



Appeal Decision

Site visit made on 7 August 2023

by C Livingstone MA(SocSci) (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/K0940/D/23/3321818

Bongate Hall West, Bongate, Appleby-in-Westmorland CA16 6HW

- 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 Peter Kirwan against the decision of Westmorland and Furness Council.
- The application Ref 23/0070, dated 27 January 2023, was refused by notice dated 26 April 2023.
- The development proposed is described as "the erection of a timber framed building, clad in laplog, covered by a pitched shingle roof - to serve the purpose of a garden shed. The shed will be erected in the rear garden of Bongate Hall West, utilising an area of non fertile earth. The shed is erected off a concrete base situated between two lime trees – this is a retrospective application."

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development on the application form refers to the application as being retrospective. I noted whilst on my site visit that a timber frame had been erected on a concrete base. I have no means of knowing whether this partially complete development accords with the submitted plans and therefore my determination of this appeal is made against the plans before me. These plans form the basis for the planning application in any event.

Main Issue

3. The main issue is whether the development would preserve or enhance the character or appearance of the Appleby Conservation Area, with regard to its effect on the health and longevity of the adjacent lime trees.

Reasons

4. The application site is located within the edge of the Appleby Conservation Area (CA) which is characterised by lower density housing set back from the public highway (B6542). A key feature within the area are pockets of mature trees which give a verdant, rural feel. Bongate Hall West is part of a subdivided mid-Victorian mansion, set in landscaped grounds, with a row of mature lime trees along the western boundary. The trees are protected by virtue of their location within the CA. The concrete base of the shed has been formed between two of the lime trees in the row, occupying approximately a quarter of the area under the canopy of each tree.
5. The trees are not visible from the public domain as they are screened in part by other mature trees. However, they are visible from neighbouring properties

and have a high amenity value, particularly when viewed in relation to the stately Bongate Hall West, adding to the special character of the area. The loss of, or any damage to, these trees would therefore have a harmful effect on the character and appearance of the CA.

6. The Council's Tree Officer has raised significant concerns that the siting of the shed is such that the concrete slab base would have a detrimental impact on the root structure of the trees. It is contended that such damage would have a material adverse impact upon the vigour of the trees, potentially resulting in their loss. It is put to me that the formation of a concrete base, on the surface of the ground, may minimise disturbance. However, no substantive evidence has been submitted to demonstrate that the root structure of the trees would not be damaged by the development. I therefore concur with the view of the Council on this matter, that the works risk causing damage to, or loss of, two important trees within the CA. Although the planting of two lime trees is suggested within the appellant's supporting statement, any additional or replacement planting would take many years to achieve the same amenity value as the existing lime trees. Consequently, I do not consider that this would adequately mitigate for any harm to those trees.
7. Paragraph 202 of the National Planning Policy Framework ('the Framework') explains that were, as in this case, the harm to the significance of the CA is less than substantial, the harm should be weighed against the public benefits. The development would provide ancillary storage for the appellants, but no specific public benefits have been identified in respect of the scheme. The balance therefore falls against the proposal.
8. I conclude that the development would fail to preserve or enhance the character or appearance of the Appleby Conservation Area. It would therefore conflict with Policies ENV10 and ENV2 of the Eden Local Plan 2014-32 which require, among other things, that proposals conserve and, where appropriate, enhance the significance of Eden's heritage assets, in addition to protecting trees from new development. Furthermore, the proposal would be contrary to the objectives of the Framework as regards the natural environment and heritage assets and consequently it would not constitute a sustainable form of development.

Conclusion

9. For the reasons set out above, the appeal should be dismissed.

C Livingstone

INSPECTOR