



Appeal Decision

Site visit made on 8 March 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th June 2022

Appeal Ref: APP/N4720/W/21/3287449

Land at Spofforth Hill, Wetherby LS22 6SE

Easting(x): 439295, Northing(y): 448925

- 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 Harper and Hunter against the decision of Leeds City Council.
- The application Ref 21/00165/FU, dated 7 January 2021, was refused by notice dated 9 September 2021.
- The development proposed is construction of two dwellings and associated works.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on trees within the site, with particular regard to character and appearance and local ecology.

Reasons

3. The appeal site is described as being a former tennis court and wider site associated with the adjacent dwelling at 62 Spofforth Hill. Whilst the site's interior is largely open and free from vegetation as may be expected given its former use, its site frontage to Spofforth Hill is lined by a number of large and attractive trees. These trees are protected by virtue of a Tree Preservation Order¹.
4. The trees along the site's road frontage lie at the end of a broadly continuous line of similarly large trees to the west of the site on the northern side of Spofforth Hill. Although the width of the verge and depth and density of the trees varies along the westerly approach to the appeal site, the avenue of trees is largely unbroken along its length, punctuated on the northern side of the road only by the road entrance to the recently developed Ingbarrow Gate residential development. Together, they create a pleasant, informal avenue of trees on the northern side of Spofforth Hill with a high amenity value and are highly prominent within the streetscene. As such, they are significant and positive contributors to the pleasant character and appearance of this approach to Wetherby.
5. The eastern site boundary is marked by two sections of a pleasant hawthorn hedge, alongside which runs a public right of way linking Spofforth Hill with, and through, the Ingbarrow Gate development. The presence of the hedge, along with that on the other side of the right of way, contribute to a pleasing

¹ City of Leeds Tree Preservation Order (No 48) 1997: Spofforth Hill / Rail Balk Lane, Wetherby, Leeds LS22

- walking environment in an area increasingly surrounded by new development and provide a link to the verdant approach to Wetherby along Spofforth Hill.
6. The proposed dwellings would be positioned towards the rear of the site, behind the line of large trees, with an access driveway, to serve both dwellings, created from Spofforth Hill between trees T1-T3² and trees T4 & T5. Service infrastructure would be routed parallel to the site's eastern boundary and hedge H18, within the site.
 7. The Council take exception to the appellant's claim that no trees or hedges would be lost as a consequence of the development, noting that tree T10 is shown on multiple plans as being removed. However, the Council do accept the conclusions of the Arboricultural Impact Assessment³ (AIA), albeit querying the extent to which it poses an imminent risk, and given the location of T10 within the group it is perhaps a moot point as to whether its removal would be as a direct consequence of the development, or in the wider interest of good tree management given the AIA's conclusions.
 8. Nevertheless, the proposed drainage excavation routing would go through the root protection areas (RPA) of trees T11, T13, T14 and T17) and would, the Council maintain, result in the total loss of 'at least 2 trees' protected by the TPO, and 'possibly 3'. How the Council reach the conclusion that trees would be lost is reached, not least because none of the plans indicate the removal of trees in this location, is not clear.
 9. However, although the proposed site layout⁴ shows that the services would run within the site, parallel to the hedge, before exiting in the site's southeast corner, the appellant's Arboricultural Method Statement⁵ (AMS) indicates that they are proposed to be installed along the existing track to the east of the site. It would not, it goes on, be necessary to excavate within the RPA if routed along the grass verge, a point reiterated in the appellant's supplementary Planning Statement⁶.
 10. However, that is not what the submitted plans show. Nor, in the absence of detailed or site-specific sections and information regarding excavation depths, let alone the conflicting evidence regarding their proposed route, has it been adequately demonstrated that this element of the proposal would not cause harm to the root structures of these trees, and therefore the trees themselves. Even if it is the case that these trees would not be lost, I cannot conclude on the evidence before me that the proposal would not cause harm to trees protected by a TPO.
 11. The creation of the access into the site from Spofforth Hill would, in some respects, be akin to 'threading the needle' between protected trees along the site frontage. As with the effects of the excavations for drainage and services towards the east of the site, it is reasonable to concur with the appellant's statement that no trees would be lost in the creation of the access.
 12. Whilst that may be so, the driveway's alignment within the grass verge, between trees T1-T3 and trees T4 & T5, and within the site's interior would be

² Appendix 6: Tree Constraints Plan JCA Ref: 16497a-Rev3/EW

³ JCA Ref: 16497a-Rev3/EW

⁴ Application determined on basis of Revision M, Appeal submitted with Revision N

⁵ JCA Ref: 16497c-rev1/EW

⁶ JCA Ref: 16497e/JC dated November 19th 2021

such that the works to create it would be within the RPA for a considerable proportion of its length. I have noted the Council's concern that the latest revision to the proposed site layout (Rev N) shows the driveway to be permeable paving. However, I am satisfied that the AMS adequately explains that where permanent hard surfaces would be required, the above ground protection would be retained as the permanent base. I see no harm in this approach in principle.

