



Appeal Decision

Site visit made on 10 November 2020

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/W4515/W/20/3258394

1A Preston Wood, North Shields, Tyne and Wear NE30 3LT

- 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 & Mrs Sample against the decision of North Tyneside Council.
 - The application Ref 20/00241/FUL, dated 12 February 2020, was refused by notice dated 11 June 2020.
 - The development proposed was originally described as 'One and a half storey three bedroomed dwelling on land which is presently part of the applicant's garden. The existing plot is 2,800m², the proposed plot for the new dwelling being 360m². The site is central to a large residential neighbourhood on the edge of a more modern housing estate, which consists of one and a half storey detached properties.'
-

Decision

1. The appeal is allowed and planning permission is granted for a one and a half storey, three bedroomed dwelling on land which is presently part of the applicants garden at 1A Preston Wood, North Shields, NE30 3LT within the terms of the application, Ref 20/00241/FUL, dated 12 February 2020 subject to the conditions contained on the attached schedule.

Procedural and Preliminary Matters

2. The description of the proposal set out on the application form was shortened by the Council and described as 'One and a half storey, three bedroomed dwelling on land which is presently part of the applicants garden.' This description has been used within the submitted appeal form. I concur that it accurately describes the proposal before me and have used this description in my formal Decision above.
3. A signed Section 106 Agreement has been completed by the appellants and Council and submitted with the appeal to secure a financial contribution towards off-site coastal mitigation.

Main Issue

4. The main issue is the effect of a new dwelling on protected trees, with particular regard to the character and appearance of the area and biodiversity.

Reasons

5. The appeal dwelling would be located close to the front of the site where the existing vehicular access leads off Cambo Place. A new vehicular entrance to the original dwelling is proposed off the estate road of Preston Wood. A group

Tree Preservation Order (TPO) protects the four sycamore trees located along the southern boundary of the site.

6. The submitted Pre-development BS5837 Arboricultural Impact Assessment (AIA) identifies Trees T1-T4 within Category B trees of moderate quality and value, and of 'fair' condition. Nonetheless, the trees are significant in their visual contribution to the street scene and seen from a number of directions. They are furthermore located within the influence of the proposed development.
7. None of these trees are proposed to be removed. The submitted technical information within the AIA and Arboricultural Method Statement (AMS) supports the use of test holes to establish the location of any existing wall foundations, no-dig construction techniques and air spade practices to reduce the potential damage to tree roots within the defined root protection areas. The construction of foundations for new walls for the proposed dwelling have also been demonstrated within the technical reports to avoid tree root damage, together with non-compacting surface treatment. The proposed tree protection measures to enclose tree canopies has also been demonstrated on a submitted plan. Arboricultural supervision whilst on site is also referenced by the appellant within the technical reports.
8. Even if land levels around trees T1 and T2 were previously raised around the trees, there is no evidence before me to demonstrate it is impacting upon their condition. Some crown lifting of lower branches would be required to T1 and T2 trees to give clearance over the proposed dwelling. These works can be appropriately conditioned and would be minor works to the trees without significantly causing harm to the character and appearance of the area.
9. There is nothing before me to identify that the trees would result in the occupiers seeking to have branches removed or seek tree felling. Nor is there evidence that leaf drop would reasonably lead to 'problems' for occupiers. Overshadowing of the garden area is noted, however, as the trees are protected by TPO, any future proposals would be subject to a formal application to the Council and would be assessed at that time. The matter regarding any future liability of the Council is not within my remit to comment upon, or whether or not potential purchasers would be aware of the TPO status.
10. Therefore, based on the technical advice set out, to which I am aware the Council's Landscape Architect raises no objections, there is nothing before me to demonstrate that the trees on site would be adversely impacted upon by the construction of a new dwelling, or that the biodiversity of the area would be compromised as a consequence.
11. To conclude, I find the proposal would not result in harm arising to the protected trees or to the character and appearance of the area and biodiversity. It would therefore not be contrary to the North Tyneside Local Plan 2017 Policies DM5.5, DM5.7 and DM5.9 which seek to manage the effects of development on biodiversity and geodiversity and connectivity to wildlife corridors, and to protect and manage existing trees.

