



Appeal Decision

Site visit made on 27 September 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2022

Appeal Ref: APP/E2734/W/22/3298859

19 Fulwith Mill Lane, Harrogate HG2 8HJ

- 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 Michael Howard against the decision of Harrogate Borough Council.
 - The application Ref 21/04777/FUL, dated 1 November 2021, was refused by notice dated 4 May 2022.
 - The development proposed is the demolition of existing property and erection of 2 storey dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing property and erection of 2 storey dwelling at 19 Fulwith Mill Lane, Harrogate HG2 8HJ in accordance with the terms of the application, Ref 21/04777/FUL, dated 1 November 2021, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the site and the surrounding area.

Reasons

3. The appeal site is located on Fulwith Mill Lane, a spacious and leafy lane with a rural feel along which large, detached dwellings are set within substantial garden plots. The houses here vary markedly in architectural style, character and detailing and age, with conspicuously more recent properties interspersed amongst older properties. There is little to unify the somewhat disparate appearance and varied architectural detailing along the lane other than the generally generous scale and proportions of properties, a set-back building line within large garden plots and a verdant, hedge-lined and often mature landscaped plot frontages and roadside verges.
4. The proposal would see one of the more modest, albeit still large, existing detached two storey houses demolished and replaced by a larger, more substantial property in its place. The proposed dwelling would provide living residential accommodation across basement, ground, first and second floor levels, together with a garage/apartment wing to the side and a swimming pool/gym wing extending rearwards into the long rear garden area. Although substantially larger than the existing dwelling in many, if not all, metrics, it would nevertheless still be broadly consistent with the prevailing pattern, form and scale of development within the lane, insofar as there are any unifying or defining characteristics.

5. Although possessing a substantially wider façade than the building it would replace, the proposed dwelling would not be any further forward within the plot than the existing. In this respect, it would preserve the broadly consistent set back established along the length of this part of Fulwith Mill Lane.
6. Whilst its overall width would also be significantly greater than that of No. 19 by virtue of the garage / apartment wing and the rear swimming pool/gym wing, both of the latter elements would be set back on each side by a considerable distance from the dwelling's front corners. This would mitigate the additional width of these elements of the building, and despite extending closer to the side plot boundaries than currently, both elements would be recessive within the streetscene. Furthermore, given the extent of this set-back, even though the property would be visible from the lane, the recessive nature of these elements of the dwelling would be such that I am satisfied that they would avoid the visual harm that the Council is concerned by.
7. Nor am I concerned by the Council's suggestion that the dwelling would have an over-complicated and poor built-form. The double-fronted design of the façade, with the peaked gable bays and bay windows, would provide further visual and design interest to the lane, whilst contributing to the pleasingly disparate collection of architectural styles along the lane. The recessed side elements with their varying depths and extent of roof slope would provide a degree of balance to the gabled bays and ensure a softer transition from built form towards the plot boundaries, thereby maintaining a visual link between the landscaping along the plot frontage and the mature backdrop afforded by rear garden planting at the appeal site and its adjacent plots.
8. Space around and between the dwellings is a characteristic feature in the lane's overall composition. The resulting gaps in this instance, but particularly between the appeal property and No. 17, would be consistent with those between properties elsewhere along Fulwith Mill Lane. In the context of a residential lane comprised of houses of varying architectural styles, scale and form and siting, the proposal would be consistent with the prevailing mixed pattern of development.
9. The appellant has provided at both application and appeal stages a detailed and well-justified approach to the design, scale, form and siting of the proposed replacement dwelling. Local distinctiveness within and along Fulwith Mill Lane is derived more from the variety of architectural styles and design approach of the dwellings than any sense of definitive or repeated design, scale or form. In this context, the proposed dwelling would be neither incongruous within nor harmful to the character or appearance of the Fulwith Mill Lane area.
10. The appellant does not dispute that trees have been removed from the site. However, the trees are not protected by preservation order nor does the appeal site lie within a conservation area and therefore do not benefit from the protection to trees afforded by such designations. Whilst regrettable, I have no reason to doubt the appellant's justification for these works prior to the submission of the planning application, as set out in the '*Appeal Statement of Case*'¹.

¹ Paragraph 7.29 – Appeal Statement of Case

11. The appellant's '*Pre-Development Arboricultural Impact Assessment & Preliminary Arboricultural Method Statement Rev a*'² (AIA&AMS) and accompanying survey plans, including particularly the Tree Protection Plan (rev a), and the Proposed Site Plan³ clearly set out the appellant's approach to the retention and protection of those trees present within the site and immediately surrounding it. The latter also provides an indication of intended landscaping proposals to bolster the retained elements of the existing hedge along the site's frontage. Whilst the appeal scheme would entail the removal of this length of hedging to create a second access into the site, I am satisfied that the submitted information and suitably worded conditions would ensure that the essential character of the lane's verdant frontage would not be compromised by the development of the appeal site in the manner proposed.
12. Policies HP3 and NE4 of the Harrogate District Local Plan (HDLP) set out the Council's approach to securing high quality development reflective of local distinctiveness. In amongst other factors, they state that proposals should respect the spatial qualities of the area including scale, appearance and the use of spaces about and between buildings, respond positively to built form, orientation, grain, take account of the contribution that fenestration, roofscape, detailing and landscaping make and that the landscape character of the district will be protected and enhanced. For the reasons set out, I am satisfied that the proposed development would achieve these aims and there would be no conflict with HDLP policies HP3 or NE4, or with the principles lying behind the advice and guidance set out in the Council's '*Residential Design Guide*'⁴.

