



Appeal Decision

Site visit made on 6 June 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th November 2022

Appeal Ref: APP/E2734/W/22/3294188

The Mews House, 74A Duchy Road, Harrogate HG1 2EZ

- 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 Henderson against the decision of Harrogate Borough Council.
 - The application Ref 21/00040/FUL, dated 5 January 2021, was refused by notice dated 4 October 2021.
 - The development proposed was initially described as '*Erection of a single storey dwelling, associated external works and landscaping*'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 no dwelling; associated external works and landscaping (revised Description) at The Mews House, 74A Duchy Road, Harrogate HG1 2EZ in accordance with the terms of the application, Ref 21/00040/FUL, dated 5 January 2021, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

2. Although the application was initially described in the terms set out in the banner heading, above, I have adopted the slightly revised development description set out on the decision notice and in subsequent appeal documentation in my decision. I am satisfied that in so doing no party would be prejudiced and I have determined the appeal accordingly.

Application for costs

3. An application for an award of costs was made by Mr & Mrs Henderson against Harrogate Borough Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Harrogate Conservation Area;
 - The effect upon trees; and
 - The living conditions of occupiers of neighbouring properties, with particular regard to sunlight and daylight, and privacy.

Reasons

5. Both parties have referred to the appeal site's recent planning history which comprises of a previously approved scheme for a detached dwelling¹ (the 2018 permission) and a more recent scheme, also for a detached dwelling, which was dismissed at appeal² (the 2020 scheme). Both parties have provided comparative commentaries on the successive schemes which I have taken into consideration in my determination of this appeal.

Character and appearance and the Harrogate Conservation Area

6. The site lies within the Duchy Estate sub-area of the Harrogate Conservation Area (CA). Under the provisions of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), there is a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
7. The CA Character Appraisal (CACA) notes that houses within this sub-area are large, largely set back from the roadside behind generous front gardens and often screened by stone walls, gates and piers, hedges and trees. The landscape is mature and the setting of the houses verdant and sylvan spacious plots, a key feature of which is a generally low building-to-plot ratio.
8. Although generally relatively narrow, the residential plots along Duchy Road are of considerable depth. The exception proving the rule, however, applies to the appeal site and the dwellings to either side of its access, numbers 74 and 76. Here, the appeal site is set back behind the prevailing Duchy Road frontage, lying between them and the rear garden plots of properties on Kent Road. Additionally, the appeal site is notably wider than those plots around it on Duchy Road, effectively comprising a width equivalent to the garden plot-widths of numbers 74 and 76.
9. The proposed dwelling would not be widely visible from public vantage points along Duchy Road. Indeed, if visible at all, views would be glimpsed and significantly tempered by frontage vegetation within the front garden plots of the two properties on either side of its access. When glimpsed, the dwelling would present a modest and simple gabled single storey elevation, offset to one side within the framed view, maintaining the dominant aspect of the dense, sylvan backdrop created by the large numbers of trees within the appeal site and the rears of nearby properties. In this respect, it would be little different in principle, if not design and appearance, to the relationship of the existing building within the appeal site to the Duchy Road frontage.
10. However, as the Council correctly state, the character and appearance of conservation areas is not solely derived from public views, and it would be in private views where the proposed dwelling would be more widely and clearly seen. Although I observed a key feature of the area between buildings on Duchy Road and Kent Road to be its long gardens, mature trees and dense hedges, together creating a sense of spacious, openness within a heavily landscaped setting, buildings were not absent from this area.
11. The Council acknowledge that some of these outbuildings are relatively large but, if so, they were not readily apparent when viewing along the rear gardens

¹ LPA Ref No: 18/00658/FUL

² LPA Ref No: 20/00433/FUL – Appeal Ref: APP/E2734/W/20/3254956

from the appeal site. The proposed dwelling would, in terms of its depth and height, be somewhat add odds relative to the scale of smaller outbuildings and sheds in the garden plots around it.

