



Appeal Decision

Site visit made on 2 July 2024

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th August 2024

Appeal Ref: APP/F4410/W/23/3332799

5 Station Road, Conisbrough, Doncaster DN12 3DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr. Paul Fowler against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref is 22/01156/FUL.
 - The development proposed is 'Erection of 4 three-storey detached houses following demolition of the existing bungalow and detached garage'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On 30 July 2024, the Government published a consultation draft of proposed reforms to the National Planning Policy Framework (the Framework). However, the proposed changes do not relate to the main issues of this appeal and are in any event at an early stage. As such, I have not sought the views of the main parties in coming to my decision.

Main Issues

3. The main issues are as follows:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the setting of heritage assets;
 - Whether the proposal would provide suitable living conditions for future occupiers; and
 - The effect of the proposal on ecology and biodiversity.

Reasons

Character and Appearance

4. The appeal site currently includes a detached single storey dwelling, outbuilding and vehicular accesses from both Station Road and Elm Green Lane. The land slopes down from the dwelling towards Station Road and includes extensive mature tree coverage and foliage within and around the boundary of the site. The proposal seeks to erect four detached dwellings following demolition of the dwelling and outbuilding. Four trees are proposed to be felled to accommodate the proposal, while hardstanding would be laid to provide vehicular access from Station Road.

5. Station Road hosts a variety of architectural styles, although generally speaking dwellings are set in generous plots while the immediate area has a spacious and verdant character. Buildings on the same side of the road as the appeal site are set back further than the opposing and lie within a dense tree belt.
6. Notwithstanding the variation in architectural styles, there is a general range in building height from single-storey to two-and-a-half storey when viewed from Station Road. This includes the approved¹ new properties in the adjoining plot, of which I have been provided with plans and details, and photographs which the appellant has included in their appeal statement from the wider area. However, the proposed properties would be of three-and-a-half storey height which would be contrary to the surrounding building heights. This would be exacerbated by the raised land levels of this side of the road and as such, the proposal would be out of scale and appear imposing, particularly when trees are cleared which would open up views in the street scene and increase their prominence in a harmful manner.
7. While the site is somewhat overgrown, it has a verdant and secluded character. The proposal to fell several trees would partially erode the verdant character along Station Road, which is a positive contributor to the character and appearance of the area. I understand that one of the trees is also protected as part of a Tree Preservation Order (TPO). I have had regard to the submitted Tree Survey and Arboricultural Impact Assessment² (AA), which recommends that 'the architect/designer should consider all category A and B trees for retention and where this is not possible should suitably plan to mitigate for their loss with replacement plantings'.
8. However, two of the trees proposed for removal are category A while one is category B. Moreover, I note that the AA is dated before the revisions to the scheme and its layout were made. As such, there is nothing before me to indicate that subsequent changes would safeguard the remaining trees at the site, including their root protection areas taking into account new hardstanding. While I take no issue with the use of hardstanding as it relates to the character and appearance of the area, I share the concern of the Council that the revised site layout could negatively impact upon the remaining trees, which would in turn cause further harm to the character and appearance of the area.
9. Taken together, the proposal would harm the character and appearance of the area due to the scale of the proposed houses and loss of trees. This would be contrary to policies 10, 32, 33, 41 and 48 of the Doncaster Local Plan 2015 – 2035 (adopted September 2021) (LP). These seek, among other things, to ensure the development would help protect and enhance the qualities of the existing area and that proposals will be supported where it can be demonstrated that woodlands, trees and hedgerows have been adequately considered during the design process, so that a significant adverse impact upon public amenity or ecological interest has been avoided. The proposal would also be contrary to paragraphs 135 and 136 of the Framework, which state that proposal should ensure that developments are visually attractive as a result of good architecture, layout and appropriate and effective landscaping, and that existing trees are retained wherever possible.

¹ 16/02871/FUL.

