before any part of the development is first occupied.

18) The development shall incorporate sufficient capacity within the electricity distribution board of each dwelling for one dedicated radial AC single phase connection to allow the future addition of an Electric Vehicle Recharge Point (minimum 32A) for each dwelling. Prior to the commencement of construction work above ground floor level, a drawing shall be submitted for the written approval of the local planning authority which identifies the proposed location for a future Electric Vehicle Recharge Point within the development curtilage and ensure that any necessary trunking/ducting is in place to enable cables to be run to the specified location.

19) Construction works shall take place only between 8am and 6pm on Mondays to Fridays, 9am and 1pm on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

20) No development shall take place until a detailed scheme of noise insulation measures for protecting the dwellings hereby permitted from externally generated noise from the adjacent Public House has been submitted to and

approved in writing by the local planning authority. Upon completion of the insulation scheme works, no part of the development shall be occupied until a noise report demonstrating compliance with the approved noise insulation scheme has been submitted to and approved in writing by the local planning authority. The measures implemented as approved shall be retained thereafter.