
Appeal Decision

Site visit made on 26 January 2024

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/Z4718/W/23/3321257

Woodside Quarry, Holmfirth Road, Meltham, Holmfirth HD9 4DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Adrian Saxton against the decision of Kirklees Council.
 - The application Ref 2019/60/93038/W, dated 18 September 2019, was refused by notice dated 4 November 2022.
 - The development proposed is outline application for proposed residential development on former quarry land.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This is an outline application with all matters reserved. The appellant has submitted a suggested layout but I have taken this to be indicative only.

Main Issues

3. The main issues are the effects of the development on:
 - The living conditions of future occupiers, with particular regard to light and other concerns; and,
 - Protected woodland and its contribution to the character and appearance of the area.

Reasons

Woodside Quarry

4. The appeal site is a former quarry located directly alongside Holmfirth Road, in a steep, near north facing and largely wooded valley. To the rear a rough cliff face rises up to a height of around 8 – 10 metres in places. Along the road boundary there are what appears to be sizeable mounds of made-up ground, possibly spoil from the quarrying operations. These mounds are now heavily populated with self-seeded birch trees and a few other species. There are also trees seemingly growing out of very steep ground near the site boundaries as well as several instances of trees which have fallen from higher ground into the former quarry. The central areas of the site are currently being used in association with a tree surgery business and storage.

5. Planning Practice Guidance (PPG) states that Tree Preservation Orders (TPOs) are made in order to protect specific groups of trees or woodlands in the interests of amenity. Amenity is not defined in law but in this context, orders may be made on the basis of public visibility, its future potential as an amenity, or contribution to and relationship with the landscape, amongst other considerations. PPG goes on to state that orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public.
6. Policy LP33 of the Local Plan (LP) states that the Council will not grant planning permission for developments which directly or indirectly threaten trees or woodland of significant amenity. As the site is covered by a Woodland TPO, I conclude that the woodland falls within the category of significant amenity.

Living conditions

7. The cliff face on the southern and eastern site boundaries will cause overshadowing on the site each day, with the extent of shade varying throughout the year. This would reduce light entry into a dwelling and across amenity areas. In addition, as the sun tracks to the west during the day, shade would be cast by the trees situated on the site's western boundary. These are shown as being up to 17 metres tall, and their shading effect would be extended by their positions on the elevated mounds, some of which are several metres higher than the central areas of the site, which is most likely to be where a dwelling and its amenity areas would be situated.
8. The drawings show indicative shade arcs for the trees, but the extent of shade cast from any obstruction changes throughout the year. Although it is not specified on the drawings, what is shown appears to indicate a point in summer when the sun is high in the sky. The arcs do not appear to show the full extent of shade in spring, autumn and winter when the shadows would be very much longer and would probably, given the height of most trees relative to the site levels, extend across the whole site.
9. My experience is that many people occupy dwellings in proximity to protected trees without being fully aware of the implications. I appreciate that there may be potential occupiers who wish to live in such shady conditions and my previous experience of people who are intolerant of the proximity of trees or shade may be unrepresentative. Nonetheless, the additional maintenance associated with leaf litter, debris and moss growth and having inadequate light in the dwelling or amenity areas is not always welcomed or accepted. Over time those concerns can outweigh the perceived advantages. In this case, the dwelling and its external areas would be heavily shaded at times by nearby trees, and shading and light loss would be exacerbated by the cliff face. This would be the case wherever the dwelling was located within the site.
10. Moreover, many of the trees on the site do not appear to be well-grounded in the substrate. A large proportion are disproportionately tall with narrow canopies and appear to be rooted into made-up and elevated ground, or the steep slopes on the boundaries. Trees in these situations tend to be susceptible to wind damage as they lack sufficient anchorage, particularly as they increase in height and sail resistance. My reasoning in this regard is reinforced by the number of fallen trees I saw at my visit. It is commonplace that people living close to trees that flex in the wind in stormy weather attribute stress and

anxiety to the presence of such trees, as natural movement is perceived as affecting their stability. This can lead to pressure for felling.