² Elite Ecology, March 2022

Setting of Heritage Assets

10. The appeal site is not located within the Conisbrough Conservation Area (CCA) although it is in close proximity to its extended boundary to the southeast. As per the Conisbrough Conservation Area Appraisal, the CCA derives much of its positive characteristics from large green areas, including trees and woodland, and Conisbrough Castle, which is Grade I listed³ and a Scheduled Ancient Monument⁴ (SAM).
11. The Castle evidently dates from the 12th century and derives significance predominantly from its historic and architectural interests. Historic interest is drawn in part from its age, its role in the governance of the region and being a surviving example of a fortification of the time period built in the Norman style, albeit much of it has been ruined. Architectural interest is derived in part from its stone construction and traditional features, such as the tower keep.
12. I note there is no dispute between the parties that the appeal site is located within the setting of both of these heritage assets and I see no reason to disagree. I have therefore had due regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). Although I am also directed to section 78 of the Act by the Council, section 72(1) does not provide a statutory duty relating to the setting of a conservation area. However, paragraph 205 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset (including conservation areas), great weight should be given to the asset's conservation. Significance can be harmed by development within its setting. The Framework defines setting as the surroundings in which the asset is experienced. Elements of setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance, or may be neutral.
13. Due to the proximity of the appeal property to the CCA and routes into and out of it, it is reasonably prominent in views both to and from the closest section of the conservation area boundary. Owing to the identified positive contribution that trees and green areas make to the character of the CCA, it follows that the appeal site, given its proximity and characteristics, makes a positive contribution to the setting of the CCA. While there is a larger distance between the appeal site and the Castle, I would agree that the presence of trees and woodland around the Castle softens the surrounding built form and allows the Castle to maintain a sense of primacy in the area, despite historic development in its setting. Its setting therefore also makes a positive contribution to the significance of the Castle.
14. Due to the loss of trees and the height of the proposed dwellings, I have concluded that the proposal would harm the character and appearance of the area. Given this lies within the setting of the CCA and the Castle, it follows that the proposal would harm the setting of the CCA and the Castle.
15. Due to the scale of development, this harm would be less than substantial in the parlance of paragraph 208 of the Framework, which goes on to require that this harm is weighed against the public benefits of the proposal. I have had regard to the benefits of the proposal as outlined by the appellant.

³ List Entry Number: 1192747

⁴ List Entry Number: 1010828

16. There would be a small boost to the Council's overall housing stock, although there is nothing before me to indicate that it is failing to fulfil these obligations to maintain a five-year supply of deliverable housing land. This would bring associated benefits such as those accrued financially during construction and the introduction of new residents to the area and the societal benefits of this to vibrant and healthy communities. This is worthy of limited weight in favour of the scheme.
17. Although the reuse of the appeal site is supported in principle, I have found that the proposal as presented would be harmful to the character and appearance of the area rather than improve it. This would not weigh in favour of the proposal as a result.
18. Although the appellant is willing to agree to a planning obligation subject to Section 106 of the Town and Country Planning Act 1990 to plant additional trees to offset those to be felled, I have no such document before me. A screenshot of an email is not a completed planning obligation. As such, there is nothing before me to substantiate the assertion that this element of the scheme can be made acceptable and as per the Planning Practice Guidance⁵, 'ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed'. This cannot be assigned weight in the heritage balance as a result, nor is there sufficient evidence to demonstrate biodiversity net gain.
19. Taken together, the benefits as presented are ascribed limited weight in favour of the scheme. Meanwhile, the harm of the proposal is worthy of great weight as per paragraph 205 of the Framework and as such the public benefits would not outweigh this.
20. To conclude, the proposal would be contrary to section 66(1) of the Act and policies 36, 37, 41, 43 and 44 of the LP. These seek, among other things, to ensure development proposals that harm the significance of a listed building, or its setting will not be supported other than in circumstances where that harm is clearly outweighed by the public benefits of the proposal having regard to the significance of the heritage asset affected. Moreover, proposals should not detract from the heritage significance of a conservation area including by the removal of trees. The proposal would also be contrary to the aims of the Framework as described above.

