



Appeal Decisions

Hearing Held on 3 December 2019

Site visit made on 3 December 2019

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13th December 2019

Appeal A - Appeal Ref: APP/TPO/E2734/7590

Birthwaite House, Birthwaite Lane, Ripley, Harrogate HG3 3JQ

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to trees protected by a Tree Preservation Order.
 - The appeal is made by Mr Mark Hilton against the decision of Harrogate Borough Council.
 - The application Ref: 19/02555/TPO, dated 7 June 2019, was refused by notice dated 5 August 2019.
 - The work proposed is: Various works to enable use of tennis court.
 - The relevant Tree Preservation Order (TPO) is Harrogate Borough Council TPO 78/2018 Birthwaite House, Birthwaite Lane, Ripley, Harrogate HG3 3JQ, which was confirmed on 1 March 2019.
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Appeal B - Appeal Ref: APP/E2734/W/19/3230255

Birthwaite House, Birthwaite Lane, Ripley, Harrogate HG3 3JQ

- 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 M Hilton against the decision of Harrogate Borough Council.
 - The application Ref 18/04134/FUL, dated 5 October 2018, was refused by notice dated 19 December 2018.
 - The development proposed is new four bedroomed detached house.
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Appeal C - Appeal Ref: APP/E2734/W/19/3239059

Birthwaite House, Birthwaite Lane, Ripley Harrogate HG3 3JQ

- 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 M Hilton against the decision of Harrogate Borough Council.
 - The application Ref 19/00613/FUL, dated 10 February 2019, was refused by notice dated 29 April 2019.
 - The development proposed is new four bedroomed detached house.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

Procedural Matters

4. Although the Council's refusal for Appeal B refers to Saved Policy C1, the evidence before me indicates that both parties are agreed that this should be Saved Policy C2.

Main Issues

Appeal A

5. The main issues are the effect of the proposed works on the character and appearance of the area, and whether sufficient justification has been given for those works.

Appeals B and C

6. The main issues are:
 - Whether the development would accord with local policies and national guidance with regard to location;
 - The effect of the development on the character and appearance of the area, including protected trees; and,
 - The living conditions of future and existing occupiers with regard to noise and disturbance (Appeal A only) and the living conditions of existing occupiers with particular regard to overlooking (Appeal B only).

Reasons

Appeal A

7. The woodland TPO comprises mixed shelter belt planting around three sides of a tennis court. The trees are of similar age and have not been thinned out since planting. Consequently, although they vary in height between 12 – 15 metres, some have a narrow and etiolated form. The ground cover appears to comprise nettle and bramble interspersed with limited areas of grass.
8. Although the southern section of the woodland (Area G2)¹ consists of two lines of planting, from the nearby public footpath and the A61 the woodland in total is seen as a fairly large block in an elevated position on rising ground. It contributes to an overall impression of a broadly rolling landscape with long views, punctuated with woodlands of irregular size and composition. My observations in this regard are reinforced by the key characteristics set out in the Landscape Character Assessment (LCA) for the Brearton and Nidd Arable Farmland. This highlights that woodlands across a moderately scaled and undulating landscape are characteristic features in this area. The LCA guidelines state that woodland management should be encouraged to improve biodiversity and woodland structure.
9. From Birthwaite Lane (the lane) and the footpath the woodland makes a significant contribution to the character and appearance of the area. From more distant views on the A61, despite being less immediately visible due to the rolling topography and intervening vegetation, the woodland makes a moderate contribution to the underlying pattern of irregular tree cover. The

¹ Iain Tavendale Tree Survey 1 February 2019

trees are relatively young and at least some of the species have the potential to become significant trees, given appropriate conditions. My observations in this regard are reinforced by the categorisation of the woodland as 'B2' in the tree survey which recognises the collective and landscape qualities of the woodland.

