

Appeal Decision

Hearing held on 2 February 2016

Site visit made on 2 February 2016

by W G Fabian BA Hons Dip Arch RIBA IHBC

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

Decision date: 15 February 2016

Appeal Ref: APP/M2325/W/15/3133503

Land adjacent Edenfield, Clifton Drive, Lytham St Annes, Lancashire FY8 5RX

- 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 A Rigby against the decision of Fylde Borough Council.
 - The application Ref 13/0620, dated 27 September 2013, was refused by notice dated 2 March 2015.
 - The development proposed is a dwelling with integral garage.
-

Decision

1. The appeal is allowed and planning permission is granted for a dwelling with integral garage at Land adjacent Edenfield, Clifton Drive, Lytham St Annes, Lancashire FY8 5RX in accordance with the terms of the application, Ref 13/0620, dated 27 September 2013, subject to the conditions in the schedule attached at the end of this decision.

Application for costs

2. An application for costs was made by Mr A Rigby against Fylde Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this appeal are:
 - i) whether the proposal would preserve or enhance the character or appearance of the Lytham Avenues Conservation Area, with particular regard to woodland trees subject to a Tree Preservation Order; and
 - ii) the effect on the living conditions of the adjacent residential occupant at Flat 8 St Johns Wood, 2 Clifton Drive with reference to daylight and outlook.

Reasons

4. The proposed new two storey dwelling would be located with its rear wall in line with that of Edenfield, a large and impressive Victorian brick villa (now converted to separate apartments) at one side, and at the other side close to the boundary with the St Johns Wood apartment block, a three/four storey mock Tudor building. It would share the existing highway access from Clifton
-

Drive into Edenfield, with a secondary access off its driveway into the appeal site.

Woodland trees

5. The appeal site and its surroundings lie within the Lytham Avenues Conservation Area, a locally designated heritage asset. The whole site is also covered by a Tree Preservation Order, TPO 2003 No.7 (Lytham). This formally designates a long thin group of woodland trees on the site (W2), stretching between Clifton Drive and the rear boundary of Edenfield (which wraps the end of the site), at the estuary foreshore. Some of the trees within this group also fall within the ownership boundary at Edenfield.
6. The Council's *Character Appraisal and Management Statement for the Lytham Avenues Conservation Area*, 1989, (CAMS) defines three sub areas of which the appeal site is within Area 1) south west of Clifton Drive and borders the sea front. *'This was originally characterised by large villas set in large landscaped grounds. Today a number of these have disappeared to be replaced by inappropriate modern multi-storey blocks of flats and individual houses of a much smaller scale.'* The CAMS then sets out that *'the visual balance still lies in favour of the Victorian villas'* but it notes that the villas face towards the sea with a more intimate scale of development along Clifton Drive, where there are *'outhouses, coach houses and later development with the original villas forming a backdrop.'*
7. This part of the conservation area is also characterised by the almost continuous high brick (and sometimes flint) wall that bounds this side of Clifton Drive as well as along the seafront onto the dunes, where it is pierced by ornate pedimented pedestrian gateways into individual gardens. The CAMS further notes the importance of *'the spaces around and between the buildings, with particularly attractive landscaped garden areas'*. Even more recent infill has taken place such as the new coach house style dwelling now reaching completion at the other side of Edenfield, which is set just behind the Clifton Drive boundary wall. This was allowed at Appeal in 2013, with a further as yet unimplemented planning permission, also allowed at a linked appeal, for another dwelling behind it.
8. Nevertheless, in the main, the original villas have not been subsumed and there is now a clear rhythm of individual large villas with varied infill between. This sub area still retains a clear and coherent character. It is an attractive enclave, defined by the encircling high boundary wall and gateways, comprising gracious seaside homes interspersed to varying degrees by attractive landscaping within gardens and by the framing trees, including the larger stands of woodland groups described above, as well as roadside trees.
9. As set out in the Statement of Common Ground, there is no dispute regarding the principle of residential development in this location, nor as to the suitability of the size, style and siting of the proposed dwelling, which are all agreed to comply with the design and conservation aims of saved policies EP3 and HL2 of the Fylde Borough Local Plan as Altered, 2005 (LP).
10. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on decision makers to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The Government's National Planning Policy Framework (the Framework)

reflects this legislative duty and sets out that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The LP policies referred to above broadly reflect the aims of the Framework in terms of the environmental role of sustainable development and the historic environment. I see no reason to depart from the Council's assessment – the proposal would replicate the existing pattern of infill and would not be at all prominent seen from either the road or the foreshore.