12. However, despite this, the proposed dwelling would not be harmfully so in the context of its positioning within the appeal site or, crucially in my view, within the space between Duchy and Kent Roads. I note that it has been significantly reduced in its depth and width relative to the previously dismissed 2020 scheme, and repositioned within the appeal site, such that its footprint and occupation of the plot would be more similar to that which the Council previously considered to be acceptable with the 2018 permission.
13. I accept that the proposed dwelling would be very different in terms of its bulk and massing to that which was previously approved in the 2018 permission. I note, too, that it would lack the creative use of levels which that scheme employed to assist it 'stepping' down the gentle slope present within the appeal site. Nevertheless, in the context of the generous rear garden plot depths and the extra width of the appeal site relative to those other plots, I am satisfied that what is proposed in this instance would appear neither excessively bulky nor extensive in its two-dimensional spread within the plot.
14. Nor would it present the 'near impenetrable' barrier across the green corridor that the 2020 scheme would have created. Although larger than the approved 2018 permission by a substantial amount in terms of its footprint area, its elevations would appear less bulky than the 2018 permission. Moreover, its footprint area would be significantly less than that of the previous scheme, which was described in the terms set out above by the previous Inspector. Indeed, proposed to be in the region of 7 metres shorter than that scheme the proposal would be reflective of the lower plot densities, space around and between properties and sylvan setting that are typical of the surrounding area.
15. However, the building would be experienced in three dimensions, rather than just the two if all that were to be considered was the building's footprint. What is proposed here is very different to what was proposed in the 2018 permission. Whilst I do not wholly agree with the appellants' description of the proposed dwelling as being of 'pavilion' form, it would appear more akin to a garden building, albeit a large one, as opposed to having the character and appearance of the distinct, solid and more formal house proposed by the 2018 permission.
16. The resulting plot ratio would also remain low, whilst the respective eaves and ridge levels would be no greater or less than those of extant scheme. Despite its extensive roof area it would nevertheless settle well into the site and its surrounding context. From Duchy Road it would provide a largely uninterrupted view between 74 and 76 Duchy Road towards the verdant backdrop seen up the driveway and through the appeal site, whilst from the rear, the mature garden landscape and vegetation would break up the bulk and massing of the building's roofscape.
17. I accept that a dwelling in this rear garden location would be a departure from the prevailing pattern of development. This would set it slightly at odds with the guidance set out in the '*Heritage Management Guidance*' Supplementary Planning Document (SPD). However, I do not find that it would compromise or cause harm to the spatial character of the area, a character which is derived

from, amongst other things, generous plot sizes, space around and between the rears of buildings and mature garden vegetation.

18. Whilst it may therefore eschew some of the detailed advice set out within the SPD it would not be at odds with its broad principles of seeking to ensure high quality development and recognising that good contemporary design can be appropriate in conservation area settings. The appellant's submissions in this respect are, I find, persuasive and coherent and explain how and why the proposal would avoid a jarring or incongruous presence within the CA.
19. Previously, the 2020 proposal was considered on appeal to result in substantial harm to the CA. The Framework 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. The statutory test set out at section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of that area.
20. It is agreed by the main parties that the 2018 permission remains extant and provides the appellant with a fallback position which is a material consideration to which I give considerable weight. The proposed dwelling would be a sizeable building, both in isolation and when considered against the extant 2018 permission. However, in other respects that comparison would conclude in more favourable terms for the current proposal. The extant scheme was, in certain respects, a substantial and solid building with taller and more substantial elevations than the current proposal. From Duchy Road, the current scheme would be discrete, removing from view the existing garage and incongruous conservatory, improving the view through towards the heavily wooded rear garden backdrop, in a way neither the existing garage and conservatory addition, the more substantial 2018 permission or the 2020 proposal would have achieved.
21. Larger garden buildings, should they exist, are not readily evident or where their scale and size is disguised by garden vegetation, trees, shrubs and hedges. However, the proposed scheme would be a less imposing building in terms of its height and, despite its slightly increased depth and width, also in terms of massing. In both respects, it would be a significant and substantial improvement over that previously dismissed as resulting in substantial harm to the CA's significance.
22. Thus, for reasons I have set out, I am satisfied that the proposed dwelling would have a neutral effect on the character, appearance and significance of the CA. In reaching this conclusion I am particularly mindful of, and have taken into consideration, the extant permission of the 2018 permission. As such, it would preserve the character and appearance of the CA, a matter to which great weight and special attention are required to be given. The proposal would not therefore cause harm to the spatial qualities and character of the surrounding area, or to its verdant, sylvan setting and qualities. There would be no conflict with HDLP policy HP2, the aims and principles of the CACA or the approach to good design espoused by the Framework.