10. The appellant wishes to carry out crown lifting works to a height of 2.5 metres across a 10 metre wide strip around three sides of the tennis court. Branches overhanging the court would be removed to a height of 4.5 metres. This is to facilitate use of the tennis court and allow easier access into the undergrowth to collect balls.
11. The TPO is a woodland order. Planning Practice Guidance (PPG) sets out that the purpose of this category is to safeguard the woodland as a whole. Whilst some trees may lack individual merit, all the trees within the woodland are protected.
12. PPG states that an authority dealing with an application relating to woodland must grant consent in accordance with good forestry practice unless it is satisfied that the consent would fail to secure the maintenance of the special character of the woodland or woodland character of the area².
13. Although the tree survey appears to have been provided to support the applications for Appeals B and C, it contains a useful description and management recommendations for each of the three identified areas.
14. For Area G2 the tree survey notes that there is mutual suppression and tight spacings. Many of the trees are clothed to ground or near ground level and whilst I appreciate that some of the lower growth may be dead, this is not the case for all the trees.
15. Crown lifting to 4.5 metres above the playing area could remove a significant proportion of live growth on one side of some of these specimens. Such works would also leave the canopies unbalanced. Whilst this may not be noticed from all public vantage points, it could be detrimental to the future health and longevity of the trees as a consequence of pathogen entry through wounds. Moreover, the works could alter wind loading and the microclimate, with potential and consequent effects on future stability.
16. Additional crown lifting to 2.5 metres across what would be the entire width of Area G2 would remove a further proportion of live growth for trees with already limited canopies. This, in combination with the siding up of trees lining the court, would increase visual permeability through this area of the woodland when viewed from the lane and the footpath. The works would have a minor adverse effect on the visual impact of the woodland in the immediate locality, particularly if there were unforeseen consequences in respect of stability.
17. I do not disagree that the trees on this southern section need management. Given the limited space available to the pines in particular, I am unclear how they could all be retained in the long term. Consequently, I agree with the recommendations set out in the tree survey for area G2 which suggests the removal of weaker specimens, coppicing and formative pruning. However, this is not what is proposed under this application.

² Paragraph 092 Ref ID: 36-092-20140306

18. Area G1 contains ash and oak. The survey notes that the ash trees are dominating the slower growing oaks and that there is mutual suppression. Area G4 contains ash of poor quality, with likely failure points and evidence of suppressed growth. Although the management recommendations for these two areas presuppose tree removal to facilitate development, which would not be the case for this appeal, I do not disagree with the overall thrust of the recommendations insofar as they are concerned with selective thinning. Nor do I have particular concerns, in principle, to crown-lifting to 2 metres³ where appropriate, as there would be a lesser impact on visual permeability from the south in these areas. I conclude that works comprising selective felling/thinning and formative pruning would be appropriate, and could secure the long-term future of this woodland.
19. However, what is proposed under this application is not, in my view, a woodland management plan. It is a generalised and blanket approach to pruning which is tailored to and predicated upon the future use of the tennis court. It would not, as far as I can see, take account of an individual specimen's species, condition or future health and longevity, or contribute to the retention of this landscape feature.
20. Consequently, whilst I appreciate that the works before me would make use of the tennis court easier, it does not amount to arboricultural justification for the works. In any case, the Council has given consent for minor works to allow netting to be erected.
21. As I outlined before the hearing, the merits of the woodland TPO are not before me. In any case, whilst PPG states that it is unlikely that woodland TPOs would be made in garden areas, it is not prohibited. I can also understand the Council's sensitivity concerning this woodland given that what is shown on the plans for Appeals B and C as a significant area of unprotected trees on the northern side of the tennis court, has been felled. This has left Area G2 in particular, more important as a landscape feature in both near and distant views.
22. I appreciate that pruning is often required to contain trees in particular settings. However, where such trees are protected, applications would require consent and those decisions would be subject to the same parameters as this.
23. I disagree with the argument that the tennis court cannot be readily seen from the public domain as it was highly visible at various points from the lane. Crown raising would make it more visible.
24. Whilst I acknowledge the appellant's arguments regarding access into the woodland, a wish to use the tennis court does not amount to justification for the works. In any case, as I have alluded to above, I do not disagree that the management aims set out in the evidence would be beneficial. However, I am not satisfied that what is proposed is good forestry practice and it would also fail to secure the maintenance of the special character of the woodland or woodland character of the area as required by PPG.
25. In the light of the above, I conclude that the proposed works would compromise the future health and longevity of trees which could be retained for the long term, and have an adverse effect on the character and appearance

³ Suggested at the site visit.

of the area. Sufficient justification has not been given. The works would be contrary to Policy EQ2 of the Core Strategy (CS)⁴ which requires the landscape character of the district to be protected and enhanced where appropriate, as well as the provisions of Paragraph 170 of the National Planning Policy Framework (the Framework) which requires planning decisions to contribute to and enhance the natural and local environment.

