



Appeal Decision

Hearing held on 18 October 2022

Site visit made on 18 October 2022

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/N4720/W/22/3304440

Land at Ash Grove, Ash Grove, Otley, Leeds

- 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 M Brooke (Bankhead Group) against the decision of Leeds City Council.
 - The application Ref 21/10180/OT, dated 20 December 2021, was refused by notice dated 18 February 2022.
 - The development proposed is the construction of 2 No. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application is submitted in outline form with approval being sought in relation to the matter of access. The matters of appearance, layout, scale and landscaping are reserved for later consideration. Therefore, I have approached my determination of the appeal on that basis.

Main Issues

3. The main issues are:
 - (i) Whether the proposal would accord with the development plan with reference to greenspace allocations
 - (ii) Whether the proposal would provide a safe and suitable access
 - (iii) The effect of the proposal on trees and hedgerows
 - (iv) Whether the proposal would make adequate provision for biodiversity net gain

Reasons

Greenspace

4. The appeal site is allocated as natural greenspace in the Leeds Site Allocation Plan 2019 (SAP). Policy G6 of the Leeds Core Strategy 2019 (CS) refers to the protection and redevelopment of such existing greenspace. The Otley Neighbourhood Plan (ONP) was adopted in 2021 and does not include any allocation on the appeal site. All three documents form part of the adopted development plan for the Leeds City Council (LCC) area.

5. It is the appellant's contention that, as a result of the allocation in the CS but the non-allocation in the ONP, there is a conflict between these two parts of the development plan. Section 38(5) of the Planning and Compulsory Purchase Act 2004 states that *'if to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan the conflict must be resolved in favour of the policy which is contained in the last document to become part of the development plan'*. The ONP is the last document in that regard.
6. There is however an important difference in the designations, in that the SAP allocates greenspace whereas the ONP allocates local greenspace. In that respect, the accompanying text to Policy GE6 of the ONP is clear in stating that local greenspace is in addition to and distinct from any green space protection policies included in the Leeds Local Plan. On that basis, the designations are separate entities that do not need to be replicated on both plans and there is not a conflict between the two documents of the development plan. The appeal site is therefore allocated as greenspace as per the CS and is afforded protection by Policy G6.
7. Policy G6 of the CS does however provide for a scenario whereas existing greenspace can be redeveloped, including where there is an adequate supply of accessible green space/open space within the analysis area and the development site offers no potential for use as an alternative deficient open space type. There is no definition of 'analysis area' in the CS, but the Council considers that this must be taken to be the ward of Otley and Yeadon in which the appeal site is located. Within that ward, there is currently a greenspace deficit of natural greenspace in the main urban area of -10.68 hectares. There are surpluses in all other categories on the basis of the most up to date information that has been provided.
8. The appellant has identified 6 sites within the ONP that are not within the SAP which they consider to be natural greenspace, totalling 14.4 hectares. If included within the overall greenspace calculation, this would mean there would be a surplus of 3.72 hectares. However, one of the identified sites, Otley Plantation, is located outside of the LCC area and within the administrative boundary of Harrogate Borough Council (HBC). If that site is not included within the overall calculation as the Council suggest should be the case, then a deficit of -2.18 hectares of natural greenspace would remain. The question is, therefore, whether for the purpose of assessing the proposal against Policy G6 of the CS, the greenspace within HBC should be included.
9. In that respect, the greenspace policies of the SAP and CS were formulated by LCC based on evidence from their own local authority area at the time. This is clear from the Site Allocations Plan Green Space Background Paper 2017 (GBP) which informed the SAP. The analysis area for considering proposals against the policy should therefore be taken to be land within the LCC administrative area, and more specifically the ward area, which in this case is that of Otley and Yeadon. This means that, notwithstanding the allocations contained within the ONP, there remains a deficit of natural greenspace in the analysis area. Accordingly, the proposal fails to accord with Policy G6 of the CS.
10. That said, the fact that the ONP allocates natural greenspace within its plan area is a consideration that requires weighing against the conflict with the development plan that I have identified. In particular, it is pertinent that Otley

Town Council determined that a larger area than the parish, encompassing areas of land within HBC, should be defined as the Neighbourhood Area for the ONP. This was on the grounds that these areas are clearly part of the urban expansion of Otley and their inclusion provided a more sensible boundary for planning purposes. Having consciously identified such a boundary and included Otley Plantation within it as greenspace of an appropriate quality, it would be remiss to choose to disregard that site in making an assessment of the greenspace provision in Otley.

