



Appeal Decision

Site visit made on 21 February 2023

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2023

Appeal Ref: APP/E2734/W/22/3310673

23 Fulwith Mill Lane, Harrogate, North Yorkshire 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 Mr & Mrs Simkins against the decision of Harrogate Borough Council.
 - The application Ref 22/02579/FUL, dated 29 June 2022, was refused by notice dated 8 September 2022.
 - The development proposed is demolition of dwellinghouse and erection of new dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of dwellinghouse and erection of new dwelling at 23 Fulwith Mill Lane, Harrogate, North Yorkshire HG2 8HJ in accordance with the terms of the application, Ref 22/02579/FUL, dated 29 June 2022, subject to the conditions set out in the attached Schedule of Conditions.

Preliminary Matters

2. The appellant states that within one paragraph the submitted Arboricultural Implications Assessment (AIA) incorrectly identifies the 2 trees proposed for removal as part of the proposed development as comprising tree group 6, and that, elsewhere within the AIA, the trees are correctly identified as group 5. I have therefore determined the appeal on the basis that it is group 5 proposed for removal.

Main Issue

3. The main issue is the effect of the proposed development upon the character and appearance of the site and the local area.

Reasons

4. 23 Fulwith Mill Lane is a large 2 ½ storey detached property set within a spacious plot. The front elevation of the property is faced with stone and the remainder is predominantly white painted render. A detached garage is located to the rear of the house and closely beside the eastern plot boundary. Behind this garage there is a greenhouse. The mature gardens serving the property contain many trees and some hedgerows, and a substantial proportion of these trees are protected by virtue of a tree preservation order (TPO). This includes groups of trees lining the southern boundary of the site, a small woodland at the northern end of the site, and individual trees adjacent to the western plot boundary.

5. Reflective of the appeal site, the local area is partly characterised by large residential properties served by large gardens. There are many mature trees within these gardens, and this provides for a verdant character. Properties on Fulwith Mill Lane exhibit a heterogeneous character, some are traditionally designed but there are also more contemporary, recently built properties. There are also a variety of materials including, but not limited to, stone, red brick and render to elevations and grey slate and red roofing tiles. Properties on Fulwith Mill Lane are predominantly 2 and 2 ½ storeys in height but close-by, on neighbouring roads such as Fulwith Drive, there are also bungalows.
6. The proposed house would have a roughly L-shaped built form, much of which would run alongside the eastern plot boundary. The proposed house would be partly 1 and partly 2 storeys in height. The property would be distinctive, owing in part to particular architectural features including pronounced gable ends to front and rear elevations, the inclusion of an external staircase and some large expanses of glazing.
7. Given this distinctive built form and detail of the design, I accept that the proposed dwelling would differ from several properties on Fulwith Mill Lane. Some of these neighbouring properties share a rectangular built form, a similar height and are set back from the road and set in from their plot boundaries by quite even distances. I also accept that some positive contribution is made to the character and appearance of the street by reason of those particular properties exhibiting some consistency in this regard.
8. However, this consistency in the layout or elements of the appearance of properties on Fulwith Mill Lane is by no means absolute, and there are several other properties which exhibit quite different approaches. Firstly, in respect of layout, No 11 has elongated rear offshoots and thereby an L-shaped built form not dissimilar to that proposed in the appeal scheme. The frontage of Almsford House addresses the street at an angle as opposed to square on, whilst a little farther east of the appeal site, the character of Fulwith Mill Lane changes quite significantly whereupon properties are laid out in an array of forms within their plots. Furthermore, within the appeal site, the existing garage and greenhouse proposed for demolition are, like much of the proposed house would be, sited closer to the eastern boundary of the plot. Therefore, there is already some precedent within the layout of the existing property of built form running alongside this plot boundary.
9. Although with much of the proposed dwelling being 1 storey in height it would have a greater land take than the existing house, the majority of the plot would, nevertheless, remain garden land serving the replacement property. Despite its elongated form, the front and rear of the proposed house would be set well away from the plot boundaries to its front and back whilst, as is the case with the existing property, a significant gap would be left to its western side. The proposed house would not, therefore, extend across the width and length of the site as put to me by the Council.
10. Secondly, and in respect of appearance, the particular combination of materials proposed to construct the replacement house and their distribution on the property would differ from a number of nearby properties. However, I nevertheless find that the proposed materials would be strongly reflective of the local area. Significant proportions of the elevations would be constructed of stone with grey coloured slate or a grey coloured standing seam to the roof,

