



Appeal Decision

Site visit made on 30 April 2024

by Diane Cragg Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/Z4718/W/23/3334247

Land south of 6 Dean Fold, Kirkburton, Huddersfield, HD8 0QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant [outline] planning permission.
 - The appeal is made by Mr Malcolm Quarmby against the decision of Kirklees Council.
 - The application Ref is 2022/60/90428/E.
 - The development proposed is outline application for a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of the development in the banner heading from the application form as there is little before me to confirm that an alternative description has been agreed.
3. The application was made in outline with all matters reserved for future consideration. I have dealt with the appeal on that basis, treating any details of reserved matters shown on the plans as being indicative.

Main Issues

4. The main issues are:
 - the effect of the proposed development on trees and protected woodland with particular regard to whether the development would preserve or enhance the character or appearance of the Highburton Conservation Area (HCA);
 - whether the proposed development would provide acceptable living conditions for its future occupiers;
 - the effect of the development on biodiversity; and
 - the effect of the development on highway safety.

Reasons

Trees and woodland

5. Dean Fold is an area of former railway land that has been developed with detached houses. Houses are adjacent to a steep embankment and sited to one side of the road frontage with gardens and woodland opposite. Broadly to the east of Dean Fold a footpath continues through woodland providing a pedestrian access to other parts of the village.

6. The appeal site is surrounded by woodland, much of which is protected by Tree Preservation Order No 3/1995 (TPO). The TPO is confirmation of the woodland's amenity value. The remainder of the appeal site is within the HCA where trees are afforded protection.
7. The significance of the HCA derives from the relatively urban form of the many stone constructed buildings within it, the social and industrial history associated with the former railway line, and its dramatic topography. Mature trees in woodland and gardens within the built confines of the village provide a backdrop to buildings, give the village a semi-rural quality and a connection with the wider rural landscape.
8. The appeal site and the woodland surroundings provide a linear green buffer between development fronting Penistone Road and the settlement of Highburton. The trees and vegetation provide a sizable undeveloped area that contributes to the significance of the HCA.
9. The tree survey and associated reports indicate that a group of goat willow and an acer tree would need to be removed to accommodate the development. The survey details demonstrate that it would be necessary to breach the root protection area (RPA) of 2 trees on the edge of the woodland adjacent to the appeal site and these trees would need to have their canopies lifted. The RPAs of other trees extend into the appeal site or are close to the site boundary. The proposal is in outline and the information of access and layout of the proposed scheme is limited.
10. In addition, third parties raise concerns about site drainage. The drainage document considers various options for dealing with surface water drainage. Several alternatives are ruled out with the option considered to be most feasible dependent on a discussion with an arboriculturist regarding the effect of infiltration drainage on trees. This report raises concern that development could not occur without detriment to other existing trees.
11. Further, the appeal site is accessed via a currently unmade section of land that sits between the front boundary fence of No 6 Dean Fold and a steep embankment falling away towards dwellings facing Penistone Road. There are trees adjacent to this proposed section of access road, but there is little before me on the effect of this part of the access on trees.
12. Overall, the evidence indicates that the proposal would result in the tree cover within and adjacent to the site being diminished and the woodland within the TPO being compromised. Based on the outline details provided the development would be detrimental to the character, appearance, and significance of the HCA.
13. While the appellant has set out how landscaping could be used to enhance adjacent woodland, landscaping is a reserved matter and not for my consideration here. Nevertheless, the proposed landscaping largely concentrates on providing tree cover in areas away from the appeal site. The landscape scheme does not represent sufficient justification for the loss of apparently healthy, relatively mature trees with extended life expectancy that are prominent towards the edge of the woodland and from Dean Fold that contribute to the street scene, woodland area within the TPO and the character and appearance of the HCA.

14. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to preserving or enhancing the character or appearance of conservation areas. The proposal would be modest, and in the terminology of the National Planning Policy Framework (the Framework) it would result in less than substantial harm to the significance of the HCA as a designated heritage asset. The Framework states that where a development proposal would lead to less than substantial harm to the significance of heritage assets, that harm should be weighed against the public benefits of the proposal.
15. Although I acknowledge below that the Council cannot demonstrate a 5-year supply of deliverable housing sites, the proposed dwelling would make minimal additional contribution to the delivery of housing and the economic, social and biodiversity benefits would be small. These public benefits would not outweigh the great weight to be given to the conservation of heritage assets. The proposal would therefore conflict with the Framework.
16. Moreover, I conclude that the proposal would be detrimental to trees and woodland and would be harmful to the character and appearance of the HCA in conflict with Policy LP33 of the Kirklees Local Plan Strategy and Policies (KLP) which seeks to resist development that directly or indirectly threatens trees and woodland of significant amenity value.

Living conditions

17. Trees around the perimeter of the site are estimated to be between 9 and 16 metres in height with life expectancies of 20 plus years. Some trees have canopies that overhang the site and trees would continue to grow.
18. Measures to reduce the effects of falling leaves and other debris could be considered at design stage and might resolve some of the effects of the proximity of the trees to the building. However, because of the shape, size, and the landform to the rear of the plot, and the trees adjacent to the appeal site it is likely that there would be significant shading of the proposed dwelling. As a consequence, there would be pressures from the future occupiers of a dwelling for the trees to be lopped, topped, or felled. This would reduce the amenity value of trees towards the edge of the woodland in a highly prominent location adjacent to Dean Fold and would not be reflective of the protection afforded by the TPO.
19. I conclude that the proposal would be harmful to the living conditions of future occupiers due to the proximity of trees. The proposal would lead to tree loss in conflict with Policy LP33 of the KLP which seeks to resist development that directly or indirectly threaten trees and woodland of significant amenity value.

