



Appeal Decision

Site visit made on 21 February 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 April 2023

Appeal Ref: APP/B2355/W/22/3297146

Land at Clover Hill, Off Todmorden Road, Bacup

- 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 S and W Middleton against the decision of Rossendale Borough Council.
 - The application Ref 2021/0577, dated 7 October 2021, was refused by notice dated 10 March 2022.
 - The development proposed is a dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by both Mr/Mrs S and W Middleton against the decision of Rossendale Borough Council and by Rossendale Borough Council against Mr/Mrs S and W Middleton. These applications are the subject of separate decisions.

Preliminary Matters and Main Issues

3. A number of drawing iterations were submitted to the Council during the determination of the planning application. However, the Council has advised that their decision was based on the plans as originally submitted. These include the site location plan SM.061021.A; proposed site plan SM-02-10-21B and proposed plans and elevations SM-02-10-21-C. I have based my decision on the same original plans, to prevent any prejudice to interested parties.
4. The Council has raised concerns regarding the appellant's submission of an Arboricultural Implications Assessment (AIA) and Arboricultural Method Statement (AMS) during the appeal process. This evidence was submitted at the outset of the appeal to try to address the Council's first reason for refusal. The Council and interested parties had the opportunity to comment on the documents, and I note that the Council's statement of case was supported by comments from their arboricultural advisor. As such, no party has been prejudiced from the acceptance and consideration of the AIA and AMS.
5. The main issues of this appeal have flowed from the Council's reasons for refusal. In addition, I have included the effect of the proposed development on land stability given the concerns raised by the Council and interested parties. The main parties were given the opportunity to comment on this matter during the appeal process, and I have carefully considered their responses.

6. The main issues are therefore the effect of the proposed development upon i) land stability and, ii) the character and appearance of the area, with particular regard to trees and hedgerows, and site coverage.

Reasons

Land Stability

7. Policy ENV1(r) of the Rossendale Local Plan 2021 (RLP) expects all new development to take account of ensuring that land stability and other risks associated with coal mining are considered and where necessary, addressed through appropriate investigation, remediation and mitigation measures. This is consistent with the advice within the National Planning Policy Framework (the Framework), which states at paragraph 183 that decisions should ensure a site is suitable for its proposed use taking account of any risks arising from land instability. It goes on to advise at paragraph 174 that decisions should contribute to and enhance the local environment by preventing new development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of land instability.
8. The appeal site is not within a defined high-risk area for land instability. However, the Council advises that there are land stability issues across their Borough and interested parties have referred albeit briefly, to land slippage on neighbouring land. The appeal site is sloping, with a particularly steep incline close-by, in an area that may experience land stability issues. The Council has further advised that measures to address land stability could impact on Tree Preservation Order's T2/104 1996 and 1952 No 2. The concerns raised by the Council and interested parties are therefore valid and given the potential risk to health, property and protected trees, there is an onus on the appellant to properly explore this matter.
9. Consequently, when following a precautionary approach, it is necessary for a preliminary assessment to be undertaken by a suitably qualified professional to demonstrate that the appeal site and surrounding land will remain stable with the appeal scheme built out. This approach is supported by the Planning Practice Guidance (PPG).¹
10. The appellant provided a land stability assessment (LSA) as part of the planning process. It advises that the appeal site has an 11% slope from north to south, and that the proposed dwelling would be some 23m away from the steeper land that falls away to Todmorden Road. It is suggested that there is no evidence of land slippage on the appeal site. However, it does not appear to have been carried out by a person qualified in this area of expertise and is lacking in scope and detailed verification. As a result, the submitted LSA does not adequately address this matter.
11. The Council whilst initially accepting the appellant's LSA for this proposal, advised that in future any further applications on the appeal site should be supported by a detailed LSA. However, the evidence before me does not support this approach, as it does not adequately demonstrate that the appeal scheme would not have an impact on land stability, but future schemes may. Instead for the reasons already given, I share the Council's revised position that land stability requires proper investigation as part of the appeal scheme.

