



Appeal Decision

Site visit made on 25 June 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 17 September 2019

Appeal Ref: APP/B2355/W/19/3221752

Land on the corner of Pendle Avenue and Coniston Way, Bacup OL13 9DP

- 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 A Uddin against the decision of Rossendale Borough Council.
 - The application Ref 2018/0404, dated 11 July 2018, was refused by notice dated 8 November 2018.
 - The development proposed is the erection of 4 No 2-bedroomed semi-detached houses and removal of existing trees on site.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The proposal seeks outline planning permission, and the application form indicated that the appearance of the proposed development was for consideration at this stage. Consideration of access, landscaping, layout and scale were indicated to be reserved. The Council's determination of the application however reverses this, and states that the proposal includes all matters except for the reserved matter of appearance. The appellant's appeal statement states that appearance is a reserved matter, but that scale is not. I have therefore dealt with the appeal on the same basis as the Council; that is, to consider access, landscaping, layout and scale but not the reserved matter of appearance.
3. The Council's 5th reason for refusing planning permission related to highway safety, relying on the advice of the Local Highway Authority ('LHA'). Since then, the appellant has provided an amended site plan of the proposed development that has overcome the concerns of the LHA. The changes are to allocate all the parking to face Pendle Avenue, rather than some facing Coniston Way, as previously; to move the parking areas away from the highway and the site boundary; and to extend the footpath across the perimeter of the appeal site.
4. The particular parking configuration of the development attracted no public comments in this respect, and interested parties have been consulted again during the course of the appeal. In these circumstances I am content that the amended site plan can be considered without prejudicing the interests of any parties, and accordingly I accept it for consideration. Highway safety concerns are therefore no longer an issue in the appeal, the Council having confirmed in their appeal statement that they would not wish to argue that the resulting development would be unsafe or the access unsatisfactory.

Background and Main Issues

5. Although the proposed development as described in the application form includes the removal of existing trees on the site, this is not in itself 'development' requiring planning permission, and so the proposed development for consideration is the erection of 4 semi-detached houses, with their appearance as a reserved matter but all other aspects falling for consideration. The trees on the appeal site are however protected under a 'Group' Tree Preservation Order dating from 1952, and the impact of their proposed loss in order to facilitate the development is a main issue in the appeal. The Council's concern relates to the role of the trees in the street scene. Additionally, although the appearance of the proposed dwellings is a matter for later consideration, the Council considers that their scale would be harmful to the character and appearance of the area. Therefore, taking these matters together, the effect of the proposed development, including the loss of the existing trees, on the character and appearance of the area is the first main issue in the appeal.
6. The appeal site formed part of an earlier application site under which permission was granted in 2001 for the construction of 52 houses on land at Windermere Road and Pendle Avenue. The appeal site was shown as 'public open space' on those plans and the Council's case is that it has been so used ever since, although the appellant disputes this. The existence and/or proposed loss of this facility, and the appellant's submitted planning obligation proposing a commitment to alternative provision, is another main issue in the appeal.
7. Finally, the Council confirms that it has a shortage of land available for housing development in its area, and considers that the development plan policies that are most important for determining the appeal are therefore out of date. Another main issue is therefore whether this is so and, if it is, and the development is found to be contrary to those policies, whether any adverse impacts of granting permission would nevertheless significantly and demonstrably outweigh the benefits of the proposed development, having regard to the National Planning Policy Framework ('the Framework') particularly by reference to paragraph 11.

Reasons

Protected Trees and the character and appearance of the area

8. The appeal site presently consists of rather overgrown grassland beneath extensive tree cover, with the tree canopy around 15m high. Ten mature trees stand in the site, all of which would be felled to facilitate the development and replaced around the site boundary with trees of a more domestic scale. The existing trees are mostly sycamores with one beech specimen. The appellant's Tree Report refers to the BS 5837 categorisation chart and identifies five category 'B' trees and five category 'C', with one removal (of T22) advised on safety grounds. The BS 5837 chart is not reproduced, but the Tree Report advises that a category C tree would not normally be of sufficient quality to restrict a development. A supporting plan to the Tree Report identifies that category C trees have a remaining life expectancy of at least 10 years whereas a category B tree is one of moderate quality with an estimated remaining life expectancy of at least 20 years. On viewing, the trees on the site appeared to be largely in reasonable condition and the Tree Report does not advise

removing them (save for T22) for any reason except to facilitate the proposed development.

