
Appeal Decision

Site visit made on 20 May 2024

by S Hunt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/V2004/W/23/3334918
62 Pearson Park, Hull HU5 2TQ

- 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 T Brownlee against the decision of Kingston Upon Hull City Council.
 - The application Ref is 23/02762/FULL.
 - The development proposed is a new dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the proposal is in a conservation area (CA) I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA Act).

Main Issues

3. The main issues are:
 - The effects of the proposal on the character and appearance of the area, with particular regard to the Avenues and Pearson Park Conservation Area (CA) and loss of trees.
 - The effects of the proposal on the Green Network.
 - Whether sufficient information has been submitted regarding effects on protected species, with particular regard to presence of bats.

Reasons

Character and Appearance

4. The appeal site is situated to the side of an attractive and well-proportioned terrace of Victorian dwellings located in the north-eastern corner of Pearson Park. Notwithstanding modern alterations to their roof materials and windows, the terrace is uniform in appearance with each dwelling largely retaining its external historic features including double height bays, decorative bargeboards, recessed porch and heavy chimney stacks. The gable of the host property, 62 Pearson Park (no.62), abuts Queens Road and a wide linear greenspace which lines the southern side of the thoroughfare connecting Beverley Road to Princes Avenue.

5. The documents indicate that the appeal site previously formed part of the garden curtilage of no.62, albeit it does not appear to have been in domestic use for some time. The site comprises largely overgrown ground vegetation and is separated from the grassed area of Queens Road by both mature and self-seeded smaller trees and ground shrubs. To the eastern end of the site is a single storey double width garage structure, accessed from Elm Terrace. This small cul-de-sac comprises four dwellings fronting Queens Road which are broadly in line with the properties on Pearson Park and Beverley Road which abut Queens Road. This building line includes the host property at no.62.
6. Pearson Park includes a Grade II Registered Park and Garden (list ref. 1001520), a public park with lake which was laid out in the mid 1800's on land donated by the shipowner and Mayor of Hull Zachariah Pearson, '*for the benefit of the working classes health and recreation*' and designed by James Craig Niven. The evidence indicates that the Park's benefactor lived in one of the neighbouring dwellings within the terrace, and there is a blue plaque in place to commemorate this.
7. The appeal site does not lie within the boundaries of the Registered Park and Garden. I am satisfied that the terrace makes a neutral contribution to its setting, given its location along a small private drive with no direct views from the Park itself. Nonetheless, the former home of Zachariah Pearson within the terrace adds significance to its associative value within the wider CA.
8. The Avenues and Pearson Park CA includes the Registered Park and Garden and the range of fine Victorian villas which encircle it. The wider CA extends to a large residential area of terraced properties 'the Avenues' beyond. In view of the size of the CA, the CA Appraisal produced in 2015 is separated into the two areas, with the appeal site located within area two; Pearson Park. I have had regard to the Appraisal in my findings together with my observations made on site.
9. The special interest of the CA derives from its high quality design and layout, with open green views offered to the spacious villa residences which surround the Park. The majority of the villas have a wealth of architectural detail and their individual identities reflect their development on independent plots in the mid to late Victorian period. The host property and its immediate environs, which include the linear green space along Queens Road, make a positive contribution to both the character and appearance of the CA.
10. The green space runs the entire length of Queens Road, and whilst its width varies it is punctuated only by the access to the nearby Elm Terrace. At the time of my site visit the area was heavily vegetated, the trees being in full leaf and providing attractive and effective and natural screening of the properties on Pearson Park. The opposite side of Queens Road has a quite different character, with a mixture of both Victorian and mid to late 20th century buildings, with a range of residential, community and commercial uses predominately situated on its northern side.
11. The proposed dwelling would project beyond the existing building line of both Pearson Park and Elm Terrace. The building would be large in size, with a bulky and elongated gable end due to the positioning of the rear projection. This would accentuate its position beyond the building line, appearing to encroach into the green space and disrupting the pleasant views which extend for some distance along Queens Road. Whilst I acknowledge that the host dwelling at