¹ Paragraph: 006 Reference ID: 45-006-20140306

12. It would be unreasonable to address this matter through the imposition of a planning condition because further investigations may confirm that the land is insufficiently stable to support the proposal.
13. In the absence of any robust evidence to the contrary, I cannot conclude that the proposal would not adversely affect land stability. The proposal would therefore conflict with Policy ENV1 of the RLP and paragraphs 174 and 183 of the Framework as detailed above.

Character and Appearance

Trees

14. The appeal site comprises an area of grassland, previously used as allotments. It lies in proximity to a number of protected trees, including an area of woodland to the south which slopes steeply downwards to where it meets Todmorden Road (A681). The western boundary of the appeal site is also tree-lined such that it has a highly verdant appearance.
15. The AIA and AMS submitted with the appeal advised the need for a small number of trees to be felled and suggested that a cellular confinement system would adequately address loads on tree roots and subsoil, arising from the construction of the proposed driveway and areas of block paving.
16. The Council has confirmed that the proposed tree removal is acceptable and that the AIA and AMS address their concerns with regard to trees within the vicinity of the appeal site. The grouping of the trees to the south-east of the driveway for the purposes of the AIA and AMS is also considered to be an appropriate approach in areas where there is dense tree planting. Whilst there are residual concerns in relation to the protection of retained trees, the Council would be content for this issue to be dealt with via a planning condition and I have no reason to disagree. Furthermore, compensatory tree and hedgerow planting as required by Policy ENV10 of the RLP could be dealt with by a landscaping condition, given that there would be sufficient room within the appeal site or the appellant's wider land ownership to accommodate such planting.
17. Notwithstanding this, interested parties have raised concerns regarding the TPO trees to the north of the existing driveway, outside of the appeal site. The effect of the proposal on these trees has not been considered in the AIA or AMS. These trees form an important part of the existing woodland, and due to their number, maturity and height are a significant verdant feature between the nearby properties and Todmorden Road. Thus, they are clearly of amenity value for their contribution to the appearance of the area, habitat and privacy they afford.
18. No works are proposed to the existing driveway, which is already used by residents of nearby properties, as well as the weekly bin lorry. Nevertheless, the proposal would result in an intensification in vehicular movements derived from the construction and occupation of the proposed dwelling.
19. The Council's arboricultural advisor indicates that the tree canopy overhanging the existing driveway would have sufficient clearance of 5m such that larger construction vehicles are unlikely to cause damage. I have no evidence to the contrary and the narrow proportions of the existing driveway would provide natural limitations as to the size of construction vehicles it can accommodate.

20. However, the AIA and AMS have not considered the impact of additional vehicular movements on the compaction of the protected tree roots. Mature trees such as these may not be able to withstand such an impact. Even though the use of the existing driveway has not caused significant issues to date, it does not automatically follow that further development would not be harmful. In omitting the TPO trees to the north of the existing driveway from the AIA and AMS, the appellant has failed to demonstrate that there would not be harm to those trees through increased compaction from vehicular movements. There is no evidence to the contrary.
21. Accordingly, the proposed development would present a harmful risk to the long-term health and viability of the protected trees adjacent to the appeal site, with the adverse impacts this would have on the character and appearance of the area.

Site Coverage

22. The Council is concerned that the proposed development would result in excessive site coverage by buildings and areas of hardstanding. Car parking provision would also be provided in excess of the Highway Authority's requirements. Given the narrowness of the access track from Todmorden Lane which also serves other nearby dwellings, it would not be unreasonable to provide additional on-plot parking for visitors. Even with the provision of 3 external car parking spaces in addition to the proposed double garage, an acceptable proportion of the site would remain as garden when considered relative to other properties nearby.
23. Moreover, there are to be no boundaries between the appeal site and the woodland to the south, which is also within the appellant's ownership. When perceived in this way from the close-range public vantage points of the access track and Greensnook Terrace, the extent of development on the appeal site would not appear excessive in relation to the plot size as a whole. The noteworthy and wider verdant setting of the appeal site would not be harmed.
24. For the reasons given above, the proposed site coverage would be acceptable. However, I am not satisfied that the impact on all of the adjacent protected trees, has been properly considered. The proposed development could harm the character and appearance of the area over time. It would therefore fail to accord with Policies ENV1 and ENV3 of the Rossendale Local Plan 2021 (RLP). Together these policies require new development to conserve and enhance the natural and built environment, including the retention and protection of trees and green infrastructure features that make a positive contribution to the character of the area. It would also fail to accord with paragraph 130 of the Framework which requires new development to be visually sympathetic to the surrounding built environment and landscape setting.

