



Appeal Decision

Site visit made on 7 March 2023

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

an Inspector appointed by the Secretary of State

Decision date: 25th April 2023

Appeal Ref: APP/A4710/W/22/3308070

Former Box Trees Mill, Boy Lane, Wheatley, Halifax HX3 5AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mandale Homes Ltd against Calderdale Metropolitan Borough Council.
 - The application Ref 22/00417/FUL, is dated 5 April 2022.
 - The development proposed is erection of four 3-bedroom dwellings with associated landscaping and external works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory timeframe. However, I have had regard to the Council's statement which provides clarity in terms of the reasons the Council would have refused planning permission for the proposed development, had it been able to do so.
3. Between the undertaking of the site visit and the issuing of this decision, the Council formally adopted the Calderdale Local Plan 2018/19 – 2032/33 (2023) (CLP). This now forms the statutory development plan for the area and substitutes the Amended Replacement Calderdale Unitary Development Plan (2009). For the avoidance of doubt, I have determined the appeal based on the development plan (CLP) taking into account the comments of the main parties.

Main Issues

4. The main issues in relation to this appeal are the effect of the development upon;
 - i) the character and appearance of the area, with regard to trees and design;
 - ii) the living conditions of the future occupiers of the dwellings with regard to the provision of private gardens;
 - iii) biodiversity and protected species; and
 - iv) highway safety with particular regard to access and the impact upon pedestrian and cycle movements.

Reasons

Character and Appearance

5. The appeal site consists of an area of relatively flat land, roughly triangular in shape fronting onto Riding Lane to the north. The remainder of the appeal site is contained and bounded to the south by a band of mature trees that form a green corridor along the embankment of Hebble Brook. The trees to the east of the appeal site form part of a woodland Tree Preservation Order (TPO) reference 93/00707/C. Opposite and set back beyond rising land and a retaining wall and fence, lies a new development of 30 houses currently under construction.
6. To the west of the appeal site the historical and architecturally pleasing Wheatley viaduct is a somewhat imposing structure, marking the transition between the more developed character of Boy Lane and the verdant characteristics of Riding Lane. A public bridleway runs along both Riding Lane and Maltings Lane to the east.
7. To construct the proposed dwellings, the Arboricultural Method Statement and Impact Assessment (AMSIA) advises that the wholesale removal of the trees identified as Group 5, that envelop the appeal site to the south would be required. Although individually the trees may attract a lesser categorisation, the AMSIA nevertheless, classifies the trees as category B for their group value, meaning that they are of moderate quality and value and their retention should be considered.
8. I observed that the trees form a tall, continuous green canopy along the bank of Hebble Brook, that pairs with a similar band along the opposite embankment. Due to their number and height, they form a significant and positive contribution to the verdant character of the appeal site and wider street scene. The Council's Tree Officer recognises the group amenity value of the trees but considers that a number are poor specimens, with some containing decay in the main stems. However, despite the self-seeded nature of the trees, the appellant's AMSIA suggests that the trees would generally survive with a life span of 40 plus years. It is highly unlikely that without the development, the trees would need to be removed.
9. The AMSIA advises that the arboricultural impact from the proposed tree removal is relatively low and could be mitigated by planting trees of smaller stature. The appellant suggests this could be controlled by a planning condition. However, the appeal site is very compact, and the amount of development and its proposed layout indicate that there would be limited places where sufficient and meaningful replacement planting could be accommodated, that would not also compromise the living conditions of the future occupiers. This would be particularly the case for Plots A and D given the constrained size of their plots. There is no evidence before me by way of a detailed landscaping scheme to demonstrate otherwise. Even if sufficient garden species could be provided, they would not reach the maturity (height and spread) of the existing trees that would be removed. I am not satisfied that a condition would be reasonable or capable of resolving or mitigating this matter satisfactorily in this instance. Without suitable mitigation, the loss of the group of trees would be harmful to the character and appearance of the area.

