

Appeal Decision

Site visit made on 15 August 2024

by H Faulkner BSc (Hons) MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/D1265/W/24/3342936

15 High Street, Sydling St Nicholas, Dorset DT2 9PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Timothy Ashdown against Dorset Council.
 - The application Ref is P/HOU/2023/07463.
 - The development is described as: "Proposal for access driveway and a single storey annex accommodation. The land adjoins a Public Highway. Access is required to the Public Highway".
-

Decision

1. The appeal is dismissed and planning permission for the development described as: "Proposal for access driveway and a single storey annex accommodation. The land adjoins a Public Highway. Access is required to the Public Highway" is refused.

Preliminary Matters

2. The appeal relates to a planning application that was not determined by the Council within the prescribed period. I note that the Council would have refused planning permission had it made a decision on the proposal. I have had regard to the parties' submissions in establishing the main issues which I set out below.
3. In respect of revised plans I have considered this appeal on the basis of revised plans submitted to the Council during the application dated 15th March 2024 AP00098.13C and AP00098.14C along with those originally submitted with the application and were not superseded by these plans.
4. The Council accepts the principle of erecting an annex and considers that the scheme does not give rise to any significant material impacts upon the occupiers of neighbouring dwellings, highway safety or flood risk. The Council are also satisfied that the proposal would conserve the natural and scenic beauty of the Dorset National Landscape. However, the Council considers that the proposed development including the loss of a protected tree would not preserve or enhance the setting of 13 High Street (No 13) a Grade II Listed building or the Sydling St Nicholas Conservation Area (CA).

5. Planning permission has previously been refused for two dwellings and a garage on the site which included a similar access. The appeal for this was dismissed in 2023¹ and I have had regard to that decision in my assessment of this appeal.

Main Issue

6. The main issue is whether the proposed development would preserve or enhance the character or appearance of the Sydling St Nicolas Conservation Area including the effect of the removal of a Cherry tree protected by a Tree Preservation Order (TPO) and the setting of 13 High Street, a Grade II listed building.

Reasons

7. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Additionally, Section 72 of the LBCA requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.

Significance and Setting

8. The appeal site is positioned fairly centrally within the Sydling St Nicholas Conservation Area (CA). 15 High Street is not listed, however, it is surrounded by listed buildings notably No 13.
9. No 13 is a detached early 19th Century property with a render finish and slate roof. According to the Historic England list entry it was mainly included for its group value. The property along with its neighbours positively contributes to the historic character of the street. The house along with its largely unaltered neighbours and the open grass verge in front of the property give the area its pleasing unspoilt rural character. These buildings and spaces along with the protected tree further positively contribute to the setting of No 13 and the CA.
10. Along with No 13 Nos 15-21 High Street are important local buildings (also known as non-designated heritage assets) identified in the CAA, which have group value due to their positioning, historic features and use of local materials, and contribute positively to the significance of the CA.
11. There are other listed buildings close to the site notably opposite including The Old Post Office and its neighbours 2a to 8 High Street. These buildings are a mix of flint rubble, stone, render and brick with both thatched and slate roofs. The significance of these buildings stems from the quality of their architectural and artistic features, age, form and historic fabric. Their special interest/significance is experienced mainly within their immediate contexts. In views along the street and when facing the properties the site would be behind the viewer. It follows that I am satisfied that the proposal would not

¹ APP/D1265/W/21/3289639

harm the setting and significance of the listed buildings on the opposite side of High Street.

12. Turning to the wider CA the appeal site is within the core of the area, as described in the Cerne Abbas, Charminster, Sydling St Nicholas and Godmanstone Conservation Area Appraisal (CAA). The CAA notes the older houses being built parallel to the road on the highway edge or set behind small front spaces. It notes the more spacious nature of the plots to the west and the suggestion of the layout being planned possibly related to its medieval ownership.
13. Around the appeal site the predominately uninterrupted verge and the protected Cherry tree at the front of the site significantly contribute to the character of the area and therefore the significance of the CA. As noted by the previous Inspector the location of the tree on an outside of a slight curvature in the road means that it is visually prominent in the street scene from both directions. Whilst there are shrubs and hedges within frontages there are few significant trees within this part of the CA.
14. Therefore, in so far as it relates to this appeal, the CA derives its significance from the aesthetic value in the quality of the period architecture and the landscaped spaces around them.

