The Planning Inspectorate

Appeal Decisions

Site visit made on 10 April 2013

by Jennifer Vyse DipTP DipPBM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 April 2013

Appeal A: APP/H1033/A/12/2183104
33 St Johns Road, Buxton, Derbyshire SK17 6XG

- 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 Sycamore Developments against the decision of High Peak Borough Council.
- The application No HPK/2012/0064, dated 31 January 2012, was refused by a notice dated 16 March 2012.
- The development proposed is described as demolition of the existing dwelling and garage and erection of a two-storey building, with two-storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works.

Appeal B: APP/H1033/E/12/2183129
33 St Johns Road, Buxton, Derbyshire SK17 6XG

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Sycamore Developments against the decision of High Peak Borough Council.
- The application No HPK/2012/0072, dated 8 February 2012, was refused by a notice dated 16 March 2012.
- The works proposed comprise demolition of the existing dwelling and garage and erection of a two-storey building, with two-storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works.

Appeal C: APP/H1033/A/12/2187544
33 St Johns Road, Buxton, Derbyshire SK17 6XG

- 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 Sycamore Developments against the decision of High Peak Borough Council.
- The application No HPK/2012/0391, dated 2 July 2012, was refused by a notice dated 29 October 2012.
- The development proposed is described as demolition of the existing dwelling and garage and erection of a two-storey building, with two-storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works.

Appeal D: APP/H1033/E/12/2187545
33 St Johns Road, Buxton, Derbyshire SK17 6XG

- The appeal is made under sections 20 and 74 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant conservation area consent.
- The appeal is made by Sycamore Developments against the decision of High Peak Borough Council.
- The application No HPK/2012/0401, dated 9 July 2012, was refused by a notice dated 29 October 2012.
- The works proposed comprise demolition of the existing dwelling and garage and erection of a two-storey building, with two-storey wings, comprising six apartments, together with associated car parking, landscaping and ancillary works.

Decisions

1. For the reasons that follow, all four appeals are dismissed.

Applications for Costs

2. Applications for costs were made by the appellant in relation to appeals C and D, and by the Council in relation to all four appeals. Those applications will be the subject of separate Decisions.

Procedural Matters

3. The application the subject of appeal C was originally considered at a committee meeting on 1 October 2012. Although recommended for refusal on two grounds - effect on the Conservation Area and adjacent Registered Park, and the effect on protected species – the committee resolved to refuse it only on the latter point. However, prior to the decision notice being issued, objections were received from English Heritage. The application was then reported back to the committee at the end of October, when it was refused for reasons relating to protected species and the effect on the Conservation Area and Registered Park. The appellant's application for costs suggests that the Council did not have the power to 're-determine' the application in this way and refers me to the case of *Dry, R v West Oxfordshire District Council [2010] EWCA Civ*.

4. I have read carefully the case referred to, and note the reference within it to a further case *Kides v South Cambridgeshire District Council [2001] QBD.* They appear to me to confirm that, having resolved a position at a point in time, there is no reason in principle why a Council could not then alter that position before issuing a decision notice in the light, for instance, of new evidence or comments. Moreover, I cannot see that it would be constrained from altering its grounds, provided that proper consideration was given and a resolution made.

5. The formal registration of a park or garden is a material consideration in the planning process and account needs to be taken of the historic interest of such sites in determining whether to grant permission for development that might affect their special interest. In this case, the Council had consulted English Heritage, albeit late in the day, as it is required to do by reason of Section 16 of the Town and Country Planning (Development Management Procedure) (England) Order 2010, the development being likely to affect the setting of the Serpentine Walks immediately to the rear of the site, which forms part of the Pavilion Gardens and which are classified as grade II* on the Register of Historic Parks and Gardens.[1] [2]

6. Whilst the Council was hasty in presenting the application to the committee before the consultation period had expired, it does not seem unreasonable to me, for it to then refer the matter back to the committee following receipt of comments from a statutory consultee, given that those comments were at variance with the Members' views. I recognise that the effect on the adjacent Park and the Conservation Area was considered at the meeting of 1 October. However, Members reconsidered the matter in the light of the English Heritage

[1] Schedule 5 part (p) of the Town and Country Planning (Development Management Procedure) (England) Order 2010

[2] English Heritage had been consulted on the applications the subject of Appeals A and B

comments and resolved to refuse the application on an additional ground. With the above in mind, I see no reason to conclude other than that I should determine the appeal on the basis of the Council's refusal notice and the reasons given therein.

