



Appeal Decision

Site visit made on 17 December 2019

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 December 2019

Appeal Ref: APP/Z4718/W/19/3239659

Land west of Green Acres Close, Emley HD8 9RA

- 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 G Lloyd (Highstone Homes Ltd) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/60/90380/E, dated 7 February 2019, was refused by notice dated 26 April 2019.
 - The development proposed is described as residential development with access into the site included.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is submitted in outline for residential development on the site and with all detailed matters reserved apart from access. It is proposed that the sole vehicular access into the site would be from Green Acres Close. An illustrative layout plan has been submitted showing 44 residential units on the site although reference is made by the appellant, including in the accompanying Transport Statement, to the erection of about 50 new dwellings. I have taken the illustrative layout into account in so far as considering only whether it would be acceptable in land use principle terms to erect dwellings on the site.
3. The Council adopted the Kirklees Highway Design Guide Supplementary Planning Document (SPD) in November 2019. This post-dates the Council's refusal of planning permission and I afford it significant weight as part of the determination of this appeal.

Main Issue

4. There is no contention between the main parties about the acceptability of the proposal in land use principle terms. Indeed, the principle of residential development has already been established in so far that the appeal site is allocated for such a purpose in the adopted Kirklees Local Plan 2019 (LP). In considering this allocation, it is of note that the Examining Inspector commented that *"the Council's highway evidence indicates that the main site access can be achieved from Wentworth Drive, and no other fundamental constraints to development have been identified"*.

5. In the context of the above, I am satisfied that residential development on the site would be acceptable in land use principle. Therefore, the main issue is the effect of the proposal on pedestrian and highway safety.

Reasons

6. It is proposed to access the site from Green Acres Close. Whilst Green Acres Close is wide enough to accommodate passing vehicles (about 5 metres in width), includes pavements on both sides and where there is on-street car parking for each of the dwellings, the same cannot be said for Warburton which currently serves about 80 dwellings. Any driver wishing to use Green Acres Close would have to use Warburton which is a road of about 280 metres long, is devoid of pavements for most of its length, includes on-street car parking (as witnessed on my site visit and in the appellant's/Council's surveys) and has varying widths.
7. I acknowledge the appellant's undisputed evidence that there have been no recorded accidents on Green Acres Close or Warburton in the last five years, although the evidence from Northern Transport Planning Limited (acting for local residents) does indicate that there were two accidents in the last five years on Upper Lane. I note that the appellant's highway consultant states that *"if the development and associated improvements didn't go ahead, then the highway concerns associated with the existing state of Warburton would remain"*. This does suggest to me, that the appellant is at least aware that there are some existing highway issues in respect of the use of Warburton.
8. Whilst there is some inconsistency in terms of the appellant's evidence, the Highway Authority do not dispute the fact that the proposal would lead to somewhere between 25 and 31 two-way trips during the morning and peak hours. I note the appellant's contrary opinion, but I consider that this range of trips would represent a significant increase in the number of vehicular movements in the context of the capacity and constraints of Warburton.
9. It is not proposed to provide highway design compliant footways along Warburton. Instead, it is proposed to provide 600mm wide 'hard margins' with 25 mm upstands as areas for pedestrians to step away from oncoming vehicles. However, that would not provide suitably safe areas for people with push chairs or wheel chairs. Furthermore, whilst the upstands would provide a useful physical feature for the blind/partially sighted when using a cane, the appellant indicates that owing to the height of the upstands it is intended that some drivers might use these areas particularly in places where carriageway widths are narrow. This would not be conducive to the safe use of the hard margins for any pedestrian taking into account the increased volume of traffic and average traffic speeds.
10. It is suggested that the hard margins might be of benefit in so far that drivers would then avoid walls and hedges, but I am not aware that this is an existing issue. Consequently, I do not afford this perceived benefit significant weight in the planning balance.
11. The provision of hard margins would likely have the effect of displacing some on-street car parking elsewhere in the local area. Whilst it could be said that at some times of the day there would be spare highway capacity to accommodate such displacement, I do note the significant number of representations made by other interested parties (including Northern Transport

Planning Ltd) about this matter, and the potential for any such displacement to cause some harm from a living conditions point of view. Furthermore, I have considered the photographs taken on 3 November 2019 by the occupier of 19b Rishworth Avenue which do show significant levels of on-street car parking on this day. Consequently, I do not agree with the appellant that "*very little on-street car parking occurs in this area*".