Living Conditions

21. The proposed site plan⁶ demonstrates that the four dwellings would have gardens to the rear alongside the position of retained and removed trees. I understand that the garden spaces meet minimum standards with regards to their area, and I have no reason to disagree.
22. However, the retained trees on the boundary of the site and one located between plots 3 and 4 would cause significant shading of garden areas due to their locations relative to the path of the sun. I note the appellant agrees that shading would occur, and that the unshaded section of the rear gardens would be 3m. This would mean that the majority of the garden would be in shade from sunlight caused by the houses themselves and the trees to the rear

⁵ Paragraph: 010 Reference ID: 21a-010-20190723

⁶ Dwg No. 02 Rev. D

boundary at nearly all times of the day, while at other times the trees would likely cause a lack of daylight which would make the amenity spaces a dreary and somewhat uninviting environment. Moreover, this harmful impact upon the living conditions of future occupiers would likely place increased pressure on the Council to allow future felling of trees to alleviate this issue, causing further harm by the loss of trees.

23. To conclude, the proposal would not provide suitable living conditions to future occupiers due to shading and low levels of natural light to amenity areas caused by the retained trees. This would be contrary to policies 10 and 44 of the LP which seek, among other things, to ensure designs result in good access to daylight and sunlight. The proposal would also be contrary to paragraph 135 of the Framework which seeks to ensure a high standard of amenity for existing and future users.

Ecology and Biodiversity

24. The proposal is supplemented by a Preliminary Ecological Assessment⁷ (PEA), which identifies that no habitats of conservation concern were located on the site itself. Therefore, the proposed scheme of works will not impact upon any rare or valuable habitats. However, the site was found to contain the potential to support protected and/or rare species. The report recommends further survey work relating to amphibians and bats as well as badgers if work does not commence on site within 6 months of the initial survey date. None of these surveys are before me, and while the appellant blames the Council for not informing them of this requirement, it is recommended by the appellant's appointed ecologist in their own document.
25. Moreover, there is no Biodiversity Net Gain (BNG) assessment before me which is required by policy 30 of the LP. It is important that the presence or otherwise of protected species and the extent to which they may be affected by the proposed development is fully established before planning permission is granted. Without this, the proposed development could lead to unacceptable harm. The appellant considers that a planning condition could secure an updated PEA and BNG assessment. However, due to the uncertainties I have highlighted, such as whether these can be mitigated at all, I am not satisfied that a condition could be imposed that would meet the tests set out in the Framework with respect to being enforceable, precise and reasonable.
26. Consequently, the proposal would be contrary to policies 29 and 30 of the LP which state, among other things, that proposals will only be supported which deliver a net gain for biodiversity and protect, create, maintain and enhance the Borough's ecological networks.

Other Matters

27. The appellant has taken issue with the Council's handling of the planning application. While this is unfortunate, it is not a matter of relevance to my determination of the appeal.

Planning Balance

28. I have determined that the proposal would cause less than substantial harm to the setting of both the CCA and the Grade I listed building/SAM Conisbrough

⁷ Elite Ecology, March 2022.

Castle. This is worthy of great weight and would not be outweighed by the public benefits of the scheme, which I found to be limited. I will not repeat those benefits here but set against the further harms I have identified to the character and appearance of the area, the lack of suitable living conditions for prospective future occupiers of the dwellings and the lack of supporting evidence relating to ecology and biodiversity, the planning balance swings further against the proposal.

Conclusion

29. In conclusion, the proposal would be contrary to the development plan, section 66(1) of the Act and the Framework taken as a whole. With no other material considerations indicating otherwise, and a significant lack of information on several key matters, for the reasons given above I conclude that the appeal is dismissed.

C McDonagh

INSPECTOR