Other Matters

12. The appeal is within 6km of the coastal buffer zone of the Northumbria Coast Special Protection Area (SPA) and Northumbria Coast Ramsar Site. Within this

- zone, new residential development is likely to increase recreational disturbance or damage within coastal designated sites. In accordance with the Conservation of Habitats and Species Regulations 2017, (the Habitats Regulations) planning permission cannot be granted unless it has been concluded through an Appropriate Assessment that the proposal, in combination with other plans and projects, would not have an adverse impact on the integrity of European protected sites.
13. The SPA was designated because of its breeding population of specific birds including the international significance for wintering birds. An increase in walking and dog walking can result in disturbance to these wintering populations.
 14. In the appeal case, despite the addition of only one dwelling, due to its relationship with the coast, results in a reasonable likelihood that the protected coastal site would be accessed for recreational purposes by future occupiers of the development. Although this may appear to be minimal by itself, a significant effect on the integrity of the protected sites would occur, when considered in combination with other residential development in the surrounding area.
 15. The Habitats Regulations require that permission may only be granted after having ascertained that a development will not affect the integrity of the European Sites.
 16. North Tyneside Council has developed a strategic approach to mitigation in consultation with Natural England in the form of the Northumberland Coastal Mitigation Service. This is a developer funded scheme. The appellants have completed a legal agreement pursuant to section 106 of the Town and Country Planning Act 1990 to make an appropriate financial contribution to the scheme. to provide mitigation through this service. Therefore, as competent authority for the purposes of Regulation 61 of the Habitats Regulations, I am satisfied that the proposal would not have an adverse effect on the integrity of European protected sites.
 17. In other matters, trees identified to be removed as part of the original application are proposed to be compensated by the planting of replacement trees, and appropriately placed. This can be secured by way of condition.
 18. Matters pertaining to the outlook and loss of privacy of local residents is noted. However, the proposed dwelling would be located in a position where its effect on the living conditions of local residents would not give rise to harmful effects. Furthermore, private individuals do not have the right to a view.
 19. The proposed dwelling would be of similar design characteristics, size and scale to the original dwelling on site, and set within a residential context. Therefore, no harm would arise to the character and appearance of the area as a result of a dwelling in this location.
 20. Off-street parking is proposed as part of this scheme as well as retaining the garaging to support the original dwelling. There is no evidence presented to demonstrate that cars would overspill onto the estate road. Furthermore, there is no evidence before me to demonstrate that the proposed new access to Number 1A Preston Wood would lead to a highway safety concern. I also note

the absence of objections from the Council's highways department on the proposed scheme.

21. There may be a level of noise and disturbance and dust emitted as a consequence of the proposal, albeit it is a single dwelling proposed. However, a condition for a construction management plan could manage such effects.
22. Issues from an objector commenting on the Council's service should be directed to them in the first instance.

Conditions

23. I have considered the suggested conditions in light of the Planning Practice Guidance and Paragraph 55 of the National Planning Policy Framework. In addition to the standard time limit condition, a condition relating to the approved plans is necessary to provide certainty, and conditions in relation to materials, boundary enclosures and refuse provision are necessary in order to protect the character and appearance of the area. The vehicular accesses shall be completed prior to the occupation of the proposed new dwelling in the interest of highway safety. Cycle parking implementation and retention is required in the interests of sustainable transport.
24. Conditions 9-17 relate to tree protection measures and supervision on site, tree pruning and details of replacement trees. These are relevant to the proposal and required to ensure no harmful effect arises to the character and appearance of the area, and in the interest of biodiversity.
25. Land contamination conditions are imposed to reduce the risk of contamination to human health, land and water pollution, as well as to safeguard land stability due to the area's coal mining legacy. Hours of construction are also conditioned to protect the living conditions of local residents.

