
Appeal Decision

Hearing Held on 8 January 2020

Site visit made on 8 January 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/Z4718/W/19/3220024

Land adjacent to 6 Dean Fold, Highburton, Huddersfield HD8 0QD

- 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 Matthew Quarmby against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/60/92169/E, dated 4 July 2018, was refused by notice dated 6 November 2018.
 - The development proposed is: Erection of one additional dwelling on disused railway line.
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Decision

1. The appeal is dismissed

Procedural Matters

2. The application was for outline permission with all matters reserved except access. During the appeal the appellant submitted a revised arboricultural assessment¹ which showed the footprint of a notional house and which also suggested that fewer trees would be affected than originally thought. As this is an outline application I accepted the appellant's argument that the revision provided additional information and I have used the revised plan as the basis for my reasoning. I am satisfied that this approach would not prejudice the interests of any other parties.
3. There is a discrepancy between the extent of the Woodland Tree Preservation Order (TPO) shown on the arboricultural assessments and that provided by the Council at the hearing². Having compared the two with the original TPO plan I am satisfied that the Council's plan is correct, and I have based my reasoning on this document.
4. At the hearing it was noted that policies from the Kirklees Unitary Development Plan (KUDP), cited on the decision and referred to by both parties in appeal statements, have been superseded. As such, KUDP Policy NE9 and other KUDP policies weigh neither for nor against the appeal.
5. I have used the site address on the decision notice in the heading above as this seems to more accurately reflect the appeal site.

¹ JCA Arboricultural Impact Assessment October 2019

² Additional evidence

Main Issues

6. The main issues are:

- Whether the development would preserve or enhance the character or appearance of the Highburton Conservation Area (HCA), with particular regard to trees and the protected woodland;
- The effects of the development on the living conditions of future occupiers, with particular regard to light; and,
- The effects of the development on biodiversity.

Reasons

Character and appearance

7. The appeal site is part of a former railway line cut into the hillside to the south of Highburton. Dean Fold is a short ribbon development on the former line to the north of the site. The proposed dwelling would be accessed from the service road for Dean Fold.
8. There is a woodland Tree Protection Order (TPO)³ which covers part of the clearing where the dwelling would be located, as well as much of the access road. This TPO also takes in some of the eastern and western embankments. The entire site is within the HCA.
9. I have not been supplied with a conservation area appraisal. However, at the hearing the Council stated that the woodland associated with the railway line and its embankments provides a linear green buffer between Penistone Road with its sporadic ribbon development, and the settlement of Highburton which is on significantly higher ground. This linear buffer contains three separate woodland TPOs and a protected group. I see no reason to disagree with the Council in this regard.
10. I observed that the separation provided by this woodland in the building pattern is not particularly apparent from Penistone Road, immediately below the woodland, but it is apparent from Woodsome Lees Road and Storthes Hall Road. Viewpoints on these roads afford glimpsed views of the wider landscape from elevated positions on the other side of the valley.
11. Accordingly, the woodland associated with the former track and its embankments is a strong feature in the wider landscape and contributes to the separation of the elevated Highburton from the valley floor. The woodland appears to be largely unmanaged and the juxtaposition of natural woodland and the small-scale residential building pattern gives the locality a distinctive semi-rural character. I conclude that the woodland is a predominant feature within the HCA and its significance is derived from its association with the area's industrial and social history, as well as preventing coalescence between discrete development patterns.
12. The appeal site separates Dean Fold from another ribbon development to the immediate south. It also forms a significant portion of the woodland feature as seen from further afield. I conclude that the appeal site makes a positive and important contribution to the character and appearance of the HCA.