Effect of the proposal on the character and appearance of the CA and the setting of the adjacent listed building

15. The proposals would result in the removal of part of the wall to the front of the site and the creation of an open access crossing the verge and the removal of the Cherry tree. Due to the change in levels the opening would reveal a long sloped driveway up to the annex and beyond with the creation of a turning area. Whilst there are other drives in the area, including the opposite side of No 13, they do not have the same gradient and the opening up of this view would harm the more enclosed feel of the street which contributes to its rural character.
16. The Cherry tree at the front of the site is referenced as being planted to commemorate Queen Elizabeth's Silver Jubilee it therefore not only contributes to the visual character of the street but is also part of the history of the village which adds to its significance. The fact that a recent TPO has been placed on the tree further adds to its importance.
17. The loss of the Cherry tree to facilitate the proposed access would leave a substantial gap in the frontage when viewed from High Street. This would have a considerable and long-lasting detrimental effect on the visual amenity of the surrounding area, diminishing its verdant and sylvan character particularly along the street frontage.
18. The previous Inspector concluded that the removal of part of the wall and the loss of the Cherry tree would not preserve or enhance the character and appearance of the CA. There have been no changes to this part of the proposal or the appearance of the surrounding area.
19. In my view the removal of the Cherry tree at the front of the site, along with the creation of the opening would have a detrimental impact on the visual amenity of the area, removing features which contribute to its historic and

rural charm and therefore not preserve or enhance the character or appearance of the CA. In reaching that view, I have taken into account that the removal of on-street parking opportunities in the location of the proposed access could of itself reduce obstructions to the views of properties, including listed buildings to the north and south of the site. However, the potential benefits in that respect are limited and do not override the harm that would arise from the removal of the protected Cherry tree.

20. It has been argued that the Cherry tree only has 15 years of life left, however, no evidence such as an arboricultural assessment completed by a suitably qualified person has been submitted with the appeal. Even if that were to be the case it should be retained for as much of its life as possible. The proposed development includes additional planting, including a hawthorn close to the proposed access. However, the submitted plans indicate that the hawthorn is proposed on land outside of the 'red edge' of the application and therefore, could not be secured by condition. In any case, it would take several years to establish and would not mitigate the harmful loss of the Cherry tree I have identified.
21. In reaching the above findings, I have taken into account that other existing mature trees within the site are proposed to be retained. However, as they are set further back from High Street, their presence and the other additional planting proposed within the site would not mitigate the harm arising from the removal of the protected Cherry tree.
22. I note that the appellant sought advice from Historic England and they concluded that the proposals for the annex, including the creation of the access and removal of the Cherry tree would preserve and enhance the conservation area. Whilst their views are an important consideration that carry considerable weight, I have not been provided with details of the plans that they assessed and it is not clear whether they visited the site, which is important to appreciate the level changes. It is also noted that they commented 'notwithstanding the loss of the tree'. The loss of the tree is an important feature and they did not fully assess the effect of its loss upon the character or appearance of the CA. Accordingly, I have necessarily reached my own findings on the effect of the loss of the tree based upon the evidence before me and my own observations.
23. With regards to the annex building itself the design is appropriate and it would be positioned such that it would not be highly visible from the surrounding area. It would have a relatively large footprint compared to the main house and I note that the Council requested the removal of the garage from the proposals. However, I find that its single storey nature helps it to appear subservient and gives it an ancillary character. The existing landscaping would further help to screen the building.
24. In terms of the setting of 13 High Street the previous Inspector concluded that the dwellings proposed to the rear of the house would visually conflict with the listed building and dilute the rural setting. However, the appeal before me only relates to the access and the annex. The loss of the open verge to the front would change the setting of No 13 and create a harder edge to one side however, it would also reveal more of the side elevation

and therefore the building's historic character to public view which would have a neutral impact. Notwithstanding the harm to the CA, I do not find the proposal would harm the significance of No 13 or its setting.

