

PLANNING APPEAL DECISION

Lead Officer: Tony Pomfret – Development Services Manager

To inform Members of a recent appeal decision at Fleatham House, St Bees

Recommendation: That the decision be noted in the context of the Council's Local Plan policies and also in relation to performance monitoring.

Resource Implications: Nil.

1.0 SUPPORTING INFORMATION

1.1 Contrary to officer advice planning permission for three detached dwellings in the grounds of Fleatham House in St Bees was refused at the Planning Panel meeting on 30 April 2008 for the following reason:-

"The proposed residential development would adversely impact on the existing and future well being of trees protected by a Tree Preservation Order and the St Bees Conservation Area generally, at variance with Policies DEV 6, ENV 10, ENV 26 and ENV 27 of the adopted Copeland Local Plan 2001-2016".

1.2 The appeal has been ALLOWED. In reaching her decision the Inspector agreed with the officers and considered that in design terms the dwellings would preserve the character and appearance of the St Bees Conservation Area and that their traditional external finishes and vernacular design would compliment Fleatham House and other surrounding buildings.

1.3 In respect of the trees the Inspector accepted the appellants arboriculturalist's view that most of the trees on the site are poor or at their best average quality and that without active management and replanting a significant proportion will be lost due to death or becoming dangerous. She was satisfied that the loss of trees proposed to make way for the development was justified and that the replacement planting is adequate. Consequently she did not share the Council's objections and considered that the proposal would not harm the health or life expectancy of other trees on the site concluding that it would "preserve views into and out of the Conservation Area and would comply with local plan policies ENV 10, ENV 26 and ENV 27".

Contact Officer: Heather Morrison – Senior Planning Officer

Background Papers: Development Control file reference 4/07/2728/0F1 plus copy of the appeal decision is attached



Appeal Decision

Site visit made on 4 November 2008

by **Wenda Fabian** BA Dip Arch RIBA IHBC

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

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Decision date:
2 December 2008

Appeal Ref: APP/Z0923/A/08/2082373

Fleatham House, St Bees, Cumbria CA27 0BX

- 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 Fleatham House against the decision of Copeland Borough Council.
- The application Ref 4/07/2728/0, dated 4 December 2007, was refused by notice dated 1 May 2008.
- The development proposed is four detached dwellings.

Procedural Matter

1. Notwithstanding the description shown above, an amended site plan Dwg No 06/12/550-01 rev a) was submitted prior to the Council's decision, which shows the house proposed at plot 1 omitted. Accordingly I have considered the appeal on the basis of a proposal for three detached dwellings.
2. The appellant has clarified the tree numbering shown on the revised site plan drawing; trees T1 to T99 correlate to trees referenced 500 to 599 in the schedule to the arboricultural report by Mr Hatton (dated November 2006) and trees T100 to T106 on the plan correlate to trees 600 to 606 in the schedule. I have used this information in assessing the proposal.

Decision

3. I allow the appeal in the terms set out in the Formal Decision below.

Main issues

4. The main issue is the effect of the proposal on the character and appearance of the St Bees Conservation Area, with particular reference to the existing trees on the site.

Reasons

5. The appeal site is a long wedge of land at the gated driveway approach to Fleatham House. The site, Fleatham House and its garden beyond it are within the conservation area. The house is a large Victorian building of render with red sandstone details and is in use as a bed and breakfast business. The site slopes steadily up from the gate to the house and there is a steep crossfall across it from the bungalows at 'The Crofts' down to the small development of barn conversions and new houses that is now underway at Fleatham Farm, to the north, well below it. The gateway is within a group of attractive traditional buildings along the road that is key to the character of this central part of the town. It is fringed by numerous individual trees and larger groups of trees,

which frame the gateway and form a backdrop to much of this part of the conservation area. Growing on rising land, the trees can be seen from many viewpoints across the town. There is strong and understandable local concern that this leafy wooded appearance, which is an inherent part of its character, should be safeguarded.

6. Policy ENV26 of the *Copeland Local Plan 2nd Deposit Version*, 2005 (LP) requires new development to preserve or enhance conservation areas and seeks to protect views into or out of them. Proposals should respect the character of existing architecture and improve the quality of the townscape.

