
Appeal Decision

Site visit made on 4 December 2025

by A Edgington BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2025

Appeal Ref: APP/N4720/W/25/3363405

Land at Ash Grove, Ash Grove, Otley, West Yorkshire, LS21 3EX

- 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 Bankhead Group against the decision of Leeds City Council.
 - The application Ref is 24/03595/FU.
 - The development proposed is Surfacing works to existing site access.
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Decision

1. The appeal is dismissed.

Application for Costs

2. The appellant has made an application for an award of costs against the Council. This is considered in a separate decision.

Procedural Matters

3. The Council has withdrawn its first reason for refusal which was concerned with the need for the development and the possible future use of the site.

Main Issues

4. The main issues are the effect of the development on:
 - Protected trees; and,
 - Highway safety.

Reasons

Protected Trees

5. A single lane and lightly stoned access track leads from the unadopted Burras Drive to a paddock. The development would comprise the improvement of the existing track and an extension into the paddock. One side of the existing access track has a kerbed edge along much of its length, and the other side is bounded by the timber garden fencing of Burras House. Streetview images show that until relatively recently the track and the northern verge were largely grassed and had an attractive semi-rural appearance.
6. The trees shown on the plans are not identified by species. Beyond the northern site boundary these are a mix of mature specimens and overgrown hedging. Along the southern edge of the site, there are ornamental species within the garden of the

Burras House. One of the ornamental specimens is a potential veteran pear tree of significant genetic and historic value.

7. Although the Root Protection Areas (RPAs) shown on the plans are likely to be theoretical, I see no reason to disagree that they extend under at least a substantial part of the appeal site. The evidence also indicates that there are instances of exposed root on the existing track's surface. However, there was no sign of rutting or deformation on the existing track that I could see and its overall condition, and the oversailing of adjacent tree canopies indicated that current use is infrequent and vehicles are lightweight and not unusually tall.
8. The proposed layout drawing shows the results of a tree survey and categorisation. However, along with species there is nothing before me to indicate heights, girths, expected life span or ground clearances as recommended by BS 5837:2012¹. Nor is there any indication as to how the overall categorisation has been determined. I noticed at my visit that the extents of some canopies are wider than shown on the drawing.
9. Appropriately specified and installed no-dig construction is recognised as a standard method of providing load-bearing surfacing over the roots of trees. In this case the construction would be laid over the existing track and the track level would be significantly raised above existing levels. The existing kerbs on the northern side of the site might be tall enough to contain the proposed construction depth, but there is no edge restraint on the southern side of the site which abuts the garden of Burras House at the same level. It is unclear to me whether the track within the paddock would be proud of existing levels or at grade.
10. The arboriculturalist states that edge restraints would be formed of sleepers and road pins, which I agree would not harm root systems. However, the intention is to build a track capable of accommodating vehicles of up to 6 tonnes gross weight. This falls within the HGV classification albeit at the lower end of the scale. Moreover, some of the evidence refers to high-sided vehicles and livestock trailers, as well as the possibility that the frequency of vehicle use could intensify.
11. The technical details from Geosynthetic Ltd specify stone size and membranes but do not mention appropriate edge restraints for the recommended construction detail. As such, I am not satisfied that more substantial edge restraints, with concrete footings would not be required, particularly given the track's relatively narrow width. Moreover, the construction details are indicative only and make assumptions with regard to the ground's load bearing capacity. The details also state that the final surface is to be confirmed. This suggests that actual ground conditions could result in changes being required to the construction method and depth. Moreover, as the edge restraints along the southern boundary would need to be set back from the boundary with Burras House, this could result in the track being narrower than planned. Given the limited information before me I am unable to conclude that the actual construction methods required would not result in damage to tree roots.
12. In addition, the track's finished level would be raised. An application has been made to raise the canopy of tree T10 to provide 3.5 metres clearance to enable the passage of high sided vehicles. However, other trees oversail the site with a

¹ BS5837:2012 Trees in relation to design, demolition and construction – Recommendations

canopy height that appears to be less than 3.5 metres. The Council has raised a concern in relation to the potential to need to cut canopies back and although the arboricultural evidence refers to this concern, it is not addressed. Any pruning or damage to crowns can render a tree more susceptible to pathogen entry and have an adverse effect on longevity and future health, as well as visual amenity.