Main Issues

7. I consider the first main issue to be the whether the proposals would preserve or enhance the character or appearance of The Park Conservation Area, including the effect on the setting of the Serpentine Walks. In addition, Appeal C was refused on the grounds that it would potentially harm protected species. However, since all the appeals relate to the same building, and given that bats are a protected species, the same consideration applies to all the appeals. A further main issue therefore, is the effect of the proposals on protected species, namely bats.

Reasons for the Decision

Character and Appearance

8. The Conservation Area includes the Serpentine Walks, which lie directly behind the appeal site. The Walks comprise a phase of the larger Pavilion Gardens, laid out for the 6th Duke of Devonshire along the course of the River Wye in around 1840. Winding paths run along each side of the river, from which there are views of the dwellings on this part of St Johns Road, including the appeal site. The Conservation Area also includes the planned development of Buxton and Devonshire Parks, which lie further to the north on rising ground. In addition to the planned open spaces, the Conservation Area is generally characterised by large, well detailed and proportioned detached and semi-detached villas, some with a loose Gothic character, which are set within generally extensive mature gardens. However, I do recognise that it does include other less grand buildings. Together these elements contribute to the character, appearance and significance of the Conservation Area.

9. The development the subject of these appeals follows three previous unsuccessful applications and subsequent appeals for redevelopment of the site.[3] Current **appeals B and D** relate to the demolition of the existing building. The 0.2 hectare appeal site is currently occupied by a family dwelling house that English Heritage assesses as dating from around 1930[4] and which is set in generous landscaped grounds that slope down to the Serpentine Walks. Although English Heritage considers the existing building to be important in representing a later period of design, and in contributing to the special interest of the Conservation Area by offering a contrasting scale and character of built development to the predominant 19th Century villas, there is no suggestion of any objection to its demolition. Moreover, the Council's Conservation Area Appraisal (April 2007) identifies the existing dwelling as a 'neutral building'[5], a

[3] APP/H1033/E/09/2103184 and APP/H1033/A/09/2103177 – demolition of the existing house and the erection of a three/four storey block of 12 apartments. Dismissed 13 November 2009
APP/H1033/E/11/2152586 and APP/H1033/A/11/2152582 – demolition of the existing house and the erection of a 2½ storey building with two storey wings, comprising six apartments and one penthouse in the roof void. Dismissed 28 September 2011
APP/H1033/A/11/2160773 and APP/H1033/E/11/2160775 – demolition of existing house and garage and the erection of a 2½ storey building with two storey wings, comprising seven apartments, including one in the roof void. Dismissed 3 January 2012
[4] The Building Phase Plan within the Conservation Area Appraisal notes it as post-1938
[5] As shown on the plan for Character Area 4 within which the appeal site lies.

view with which my predecessors agreed. I found the building to be relatively quiet and unassuming, of little architectural interest in itself, and I therefore concur with the conclusions of my colleagues, that there is no objection in principle, to its demolition.

10. However, policy BC6 of the High Peak Local Plan (March 2005) resists the demolition of buildings in conservation areas unless certain criteria are met. The dwelling occupies the largest plot within a discrete group of properties and logically requires a building upon it. Again, I concur with my colleagues, that demolition of the existing building, without a suitable scheme of redevelopment being agreed, would compromise the established character and appearance of the Conservation Area. The loss of the building must, therefore, be considered in the light of the merits of the building which would replace it.

11. The applications the subject of **appeals A and C**, seek to address the concerns raised in the last appeal decision, which proposed seven apartments, including one in the roof void, which scheme itself sought to address earlier concerns. The Inspector in that last case found that, whilst the footprint of the development proposed would be much greater than the existing building, this is a spacious plot, capable of accommodating a deeper and wider building than the existing without necessarily compromising the prevailing pattern of development. However, he had significant concerns about the resulting bulk of the building, not only in relation to the size and proportions of the roof to the central bay and the dormer windows within the rear elevation, but also the elevated siting of the building and its proximity to the registered park.