11. The woodland on the site is a key feature of the conservation area. This is particularly so seen from the foreshore, where even in winter it forms a distinct and striking wind-rounded group of mixed trees. These are mainly deciduous, mostly sycamores with a beech and an elm, as well as some hollies. This large group of around twenty or more trees, with another woodland group (W1) of trees also protected by the same TPO at the other side of Edenfield, frames and shelters the original villa. The trees and the villa together are a prominent and eye-catching composition – an important key vestige of the former character of the enclave. Seen from the foreshore and from the road the woodland group on the appeal site is a highly important feature and integral to the character of the conservation area. Thus the desirability of conserving its contribution to the significance of the heritage asset is of great weight in this appeal.
12. From Clifton Drive the larger mass of the trees at the rear of the site is less apparent, but a few key trees stand out at this end of the site including a 16.7m high ash, T4¹, and a 10.5m high evergreen holm oak, T2. These merge with less tall hollies T1, T3, T5 and T6 around them as well as several larger hollies T7, T8 and T9 and two more substantial holm oaks, T10 and T11, further back along the northwest boundary of the appeal site. Together they form a pleasing group that is highly prominent at the roadside, in views along the street and from side roads opposite. They are a substantial and also highly important contributor to the treed appearance of the conservation area here and as such, great weight should be given to their conservation too.
13. Saved LP policy EP12 specifically seeks to protect the character, quality and visual amenity of trees, woodlands and hedgerows that make a significant contribution to townscape.
14. The central part of the appeal site, in the location of the proposed footprint of the house is open, although overgrown, mainly by a tangle of blackberries. Site levels here have been substantially reduced at some point in the past, leaving a steep earth bank between the appeal site and Edenfield, topped by a few trees, mainly cypress. Only three leyland cypress trees and a shrub would be removed to allow construction of the dwelling itself. These are T16 – T19, all classified as C3; no objection has been raised to their loss and I agree. Given their poor quality and elevated position their future life expectancy is likely to be compromised.
15. Tree roots along the bank appear to have been severed by the previous lowering of the site and several small holm oaks, probably suckered from the roots of T11, have regenerated in its vicinity. These would mostly fall within an area to be retained for shrub planting close to the proposed house and, subject to the suggested submission of a scheme of landscaping as well as

¹ References and heights as shown on Tree Survey drawing LA1 rev A and schedule attached to Tree Report 20 December 2011

woodland management, secured by condition, would remain to grow naturally if appropriate. No other evidence of naturally occurring woodland regeneration was evident at the site visit or drawn to my attention within the immediate vicinity of the proposed dwelling.

16. Although the regeneration of the woodland in this open part of the site would be prevented in the long term by the proposed house and driveway, the Council acknowledged at the hearing that it would not be able to formally pursue any replanting of woodland in this part of the site. There is little to show that without active management of the woodland to promote natural regeneration there is a realistic probability that this would occur in such a way as to enhance the conservation area. It is further acknowledged that positive management of the woodland cannot be secured other than through a condition attached to the proposal or other future development on the site.
17. The Council's principle concern is in respect of the feasibility of constructing the driveway as proposed without harming the root protection areas (RPA) of the trees in its vicinity – those described above at the roadside part of the site. The RPA of T4 would be substantially traversed by it and to a much lesser extent those of trees T2, T3, T11 and T12 would be impinged on. The Council's tree officer has questioned whether the driveway could be satisfactorily installed without causing harm to these trees in the process. In particular doubts were expressed as to the feasibility of heavy construction vehicles (HGVs) entering the site at the point indicated and the extent of pruning/crown lifting of T4 that might be necessary.
18. However, the detailed information contained with the application submissions include the appellant's arboriculturalist's construction details and technical information to show that a no-dig construction technique as well as protective fencing, in compliance with BS 5837: 2012 – Trees in Relation to Design, Demolition and Construction, could be used to avoid harm to the trees and their roots and this would be employed for the section of driveway under T4. A vehicle height barrier would be installed at the site entrance during construction to prevent access by HGV vehicles. In any case, although not directly set out in the submitted evidence, on the basis of my own professional experience, it was evident on site from the angle of the existing gateway onto Clifton Drive and the tight turn that would be required for vehicles entering the proposed driveway, that large vehicles such as HGVs would not be able to make this manoeuvre to access the site.
19. Further queries relate to the installation of the 'cellweb' material above ground levels in the vicinity of the junction between the existing Edenfield driveway and the site, where spot levels appear to show the site above the level of the drive. Other than the generic construction section submitted, no site specific detailed construction sections or plans related to local levels were provided either at application or at appeal. At the hearing site visit the installation was explained orally. It was shown that the underlying ground surface, below leaf litter and debris is already approximately 100mm below the kerb to the Edenfield driveway.
20. Moreover, the removal of the six or so leyland cypress trees, G1, (which is not resisted) and the reduction below ground level of their stumps with local hand digging to expose and preserve the intermingled tree roots from retained trees T2, T3, T4 and T5 where necessary, would be likely to inevitably further reduce

levels locally. Thus installation of the 100m deep 'cellweb' could be achieved above ground level without harm to the roots of the retained trees here and would allow the conjunction of the new and existing driveways.

