
Appeal Decision

Site visit made on 23 May 2017

by S Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 21st June 2017

Appeal Ref: APP/W4705/W/17/3170522

Land west of 3 Sowden Grange, Thornton, Bradford BD13 3TH

- 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 Denis Stott against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 16/09297/FUL, dated 8 December 2016, was refused by notice dated 17 February 2017.
 - The development proposed is new detached dwelling house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Supreme Court Judgment: Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council was published on 11 May 2017¹. The parties have been provided with the opportunity to comment on the judgement. I have taken into account comments received together with the judgement itself in coming to my decision.

Main Issue

3. The main issue for this appeal is the effect of the proposed development on the character and appearance of the street scene paying particular attention to the effect on trees.

Reasons

4. Planning applications and appeals should be determined in accordance with the development plan unless material considerations² indicate otherwise. The weight to be attached to policies in the development plan should be according to their degree of consistency with the National Planning Policy Framework (the Framework), which sets out the Government's planning policies and is a material consideration.
5. Paragraph 47 of the Framework seeks to boost significantly the supply of housing. The Council states that a five year deliverable supply of housing land cannot be demonstrated, and that the Strategic Housing Land Availability

¹ [2017] UKSC 37 on appeals from: [2016] EWCA Civ 168, [2015] EWHC 132 (Admin) and [2015] EWHC 410 (Admin)

² Section 38 of the Planning and Compulsory Purchase Act 2004

Assessment Update Report 2015 indicates a significant shortfall. Therefore in accordance with Paragraph 49 of the Framework relevant policies for the supply of housing should be considered as out of date and the presumption in favour of sustainable development at Paragraph 14 comes into play. This means granting planning permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole or specific policies in the Framework indicate development should be restricted.

6. The appeal site is a piece of land at the end of Sowden Grange, a short, unadopted access road serving six dwellings. The site is the subject of Tree Preservation Order No 78. Although the trees are mainly towards the boundaries the majority of the site lies beneath tree canopies except for a relatively small area towards the middle of the site.
7. An Arboricultural Report and Impact Assessment, carried out in November 2016, (the AIA) has been provided by the appellant. This describes a number of established trees within the site and others in close proximity. It concludes that some of the trees within the appeal site are in poor condition and should be removed. Five others, including T15, which is on adjacent land, would require up to 5m crown lift to facilitate the proposed development. Of these at least three have a life expectancy of more than 40 years.
8. The most prominent individual tree is an oak identified as Tree T16. This is in a broadly central position close to the boundary with the access road. The AIA identifies some deadwood/dieback and recommends crown reduction of up to 20% and re-shaping. I have no reason to doubt the conclusions of the AIA that the tree is in decline. However, I note that the AIA identifies it has a life expectancy of 10–20 years which is a substantial amount of time. I consider that it has significant amenity value due to its size and prominent position in the street scene.
9. Tree T16, together with the other trees within the appeal site, make a strong contribution to the green character of Sowden Grange particularly when the trees are in leaf. Substantial crown alterations would be required for some of the trees to enable the proposed development. The extent of the proposed reductions would adversely affect their overall amenity value.
10. Even with the crown reduction/reshaping of trees proposed by the AIA the remaining crowns of Trees T10-T13, as shown on plan Ref 10949/02, would touch or overlap the proposed dwelling. A substantial part of the front of the proposed house would be beneath the retained crown of Tree T16. The construction of the foundations of the proposed dwelling would encroach on the Root Protection Areas (the RPA) of these trees.
11. The AIA indicates it may be possible to employ special foundation design to avoid negative impacts within the RPAs. However, on the balance of probabilities, given the extent of the work required within the RPAs, it seems likely to me that the health of the trees would be adversely affected by the implementation of the proposed development. Moreover, due to the proximity of the proposed dwelling to the trees, particularly Tree T16, in the absence of an Arboricultural Method Statement detailing protective fencing specifications and construction methods, including the effect of trench(es) to bring services in to the dwelling, I cannot safely conclude that the trees could be satisfactorily protected during the construction period.