Design

7. No policy has been drawn to my attention that resists the principle of residential development in this part of St Bees. There is no dispute between the parties that the overall design of the proposal would be acceptable. I agree with the Council officer's view that the proposed houses, which would be of sandstone, roughcast render and slate roofs in a vernacular style, would compliment Fleatham House and other surrounding buildings. The houses would each be of a separate design set in a generous plot and would front the existing driveway in a linear layout. It seems to me that in design terms they would reflect the existing pattern of ad hoc organic development of large detached houses close-by and would fit naturally with the grain of this part of St Bees. The design of the proposal would preserve the character and appearance of the St Bees Conservation Area. There would be sufficient separation distance between the proposed houses and adjacent dwellings to substantially reduce any overlooking that may occur.

Trees

8. LP policy ENV 10 relates to trees subject to a tree preservation order and requires that where trees would be lost through development these should be replaced at a ratio of at least 2:1. Policy ENV 27 relates to trees in a conservation area. Both seek to protect trees from harmful development.
9. There are a little over one hundred trees on the appeal site, mainly in stands around the perimeter but with some spaced out along the sides of the drive as well as a few more recently planted individual trees in the open lawned area towards the upper end of the site. The trees are all the subject of a Tree Preservation Order (TPO No 1: 2004, Land at Fleatham House, St Bees, Cumbria). Forty-five individual trees and nine groups of trees are indicated on the TPO plan and identified by species and approximate age on the attached schedule.
10. The appellant has commissioned a report by a professional arboriculturalist, dated November 2006, in respect of all of the trees on the site. This schedules the trees in accordance with BS 5837:2005 '*Guide for Trees in relation to construction – recommendations*' in terms of species and estimated age and it categorises each for its quality and predicted useful life expectancy with recommendations for its retention or otherwise. The report was updated by letter dated November 2007 and by a further statement dated July 2008.
11. In summary, this professional advice finds that sycamores have become dominant on the site and most trees are of poor quality or, at best, of average

quality (the majority are in category C or below, the lowest condition category for retention). Most elms on the site have regenerated from existing root systems and there is evidence of repeat colonisation by the scolytus beetle, which carries Dutch elm disease. The report finds that without active management and replanting, a significant proportion of trees on the site will be lost in the short to medium term through authorised felling due to death, or becoming dangerous. It recommends that a tree management plan, with replanting, should be conditional to any planning permission and suggests that this would be the most realistic way of securing the long term future of the trees on the appeal site and safeguarding the appearance of the conservation area. It is proposed to provide replanting of fourteen mixed hornbeam, beech, oak and lime trees and this could be secured by a detailed condition.

12. In relation to the proposed houses the report specifically considers each of the trees immediately around each one in accordance with the BS. The BS sets out that the current and ultimate height and spread of a tree is a constraint due to its size, dominance and movement in strong winds and should be taken into account in the design phase of a development. Damage can occur to trees and structures by the continuous whipping of branches and branch ends may have to be cut back repeatedly, possibly spoiling the shape of the tree. The effect of shading by the trees of the development should also be taken into account. In broad terms the report concludes that the houses would be positioned sufficiently well clear of the tree canopies and root protection areas (RPA) that they would not be directly affected by the proposal either during or after construction, subject to the provision of adequate protection during construction, which can also be secured by a condition.
13. I note that the Council's Landscape Officer has commented on few of the specific matters raised by the arboricultural report but resists the proposal on the basis that it would lead to the future loss of trees on the site. The Council is concerned that in future occupiers of the proposed dwellings may wish to lop or fell trees close to their homes because of shading or other factors and such demands would be difficult to resist. However, as the closest trees would be around 8 - 10m from the proposed dwellings and most would be well in excess of this, I consider that there would be sufficient space around the dwellings, in particular at the south side of the main living areas to prevent excessive shading. In the absence of evidence to the contrary and on the basis of my observations on site, I accept the findings of the professional report supplied by the appellant. It would be open to the Council to consider future applications of the sort envisaged in respect of the TPO trees each on its own merits.
14. The proposed service trench would be positioned to pass outside the RPAs of two young/young-mature oaks of above average condition (T100 and T101 on the submitted layout, both category B). The existing driveway would be unaltered other than by the addition of a new passing place, which would not conflict with any RPA. Five trees are indicated to be removed as part of the proposal. Of these two are categorised R as requiring removal - T105, a young field maple with poor structure, and T104, a young/mature multi stem self-set sycamore, both with a life expectancy of less than 10 years. The other three are C category trees that could be retained: T103 a young/mature oak with a life expectancy of 10 - 20 years, which I saw has a raised soil level closely surrounded by the existing lower level of the tarmac carpark and which has a

