
Appeal Decision

Site visit made on 25 October 2016

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

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

Decision date: 16th November 2016

Appeal Ref: APP/A4710/W/16/3153985

Land adjacent to Belvedere, Savile Road, Hebden Bridge, West Yorkshire, HX7 6ND

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr John Rhodes against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 16/00207/OUT, dated 10 February 2016, was refused by notice dated 12 April 2016.
 - The development proposed is described as "*The application is to build a new ultra-low energy three-bedroom family house on land adjacent to Belvedere, Savile Road. The house will be built to the international Passive House (Passivhaus) standard and will aim to achieve formal certification.*"
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. I have taken the site address from the appeal form, as this is more precise than the address given in the application form.
3. The application is in outline with access and layout to be considered. While design is a reserved matter, I note that it is intended that the development would be of a 'Passivhaus' design and indicative plans have been provided. I have had regard to this in the determination of the appeal.

Main Issues

4. The main issues are the effect of the proposed development upon (a) land stability and (b) the character and appearance of the area, including its effect on protected trees.

Reasons

Land Stability

5. The appeal site comprises of land at the junction of Savile Road and Morningside. At the lowest section of the site, alongside the highway, is a detached single garage. The rest of the site is formed of steeply rising ground with trees and vegetation. Beyond the appeal site, the ground continues to rise and contains more trees. Belvedere is located on high ground to the north of the appeal site. To the rear is Acre House. An outbuilding serving this dwelling is visible from the appeal site located atop of the hill.
-

6. The appeal plot is relatively small in size with a narrow depth. Based on the proposed layout of the dwelling within the site, at right angles to the road, and the steep topography, I consider that the development would be highly likely to entail the need for substantial excavation. I am also mindful that the indicative design shows that the dwelling would incorporate an undercroft area to accommodate a garage and garden store.
7. It is understood that the appeal site is within an area identified as having land stability concerns. Policy EP11 of the Calderdale Replacement Unitary Development Plan, 2006 (RUDP) requires the submission of a land stability report assessing the nature and scale of any stability problems as well as measures to overcome any issues, to be submitted to the Council for consideration. No such report has been provided.
8. The appellant has suggested that the requirement for a land stability report could be conditioned. I do not consider, however, that such an approach would be appropriate. Given the likely level of excavation required for the proposed development, and the potential implications of that for land stability, it is fundamental, in my judgment, to establish in advance of planning permission being granted whether the proposed development, or the adjacent properties, would be put at an unacceptable risk from land instability. In the absence of evidence to suggest otherwise, I consider that a precautionary approach is appropriate.
9. I accept that many dwellings in the area are built into the hillside but there is no evidence before me to suggest that they were constructed without due consideration for local land stability in advance of construction.
10. I conclude that, without any evidence to the contrary, the development could impose a significant risk to land stability in respect of the appeal site, as well as in respect of neighbouring dwellings. The development would therefore fail to accord with RUDP Policy EP11, the requirements which are noted above. The development would also run counter to paragraphs 109 and 121 of the National Planning Policy Framework (the Framework) which seek to ensure that the site is suitable and to prevent development from contributing to unacceptable risk of land instability.

Character and Appearance

11. The general area has a dramatic landscape setting which comprises of densely wooded and steep valley sides, interspersed with dwellings built into the hillside. The town of Hebden Bridge is located on the bottom of the valley.
12. The appeal site is located around 800m from the town centre, in a hillside location. Development in the locality comprises of rows of cottages as well as detached and semi-detached dwellings located adjacent to Savile Road as it ascends the valley side. There are pockets of open and wooded land between built development along the highway, and the appeal site forms one such area.
13. There are 4 protected oak trees within the appeal site, covered by the Council's Tree Preservation Order (TPO) reference C1163 2000P. Three of these trees would be removed to accommodate the proposed development (T1, T3 and T4) and one tree (T2) would be retained.
14. As set out within Planning Practice Guidance (PPG), TPOs are used to protect selected trees and woodland if their removal would have a significant negative

impact on the local environment and its enjoyment by the public.¹ Saved Policy NE20 of the RUDP states that TPOs will be made to trees that make an important contribution to local amenity or local landscape character.

15. I consider that the appeal site forms an important open break between built developments along Savile Road. By reason of their size, maturity, location on the hillside and spread across the appeal plot, I consider that the group of 4 protected trees are attractive and, visually, make a significant contribution to the street scene, as viewed from Savile Road and from along Morningside.
16. Accordingly, the loss of 3 of these trees, including T3 which is identified in the appellant's Arboricultural Report as being a 'Category A' tree of high quality, and T1 which is 'Category B' of moderate quality, would cause significant harm to the character of the area.
17. It is noted that T4 is identified as 'Category C' due to its structural condition. Nonetheless, as part of the overall group I consider this tree to make an important contribution, and its removal to allow light to the proposed dwelling and optimise solar gains would further exacerbate the harm identified.
18. I accept that the loss of 3 trees would be minimal in the overall context of the wider and heavily wooded landscape. However, I have found above that the contribution made by this small group of protected trees to the street scene, is considerable and important. Therefore, while the adverse visual impact of the loss of trees would in this context be relatively localised, it would still be materially harmful to the character and appearance of the area.
19. Furthermore, I do not consider that the loss of the trees would be moderated to any significant degree by any replacement tree planting and landscaping proposals at reserved matters stage, given the siting of the dwelling within the site and the need to maximise solar gain.
20. While T2 would be retained, it is noted from the Arboricultural Report that the development would be partly located in the root protection area (RPA) of this tree. As set out above, I have found that the development would be highly likely to entail significant excavation of the site. In the absence of any evidence to the contrary, the effect of any engineering and excavation works upon T2 and its RPA is brought into question.
21. In any case, the proposed dwelling would be partly located underneath the canopy of T2. Therefore, even if it were found to be possible to protect this tree from development in its RPA, given its size, proximity and location to the south of the proposed dwelling, it is likely that there would, in my judgment, be pressure to substantially cut back or fell this tree, particularly as the dwelling is intended to be of a Passivhaus design, which would need to maximise solar gain. Although the Council would retain formal control over any such request for tree works to T2, in practice I consider that it is likely to be difficult to resist such pressure in the long term.
22. I am also mindful that any necessary engineering operations would alter the profile of the hillside in this location and the extent to which these would be required is currently unknown. Again, while developments set into the hillside and retaining walls are not unusual in this area, given the visibility and context of the site I find that the necessary groundworks, excavation, and retaining

¹ Reference ID: 36-007-20140306

walls, together with the loss of trees, would urbanise and erode the open and verdant character of the site. This effect would be particularly visible from within the street scene, causing harm.

23. On this matter, I therefore conclude that the development would adversely affect the character and appearance of the area through groundworks and excavation, as well as through the loss of protected trees. The proposals would therefore be in conflict with saved Policy BE1 of the RUDP which seeks to ensure that new development retains natural features that contribute to the amenity of the area, and local identity. The development would also fail to accord with saved Policy NE21, which seeks the retention of trees where they are of amenity value, as well as ensuring that distances between proposed excavations for development and existing trees, and between foundations and new planting, are sufficient to ensure the continued health of the trees.
24. With specific regard to saved policy NE20, this states that the removal of protected trees will not be permitted unless the benefits of the development including any replacement planting would outweigh the harm caused by the loss of trees. I will conclude on this policy in my overall consideration of the planning balance of the proposals, below.

Planning Balance

25. The Council accepts that it is unable to demonstrate a five-year supply of deliverable housing sites. Thus, in accordance with paragraph 49 of the Framework, this renders policies relevant to the supply of housing as being out of date. Such policies include RUDP policies H2 and H9, which seek to preclude development, in principle, on unallocated greenfield sites such as the appeal site. In my judgment, given that these policies are regarded as being out-of-date, this necessarily reduces the weight to be attributed to the appeal proposal's conflict with them.
26. Paragraph 14 of the Framework applies, which requires granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. In order to achieve sustainable development, the Framework identifies that economic, social and environmental gains must be sought jointly and simultaneously.
27. In social terms, the erection of a single dwelling would contribute to housing land supply, albeit to a very modest degree and there is some local support for it. I also note reference by third parties to the appellant's personal circumstances. The proposed development would be located in an established residential area, which is well served by shops, schools and other amenities. There would also be access to public transport. I attach moderate weight to these benefits. The impact of the development in respect of highway safety and living conditions would be neutral.
28. In environmental terms, although the proposals are in outline, I also note that the development would aim to be carbon neutral which also weighs in favour of the proposed development. I accept that the wider area may be susceptible to flooding and I note that the site is not within an area of flood risk. However, there is no detailed evidence before me to support the appellant's claim that development opportunities in the area are limited. The weight I can attach to this is therefore restricted.

29. Turning to economic factors, the appellant suggests that the delivery of new housing is critical for continued local economic regeneration. There is not, however, any evidence before me to enable me to reach a firm view on the degree to which local economic regeneration is an issue of significance. Even if it were a major local priority, I am not persuaded that a single new dwelling would give rise to significant benefits in this regard. I afford this matter only minimal weight.
30. Weighed against these factors, however, I have found that there could be unacceptable risk in respect of land stability, as well as failure to comply with the development plan in this regard. There would also be harm to the character and appearance of the area through the loss of protected trees and site excavation. These are factors that attract very significant weight.
31. I therefore conclude that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the suggested benefits. Consequently, the proposals would not comply with RUDP Policy NE20. The proposals cannot, therefore, be considered to be the sustainable development for which the Framework presumes in favour.

Conclusion

32. For the reasons above, taking into account all other matters raised, I therefore dismiss the appeal.

C Searson
INSPECTOR