



Appeal Decision

Site visit made on 9 November 2022

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2022

Appeal Ref: APP/A2335/W/22/3305554

Land adjacent to Westbourne Road, Sunny Hill, Lancaster LA1 5LJ

- 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 and Mrs Howard against the decision of Lancaster City Council.
 - The application Ref 21/00500/FUL, dated 15 June 2021, was refused by notice dated 20 April 2022.
 - The development proposed is described as 'Full planning application for the removal of the existing derelict garage, shed, hard standings and retaining walls and the erection of a single dwelling with associated parking and amenity space'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal submission includes drawings referenced as 'Alternative site layouts A – E'. They do not show the development as proposed and I have considered them only insofar as they provide a rationale for the final scheme design.

Main Issues

3. The main issues are (a) the effect of the proposed development upon the character and appearance of the area, which includes the Cannon Hill Conservation Area (CA), with particular regard to the effect on trees, (b) whether the proposed development would provide satisfactory living conditions for the future occupiers, with particular regard to external amenity space, and (c) whether the proposed development provides sufficient surface water drainage information in order to minimise flood risk.

Reasons

Character and appearance

4. The site consists of an enclosed area of rising land to the southern side of Westbourne Road, a principal route through the CA. The site includes a number of large trees and vegetation, along with a disused garage, set behind a high stone wall. There is a tree lined access which extends through the site and serves two semi-detached dwellings at Sunny Hill. The surrounding area is characterised mainly by detached and semi-detached dwellings set in spacious plots, often containing mature trees and landscaping. This gives the area a leafy, wooded character. Some trees within and around the site have been protected by a number of Tree Preservation Orders (TPO's), the most recent in March 2018, covering 4 groups containing a total of 14 individual trees.

5. The Cannon Hill Conservation Area Appraisal (CHCAA) indicates that the area is a good example of a residential suburb of low-density housing built for the middle classes in the late 19th century. The significance of the CA is derived from understanding this as an important aspect of the city's historic development, along with some fine examples of Victorian domestic architecture. The CHCAA considers the landscape value of the area to be high, with mature trees and shrubs important features, along with stone boundary walls and a mixture of public and private space, that combine to give a distinct impression of a private enclave. These features are therefore important to the character and appearance of the CA. I have paid special attention to the desirability of preserving or enhancing the character or appearance of the CA, as required by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
6. The Council has not raised concerns with the design, siting, scale or orientation of the proposed dwelling insofar as it relates to the surrounding built form. Having considered the detailed plans in context and noting how the area has developed from information provided within the CHCAA, I have no reason to disagree in this regard. I consider the proposed dwelling to be of a high design standard, with suitable materials. This is a requirement of policy, given the location of the site within the CA. It is necessary to preserve its character and appearance. However, the proposed dwelling and associated earthworks would also require the removal of trees within the site.
7. The submitted Tree Survey indicates that there are 17 existing trees on site, one of which I understand is consented for removal. 3 trees are category 'U' (unsuitable for retention) and for arboricultural reasons unconnected with the development, the Tree Survey indicates these cannot be retained. 11 trees are category 'C' (low quality), and 2 trees are category 'B' (moderate quality). All would be removed due to the development. The appellant submits that the majority of trees are of low quality, poor form and have a short life expectancy, with the Tree Survey suggesting that the quality of these trees does not warrant a constraint to development.
8. The sporadic nature of the existing trees suggests that they are unlikely to be remnants of any formal garden, limiting any intrinsic historical value. In this regard, there is also some contrast to the more formally laid out and managed gardens within the area. However, these trees are substantial in terms of their height and spread of their canopies, particularly the group close to the existing garage, those close to the area of proposed parking and those towards the boundary with The Knoll. These trees are readily visible from public areas along the road and, in combination with other mature trees within neighbouring plots up and down Westbourne Road, they make a positive contribution to visual amenity and to the leafy and wooded character of the CA, and therefore its significance. Having considered the findings of the Tree Survey, the majority of trees are in fair condition and have a life expectancy exceeding 20 years, indicating that most are likely to survive for some time, thereby sustaining this contribution to the character of the CA.
9. The appellant questions the protection afforded to these trees by the TPO and provides a further assessment using the TEMPO method (Tree Evaluation Method for Protection Orders), concluding that none of these trees merit inclusion in a TPO. However, irrespective of that, my assessment is that the trees currently make an important contribution to the character and

appearance of the area and the significance of the CA. The effect of removal would be significant.