- no.62 has an existing blank gable, its rear projection is set back beyond the back yard area and it benefits from a large chimney stack spanning the end ridge. It is also well-screened by the existing trees and vegetation.
12. I do not have sight of the plans for the proposals previously rejected at appeal¹. The Council's submission indicates that the design details of the proposed dwelling are now broadly sympathetic to the existing terrace. Nonetheless, it is clear that deficiencies remain. These include the bulky and featureless end gable, the omission of an end chimney stack, and the narrower proportions of the front elevation than its neighbours. Given its prominent location visible from Queens Road and within the CA, a high standard of design is to be expected and I am not satisfied that this has been adequately achieved here.
13. The existing vegetation provides good screening of the terrace and is an important part of the amenity value of Queens Road, positively contributing to the character of the CA as well as its ecological value. The appellant's Arboricultural Report provides a detailed survey of the existing trees both within the site and adjacent to the boundary. It indicates that many of them are of significant size, with several exceeding 20 metres in height. The Report indicates that trees T5, T6 and T7 (two mature Sycamores and an Ash located just within the side boundary), and group G11 (three mature Sycamores to the rear) would be removed for development. Most are graded by the writer as C2 (the Ash as B2). Nevertheless, from my observations on site, and consideration of the condition survey of the trees which sets out a useful life expectancy of at least 40 years, there is limited evidence for this low category grading.
14. Removal of these trees would render the proposed dwelling more noticeable from Queens Road, increasing its prominence along Queens Road and within the wider CA and there would inevitably be corresponding biodiversity losses. I acknowledge that replacement planting is possible, and it could be secured by conditions. However, I am not satisfied that such planting as set out in section 6.0 of the Arboricultural Report would provide acceptable mitigation for the loss of mature trees of good size and amenity value, nor would it offer adequate screening of the bulky gable of the proposed dwelling. I am in agreement with my colleague in the previous appeal decision that the loss of the trees '*would significantly diminish the positive contribution that the group of trees and open strip of land as a whole make to the attractive, verdant character and appearance of the area and the CA, including through reducing the linear extent of the visible tree canopy*'.
15. Furthermore, I am not persuaded that tree protection measures during construction and a potential alternative type of foundation construction would be adequate, given the proximity of the proposed dwelling to the remaining trees. Pressure from future occupants to fell trees in the future due to shading and leaf drop has also not been adequately considered.
16. The appellant has directed me to a relatively modern development nearby backing onto Queens Road, which is tight to the boundary and readily visible from the greenspace. Nonetheless, I find few comparisons with the proposals before me given the quite different design of the development. I am cognisant that the CA Appraisal (paragraph 7.4.15.5) notes that it is not an attractive addition, and the Council state that these structures replaced former coach

¹ APP/V2004/W/22/3299936 (12 December 2022)

houses associated with dwelling on Pearson Park rather than new development encroaching towards a green space.

17. Overall, I find that the proposed dwelling, coupled with the loss of trees, would be detrimental to the wider character and appearance of the CA as a whole, failing to preserve its significance.
18. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Paragraph 206 goes on to advise that significance can be harmed from development within setting and that this should have a clear and convincing justification. Given that the harm would be localised to Queens Road and that the proposals would not directly affect the setting of Pearson Park I find the harm to be less than substantial in this instance, but nevertheless of considerable importance and weight.
19. Under such circumstances, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The proposal would add a single family-sized dwelling to the local housing supply and would make use of underused land in an accessible location within the city. However, such benefits are insufficient to outweigh the harm that I have identified. There was no indication of fly tipping of the site on my site visit.
20. Given the above and in the absence of any significant public benefit, I conclude that the proposal would fail to preserve the character or appearance of the Avenues and Pearson Park CA. This would fail to satisfy the requirements of the Act, section 16 of the Framework and conflict with policy 16 of the Hull Local Plan which requires development to convincingly demonstrate that development causing harm to the significance of a designated heritage asset cannot be avoided and that public benefits would be sufficient to outweigh such harm. The proposal also conflicts with policies 14 and 15 of the Hull Local Plan which seek, among other things, to ensure to ensure that development supports the delivery of a high quality environment with regard to the relationship with the surrounding built form and that local distinctiveness is promoted. The failure to achieve well-designed and beautiful development is also contrary to section 12 of the Framework. Furthermore, the removal of trees of amenity value conflicts with policy 45 which seeks to retain mature trees where possible.