11. The ONP when taken with the SAP demonstrates that there is a surplus of natural greenspace in Otley. This is unaffected by the fact that the ONP straddles the boundaries of two different local authorities. Furthermore, the site was considered for allocation as local greenspace in the ONP but the surveyor recommendation was not to proceed to allocation. Within this recommendation was an assessment that the site has no local or community value, no landscape value, no recreational value and no known historical value. It is also relatively small in size and situated to the end of two private roads, with no public access rights across it and few views of it from the public domain. As a result of these factors, it makes only a limited contribution to greenspace provision in Otley.
12. When taken together, these considerations support the loss of the greenspace and outweigh the conflict with the development plan that I have found. Although referred to on the decision notice, the proposal would not conflict with Saved Policy GP5 of the Leeds Unitary Development Plan Review 2006 (UDP) or paragraphs 174 and 180 of the National Planning Policy Framework (the Framework).

Access

13. The appeal site would be accessed via a private drive leading from the adopted section of Ash Grove. The private drive currently provides vehicular and pedestrian access to The Croft, Ghyllbrook and Wingfield, and pedestrian access only to Invermay. The Street Design Guide Supplementary Planning Document 2009 (SPD) requires that any development where an existing private drive will serve more than 5 dwellings after completion of the development should be designed to adoptable standards. To be adoptable, the private drive would need to be widened along its full length, which is not proposed. The SPD does not specify whether there must be a vehicular access present in order for the drive to be deemed to serve an individual dwelling.
14. The principal elevation of Invermay faces towards the private drive and contains a door, with a path leading onto the private drive along which access can be taken to the adopted highway. Persons entering and leaving Invermay via that door would therefore have to walk down the private drive, and as a result it can reasonably be said that the private drive does serve that dwelling in some capacity. It has also been suggested that the occupiers of Invermay might, in the event of the appeal being allowed, seek to provide a vehicular access directly from the private drive to compensate for the loss of any ability that they may currently have to park upon it.
15. However, the impact of the appeal proposal upon the safety of vehicles and people using the private drive would be limited by the circumstances present in this case. Firstly, Invermay has a parking space which is taken directly from the adopted part of Ash Grove. Access into the dwelling can also be taken from this location, which would be likely to greatly reduce the instances of people

accessing it via the private drive. The distance to the adopted highway from the pedestrian access point onto Invermay is also very short and vehicles would be passing along the private drive at a low speed, meaning that there would not be a risk of an unsafe conflict between vehicles and people. There would also not be a substantial increase in the number of vehicles using the private drive from the proposed two additional dwellings.

16. There would be provision for cars to pass one another at the proposed widened entrance point onto the adopted part of Ash Grove. This would mean that a vehicle could stand clear of the adopted highway whilst waiting for a vehicle leaving via the private drive to pass. It is also the case that the addition of one additional dwelling on the appeal site would not require that the private drive be made up to adoptable standards, and the proposal would not be a significant uplift on that situation.
17. On balance and considering the current circumstances, in either the scenario that a new vehicular access is provided to Invermay or the existing pedestrian access only is retained, there would not be an unacceptable impact upon highway safety, including on pedestrians, from the proposed new dwellings with respect to the private drive. Therefore, notwithstanding that the private drive would not be brought up to adoptable standard, there would be no harm arising from this.
18. Representations submitted by interested persons including an aerial photograph suggest that parking has taken place along and at the end of the private drive for a number of years. However, there is provision within the curtilage of The Croft, Ghyllbrook and Wingfield to provide parking clear of the private drive for a vehicle, and therefore it is not likely there would be a displacement of a great number of cars from the private drive. It is also reasonable to presume that, if they have a right to park there, any vehicles parking along the private drive would have to do so in a way that would not prevent access to the furthest dwelling, The Croft, thus ensuring that vehicles could also pass towards and from the appeal site.
19. However, as many of the dwellings further along the adopted section of Ash Grove do not have the benefit of off-street parking, there is already reliance on parking on the public highway, as evidenced in the submissions of the Highway Authority (HA) and interested parties and not disputed in the appellant's own submissions. The fact that there is limited off-street parking means that there is a reasonable likelihood of parking stress already existing on Ash Grove, and there is no substantive evidence before me to suggest that parking would be readily available on Ash Grove or elsewhere for any vehicles displaced from the private drive.
20. This is of particular importance because parking close to the 90 degree bend in Ash Grove has the potential to cause highway safety issues by impeding the movement of vehicles around the corner and impairing visibility. Whilst it would appear that this already occurs, even the displacement of relatively few vehicles from the private drive could have an adverse impact on this area of the highway through inappropriate parking in that location. It would not therefore be desirable to displace vehicles from the private drive onto Ash Grove without first having a more comprehensive understanding as to whether or not they could reasonably be absorbed on-street without causing harm to highway safety.

