
Appeal Decision

Site visit made on 2 October 2017

by Alexander Walker MPlan MRTPI

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

Decision date: 25th October 2017

Appeal Ref: APP/M2372/W/17/3179112

Land adjoining Moorthorpe Cottage, Chestnut Grove, Darwen BB3 2LQ

- 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 and Mrs I and K McInery against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/16/1349, dated 9 December 2016, was refused by notice dated 2 February 2017.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at Land adjoining Moorthorpe Cottage, Chestnut Grove, Darwen BB3 2LQ in accordance with the terms of the application, Ref 10/16/1349, dated 9 December 2016, subject to the conditions contained within the attached Schedule.

Application for costs

2. An application for costs was made by Mr and Mrs I and K McInery against Blackburn with Darwen Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area, including its effect on protected trees.

Reasons

4. The appeal site is located within woodland that is the subject of a Tree Preservation Order (TPO). Access is via a tree lined private road that serves four existing properties. These properties sit in generous plots surrounded by mature tree planting, creating a pleasant sylvan setting.
5. The protected woodland within which the site is located makes an important contribution to the sylvan quality of the surrounding setting. The site comprises a number of trees and a hedgerow that are protected by the TPO which are proposed to be removed. These trees are located adjacent to the private road. Behind these trees is a large clearing which is currently overgrown with the remainder of the woodland being to the north, west and east.

6. The private road has no public access over it and there are no public footpaths with proximity of the site. As a result, public views of the site and the trees within it are limited to neighbouring residents on the road and long distance views.
7. The Arboricultural Impact Assessment (AIA), dated December 2016, undertaken by Bowland Tree Consultancy Ltd identifies that the trees that would be removed includes one Category B tree, a Sycamore with an estimated remaining contribution of 20+ years. Whilst this tree makes a positive contribution to the area, there is an absence of substantive evidence to prove that it has an especially important effect on local character. The tree is most apparent from the private road immediately in front of the appeal site; from other angles it is either obscured by neighbouring trees, or blends into the wooded surroundings. Similarly, the three Category C trees, one tree group and one hedgerow that are proposed to be removed are unremarkable specimens and do not contribute significantly to the landscape value of the area.
8. Furthermore, by reason of the large clearing, these trees and hedgerow are viewed as detached from the remainder of the protected woodland, which is over a higher quality in terms of visual amenity. Their loss would not diminish the significant contribution the overall woodland has to the character and appearance of the area.
9. I note the Council's suggestion that the lack of growth over the last 14 years in the clearing area may be as a result of 'proactive hindrance of regeneration'. However, there is no material evidence before me to substantiate this claim and therefore I have afforded it no weight in my determination of the appeal.
10. The proposed mitigation for the loss of the trees includes silvicultural management of the existing tree stock, new tree planting and management of the highly invasive Himalayan Balsam which is widespread throughout the site. I am satisfied that such a management scheme could be secured via an adequately worded condition and would likely improve the long-term sustainability of the woodland and improve wildlife habitats. Consequently, I find that the benefits of it would satisfactorily mitigate against the proposed loss of trees.
11. In addition to the immediate loss of trees, the Council also raise concern regarding the longer-term pressure from future occupants of the dwelling for trees to be pruned or felled. No particular trees or grouping have been identified as being at specific risk. From the evidence before me and the observations I made on site, none of the trees would be especially close to the dwelling thereby reducing the likelihood of damage or nuisance. Those at the rear of the site are in a northerly direction where the effect of overshadowing would be minimal. There would be overshadowing from the trees to the east and the west, but they would also provide privacy to the benefit of occupiers who may be just as likely to see these and other trees as contributing to a very pleasant and verdant environment. Moreover, other parts of the garden would still receive sunlight, including possible sitting out areas. In any event, any works to protected trees would be under the Council's control including the regularity and extent of routine maintenance. There is no substantive evidence before me that any present moss, mould or honeydew would significantly harm the living conditions of any future occupants.