Other Matters

25. Vehicular access to the appeal site would be via the existing track from Todmorden Road. Being single track, uphill and routed around a bend, the existing track is not ideal. However, no substantive evidence has been presented that demonstrates the intensification in the use of the track to serve a single additional dwelling would present a highway safety issue. The Highway Authority whilst raising concerns about the lack of intervisibility from vehicles exiting and entering the track has not objected to the proposal. Accordingly,

- substantive evidence is not before me that demonstrates it is necessary to widen the access track to provide a safe and suitable access.
26. Moreover, a balance is to be struck between optimum vehicular access arrangements and the character and appearance of the area in this instance. Alterations to the access would affect the historic and attractive gate piers, require the partial removal of the existing stone boundary wall and 2 trees, with a means to retain the existing rising land level likely to be required. Whilst minor in nature, these changes would nonetheless impact detrimentally on the street scene of Todmorden Road, as highlighted by interested parties.
27. The Council advises that its Housing Delivery Test results demonstrate recent under provision of housing delivery. As such, they confirm that the relevant policies for the supply of housing should not be considered up to date and paragraph 11(d)ii of the Framework should therefore be applied.
28. For the reasons given above, the proposed development would be contrary to Policies ENV1 and ENV3 of the RLP in respect of land stability and the character and appearance of the area, with regard to protected trees. These policies are consistent with the Framework which seeks to ensure that sites are suitable for the proposed use, taking into account risks arising from land instability, and that the natural environment is protected and enhanced. I therefore attach significant weight to the conflict with these policies.
29. The benefits of the appeal scheme would amount to the construction and occupation of a dwelling located within walking distance of shops and services. Whilst any contribution to housing delivery would be worthwhile, the benefits would be restricted to the provision of one dwelling, which would make a very limited addition to housing supply.
30. The acceptability of the proposal in terms of the principle of housing development, the living conditions of the future occupiers and neighbours and ecology, are neutral factors that weigh neither for, nor against allowing the proposal.
31. Consequently, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the development, when assessed against the policies in the Framework as a whole. The proposal would not therefore benefit from the presumption in favour of sustainable development. The policies in the Framework do not outweigh the conflict with the development plan and I am therefore led to a dismissal of the appeal.
32. I am advised that outline planning permission was previously refused for the erection of 2 dwellings on the appeal site (reference 2004/890) in 2004 for reasons of highway safety and an oversupply of housing, but not the impact on trees. Details of this decision are not before me. Nonetheless, the lack of a reason for refusal relating to trees for a decision that pre-dated both the RLP and the Framework, does not render the appeal proposal acceptable.
33. I note a letter of support for the re-use of the land by an interested party. However, I have considered the merits of the proposal before me, in light of current guidance within the PPG and current planning policy, and I have found harm for the reasons given above. It is likely that an alternative scheme could be found that would not result in the harm identified.

34. Concerns regarding the way in which the Council dealt with the planning application including the receipt of amended plans and the timing of the decision, is a matter for the main parties. I will further touch upon it so far as is relevant within the applications for costs.

Planning Balance and Conclusion

35. I have not found harm in relation to the amount of site coverage. However, the absence of harm is neutral in the planning balance, and it therefore does not outweigh the harm identified in respect of the effect of the development upon land stability and the character and appearance of the area, with particular regard to protected trees. There are no material considerations that lead me to determine the proposal otherwise than in accordance with the development plan. Accordingly, the appeal is dismissed.

M Clowes

INSPECTOR