Appeals B and C

Location – Appeals B and C

26. The Council's emerging Local Plan was examined in January 2019 and the Council anticipated that it would be adopted at the end of this year. However, its adoption has been delayed by the pre-election purdah. Whilst policies within this plan cannot be given full weight, there is nothing before me to indicate that the examining Inspector requires further amendments. As such, I give relevant policies in the emerging Local Plan substantial weight in line with Paragraph 48 of the Framework which states that the more advanced the preparation of the emerging plan, the greater weight may be given to its policies.
27. The Council does not dispute that at the time the applications for Appeals B and C were submitted, the principle of development on the appeal site was acceptable as the Council did not have sufficient housing land supply (HLS). However, that situation has changed with the examination of the emerging Local Plan.
28. Under emerging Policy GS3, development in the wider countryside is only appropriate if permitted by other policies of the emerging plan, a neighbourhood plan or national policy. It also sets out that new housing development outside settlement limits would be considered only in the absence of 5 year HLS.
29. The evidence before me indicates that the site falls outside settlement boundaries and is not an allocated housing site. Consequently, the development would not accord with the emerging Local Plan in respect of location and I give the conflict with this policy substantial weight. This is covered further in the planning balance towards the end of this decision.

Character and appearance – Appeal B

30. The appeal site is part of Birthwaite House's garden. This is a domestic period dwelling built in a vernacular style, using traditional materials. It is sited on the edge of a loosely scattered cluster of dwellings and farm buildings, in open countryside and towards the top of a ridge. Its overall style and appearance is similar to and typical of many other dwellings and rural buildings I noticed in this predominantly rural and spacious landscape.
31. I have outlined above my impressions of the local landscape and the key landscape characteristics set out in the LCA. The LCA guidelines also describe the settlement pattern as scattered and small scale. I saw nothing to lead me to disagree with this description. As part of the Council's reasons for refusal concerned the impact of the development on the underlying landscape, those observations are of relevance here.

⁴ Core Strategy February 2009

32. The development would comprise a large linear split-level dwelling built in an uncompromisingly contemporary style, located on but extending significantly beyond, the tennis court. The dwelling and associated terrace would extend to within a few metres of the western and southern site boundaries, and to within 1 metre of the eastern boundary. On the northern side there would be gap of some 6 metres between the dwelling and the site boundary, but this would be largely taken up with the vehicular access to the garage.
33. Although the underlying ground levels fall away to the south-east, the dwelling is orientated parallel to the site's northern and southern boundaries. The excavations necessary to accommodate the development at the western end, together with the spread of the development across the site and its contours, has resulted in a dwelling that would appear to dominate the available space. Whilst the spread of development would not necessarily be out of place in a denser building pattern, in this rural and spacious context it appears rather cramped and something that is imposed upon, rather than responsive to, its setting. The extent of development also reduces opportunities for providing a setting, or appropriate screening, within this highly visible site.
34. I appreciate that the western end of the dwelling would be lower than ambient ground levels which would reduce its visibility but at the eastern end, the floor levels would be up to 1.5 metres above existing levels. The proposed contour plan also indicates that the ground would be built up beneath and beyond the dwelling on the eastern side.
35. The development would also require the removal of a significant number of young trees within the woodland TPO, both to accommodate its footprint and associated earthworks, and to enable solar harvesting through the glazed southern elevation. In principle, I do not necessarily find harm in the loss of some trees and the woodland's long-term retention would be best served by the implementation of a management plan. However, the extent of the development would significantly reduce the area of woodland even if there was no management. This in itself would have an adverse effect on the underlying landscape character of the area.
36. Moreover, although the existing woodland blends into the overall landscape when seen from the A61 and the footpath, much of what is seen as the woodland's southern boundary would be replaced by a starkly contemporary dwelling whose scale and extent would appear intrusive and discordant in those views. Moreover, the intrusiveness of the development would be far more apparent from the lane, which is part of the Nidderdale Way.
37. In addition, the styling, height and mass of the development's boxy form would appear bulky and functional in the context of the more traditional Birthwaite House, and the scatter of traditional buildings in the locality. I have particular concerns in relation to the entrance tower, which, at over 6 metres high would be highly visible from the lane.
38. I give limited weight to the argument that the development would be a grand country house in a large garden with an abundance of trees and parkland. The only way that it could be considered to be in a larger setting is to borrow that setting from nearby fields. Even if I accept that woodland planting could be established to the south and east and secured for the lifetime of the dwelling, this does not alter my reasoning that the dwelling's proximity to the other two site boundaries, particularly in relation to the lane, remains suggestive of a

