



Appeal Decision

Site visit made on 5 February 2024

by L Wilson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/W4705/W/23/3331646

2 Lucy Hall Drive, Baildon, Bradford BD17 5BB

- 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 Jason Hodson against the decision of City of Bradford Metropolitan District Council.
 - The application Ref 23/01752/FUL, dated 19 May 2023, was refused by notice dated 9 August 2023.
 - The development proposed is demolition of existing dwelling and erection of two detached dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This application is attached as a separate Decision.

Preliminary Matters

3. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published. In relation to this appeal the relevant parts of the Framework are similar. Consequently, I have not gone back to the parties for comments. Whilst I have had regard to the Framework in reaching my decision, no party would be prejudiced or caused any injustice by me taking this approach.
4. Amended plans have been provided with the appeal submission which increase the size of the windows on the rear elevation of the proposed dwellings. The appeal process should not be used to evolve a scheme. Whilst the changes are relatively minor, they materially alter the proposed development. My consideration of the amended plans could prejudice those with an interest in the appeal and alter matters fundamental to the case. I have therefore considered the appeal on the basis of the scheme and the plans which were before the Council when it made its decision.

Main Issues

5. The main issues are:
 - The effect of the nearby trees on the living conditions of future occupants of the proposed development, and linked to that, whether there would be future pressure to prune or fell the protected trees; and

- The effect of the proposed driveway surface on highway safety.

Reasons

Living Conditions

6. No 2 is a detached dwelling situated within a residential area. To the rear of the site is a woodland area which is covered by a Tree Preservation Order (TPO), known as West Ings Wood, and there are also trees to the site's frontage. The trees are substantial, mature trees.
7. Trees can provide benefits, such as helping to mitigate and adapt to climate change, and that is acknowledged in the Local Plan for Bradford District: Core Strategy Development Plan Document (2017) (CS). The trees are deciduous and when the impact of the trees will be at their highest, they would create shade which would reduce the dwellings temperature. Having said that, the shade from the trees could result in future occupiers having a greater reliance on energy usage. Nonetheless, I am mindful that evidence has been provided to demonstrate that the electricity demand resulting from tree shade during the summer outweigh increases in demand for winter heating. Further evidence highlights that the sheltering of buildings from wind has been demonstrated to reduce winter heating costs.
8. It is important to strike a balance between the benefits of trees yet also ensure that adequate living conditions would be provided. As shown on the tree shade plan, the trees to the rear would cause significant shading when the trees are in leaf. This is because there would be a limited gap between the canopy of the trees and the proposed dwellings. The distribution of the shade would change throughout the day, sunlight would penetrate the tree canopy and the canopy would not overhang the dwellings. Nonetheless, the TPO trees would inevitably restrict light levels to the dwellings and gardens. The trees to the front of the site are unlikely to cause significant shading due to the position and spread of the trees, and movement of the sun.
9. A daylight assessment has been provided. The appellant highlights that the BRE Guidelines should be applied flexibly and states that for a room where the recommendation is exceeded in winter, but not in summer, daylight provision year round is likely to be adequate. There are some inaccuracies within the report, and therefore I cannot be sure that the results are accurate for the site. For example, paragraph 3.8 incorrectly states that the site is located in Manchester. The report sets out equivalent target daylight factors for Manchester, and these figures are reflected within the daylight factor tables.
10. The report provides daylight results for when the trees are in full leaf and bare branch. It is unclear why the layouts of the daylight factor tables are different. The bare branch table correctly sets out the 16 rooms. In contrast, the full leaf table has combined the living room with the kitchen/dining room which does not reflect the drawings. Setting aside the accuracy of the report, the results effectively show that, when the trees are in full leaf, only 6 of the 16 rooms would adhere to the BRE guidelines. None of the living rooms or kitchen/dining rooms would meet the guidelines when the trees are in full leaf. In winter 11 of the 16 rooms would adhere to the guidelines, with only bedrooms not meeting the recommended target values.

11. I recognise that bedrooms have less expectation for daylight but even in winter some of the bedrooms would fall significantly short of the guidelines. Given the number of rooms which would fail to meet the guidelines, including main habitable rooms where future occupiers would spend the majority of their time, the proposed development would not provide reasonable daylight conditions within the proposed accommodation throughout the year. Consequently, adequate light levels would not be provided within the proposed dwellings and the development would result in dark rooms.
12. Section 3.5 of the Council's Supplementary Planning Document¹ sets out that gardens should receive direct sunlight all year round, for at least part of the day. The daylight report does not specifically assess the development's relationship with the proposed garden areas. The trees would not prevent occupiers using the proposed garden areas, and the existing garden is not barren of vegetation. However, the garden areas would be heavily shaded, in the months when the gardens are most likely to be used, which would result in a poor quality area. The development consists of family sized dwellings so it is likely that future occupiers would spend a reasonable amount of time in the garden areas.
13. Given the limited distance between the dwellings and trees, there could be a perceived threat to property damage. Furthermore, given my findings above, it is likely that there would be future pressure to prune or lop the trees to improve light levels to the dwellings and garden areas. The appellant states that any pruning works, if undertaken, would be to the appropriate arboricultural standard. The trees make a significant and positive contribution to the character and quality of the area (as recognised by their inclusion in the TPO) so any alterations to the trees could have a harmful impact on the area. It would be difficult for the Council to resist applications to prune or fell in circumstances such as where safety is at issue.
14. The outlook of the rear facing rooms would be predominantly of the trees which would provide a natural backdrop. The distance between the trees and windows would ensure that the trees would not be harmfully dominating or result in an unacceptable sense of enclosure. The outlook would also not be dissimilar to other dwellings in the locality. Consequently, the proposed development would provide an acceptable outlook for future occupiers of the development. Having said that, future occupiers may initially place a high value on the contribution that trees make to the setting of the dwellings, failing to appreciate the implications and problems of living next to large trees.
15. The existing dwelling has been sited on the plot for numerous years without a need to prune the existing trees. However, the development results in two dwellings within the site. In contrast to the dwellings proposed, No 2 has a garden area to the rear and side as well as large windows to the front and windows to both side elevations. Furthermore, whilst the building line of the existing conservatory would not be dissimilar to the proposed rear elevations, the development would extend a notable bulk of development beyond No 2's main rear elevation. The main living spaces are proposed to the rear of the dwellings with the garages and dining/studies to the front. Consequently, the proposed dwellings would have a closer relationship with the trees than the existing dwelling.

