



Appeal Decision

Hearing held on 31 January 2023

Site visit made on 1 February 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 February 2023

Appeal Ref: APP/W4705/W/22/3303794

Land at Back Leeming, Oxenhope, Keighley BD22 9NL

- 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 S Couch against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 21/01571/FUL, dated 24 March 2021, was refused by notice dated 3 February 2022.
 - The development proposed is CONSTRUCTION OF ONE HOUSE WITH ACCESS AND LANDSCAPING.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The hearing was held in relation to the appeal proceedings in the banner heading above and a separate appeal on the land against the issue of a Tree Replacement Notice (TRN) under Ref APP/TRN/W4705/9093. I have dealt with the appeals within separate decision letters and have considered each appeal on its own merits. However, as the Inspector for both appeals I have had regard to my findings, in relation to the other appeal.
3. Since planning permission was refused the Oxenhope Neighbourhood Plan (2022) (the ONP) and the Oxenhope Design Guide (2022) (the ODG) have been adopted. The ONP now forms part of the statutory development plan. I have given the Council and the appellant the opportunity to comment upon the implications of these for their respective cases and taken those responses into account in my findings below.

Main Issue

4. The main issue is the effect of the proposed development upon the character, appearance and significance of the Leeming Conservation Area (the LCA).

Reasons

5. Within the LCA there is a statutory duty under section 72 of the Planning (Listed Buildings & Conservation Areas) Act 1990 (LBCAA) to pay special attention to the desirability of preserving or enhancing its character or appearance. Paragraph 199 of the National Planning Policy Framework (2021)

(the Framework) requires that when considering the impact upon the significance of a designated heritage asset, great weight should be given to the asset's conservation, and harm to its significance requires clear and convincing justification (paragraph 200).

6. The LCA encompasses clusters of historic buildings and some more modern examples, comprising the eastern part of the settlement of Oxenhope and land and other buildings on the hillside and valley. The character, appearance and significance of the LCA can be summarised as deriving from the collection of clusters of mainly historic buildings with traditional materials, forms, detailing and boundary treatments in linear development patterns, along the valley and hillside, towards the central area of Oxenhope, Leeming Water and Reservoir. The LCA land surrounding the building clusters or footholds is largely open with views to the reservoir, but punctuated by significant treed and wooded areas.
7. The part of the LCA within which the appeal site is located is characterised and primarily derives its significance from the footholds of mainly historic dwellings often set within modest sized plots along narrow lanes within a hillside of heavy tree cover. Dominant dense deciduous foliage on the hillside is a distinguishing feature referred to in the Oxenhope Assessment of Conservation Areas¹. This distinctive character is appreciable from parts of Back Leeming, Jew Lane and is discernible in views from a sizeable section of the Bronte Way and a permissive footpath adjacent to the reservoir. The intersection of these is a key view or vista in the LCAA², looking towards the appeal site.
8. In its present form the appeal site contributes to the LCAs character, appearance and significance as a verdant terraced garden, appearing as an open space between clusters of buildings on the hillside, but with derelict and declining buildings and structures and terracing. As I saw it, I consider it makes an overall minor negative contribution to the character and appearance of the LCA. This is appreciable from a section of Leeming Back, nearby neighbouring properties, the adjacent ginnell, and sections of the Bronte Way and a permissive footpath adjacent to the reservoir.
9. The Council's reason for refusal alleges the proposed development would preclude tree planting on the site to mitigate the loss of important trees that formerly stood on the appeal site. These trees were removed in contravention of section 211 of the Town and Country Planning Act 1990, after which the Council issued a TRN. The TRN and tree planting is the subject of appeal Ref APP/TRN/W4705/9093 (the TRN appeal).
10. I do not intend to repeat my detailed findings and reasoning in relation to the TRN appeal here but I shall have regard to it. The appeal site is not designated as a Key Open or Green Space in the LCAA and ONP respectively. However, an assessment of site approximately 8 years before the felling of trees in the LCAA³, viewed the site as containing important trees, yet making a neutral contribution to the LCA. Between that assessment before their felling there is no substantive evidence demonstrating their contribution would have diminished and indeed it is likely they may well have grown further increasing their contribution to the character and appearance of the LCA.

¹ P.67 Open Spaces and Natural Elements: Leeming of Oxenhope Assessment of Conservation Areas (2005).

² Page 9 'Listed and Key Unlisted Buildings, Open Spaces and Trees' of the Leeming Conservation Area Appraisal (2009).