25. It is not considered that the proposed works would alter the setting of the other nearby listed buildings and it would not harm their significance.
26. In conclusion, whilst I find that the setting of No 13 would be preserved, the creation of the access along with the loss of the tree and part of the existing wall would result in harm and fail to preserve or enhance the character and appearance of the CA. The proposal is therefore contrary to policy ENV4 of the West Dorset, Weymouth and Portland Local Plan (LP) and paragraph 195 of the National Planning Policy Framework (the Framework) which seeks to conserve heritage assets in a manner appropriate to their significance.
27. In reaching the above conclusion, I have found no specific conflict with Policy ENV1 of the LP. Based on the evidence before me, the visibility of the proposal and the harm identified would be localised to the CA. When viewed as part of the wider landscape it would assimilate appropriately with the surrounding built environment and therefore, would conserve the natural and scenic beauty of the National Landscape.'

Heritage Balance

28. The Framework states that great weight is given to a designated heritage asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Harm has been identified to the character and appearance of the CA. In terms of the Framework the harm identified would be less than substantial. Although the harm identified is minor it is nevertheless of considerable importance and weight. This needs therefore to be weighed against the public benefits in accordance with Paragraph 208 of the Framework and Policy ENV4 of the LP.
29. The benefits of the scheme, including ancillary accommodation in the annex, would largely amount to private benefits for the appellant and his family, or future residents. Benefits such as new tree planting, provision of off street parking and improved vehicular visibility along High Street, energy efficiency of the new building and electric vehicle charging are noted. The appellant argues that the alterations to the entrance are themselves enhancements which would be for the public benefit. However, as I have found the proposal in those respects to be harmful, I cannot give this any weight. The annex itself would have a neutral impact on the CA, and as it does not enhance the area it does not weigh into the balance. The cumulative weight of public benefits would be limited and not sufficient to outweigh the great weight that the conservation of a designated heritage asset carries. The proposal therefore fails to accord with the historic environment protection policies of the Framework.

Other Matters

Flooding

30. There have been no objections on flooding grounds from the Council although the matter has been raised by interested parties. In those respects,

my attention has also been drawn to a development at Sherrin's Farm for fifteen houses which was subject of an appeal (APP/F1230/W/15/3135041) where similar flood risk matters were addressed. Nonetheless, as the appeal is being dismissed on other grounds, I have not found it necessary to further consider this matter.

Consultee responses

31. The response from Historic England as referenced previously, was considered alongside comments from the Council's Conservation Officer on this application and previous applications, alongside the previous appeal decision.
32. In that respect, differing opinions between professionals can occur and clearly that is the case in this instance. As explained, I have necessarily reached my own judgement based on the evidence before me and my observations during the site visit.

Tree loss and replacement

33. The appellant states that as the tree is blocking the access to the highway there is a legal requirement for its removal under Section 96(6) of the Highways Act 1980. Reference is also made to the legal right of an access citing *Marshall v Blackpool Corporation*: HL 1934. The details of this case have not been provided only quoting that 'The owner of land adjoining the highways has a right of access to the highway from any part of his premises'. It should be noted that the tree is not currently blocking any existing access and planning permission is required for the creation of an access in any event.
34. In the assessment of this appeal, I have to consider the matters under the duties of the Town and Country Planning Act along with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LBCA). Case law and other legislation act independently and do not override my requirements to assess the case under the relevant legislative regime.

Further matters

35. The appellant references endorsements of the scheme from a planning consultant, an independent architectural review and a comment from a local builder. Only limited details have been provided and in any case, the comments in support do not overcome my concerns.
36. Reference is made to poor design that exists in the CA including the use of inappropriate materials amongst other things and where the Council has allowed developments the appellant considers to be inappropriate. This appeal has been assessed on its own merits. Whilst the appellant may consider poor decisions have been made in the past this does not justify the changes proposed here. The proposals are found to be harmful regardless. The quality of the works proposed and materials are not the specific issue here rather the creation of the opening and the loss of the verge and the TPO tree.
37. The Heritage Assessment also reference to Sherrin's Farm along with two other approved schemes one at Dorchester Road and another on Land South of Nick's Nest. Only limited details have been provided. Whilst it is clear that

these relate to developments within the setting of listed buildings these will have each been assessed on their own merits and are not directly comparable to this proposal and the impact it has on the CA or respective listed buildings.

Conclusion

38. Even though I have found no harm in respect of the setting of 13 High Street, the proposal would nonetheless have an unacceptable effect on the character and appearance of the CA. The proposed development would conflict with the development plan, when read as a whole and there are no other material considerations, including the provisions of the Framework, that outweigh this finding. Therefore, for the reasons given the appeal should be dismissed.

H Faulkner

INSPECTOR