and stone and grey coloured roofing materials are already widespread in the area. I find that the use of timber cladding and sections of moss roofing would be sympathetic to the verdant character of the site and area. Furthermore, recently built houses of a contemporary design such as those at No 15 and at Fulwith Manor incorporate both materials and design features similar to that proposed in the appeal scheme. This includes, at No 15, a pronounced front gable which is clearly visible in the street scene, whilst both No 15 and Fulwith Manor incorporate stonework, timber treatments and some large expanses of glazing.

11. Therefore, I find that the local area is not strongly characterised by particular prevailing approaches to the design or layout of the housing but rather that local distinctiveness is partly derived from how eclectically designed existing properties are. The Council submit that the existing house is well designed and whilst I accept that this is the case, the proposed replacement dwelling would also represent high quality contemporary design, would utilise sympathetic materials appropriate to the street scene, whilst its L-shaped built form, its positioning, and its floor area would not be disproportionate or incongruous within its plot.
12. Moreover, and notwithstanding the design merits of the scheme described above, the maturity and density of tree planting on the front boundary of the appeal site means that the proposed dwelling would also be afforded significant screening from the street. Given that the proposed dwelling is set well away from these trees and given that a TPO protects trees on this boundary, I also have no reason to conclude that these trees would not be likely to endure in the long term.
13. The Council submit that the proposed house would not be of exceptional design nor significantly enhance its immediate setting. However, in finding that the proposal would represent high quality design which would respond positively to the built form and design of properties within an area where much variety in this regard exists, the proposal would not depart from the local character, or in turn necessitate a truly exceptional design. As a result, the effect of the proposal upon the character and appearance of the site and area would be acceptable and in accordance with policies HP3 and NE4 of the Harrogate District Local Plan 2014-2035, adopted 2020 (LP). In summary and amongst other matters, these policies require that development has particular regard to maintaining the aesthetic qualities of the natural and man-made features within the landscape, incorporate a high quality design which reinforces the qualities and characteristics of local distinctiveness and, where a proposal would depart from this, ensure that it represents exceptional design. I also find that the proposal would comply with guidance contained within the National Planning Policy Framework (the Framework), including that at paragraph 130, which states that development should be visually attractive as a result of good architecture and should be sympathetic to local character.

Other Matters

14. I note that the Council can demonstrate a housing land supply in excess of 7 years. No net gain in dwellings would result from the development, therefore no contribution to housing supply would be made through the proposal, and this is a neutral factor in my determination.

15. The Council determined the planning application on the basis that the development comprised of a self-build home. Although I have no reason to conclude that a self-build home is not proposed, no mechanism has been suggested to me that would secure that this would be the case. Without the proposed dwelling being secured as a self-build home, this limits the extent to which I can attribute any positive weight to the delivery of this type of housing. However, given in the main issue I have identified that the proposal would result in no harm to the character or appearance of the area, this matter is not determinative in my decision, and no mechanism to secure the delivery of a self-build home is necessary to make the development acceptable.