10. Where built development occurs nearby, it is of a mixed character including traditional stone terraces at the north-western end of Boy Lane, with later brick and rendered dwellings and bungalows to the south-east, and a modern housing development off Hops Lane. Both the appeal site and the newly constructed dwellings to the north are located to the west of the viaduct which provides a physical and to some degree visual separation, with nearby built forms. Despite the presence of retaining walls and fences, there is a degree of intervisibility between the 2 sites. The simple appearance of the proposed dwellings with a balanced fenestration pattern and traditional roof pitch to match one of the recently constructed house types to the north¹, would therefore be appropriate.
11. Although I have found that the design of the proposed dwellings would be acceptable, the loss of existing trees would significantly reduce the verdant quality of the street scene in this location, resulting in an adverse impact on the character and appearance of the area. The proposed development would therefore conflict with Policies BT1, BT3 and GN5 of the CLP. These policies seek amongst other things, to ensure that development does not result in the unacceptable loss of existing trees, and that trees that contribute to the character of the area are retained within landscaping schemes. Conflict is also found with paragraphs 130 and 174 of the National Planning Policy Framework (the Framework), which requires existing trees to be retained where possible and for proposals to recognise the natural capital of trees and woodlands.

Living Conditions

12. Each dwelling would be provided with a rear garden, although Plots A and D would be constrained by the proximity to the tapering boundary at either end of the appeal site. The appellant suggests that the main extent of the gardens to Plots A and 4 would be 42m² and 36m² respectively. I note that there is no Plot 4, and that this calculation is likely to relate to Plot D. It is not clear what the appellant considers the 'main extent' of the garden to be. Regardless, the calculations and site plans indicate the provision of diminutively sized gardens for plots A and D, particularly given that the proposed dwellings are to provide 3-bedroomed family-sized homes for up to 5 persons.
13. The rear gardens to Plots A and D would be triangular with an additional parcel of land to either side of these dwellings, mostly but not exclusively, used for car parking. The rear elevations of these dwellings would not be consistently 10.5m from the rear boundaries of the gardens as required by Annexe 2 of the CLP. The restricted shape and limited depth of the rear gardens, would provide very little useable outdoor space to meet reasonable living requirements for the future occupants, including sitting out, drying washing, growing plants and providing space for children to play.
14. During my visit on a bright and sunny winter's afternoon, I observed that the appeal site was largely in shade due to the presence and height of the existing trees. Whilst a number of trees would be removed and the rear elevations and gardens of the proposed dwellings would face south-west, it seems clear to me that the proximity, height and extent of tree coverage that would be retained, would limit the extent to which both daylight and direct sunlight could penetrate, as well as causing shade. The rear gardens of Plots A and D are likely to be gloomy as a result, particularly when the trees would be in leaf and

¹ Planning application reference 20/01517/FUL.

in winter when the sun is positioned lower in the sky. There is no substantive evidence for example a daylight and sunlight assessment, to endorse the assertion that the rear gardens would benefit from the sun at some point during the day, and that this would be the case all year round. Tree planting to mitigate the loss of the existing trees could further increase the occurrence of shading and limit light penetration.

15. Future pressure to lop, top or fell further trees is also likely to be elevated in relation to Plots A and D given the diminutive and awkwardly shaped plots. This is of considerable concern given the proximity of Plot A to the band of adjacent protected trees.
16. The proposed development would fail to provide suitable and sufficient amenity space which would be harmful to the living conditions of the future occupants of Plots A and D. Consequently, conflict is found with Policy BT1 and Annexe 2 of the CLP which seek to ensure the provision of adequate daylighting and private amenity space for prospective residents. It would also fail to comply with paragraph 130 of the Framework, which requires new development to have a high standard of amenity for future users.

