



Appeal Decision

Site visit made on 7 September 2023

by **L N Hughes BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/H2733/W/23/3316088

6 Main Street, Gristhorpe, Filey YO14 9PP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Shaun Wood against Scarborough Borough Council.
- The application Ref 22/00153/FLA is dated 19 January 2022.
- The application sought planning permission for the erection of four two bedroom dwellings without complying with conditions attached to planning permission Ref 17/01994/FL, dated 8 August 2018.
- The conditions in dispute are:
 - *No. 1 which states that: "Except where modified by the conditions of this consent, the development shall be carried out in accordance with the following plans and drawings:*
 - 11.11-01, 'location plan', received 31 March 2018;
 - 11.11-01, 'proposed side elevations', received 31 March 2018;
 - 11.11-01, 'proposed layouts for parking spaces for all 9 dwellings' (also showing ground floor layouts), received 31 March 2018;
 - 11.11-01, 'proposed front and rear elevations', received 31 March 2018;
 - 11.11-01, 'proposed layouts - first floor', received 31 March 2018;
 - 11.11-01, 'surface water drainage', received 31 March 2018;
 - 11.11-01, 'access road survey', received 31 March 2018."
 - *No. 2 which states that: "Prior to the first occupation of the dwellings hereby approved, the parking spaces as shown on approved plan '11.11-01, proposed layouts for parking spaces for all 9 dwellings' shall be formed, marked out and made available for use. The marked out spaces shall be permanently retained for no other use than the parking of vehicles."*
 - *No. 10 which states that: "No development shall take place until there has been submitted to and approved in writing by the Local Planning Authority a plan specifying the positions, design, materials and type of the boundary treatments to be erected. The plan shall specify the retention and making good of the stone wall marking the back (southern end) of the site. The boundary treatments shall be completed in accordance with the approved details before first occupation of any of the dwellings hereby approved."*
- The reasons given for the conditions are:
 - No. 1: *"To avoid doubt."*
 - No. 2: *"To ensure sufficient on-site parking is provided in the interests of highway safety."*
 - No. 10: *"To ensure the character of the Conservation Area is preserved and the amenity of residents is afforded sufficient protection in accordance with policies DEC4 and DEC5 of the Local Plan."*

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Mr Shaun Wood against Scarborough Borough Council. This is the subject of a separate Decision.

Preliminary Matters

3. Section 73 of the Town and Country Planning Act (1990) relates to the determination of applications to develop land without compliance with conditions previously attached. An approval of a s73 application effectively creates a new planning permission, with the extant approval remaining intact. However, the 4 dwellings on the appeal site have been constructed and are occupied. Therefore, the application should instead be made under s73A, as this relates to planning permission for development already carried out. This includes development carried out before the date of the application which did not comply with some condition subject to which that permission was granted, which is the case here.
4. In the case of *Lawson Builders Ltd v SSCLG*¹, the judgement confirmed a fluidity between sections 73 and 73A. In an appropriate case, a decision maker considering an application made under s73 to proceed with a development without complying with conditions attached to an existing permission, might instead grant retrospective permission for development already carried out under s73A, and in addition impose conditions under s70. I have therefore determined this appeal as though it has been made under s73A rather than s73, and confirmed this approach with the appellant.
5. I have considered whether the new rooms proposed for each dwelling by virtue of the insertion of the dormer windows, could be used as additional bedrooms. This is because the description of the development specifies the dwellings to only have 2 bedrooms, and the 'Finney' court judgement² established that an application under s73 or s73A may not be used to obtain a permission that would require a variation to the terms of its operative part. However, the evidence identifies that the new rooms would be used as home offices, and I have seen no contradictory evidence. I thus find that no conflict with the operative description would occur.

Background and Main Issue

6. The proposal seeks to add a rear dormer window to each of 4 dwellings, and to demolish the existing rear boundary wall and replace it on a slightly different alignment using different materials. It also seeks parking on areas to the side of the end dwellings currently identified for landscaping, and the provision of electric vehicle charging points (EVCPs). These amendments would be done by replacing the references to some of the approved plans in conditions 1 and 2, with the references of the plans submitted for this appeal, alongside the removal of condition 10.