Conclusion

26. For the reasons given I conclude that the appeal should succeed.

Alison Scott

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan 01; East facing street scene; Proposed plans and elevations; Proposed site plan; Pre-development BS5387 Arboricultural Implications Assessment; Tree Protection Plan ACP.1APreston.No1; Pre-development BS5387 Arboricultural Method Statement Addendum 1. 1A Preston Wood.
- 3) No development shall commence above damp proof level until a schedule of the details, and samples of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and samples.
- 4) No development shall take place until details of all means of enclosure have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only be carried out in accordance with the approved details and the dwelling shall not be occupied until the details have been fully implemented.
- 5) No part of the development shall be occupied until the new means of vehicular access to support 1A Preston Wood has been fully completed in accordance with the approved plan.
- 6) The scheme for parking, garaging and manoeuvring indicated on the approved plans to support the new dwelling shall be completed prior to the occupation of the development and these areas shall not thereafter be used for any other purpose.
- 7) The development shall not be occupied until details of a scheme for the provision of secure and covered cycle storage has been submitted to and approved in writing by the LPA. The approved details shall be implemented prior to the occupation of the development and retained thereafter.
- 8) Prior to the erection of the dwelling above damp proof course level, details of facilities to be provided for the storage of refuse, recycling and garden waste at each residential dwelling shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided in accordance with the approved details prior to the occupation of the approved dwelling and thereafter permanently retained.
- 9) Prior to the commencement of development or any site clearance/preparation work, the retained trees within, adjacent to and overhanging the site shall be protected by fencing as detailed in the Pre-Development BS5837 Arboricultural Implications Assessment 16 January 2020 and as shown on the Tree Protection Plan ACP.1APreston. No operational work, site clearance works or the development itself shall commence until the fencing or ground protection has been installed. The protective fence and ground protection shall remain in place until the works are complete and its removal is approved in writing by the Local Planning Authority. The protective fence or any ground protection is not to be repositioned without the approval of the

- Local Authority. Appropriate signage shall be fixed to protective fencing and maintained in place for the duration of the works.
- 10) All works shall be carried out in accordance with the submitted Pre-Development Arboricultural Implications Assessment (review of landscaping comments April 2020), Pre-Development Arboricultural Method Statement (Addendum 1), Tree Protection Plan (ACP.1APreston.No1) email dated 5 May from ALCC Ltd. and the guidelines contained within BS5837:2012 and NJUG Volume 4. The following must be complied with: The removal of any existing surface material within the root protection areas must be carried out by hand; Pile foundations shall be installed using low height piling rigs to avoid damaging branches or a suitable alternative with a banksman; Foundations to the walls shall comprise shallow concrete ground beams, spanning over the root protection zone, and shallow concrete pads to support the brick pillars with steel or concrete lintels over tree roots.
 - 11) No development shall commence on site until trial holes have been dug to determine the presence of any existing wall foundations and the results submitted to and approved in writing by the Local Planning Authority. If foundations are not present or unsuitable for use, no development shall commence until an amended arboricultural method statement has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be complied with thereafter.
 - 12) No development shall commence on site until details of the construction of the car port base have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
 - 13) No development shall commence until a detailed plan showing services, drainage (on site and off site) and lighting that requires excavation has been submitted to and approved in writing by the Local Planning Authority. The plans shall provide for the long-term protection of the existing trees on and adjacent to the site and demonstrate that any trenches will not cause damage to the root systems of the trees. Thereafter the services and drainage layout shall be implemented in accordance with the approved details prior to the occupation of the development. Any excavations within the root protection area shall be first approved in writing by the Local Planning Authority and carried out in complete accordance with the approved plans prior to occupation of the development.
 - 14) Prior to the erection of the development to damp proof level, details of the 2no. replacement trees (girth minimum 12-14cm) shall be submitted to and approved in writing by the Local Planning Authority. The specification shall include the species and positions of the trees to be planted, how they will be planted and protected and the proposed time of planting and shall thereafter be carried out in accordance with the approved specification. If within a period of five years from the date of planting, the tree (or any other tree planted in replacement for it) is removed, uprooted or destroyed or dies, another tree of the same size and species shall be planted at the same place.
 - 15) No development shall commence until details of all proposed Access Facilitation Pruning (see BS5837:2012 for definition) to trees T1 and T2 has been submitted to and approved in writing by the LPA. The approved tree pruning works shall be carried out in accordance with BS3998:2010. The

development thereafter shall be implemented in accordance with the approved details.