Biodiversity and Protected Species

17. The appeal site consists of semi-natural habitat, located within a Wildlife Corridor. The appellant suggests that the requirement for 10% biodiversity net gain set out in the Environment Act 2021 cannot be required as it requires secondary legislation for implementation. Whilst I agree that this is currently the case, paragraph 174 of the Framework nonetheless states that planning decisions should contribute to and enhance, the natural and local environment by minimising impacts on and providing net gains for biodiversity. The Planning Practice Guidance (PPG) has defined biodiversity net gain as works which deliver measurable improvements for biodiversity by creating or enhancing habitats in association with development.²
18. The Preliminary Ecological Appraisal (PEA) suggests that the appeal site has a low ecological baseline value. Nevertheless, all of the trees identified within Group 5 would be removed to accommodate the proposed development. Where habitat is to be lost, the PEA advises that the same or higher value habitats will be required on the appeal site.
19. No provision for replacement trees or habitat has been made within the proposed development and given the amount and layout of the proposed dwellings, meaningful on-site compensatory planting could not be achieved by condition in this instance. Alternatively, the PEA suggests that there may be scope to enhance and increase the biodiversity value of the retained woodland areas to offset the loss on site. No such scheme is before me.
20. In addition, the PEA advises that it must be converted into an Ecological Impact Assessment (EIA) including details of further surveys, mitigation and biological enhancements to arrive at an assessment of the residual impact of the proposed development, including a biodiversity calculation. No EIA has been provided to me, nor a biodiversity calculation to demonstrate the true impact of the development on biodiversity. In the absence of such information or

² Paragraph: 022 Reference ID: 8-022-20190721.

evidence to the contrary, it seems to me that there would be no enhancement or net-gain of biodiversity, with a net-loss occurring instead.

21. I am referred by the appellant to 3 conjoined appeals³ for residential development on a site outside of the Council's administrative area. Whilst that site was considered to be of low ecological value, biodiversity mitigation was provided in the form of native scrub and wildflower planting, sustainable urban drainage systems including wet grassland and replacement hedgerow planting. The Inspector considered a significant proportion of the site was set aside from built development and a 1% net gain was considered to be policy compliant in that instance. Given the difference in circumstances, the referenced appeal schemes are not comparable to that before me. There is no on-site biodiversity enhancement scheme before me, nor a planning obligation to secure a financial contribution towards off-site provision. Such matters could not be appropriately dealt with by condition in this instance.
22. In this regard, paragraph 180 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or as a last resort compensated for, planning permission should be refused.
23. Bats are protected by law⁴. Their presence is a material consideration when a development proposal is being considered that would be likely to result in harm to the species or its habitat. There is a statutory duty on me to have regard to the conservation of biodiversity.⁵
24. The PEA identifies that some trees within the survey area were identified to provide either low or in one case, moderate potential roosting opportunities for bats. The PEA advises that the removal of any of these trees could have a high impact on roosting bats. Of particular concern is the removal of a tree that offers moderate bat roost potential. The PEA recommends a further climbing survey to more accurately determine the extent to which the tree provides bat roost potential, and whether a Natural England licence would be required. No such survey has been provided and there is no conclusive evidence before me that this tree is to be retained.
25. Circular 06/2005⁶ states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted. Otherwise, all relevant material considerations may not have been addressed in the decision-making process. In the absence of the recommended survey and on the basis of the limited information before me, I cannot be certain of the extent to which bats may be affected or what mitigation if required, may be appropriate. The circular also states that ecological surveys should only be left to a planning condition in exceptional circumstances, which do not apply in this case.
26. I cannot be certain that the proposal would not adversely affect a protected species, specifically bats. Furthermore, the proposed loss of trees would result in harm to biodiversity and no provision has been made for biodiversity enhancement or net-gain. The proposal would therefore be contrary to Policy

³ APP/Y3940/W/21/3278256, APP/Y3940/Q/21/3278923 and APP/Y3940/W/21/3282365.

⁴ Conservation of Habitats and Species Regulations (2017) & Wildlife and Countryside Act (1981).

⁵ Section 40 of the Natural Environment and Rural Communities Act 2000, as amended.