21. Although the spot levels shown near T3 fall across the site by up to as much as 0.5m, this highest level is immediately beside its trunk and the general fall is less, around 0.3m. It was evident on site that the construction technique proposed could be installed without any high degree of overlap of the 'cellweb' or undue build up of levels above the RPAs. The necessary detailed levels and construction drawings could be the subject of a condition, as could the presence of the appellant's arboricultural adviser during this key part of the construction.
22. In relation to the suggested need to crown lift T4, it is also clear from the site visit that the canopy commences at a height of at least 3.2m, well above that of any vehicles that could enter the site and so any pruning necessary would be likely to be minimal.
23. An additional objection was raised to the indicative site cabin location shown on plan, which is within the RPA of T4. Whether or not this meets the guidance within the BS on such matters, I am satisfied from oral evidence that the location of a lightweight site cabin, sufficient for the small scale construction team needed for a single house, could be located in the restricted areas outside the RPAs of retained trees provided that it were moved to facilitate particular construction stages. It could be located, for instance, in the area beside the proposed turning head or eventually be provided within the proposed integral garage. This aspect too could be secured through the suggested conditions.
24. As a consequence of the site visit and oral explanation of the construction techniques proposed, including the use of light weight construction vehicles, possible hand unloading of brick deliveries, and hand-dig, boring or 'air-spade' techniques for the installation of underground services, I am convinced on balance that the construction of the proposed dwelling and driveway could be achieved without undue harm to the retained trees on the site or to their future health. This would be contingent on a high level of supervision by a suitably qualified arboriculturist, as is proposed and this could be secured by condition.
25. I conclude that the proposal would preserve the character and appearance of the Lytham Avenues Conservation Area, with particular regard to woodland trees subject to a Tree Preservation Order, in compliance with the development plan and national policies set out above.

Living conditions

26. The proposed dwelling would be constructed at some 5.2m from the side of the St Johns Wood apartments. In particular the side double gables proposed would be set close to two windows in Flat 8. One of these, to the dining room, would look out entirely at an expanse of brickwork, where currently the occupant enjoys an open aspect across the appeal site. The other, to the kitchen, would be less affected; as shown on the amended sections drawing submitted for the appeal, the proposed dwelling would overlap this window by less than half its width.
27. Saved LP policy HL2 requires that development should not affect the amenity of neighbouring properties. In terms of daylight, there is little evidence to

demonstrate that the two rooms affected would not continue to receive adequate light; the proposed house would not extend sufficiently high above the dining room window to block all sky views and the kitchen window would be substantially unaffected. In terms of outlook, while the proposal would introduce a new and solid mass close to the dining room window, I have seen at the visit that this room is open to the adjacent lounge, which would continue to enjoy uninterrupted southerly outlook towards the foreshore. In these circumstances the effect on living conditions would not be so harmful as to justify dismissing the appeal.

28. I conclude that the proposal would not unduly harm the living conditions of the adjacent residential occupant at Flat 8 St Johns Wood, 2 Clifton Drive with reference to daylight and outlook and would comply with development plan policy in this regard.

Conclusion

29. Drawing my findings together, the proposal would not cause harm to the identified main issues and would assist to a limited degree with boosting the supply of housing, a key Government aim established by the Framework. It would comply with the development plan as a whole and fulfil the environmental role of sustainable development. In social terms, the proposal would contribute to the supply of housing to a small degree and it would deliver economic benefits through the provision of employment during the construction and in the building supply industry.
30. Overall the proposal would be sustainable development in terms of the Framework and would accord with the development plan as a whole. The proposal should be allowed.