21. An alternative scenario exists whereas vehicles do not have a legal right to park on the private drive. This would mean that it would not be the proposed development that would be responsible for any displacement of parking onto the adopted highway and that this element of the reason for refusal would be bound to fall away. However, it was advised at the hearing that there is ongoing litigation which is currently unresolved, and it is therefore not possible to establish what the lawful position is in that respect. I cannot therefore give weight to this consideration in reaching my decision.
22. The SPD requires that a fire tender be able to get within 45 metres of the front doors of all dwellings. It is not evident that this could be achieved, and it would not be likely to be possible at all if vehicles were parked on the private drive. This would create an unsatisfactory situation whereas the emergency vehicle may not be able to reach the proposed new dwellings in the case of a fire. The fact that this may be similar to the existing situation at The Croft does not justify the provision of two further dwellings on the same basis. Whilst the HA note that a turning area within the appeal site for a tender has not been shown on the indicative plans, there is an ample land area available in order that this could be provided.
23. A similar situation arises with respect to the moving of bins on collection day and the distance from the adopted highway. However, a bin storage area is shown on the indicative plans submitted and this would not be significantly different to the arrangements for The Croft. This would not be comparable to the seriousness of the fire tender distance not being met and, in isolation, it would not warrant the refusal of planning permission.
24. For the above reasons, I conclude that with respect to the impact of displaced parking on the adopted section of Ash Grove and with regard to access for a fire tender, the proposal fails to accord with Saved Policy GP5 of the UDP, which requires development proposals to resolve detailed planning considerations including in relation to highway safety and danger to life. There would however be no conflict with Policy T2 of the CS, as I have found that there would not be harm to pedestrian safety. Although the proposal would not meet with the requirements of the SPD in terms of bringing the private drive to an adoptable standard, I too have found that this would not cause harm in the circumstances of the case.

Trees and hedges

25. A number of trees within the appeal site and immediately adjacent to it, are subject to an area Tree Preservation Order. The Arboricultural Impact Assessment (AIA) submitted provides only limited information as to the impact that the proposed development would have on some of those trees. It is acknowledged within the AIA that not all trees that may be affected by the development have been accurately measured or assessed at close quarters because they are located off-site.
26. In particular, it was evident at the site visit that T22 which is immediately adjacent to the site access point from the private drive has not been plotted accurately. This means it is not known as to the degree that necessary works in this area may encroach into the root protection area of the tree, or what other works may be needed to the tree to allow vehicles to enter onto the appeal site. T22 is a Weeping Willow whose visual amenity is formed by its natural shape, and this could be compromised by any excessive works that might be

needed. There are also only limited details available as to how any works relating to the private drive to provide services or hard surfacing may affect protected trees in the vicinity of it. Alternatively, it may be necessary to dig service trenches from the direction of Burras Drive which also may necessitate works close to protected trees within the site.

27. In the absence of this information, it is uncertain that the proposed development could be implemented in a way that would not cause harm to the protected trees in question. There may also be harm caused to hedgerows along the private drive from the installation of services. Given this uncertainty, it would not be satisfactory to permit an outline planning permission that could not ultimately be implemented without causing harm to the health of protected trees and to hedgerows.
28. With respect to the other protected trees, the site is of a substantial size relative to the number of dwellings proposed, and therefore in principle there is scope for them to be accommodated without causing harm to the trees. However, due to the topography of the site, regrading of the land which could affect the protected trees may be necessary and there is no information provided in that respect. Whilst reference is made to shading from the trees, due to the orientation of the site and its size, this would not cause a conflict to the extent that the future retention of those trees would be compromised. This does not however overcome the absence of substantive evidence in the other regards.
29. In conclusion, in the absence of evidence to suggest that the proposed development could be accommodated on the appeal site without causing harm to protected trees and to hedgerows, the proposal would fail to accord with Saved Policy LD1 of the UDP and Policy Land 2 of the Natural Resources and Waste Local Plan (NRWLP), where they seek to provide protection to trees and hedges and Saved Policy GP5 of the UDP where it requires the resolution of detailed planning considerations. There would also be a conflict with Paragraph 174 of the Framework where it seeks to recognise the benefits of trees.