dwelling rather too large for its context. In any case, whilst I can see benefits to local landscape character arising from the proposed planting, for one dwelling to require such extensive mitigation beyond its actual site boundaries does suggest that the development is unsuitable. I appreciate that there are large scale estates in the wider area but even with additional planting on adjoining land I am not persuaded that this development's setting is in any way comparable to that of historic country house estates.

39. Moreover, unless the screening was wholly evergreen, and clothed to ground level, it would be unlikely to provide adequate screening from the A61 and footpath throughout the year. As the immediate area is characterised by mixed planting, blocks of evergreen planting would not be appropriate.
40. In addition, given the proximity of the dwelling to the lane it is difficult to see how views into the site from the Nidderdale Way could be screened. In any case, whether seen by people using the footpaths or nearby roads or not, the development would be out of keeping with the underlying landscape character. In my experience, best practice advises that an assessment of a development's overall impact should consider the two strands of effects on visual amenity and landscape features in tandem.
41. The appellants have provided visualisations of the development from various viewpoints. However, the visual and landscape effects of the development have not been subjected to any landscape and visual impact appraisal using recognised methodology, and I have based my reasoning on my own observations of the site from various viewpoints.
42. There is limited evidence before me to suggest that the Council does not appreciate the contemporary design. The officer's report refers only to the building being uncharacteristic and having a large amount of glazing. There is nothing in the report that suggests any prejudice against the dwelling's actual design, only that it represents overdevelopment. The parish council also notes that the *overall size of the development would be overbearing in its historic rural setting with its very modern design*.
43. Moreover, the Council confirmed at the hearing that their concern is related to the amount of development proposed, as well as the dwelling's appearance in this context. Whilst the term overdevelopment is ill-defined in planning terms, the planning portal describes it as *an amount of development that is excessive in terms of its impact on local amenity and character*. In its appeal statement the Council states that the dwelling *would not complement the surrounding built form ... to the detriment of the appearance of the immediate area*.
44. Irrespective of the use of some traditional materials, it remains that this would be a large contemporary dwelling on an elevated and visible site, and in an expansive rural landscape. The appellants may disagree with the Council but that does not mean that the Council is not qualified or entitled to make that judgment. Moreover, it is standard procedure for officers to assess all aspects of applications. I see no reason why the planning officer should require advice from a conservation officer when the site is neither a designated nor non-designated heritage asset as far as I am aware.
45. With regard to the turbines, having viewed the site from a number of viewpoints I am satisfied that the turbines would only be particularly apparent from the lane. There would be some adverse impact on the character and