12. Whilst there would be a loss of trees, which would have limited harm, this would be outweighed by the benefits of a woodland management scheme that would improve the visual amenity of the area and wildlife habitats. Furthermore, the provision of additional housing also weighs in favour of the proposal, albeit with only limited weight. Consequently, I conclude that the proposed development would have no significantly adverse effect on the character and appearance of the surrounding area. Nor would it be likely to have a long-term effect on protected trees on the site. As such, it would comply with Policy 9 of the Blackburn with Darwen Borough Council Local Plan Part 2: Site Allocations and Development Management Policies (LP2) 2015, which, amongst other matters, seeks to protect trees.
13. There would be some moderate conflict with Policy 28 of the LP2, which identifies 'Long Clough' as an area for very small scale residential development, providing there is no loss of trees or woodland. However, given the very limited amenity value of the trees to be removed and that a woodland management scheme would be implemented to improve the overall woodland, I find that it would accord with the LP2 as a whole.

Other Matters

14. There is much dispute between the parties regarding the making of the TPO and the procedure for doing so. However, it is not for me under a s78 appeal to assess whether or not the correct procedure was followed and has had no bearing on my consideration of the planning merits of the appeal proposal.

Conditions

15. I have had regard to the various conditions that have been suggested by the Council. For the avoidance of doubt it is appropriate that there is a condition requiring that the development is carried out in accordance with the approved plans. In the interests of the character and appearance of the area conditions regarding materials, landscaping, tree protection, a woodland management plan and the removal of permitted development rights are necessary.
16. In the interests of public health and flooding, a condition is necessary regarding drainage.
17. In the interests of safeguarding protected species, a condition is necessary regarding the implementation of the recommendations set out in the Ecological Appraisal report.
18. In the interests of protecting the living conditions of the occupants of neighbouring properties, a condition is necessary restricting the hours of site operations.
19. Furthermore, in the interests of public health, a condition is necessary regarding contamination.
20. It is essential that the requirements of conditions 3, 4, 7, 8, 9 and 10 are agreed prior to the development commencing to ensure an acceptable form of development in respect of preserving the character and appearance of the area, safeguarding protected trees, flood prevention and protecting public health.

Conclusion

21. For the reasons given above, having regard to all matters raised, the appeal is allowed.

Alexander Walker

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: Location Map, PHD/CG/300, PHD/CG/200 (1:500 at A4), PHD/CG/200 (1:100 at A1) and PHD/CG/100.
- 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until a landscape scheme has been submitted to and approved in writing by the local planning authority. This scheme shall indicate full details of the treatment proposed for all hard and soft ground surfaces and boundaries together with the species and materials proposed and their disposition.
- 5) The approved landscape scheme (both hard and soft) shall be carried out before the occupation of the buildings or the completion of the development, whichever is the sooner; unless otherwise agreed in writing by the local planning authority. Any 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 consent to any variation.
- 6) All trees and hedges, including their roots, shown on the landscaping plan as "to be retained" and/or any trees whose canopies overhang the site shall be protected by fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto 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 within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 7) No development shall take place, including any works of demolition, until an Arboricultural Method Statement, drafted in accordance with the recommendations of BS5837: 2012 Trees in Relation to Design, Demolition and Construction (or an equivalent British Standard if

- replaced), has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) No development shall take place, including any works of demolition, until a long-term Woodland Management Plan has been submitted to and approved in writing by the local planning authority. The approved Plan shall be adhered to throughout the lifetime of the development.
 - 9) No development shall commence until a drainage scheme has been submitted to and approved in writing by the local planning authority. The approved scheme shall be completed prior to the first occupation of the approved dwelling.
 - 10) No development shall commence until a Method Statement has been submitted to and approved in writing by the local planning authority detailing appropriate treatment or removal methods of invasive species, in accordance with current best practice guidelines and legislation. The development shall be carried out in accordance with the approved details.
 - 11) The hereby approved development shall be carried out in accordance with the recommendations set out in Sections 5.9-5.11 (inclusive), 5.12, 5.14, 5.15 and 5.21 of the Ecological Appraisal report produced by Bowland Ecology, dated November 2016.
 - 12) There shall be no site operations on any Sunday or Bank Holiday nor on any other day except between the following times:
Monday to Friday 08:00 - 18:00 hours
Saturday 09:00 - 13:00 hours
 - 13) Should contamination be encountered unexpectedly during the development, all works should cease, and the local planning authority should be immediately informed in writing. If unacceptable risks are identified, a remedial options appraisal and detailed remediation scheme should be submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 14) Notwithstanding the provisions of Article 3 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the type specified in Classes A, B, C, D, E, F of Part 1 of that Schedule and Class A of Part 2 of that Schedule shall be carried out unless planning permission has been granted first.