Biodiversity

30. The submission by the appellant assumes a scenario that the existing hedgerows on the site are fully retained within the development and are to be enhanced, but that the remaining habitats are all lost. This is said to represent a worst-case scenario and there would be likely to be a lower impact when re-assessed at reserved matters stage once details of layout and landscaping were known. To achieve a 10% net gain, 0.91 Habitat Units would need to be delivered post development. In the event that this could not be achieved on the appeal site as part of the development proposals, a maximum sum of £18,260 (plus monitoring, facilitation and strategic projects fees) is identified in lieu.
31. As layout and landscaping are amongst the reserved matters, it is not known whether the on-site net gain could be achieved and there has not been any information advanced to provide comfort that this would be possible. It remains therefore a possibility that a financial contribution towards achieving all or at least part of the biodiversity net gain would be necessary. The payment of this would need to be secured by way of a planning obligation.

32. Whilst the Planning Practice Guidance¹ states that it is possible that a negatively worded condition can be used to require the entering into a planning obligation, it further advises that this is unlikely to be appropriate in the majority of cases and only in exceptional circumstances, where there is clear evidence that the delivery of the development would otherwise be at serious risk². There is nothing before me to suggest that this is the case with respect to the appeal proposal.
33. Therefore, a planning obligation would be required to ensure that the necessary biodiversity net gain would be delivered. As there is no obligation before me, the proposal fails to accord with Policy G9 of the CS, where it refers to biodiversity net gain and Saved Policy GP5 where it requires the resolution of detailed planning considerations. There would also be a conflict with Paragraphs 174 and 180 of the Framework where they seek to provide net gains for biodiversity.

Other Matters

34. The Government's objective is to significantly boost the supply of housing and the proposal would provide two modern homes in a location with adequate access to services. However, given that only two dwellings would be provided, the provision of the additional housing and the benefits arising attract only limited weight.
35. The decision notice refers to Policy G1 (Green Infrastructure) of the CS and Saved Policies N9 (corridor functions), N24 (green corridors) and N25 (boundaries) of the UDP. However, it has not been demonstrated that the site is within or adjoining an area defined as Green Infrastructure or a corridor. Boundary treatments would fall to be addressed at reserved matters stage. I have therefore not considered these policies in my assessment of the appeal.

Planning Balance and Conclusion

36. The loss of the protected greenspace and conflict with Policy G6 of the CS would be outweighed by the provision of alternative greenspace as identified in the ONP, together with the considerations relating to the contribution of the appeal site in greenspace terms. There would be no harm to highway safety or pedestrians from the use of the existing private drive.
37. However, there is insufficient information relating to the existing parking situation on the adopted part of Ash Grove and to the impact of the proposal on protected trees. The potential inability of a fire tender to reach the appeal site would not create a safe development. There is also no mechanism before me to secure the required biodiversity net gain. Consequently, the proposal fails to accord with Policy G9 of the CS, Saved Policies GP5 and LD1 of the UDP and Policy Land 2 of the NRWLP.
38. The conflict with the development plan is not outweighed by the provision of the new dwellings and the associated benefits. The appeal should therefore be dismissed.

Graham Wraight INSPECTOR

¹ Paragraph: 005 Reference ID: 21a-005-20190723

² Paragraph: 010 Reference ID: 21a-010-20190723

APPEARANCES

FOR THE APPELLANT:

Matt Brooke – Appellant

Andrew Moseley – Andrew Moseley Associates

Steve Waterson – Tree Care Company

Josh Kitson – Walker Morris

FOR THE LOCAL PLANNING AUTHORITY:

Carol Cunningham – Team Leader North West

Anup Sharma – Planning Policy

John Booth – Principal Engineer Transport and Development Service

Ahmad Huneidi – Senior Highways Officer

Helen Tipping – Planning and Landscape Architect

Richard Marsh – Senior Nature Conservation Officer

INTERESTED PARTIES:

Cllr Colin Campbell – Leeds City Council

Cllr Sandy Lay – Leeds City Council

Amanda Beresford – Schofield Sweeney

Simon Pratt – SCP

Sue Rushfirth – Local resident

Jim Spencer – Local resident

Annie Swan – Local resident

DOCUMENTS – Letter and attachments from appellant dated 13 October 2022