12. The proposed parking area would be close to the trunk of Tree T16. Subject to appropriate construction and porous surfacing, which could be secured by condition, the Council raises no objection to the location of the parking area. On the basis of the evidence before me I see no reason to disagree.
13. Some occupants may prefer shaded windows and gardens. However, due to the numbers and siting of the trees, even though the trees are deciduous, the garden and the rooms are likely to be heavily shaded. The trees are likely to shed a large amount of leaves and litter. Both of these could increase pressure to further alter or remove the trees. It might be difficult for the Council to resist such pressure which would be likely to be to the further detriment of the visual amenity of the street scene. Moreover, although the appellant suggests the development would provide an opportunity to undertake new tree planting, it is not clear where this could occur without further impinging on the living conditions of future occupants of the proposed dwelling. It would also take some time to mature. Accordingly this attracts little weight in my assessment.
14. I acknowledge that the current proposals differ from those dismissed at appeal in 2009³ in that Tree T16 would not be removed. Nor do I have any doubt that the design and materials of the house would be appropriate to the local area. However, for the reasons set out above, on balance I conclude that the proposed development would have an unacceptable impact upon the character and appearance of the area due to the adverse impact upon the health of trees arising from the extent of crown reduction/re-shaping that would be necessary, the probable impact on the root protection areas and future pressure for alteration or removal.
15. For the above reasons I conclude the proposed development would be contrary to Policies UR3, NE4, NE5 and NE6 of the Replacement Unitary Development Plan for the Bradford District 2005 (UDP). These, in summary, require the retention of trees which are healthy or those which have a significant public amenity benefit, presuming against development which would result in the loss of trees which contribute to the character and amenity of an area. It would also be contrary to those principles of the Framework which seek to conserve and enhance the natural environment and establish a strong sense of place.

Other Matters

16. Third parties have raised concern about the parking along the access road and visibility at the junction with James Street. However, on the basis of the evidence before me I conclude that the increased use of the access road arising from addition of one dwelling would not have a material impact on highway or pedestrian safety. In these matters I concur with the Inspector's conclusions in respect of the previous appeal on the site.
17. The appellant says that neighbours on Sowden Grange support the proposal. Whilst this might be the case others have formally objected through the planning application process. In either event I have reached my conclusion based solely on the planning merits of the case.

Planning Balance

18. Planning policies can pull in different directions. The Framework identifies environmental social and economic benefits to sustainable development.

³ Ref APP/W4705/A/09/2102623

19. The site is within a residential area with reasonable access to services, facilities and public transport. The appellant says that the land is currently used for storage of builders' materials whilst the Council describes it as undeveloped green field land.
20. At the time of my site visit there was a storage container towards the rear of the site and a pile of stones on the boundary, which may be the collapsed remains of part of the boundary wall. Otherwise the land was overgrown with nettles, grass etc and showed little sign of being in active use. Although the planning history is unclear in respect to lawful use the proposal would make efficient use of an underused piece of land in an accessible location. I have found that the proposed development would conflict with the development plan and those principles of the Framework that to retain protected trees which contribute to the character and amenity of the area. On balance I conclude that overall the harm identified would outweigh the benefits in respect of the environmental dimension.
21. There would be a small but positive contribution to help expand the local housing stock which carries significant weight in the context of the shortfall in local housing land supply. There would be a small economic benefit arising from employment during construction and future occupants could make a small contribution to the local economy. Due to their scale such matters carry limited weight in favour of the proposal.
22. Weighing all the above matters on balance I conclude that overall the proposal would not amount to sustainable development.

Conclusion

23. On balance, taking all the above matters into account, I conclude that the adverse effects on the character and appearance of the area, by way of impact on protected trees, significantly and demonstrably outweighs the benefits when assessed against the policies in the Framework taken as a whole. In failing to comply with Policies UR3, NE4, NE5 and NE6 of the UDP the proposal would also not accord with the development plan taken as a whole.
24. For the reasons set out above, and taking into account all other relevant matters raised, I conclude the appeal should not succeed.

SDHarley

INSPECTOR