³ TPO No 3 1995

13. The Council was unable to clarify the reasoning behind the making of the TPO, and the appellant argued that when the HCA was designated the woodland TPO was not in place. Whilst I appreciate that this could indicate that the woodland was not seen as an integral part of the HCA at its designation, there was clearly some woodland in 1994 - 1995 otherwise the TPO could not have been made. In any case, the merits of the TPO are not before me as I have to proceed on the basis of the current situation.
14. It was argued by the appellant that it was always the intention to build on the appeal site. This may be the case but in the intervening years the planning context has changed. The site is not allocated as housing land under the recently adopted Local Plan even though the original application preceded that Plan's examination and adoption.
15. Although the two tree surveys are dated 2017 and October 2019 respectively, the survey information is identical. Sample measurements taken at the site visit for two trees on the edge of the clearing confirmed that the canopies of those trees are more extensive than shown on the survey plans. Consequently, although the appeal statement notes that the dwelling would be sited in the open space between the canopy spread, the open space available is less than that shown.
16. I also have concerns that even if I accept that the surveyed area is made up predominantly of young and early-mature pioneer species with a life expectancy of only 10 + or 20+ years, the assessment does not seem to have taken any account of the collective contribution the woodland⁴ makes within the wider landscape. This is of relevance given the site's location within the HCA and the guidance given in BS 5837:2012.
17. Furthermore, within the surveyed area I noticed two early mature oaks identified as sycamores, and what appeared to be a mature hawthorn also recorded as a sycamore. The ecology survey highlights the potential importance of the area for bat foraging and roosting. This is considered later in this decision.
18. As such, I conclude that the tree surveys understate species diversity as well as the woodland's conservation and landscape value. A further report was submitted⁵ but this is concerned with three groups of trees only and although it reiterates the conclusions of the JCA survey, it does not alter my reasoning.
19. The development would require the removal of two groups of early mature sycamores to accommodate a turning head, as well as pruning to trees enclosing the clearing where the dwelling would be sited. Pruning works would be required on two oaks and given that their canopies are some 3 metres above ground level, this would lead to the loss of a significant portion of their asymmetric canopies which lean towards the clearing. This could be detrimental to the trees' ability to recover from those pruning works. It also seems to me that pruning above and beyond that suggested would be needed to accommodate construction traffic and activities. Furthermore, excavation of the turning head into the very steep eastern embankment would result in the loss of some of the more mature trees within the TPO.

⁴ In this context I refer to the surveyed area rather than the TPO

⁵ Bagshaw Ecology June 2018

20. It is argued that pruning works or the loss of trees around the clearing would not have a noticeable effect on the wider appreciation of the woodland in the landscape. To some extent I agree that this could be the case if the works were limited to that indicated. However, I concur with the Council that the space available for the dwelling would be so limited that it is highly likely that applications would be made for further pruning works or tree removal either during the works or post-development. I conclude that it is likely that the identified and other works would result in a thinning out of the woodland and exposure of the remaining trees to wind loading and subsequent issues with stability. This would be detrimental to the future health and longevity of the woodland and would have an adverse effect on the character and appearance of the HCA.
21. Although the associated TPO application has been withdrawn, the appellant argues that the woodland requires management. However, to my mind woodland only requires management if it is to serve a particular purpose. Trees and woodland are able to develop into sustainable ecosystems without human interference.
22. It was argued that if left alone the woodland would develop into a dank and dark sycamore wood. However, I see no reason to dispute the Council's argument that sycamores are naturalised and may be useful as a replacement for local ash, which is now succumbing to ash die-back. Even if some of the existing trees fail, there are biodiversity benefits from decomposition. Moreover, I noticed a high percentage of oak saplings on slightly shallower slopes to the immediate south of Dean Fold, as well as within the survey area, which suggests that oak is colonising the embankments.
23. Furthermore, the woodland to the immediate east of the site has established on very steep slopes where safe access for management would be problematic. Even if the steeper sections of the embankment become wholly dominated by sycamores, it is unclear to me why this is considered inherently harmful to the HCA or to the ongoing health of the woodland. There is no regularised public access, and consequently I cannot see what purpose a formal management plan would serve. As such, I give limited weight to the benefits or practicalities of woodland management.
24. With regard to the access road and turning head, it seems to me that no-dig operations could limit root damage to established trees but pruning would be required either in the short or longer term to allow vehicles to pass. Given that most of the trees lining the access route and on the embankment have asymmetric canopies this would have a disproportionate effect on their ability to recover. As noted above, this could open up nearby trees to additional wind loading.
25. The appellant argues that a dwelling in this situation would be continuation of the existing building pattern. I appreciate that there are dwellings to the immediate south of the site, as well as those on Dean Fold but this in itself does not justify further development.
26. In the light of the above I disagree that the development would avoid any impact on the surrounding trees and find that it would neither preserve nor enhance the character or appearance of the HCA, with particular regard to trees and the protected woodland. This would be contrary to Policy LP33 which states that the Council will not grant planning permission for developments

which directly or indirectly threaten trees or woodlands of significant amenity. It would also be contrary to the provisions of the Act⁶ which require me to pay special attention to the desirability of preserving or enhancing the character or appearance of the HCA.