Trees

23. The Council are concerned that the appeal proposal would increase the dwelling footprint at the expense of tree numbers, resulting in the loss of healthy trees

within the CA. As there is no dwelling on the site, it is assumed that the comparison the Council draw is with regard to the previously approved scheme. Yet the appeal scheme proposes the removal of only 3 trees³ (2 within the appeal site) and two smaller groups of trees⁴, noting that the latter groups were, at the time of my visit to the site, no longer present and the circumstances of their removal the subject of dispute between the parties.

24. As described above, a key element of the area's character is derived from the mature, sylvan landscape between the rears of properties on Duchy Road and Kent Road. Whilst much of the site's interior is open, mature tree, shrub and hedge cover remains, and would remain, around the site's perimeter. In reality, this is little different from those neighbouring garden plots where the vegetation also forms clear, established and distinctive perimeter features.
25. Moreover, the appeal proposal adequately demonstrates how it would be possible to retain more of the larger trees when compared with the approved scheme, particularly with regard to the willow at the site's south-eastern corner. This, and the other mature tree flanking the entrance from the access lane, are significant contributors to the area's sylvan setting; their retention, protection and incorporation into the scheme is therefore welcomed. Nevertheless, I accept that the dwelling would be relatively close to this particular tree than the previously approved scheme and I am therefore also mindful of future pressures for pruning. However, I have no reason upon which to conclude that the proposal would be immediately harmful to this tree, and no reason to believe that it would necessarily present any greater potential for pruning works than the tree's presence in the context of the existing residential garden areas around it.
26. With suitable mitigation and measures as set out in the appellants' *'Arboricultural Report and Arboricultural Impact Assessment'*⁵ and *'Arboricultural Rebuttal Statement'*⁶ I am satisfied that the proposed scheme would adequately protect those trees identified as being retained. Moreover, I am satisfied that those trees to be retained would provide an appropriate basis for the continuation of the area's defining characteristics of a mature, sylvan landscape setting in a residential context.
27. With regard to the suitability of the proposed planting, I am satisfied that the Council's concerns in this respect could reasonably, logically and appropriately be addressed through suitably worded landscaping and landscape planting conditions. For these to be informed by discussions around suitability of species and planting locations would not be unexpected or unreasonable and I am not persuaded that there is anything unusual regarding the proposal, the site, site conditions or its setting that would prevent such an approach. There would not, for these reasons therefore, be conflict with the provisions of HDLP policy NE7.

Living conditions

28. With regard to the proposal's effect on living conditions and amenity of future occupiers of the proposed dwelling, or existing and future occupiers of

³ Identified as T4, T7 and T19 – Appendix 3, Arboricultural Rebuttal Statement on behalf of the appellant – JCA Ref: 15516c/ChC – Rev 1

⁴ Identified as G8 and G18 – Arboricultural Report and Arboricultural Impact Assessment – JCA Ref: 15516c/ChC – Rev 1

⁵ JCA Arboricultural & Ecological Consultants Limited – *'Arboricultural Report and Arboricultural Impact Assessment'* – JCA Ref: 15516c/ChC – Rev 1

⁶ Arboricultural Rebuttal Statement on behalf of the appellant – JCA

neighbouring properties, I have noted that the Council did not refuse the application on these grounds. I have also carefully considered the conclusions of a previous Inspector in relation to earlier schemes at the appeal site in this respect.