- 16) No development shall commence on site until details of all tree protection, monitoring and site supervision by a suitably qualified arboricultural consultant have been submitted to and approved in writing by the Local Planning Authority. This shall include details of:
induction of staff in awareness of arboricultural matters;
identification of individuals and their responsibilities;
statement of delegated powers;
timing and methods of site visiting and record keeping, including updates;
procedures for dealing with variations and incidents.
The scheme of supervision shall be implemented as approved.
- 17) No vegetation removal shall take place during the bird nesting season (March-August inclusive) unless a survey by a suitably qualified ecologist has confirmed the absence of nesting birds immediately prior to works commencing.
- 18) No development shall be commenced on site until:
 - a) A detailed site investigation has been carried out to establish:
 - i) If the site is contaminated; ii) To assess the degree and nature of the contamination present, and whether significant risk is likely to arise to the residents and public use of land; iii) To determine the potential for the pollution of the water environment by contaminants and; iv) The implication for residential development of the site and the quality of the residential environment for future occupiers.Such detailed site investigation shall accord with a statement of method and extent which shall be first submitted to and approved in writing by the Local Planning Authority and;
 - b) The results and conclusions of the detailed site investigations referred to in (a) have been submitted to and the conclusions approved in writing by the Local Planning Authority. The Phase 2 Report shall be written using the current government guidelines.
 - c) If remediation is required following the assessment of the chemical results under current guidelines, then a method statement shall be submitted to the Local Planning Authority for approval. This shall provide details of exactly how the remediation works are to be carried out, detailed site location plan of where material is to be deposited and details including drawings of gas protection scheme shall be included.
 - d) If remediation is carried out on the site then a validation report shall be required. This report shall confirm exactly what remediation has been carried out and that the objectives of the remediation statement have been met. This report shall provide verification of the type, source, depth, location and suitability (to include any test certificates for material to be imported on site to ensure it is not contaminated) of the imported materials for their use on site. This shall include cross sectional diagrams for the site and detailed plans of the site. This report shall be submitted before the contaminated land condition can be removed from the planning application.
 - e) If any unexpected contamination or hotspots are encountered during the investigation and construction phases, the Local Planning Authority shall be

informed in writing and development ceased to carry out additional investigative works and subsequent remediation. If any unexpected contamination or underground storage tanks are discovered during the development, works shall cease until any risk is assessed through chemical testing and analysis of the affected soils or waters.

Thereafter the development shall not be implemented otherwise than in accordance with the scheme referred to in c) above.

- 19) The development hereby permitted shall not be constructed above damp proof course level until the details of a scheme of site investigation and assessment to test for the presence and likelihood of gas emissions from underground workings, historic landfill, unknown filled ground or made ground has been submitted to and approved in writing by the Local Planning Authority.

Upon approval of the method statement:

- a) A detailed site investigation shall be carried out to establish the degree and nature of the gas regime, and whether there is a risk likely to arise to the occupants of the development. The results and conclusions of the detailed site investigations shall be submitted to and the conclusions approved in writing by the Local Planning Authority. The Ground Gas Assessment Report shall be written using the current government guidelines.
- b) In the event that remediation is required following the assessment of the ground gas regime using current guidelines, then a method statement shall be submitted to and approved in writing by the Local Planning Authority.

The detailed design and construction of the development shall take account of the results of the site investigation and the assessment shall give regard to results showing depleted oxygen levels or flooded monitoring wells. The method of construction shall also incorporate all the measures shown in the approved assessment.

This shall provide details of exactly what remediation is required and how the remediation will be implemented on site; details including drawings of gas protection scheme shall be included.

- c) Where remediation is carried out on the site then a validation report shall be required. This report shall confirm exactly what remediation has been carried out and that the objectives of the remediation statement have been met.

The validation report shall include cross sectional diagrams of the foundations and how any gas protection measures proposed in the remediation method statement are incorporated. In the event that integrity testing of membranes is required then any test certificates produced shall also be included.

A verification report shall be submitted to and approved in writing by the Local Planning Authority prior to the development becoming occupied.

- d) In the event that there is a significant change to the ground conditions due to the development, for example grouting or significant areas of hard standing; then additional gas monitoring shall be carried out to assess whether the gas regime has been affected by the works carried out. In the event that the gas regime has been altered then a reassessment of remediation options shall be submitted to the Local Planning Authority to be approved in writing before the development is occupied.

- Thereafter the development shall not be implemented otherwise than in accordance with the scheme referred to in c) above.
- 20) No development shall commence until intrusive site investigations have been carried out on site to establish the exact situation in respect of coal mining legacy features. The findings of the intrusive site investigations shall be submitted to the Local Planning Authority for consideration and approval in writing. The intrusive site investigations shall be carried out in accordance with authoritative UK guidance.
- 21) Where the findings of the intrusive site investigations (required by condition 20 above) identify that coal mining legacy on the site poses a risk to surface stability, no development shall commence until a detailed remediation scheme to protect the development from the effects of such land instability has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the remedial works shall be implemented on site in complete accordance with the approved details.
- 22) The construction site subject of this approval shall not be operational and there shall be no construction, deliveries to, from or vehicle movements within the site outside the hours of 0800-1800 Monday - Friday and 0800-1400 Saturdays with no working on Sundays or Bank Holidays.

END OF SCHEDULE