- appearance of the area, but the effect would be localised. Moreover, I noticed other turbines in the wider area and some were visible at a distance.
46. However, the evidence before me suggests that a section of the Nidderdale Way could be subjected to noise levels well in excess of that considered acceptable under current guidance. This is discussed in more detail below.
47. Consequently, although the presence of turbines would not necessarily be detrimental to the character and appearance of the area, the noise emissions could detract significantly from the prevailing peaceful and rural character of the area.
48. I appreciate that conservation does not equal preservation but this does not alter my reasoning with regard to the scale, extent and visibility of the development and its impact on the landscape. I also acknowledge the development's design merits and energy saving credentials. However, those issues are not determinative in my assessment of the development's impact on the character and appearance of the area.
49. In the light of the above, I see no reason to disagree with the Council's conclusion regarding overdevelopment for the reasons outlined above. The development would fail to relate to or reflect its context, and would appear incongruous in this setting.
50. Accordingly, the development would have an adverse effect on the character and appearance of the area. It would be contrary to Saved Policy HD20 which requires development to respect the character of its surroundings and make a strong contribution to the visual quality of the area, amongst other considerations. It would also be contrary to Saved Policy R11 which is concerned with the character and amenity of rights of way, and Saved Policy C2 which is concerned with the protection of landscape character. It would also fail to accord with the LCA guidance which states that development which does not take account of the underlying landscape character should be resisted.
51. The Council has also referred to Saved Policy HD13 in relation to the loss of woodland but this is concerned primarily with the urban and built environment and as such weighs neither for nor against the appeal.

Character and appearance – Appeal C

52. This dwelling is on one level and would have a shorter southern elevation compared to Appeal B. It would be set back from the southern boundary by about 9 metres and some of the existing trees between the dwelling and the boundary would be retained. These, it is argued would provide a partial screen from viewpoints to the south of the site, particularly in combination with the proposed tree planting on the fields to the south of the site.
53. However, although this development's footprint is smaller than that of Appeal B, the earthworks required to its west would also require removal of a significant proportion of trees within the protected woodland. Some trees to the south of the dwelling, in Area G2, would also be removed but it is proposed that some would be retained to provide screening.
54. Nonetheless, in the light of the comments made above in relation to Appeal A, I have reservations that some of the trees in Area G2 could be retained as

- proposed. These trees have grown in the context of close companion trees. On what appears to be a fairly exposed site it seems highly likely that the proposed felling of a good proportion of these trees could be detrimental to the long-term stability of those retained, as wind loading patterns would alter.
55. I appreciate that if the appeal was allowed additional trees could be planted between the dwelling and the boundary. However, in my experience occupiers are not particularly tolerant of trees in proximity to dwellings, particularly where there is a reliance on solar panels or passive solar gain through windows. It may be that these are not concerns of the appellants but any permission would run with the land. It cannot be presumed that occupancy will not change at some point in the future.
56. Moreover, the shade patterns submitted were based on trees of a lesser height than noted in the tree survey and on their current narrow girth. Trees retained or newly planted in the vicinity of the dwelling to provide screening would be unlikely to have these shade patterns when mature. Moreover, the shade patterns images are limited to midday at the summer and winter solstices. There are no images before me to indicate shade patterns for the range of solar altitude and azimuth angles likely to be experienced throughout the year. Given there would be trees retained to the east and west of the dwelling, and morning and evening shade would be cast from a lower angle, I conclude that the shade patterns are not necessarily representative of the likely situation. As such, I give limited weight to the argument that trees around the dwelling and within the TPO would not at some stage come under pressure for removal. Although this dwelling would be far less visible in distance views than that of Appeal B, it would remain prominent when viewed from the Nidderdale Way.
57. My reasoning in respect of the screening afforded by planting outwith the site is similar to that outlined above. Furthermore, although overall less bulky than Appeal B, the dwelling's northern flank wall and entrance tower in particular would also be likely to be visible and obtrusive when viewed from the Nidderdale Way. Even with the use of local stone as a facing material, the scale of the taller elements, combined with their lack of articulation, would be disproportionately large and intrusive in this context. Furthermore, the extent of excavations required to provide appropriate pedestrian and vehicular access also suggests that the dwelling would sit awkwardly within the site and reinforces my reasoning in respect of overdevelopment.
58. Accordingly, I conclude that the development would have an adverse effect on the character and appearance of the area. It would be contrary to Saved Policy HD20 which requires development to respect the character of its surroundings and make a strong contribution to the visual quality of the area, amongst other considerations. It would also be contrary to Saved Policy R11 which is concerned with the character and amenity of rights of way, and Saved Policy C2 which is concerned with the protection of landscape character. The development would also fail to adhere to the LCA guidelines. My comments above in relation to Saved Policy HD13 also apply here.