13. However, the width of the proposed access has increased and its alignment revised compared with the previous version of the scheme considered by the Council at the application stage. The crossing from the carriageway, across the undulating verge and into the site, all within the collective root protection area of a number of trees, would have to cope with various changes in levels. Whilst the general principles of a no-dig and permeable surface approach have been set out they fall short of setting out a specific detailed approach to the appeal site access. The shortage of sufficiently detailed, site specific detail, justification and methodology for the works proposed to construct the access from Spofforth Hill to demonstrate that harm would be minimised in this sensitive location compounds the similar concerns regarding the excavation towards the eastern side of the site.
14. Other than the removal of tree T10, itself located within towards the rear of the group and relatively close to two flanking trees, I am satisfied that the proposed development would not require the removal of any trees. However, there are elements of the proposal that would be close to the trees and within their root protection areas. Whilst these works would not directly entail the removal of the trees in question, it has not been adequately or robustly demonstrated that these works would not cause harm to the trees.
15. Thus, I am not persuaded that the excavation for drainage and services through the RPAs of trees T11, T13, T14 and T17 and, to a lesser degree, the creation of the site access from Spofforth Hill, would not cause harm to the health and integrity of these protected trees. The trees have a high amenity value, are visually significant and contributed positively to the verdant, sylvan approach to Wetherby along Spofforth Hill. The implications of allowing the appeal scheme in these circumstances may not be immediately felt, but longer-term harm to the trees would be to the detriment of the character and appearance of the surrounding area and would compromise their ability to provide visual, social, ecological and biodiversity benefits that their retention without would harm allow.
16. As such, I conclude that the proposed would be in conflict with the collective aims and provisions of Core Strategy policies H1, H2, G1, G2, G9, P10 and P12. Together, these policies seek to secure high quality development that, amongst other things, protects and enhances an area's special visual and spatial character, appropriate to its location, context and distinctiveness and which makes a positive contribution to habitat through its protection and enhancement.

Other Matters

17. The proposed development would deliver two family-sized dwellings which, the Council acknowledge, would make a contribution to local housing land supply and would constitute a benefit arising from the proposal. This would also be consistent with the Government's objective of significantly boosting the supply

of homes, as set out within the Framework. I agree that this should weigh in favour of the proposal, albeit that that weight is tempered by the limited quantum of the proposed development.

18. There is some disagreement as to whether or not the appeal site constitutes previously developed land (PDL). I am advised that the tennis court was associated with the adjacent property at 62 Spofforth Hill, albeit that it was detached from it, separated by the line of the intervening bridleway. I have no other evidence before me as to the recent use of the tennis court for recreational or leisure purposes or its detailed historic relationship to that property, but if I were to conclude that the site is excluded from the definition of PDL, it is the prominent trees and pleasant hedge to Spofforth Hill and the bridleway, respectively, which are significant contributors to local character and have intrinsic value rather than the open space of the tennis court, per se.

Planning Balance and Conclusion

19. The proposal would deliver two additional homes and thus provide a boost, to the supply of homes within the Council's area which would weigh in favour of the proposed development, albeit that that weight is limited due to the limited quantum of the proposed development. The Council do not object to the proposal on grounds relating to the dwellings' design, orientation, size, scale, character and appearance, or their effects upon the living conditions of existing neighbouring residents and future occupiers. However, the lack of harm is a neutral factor, and weighs neither in support of nor against the proposal.
20. With regard to whether or not the site constitutes previously developed land, even if I were to conclude that the site does constitute the re-use of PDL, neither this, the delivery of two additional homes, nor the other matters to which the Council do not object, are sufficient to overcome the harm, on the basis of the evidence before me, that I have identified in respect of the main issue.
21. For the reasons set out, and having considered all other matters raised, I conclude that the appeal should be dismissed.

G Robbie

INSPECTOR