



Appeal Decision

Site visit made on 8 April 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th May 2024

Appeal Ref: APP/W4705/W/24/3336321

Site of former Unit 18 Manywells Industrial Estate, Manywells Brow, Cullingworth, Bradford BD13 5DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Malik on behalf of Eco Developments Yorkshire against the decision of City of Bradford Metropolitan District Council.
 - The application Ref is 23/00972/FUL.
 - The development proposed is construction of 1 dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Both parties, within their respective submissions had an opportunity to comment on the revised Framework. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.
3. I note the reason for refusal on the Decision Notice describes the trees to the north of the appeal site as '*protected trees*'. However, the Council's Officer Report states that the trees are '*...worthy of a Tree Preservation Order*' and the Council's Appeal Statement confirms that '*...whilst not currently subject to a Tree Preservation Order, they are considered to be worthy of one*'. The appellant's submissions also state that these trees are not covered by a Tree Preservation Order and I have not been provided with any details of any protected status in relation to these trees. Consequently, I have determined the appeal on the basis that these trees are not protected.
4. The appellant has submitted copies of complaints they have made to the Council in respect of the planning application process, as well as the Council's response(s) to these complaints. However, I have considered this appeal based on its planning merits and in line with the relevant planning policies.

Background

5. The application relates to a plot of land situated within a wider development site (hereafter referred to as the 'larger site') that is currently being developed for residential use (24no. dwellings). Planning permission¹ was granted for the

¹ Council ref: 21/03666/MAF

erection of these 24no. dwellings within the larger site in February 2023 and subsequently a Section 73 application² was granted to vary the approved plans condition, by way of changes to the previously approved house types. I observed on my site visit that construction of the 24no. dwellings on the larger site was at an advanced stage.

6. This appeal relates to a plot of land that, as approved under the aforementioned planning permissions, forms part of the front and side garden area of proposed Plot 24 on the larger site. The appeal proposal seeks to erect an additional single dwelling on this plot, taking the overall number of dwellings on the larger site to 25.
7. In the interest of clarity however, whilst the proposed additional dwelling would utilise the approved access road that will serve the larger development, this appeal seeks approval for a single standalone dwelling under its own separate planning permission.

Main Issue

8. The main issue is the effect of the proposed development on the character and appearance of the area, with respect to its effect on trees.

Reasons

9. Directly to the northwest of the appeal site is a dwelling, identified as Plot 24, currently under construction as part of the residential development of the larger site. To the south and east runs a section of the access road which serves this larger development. To the north is part of the Great Northern Trail footpath, which is a former railway line. This footpath is set on higher land than the appeal site and is separated by a relatively steep sloping former railway embankment. This grassed embankment currently contains a number of trees.
10. The trees within the embankment are visible from the appeal site and the larger site that is currently being developed. Furthermore, these trees are visible when using the former railway line footpath, as well as from the well-used highway of Manywells Brow to the west.
11. Whilst appreciating that when viewed individually each tree may not have specific visual amenity value, collectively the trees have group value and I observed on site that together they make a positive contribution to the character and appearance of the area. This positive contribution arises from both the visual relief the trees provide from the built development when viewed from the south and the attractive landscape buffer they provide when using the former railway line footpath to the north of the site. As these trees grow and mature, their collective value and the contribution they make to the character and appearance of the area would only increase further.
12. The appeal submission is supported by an Arboricultural Report & Impact Assessment (dated July 2021) (ARIR) and a separate Arboricultural Method Statement (dated Nov 2022) (AMS). Critically, the Tree Constraints Plan that accompanies the ARIR has not been updated since July 2021 and therefore the canopies and the root spreads of the trees within the embankment will inevitably have altered since this Tree Constraints Plan was drawn. Additionally, the Tree Protection Plan within the AMS does not show a dwelling on the appeal plot, and

² Council ref: 23/01273/VOC

the Tree Impacts Plan within the ARIR does not show the correct footprint of the proposed dwelling.

13. I note that the submitted site plan does show the proposed dwelling in relation to the trees on the adjacent embankment. However, this plan does not show the required root protection zones and it is unclear whether the canopies and root spreads shown on this plan have been updated from that shown on the aforementioned Tree Constraints Plan from 2021.
14. In view of the above, I consider the tree related documents (AMS and ARIR) submitted in support of this appeal to be out-of-date, as well as potentially inaccurate and missing important information. Consequently, the appeal submission includes insufficient information to ascertain the potential impact of the proposed dwelling upon the existing trees within the adjacent embankment, in terms of its impact upon both their canopies and root spread. As such, I have insufficient evidence before me to be confident that the proposed dwelling would not be constructed within the root protection zones of some existing trees within the adjacent embankment.
15. There is no dispute between the parties that as the trees are not protected the appellant could cut back overhanging branches and remove roots from their land. Nevertheless, for the reasons given above, I have insufficient evidence before me to ascertain which trees could be affected by the appeal proposal; details as to how their health would likely be affected by the cutting back of any overhanging branches and roots back to the boundary line; or what level of works could be undertaken to the trees without affecting their health.
16. As such, I cannot draw any direct comparisons between the works that could be undertaken by the appellant in relation to the cutting back of any overhanging branches and roots, and the potential impact of the appeal proposal on these trees during the construction phase.
17. In summary of the above, I have been provided with insufficient information to make any clear conclusion as to the potential impact the construction of the proposed dwelling would directly have upon the health of the existing trees on the adjacent embankment.
18. Furthermore, the siting of the proposed dwelling in relation to the adjacent trees, along with the short rear garden area that would be afforded to the proposed dwelling, would also likely result in tree resentment issues for future occupiers by way of impacts arising from overhanging branches and overshadowing. The submitted tree reports predict a life expectancy ranging from 10 to 40+ years for the trees on this embankment, and thus it is likely that the canopies of these trees will grow closer to the proposed dwelling in time. Furthermore, as mentioned earlier, as these trees grow the positive contribution they make to the visual amenity of the area would only increase.
19. This relationship between the proposed dwelling and these neighbouring trees therefore has the potential to result in future pressures for these trees to be significantly pruned or removed, and this would erode the positive contribution these trees make to the character and appearance of the area.
20. I again acknowledge that the landowner would be entitled to cut back any overhanging branches in the future, regardless of whether there is a house on this plot or not. However, I consider it is reasonable to conclude that the