Green Network

21. The linear green space along Queens Road is classed as a green corridor, part of the Green Network as defined in policy 43 and Table 12.4 (ref. 109) of the Hull Local Plan. Policy 43 states that development that adversely affects the continuity and value of the Green Network will not be permitted, and that development in close proximity to it should seek to protect and/or enhance its functionality and connectivity. The supporting text refers to the definition of Green Infrastructure in a former version of the Framework, and I note that this has since been updated in the 2023 version to: *'a network of multi-functional green and blue spaces and other natural features, urban and rural, which is capable of delivering a wide range of environmental, economic, health and wellbeing benefits for nature, climate, local and wider communities and prosperity'*. Consequently, their multi-functional nature is a key consideration.

22. I acknowledge that the development proposal would be contained within the former side garden of no.62 and as such would not physically onto the encroach onto the green space and directly affect its community use. Notwithstanding this, its projection beyond the existing building line has the visual effect of encroachment, and the loss of trees partly erodes its natural features and its environmental benefits.
23. The harmful effects of the building on area character as set out in the previous main issue, coupled with the loss of mature trees and corresponding effects on biodiversity (including species identified by the Council as a Biodiversity Action Plan species) would in my view irreversibly erode the value of this part of the Green Network, contrary to policy 43 of the Hull Local Plan. Replacement planting would not provide the same visual and ecological benefits as the mature trees which currently exist.

Protected Species

24. I am obliged to consider the presence of protected species and the extent to which they may be affected by the proposed development before planning permission is granted². There is evidence before me which suggests that the habitat conditions of the site and its surroundings have potential for the presence of bats, which are a protected species under Schedule 5 of the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. Potential habitats include both the existing dwelling and the presence of vegetation and mature trees. Surveys should be carried out where there is a reasonable likelihood of species being present and affected by the development. Paragraph 186(a) of the Framework indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.
25. I acknowledge that a Preliminary Ecological Appraisal was submitted in support of the application, and that it was carried out by a competent person. Nonetheless the Appraisal is limited to a desk-top study and single field survey carried out in February 2023. There are limitations of the field survey, noting that whilst the timing of the survey was adequate to classify the habitat types, many species occurring outside of the survey period will have been overlooked. In particular, one of the mature trees on the site contains features suitable for roosting bats but given the time of year of the assessment it was not possible to fully determine its use by the species. Additional bat survey work between May and August was recommended by the writer to determine the impact. There is no evidence before me that this has taken place.
26. I am not persuaded that such further surveys could be conditioned for agreement post-decision. This is contrary to Government guidance and my duty under Section 40 of the Natural Environment and Rural Communities Act 2006. I acknowledge that the tree most suitable for roosting opportunities, a Lime, is not proposed to be removed nonetheless it is adjacent to other trees which are listed for felling as part of the development. I consider there is a reasonable likelihood of bats being affected by the proposals, and without adequate information I am unable to make an informed decision whether the proposal would have an adverse effect on protected species, and if so, whether such an adverse effect could be overcome by any proposed mitigation measures.

² Circular 06/2005, paragraph 99 and the Natural Environment and Rural Communities Act 2006

27. The proposals therefore conflict with Policy 44 of the Hull Local Plan which does not allow development adversely affecting a protected species, and section 15 of the Framework, in particular paragraphs 180, 185 and 186.

Conclusion

28. The appeal is dismissed.

Susan Hunt

INSPECTOR