



Appeal Decision

Site visit made on 16 January 2024

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th January 2024

Appeal Ref: APP/N4720/W/23/3328452

Old Water Tower, Quarry Lane off Spring Lane, Scarcroft, Leeds, LS4 3HZ

- 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 T M Zaman against the decision of Leeds City Council.
 - The application Ref 23/00688/FU, dated 2 February 2023, was refused by notice dated 17 April 2023.
 - The development proposed is a change of use of land from a sui generis use associated with demolished water tower to residential for the construction of one new dwellinghouse (Use Class C3), with associated access, driveway and landscaping works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in planning decisions. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes, albeit the numbering of paragraphs. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context.
3. With the appeal the appellant has submitted an Arboricultural Impact Assessment (dated May 2023) (AIA) along with a Tree Protection Plan; and a Drainage Report from WA Consulting dated 23 August 2023 (DR). The Council and other interested parties have had the opportunity to comment on that information, I am satisfied there would be no unfairness to any interested party by accepting this information. Consequently, the appeal will be determined on this basis.
4. In light of the information submitted with the appeal, the Council has confirmed that subject to a suitable planning condition, its reason for refusal no.4, relating to drainage is no longer relevant and has withdrawn that reason for refusal. The appeal has been determined on that basis.
5. The Council has also accepted in its statement that there would be no unacceptable pressures to prune trees 001 and 002 as a result of the proposal, and the relevant part of reason for refusal no.1 no longer apply in this respect. Accordingly, the appeal has also been determined on this basis.

6. The Council have advised that after detailed enforcement investigations they have concluded that there is an extant planning permission¹ on the appeal site for a dwelling, subject to the discharge of some outstanding conditions. Notwithstanding that objectors do not agree, particularly regarding outstanding conditions, I do not have any substantive evidence to dispute that there has been a lawful commencement of development to rebut the Council's opinion. Consequently, I have had regard to the extant approval in my decision insofar as it is relevant to the appeal proposal before me.

Main Issues

7. The main issues are:

- Biodiversity net gain (BNG);
- The effect of the proposal on trees;
- The effect of the proposal upon the living conditions of the occupiers of No. 43 Bracken Park, with particular regard to outlook; and,
- Whether there would be satisfactory living conditions for future occupiers of the proposed dwelling, with particular regard to the proximity of trees.

Reasons

Biodiversity net gain (BNG)

8. Policy G9 of the Leeds Core Strategy (Selective Review 2019) (CS) requires there to be an overall BNG on new development. In addition, paragraph 186 of the Framework states opportunities to improve biodiversity in and around developments should be integrated as part of their design, especially where this can secure measurable net gains for biodiversity.
9. The Preliminary Ecological Assessment dated July 2022 (PEA), and the Preliminary Ecological Appraisal & Biodiversity Net Gain Assessment Report dated September 2022 (PEABNGAR) identified 4.23 existing habitat units and 0.14 existing hedgerow units at the appeal site. The PEABNGAR calculated that post development there would be 3.90 habitat units and 0.14 hedgerow units, representing a 7.7% reduction in habitat units, no net gain in hedgerow units, and an overall net loss in biodiversity. The calculations are said to include the retention of the existing planting.
10. The calculations pre-date the AIA submitted with the appeal, so it is unclear how the proposed new beech hedge, and additional woodland planting mix would affect the post development hedgerow and habitat units. Whilst this could result in a net increase in hedgerow units, it is not clear if, or how, such proposals would affect habitat units. Furthermore, it was made clear in the PEABNGAR that BNG is unlikely to be achieved on site alongside the proposed development.
11. In addition, no BNG management plan has been submitted to demonstrate how BNG could be provided either on or off the appeal site. Whilst the appellant has indicated that they would be willing to provide a contribution to achieve BNG off-site, there has been no details provided of the exact BNG or an identified site to deliver it, or a legal agreement to secure its delivery and

¹ Ref: 12/00854/FU

future management. I am therefore unable to attach weight to the appellant's proposal to provide BNG off-site.

