



Appeal Decision

Site visit made on 22 November 2023

by L Hughes BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 December 2023

Appeal Ref: APP/F4410/W/23/3317244

Land off Birch Close, Sprotbrough DN5 7LF

- 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 Idyllic Developments Ltd against the decision of Doncaster Metropolitan Borough Council.
 - The application Ref 22/01941/FUL, dated 15 August 2022, was refused by notice dated 10 October 2022.
 - The development proposed is the development of 5 dwellings with associated access and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's appeal evidence includes revised and additional plans and technical information. This provides minor amendments and further clarity, and the Council has consulted relevant parties. In accordance with the Holborn Studios Ltd 2017 judgement, accepting this evidence as the basis for the appeal therefore meets the substantive and procedural tests, and no parties would be prejudiced in the interests of natural justice. The Council also confirmed that the reason for refusal relating to drainage is no longer upheld, following the receipt of this additional information. I see no reason to make a different conclusion.
3. The parties disagree as to the original intent of the part of Birch Close which would provide the site's access point. However, even were I to conclude that this was designed to act as the site's future access, an intent from over 15 years ago is not determinative to my decision. The access road has been used since its construction as a turning head, for parking, and to access the gardens of the adjoining dwellings. I have therefore assessed the appeal proposal against this context.

Main Issues

4. The main issues are:
 - whether the proposed development is in a suitable location for housing, having regard to its backland location including its effect on the character and appearance of the area; and
 - the effect of the proposed development on the living conditions of the occupiers of neighbouring properties with particular regard to privacy and disturbance, and on potential future occupiers with particular regard to overshadowing.

Reasons

Suitable Location for Housing

5. The site consists of the rearmost portions of the gardens of 4 properties on Park Drive, comprising scrub vegetation cover, hedgerows, lawn, and a heavily treed orchard. Some trees, including within the eastern and western boundaries, are subject to Tree Protection Orders (TPOs). Dwellings lie either side, and a TPO woodland lies adjacent to the south. The proposal is for 5 detached dwellings, accessed off the existing adopted highway of Birch Close.
6. The main parties agree that the proposal would meet the definition of backland development in the Transitional Developer Guidance (TDG) (updated August 2023). This provides supplementary guidance, being a material consideration of limited weight. Although the appellant suggests the site is not typical backland, I have not seen any circumstances which exclude it from an assessment against the relevant backland development plan policies.
7. The site is within an area of protection from further backland development, as identified by the Doncaster Local Plan (LP) (2021) Policies Map and Policy 44(C). Subject to various requirements, this policy supports backland housing, and states that modest redevelopment on backland sites may be considered acceptable. Its justification text further identifies that protection areas will generally be protected from backland development. Backland development is therefore not fully precluded as a matter of principle. A definition of 'modest' is a matter of planning judgement set against the site context. Compared to the number of dwellings to either side, and the 10 dwelling threshold for major development in the National Planning Policy Framework ('the Framework') (2023), I find 5 dwellings to be modest.
8. However, the Policy 44 intent is to retain the prevailing character of these areas, and so requires minimising the loss of rear domestic gardens due to the need to maintain local character, amenity, garden space, green infrastructure, and biodiversity. Development should generally conform to existing plot sizes and not lead to overdevelopment or a cramped appearance. This is reinforced in Policy S3 of the Sprotbrough Neighbourhood Development Plan up to 2035 (NDP) (2020), with residential development in rear gardens resisted where there would be an unacceptable impact on the character of the local area in terms of loss of openness, mature trees, and a significant increase in the density of built form. Therefore, the principle of the proposal cannot be divorced from its impact on the character and appearance of the area.
9. The proposal would result in the loss of 17 Category B trees identified as having moderate quality and value, 10 Category C trees, and 1 Category U tree. Many are protected by TPOS, indicating that they have been deemed worthy of special protection. Pruning would also be required to some retained trees due to the proximity to the new dwellings. There would be additional planting and a landscape buffer, and some tree retention including the adjacent woodland, which would result in more landscaping and natural areas than the adjacent sites. Some trees for removal are also identified as having structural issues. However, the trees have a strong positive contribution towards the area's established green and open character, and the loss of this significant green backdrop would be substantial overall.

10. Outstanding details for tree protection methods during construction could be addressed via a condition. However, it is not unreasonable to assume that due to the proximity of some of the trees by and within plots 1 to 3, future occupiers may have dissatisfaction or anxiety with shade, and falling leaves and debris. The arboricultural survey refers to this potential to some extent, as well as from potential issues with building insurers. Over time there would be a significant risk of pressure for substantial pruning or complete felling of some trees, which could be difficult for a reasonable local planning authority to resist. As a consequence, the site may become even more urbanised. I therefore find overall that the extent and potential extent of tree loss, would cause harm to the area's prevailing verdant character.
11. As such, I cannot assess the impact of the built form of the proposed development in isolation from this loss. I do find that it would generally follow the character of the more recent developments of Birch Close and Burghley Court close to either side, to which I give more precedence than the built form of the Park Drive dwellings. The new dwellings would not have abnormally short gardens in comparison, and the remaining size and length of the Park Drive gardens would still be significant. The new dwellings would also not dominate the frontage properties, as advised in the TDG.
12. However, the massing on some plots would appear overbearing in combination, and in contrast to the site's current openness. Along with the large areas of paving, this indicates an overall overdevelopment of the site. The conflict with and overshadowing from the retained trees would also give the impression of a cramped layout. It would be overdevelopment and a significant increase in the density of built form overall.
13. I thus find the proposed development unacceptable having regard to its backland location, including its harmful effect on the character and appearance of the area with particular regard to tree loss. As such, it would conflict with the LP Policies 10, 32, 41, 42, and 44, and the Sprotbrough NDP Policy S3. Together these provide tree protection, and require proposals to be high quality development which is sympathetic to the character of the area and respond positively to their context, to not be overbearing, and to be well integrated with the built and natural environment. It would also similarly conflict with the Framework paragraphs 130 and 131, and the TDG.