12. The current appeals each propose six apartments, with no accommodation within the roof void. Each has a similar footprint that is of slightly reduced depth compared to that the subject of the previous appeal, and utilises similar external materials as before, namely gritstone facing for the central block, a white render finish to the side wings, all on a gritstone plinth, with a slate roof and deep eaves. In both current cases, the building proposed would, as before, be set on a similar building line to the existing dwelling, some 10 metres back from St Johns Road and slightly forward of neighbouring properties - the main differences relate to the treatment of the roof.

13. **Appeal A** – as annotated on the submitted plans, the central block in this scheme has a shallow (20 degree) pitched hipped roof, with a ridge height of 8.9 metres when viewed from the rear[6], not dissimilar to the previous scheme. The shallow hipped pitched roofs to the side wings, are shown as having a maximum height to the rear of 7.35 metres, with pentice dormers to the front and rear and a smaller gablet above a central window to each of the side elevations.

14. **Appeal C** – the dormers and side gablet features of scheme A are omitted and the roof is altered to a pitched hipped roof with a flat top, shown as having a height of 7.935 metres to the rear, 7.3 metres to the front. The submitted plans indicate a sedum roof on this part of the building. The side wings, which would also be flat topped but are not shown as sedum, are shown as being approximately 0.3 metres lower than the central block.

15. I agree that the overall height of either scheme would not be seen as unduly prominent or uncharacteristic in its setting. However, in relation to appeal A,

[6] No corresponding measurements are shown for the front elevation.

specific concerns relate to the very shallow pitch to the roofs and the incongruous pentice dormers which are, more commonly, a feature of taller buildings with greater vertical emphasis. The appeal B scheme includes large areas of uncharacteristic flat roofs and suffers from the roofs to the side wings not being sufficiently distinct from the central block, which 'flattens' the building out, resulting in it having, as noted by English Heritage, a rather 'institutional character'. I also share the concerns of English Heritage and the Council, that the buildings neither reflect, nor respect, the general character and distinctiveness of local buildings that are key to the sense of place here and which are recognised through designation of the Conservation Area. Nor are they of sufficient quality to stand on their own as contemporary buildings.

16. It seems to me, that it is the appellant's pursuit of a particular style of building, combined with the quantum of development proposed, that has resulted in the sustained objections to the scheme. The depth of building required to accommodate the six apartments proposed, combined with the need to ensure that the overall height reflects that of the neighbouring properties, creates a fundamental tension that results in a building of unsettled proportions and which appears somewhat 'squashed'. Moreover, in seeking to address previous concerns by, in effect, 'tweaking' the design each time, rather than going back to basics, both the buildings now proposed lack architectural merit or identity.

17. I am not persuaded either, that any real effort has been made to address other concerns of the previous Inspector relating to the elevated siting of the building and its relationship with the registered park behind, which is at a lower level than the appeal site and its neighbours. During the site visit, I saw that the appeal site and the existing building are seen from the Serpentine Walks. Either of the buildings proposed, although not so deep as the earlier proposals, would be closer to the parkland than the existing dwelling and thus, as a much larger building than the existing property, would be more visible. It is all the more important therefore, that they should be of sufficient design quality, detailing and proportions that they would not detract from, or intrude into, the setting of the Serpentine Walks.

18. The Government attaches great importance to the design of the built environment, with the National Planning Policy Framework making it clear that good design is a key aspect of sustainable development, which involves positive improvements in the quality of the environment, including replacing poor design with better design. In determining applications, the Framework also requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets which, in this case, include the Conservation Area and the Registered Park, encouraging opportunities for new development within conservation areas to enhance, or better reveal, their significance. In addition, policy BC5 of the Local Plan reflects the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

19. Whilst the proposal would retain much of the well-established vegetation around the perimeter of the site, which would screen the new building to some extent, both the buildings proposed would, even in summer months, be seen from both St Johns Road and the park to the rear. The unrefined bulk and proportions, together with a lack of appropriate detailing would, in both instances, result in a building that would be significantly at odds with, and would cause substantial harm to the established character and appearance of

the Conservation Area and its significance, and to the setting of the adjacent grade II* Registered Park, contrary to the National Planning Policy Framework, and Local Plan policy BC5.

20. I recognise that the development would make more efficient use of land, and would make a contribution, albeit small, to the supply of new housing in the area in a relatively sustainable location. However, with regard to paragraphs 133 and 134 of the Framework, even had I found the harm to be less than substantial, it would not be outweighed by those benefits.