12. BNG is a requirement of the development plan, whilst it was not required on the extant permission, this proposal is in a much different location to the extant approval and occupies a larger footprint. Consequently, its effect upon biodiversity would also likely be much different to the extant scheme. As such, I did not find the extant permission to justify this proposal not achieving BNG.
13. I therefore conclude on the basis of the information before me, the proposal would not achieve BNG and would conflict with Policy G9 of the CS, and paragraph 186 of the Framework, insofar as they seek to protect and conserve biodiversity, and ensure that BNG is achieved.
14. Policy GP5 of the Leeds Unitary Development Plan (Review 2006), adopted July 2006 (UDP) seeks to avoid to problems of environmental intrusion, as such I did not find this policy to be directly determinative in regard to BNG.

The effect on trees

15. The appeal site contains several trees, and most of them, apart from a small area nearest its boundary with No. 43 Bracken Park, are protected by two Tree Preservation Orders². I am aware of the site's planning history relating to trees, and that previously it contained more trees than it currently does. However, I am only able to assess the effect of the proposed development upon the existing trees at the appeal site, consequently my assessment is limited in that regard.
16. Tree 023 is an oak tree, it has a large canopy which is said to mostly be on its sides away from the proposed dwelling, and would be some 8 metres away from the side and corner of it. The tree is tall and makes a positive contribution to the site and the immediate area. Its canopy is said to be within 4.5 metres of the proposed dwelling, and it is also stated that the tree has the potential for 40 years or more of future growth. It would not be inconceivable that it could grow considerably over that time and extend much closer to, or be in physical contact with the proposed dwelling including its roof, and shed leaves on and near it. This would present pressure for felling or pruning the tree, harming its long-term growth potential.
17. Whilst the proposal would be outside of its root protection area, Leeds City Council's Guideline Distances from Development to Trees Securing Space for Existing and New Trees, updated March 2011, revised February 2021 (GDDT) advocates a separation distance for this oak tree of 20 metres from the side of the proposed dwelling and 10 metres from its corner. Whilst these distances are a guide, due to the long-term growth potential of the tree, and even taking the Council's mid-point separation distance of 15 metres, the tree proposed dwelling would be too close to this tree. As a result, to protect the tree for the long-term, due to the positive contribution it makes to the area, a much larger separation distance would be necessary.
18. Furthermore, in the absence of detailed justification for the proposed siting, and in view of the extent of the site, it is unclear why the proposed dwelling has to be sited so close to tree 023.

² Refs. TPO1977 016 & TPO2023 006

19. Tree 019 is a birch tree, said to be positioned some 6 metres from the rear of the proposed dwelling and its root protection area would be approximately 2 metres from it. It has a canopy said to be 7 metres above the ground level and mostly on its sides away from the proposed dwelling, and it is also said to have 10-20 years of growth potential. This tree, which has a tall relatively slender trunk without any low-lying branches would be unlikely to create pressure for pruning works. As such I find it unlikely that the proposal, subject to conditions regarding construction works, would harm this tree. For these reasons, I do not consider the suggested 12 metre separation referred to in the GDDT would be necessary in this case.
20. Of the 3 recently planted new trees, 020, 024, and 046, their growth potential would likely create pressure in later years for pruning works as their crown spreads would likely significantly increase and disrupt the outdoor space and result in branches near or touching the proposed dwelling. The appellant's proposal to remove/replace these trees with 6 no. trees (3 no. limes and 3 no. beech trees) planted towards the edge of the site nearest Quarry Lane, would allow future space for these trees, and protect the appearance of the area and ensure its verdant appearance would be maintained from public viewpoints along that road.
21. Whilst the Council say this would undermine their earlier works to secure their replanting, this would not in itself be sufficient justification to prevent alternative and additional re-planting. Furthermore, the proposed new planting would also ensure their biodiversity, climate change and air pollution objectives relating to the re-planting was not undermined.
22. Concerns have been raised about the effects of drainage works on trees. However, as the appellants have submitted an AIA that shows both foul and surface water draining off-site, ground disturbance works should be away from root protection areas. Had I been minded to allow the appeal, these issues could have been addressed through planning conditions to ensure no ground disturbance works are undertaken within root protection areas and to control routes of underground pipes. In addition, conditions could also have been imposed regarding ground and finished floor levels, and to ensure ground surfacing works, such as paths and patio areas are also outside of the root protection areas.
23. In terms of other trees on and near the appeal site, there are no specific concerns now raised by the Council, and I see no reason to disagree.
24. The proposed dwelling is much closer to tree 023 than the dwelling on the extant permission. As such, its effect on that tree would likely be much greater. Accordingly, the extant permission does not lead me to conclude differently regarding the identified harm to tree 023 on this appeal proposal.
25. To conclude, the proposed development would likely have an adverse effect upon the long-term health of a protected oak tree (T023) which would be harmful to the appearance of the area and conflict with Policies P10 and P12 of the CS and Policies LD1 and GP5 of the UDP and Policy LAND2 of the Natural Resources and Waste, Development Plan Document, dated November 2010, that amongst other things require the siting of new development to respects its surroundings, protect existing trees and allow sufficient space for trees to be retained in a healthy condition to grow to maturity without significant adverse effect on the amenity or structural stability of the