Other Matters

13. It has been suggested that remaining trees within the appeal site be granted protection by way of a Tree Preservation Order. Whilst such matters do not fall to me to consider under the scope of this appeal, a suitably worded planning condition would ensure the protection during construction of those existing trees to be retained and a scheme of tree, shrub and hedge planting as part of a comprehensive landscaping proposal. Consideration of whether or not to designate a tree preservation order is a matter for the Council and interested parties.
14. I have not been provided with any details of a woodland planting programme, as referred to by an interested party and, given my conclusions above regarding the proposal's approach to tree protection and replanting, this is not a material consideration to which I give any significant weight.
15. It is noted that the Council did not object to the proposal in principle, or on grounds relating to living conditions of occupiers of neighbouring properties, biodiversity or highway and pedestrian safety. Subject to suitably worded planning conditions where necessary and reasonable, as set out below, I have not been presented with any reason to reach an alternative conclusion in respect of these matters.

Conditions

16. I have carefully considered the conditions suggested by the Council in the light of the Framework and Planning Practice Guidance. A plans condition is

² Aire Valley Tree Consultancy Limited 30.10.21 (AVTCL Ref: 1 Rev a FulwithMillLance.WildbloodMacdonald. 10-21)

³ Drwg No: (PL)005 Rev E

⁴ Approved March 1999

necessary and reasonable in the interests of certainty and good planning. So too is a materials condition in the interests of character and appearance, as well as good planning and certainty. I agree too, that a condition setting out the hours of demolition and construction work should be attached in the interests of the living conditions of occupiers of nearby properties during the construction period.

17. Additionally, conditions relating to the specifications of the access onto Fulwith Mill Lane, the implementation of the approved landscaping scheme and a condition requiring a bat survey, are necessary and reasonable in the interests of highway safety, character and appearance and biodiversity and the protection of protected species, respectively.
18. There is no evidence before me indicating that the site is potentially liable to contain contamination. Nevertheless, as a result of the potential legacy of historic uses and the demolition of the existing building, as a precautionary approach it would be necessary, reasonable and prudent to impose a condition regarding addressing unexpected contamination.
19. Although the Council have suggested a condition relating to the provision of an electric vehicle charging facility, I have not been provided with any development plan imperative to do so, and this is covered by other legislation. I have therefore not attached the suggested condition. Nor have I imposed the Council's suggested conditions regarding the provision and retention of access and parking spaces or the removal of permitted development rights, as they duplicate the plans condition and may not pass the test of reasonableness or necessity, respectively.

Conclusion

20. For the reasons given above, having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed subject to the conditions set out in the schedule attached to this decision.

KL 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:
 - 2693 (PL)005 Revision E Proposed Site Plan;
 - 2693 (PL)011 Revision D Ground Floor Plan;
 - 2693 (PL)012 Revision D First Floor Plan;
 - 2693 (PL)013 Revision D Second Floor Plan;
 - 2693 (PL)014 Revision D Basement Floor Plan;
 - 2693 (PL) 30 Revision B Proposed South (Front) Elevation;
 - 2693 (PL) 31 Revision B Proposed East (Side) Elevation;
 - 2693 (PL) 32 Revision B Proposed North (Rear) Elevation;
 - 2693 (PL) 33 Revision B Proposed West (Side) Elevation;
 - 2693 (PL) 34 Revision B Sectional East (Side) Elevation;
 - 2693 (PL) 35 Revision B Sectional North Elevation;
 - 2693 (PL) 36 Revision B Sectional West (Side) Elevation and
 - 2693 (PL) 45 Revision C Street Scene.
- 3) Prior to their first use, samples of the materials for the external walls and roof in the development hereby approved shall be made available on site for the inspection by and written approval of the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details.
- 4) The development must not be brought into use until the access to the site at Fulwith Mill Lane has been set out and constructed in accordance with the 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by the Local Highway Authority and the following requirements: The crossing of the highway verge and/or footway must be constructed in accordance with the approved details and/or Standard Detail number E50-A and the following requirements:
 - Any gates or barriers must be erected a minimum distance of 5 metres back from the carriageway of the existing highway and must not be able to swing over the existing or proposed highway.
 - That part of the access extending 5 metres into the site from the carriageway of the existing highway must be at a gradient not exceeding 1 in 40.
 - Provision to prevent surface water from the site/plot discharging onto the existing or proposed highway must be constructed in accordance with the approved details and maintained thereafter to prevent such discharges.
 - The final surfacing of any private access within 10 metres of the public highway must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
 - Measures to enable vehicles to enter and leave the site in a forward gear. All works must accord with the approved details.

- 5) Prior to the commencement of works, bat surveys must be undertaken during the main bat activity period (May to August inclusively) in accordance with the recommendations of the Bat Survey Report (Middleton Bell Ecology, November 2020 section 6.3.1) and the results of the surveys must then be submitted, together with recommendations for mitigation and enhancement for the written approval of the Local Planning Authority. The development must then be carried out in strict accordance with the approved details.
- 6) 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 by competent persons and a written report of the findings must be produced and approved in writing by the Local Planning Authority.

Where remediation is necessary a remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared and is subject to the approval in writing of the Local Planning Authority. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise approved in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning Authority.

- 7) All demolition and construction works shall be controlled and restricted to:
 - 08:00 until 18:00 Mondays to Fridays
 - 08:00 until 13:00 Saturdays
 - No work on Sundays or Bank Holidays

**** end of schedule ****