Living conditions - Appeal B

59. The Council confirmed at the hearing that its reference to residential amenities, as referred to in the decision for Appeal B, related to concerns for future occupiers of the proposed dwelling as well as existing occupiers of Birthwaite House. Although the future occupiers would be the beneficiaries of the two

- wind turbines, this does not lessen the weight to be given to issues of noise and disturbance.
60. The appellant has provided a noise contour plan showing the 45 dB and 40 dB contours. These are concentric circles and I conclude that they are theoretical contours based on the likely pressure generated by the turbines in a free medium. They do not, as far as I am aware, take site-specific circumstances of topography, structures or vegetation into account.
61. The contours are based on the specification and test results for a wind turbine on another site. The tested turbine would be larger than those proposed here. Nonetheless, this is the only evidence provided. Those tests recorded levels of above 80 dB at the test microphone⁵, which was located some 11.75 metres from the mast. Both turbines would be about 10 metres from the dwelling. Using the noise contours provided by the appellant and the specification test result I conclude that a large part of the area directly around the dwelling could be exposed to noise levels significantly in excess of 45 dB. Even in a free medium, the pressure gradient would increase towards the noise source.
62. BS 8233⁶ sets out recommendations for internal noise levels. These set out thresholds ranging from 30 dB L_{Aeq} to 40 dB L_{Aeq} for internal rooms, depending on the room and time of day or night. BS 8233 also states that external amenity areas should not experience external noise of above 50 dB L_{Aeq}, with an upper guideline of 55 dB L_{Aeq} in noisier environments. These thresholds are the level above which it is likely that critical health effects and disturbance could arise for receptors⁷, as set out in the WHO guidelines. This level translates to the Significant Observer Adverse Effect Level set out in the government guidance⁸.
63. The noise contour plan provided also only takes one turbine into account. The decibel levels close to the dwelling are likely to be greater as the second turbine is sited within the 45 dB contour of the first turbine.
64. The appellant argues that the emitted tone would be zero. However, the tone component is used to adjust the overall decibel level when assessing likely noise, as some tones cause more disturbance than others. A zero tone means that no adjustment to the overall decibel level is needed.
65. The Council generally requires a buffer of 200 metres between a turbine and dwellings. Birthwaite House would be within that buffer and on the basis of the evidence before me I am unable to conclude that those occupiers would not be adversely affected. There may be turbines close to dwellings in the area, but I do not have the details of those specific instances before me to see if they are directly comparable. In any case, the Council noted that noise issues are now arising in some instances where turbines are causing a nuisance.
66. The appellants argued that the noise emanating from the turbines would be masked by the wind. However, in the absence of any background surveys or other supporting evidence I conclude that this statement is unsubstantiated and I give it little weight.

⁵ At wind speeds of 8 m/s

⁶ Guidance for sound insulation and noise reduction for buildings

⁷ Guidelines for Community Noise, World Health Organisation

⁸ Noise Policy Statement for England, Defra, March 2010

67. I appreciate that comprehensive noise surveys can be expensive but the basic test data submitted suggests that the proposals could have an adverse effect on living conditions. The turbines could be smaller, but the appeal has to be determined on the basis of the evidence before me. There was some discussion regarding conditions and whether one could be imposed to limit noise levels. However, even taking such a condition into account, in the absence of more detailed and accurate noise data I am unable to discount the possibility of harm arising from noise and disturbance, and compliance with any condition could affect other elements of the proposals.
68. I conclude therefore that the development would have an adverse effect on the living conditions of future and existing occupiers, with regard to noise and disturbance. It would be contrary to Saved Policy HD20 insofar as this requires development to respect the amenities of nearby residents, and Paragraph 127 of the Framework which requires development to provide a high standard of amenity for existing and future users.