buildings, and that planning considerations relating to landscaping and design are resolved.

26. I also find the proposal to conflict with paragraph 135 of the Framework insofar as it requires new development to function well and add to the overall quality of an area, not just for the short term but over the lifetime of the development, respect its landscaped setting and have appropriate and effective landscaping. In addition, I find the proposal to be inconsistent with one of the objectives of Leeds City Council's Neighbourhoods for Living, A Guide for Residential Design in Leeds, Supplementary Planning Guidance, dated 2015 (SPG) of providing good housing design that respects local character. There was also conflict with the GDDT in terms of the distance between the oak tree and the proposed dwelling, and its primary objective of protecting existing trees.
27. I did not find Policy G9 of the CS to be determinative on this main issue, as that policy is concerned with biodiversity enhancements.

Effect on existing living conditions

28. No. 43 Bracken Park is located to one side of the appeal site, on lower ground levels, there is some space between its side elevation and its boundary with the appeal site. The partly diagonal alignment of No. 43 in relation to the appeal site, results in its rear elevation being partly orientated towards the common boundary. However, there is considerable planting on the boundary between it and the appeal site, including a tall leylandii hedge and a tree, all of which is in the garden of No. 43.
29. The proposed dwelling is sited behind No. 43, with a lower two storey part nearest the common boundary, said to measure 7.8 metres at its highest point. The proposed dwelling has part of its side elevation set-in to ensure separation space is provided between the proposed dwelling and the boundary to No. 43. This together with the established tall boundary planting, would ensure the siting of the proposed dwelling would not be harmful to the outlook from within No. 43, or its garden area, and the proposal would not appear oppressive or enclosing. I note that the tall leylandii hedge is different to a physical building, nonetheless it still forms a significant tall boundary feature.
30. For the same reasons relating to the separation and existing planting, the mass of the proposed dwelling would not have unacceptable daylight or sunlight effects upon the living conditions of the occupiers of No. 43.
31. I therefore conclude the proposed development would not have unacceptable effects upon the outlook of the occupiers of No. 43 Bracken Park and would provide satisfactory living conditions. In light of this, the proposal would comply with Policy P10 of the CS, Policies GP5 and BD5 of the UDP that amongst other things require new development to protect and avoid a loss of residential amenity and allow satisfactory penetration of daylight and sunlight to neighbouring occupiers.
32. The proposal would comply with paragraph 135 of the Framework that requires a high standard of amenity for existing and future users. In addition, the proposal is also consistent with one of the objectives of the SPG in relation to safeguarding amenity by ensuring satisfactory space between properties.