Conditions

31. A number of conditions have been suggested, in addition to those noted above. For the avoidance of doubt and in the interests of proper planning a condition specifying the approved drawings is necessary. Further details of materials and large scale sections for the construction and installation of timber windows are necessary to ensure visual compatibility with the conservation area. For the same reason and as set out above a detailed scheme of landscaping, tree protection and future woodland management is necessary and reasonable. To secure a sustainable form of surface water drainage the requirement for a detailed scheme is reasonable.
32. As mains foul water drainage is controlled by other legislation this part of the suggested condition is not necessary. In accordance with development plan objectives for the enhancement of wildlife habitats the provision of bat roosting boxes is reasonable as is a restriction on works during the bird nesting period. In accordance with the appellant's submitted ecology report means of external lighting should be subject to further approval to prevent harm to wildlife habitats on the site.
33. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Given the proximity to the proposed house of trees subject to a TPO it is important to safeguard their future health and so a restriction on the following without a further approval is

justified: future extensions; alterations to the roof; provision of additional buildings or enclosures or swimming pools or other pools; any additional hard surface; or the erection of other means of enclosure. However, it is not clear why the suggested removal of such rights in respect of the formation of an access to a highway that is not a classified road (Clifton Road being classified) or the painting of the exterior of the building is necessary or justified or whether a similar restriction is in place for neighbouring residential properties in the conservation area.

Wenda Fabian

Inspector

Schedule of Conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - BR4024/SD2 – Rev B, proposed site plan
 - BR4024/SD4 – Rev B, proposed landscaping
 - BR4024/SD5 – Rev B, proposed levels
 - BR4024/SD6 – Rev B, proposed plans and elevations
 - BR4024/SD7 – Rev B, proposed section/street elevations
- 3) No development shall take place until samples and details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted have been submitted to and approved in writing by the local planning authority. These details shall include construction drawings at a scale of 1:5 or 1:10 as appropriate, for timber windows and for their installation within window openings. Development shall be carried out in accordance with the approved details.
- 4) No development shall take place until there has been submitted to and approved in writing by the local planning authority a landscaping scheme, with a programme for planting, an arboricultural method statement, which shall include details of: future woodland management arrangements; an up to date plan of all existing trees on the land, with details of those to be retained, together with measures for their protection in the course of development; a programme for removal of trees in accordance with the provisions of 4.2.1 of the Ribble Ecology Report, dated October – November 2013; and details of the means of excavation for services with means of root protection during such excavation. All works and provisions shall be implemented in accordance with the approved details.
- 5) No removal of shrubs or trees or any other site clearance shall take place during the bird nesting season (1 March to 31 August inclusive) unless the site is surveyed for breeding birds and a scheme to protect breeding birds is submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any new or retained trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 7) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of surface water drainage to demonstrate compliance with principles of sustainable urban drainage including rainwater collection from the roof and all hard-surfaced areas including patio, forecourt and turning head. The scheme shall be implemented in accordance with the approved details.

- 8) The dwelling hereby approved shall not be occupied until bat roosting boxes have been installed in accordance with a scheme first submitted to and agreed in writing by the local planning authority.
- 9) Prior to the installation of any means of external lighting a scheme for this in accordance with 4.2.2 of the Report by Ribble Ecology, dated October – November 2013, shall be submitted to and agreed in writing by the local planning authority. The installation shall be carried out in accordance with the approved details.
- 10) Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A, B, C, D, E and F and Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no further development of the dwelling or curtilage relevant to those classes shall be carried out without the grant of planning permission.

End of Conditions

APPEARANCES

FOR THE APPELLANT:

Mr S Richardson	Planning and Law Ltd
Mr I Tavendale F Arbor A	Arboricultural consultant
Mr A Rigby BSc Hon	appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs C Kitching	Conservation Officer, Fylde Borough Council
Mr A Wallbank	Tree Officer, Fylde Borough Council
Mr P Drinnan	Regeneration and Design Manager, Fylde Borough Council

DOCUMENTS

- 1 Council's hearing notification and circulation list
- 2 Aerial photograph of site, 2011
- 3 ARB Magazine winter 2015, pp 48 – 49, Article - 3D cellular confinement
- 4 Ruskins Trees and Landscapes – air spade services pages 1 - 4
- 5 'Science & Opinion' Photographs of Cellweb TRP construction in progress
- 6 Council's response to appellant's costs application

PLANS

Submitted with application

- A site location plan 1:1250
- B BR4024/SD2 – Rev A, proposed site plan
- C BR4024/SD2 – Rev B, proposed site plan
- D BR4024/SD4 – Rev A & Rev B, proposed landscaping
- E BR4024/SD5 – Rev A & Rev B, proposed levels
- F BR4024/SD6 – Rev A & Rev B, proposed plans and elevations
- G BR4024/SD7 – Rev A & Rev B, proposed section/street elevations
- H BR4024/SD3 – Rev A, street scene photographs
- I BR4024/SD8 – Rev A, Edenfield photographs

PLANS

Submitted with appeal

- J BR4024/SD2 – Rev C, proposed site plan, with adjacent windows, flat 8
- K BR4024/SD7 – Rev C, proposed section/street elevations