



Appeal Decision

Site visit made on 5 June 2019

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/Z4718/W/19/3225265

203 Raikes Lane, Birstall, Batley WF17 9QF

- 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 D Moyser against the decision of the Kirklees Council.
 - The application 2018/62/90886/E dated 13 March 2018, was refused by notice dated 30 January 2019.
 - The development proposed is described as 2 No. detached house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the submission of the appeal the Council have adopted the Kirklees Local Plan (2019) (the Local Plan), which replaces the Kirklees Unitary Development Plan (1999 as revised 2007). Both parties were given the opportunity to provide additional comments, therefore no party has been prejudiced or caused any injustice by me proceeding with the appeal in light of the changes in policy.
3. An amended plan was considered by the Council with details of off street parking provision. I have therefore considered this appeal on the basis of the plans submitted including the amended plan Drawing No. 18/25/2 Rev A as this is what the Council based its assessment on.

Main Issues

The main issues in this appeal are the effect of the development on (i) highway safety; and (ii) the protected trees on the site.

Reasons

Highway Safety

4. The site is part of a rear/side garden of 203 Raikes Lane, the host property, which is within a predominantly residential area. The site slopes from Raikes Lane down towards the rear of the garden. The proposed development includes the improvement of a vehicular access from Raikes Lane to serve the host property and 2 detached dwellings.
5. Raikes Lane is a narrow road with usable footpath along one side. The road is blocked at one end which ensures that it is not used as a through road and whilst off-street parking in the form of driveways is a prevalent feature for

properties on-street car parking does occur. I noted that 2 cars used the road during my site visit, and both appeared to be moving at a lower speed than the 30mph speed limit.

6. The proposed development includes visibility splays which are below the standard required by the Council for the speed of the road. The Council has acknowledged that there may be opportunity to decrease the visibility splays however this would be predicated on the submission of evidence to support the reduction. The appellant has not provided substantive evidence.
7. The appellant contends that the site has been used to store various forms of plant, materials and equipment associated with a construction business ran from the host property. The existing use is described in Section 14 of the Planning Application form by the appellant as a garden. Whilst I noted some building rubble onsite during my site visit, there is no indication as to the levels of activity associated with the use of the site over and above that of a domestic use.
8. Policy LP21 requires proposals to demonstrate that they can be accessed effectively and safely by all users. Whilst the features of the road reduce the likelihood of rapid vehicle movements, I have no substantive evidence before me to confirm the reduced visibility splay would be appropriate for the existing conditions of the road. I therefore conclude that the effect of the proposed development would harm highway safety.
9. There is conflict with Policy LP21 of the Local Plan, which amongst other things seeks to ensure safe and efficient access and free flow of traffic within a development and on the surrounding highway network.

Protected Trees

10. The site contains 4 mature trees (2 x Horse Chestnut and 2 x Sycamore) protected by a Tree Preservation Order (TPO).
11. The proposed development would not require the removal of the protected trees, although development would occur within the Root Protection Area (RPA) as defined in the Arboricultural Report which accompanies the proposal. Advice contained in BS 5837:2012 Trees in relation to design, demolition and construction – Recommendations advocates that structures should be located outside of RPAs, however technical solutions may be available which would prevent damage to the trees.
12. The Arboricultural Report recommends that the next stage for the proposed development would be the preparation of an Arboricultural Impact Assessment (AIA) which would illustrate and discuss the impact of the proposal on the trees and vice versa to help inform good design. The proposed development is a detailed planning application with a defined layout and design. I cannot be certain that there are technical solutions such as the proposed specialist pile and ground beam foundations which would not harm the protected trees.
13. The protected tree canopies would cover the majority of the rear garden space for each of the proposed dwellings. The design and layout of the proposed development would have main living areas on the ground and first floor facing out onto the rear gardens. Due to the close proximity of the proposed development to the trees I am not persuaded that there would not be pressure

to prune or fell the trees in the future due to unduly gloomy rooms and gardens which would be heavily shaded.

14. I conclude that the proposed development would threaten the protected trees on the site. There is conflict with Policies LP24 and LP33 of the Local Plan, which amongst other things seek to protect valuable or important trees.

Other Matters

15. The appellant has drawn my attention to the previous approval of a planning application at the site; however, no substantive details have been provided to demonstrate that the approved scheme was directly comparable. Notwithstanding this the planning policies for the area have now changed and in any event each development needs to be considered on its individual merits and circumstances against the relevant policies and taking account of other material considerations. I have reached my conclusion based on the individual merits of the appeal proposal.

Conclusion

16. The proposed development would be a modest addition to the local housing supply within an accessible location. The proposed development would also benefit the area by removing an overgrown and unkempt site, however this does not outweigh the harm I have identified in relation to effect on highway safety and protected trees.
17. For the above reasons I conclude that this appeal should be dismissed.

C Pipe

INSPECTOR