Effect on future living conditions

33. Trees 019 and 023 are most likely to affect the future living conditions of occupiers of the proposed dwelling. Tree 019's canopy at a height of 8 metres above ground level, mostly on the sides away from the proposed dwelling would be unlikely to create unacceptable levels of foliage. Even in leaf its canopy would not be particularly large, and I note from the AIA it is expected to have another 10-20 years of growth.
34. It would be located nearest to a proposed rear ground floor kitchen window, with a large first floor bedroom window above it. The outlook from within either of these rooms would mainly be of the stem of the tree, which is not particularly wide. The location and shape of the tree would allow ample light into the nearest rooms and their outlook would not be compromised given the narrow stem and its raised canopy. Furthermore, it would also be seen against other trees also to the rear of the proposed dwelling on the site and near to it. Whilst there would be some shading from its canopy, given its orientation it would not unacceptably shade the rear windows of the property and there would be adequate unshaded outdoor space around the proposed dwelling to ensure it would not adversely affect the living conditions of future occupiers.
35. Tree 023's canopy is said to be straggly, and it would be some 4.5 metres from the proposed dwelling. The proposed accommodation nearest to the tree would be a ground floor family room, served by large glazed double doors on both its rear and side elevations. Above at first floor, would be a small dressing room window on the side elevation and an ensuite window in the rear elevation. The oak trees canopy is also mostly located away from the proposed dwelling.
36. Notwithstanding that the tree has more than 40 years of growth and the harm identified above, given its canopy shape and height, it being nearest to a corner of the proposed dwelling, the large double doors on two elevations serving the family room, there should be no unacceptable loss of light or shading, even taking into account its long-term growth potential. There would also be ample outdoor space retained particularly to the side of the proposed dwelling. As such I do not consider this tree would harm the outlook for future occupiers of the proposed dwelling.
37. I am also satisfied that there would be no other harmful effects from other trees upon the living conditions of future occupiers of the proposed dwelling.
38. I therefore conclude that the proposal would provide satisfactory living conditions for future occupiers of the proposed dwelling and comply with Policy P10 of the CS, and Policies GP5 and BD5 of the UDP, that amongst other things require new development to protect the residential and general amenity of the area through high quality design that provides useable space, and requires consideration is given to the amenity of new development, ensuring satisfactory penetration of daylight and sunlight, and avoids loss of amenity.
39. The proposal would also comply with paragraph 135 of the Framework that requires a high standard of amenity for existing and future users. In addition, the proposal would also be consistent with one of the objectives of the SPG by safeguarding amenity. The reference within the SPG to a distance of 7.5

metres, refers to the secondary curtilage boundary, not to trees within its curtilage. I therefore did not find conflict between the proposal and the SPG.

Other Matters

40. I note the planning history, including enforcement investigations referred to in the appeal documentation. I have had regard to these issues insofar as they relate to the matters before me on this appeal.
41. There have been many objections raised to the proposal, some of which go beyond those relating to the main issues. However, as I am dismissing the appeal, it has not been necessary for me to address the other issues raised in my decision.
42. Reference has been made to a planning appeal that was dismissed on this site in 2008, for reasons relating to its effect upon trees and the character and appearance of the area. The appearance of the trees on the appeal site, evidenced by submitted photos, are now much different from the time that earlier appeal was determined. I have assessed the effect of the appeal proposal upon the trees currently at the appeal site in my decision above. In addition, some of the main issues with this appeal are different to the earlier appeal. For these reasons I attach limited weight to that earlier decision.
43. The appellant has stated that the proposed dwelling would relate well to the character and appearance of the area; that there are no highway objections; contaminated land information could be conditioned; and there would be no unacceptable overlooking. These points are noted; however, they are also requirements of any well designed development and neither weigh in favour or against the proposal.

Conclusion

44. Although I find the effects of the proposed development upon existing and future living conditions to be satisfactory, I find the proposal would harm an existing protected tree and not provide BNG. As a result, I find there to be conflict with the development plan taken as a whole, and that the proposal would not comprise sustainable development. There are no other considerations, including the Framework, which indicate a decision other than in accordance with the development plan. I therefore dismiss the appeal.

A Hunter

INSPECTOR