likelihood of any overhanging branches being cut back is significantly increased by the erection of the proposed dwelling on the appeal plot in comparison to its approved use as a side garden area for the adjacent dwelling on Plot 24.

21. In view of all the above, I conclude that the submitted tree related information is out-of-date and therefore potentially inaccurate and missing important information. Without the requisite information to demonstrate otherwise the appeal proposal could result in a loss of existing landscape features that currently make a positive contribution to the character and appearance of the area. Additionally, the proposal would likely result in tree resentment issues for future occupiers and therefore place undue pressure for the potential loss of trees which are an existing positive landscape feature in this area.
22. The appeal proposal would therefore conflict with Policy EN5 of the Local Plan for the Bradford District Core Strategy Development Plan Document (2017) (CSDPD), which seeks to ensure that the contribution trees make to the character of the district is enhanced or preserved by protecting trees that contribute to the character of a settlement, or the amenity of the built-up area.
23. The proposal would also be contrary to paragraph 136 of the Framework which states that trees make an important contribution to the character and quality of urban environments, and that decision should ensure that existing trees are retained where possible.

Other Matters

24. The appellant has stated that there are a significant number of properties that have recently been constructed close to this embankment which have more of an impact on existing trees than the appeal proposal. During my site visit I observed that dwellings have been built a similar distance to the trees on this embankment as the appeal proposal. However, I have not been provided with the specific details, or Arboricultural Reports, in relation to all these wider neighbouring developments and their relationship to the trees at the time they were granted permission.
25. As part of the appeal documents I have been provided with the AMS and ARIR that were submitted for the adjacent larger site, within which the appeal site is located. Nevertheless, this AMS and ARIR were at the time the larger site was approved considered to be up-to-date documents, whereas, for the reasons detailed earlier, I consider this appeal proposal is not accompanied by the most up-to-date information in respect of the existing trees on the embankment. As such, I cannot draw a direct comparison between the appeal proposal and these neighbouring developments, in terms of their relationship with nearby trees at the time of planning permission being granted.
26. The appellant has stated that measures can be imposed to ensure the trees are protected during construction. However, for the reasons detailed above the submitted tree related information is considered to be out-of-date, potentially inaccurate and missing information. As such, I cannot be certain that the suggested protection measures detailed within the submitted reports would be sufficient. Furthermore, in this case the concern does not solely relate to the impact of the appeal proposal on the adjacent trees during the construction process, but also pressure arising from future occupants of the proposed dwelling to have the adjacent trees significantly pruned or felled due to resentment issues.

27. The appellant has commented that the owner of the trees on the embankment has removed trees that were physically closest to the appeal plot. I have been provided with very limited information in respect of which trees have been removed from this embankment, and in any case I observed on site that there are trees within influencing distance of the appeal site.
28. The appellant states that the proposal would provide financial contributions towards public open space, education and biodiversity. However, no specific information has been provided by either party as to what these financial contributions entail or how they would be secured as part of this appeal. As such, in the absence of this information, I cannot attribute these matters any positive weight in the determination of this appeal.
29. The site is within buffer Zone C (7km) of the South Pennine Moors Special Protection Area (SPA) and Special Area of Conservation (SAC). These are European Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 (as amended) for their ecological importance in supporting bird populations.
30. The Council's South Pennine Moors SPA / SAC Planning Framework Supplementary Planning Document states that residential developments within the 0-7km zones of influence are likely to have a significant effect on the SPA and SAC in terms of increased recreation use, either alone or in combination with other proposals.
31. Had I been minded to allow the appeal I would have carried out an appropriate assessment (AA) of the effect of the proposal on the integrity of the SPA and SAC. However, as the proposed development is unacceptable for other reasons, an AA is unnecessary as doing so would not change the outcome of the appeal.

Planning Balance and Conclusion

32. The Council has confirmed that it currently has a 2.08 year supply of deliverable housing sites and consequently paragraph 11(d) of the Framework should be applied.
33. Paragraph 11(d) of the Framework indicates that where the requisite housing land supply does not exist, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. Paragraph 60 of the Framework refers to significantly boosting the supply of housing provision and the delivery of one additional dwelling in a sustainable location is a social benefit arising from this proposal, as well as positively contributing to the Council's housing land supply, albeit the benefits of a single dwelling would be very modest. Limited economic benefits would also likely arise from employment during the construction works, and occupation of the proposed dwelling through additional expenditure in the area.
35. For the reasons given earlier, I have found that the appeal proposal is contrary to Policy EN5 of the CSDPD and paragraph 136 of the Framework, and I conclude that the potential harm arising from the appeal proposal would significantly and demonstrably outweigh the benefits of the scheme. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.

36. The proposal conflicts with the development plan taken as a whole and material considerations do not indicate a decision otherwise than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR