



Appeal Decision

Site visit made on 7 September 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 September 2023

Appeal Ref: APP/C2741/W/23/3319070

Site to the rear Of 5 Cherry Lane, York YO24 1QH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by J Lee against the decision of City of York Council.
 - The application Ref 22/02289/REM, dated 3 November 2022, sought approval of details pursuant to condition No. 2 of planning permission Ref 21/00121/OUT, granted on 16 April 2021.
 - The application was refused by notice dated 6 March 2023.
 - The development proposed is the reserved matters pursuant to outline consent described as outline application for the erection of 1no. detached dwelling.
 - The details for which approval is sought are: appearance, layout, and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely the appearance, layout, and scale details submitted in pursuance of condition No. 2 attached to planning permission Ref 21/00121/OUT granted on 16 April 2021, subject to the following condition:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan

Site Plan CL JJL 5C SG, October 2022 revised 7 January 2023

General Plans – Separate Garage CL JJL 4C SG, October 2022 revised 7 January 2023

Applications for costs

2. An application for an award of costs was made by J Lee against City of York Council. This is the subject of a separate Decision.

Preliminary Matters

3. The principle of residential development on the site and the suitability of its access are established by the outline permission, and are not matters before me. This appeal seeks approval for the appearance, layout, and scale of the proposal, leaving access and landscaping for future determination.
4. There is no adopted statutory development plan for the City of York relevant to the appeal site. The Council has referred to policies in the emerging City of York Local Plan - Publication Draft (2018) (Regulation 19 Consultation) ('the LPPD'), which was submitted for examination in 2018. It has been subject to full examination with Modifications consulted on in February 2023, and as at August 2023 the Council advised that it expects the Local Plan to be adopted in

late 2023. Although I am not aware of the extent of any unresolved objections to its policies, the relevant policies are material considerations in so far as they are consistent with the National Planning Policy Framework ('the Framework') (2023), and so I have afforded them moderate weight.

Main Issues

5. The main issues are the effect of the proposed development:

- on the character and appearance of the area; and
- on the trees within and adjacent to the site, including those protected by Tree Protection Orders (TPOs).

Reasons

Character and Appearance

6. The site is a rectangular paddock with its main access off the junction of St Edward's Close and Cherry Lane. Cherry Lane then narrows to single width alongside the site's northern boundary. This comprises a high hedgerow with intermittent Tree Protection Order (TPO) trees, and forms part of a Site of Importance for Nature Conservation (SINC). Large detached dwellings with long gardens lie beyond. The site's eastern boundary comprises thick mature tree and hedgerow cover, and access off a car park for the racecourse and large expanse of the Knavesmire beyond. Racing stables lie to the south including a recent large maintenance building, separated by a low fence with some mature trees and a recently planted hedgerow. The western boundary comprises thick vegetation between a dwelling and its garden, and a hotel complex sits to the north west.
7. At the site's entrance point with Cherry Lane, the character is of a narrow suburban street bounded by thick and high vegetation. It feels relatively secluded and verdant interspersed with the substantial massing of the nearest dwellings. This seclusion and thick vegetation continues down Cherry Lane, but the glimpses of openness through the appeal site hedgerow and the end of the lane contribute to a more sylvan impression.
8. The proposal is for a 2 storey detached dwelling with detached garage. It would have an improved access off Cherry Lane, be surrounded by garden, and retain a large area of paddock at its rear.
9. The Council considers that the proposal does not meet the parameters approved under the outline permission. Condition 3 on that permission specifies that the development shall be carried out in accordance with the location plan, and condition 4 states that "*The location of the approved dwelling shall be in general accordance with the siting shown on the illustrative site layout plan Y81.948.03*", reasoned as being to preserve the open setting to the Knavesmire. Condition 5 requires there to be no more than 1 dwelling which would be no greater than 9m in height, reasoned as being in the interests of visual amenity and the character of the area.
10. As such, the use of the illustrative site layout at outline stage was purely to give an indication of where the dwelling should sit within the site. Although slightly further to the west than the illustrative layout, it and the detached garage would be both broadly within the same location within the site. The line demarking the paddock area would also be on a very similar alignment, albeit

not straight across as on the illustrative layout. The dwelling's height would also be below 9m. On this matter of principle therefore, I find that the proposal would align with the requirements of the outline permission conditions.

11. Although an inappropriate use of materials is specified within the reason for refusal, the Council has not identified what would be more appropriate than the proposed handmade bricks, timber fenestration, and Welsh slate roof. I find these materials acceptable in the context of the surrounding properties and the general vernacular.
12. The Council and interested parties consider that because the recently planted hedgerow just within the site's boundaries is not native, it may affect the SINC integrity, as well as cause harm through the loss of filtered views across open space. As landscaping is a reserved matter, I have not relied on the presence or removal of this hedge as being determinative to my decision. However, I would expect there to be some additional level of landscaping to the garden to allow for privacy and security, and to also soften the appearance of the built form. Indeed, this was acknowledged within the outline permission's Officer report, which noted the future loss of openness at the site entrance and thus a slight change in visual amenity for those using Cherry Lane, but that further down the site would remain unaltered in character. The proposed layout and design would align with this description.
13. The officer's report critiques the design and appearance of the dwelling at paragraph 5.12, however, this clearly describes a previous design iteration of the dwelling. This is due to the references to its east and west wings around a central courtyard, whereas the proposal under determination is broadly rectangular, and relatively compact and simple in form. Its roof profile and fenestration is balanced and appropriate for a large property, and although the rear has a double height glazed form with a vertical emphasis, this acts as a central feature of interest and does not overwhelm the elevation as a whole.
14. I find that despite its substantial size, the dwelling would be appropriate within the site and its landscape setting. This includes in comparison to the nearest dwellings on St Edward's Close, which also present substantial massing. The proposal would align within the somewhat varied form and materials of the St Edward's Close dwellings, and use a smaller proportion of its available plot width. In this sense it has a suitable density for the site and setting. Although in a more open position than the existing dwellings, it would replicate their same broad characteristics and relationship with the Knavesmire.
15. Notwithstanding any future landscaping as discussed above, the retention of the paddock on the site would retain some of the openness in close range views. It would allow the site to blend in with the paddock in front of the stables and with the Knavesmire. As noted above, the proposal would inevitably bring some change to these views, but the principle is already approved. The design and massing of the proposed dwelling would not affect the sylvan character along Cherry Lane or the experience of the openness of the Knavesmire as the key characteristics of the context.
16. The proposed dwelling would also be of only limited visibility in medium to longer range views from the Knavesmire. In part this is due to its boundary vegetation which would predominantly block views from many angles. It would be less prominent than the existing houses on Hunter's Way, and the top of the hotel building rising above the trees would frame some views. While the

maintenance building does not in itself set a precedent for the proposal's size and scale, it would be more prominent from the Knavesmire due to its larger tree gap in front, and its industrial characteristics. The appeal proposal would not therefore be unduly prominent overall in this context. It would thus respect and preserve the vast open landscape setting of the Knavesmire.

17. Overall, the proposal would not result in harm to the character and appearance of the area, and thus would comply with Section 12 of the Framework, and Policies D1 and D2 of the LPPD insofar as they are material. Together these require development proposals to achieve well designed places that are visually attractive as a result of good architecture and layout, and that are sympathetic to local character and history including the surrounding built environment and landscape setting and the public's experience of it. Proposals should respect important vistas and recognise the significance of landscape features, use appropriate building materials, and that create a comfortable association between the built and natural environment.

Protected Trees

18. The Council considers that due to its proximity, the proposal would impact detrimentally on a TPO oak tree within the Cherry Lane hedgerow. This tree is identified as T8 within the Arboricultural Report ('the Report'). The Council also suggests there is insufficient evidence to clarify impacts on other trees within and adjacent to the site, particularly the TPO hornbeam at the site's access off Cherry Lane, identified in the Report as T1.
19. However, the Report does conclude that no trees will be harmed, except those noted for removal due to their poor condition. This is subject to the conditioning of an Arboricultural Method Statement to specify protection methods to detail the entrance driveway and utilities. The Arboricultural Impact Assessment Plan alongside the Report clarifies that the density and depth of roots could be determined through tree root radar mapping to help inform the approach and installation materials to be used, with specific products and a no-dig method employed.
20. The Council refers to operations within the oak tree's recommended root protection area relating to earthworks and terracing, which would result in raising the soil. However, as identified above it is unclear whether this statement refers to a previous iteration of the plan. This is because the dwelling is sited well away from the oak, with no terracing shown. Moreover, although the Council identifies that the impact on the hornbeam is relevant at this stage because it contributes to the future layout of the dwelling, the dwelling's siting within the plot is also well away from this tree.
21. As landscaping and access are reserved matters, then details of terracing or no-dig methods are not yet required, and control for tree protection via conditions could be provided at that stage if necessary. I have seen no evidence that would outweigh the findings in the Arboricultural Report.
22. Overall therefore, I find that the proposed development would not result in harm to the trees within and adjacent to the site, including those protected by TPOs. It would thus comply with paragraphs 131 and 174 of the Framework, which require proposals to contribute to the natural and local environment by recognising the benefits of trees, and that trees should be retained wherever possible as they make an important contribution to the character and quality of

urban environments, as well as helping mitigate and adapt to climate change. It would also comply with Policy GI4 of the LPPD, which supports development which provides protection for overall tree cover as well as for existing trees worthy of retention, and which retains trees and hedgerows that have visual benefit value to general public amenity.

Conditions

23. The condition to specify the approved plans is to provide clarity for the terms of the permission. I have not imposed the Council's suggested conditions, as these are repeated from those on the outline permission which are still in force. Any details required to further clarify appearance, layout, or scale, are already addressed under these conditions.
24. A biodiversity enhancement plan was suggested by a consultee, but as this is closely linked to the reserved matter of landscaping it is more appropriate to consider it alongside that future submission.

Conclusion

25. The scheme accords with the development plan as a whole. With no other material considerations indicating otherwise, for the reasons given above, I conclude that the appeal is allowed.

L Hughes

INSPECTOR