poor structure as a result of past pruning; T102 a young/mature sycamore with a life expectancy of 10 - 20 years in reasonable condition but which conflicts with a nearby good sycamore with a 20 - 40 year life expectancy; and T99 a mature sycamore with a cavity in its dominant stem and a life expectancy of 10 - 20 years. I am satisfied from all that I have seen and read that the proposed loss of the trees is justified, that the proposed replacement planting would be adequate and that the proposal would not harm the health or life expectancy of the other trees on the site. It would, consequently preserve views into and out of the conservation area and would comply with LP policies ENV10, ENV26 and ENV27.

Conclusion

15. For the reasons given above I conclude that the proposal would preserve the character and appearance of the St Bees Conservation Area in accordance with local and national policies.

Other Matters

16. I note local concerns with regard to the adequacy of the drainage infrastructure for the town. However, I have seen little evidence to show that the three additional dwellings proposed could not be adequately serviced. Nevertheless, I note the Environment Agency comments that a form of sustainable drainage system should be installed to mitigate the impact of surface water drainage from impermeable areas of hardstanding and I shall attach the suggested condition. Little evidence has been submitted to show that existing wildlife habitats would be significantly affected by the proposal. Work to improve the existing driveway is not included in this proposal. Any such future work that may arise would also be subject to the TPO legislation. Boundary wall considerations in relation to construction traffic are not a planning matter.
17. Reference has been made to highway authority objections to the layout of the existing access. Details of this have not been made available to me. However, I saw little at my site visit to cause me concern on this aspect and I have seen little evidence to show that the additional traffic arising from the proposal would add so substantially to the existing level of comings and goings generated by the bed and breakfast business at Fleatham House, as to cause significant harm to highway safety.

Conditions

18. To ensure that all of the development is outside the relevant RPAs as shown on the submitted drawings, further details of driveways, including hardsurfacing materials, should be submitted for approval and the detailed setting out of the dwellings on site should be subject to approval before construction commences. Schemes for tree protection during construction, management and replanting are necessary as set out above. Whilst Circular 11/95: *The Use of Conditions in Planning Permissions* sets out a presumption against restriction of permitted development rights, to prevent encroachment into the RPAs the addition of any future extensions, other buildings or hardstandings should be subject to further approval. However, it is not apparent to me why the replacement of windows or doors should be similarly restricted. A condition is reasonable to ensure the free use of the existing public footpath on the site during construction.

Formal Decision

19. I allow the appeal, and grant planning permission for three detached dwellings at Fleatham House, St Bees, Cumbria CA27 0BX in accordance with the terms of the application, Ref 4/07/2728/0, dated 4 December 2007, and the plans submitted with it, as amended by Dwg No 06/12/550-01 rev a), and subject to the following conditions:

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The setting out of the buildings, hardstandings and driveways hereby approved shall be marked out on site such that a minimum separation distance of 1m is provided between the root protection areas of any retained tree and the development and this setting out shall be approved in writing by the local planning authority prior to the commencement of construction. The development shall be carried out in accordance with the approved setting out.
- 3) Notwithstanding the provisions 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 development permitted by Classes A, B, D, E, F or G of Schedule 2 Part 1 (The enlargement, improvement or other alteration of a dwellinghouse, the provision of any building, enclosure, pool, hardstanding or domestic heating oil storage container) shall take place, other than as expressly authorised by this permission, without the prior written permission of the local planning authority.
- 4) No works or development shall take place until a scheme in accordance with BS 5837:2005 for the management of existing trees on the site and for their protection during construction as well as for replacement tree planting, including species and sizes with a proposed timetable for planting and a maintenance regime, has been submitted to and approved in writing by the local planning authority, and the approved scheme shall be carried out in accordance with the approved details and timetable.
- 5) If within a period of two years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 6) The erection of fencing for the protection of retained trees, in accordance with condition 4 above shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any

excavation be made, without the written approval of the local planning authority.

- 7) Public footpath N423004, which runs along the southern boundary of the site shall be maintained unobstructed at all times during construction until completion of the development.
- 8) No works or development shall take place until a scheme for the provision of surface water drainage works has been submitted to and approved in writing by the Local Planning Authority and the approved scheme shall be carried out in accordance with the approved details.

Wenda Fabian

Inspector