⁶ Biodiversity and Geological Conservation – see footnote 61 of the Framework.

GN3 of the CLP which aims to prevent significant adverse impacts on protected species. It also seeks to conserve and enhance the biodiversity features of the Borough, by protecting and improving habitats and maximising biodiversity opportunities in and around new developments. Additionally, it would fail to comply with paragraph 174 of the Framework, which seeks amongst other things to minimise impacts on and provide net gains for biodiversity.

Highway Safety

27. Riding Lane is a narrow, no through road, laid with stone setts sloping down towards Hebble Brook. It is a public bridleway and I observed during my visit that it was well used by pedestrians accessing the nearby countryside. There is no turning head within Riding Lane, nor would one be provided as part of the appeal scheme. It is not clear how large delivery or emergency service vehicles and HGVs would be able to access and egress the appeal site safely.
28. Space for turning and manoeuvring would be limited given the constraints of the viaduct, the emerging access which is screened to the south by retaining walls and fences, as well as the narrow, sloping nature of Riding Lane. Setting aside the implications for the character and appearance of the area, the provision of a dedicated footpath would not adequately mitigate the lack of room for turning vehicles. Conflict between large vehicles, pedestrians and cyclists is highly likely. No swept path analysis is before me, nor the tracking information provided as part of the previous application⁷ for 30 dwellings on the development site to the north.
29. Although not particularly well trafficked by vehicles at the moment, the occupation of the proposed dwellings and those under construction, would inevitably increase the number of vehicles, pedestrians and cyclists using Riding Lane. The potential for conflict would therefore be increased.
30. I find that the proposal would result in an unacceptable impact on highway safety, with particular regard to access and the impact upon pedestrian and cycle movements. The proposal would therefore conflict with Policy BT4 of the CLP, which requires the design and layout of accesses to take account of the hierarchy of road users and ensure the free flow of traffic in the interests of highway safety. Conflict is also found with paragraph 112 of the Framework, which aims to create safe places that minimise the scope for conflict between pedestrians, cyclists and vehicles.

Other Matters

31. Reference is made to the granting of a permission in 2013⁸ for 87 dwellings on land which included the appeal site. There appears to be some uncertainty amongst the main parties as to whether this permission was ever implemented and remains extant. The evidence is imprecise and moreover, the more recent permission⁹ for 30 dwellings was granted and is being implemented on a smaller part of the site to the north. Even if the 2013 permission could be deemed to be extant such that it provides a fallback position that has a realistic prospect of being implemented, it has not been demonstrated that it would have worse impacts than those identified within the current proposal.

⁷ Application reference number 20/01517/FUL.

⁸ Application reference number 05/01672/FUL.

⁹ Application reference number 20/01517/FUL.

32. The adoption of the CLP now means that the Council can demonstrate a 5-year housing land supply. Nonetheless, the proposed dwellings would provide economic benefits during the construction phase, as well as social benefits in the provision of 4 family-sized dwellings in an accessible location on a brownfield site.
33. The existing appeal site when not in use as a construction site compound, largely consists of an area of hardstanding such that its development would not result in a significant improvement or regeneration of the area. Limited weight is attached to this suggested benefit.
34. I note the frustrations expressed by the appellant in relation to their perception of the way in which the planning application was dealt with by the Council. However, this is a matter for the parties.

Planning Balance and Conclusion

35. The proposed development would boost the supply of family-sized housing in an accessible location on a brownfield site, whilst providing economic benefits during construction. These benefits however would be limited and would not be outweighed by the adverse effects identified in relation to the character and appearance of the area arising from the loss of trees, the living conditions of the future occupiers, biodiversity and protected species and highway safety. The lack of harm I have found with regard to the design of the proposed dwellings weighs neutrally in the planning balance.
36. There are no considerations in this instance that lead me to find otherwise than in accordance with the development plan. Therefore, for the reasons set out above, the appeal is dismissed.

M Clowes - INSPECTOR