9. Policy 18 of the '*From East to West: Making Rossendale the Best*' Rossendale Core Strategy Development Plan Document '*The Way Forward 2011 – 2026*' adopted in November 2011 by the Borough Council ('the CS') expects development proposals to avoid any tree loss. The appellant contends that the trees would in any event soon be lost, but this is not supported by the Tree Report, although a lack of management and maintenance is said to present a risk to their future longevity. The Council presents no ecological objection to the loss of the trees, but although the appellants have identified the proposed 'more residential scaled planting' as an opportunity for biodiversity gain, this is not mentioned as an ecological site enhancement in their supporting Preliminary Ecological Appraisal.
10. Biodiversity is not the only possible aspect of the proposed tree loss, however, and the Council identifies this copse as making a positive contribution to local amenity, as a prominent and attractive feature in the street scene. The site lies close to the northern fringe of Bacup, and the trees make a significant contribution to the sylvan character of this transitional area, to which their loss would be detrimental.
11. In their place it is proposed to erect two buildings, each comprising a pair of semi-detached houses. Drawing Nos 17-23-20-001/P1 and 17-23-20-002/P1 identify these to be 2 storeys high, which would be commensurate with some of the houses nearby but not with those immediately to the sides or the rear, or the one facing on Pendle Avenue. However, considering the scale (but not the appearance) of the proposed development I consider that dwellings of this height could reasonably be accommodated without unacceptable additional detriment to the character of the area beyond the loss of the trees. The two buildings nearby immediately opposite Coniston Way are themselves 2 storeys high and such a development would not be unduly out of kilter with these or other surrounding properties.
12. On this issue therefore I conclude that although the scale of the proposed development on the site would not cause unacceptable additional detriment to the character of the area, the loss of the existing protected trees in order to accommodate it would be unduly harmful. This would be contrary to Policy 18, which expects development proposals to avoid tree loss, and would also be detrimental to local character, contrary to Policies 23 and 24 which seek high design standards that are responsive to such character, making a positive contribution to it and protecting local amenities.

Public Open Space

13. The site was identified as 'public open space' in the 2001 application drawings, and the parties dispute whether it has been so used ever since. The Council describes it as an important and valued community space for informal recreation and play, whereas the appellant contends that it has not been used for recreation of any kind for over 10 years and cannot be so used.
14. The site is presently capable of recreational uses. The appellant's Tree Report records that rope swings have been tied (presumably by children) to some of the trees. I saw a number of apparently well-trodden paths through the site, and the evidence of local residents is that it has been used recreationally,

including for children's play and dog walking. The site is open to the highway on two sides and access is not obstructed. It appears to be used as a local recreational space, and I do not accept the appellant's submission that such use has not taken place within the past decade.

15. The 2001 planning permission identifies the site as 'public open space' but no planning condition operates to secure public access to it, and I am not informed that any other mechanism exists that would do so. The appellant points out that title to the site has been transferred to private ownership without any obligation in this regard, and that in theory the site could be fenced off and access prevented. That may be so, but I give little weight to this theoretical prospect in the absence of any concrete proposals. CS policies 23 and 24 are supportive of developments that incorporate accessible public spaces, and the loss of public access to the appeal site would be a detrimental aspect of the development.
16. The appellant proposes to overcome this harm by the submission of a planning obligation that purports to transfer another nearby area of land ('Area B') to the Council, together with a contribution towards the provision by the Council of a children's play area on that land.
17. The planning obligation is deficient in a number of respects. Principally, it does not identify "the Land" which is to be bound by the obligation, so failing to satisfy the statutory formalities of section 106(9) of the 1990 Act. The obligations are generally contingent on the 'Commencement' or 'Occupation' of the 'Development'. However, the 'Development' (and its cross-reference to the 'Planning Application') fails to identify the particular planning permission to which the planning obligation is supposed to relate, meaning that the obligations would never actually arise. The 'Commencement' is also contingent on the start of 'Material Operations' which are themselves nowhere defined. The obligation appears to be unenforceable as a result of these defects.
18. The obligation is expressed unilaterally, and the Council cannot be bound by its terms, but there is no indication elsewhere of any commitment by the Council to accept the land transfer or to spend the contribution in the way proposed. Although not raised by the parties, Area B itself appears to be the subject of a 'Woodland' Tree Preservation Order and there is no assessment available of the likely impact of any play area development on the trees on that site. Area B is also identified as public open space in the 2001 permission, in the same way as the appeal site, and from my site observations was evidently also already used as such. Therefore the planning obligation does not appear designed to offer significant improvements to the existing position.
19. Consequently the planning obligation would not be effective or achieve what is intended, and therefore it carries no weight in my determination of the appeal. The proposal would result in the loss of an existing community facility without adequate mitigating or compensatory provision, contrary to policies 23 and 24 of the CS.

The presumption in favour of sustainable development

20. As adverted to above, the Council states that it has a shortage of housing land supply, and accordingly the provision of 4 houses, against the Government's policy objective of significantly boosting the supply of houses, carries substantial weight in favour of the appeal proposals. Neither party has however

chosen to provide details of the extent of any housing shortfall; the Council's position is simply that it has less than 5 years' supply. The published Housing Delivery Test 2018 measurement records the delivery of 466 homes over the previous 3 years against a requirement of 622, which suggests that the supply shortfall is quite acute. Nevertheless I consider, on the basis of the evidence available to me, that the benefits of the proposal, in the form of 4 additional houses and the concomitant contribution to the local economy that their construction and occupation would inevitably entail, would be significantly outweighed by the substantial harms that I have identified in the form of the loss to the area's character of the important trees and community recreational facility. The proposal attracts support from the policy objective expressed in the Framework to significantly boost the supply of homes. However it does not find support in the Framework's policies concerning making effective use of land, conserving the natural environment or promoting healthy communities.

Planning Balance and Conclusion

21. Section 38(6) of the 2004 Act requires that any determination to which it applies shall be in accordance with the development plan for the area, unless material considerations indicate otherwise. For the reasons I have identified above I consider there would be substantial policy objections to the proposed development. The 'tilted balance' of the Framework nevertheless applies, but having regard to the evidence before me I conclude that the benefits of the development are significantly outweighed by the harm it would cause to local interests of demonstrable public importance, supported by local planning policies. Accordingly, the provisions of the development plan prevail and the appeal is dismissed.

Laura Renaudon

INSPECTOR