Living conditions - Appeal C

69. The northern elevation and vehicular access for this development would be a few metres from the garden boundary of Birthwaite House. Although the trees along this boundary have been removed, there would be distance of some 80 metres between the boundary and Birthwaite House's front elevation which is considerably more than is generally required to avoid a loss of privacy. Birthwaite House appears to have other amenity areas and the front garden has scattered trees and shrubs which screen views from the south to some extent. In any case, the relative levels of the development's roof terrace and Birthwaite House's garden suggest that there would be a very limited height advantage for future occupiers of the development. Furthermore, although there is limited space, additional trees or hedging could be provided as mitigation.
70. The development would not therefore have an adverse effect on the living conditions of occupiers of Birthwaite House in respect of overlooking. It would not be contrary to Saved Policy HD20, which is concerned with the amenity of occupiers of adjacent buildings. The Council has also cited the Framework but has not referred to a specific paragraph. There is nothing before me to suggest that the development would fail to accord with the provisions of the Framework in this regard.

Planning balance – Appeals B and C

71. The appellant argued that limited weight should be given to emerging Policy GS3 as the Council is overly reliant on windfall sites in its calculation of housing land supply (HLS). However, even if I accept that a figure of 14 – 15 per cent windfall sites is overly optimistic, a reduction in the projected windfall sites would be unlikely to reduce the current figure of nearly 7 years HLS to below 5 years HLS. Moreover, the emerging plan has been found to be sound by the examining Inspector.
72. As the appellant does not dispute the application of the cited Saved Policies or those in the Core Strategy, I conclude that the policies relevant to the determination of this appeal are neither absent nor out of date. As such footnote 11d of the Framework does not apply.

73. I have considered whether I should give weight to the provisions of the Framework in respect of rural housing. However, the very recent examination of the emerging Local Plan and accompanying Housing Needs Survey suggests that rural housing needs have been taken into account in that plan.
74. The appellant also argued that the location would be sustainable and that there are regular bus services along the Pateley Bridge road. Whilst this may be the case, there are no footways on the narrow and unlit Birthwaite Lane and on one side only of the road to Pateley Bridge. Moreover, although there was fairly regular traffic along Birthwaite Lane at my morning visit, there were no pedestrians. I recognise that this is a snapshot in time but it reinforces my impression that an additional dwelling would generate primarily vehicular journeys.
75. It is argued that both developments would significantly exceed the current requirements for new dwellings in respect of energy use and I do not doubt that this is the case. However, there is nothing before me to indicate that such credentials warrant an exception under the relevant local policies or the Framework. Even if I gave this weight, there would be significant conflict with emerging Policy GS3 in respect of location for both Appeal B and C.

Other matters - Appeals B and C

76. The lack of objections to these developments is not indicative of a lack of harm. There may be many reasons why people do not object to a proposal. Nor is the fact that other local policies may be supportive of the developments add weight to the arguments advanced by the appellants. My reasoning is based on those policies most relevant to the determination of the appeal.
77. Both parties raised other issues but these were minor matters that did not add weight to the arguments advanced on either side or indicate that the appeals should be allowed.

Conclusions

Appeal A

78. For the reasons outlined above, the appeal should be dismissed.

Appeal B

79. Appeal B would be contrary to emerging Policy GS3 in relation to location. Although I have not given this policy full weight, I have also found harm in relation to the character and appearance of the area, and living conditions for future and existing occupiers. As such the development would be contrary to relevant local policies and national guidance, and consequently the appeal should be dismissed.

Appeal C

80. Appeal C would also be contrary to emerging Policy GS3 in respect of location. Although I have concluded that there would be a lesser quantum of harm in relation to character and appearance compared to Appeal B, it remains that there would be significant conflict with emerging Policy GS3. Even if I found no harm in relation to character and appearance, the proposals would remain at odds with the Council's emerging spatial strategy and I see no reason not to give that anything but substantial weight. Consequently, the development

would be contrary to relevant local policies and national guidance, and should be dismissed.

A Blicq

INSPECTOR

APPEARANCES

APPELLANT

Mark Hilton

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COUNCIL

Alan Gilleard

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ADDITIONAL EVIDENCE

1. Layouts with contours, Appeals B and C – viewed at hearing and sent by email.
2. Suggested condition noise emissions – read out by Council at hearing, sent by email.
3. Photographs of woodland taken by Council – Appeal A