Living conditions

27. The clearing proposed as the site of the dwelling is less than 15 metres wide and has steep embankments on both sides. Trees located at the edge of the clearing oversail the clearing and it is also the Council's intention to locate a cycleway through the flat area of the site. This intention was not disputed by the appellant. Even without the proposed cycleway this is a very modest site and consequently options for locating a dwelling within the space are extremely limited.
28. The eastern embankment is of some considerable height and it would overshadow the site until mid-morning, whatever the time of year, as well as affecting light entry into the dwelling. For the rest of the day the dwelling would be in the shade path of trees to the immediate south and west. There are also mature trees to the south and west outside the appeal site which would cast shade across the likely location of the dwelling and associated amenity areas.
29. The appellant had prepared a shade path drawing but this was for one tree only. Occupiers of an adjacent dwelling to the immediate south noted that in the summer the site is wholly shaded. This reinforces my conclusions reached from an assessment of the site, topography and tree distribution. During the winter months the effects of tree shading will be lessened due to the lack of leaves but the angle of the sun will be lower and likely to meet other obstructions to the south, including nearby dwellings, in particular. The significant shade cast by the embankment would remain unchanged throughout the year.
30. I appreciate that there may be potential occupiers who wish to live in such shady conditions and my experience of people who are intolerant of the proximity of trees or shade may be unrepresentative. However, it remains that many people occupy dwellings in proximity to protected trees without being fully aware of the implications. The additional maintenance associated with leaf litter and debris and having inadequate light in the dwelling or amenity areas is not always welcomed or accepted, and those concerns can over time outweigh the perceived advantages. Moreover, family circumstances and the requirements of the dwelling may change. In this case, not only would the dwelling and its external areas be heavily shaded at times by nearby trees, but shading and light loss would be exacerbated by the eastern embankment.
31. As such, I conclude that there is no certainty that the Council would not come under pressure to allow works to nearby trees. In fact I consider that this outcome would be highly likely, especially as the trees grow or become unstable or fail, as the appellant argues. It is not necessarily the case that the Council would have ultimate control over any works as a refusal could lead to an appeal. In any case, given that the Council has expressed concern at this early stage, it seems likely that arguments advanced that the dwelling was in excessive shade could have a sympathetic hearing. Any pruning or removals to

⁶ Planning (Listed Buildings and Conservation Areas) Act 1990

nearby trees would increase visibility into the site from a distance and the screening effects of the tree cover would diminish. This reinforces my concerns in relation to the impact of the development on the character and appearance of the area.

32. I conclude therefore that the development would have an adverse effect on living conditions for future occupiers with particular regard to light. It would be likely to lead to the removal or pruning of trees in the vicinity, contrary to Policy LP33 which states that the Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity. In this case, notwithstanding that the appellant argues that the trees have little value, it remains that they have the protection of the TPO and the HCA.
33. The development would also fail to comply with the provisions of Paragraph 127 of the National Planning Policy Framework (the Framework) which requires development to provide a high standard of amenity for future occupiers.

Biodiversity

34. A preliminary ecology survey concluded that there was moderate to high potential for both bat roosting, as well as foraging and commuting bats within the survey area. Of those trees with roosting potential, only G6 would be directly affected and this has low potential. However, there are groups of trees lining the access route which have moderate roosting potential. It is not disputed that the linear edge habitats provided by the trees growing alongside the former track are likely to provide a food source, should bats be present.
35. The survey recommended that further work be undertaken to confirm whether bats are present, and their levels and patterns of activity. This could be used to inform details of appropriate mitigation or compensation. However, no such additional survey work has been undertaken.
36. An aerial inspection was undertaken of one group of trees to identify bat roosts⁷. However, as this group would not be removed, this weighs neither for nor against the appeal. Nor does it show that other non-surveyed trees lack actual roosts.
37. I am unable to conclude that the development would not have an adverse impact on a protected species. Circular 06/2005⁸ states that it is essential to establish the extent to which protected species may be affected by a proposed development before planning permission is granted.
38. I also note that it was suggested that there are bird and mammal species associated with the site, including other protected species. The increased noise and disturbance of movement along the access road and associated with the dwelling would be likely to be detrimental to at least some of those species, whether protected or not. This would be detrimental to local biodiversity. On the basis of the evidence before me I am not satisfied that any modifications or imposition of conditions could prevent increased noise and disturbance, and the fragmentation of an unmanaged habitat.

⁷ Bagshaw Ecology 30 May 2018

⁸ Biodiversity and Geological Conservation, Statutory Obligations and their impact within the planning system

39. Accordingly, I conclude that the development would have an adverse effect on biodiversity. There is nothing before me to suggest that this is something that could reasonably be addressed by condition. This would therefore be contrary to Policy LP30 which is concerned with the safeguarding of biodiversity. This policy is reinforced by Paragraph 175 of the Framework which states that if significant harm to biodiversity cannot be adequately mitigated or compensated for, permission should be refused. As noted above, it is unclear to me whether there would be harm and whether such harm would be significant, but as the decision maker I have to take a precautionary approach.