10. Instead, the scheme proposes replacement tree planting. The indicative new tree planting drawing annexed to the Tree Survey shows a total of 23 single stemmed trees (extra heavy standard) and 19 multi stems. 12 single stems and 7 multi stems would be planted to the site frontage, with the remainder around the parking area and bin store, or to the rear boundary. DPD Policy DM45 and the Council's Tree Policy, Adopted October 2010, requires replanting for mature trees at a 3:1 ratio. The trees for removal are identified mainly as 'mature', with some as 'early mature' and 'semi-mature'. The Tree Policy does not include a similar breakdown of the term. As such, the policy would require approx. 36 new trees if the ratio is applied only to those categorised as 'mature', or approx. 51 new trees if the ratio is applied to early and semi mature trees also. The 42 trees proposed sits between these figures.
11. The appellant considers that a do-nothing scenario will see an arboricultural deterioration of the site. I am provided with a quantification of arboricultural impact through a tree years assessment which compares the retention period of the existing trees at 20+ years, to the proposed new trees at 60+ years. I appreciate the arboricultural benefits of this in the longer term. However, the evidence before me does not demonstrate that a do-nothing scenario, resulting in a deterioration of the site, is the only possible alternative to the proposed development.
12. Even so, it remains necessary to consider how this physical change in tree cover would impact upon the visual amenities and character of the area. The 12 extra heavy standard trees to the site frontage would be approx. 3.5-4.0m high when planted, and the Computer-Generated Imagery (CGI) indicates that this would have an immediate greening effect. These frontage trees, along with others within the site, would provide some mitigation for the significant loss of greenery that would result from the removal of the existing trees. The level of mitigation would increase over time as the trees matured and in the long term, the plot would increasingly appear similar to others in the CA, a detached building set in landscaped grounds.
13. However, the new trees would inevitably be younger than those to be replaced. The frontage trees would be planted in a relatively close arrangement, and I have not been provided with any detailed information relating to the likely size and canopy spread that these replacement tree species would achieve within this setting and over what time period, in order to fully understand whether these replacement trees would eventually offer the same level of visual amenity as the existing trees. Even if they could, it would be a considerable time before any new trees would reach maturity. Given the size of the trees on site at present, the proposed re-development would be a substantial change in the appearance of the site and new planting would not offer the same visual amenity value, or contribute in the same significant and positive way, to the leafy and wooded character of the CA.
14. The appellant indicates that the proposal would ensure the development of a remaining plot of the planned 19th century suburb, which has benefitted from outline planning permission in the past. Whilst this may be the case, the site in its present state, makes a positive contribution to the significance of the CA and the loss of trees would harm this significance.

15. The proposal would include the removal of the existing garage on site, which is in a deteriorating state, and the lowering of a wall between the site and 1 and 2 Sunny Hill. However, the garage and wall are largely screened from public views along Westbourne Road and so are not harmful to the CA.
16. Overall, the proposal would harm the character and appearance of the area, including the designated CA. The harm identified would negatively impact on the significance of this heritage asset, failing to preserve or enhance its character or appearance. Given the scale and nature of the proposed development, the harm to the significance of the CA would be 'less than substantial'. I attach considerable importance and weight to the desirability of preserving this designated heritage asset. DPD Policy DM38 and the National Planning Policy Framework (NPPF) require that less than substantial harm is balanced against any public benefits. I will return to this matter below.

Living conditions

17. The drawings indicate that the proposal would benefit from a private rear patio area that would be relatively shallow in depth, but which would run for the full width of the dwelling. The appellant indicates that this area would be approx. 100m². Further outdoor amenity space would be provided by lawned areas to the front and side of the dwelling. Whilst these areas would not be wholly screened from public views, the high stone wall and proposed tree planting would provide a degree of privacy, with limited passers-by along the access lane to 1 and 2 Sunny Hill. The positioning of the dwelling within the plot has resulted from consideration of the alignment of the existing dwellings to the south and so there is some justification for the limited depth of the private rear patio failing to achieve 10m in depth, as encouraged by the supporting text to DPD Policy DM29.
18. Albeit southwest facing, this private rear patio would no doubt experience a high degree of overshadowing and limited outlook, because of the high wall and mature trees along the boundary with The Knoll. Nevertheless, the proposed dwelling would sit in a relatively generous plot and would benefit from semi-private areas to the side and front also, which would provide other outdoor options with an acceptable level of outlook and light. The patio area alone would exceed the Council's space standards for this size of dwelling and would be supplemented by these other areas. Overall, I consider that the living conditions of future occupiers would be satisfactory with regards to the level and quality of external amenity space provided. The proposal would therefore comply with DPD Policy DM29, which seeks to ensure, amongst other matters, that new development does not impact significantly on amenity, recognising the importance of a private garden to the health and well-being of residents. It would be consistent with the requirements of the NPPF to provide a high standard of amenity for future users.