29. Nevertheless, concerns have been raised by other interested parties in this respect. The appeal scheme before me differs from that previously considered at appeal and again from that considered by the Council to be acceptable. However, there are some broad similarities and shared principles between the two, most recent, appeal schemes, principally that the building's long axis, and thus a lengthy flank elevation, would also run parallel to the plot boundary with the neighbouring garden for a substantial part of its length.
30. At its closest points to the eastern side of the plot, it would be further away than the previous appeal scheme in which the Inspector concluded that although there would be some loss of sunlight to the neighbouring rear garden, existing vegetation would be a significant factor in loss of sunlight on summer evenings. The net loss of sunlight in that instance would not, the Inspector concluded, be substantial.
31. As with that scheme, it seems to me that the proposed dwelling would result in some loss of sunlight to the neighbouring rear garden. Although further away at its closest points, the main body of the proposed dwelling would be consistently closer to the plot boundary, albeit not by a substantial margin, than the previous scheme. Nevertheless, it seems to me that the existing mature, verdant setting and boundary vegetation of surrounding garden plots, including that of the appeal site, remains a significant factor in sunlight penetration.
32. With regard to matters of privacy, the dwelling has been designed to be largely inward looking within the plot. Thus, window and door openings on the south/east, north/east and north/west elevations would be limited, and the main focus of fenestration and day-to-day activity and movements would be around the building's south/west elevation. I am not persuaded that the proposal would be materially different in these respects to that which was previously considered and concluded to avoid harm to the living conditions of occupiers of 72 Duchy Road.
33. Nor, having carefully considered the proposed dwelling's relationship with those other neighbouring properties around it, am I persuaded that it would result in harm to the living conditions of occupiers of Nos. 74 or 76. There would be no conflict with HDLP policy HP4 which seeks to ensure that new development would not result in significant adverse impacts on neighbours through loss of privacy or sunlight, or the Framework in its advice regarding the provision of a high standard of living conditions for current and future occupiers.

Other Matters

34. It is acknowledged that there is no dispute as to the Council's healthy housing land supply position and the proposed development for a single dwelling house would make only a very limited contribution to housing supply. However, the presence of a five-year housing land supply is not a limit, and the Government's objective of significantly boosting the supply of homes is clearly set out in the Framework. The provision of an additional home nevertheless therefore carries some, albeit limited, weight in support of the proposal.

35. It is noted that the Council do not object to the proposal, subject to appropriately worded planning conditions, on highway safety grounds. I have not been presented with any compelling evidence to lead me to conclude otherwise.

Conditions

36. The Council have suggested a range of conditions in the event that the appeal should succeed, to which I have given careful consideration in light of the advice and guidance set out in the Framework and Planning Practice Guidance. Where necessary I have amended conditions in the interests of precision and clarity but in so doing I am satisfied that no party would be prejudiced.
37. In addition to the time limit condition, I have noted the clarification provided by the Council with regard to the numbering of plans. I have revised the wording of the condition to reflect this clarification and consider both of these conditions to be necessary and reasonable in the interests of good planning and in order to provide certainty.
38. I agreed that materials conditions regarding the external materials, to include those of the walls, of the roof, and windows and doors, and landscaping details to include surface materials, are necessary and reasonable in the interests of character and appearance. The latter, together with conditions to ensure implementation of the tree protection measures set out by the appellants, are also necessary and reasonable in the interests of both character and appearance and the health and integrity of trees, shrubs and hedges within and around the site.
39. I agree that conditions to ensure the appropriate laying out of the access, manoeuvring and parking spaces, and access to an electric vehicle charging point, are necessary and reasonable in the interests of highway and pedestrian safety and the encouragement of sustainable travel patterns. I have slightly revised the wording of suggested conditions 5 and 6 to ensure consistency of phrasing between them.
40. With regard to the management of the appeal site during its construction phase, I agree that a construction management plan (suggested condition 7) would be in the interests of living conditions and highway safety. I have however removed the requirement preventing parking on the public highway as to impose it would unreasonably go beyond the scope of the planning permission. A condition setting out provisions should ground contamination be encountered is reasonable and necessary in the interests of health and the safe development of the appeal site.