³ Page 8, Ibid

11. The felling has harmed the character and appearance of the LCA, adversely impacting upon its significance. The TRN is necessary in order to remedy harm that has taken place to amenity including to the character and appearance of the LCA. The TRN has been amended in respect of some of the species, but the requirement to plant 16 trees in the locations set out remains.
12. Compliance with the TRN would result in the planting of trees that would have a short-term limited positive effect upon the character and appearance of the LCA compared to the site as I saw it. Their long-term retention and continued growth would increase their amenity value and contribution to the character, appearance and significance of the LCA. In time it would remedy the harm that has occurred to the LCA from the previous felling.
13. One of the appellant's representatives suggested my assessment of this appeal proposal should be in regard to how the site would become having regard to my findings on the TRN, with the current use as garden land. There were no views advanced that would lead me to conclude this is incorrect. My assessment of the effect of the proposed development is made in that context, and I attribute the requirements of the TRN and future growth of the trees significant weight.
14. The dwelling would be of some scale and together with the associated parking and circulation areas, would occupy a significant proportion of the site. The dwelling would be of similar widths to some in the area, 2 storeys to the front addressing the highway and three to the rear, and would not appear discordant with other properties in these regards. It would be constructed with local weathered or reclaimed stone, with thoughtful design details and materials reflecting the local vernacular. I see no reason to conclude it conflicts with the detailed design advice of the ODG in this regard. There would be some beneficial effects from replacing the existing site buildings/structures.
15. However, the footprint of development would occupy a sizeable and central proportion of the site. It would directly prevent the planting of trees centrally within the site required by the TRN to remedy harm to the LCA caused by unlawful tree works. A detailed landscaping scheme is submitted proposing 11 standard trees, planting with named species and seeding. However, the landscaping would be constrained by the footprint of built development. Trees and larger shrubs would be located close to the edges of the site with a sizeable central area of built development and absence of tree cover. The proposal would not mitigate the harm from previous tree felling across the site.
16. I am not satisfied the proposal including planting and management could accommodate sufficient trees and landscaping to mitigate the adverse effects of not complying with the TRN and future Tree Preservation Order. There is only limited potential scope for revisions to the landscaping proposals without significant and material changes having regard to the Wheatcroft principles⁴ and the potential effects upon the living conditions of future and neighbouring occupiers.
17. Taking the proposals as a whole and the scope for matters to be secured by suitably worded planning conditions including further planting and retention, the proposal would not adequately remedy the harm that has occurred to the character, appearance and significance of the LCA. The proposal would prevent

⁴ Bernard Wheatcroft Ltd v SSE [JPL 1982 P37].

the remediation of harm that has occurred to the LCA, and so would overall negatively affect and would not preserve or enhance the character, appearance or significance of the LCA.

18. The Council has referred me to a judgement⁵ as authority for the proposition that a person should not benefit from their own wrong. There is no substantive evidence demonstrating the appellant has made positively and deliberately misleading statements to conceal the offence on the land. Therefore, the judgement is not directly comparable to the case before me.
19. For the reasons set out above the proposed development would prevent tree planting in accordance with a TRN and would have a harmful effect upon the character, appearance and the significance of the LCA. This would be less than substantial harm. Nevertheless, the proposal conflicts with Policies EN3 and EN5 of the Local Plan for Bradford District, Core Strategy (2017) and Policy GP7 of the ONP. In combination and amongst other things these require proposals conserve or enhance the significance of heritage assets that contribute to the distinctive character of the District, as well as protect, preserve and enhance the contribution that trees and woodland cover make to the character of the District. The proposal would also conflict with the aims of section 72 of the LBCAA, the relevant provisions of which I have referred to above.

Other Matters

20. The appeal site lies within zone B (up to 2.5km) and zone C (up to 7km) of influence of the South Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC). The appellant considers the proposal meets the requirements for zone B as it would not adversely affect the foraging habitat for qualifying species. It is also put to me a suitably worded condition could secure a Unilateral Undertaking to secure a contribution to mitigation that would avoid harm from increased recreational use of the SPA and SAC in accordance with approved mitigation measures referred to in the SPD⁶. It is not put to me, and I see no reason to conclude, the proposals and contribution would have overall benefits to the SPA and SAC and their qualifying features, weighing in favour of the scheme. Therefore, in-light of my findings on the main issue above, it is not necessary to look at this matter in detail.
21. Were I to agree the proposal is or could be compliant with policies in respect of matters such as location, accessibility, drainage, car parking standards, construction management in relation to matters including biodiversity, highway safety and emissions, and the living conditions of future and neighbouring occupiers, design principles, landscaping, mitigating effects upon the SPA and SAC and their qualifying features, these are all neutral matters in the planning balance.
22. I note the Council officer pre-application advice, and report and initial recommendation the application be approved by its Area Planning Panel (APP). However, I am informed these were made without a full understanding or sufficient details of an investigation of the circumstances of the tree removal and potential enforcement remedies. The officer recommendation upon the

⁵ Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2011] 2AC 304.