Biodiversity

20. Species protected under the Conservation of Habitats and Species Regulations 2017, including all species of bats, are subject to a high level of legal protection. Circular 06/2005, advises that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by proposed development, is established before the planning permission is granted.
21. An initial bat scoping survey and report undertaken in 2018 concluded that there was moderate to high potential for both bat roosting as well as foraging

and commuting bats within the site. In January 2022, a further survey was undertaken, and its findings were recorded in an addendum to the earlier report. The addendum noted 8 trees with moderate bat roost potential (BRP) had been removed but other trees identified with BRP remained. Four trees previously identified as low BRP are retained and a further two trees with previously negligible BRP are now considered to have low BRP.

22. The addendum report also clarifies that the trees with moderate BRP require one dawn re-entry and one dusk emergence survey to determine whether roosting bats are using these trees. In addition, an activity survey is required as the site holds suitability for use by commuting and foraging bats.
23. As part of the appeal the appellant has submitted a Biodiversity Enhancement Plan and survey dated November 2023. This report acknowledges the need for additional survey work related to bat activity. However, no such survey work has been undertaken. Whilst the report proposes habitat creation, without the survey work I cannot be satisfied that the proposals would be appropriate in relation to bats, particularly given the need to consider avoiding effects on bats and their roosts in the first instance.
24. The Biodiversity Enhancement Plan acknowledges that the site has the potential to support other protected and notable species such as nesting birds and hedgehogs and the proposal would involve the removal of large portions of all the present habitats with likely disturbance to remaining habitats during the construction phase of the development. The plan advises that the enhancement plan should follow the mitigation hierarchy in BS 42020 retaining habitat as the first option, minimising impact as the second option and if these options are not available providing compensatory measures. It concludes that the loss of, and disturbance to, the remaining habitat can be offset via enhancement of the woodland and a management plan to maintain biodiversity. However, without appropriate survey work I am unable to establish that the enhancement proposals would be appropriate or acceptable.
25. The woodland management plan covers a 5-year period and is designed to be reassessed following an annual inspection. The management plan is proposed to be secured through a planning obligation, but I have no such agreement before me.
26. Overall, I cannot be satisfied that the development would not adversely affect biodiversity. The proposal would conflict with Policy LP30 of the KLP where it seeks to ensure that species of principal importance are protected, impact of development on biodiversity are minimised and provide net biodiversity gains. It would also conflict with the Framework where it states that development should contribute to and enhance the natural and local environment.

Highway Safety

27. Dean Fold is a narrow road but, it has a turn head and passing place along it. Notwithstanding my concerns about the proximity of the access arrangements to protected trees, the area of the appeal site is of sufficient size for turning facilities for its occupants and visitors to be accommodated within it. Further, there is no evidence that the existing road cannot accommodate the movement of refuse and emergency vehicles without compromising traffic movements on what is a no through route with limited traffic. I have little before me to suggest that the additional dwelling would result in conditions prejudicial to

highway safety and I am satisfied that the access road to the site could accommodate the traffic associated with an additional dwelling.

28. I conclude that the proposal would not be detrimental to highway safety and would accord with Policy LP21 of the KLP where it seeks to ensure that development can be accessed effectively and safely by all users. It would also accord with the Framework.

Other Matters

29. The Council confirms that it is currently unable to demonstrate a 5-year housing land supply (5YHLS) with the current supply being 3.96 years. Therefore, it is evident that there is a pressing need for housing when considering this shortfall.
30. The Government's objective is to significantly boost the supply of homes. Other provisions of the Framework give support to the development of under-utilised land and brownfield land within settlements and observe that small sites can make an important contribution to meeting the housing requirement. Nevertheless, the provision of one house would provide a minor contribution to housing.
31. One extra household would also support local services and facilities providing a small benefit to the local economy and community. While biodiversity enhancements are proposed, the lack of a bats survey and doubt over whether the management of biodiversity and the woodland can be secured as well as the effect of the development on trees limits the biodiversity benefits. Overall, I attach limited weight to the collective benefits of the scheme.
32. The Council indicates that the appeal site includes part of the route of a proposed core walk cycling route and refers to the effect of the proposed cycle link on trees. I have not been provided with details of the location of the cycle link or the effect this would have on any scheme design. However, given my decision above I have not found it necessary to consider this matter further.

Planning Balance and Conclusion

33. The fact that the Council cannot demonstrate a 5-year housing land supply triggers the circumstances in paragraph 11 d) of the Framework. In weighing the public benefits against the less than substantial harm to the HCA, I have considered the benefits of the scheme including the contribution to the Council's 5YHLS. I have concluded that the proposal would harm a designated heritage asset, the application of policies in the Framework that protect designated heritage assets provide a clear reason for refusing the proposed development in accordance with paragraph 11d)(i). As such, the presumption in favour of sustainable development does not apply.
34. The proposal would conflict with the development plan when taken as a whole and material considerations, do not indicate that the decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

Diane Cragg,

INSPECTOR