



Appeal Decision

Site visit made on 22 November 2022

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/E2734/W/22/3307345

12 Hill Rise Avenue, Harrogate HG2 0AF

- 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 Luke Fitzgerald against the decision of Harrogate Borough Council.
 - The application Ref 21/04794/FUL, dated 29 October 2021, was refused by notice dated 22 July 2022.
 - The development proposed is demolition of garage and erection of two-bedroom bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of garage and erection of two-bedroom bungalow at 12 Hill Rise Avenue, Harrogate HG2 0AF in accordance with the terms of the application, Ref 21/04794/FUL, dated 29 October 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Issues

2. An elevation drawing showing a 1800mm high close boarded fence on the north-western boundary of the appeal site has been submitted with the appeal¹. The drawings submitted to the Council as part of the planning application are clearly marked with a 1800mm close boarded fence along this boundary.
3. Alongside the drawings informing the Council's decision I have considered whether it would be appropriate to take an additional submitted drawing into account in line with the Wheatcroft principles². As the drawing does not amend the scheme and no party would be prejudiced by its consideration, I have taken it into account in reaching my decision.

Main Issues

4. The main issues are the effect of the proposed development on:
 - The character and appearance of the site and its surroundings including the effect on trees; and
 - The living conditions of existing occupiers at 13 College Street with particular regard to privacy.

¹ Dwg No. 1.9 Rev A

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL, 1982, P37]

Reasons

Character and Appearance

5. The appeal site comprises a broadly rectangular parcel of land in the garden of 12 Hill Rise Avenue. It is located in an established residential area characterised by mainly semi-detached and detached houses of mixed styles and eras. An existing bungalow (13 College Street), similar in style to that proposed, is located just to the east, set back from College Street and accessed adjacent to the appeal site. There is also a row of four bungalows with unusual half hipped roofs on College Street. Further afield, houses in the area occupy modest plots and are generally set back from the highway with short front gardens.
6. The proposal involves the demolition of an existing garage and its replacement with a detached two-bedroomed bungalow. The proposed bungalow would have a larger footprint and be positioned further back within the site than the existing garage.
7. Whilst the proposed bungalow would occupy almost the whole width of the appeal site there would be sufficient gap between 12 Hill Rise Avenue and 15 College Street for a new dwelling not to appear cramped. It would appear as part of the street scene of College Street rather than that of Hill Rise Avenue where it would only be visible in part, through a gap between the houses.
8. The proposed development would not appear incongruous in the street scene on College Street where it would be viewed in the context of the bungalow at No. 13, the surrounding two storey houses and the bungalows on the opposite side of the street. Whilst the proposed development would be clearly visible from the public realm this does not equate with harm. Neither do I consider that it would result in plot sizes for the proposed dwelling or that of No.12 which would not be in keeping with those prevailing in the locality.
9. The proposal would involve the removal of a number of trees from the site. The group of trees which comprises one sycamore and three ash trees to the College Street frontage of the site are covered by a Tree Protection Order (TPO). As a group, these trees contribute positively to the character and appearance of the street scene.
10. An Arboricultural Impact Assessment submitted by the appellant identifies the removal of trees on the southeastern boundary of the site and also the southernmost ash tree in the line of trees on the College Street boundary. However, the proposed site plan and street scene elevations indicate that it would be retained. The driveway would be almost entirely within the root protection area of the southernmost ash tree. Whilst the group of trees as a whole contributes positively to the street scene, the loss of this particular tree would not harmfully undermine the contribution that the group makes to the appearance of the area.
11. The appellant has indicated that the storage of materials during the course of the construction would take place outside the appeal site boundary but would be on land within their control at 12 Hill Rise Avenue. The use of the area indicated would ensure that root protection zones for the protected and retained trees on the site would be safeguarded during the construction period. This could be adequately and reasonably controlled by condition.

12. I therefore find that the proposed development would not have an adverse effect on the character and appearance of the site and the wider area and any adverse impact on trees could be adequately mitigated or compensated for. Therefore, it would not conflict with Policies HP3, NE4 or NE7 of the Harrogate District Local Plan 2020 (HLP), which amongst other things, seek to ensure that development respects the spatial qualities of the local area, including the use of spaces about and between buildings and protects existing trees and the landscape character of the area. The proposal would also not conflict with advice contained within the Council's Residential Design Guide 1999 (RDG) relating to the layout, form or external appearance of new dwellings. The proposal would also not conflict with the aims of the National Planning Policy Framework (the Framework) with regard to design or trees.