Conclusion

41. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

G Robbie

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: Location Plan drawing no: PL-20 (date 27.02.2020); Proposed Site Plan drawing no: PL-21 Revision B (date 25.08.2021); Proposed Ground Floor Plan drawing no: PL-22 Revision A (dated 25.08.2021 with revision B in notes above drawing title box); Proposed First Floor Plan drawing no: PL-23 Revision A (dated 25.08.2021 in notes above drawing title box); Proposed Roof Plan drawing no: PL-24 Revision B (date 25.08.2021); and Proposed Elevations drawing no: PL-25 Revision B (date 25.08.2021).
- 3 The construction of the external walls of the dwelling shall not commence until a sample panel of the proposed external stonework and samples of the proposed external roofing material have been made available on site for the written approval of the local planning authority, and have been approved in writing by the local planning authority. The sample panel shall measure at least 1 square metre and demonstrate the type, size, colour, pointing, dressing and coursing of the stone to be used. The development shall be carried out in accordance with the details thereby approved.
- 4 No works above ground level shall commence until details of the appearance, materials and colour of the proposed windows and doors have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the details thereby approved.
- 5 The dwelling hereby permitted shall not be occupied or brought into use until details of the installation of a charging point for electric vehicles have been submitted to and approved in writing by the local planning authority, and a charging point has been installed in accordance with the details thereby approved. The charging point shall thereafter be retained in accordance with the approved details.
- 6 The dwelling hereby permitted shall not be occupied or brought into use until the related parking facilities have been constructed in accordance with the details on the Proposed Site Plan drawing no: PL-21 revision B. Once created the parking area shall be maintained clear of any obstruction and retained for its intended purpose at all times.
- 7 No development shall commence, including site clearance, demolition, excavation or depositing of materials, or establishment of a site compound in connection with the construction of the proposed development, until details of the following have been submitted to and approved in writing by the local planning authority:
 - a) on-site parking capable of accommodating all staff and sub-contractors' vehicles clear of the public highway; and

b) an on-site materials storage area capable of accommodating all materials required for the operation of the site.

The approved areas shall be kept available for their intended use at all times that construction works are in operation.

- 8 No development, including demolition, site clearance or preparation, shall commence until tree protection measures have been installed at the site in accordance with the details in JCA Tree Report, reference 15516f/ChC, dated September 2021 and Arboricultural Implications Plan reference: 15516f/ChC, and in accordance with the requirements of British Standard BS 5837: 2012 (section 6.2.2 figure 2) Trees in Relation to Construction – Recommendations, or any subsequent amendments to that document. The tree protection measures shall be retained on site in accordance with the details specified for the full duration of the construction of the development.

No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved root protection area scheme. Nor shall any alterations take place to the level of the land within fenced-off areas.

- 9 No development shall commence until a scheme, by a qualified structural engineer, for the foundation details and general building structure has been submitted to and approved in writing by the local planning authority. The submitted scheme shall ensure that tree roots are retained and the building protected against root activity related movement in the future.

The development shall be carried out in accordance with the details thereby approved.

- 10 No works above slab level shall commence until a detailed scheme for landscaping, including the planting of trees and or shrubs and the use of surface materials has been submitted to and approved in writing by the local planning authority. The scheme shall specify materials, species, tree and plant sizes, numbers and planting densities, and the timing of implementation of the scheme, including any earthworks required. The works shall be carried out in accordance with the details and timetable thereby approved.

- 11 In the event that contamination is found at any time when carrying out the approved development that was not previously identified, all groundworks in the affected area (except for site investigation works) shall cease immediately and the local planning authority shall be notified in writing immediately. Works shall not recommence until an investigation and risk assessment, and, where necessary, a remediation scheme, have been submitted to and approved in writing by the local planning authority.

In the event that remediation is necessary, the development shall be carried out in accordance with the remediation scheme therefore approved.

Following completion of measures identified in the approved remediation scheme, a verification report shall be submitted to the local planning authority. No part of the site shall be brought into use until such time as the

remediation measures have been completed for that part of the site in accordance with the approved remediation scheme and a Verification Report in respect of those remediation measures has been approved in writing by the local planning authority.

**** end of Schedule ****