⁶ City of Bradford Metropolitan District Council South Pennine Moors SPA/SAC Planning Framework Supplementary Planning Document (2022).

application was revised in-light of these matters. Therefore, given their context and that they are not formal binding decisions of the Council, they attract little weight.

23. Representations by interested parties allege the submitted plans do not reflect the layout and form of the neighbouring No 32 Leeming Back, they include land within the appeal site that is in ownership of No 32, and the correct ownership certificates were not served with the application. The plans appear to have been amended during the submission of the application to reflect the layout on the ground. However, as I am dismissing the appeal I have not considered these matters further.

Heritage Balance

24. The proposal would result in less than substantial harm to the character, appearance and the significance of the LCA. Paragraph 202 of the Framework states where a development would lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against its public benefits. However, great weight should be given to an asset's conservation, and less than substantial harm should not be equated with a less than substantial planning objection.
25. The proposals would result in a modest economic benefit during construction, and once complete a small on-going spend in the local economy, support to local services and facilities and Council Tax and CIL payments. At the time of determining the application the Council could only demonstrate a Housing Land Supply (HLS) of approximately 2.03 years. There is nothing before me that assures me it might not have reduced further. While the HLS shortfall could be regarded as particularly acute, the provision of a single dwelling is a limited public benefit.
26. The current driveway and garage require vehicular reversing in or out manoeuvres. Were to accept that this proposal would result in a highway betterment, having regard to the existing and proposed arrangements, at best this is a limited public benefit. There is nothing before me to suggest any benefits to the living conditions of neighbouring occupiers would be anything other than a small public benefit at best. It is put to me a detailed scheme could ensure habitat establishment and future habitat and landscape management with a Biodiversity Net Gain of at least 10% secured by suitably worded planning conditions. Even if this were achievable, given the site area, habitats, and scope for likely improvements, this is a limited public benefit. The proposal would remove derelict buildings and structures, some that include asbestos, which would be a small public benefit.
27. Overall, all the public benefits advanced constitute a limited public benefit and they attract limited weight. Consequently, when giving great importance and weight to the special attention I must have to the desirability of preserving or enhancing the character or appearance of the LCA, the harm that would arise from the appeal scheme would not be outweighed by its public benefits. Accordingly, there would be a conflict with paragraph 202 of the Framework as the harm to a designated heritage asset would not have a clear and convincing justification. This attracts great weight.

Planning Balance & Conclusion

28. While the Council cannot demonstrate a HLS of 5 years, the development would harmfully affect the character and appearance of the LCA, and would have an adverse effect upon its significance. In accordance with paragraph 11d)i) of the Framework, the application of policies that protect areas or assets of particular importance provide a clear reason for refusing the development, for which the policies of the Framework have not been met. Consequently, the tilted balance does not apply. Furthermore, the policy compliance and the benefits of the scheme do not outweigh the harm from the development.
29. The proposed development is contrary to the development plan and the National Planning Policy Framework taken as a whole, and the aims of section 72 of the LBCAA. There are no other considerations advanced, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr J O Steel BA (Hons) DipTP, MRTPI, FRSA (Steel Consulting);

Mr Peter Dixon (Barrister);

Mr Iain Tavendale F.Arbor. A.OND Arbour. Surrey Certificate Arbor. RFS Certificate Arbor.;

Mr Stephen Couch (the Appellant).

FOR THE COUNCIL:

Mr Andrew Moxon BA (Hons) Dip TP, MRTPI (Planning Officer);

Mr Brian Robinson (Enforcement Officer);

Mr Simon Keenan HNC, HND, BSc (Hons) Arb., MArborA, PGCE Urban & Rural Planning (Arboricultural Officer);

Mr Bob Power (Locum Planning Solicitor).

INTERESTED PARTIES:

Mr Russell Andrews (Local resident);

Mr Peter Corcek (Local resident);

Mr Alan Wright (Local resident);

Mr Gunter Prescott (Local resident);

Mrs Claire Anderson (Local resident);

Ms Lynne Elliot (Local resident).

SUBMITTED DOCUMENTS

Statement of Common Ground dated 31 January 2023;

BL-1 Google Streetview Image (captured Mar 2009) 5 Back Leeming;

BL-2 Letter from Mr Andrew D King BSc (Hons) Environmental Management of ADK Environmental Management dated 29 January 2023.