Other matters

40. The appeal statement highlights a lack of housing supply. However, the Local Plan was adopted in January 2019 and the Council stated that the current housing supply is currently just over 5 years. Although the appellant noted that the figure is close to the threshold and that not all the sites are deliverable, there was no evidence presented to identify the non-deliverable sites. As such, given that the plan was examined and found sound only a year ago I have concluded that the Council has sufficient housing supply and that the tilted balance set out in the Framework does not apply. In any case, even if the Council did not have sufficient housing supply land it remains that the development would fall within a woodland TPO and a conservation area. The limited benefits to local housing supply from one additional dwelling would be significantly and demonstrably outweighed by the adverse impacts outlined above, when assessed against the policies in the Framework taken as a whole.
41. The appellant argued that future occupiers could be required to undertake woodland management within the dwelling's curtilage and the landowner would be prepared to accept a Section 106 agreement to manage the remaining woodland within his ownership. Notwithstanding that this would place a rather onerous commitment on future occupiers, which could be time consuming for the Council to monitor and enforce, even a period of twenty years would fall short of the lifetime of the dwelling. In any case, it remains, particularly given the apparent oak colonisation, that I see no compelling reason for this woodland to be formally managed. Furthermore, I am not aware that there is or has been anything preventing the landowner from carrying out woodland management if indeed it is needed.
42. It also seems to me that if mitigation on such a scale is required to make one dwelling acceptable, it suggests that the development is in itself unacceptable.
43. The appellant argues that the dwelling would be innovative and that similar dwellings have been designed in similar situations. However, no examples were given. I appreciate that this is an outline application. Nonetheless, I have outlined above my concerns in relation to the size of the site and the immediate topography and vegetation. In these particular and highly constrained circumstances it seems to me that the Council is entitled to require reassurance that a successful dwelling could be built without affecting the surrounding protected woodland and other trees, or having an adverse effect on living conditions and biodiversity. It cannot be presumed that further consideration at reserved matters stage would be sufficient to address those issues.
44. With regard to Paragraph 131 of the Framework, great weight should be given to outstanding or innovative designs so long as they fit in with the overall form

and layout of their surroundings. Given the site constraints I am unclear how a dwelling would fit in with the underlying form and layout of the surroundings, particularly as the site provides separation between distinct areas of buildings. Moreover, whilst I do not disagree that the site is accessible and that small windfall sites can contribute to housing supply, the Framework also states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.

45. The fact that the woodland is not part of any established woodland is not determinative. An interested party noted that the railway ceased to be operational in 1965 and by 1994 there was sufficient woodland on and around the former railway line to warrant TPOs. The appeal statement notes that the site was acquired about by the appellant's father 20 years ago. Consequently, it is not the case that the existing trees are there by default and at the discretion of the appellant. They have benefited from the protection of the woodland TPO or the conservation area status since before its acquisition by the current owner.
46. The appeal statement also states that the trees could not be realistically retained for longer than ten years. However, this is taken from the description of category U trees from BS 5837:2012. There are no category U trees identified in the survey.
47. I appreciate that the track construction may not support long lived or sizeable trees but it is noticeable that the trees are aligned in largely linear groups. This suggests that the track sub-base is breaking down along the edges and some self-seeded trees are finding adequate substrate or are able to break it up. In any case, pioneer species such as these are adapted to harsh conditions and the pattern of colonisation I observed is not atypical of the long-term establishment of climax woodland on post-industrial sites.

Conclusion

48. In the light of the above I conclude that the development would be contrary to the relevant policies of the Local Plan as well as the provisions of the Framework and other government guidance. The appeal is dismissed.

A Blicq

INSPECTOR

APPEARANCES

APPELLANT

Mr Jonathan Cocking	JCA Ltd
Mr Adrian Rose	Rose Consulting
Ms Emily Wilde	JCA Ltd

COUNCIL

Ms Rebecca Drake	Kirklees Metropolitan Council
Mr Nick Goddard	Kirklees Metropolitan Council
Mr Tom Stephenson	Kirklees Metropolitan Council

INTERESTED PARTIES

Mr Oliver Sutcliffe

ADDITIONAL EVIDENCE

1. Drawing showing extent of Woodland TPO and Conservation Area (submitted by Council)
2. Plan showing shade patterns around proposed site (submitted by Council)