Living Conditions

13. The rear ground floor windows of the proposed dwelling would face towards 13 College Street albeit offset from it. No. 13 has a small window at ground floor and two small upper floor windows in the gable. Although there is some disagreement between the parties as to the distance between the two, a substantial hedge sits between the two properties.
14. It is unclear from the plans whether the hedge would be retained as part of the proposal. Nevertheless, a condition relating to hard and soft landscaping which would include details of proposed boundary treatments to ensure that adequate screening between the two properties would be installed, should the hedge be removed would ensure that an appropriate level of privacy is maintained. Therefore, with suitable boundary treatment in place, the size and position of the windows serving No. 13 and distance and offset between the two means there would be little opportunity for overlooking to a level which would be unduly harmful to those adjoining occupiers.
15. I therefore conclude that the proposal would not cause undue harm to living conditions of the occupiers of No. 13 College Street. The proposal would therefore not conflict with HLP policy HP4 which seeks to protect the amenity of occupiers and neighbours. The proposal would also not conflict with the advice in the RDG relating to site layout for new dwellings or aims of the Framework in seeking to protect living conditions of residents from harmful development.

Other Matters

16. Matters relating to a boundary dispute between the occupiers of 13 College Street and the appeal property have been brought to my attention. This is not an issue for me to consider under a Section 78 planning appeal and is covered under legislation not within my remit. In the determination of the appeal, I can only have regard to the planning merits of the case.
17. I note comments which have been made regarding a photograph in the appellants submission relating to the appearance of the gate belonging to 13 College Street. This has had no bearing on the consideration of the appeal before, which I considered on the information before me and from what I saw on my site visit.

Conditions

18. I have considered the Council's suggested conditions in the light of the Framework and Planning Practice Guidance (the Guidance). A plans condition is

necessary and reasonable in the interests of certainty. I have also imposed conditions relating to materials, landscaping which shall include details of boundary treatments, replacement planting and the protection of root zones around trees within the site. These are both necessary and reasonable to preserve the character and appearance of the area and to protect the living conditions of neighbouring occupiers. There is no evidence before me indicating that the site is potentially liable to contain contamination. Nevertheless, as the proposal involves the demolition of a building on the site, as a precautionary approach, it is necessary and reasonable to impose a condition regarding addressing unexpected contamination.

19. The Council have suggested the removal of permitted development rights. Framework paragraph 54 is clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Guidance states that such conditions may not pass the tests of reasonableness or necessary and should only be done in exceptional circumstances. In this case I consider this not to be the case as the opportunities for additions to the proposed dwelling would be limited in any event and the retention of access and parking spaces would duplicate the plans condition.
20. I have also not imposed a condition requiring the installation of an electric vehicle charging point as the Council suggest as this is covered by other legislation.

Conclusion

21. 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:
Dwg Nos. 1.2; 1.6; 1.7; 1.8; 1.9 Rev A; BA11244AIA; BA11244TPP; BA11244TS.
- 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) No development shall commence on site before the developer has submitted for approval a tree report for a root protection area (RPA) fencing in line 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, around the trees or shrubs or planting to be retained, as indicated on the approved plan. The developer shall maintain such fences until all development subject of this permission is completed.
- 5) No operations shall commence on site in connection with the development hereby approved (including any demolition work, soil moving, temporary access construction and/or widening or any operations involving the use of motorised vehicles or construction machinery) until the root protection area (RPA) works required by the approved tree protection scheme and ground protection detail (no dig) are in place. The level of the land within the fenced areas shall not be altered.
- 6) No development shall commence until details of a construction storage area, to be sited outside the root protection area of any tree within the application site, has been submitted to and approved in writing by the Local Planning Authority. The storage area shall be implemented prior to the commencement of the development and utilised at all times throughout the construction of the dwelling hereby approved.
- 7) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i. boundary treatments;
 - ii. vehicle parking layouts;
 - iii. hard surfacing materials;
 - iv. soft landscaping and retained and replacement trees.
 - v. implementation scheme

The landscaping works shall be carried out in accordance with the approved details before the dwelling hereby approved is first occupied in accordance with the agreed implementation programme.

- 8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the approval of the scheme; and any trees or plants which within a period of 5 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 similar size and species.
- 9) In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all groundworks in the affected area (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Groundworks in the affected area shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy.

Following completion of any measures identified in the approved Remediation Strategy 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 site has been remediated in accordance with the approved Remediation Strategy and a Verification Report in respect of those works has been approved in writing by the local planning authority.