Living Conditions

14. The existing area of road between the side elevations of Nos. 34 and 37 Birch Close includes a pedestrian footpath to each side of the carriageway, plus a further small strip of land alongside No. 34. Each dwelling has an outwards opening kitchen window in these elevations. While relatively small, and acting as additional windows to the main elevations, they do provide ventilation, light, and outlook to the habitable room of the main kitchen/dining/family space. They are not set back behind any defensible boundary, and the windows open outwards, which for No. 37 would be fully across the pavement.
15. The more intensive use of these footpaths as part of the site's access would therefore cause issues regarding these windows which only rarely apply at present. There would be some loss of privacy, and potential physical harm from pedestrians bumping into them.

16. There would also be increased noise and disturbance to Nos. 34 and 37 due to additional vehicle movements. However, this would not be of such magnitude from 5 dwellings that I find it would be unduly harmful within the residential layout. The high brick walls to the gardens would also block some noise.
17. Paragraph 3.5.9 of the TDG does identify that backland access routes should be a minimum of 3m to the edge of the nearest house, and with appropriate boundary screening. However, the access road already exists in its current form, and the red line boundary does not include this area. I therefore do not find the guidance sufficiently material such that it would suggest a reason for refusal in this regard.
18. With regard to overlooking, the TDG states that there must be at least 10m to the boundary from rear elevation habitable room windows, to avoid harm to neighbouring gardens. Although the gardens of Plots 4 and 5 would fall slightly short of this, I cannot see that this would cause harm to the living conditions of their future occupants or those in the Park Drive dwellings. Those gardens are a minimum of 49m in length, which is more than sufficient to avoid any significant overlooking between windows, and would also allow for sufficient privacy for the vast majority of the garden areas.
19. Similarly, although the plot 4 and 5 dwelling heights would be somewhat imposing, this would rarely be perceived at close range such that they would not be dominating or overbearing. Overshadowing would only be across a very small proportion of the Park Drive gardens.
20. Although not cited within the reason for refusal, the Council's evidence also refers that tree overshadowing would cause harm to the living conditions of occupiers of plots 1-3. The arboricultural report suggests that the plot 2 tree would dominate the garden as it grows, alongside the similar potential from the other trees in those gardens and the woodlands. Although non-habitable rooms would be closest to the areas of shade, overshadowing would lead to a poor quality of external environment. The TDG as the relevant detailed guidance states that at least 50% of a private amenity area should receive unobstructed sunlight in summer, which I have not been convinced could be achieved. I note there was no objection from the Environmental Health team, but this does not indicate a lack of general harm.
21. Overall, the proposal would cause harm to the living conditions of the occupiers of neighbouring properties, with particular regard to privacy and disturbance. There would also be harmful overshadowing of the gardens for the site's future occupiers. As such, it would conflict with the LP Policies 10 and 44, which together and amongst other matters, seek to provide for an acceptable level of residential amenity for existing and future residents, and for no significant impact on living conditions including privacy. It would also conflict with the Framework paragraph 130 which requires a high standard of amenity for existing and future users, and guidance within the TDG.

Other Matters

22. A lack of appropriate mitigation for the site's proposed tree loss was a reason for refusal. The LP Policies 32 and 33, amongst other matters, require sufficient replacement planting where trees are to be removed, which can include off-site financial compensation.

23. The appellant's appeal evidence includes a signed Unilateral Undertaking (UU) to this end. However, the Council does not accept its provisions, and so has maintained its reason for refusal. Despite this, I have not considered any matters relating to this financial contribution to be a main issue in this case. This is because the main parties have agreed both the need for the contribution, and the amount of money to be paid. The only matter for determination would be whether the UU has been properly executed and would be sufficiently binding, such as to guarantee the payment. However, as I am dismissing the appeal on other grounds, the UU will not come into effect. As such, a detailed assessment to this end is not necessary.
24. The benefits of the proposed development would be 5 additional dwellings in an urban area. This is supported in general by the Framework which seeks to significantly boost the supply of homes, but I have no evidence that there is a local housing undersupply, or that the types of dwellings would meet any specific housing requirement. Therefore, the dwellings would only be a limited benefit. There would also be a short-term economic benefit from construction, and an economic benefit from the spending from new occupants, but again this would be limited. I find these to be modest benefits overall, to which I give moderate weight. The landscape buffer, tree planting, and landscaping would also provide additional habitats, alongside the off-site ecological mitigation for the tree loss. I give this biodiversity benefit limited weight.

Conclusion

25. The proposal conflicts with the development plan as a whole. With no other material considerations outweighing this conflict, for the reasons given above I conclude that the appeal is dismissed.

L N Hughes

INSPECTOR