Conditions

16. I have imposed the standard condition in respect of time limitation and a plans condition in the interests of clarity. Section 197 of the Town and Country Planning Act 1990 (as amended) places upon me a duty to ensure, whenever it is appropriate, that in granting planning permission for any development adequate provision is made, by the imposition of conditions, for the preservation of trees. Although the submitted AIA details tree retention and root protection areas, the precise design and siting of the necessary protective fencing is not included, therefore I have imposed condition 3. The submitted AIA also states that, in order to take account of the water demand of trees on site and, in turn, ensure their preservation, specialist foundation design may be required. Condition 4 is therefore necessary. The Council have suggested removing a suite of permitted development rights including any development that would entail an external alteration to the property. Having regard to the advice contained within the Planning Practice Guidance (PPG), the imprecise or unjustified removal of freedoms to carry out domestic alterations to properties will not meet the tests for imposing conditions. In this particular case, given the number, value and distribution of trees within the site there is the potential for some extensions or outbuildings to cause unacceptable harm to trees. Therefore, and so that control can be exercised in this regard, the removal of permitted development rights for some additions to the property is necessary, albeit I have narrowed the scope from that suggested by the Council.
17. Although broad details of the materials to be utilised in the construction of the proposed house are included within the submitted plans, in order to ensure that the precise material choices are appropriate to the character and appearance of the area, samples of those materials should be submitted and agreed, and I have imposed a condition to this end.
18. The justification to policy NE1 of the LP states that in order to protect and improve air quality all traffic generating development should provide mitigation in the form of electric vehicle charging points. Furthermore, policy CC4 requires that all development proposals incorporate measures to reduce carbon dioxide emissions. A condition so as to ensure the provision of an electric vehicle charging point is therefore necessary. I note that no land contamination assessment accompanied the planning application and, in order to minimise the pollution and health risks which could arise from unexpected site contamination, I have imposed condition 7. A condition controlling site working hours is necessary to ensure that the effects of demolition and construction on the living conditions of neighbouring occupiers would be acceptable.

19. Finally, the Council suggested a condition so as to ensure that the access, parking and turning areas are available for their intended purposes at all times. Both paragraph 56 of the Framework and content within the PPG are clear that planning conditions should be kept to a minimum and only imposed where they would satisfy all 6 tests for their imposition. I have no substantive evidence before me to suggest that any access, parking or turning areas would be likely to be unavailable nor, if such an incidence were to arise, the particular highway safety issues likely to result. I find that such a condition would not be necessary or reasonable and I have therefore not imposed it.

Conclusion

20. For the above reasons, the appeal is allowed subject to the conditions within the attached schedule.

H Jones

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: 931.01.(-)010, 931.01.(-)001 D, 931.01.(-)002 D, 931.01.(-)003 B, 931.01.(-)004 B, 931.01.(-)005 B and 222075-MSJ-ZZ-XX-DR-D-4000 P1.
- 3) No demolition, site clearance, preparatory work or other development shall take place until trees scheduled for retention as detailed within Appendices 1 and 7 of the submitted Arboricultural Impact Assessment 18171-A/AJB have been protected in accordance with a scheme of tree protection (tree protection plan) which shall have first been submitted to and approved in writing by the local planning authority. The scheme of tree protection shall accord with paragraphs 5.5, 6.1 and 6.2 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). The scheme for the protection of the retained trees shall be carried out as approved and the protection measures retained until the completion of the development works.
- 4) No development other than demolition, site clearance and preparatory work shall take place until the foundation design of the development hereby permitted has been submitted to and approved in writing by the local planning authority. The foundation design shall have regard to the water demand of the trees on site as detailed within Appendix 1 of the Arboricultural Impact Assessment 18171-A/AJB. Development shall be carried out in accordance with the approved foundation design.
- 5) No development involving the erection of any sections of the external walls or roof of the development hereby permitted shall take place until samples of the materials to be used in the construction of the external walls and roof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.
- 6) The development hereby permitted shall not be occupied until electric vehicle charging infrastructure has been installed in accordance with a scheme that shall have been first submitted to and then approved in writing by the local planning authority.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order

revoking and re-enacting that Order with or without modification), no development permitted under Schedule 2 Part 1 Classes A and E other than that expressly authorised by this permission, shall take place without express planning permission having first been granted by the local planning authority.

- 9) Demolition or construction works shall take place only between 08:00 and 18:00 on Mondays to Fridays inclusive, 08:00 and 13:00 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.

****end of Schedule****