¹ Homes and Neighbourhoods: A Guide to Designing in Bradford (2020)

16. The neighbouring dwelling cannot be directly compared to the circumstances before me and does not set a precedent as its design considered the relationship between the trees and dwelling. The dwelling was designed to have an angled south-facing elevation, part of the garden area to the side, and main living space at first-floor level.
17. The appellant highlights that there are other structures sited closer to the woodland than the proposed development. Extremely limited information has been provided regarding those cases, so I am unable to make a direct comparison. In any case I have considered the appeal proposal on its own merits, and do not consider that such considerations outweigh the harm I have found.
18. For the reasons given above, the proposed development would have a poor relationship with the protected trees and would result in low quality accommodation. As a result of the nearby protected trees as well as the siting and design of the development, the proposal would not provide satisfactory living conditions for future occupants of the proposed development which could result in future pressure to prune or fell the protected trees. Consequently, it would conflict with Policies DS5 and EN5 of the CS. These seek, amongst other things, to preserve and enhance the contribution that trees make to the character of the district and ensure development proposals do not harm the amenity of prospective residents. Even if I had accepted the amended plans, based on the evidence presented, the amended plans would not have overcome the harm I have found.

Highway Safety

19. The driveway of the proposed eastern dwelling falls within the root protection area of the oak tree to the site frontage. This restricts the type of surface that would be suitable for the driveway in order to ensure that the tree would not be harmfully impacted by the development. It is proposed that the driveways would be constructed using Geocell. The gravel would effectively sit in the Geocell. As a result of the topography of the area, the driveways would slope down from Lucy Hall Drive. I understand that the neighbouring dwelling's driveway is constructed of the same materials as that proposed.
20. The appellant has drawn my attention to the Arboricultural Association Guidance Note 12 (2020) which provides detailed technical guidance on the use of no dig installation, three-dimensional cellular raft systems for use within root protection areas. The guidance identifies suitable wearing course types which would mitigate the potential for unbound wearing course (e.g. gravel) spill into the highway.
21. I am satisfied that this matter would not be a reason to withhold planning permission and could be adequately addressed by a planning condition. Based on the evidence presented, the proposed development would not pose an unacceptable danger to road users on West Lane and Lucy Hall Drive, and public safety.
22. For these reasons, the driveway surface would not have an unacceptable impact on highway safety. Consequently, it would comply with Policy DS4 of the CS. This seeks, amongst other things, to ensure that the highway design is safe and provides suitable surface materials.

Other Matters

23. The appellant highlights frustrations with the Council, the principle of residential development is acceptable, the development would be in keeping with the area and the development would comply with the requirements of the development plan and the Framework. The other matters highlighted would not outweigh the harm I have found above.
24. The appeal site is located within the buffer zone of the Saltaire World Heritage Site (WHS). The proposed development would be in keeping with the character and appearance of the area, and would not impact key views in to and out of the WHS. Consequently, the proposal would have a neutral impact on the setting of the WHS.
25. The Council concede that the Housing Delivery Test results indicate that the delivery of housing has been below the requirements set out in the Framework. The development would result in a very limited contribution to housing land supply as it would only result in a net increase of one dwelling. The development would also provide very limited benefits to the local economy both during and after construction.

Planning Balance and Conclusion

26. I have found that the proposal would have an acceptable impact on highway safety. However, it would have a poor relationship with the protected trees and would not provide satisfactory living conditions for future occupants, which could result in future pressure to prune or fell the protected trees, to which I attach significant weight. The benefits of the development would be very limited.
27. Given the Council's housing delivery position, paragraph 11(d)(ii) of the Framework is engaged. Weight may still be afforded to policies depending on their consistency with the Framework. The most relevant policies are consistent with the aims of the Framework regarding the need to achieve well-designed places, create places with a high standard of amenity for future users, and recognise that trees make an important contribution to the character and quality of urban environments. There is nothing within the Framework to suggest that those requirements of all development should be lessened on account of the shortfall in housing delivery. In that context, I attach significant weight to the conflict with the development plan.
28. In considering paragraph 11(d)(ii) of the Framework, I must determine whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
29. For the reasons given above, the proposed development would not provide acceptable living conditions for future occupants and could result in future pressure to prune or fell the protected trees. The benefits associated with the appeal scheme carry very limited weight. Consequently, the adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
30. The proposal would be contrary to Policies DS5 and EN5 of the CS and I afford this conflict with the relevant policies of the development plan significant weight.

31. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other material considerations, the appeal does not succeed.

L Wilson

INSPECTOR