Surface water drainage

19. The Council considers that insufficient information has been provided with regards to surface water drainage and the consideration of the surface water drainage hierarchy. DPD Policy DM34 states that proposals for all new development should implement sustainable drainage systems, and that alternatives will only be permitted where it has been demonstrated to be inappropriate or impractical. The policy only specifies the submission of drainage strategies for major developments.

20. Paragraph 55 of the NPPF advises that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions. The use of a planning condition to secure the details of surface water drainage is not unusual. The appeal scheme is not a major development requiring submission of a drainage strategy. It lies within an established urban area where drainage arrangements will be in place to serve existing development. I have been provided with no evidence by the Council of any surface water drainage issues at this location. Nor has any such information been provided by the relevant drainage or flood authority. I appreciate that some concerns have been expressed by residents who will have local knowledge, however, an appropriately worded condition to secure surface water drainage details which follow the surface water drainage hierarchy, would satisfy DPD Policy DM34, which seeks to manage surface water sustainably.
21. To conclude on this main issue, I consider that sufficient surface water drainage information could be secured by the imposition of a suitable condition, in order to minimise flood risk.

Public benefits

22. During construction, the proposal would provide employment and spending in the supply chain. The development would make an efficient use of land, adding to the supply and choice of housing within an urban area, within an accessible part of the city. It would also make a beneficial contribution to addressing the present shortfall in housing land supply, which stands at 2.6 years. I am advised that the dwelling would incorporate sustainably sourced materials and energy saving design initiatives, albeit I am provided with limited information in this regard. Future occupiers would help sustain local amenities and services. Given the scale of the development, I attach modest weight to these public benefits.

Other Matters

23. The appeal site is within the zone of influence of the Morecambe Bay Special Area of Conservation (SAC), Morecambe Bay Duddon Estuary Special Protection Area (SPA), and Morecambe Bay Ramsar Site. As the appeal is dismissed for other reasons, it is not necessary in this instance to undertake an appropriate assessment to consider the effect of the proposed development on these designations.
24. The proposal has not raised any other technical issues, such as highways matters or air pollution etc. These matters are afforded neutral weight.
25. Concerns raised by the appellant regarding the Council's ability to provide pre-application advice have no bearing on my consideration of the planning merits of the proposed development.
26. Objections have been raised by interested parties on other matters, including heritage assets other than the CA, access lane construction standards and safety, use as a family dwelling only, construction management, ecology and overlooking. Given my overall conclusion, nothing turns upon these other matters.

Planning balance and conclusion

27. For the reasons outlined above, the proposal would result in harm to the character and appearance of the area, failing to preserve or enhance the character or appearance of the CA, causing less than substantial harm to its significance as a heritage asset. The modest public benefits identified would not outweigh this harm. The proposed development does not therefore comply with DPD Policy DM38, which requires proposals to preserve or enhance the character and appearance of conservation areas, be sympathetic to their character and not result in detriment to their visual amenity. Nor would the proposal comply with DPD Policy DM45 which supports the protection of trees and hedgerows that positively contribute to the visual amenity and landscape character of the location. Further, the proposal does not comply with the requirements of the NPPF in terms of conserving heritage assets in a manner appropriate to their significance, ensuring that new developments add to the overall quality of an area, and are sympathetic to the local character and landscape setting.
28. In circumstances where there is no 5 year housing land supply, the NPPF states that planning permission should be granted unless the application of policies within the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. I have identified less than substantial harm to a designated heritage asset and the public benefits of the proposal are not considered to outweigh that harm. Therefore the application of policies in the Framework that protect areas or assets of particular importance, provides a clear reason for refusing the development proposed.
30. Whilst the proposed development would not result in harm to the living conditions of future occupiers and technical details of surface water drainage could be adequately addressed through the imposition of a condition, this lack of harm is a neutral matter, which does not outweigh the unacceptable harm that the development would have on the character and appearance of the area, which includes the Cannon Hill Conservation Area. The harm I have found leads me to conclude that there is conflict with the development plan as a whole.
31. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

S Brook

INSPECTOR