21. As noted above, the building that would be replaced is relatively modest in comparison to some of its period neighbours and makes no positive contribution to the Conservation Area. Whilst this does not justify retention at all costs, the proposed replacement is unacceptable for the reasons given. As such, demolition of the existing building (appeals B and D) would be unacceptable since, without a suitable replacement scheme, the resultant gap would harm the character and appearance of the Conservation Area, contrary to the provisions of the National Planning Policy Framework and policy BC6 of the Local Plan. Again, that harm is not outweighed by any benefits.

Protected Species

22. A bat survey undertaken at the appeal property in June 2008, confirmed the presence of brown long-eared and common pipistrelle bats within the roof space, although it was considered that this was probably a summer roost for a small number of non-breeding bats and was unlikely to be a maternity roost. Mitigation measures were proposed and I note that the effect on protected species was not a reason for refusal on the earlier appealed decisions. However, the 'usable' time for that survey has elapsed and a later survey was undertaken, at the request of the Council, in September and early October 2012, to establish whether there had been any change in circumstances since then.

23. The survey report of October 2012 is consistent with the 2008 findings. It confirms that a small number of (probable) brown long-eared bat droppings were found in the loft and, although no common pipistrelle bats were observed to be using the building, it still has the same potential to support a roost as was the case in 2008. As before, the survey concludes that the building is likely to provide only a summer roost. The mitigation measures suggested, include the provision of small gaps behind fascia boards/within soffit boxes/ under the eaves, to retain roosting areas for the common pipistrelle bats using the site, and provision for a brown long-eared bat roost within the roof void. To ensure that the bats are not without a roost for the period of demolition and redevelopment, bat boxes are recommended. It is also suggested that the boundary vegetation be retained to maintain foraging routes.

24. Although the officer's report refers to advice received on bats from statutory consultees, the only response cited is from the local wildlife trust. Those comments indicate a general acceptance of the survey results, but raise concern at the timing of the emergence and swarming surveys, which showed little activity. There is no record of any direct comment from Natural England (the statutory body tasked with ensuring that the natural environment is conserved, enhanced and properly managed) although its standing advice for species protected by the Conservation of Habitats and Species Regulations

2010 (the Habitats Regulations) is a material consideration in the determination of applications.

25. However, in seeking to address the Council's concerns in this regard, the appellant sought a formal response from Natural England. In a letter dated 20 December 2012, Natural England advises (notwithstanding the dates of the emergence and swarming surveys) that the survey work undertaken is adequate and that it has been demonstrated that the status of the roost has not changed since 2008. The letter also confirmed that the proposed mitigation is proportionate and sufficient to maintain the populations identified in the survey report.

26. Regulation 9(5) of the Habitats Regulations provide that, in exercising any of its functions, a competent authority must have regard to the requirements of the European Habitats Directive so far as they may be affected by the exercise of those functions. As the 'competent authority', I have a duty to consider whether the requirements of the Directive and Regulations are met in determining whether permission should be granted. In this case, although a bat roost has been confirmed within the building, I consider, having regard to the type of roost, and the advice from Natural England, that the mitigation measures proposed, which could be secured by condition were the appeal to succeed, would be sufficient to ensure that there would be no significant adverse impact on the local conservation status of the bats should the development go ahead. I find no conflict in this regard, with paragraphs 109 and 118 of the National Planning Policy Framework which seek, among other things, to conserve and enhance biodiversity.

Other Matters

27. Local residents have raised a number of matters. Neither development would be likely to give rise to significant levels of vehicular activity, nor is the on-site parking provision shown unacceptable to the Council. Subject to a slight modification to the access arrangement, the highway authority is also satisfied that there would be no material harm to highway safety.

28. The perimeter trees and vegetation are to be retained and could be protected during construction by means of condition were the appeals to succeed, although I note concerns about the accuracy of some of the detailing. Concerns in relation to surface water drainage could also be dealt with by condition.

Conclusions

29. Notwithstanding my findings in relation to protected species, I have found that there would be substantial harm to the character and appearance of the Conservation Area and the setting of the adjacent grade II* Registered Park. My concerns in this regard are not outweighed by other matters and, on balance therefore, I conclude that the appeal should not succeed.

Jennifer A Vyse

INSPECTOR