11. As such, I conclude that there is no certainty that the Council would not come under pressure to allow works to nearby trees. In fact, I consider that this outcome would be highly likely. It is not necessarily the case that the Council would have ultimate control over any works as a refusal could lead to an appeal.
12. I conclude therefore that the development would have an adverse effect on living conditions for future occupiers with particular regard to light and other concerns. This would conflict with LP Policy LP24 which requires a high standard of amenity for future occupiers. In addition, there would be conflict with the guidance in the Housebuilder's Design Guide which also sets out that permission will not be granted for development which directly or indirectly threatens trees or woodlands of significant amenity. The development would also fail to comply with the provisions of Paragraph 135 of the National Planning Policy Framework (the Framework) which requires development to provide a high standard of amenity for future occupiers, amongst other considerations.

Woodland

13. In 2020 an appeal¹ for the removal of seedlings from open areas of the site for a ten year period was dismissed. The Inspector concluded that keeping areas free of seedlings would prevent regeneration and would perpetuate the absence of trees from part of the site which would have an adverse effect on longevity and the future structure of the woodland. An earlier consent², dated July 2019, to allow the open areas of the site to be kept weed-free for five years, expires in a few months. The Council refused an application made in 2021 to increase the area to be kept clear of seedlings. This has been appealed but I do not have the appeal decision in the evidence before me.
14. The argument is advanced that the Council accepts that the removal of seedlings from given areas would not affect the amenity value of the woodland. However, as noted above, the current consent expires in a few months. Woodland orders are made to safeguard a woodland as whole. Trees and saplings which grow naturally within the woodland after the area is made, are protected by the order. Moreover, it is in the cyclical nature of woodland that open areas are colonised by seedlings which then replace older trees as they senesce, creating a dynamic mosaic over the area, over a long period of time. Removing areas available for recolonisation will have an adverse effect on regeneration and long term amenity. My conclusions in this regard are reinforced by the previous appeal decision.
15. As this is an outline application there is no need to provide a definitive layout. However, irrespective of the current distribution of vegetation across the site, the excavation of access, hardstanding and a dwelling and amenity areas will reduce the area available for woodland regeneration, whether those areas currently contain seedlings or not. As such, I am unable to conclude that even one dwelling could be constructed without harm to the woodland and its long-

¹ Ref: APP/TPO/Z4718/7563

² Ref: 2019/91646

term sustainability as a consequence of excavation and the extent of building and activity across the site.

16. Moreover, there are limited options with regard to the site entrance. The evidence suggests that a no-dig approach would be deployed where the access drive would cross the Root Protection Zone (RPZ) of one of the better trees on the site, T1. However, this would raise finished levels over the TPZ. Given the distances and heights involved and the need to create a graded access, I am unable to conclude that the RPZ of T1 could be protected.
17. I acknowledge that there is no evidence that the appellant is using the site unlawfully and continued operations could prevent the regeneration of the central area of the site. Repeated movement and activity across the site could prevent seedlings establishing as effectively as herbicide. Whilst residential development could present an opportunity to plant trees in more stable situations and with greater longevity on the site, it seems likely that the central and more sheltered areas of the site would be used for residential development. In any case, this would not alter my reasoning with regard to living conditions.
18. It seems likely to me that many of the trees currently on the periphery of the site will not reach maturity as a consequence of their compromised growing conditions. However, the entire site is covered by the woodland order and allowing residential development within the site would prevent regeneration from occurring within the central areas of the site, which would be harmful to the woodland's long term sustainability. Moreover, given that I have concluded that it is very likely that there would be pressure to carry out tree works, the development would also diminish the contribution the site makes to the local largely wooded landscape as Holmfirth Road winds down into Meltham. As such, the proposals would have an adverse effect on the protected woodland and its contribution to the character and appearance of the area. This would be contrary to LP Policy LP33, as set out above, as well as LP Policy LP24 which that proposals should contribute to the enhancement of the natural environment, and retain valuable or important trees, amongst other considerations, as well as similar guidance in the Householder's Design Guide.

Other matters

19. There are older stone dwellings nearby which have been built at the base of significant slopes and a dwelling on this site would not be out of keeping with the local development pattern, particularly if local materials were used. However, this does not alter my reasoning as set out above.

Conclusion

20. The development would fail to accord with the local development plan with regard to the protection of local woodland. Although there would be some minor benefit from residential development which would contribute to local housing supply as a windfall contribution, this harm would not outweigh the conflict with the local development plan. The appeal is dismissed.

A Edgington

INSPECTOR