13. British Standard 5837:2012 notes that structures should not be built over RPAs without justification. Whilst I accept that there has been an existing access over part of the appeal site for some time, it has been lightly used and appears to be a minimal depth of stone. I agree with the Council that the highly engineered proposal is disproportionate for infrequent access, and compared to the existing situation, would amount to new surfacing for the purposes of the guidance in BS 5837:2012. Moreover, with regard to the pear tree, which could have veteran status, no surfacing should be undertaken within its RPA and buffer zone.
14. As such I conclude that there would be an adverse effect on the protected trees. This would be contrary to LP Policy GP5 which requires development to resolve detailed planning considerations including environmental intrusion, LP Policy LD1 which requires the protection of existing vegetation and LP Policy P12 which requires the character, quality and biodiversity of Leeds's townscapes and landscapes to be conserved and enhanced.

Highways

15. Burras Drive is not adopted. It is narrower than a standard two lane carriageway and comprises sections of unmade areas along with private parking areas and paths. There are a variety of surfaces. It connects the adopted West Chevin Road and the appeal site.
16. The development's indicative details show that the construction depth would be at least 225 millimetres of stone with a further layer of an unspecified surface on top. Across the area of the development, this would amount to a significant tonnage of material. Given the restricted area of the site, it seems unlikely that the development could be implemented without encroaching onto adjacent land for the turning of delivery and construction vehicles, or the storage of tipped materials. Moreover, the evidence states that materials would not be stored over the RPAs of protected trees which excludes virtually all of the appeal site.
17. However, the appellant has indicated that the paddock is in the same ownership and would be used for turning and other purposes to avoid the use of Burras Drive. Although the red line boundary does not include sufficient land for those construction purposes, the courts have found that this is not necessarily a barrier to the determination of a development²³.
18. There is nothing before me to suggest that the appellant does not have a right of access along Burras Drive to the appeal site. In the event that the appeal was allowed a construction management condition could be imposed to ensure that construction operations were contained within the paddock to avoid adverse effects on the adopted highway network or Burras Drive.
19. With regard to the Transport SPD, the access track is not part of Burras Drive and does not lead to housing. I see no reason why the track should conform to the

² Wyatt v Fareham BC [2021] EWHC 1434 (Admin)

highway authority's standards for adopted roads. As such there would be no adverse effects on highway safety and no conflict with LP Policies GP5 and T2 insofar as these are concerned with highway issues, the Otley Neighbourhood Plan (ONP) or the Transport SPD.

Biodiversity Net Gain (BNG)

20. Although not raised by the Council in its reasons for refusal, the ONP identifies this area as a positive habitat and ONP Policy GE5 requires development to make a positive contribution to network diversity through biodiversity and habitat protection, enhancement and creation.
21. The evidence indicates that there would be a biodiversity net gain of just over 10 per cent, achieved through the creation of neutral grassland on land which is currently covered in ivy. This is land that photographic evidence shows was largely unmanaged in the past with mixed herbaceous cover, yet is shown as bare ground on the ecology survey. The evidence indicates that herbicides have been used as a management tool. As such, even if it is the case that the land contributing to BNG is currently bare ground, this appears to have been achieved through management actions. As such, I give little weight to the BNG calculation as it appears that the low pre-development value has been achieved through pre-emptive action.
22. Moreover, I do not have the build up to the BNG calculations before me. It is unclear to me how losing an area of grassed paddock which is more or less equivalent in area to the area of created neutral grassland could equate overall to a 10 per cent biodiversity gain. Nor does the evidence give any indication as to how the habitat would be established or maintained. I am not satisfied that the imposition of conditions in this regard would be appropriate. I agree with the officer's report that the evidence does not demonstrate how the BNG would be achieved. As such, in my planning balance I give the proposed BNG no weight.

Other matters

23. I agree that the development would result in significant urbanisation of part of this area of positive habitat. The Council refers to the site being within Green Space G1777 but there is no further information in this regard and it is not listed in the ONP's list of green spaces. However, character and appearance has not been raised as a main issue and as I have found harm with regard to tree protection, I have no reason to consider this further.
24. The development would prevent use of an existing access between Burras House and the site, as levels would be raised within the track. However existing access rights are not before me.
25. Whether the development would comprise permitted development is not before me.

Planning Balance and Conclusion

26. The application is framed as a means of managing the risk to existing trees as some root areas extend across the track's footprint. However, the current state of the track suggests that current traffic is lightweight and infrequent. There is nothing before me to suggest that the current arrangements are having an adverse effect on existing protected trees, which in any case, will have adapted to that use to some extent.

27. Moreover, there is inconsistency in that the evidence which states both that the frequency and type of vehicle using the track would not change, but also that access might be needed for high-sided HGVs, and that over time use might intensify. Nor is there anything before me to suggest that 6 tonne vehicles are currently using the track. As such, there are no benefits to weigh against the harm identified above in relation to the future health of protected trees. The appeal is dismissed.

A Edgington

INSPECTOR