¹ *Lawson Builders Ltd v SSCLG* [2015] EWCA Civ 122

² *Finney v Welsh Ministers* [2019] EWCA Civ 1868

7. The main issues are:

- the effect of the proposed amendments to the conditions on the character and appearance of the area, with particular regard to the preservation or enhancement of the Gristhorpe Conservation Area (CA); and
- if any harm is found, whether that harm would be outweighed by the public benefits of the proposed amendments to the conditions.

Reasons

Character and Appearance

8. The site lies within the Gristhorpe Conservation Area (CA), and so I have a statutory duty under section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. Section 16 of the Framework also requires that great weight should be given to the conservation of designated heritage assets. There is no Conservation Area Appraisal which identifies the significance of the CA, and I have therefore assessed this from my site visit and the other evidence.
9. The CA incorporates most of the village, including large undeveloped gardens. Its significance is derived from the rural and open character, including views on approaches. This character is also derived from its range of buildings of varying traditional design and materials. This includes many of limestone, and white painted limestone and render, being 1.5 or 2 storeys high with dormer windows in steep pitched pantile roofs, and with traditional chimney stacks, doors, windows, and door canopies. The buildings along Main Street particularly contribute to the CA and the primary street scene. This rural impression is further enhanced by the layout of other properties, including numerous long rear gardens and the few larger set back dwellings in extensive grounds.
10. The wider site is a former farmstead. It now comprises a terrace of dwellings along Main Street, with a rear parking court via a private access. The appeal site element comprises part of the parking court, and the terrace of 4 dwellings beyond it, including their rear gardens and land to each side. A public right of way (PROW) runs along the access into the fields.
11. The appeal dwellings display a simple form and materiality reflective of the more historic elements of buildings within the CA, including balanced and relatively plain elevations, artificial stone cills and lintels, imitation chimneys, and red pantile roofs. As such, and although post-dating the CA designation, they act as an entrance to it from the countryside. They signify a sense of arrival into the more historic setting beyond, and make a positive contribution to the CA's character and appearance.

Insertion of Dormer Windows

12. The dwellings and particularly their roofscape are highly visible due to the topography and the lack of tree cover on approach to the village from the PROW. Although comprised of matching materials and with the same window frame glazing bar layout as the first floor windows, the dormers would take up a relatively large expanse of the roofs, and create undue prominence and imbalance through their slightly off-centre positioning and size in relation to the first floor. Altogether this would create a top-heavy appearance, causing harm

to the character and appearance of the hosts. Even if tree cover were increased, this would not mitigate this intrinsic harm to the hosts.

13. A range of front and rear dormers are present in the CA, although many break the eaves rather than the style proposed. However, those examples which do not well reflect the proportions and fenestration of their hosts, should not encourage further departures. The local support for the proposal as a whole and the lack of objections does not equate to a lack of harm.
14. Although some elements of the CA's significance would be unaffected, the proposed dormer windows would therefore also lead to less than substantial harm to the significance of the CA as a designated heritage asset. I give great weight to this harm, as advised by the Framework paragraph 199.

Parking and Boundary Wall

15. The proposed amendments would provide 2 new grassed porous bodpave car parking spaces to each end dwelling, replacing the approved landscaped areas. Alongside a reallocation of the spaces across the wider site, this would create 3 visitor spaces overall. Front landscaping is proposed in a similar location to that approved, but with more vegetation and trees instead of grass.
16. This additional landscaping would increase the softening and greening effect to the dwellings' frontages. It would contribute to the development's individual sense of place and distinctive character, and be visible from the PROW route and neighbouring properties. As such, I find that it would mitigate for the loss of the side landscaping. In views south past the dwellings, I also find that cars parked to either side would not substantially block the open sky views and fields beyond, being the main character of the transition to the countryside. This view is also framed by mature trees, and so this verdant impression would remain. Boundary planting would further contribute to this. Overall, the proposal would not create a cramped layout, and would preserve the character and appearance of the CA.
17. A historic stone wall marks the southern boundary of the site, a large extent of which has been subject to severe collapse. Notwithstanding that it may have been possible to limit this deterioration in the 5 years since the permission was granted, I have assessed the proposal against its current condition.
18. The Council considers the wall to have significance within the CA for both its materiality, and its alignment as a marker of the extent of the original farmstead. I find that it would previously have made a positive contribution, but in its current state, and notwithstanding the overgrown vegetation plus the fencing and bunding which are not permanent or approved, it is barely visible beyond close range. As such, it makes only a slight contribution to the CA character.
19. Its repair or replacement is necessary as it poses a security and health and safety risk to residents and passers-by. The North Yorkshire Building Control 'Notification of Dangerous Structure – Informal Notice' given to the appellant, requires it to be made safe so that no collapse can endanger members of the public accessing the public footpath.
20. The wall's replacement is proposed with matching stone to the dwellings and other walls. Reports by a chartered building surveyor and a stone mason confirm that over half the stones cannot be re-used as they are too poor

quality, and that alternative matching reclaimed stone to rebuild the wall is not available. I can see no reason why I would take a different view. Therefore, despite that replacement would result in the loss of patination as its key aesthetic quality and marker of its age and originality, this does not alter my conclusion that replacement to a large extent is necessary. The Council identifies that the reports do state that some of the existing materials could be re-used. This could be addressed via a condition were I to allow the appeal.

21. The proposal also seeks for this replacement on a slightly different alignment around the site's corner. As the wall marks the extent of the original farmstead, the Council considers that this would lose its significance and thus further harm the CA. However, only a small portion would be realigned. In the context of the whole wall needing rebuilding, of mostly or all new materials, and this being around a new layout of development. I thus do not find this realignment to be so significant as to harm the understanding of the context and history of the site, or the character or appearance of the CA.
22. Overall, I find the proposed amendments to the parking, landscaping, and boundary wall would be acceptable. However, the proposed dormers would cause harm to the character and appearance of their host properties, the character and appearance of the area, and less than substantial harm to the significance of the CA as a designated heritage asset. As such, it would conflict with Policies DEC1, DEC5, and ENV7 of the Scarborough Borough Local Plan (LP) (2017). Together these policies require good design which reflects the local environment and responds positively to the local context in its detailed design, the preservation or enhancement of the character and appearance of the CA, and the preservation of features which contribute to the landscape character of an area. This includes taking into account the relationship to the existing settlement edge and the need to safeguard important vistas.

Public Benefits

23. Paragraph 202 of the Framework and the LP Policy DEC5 identify that less than substantial harm to the significance of a designated heritage asset should be weighed against the public benefits of the proposal.
24. A benefit of the revised parking arrangement would be 3 new visitor spaces. However, although this has public support and the appellant suggests that it would reduce the demand for parking along Main Street, I have no specific evidence identifying that Main Street parking is a problem. By their nature, I would also expect visitor spaces to only be occasionally used, and thus any reduction to Main Street parking would also only be limited. I find this to be a minor benefit to which I give minor weight.
25. The provision of the EVCPs would encourage the move away from petrol/diesel powered cars, contribute to net zero objectives, and help to address the Council's stated climate emergency. Furthermore, EVCP provision within rural areas can be challenging, and residents in these areas are more often required to make car trips. However, due to its small scale, and because providing EVCPs for the dwellings through another means does not appear unsurmountable, I find this only a minor benefit to which I give minor weight.
26. The appellant refers to the increased need for adaptable homes and home working following the pandemic, and that having appropriate space to work from home provides significant mental health benefits. However, this would

predominantly be a private benefit for the dwellings' occupants. I give this only minimal weight as a minimal public benefit. Similarly, that the dwellings would be more attractive to future tenants is a private benefit.

27. The completion of the extant permission would result in the safe repair of the boundary wall, albeit in a different form to that now proposed, such that I do not find this to be a public benefit to be weighed in this balance. I find the revised areas of landscaping to have a similar impact as that within the extant scheme as a whole, such that I do not deem it to be a public benefit.

Planning Balance and Conclusion

28. The proposal in totality would cause harm to the character and appearance of the host properties, the character and appearance of the area, and less than substantial harm to the significance of the CA as a designated heritage asset. I give great weight to this harm, and Paragraph 202 of the Framework identifies that this should be weighed against the public benefits of the proposal. I find that the minor public benefits of the scheme identified above would not cumulatively outweigh this harm.
29. In conclusion therefore, the scheme conflicts 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 dismissed.

L N Hughes

INSPECTOR