12. I do accept that the appellant has proposed to improve two existing footpaths (surfacing and lighting) which lead to Upper lane, one leading from Green Acres Close and the other from the appeal site. This would offer some of the occupiers of the proposed dwellings alternative and acceptable pedestrian routes to Upper Lane. However, for some, and notwithstanding the provision of proposed lighting, such routes would in relative terms be more vulnerable options particularly at night given the lack of surveillance from occupiers of dwellings and passing motorists. Therefore, I am not persuaded that all of the occupiers of the proposed dwellings would avoid using Warburton as a pedestrian route.
13. For those who currently live close to or on Warburton (particularly those on the more northerly stretch of this road), I do not envisage that very many of these residents would use the aforementioned public footpaths regularly when wishing to reach Upper Lane. It is reasonable to take the view that for these people they would take the most convenient/quickest route to Upper Lane which would be along Warburton. Indeed, the appellant's pedestrian counts suggest that some do already despite the existence of the alternative pedestrian routes. It is in this context, that I must consider the proposed significant increase in the volume of traffic on Warburton and its impact on all pedestrians that would use this route. The appellant takes the view that there are not a lot of people that walk down Warburton. However, the safety of pedestrians is an important consideration irrespective of the number of people that do/would use Warburton.
14. The appellant claims that due to average traffic speeds, it is acceptable for pedestrians and vehicles to co-exists as part of a shared surface. Whilst there may be some instances where a shared surface would be acceptable, I do not consider that this one of those cases. I reach this view taking into account that the appellant's 85th percentile wet weather speeds are respectively 18.4 mph southbound and 20.5 mph northbound which is higher than that advised in the SPD; that there is no existing or detailed proposed traffic calming in Warburton; that Warburton is a relatively long road; that a number of cars do/would regularly park on Warburton particular along its western side near to the recreation ground; that a number of residential driveways on Warburton do appear to have visibility splays that fall short of highway requirements, and as Warburton would be used by a significant amount of traffic at odds with guidance in paragraph 1.6 of the SPD. I also note the undisputed evidence provided by the Council that on 24 July 2018 twenty-six on-street parked vehicles were observed.
15. It is of note that the terraced houses opposite the recreation ground have no on-site car parking: it is therefore likely that some of the on-street car parking in this area is associated with the occupiers of these dwellings. I acknowledge the appellant's road safety audit which states that the existing parking of vehicles in this area runs the '*risk that pedestrians will exit between parked cars into the path of passing vehicles*'.

16. With a significant increase in vehicular movements on Warburton, I consider that there is an even greater risk of pedestrians being struck by passing vehicles when having to exit between or manoeuvre around parked cars on Warburton. I accept that H bar markings are proposed in this area, but I have not been provided with any evidence that these would be enforceable. Given the amount of on-street car parking that takes place already on this part of the road, I am not persuaded that the H bar markings would stop all people from parking in these areas.
17. I appreciate that the narrow grass verge adjacent to the recreation ground could be used as an area for pedestrians to keep away from passing vehicles. However, this area would not be wide enough to accommodate all individuals (e.g. those with push chairs / wheel chairs) and, in any event, any such individuals that might be able to use such an area would then be unacceptably forced into the road and into oncoming vehicles near to the existing pedestrian access to the recreation ground. This may happen now, but that is in the context of much fewer vehicular movements in Warburton.
18. As part of my site visit, I was able to consider the width of the carriageway in Warburton with the provision of the proposed hard margins (i.e. 600 mm) and car parking bays. In particular, I was able to consider the provision of a proposed extended footway at the junction of Green Acres Close with Warburton. It was agreed on site that with the provision of such a build out the width of the highway (i.e. from the build out to the proposed hard margin) would be about 4.4 metres and with a parked car in this location (as was the case on the site visit) it would be approximately 2.5 metres.
19. I recognise that some drivers may look to bump over the hard margin at this point in Warburton given that space would be very tight. Some may not opt to do that particularly when pedestrians were in situ and given the close proximity of residential properties. Either way, there is potential for unacceptable conflicts between oncoming vehicles and/or with pedestrians in this part of Warburton which is also close to the junction with Green Acres Close.
20. I accept that the proposed works to the Green Acres Close / Warburton junction would provide some minimal improvements to visibility from the junction. However, this would be at the expense of narrowing the carriageway where the evidence, as outlined above, indicates that vehicles park opposite.
21. With the implementation of the appellant's proposed highway works, parts of Warburton would be of insufficient width to allow some vehicles to pass including in particular an HGV /refuse vehicle and a car. In this regard, it cannot reasonably be said that the proposal would represent an improvement relative to the existing situation. In fact, and given the significant increase in traffic on Warburton, I consider that it is likely that traffic flow on this road would be severely interrupted and that overall there would be unacceptable conflict between oncoming vehicles and pedestrians.
22. In reaching the above view, I note that the SPD states that "*the typical width of adopted carriageways is generally 5.5m. This allows all vehicles to pass each other with ease given the infrequency of large vehicles on residential streets. This width is only sufficient to cope with typical residential traffic provided that sufficient off-street parking is available*". I note that the appellant suggests that with the provision of the H Bar markings it would allow some vehicles to

- pass. However, and for the reasons outlined above relating to enforceability, I consider that some motorists would likely park in these areas.
23. I do accept that the proposals include some improvements in Warburton (including at its junctions) such as the provision of dropped kerbs in some locations. This would make it easier for some to use Warburton (e.g. push chair and wheel chair users) without having to bump over kerbs.
24. I note that it is proposed to include new footways where the existing two public footpaths emerge at Upper Lane. It is also proposed to include a continuation of the footpath on Upper Lane to the junction with Warburton. I do acknowledge the Council's comment that these works would lead to a narrowing of Upper Lane and that there are no current on-street car parking restrictions along this highway.
25. Nonetheless, Upper Lane is not consistent in terms of its width and it is particularly wide in the vicinity of the junction of Warburton with Upper Lane (agreed on site at about 7.2 metres). Furthermore, the proposed footway at the entrance to the public footpath on Upper Lane (i.e. that close to Ellmont Avenue) would be approximately in line with the existing footway which runs from the junction of Warburton with Upper Lane. Furthermore, and subject to the consideration of a more detailed highway design, the proposed 'hard standing' opposite Church Street would take up only a small part of the width of the highway and would provide an improved link to the street lamp which I am informed is also used as a bus stop.
26. Overall, and notwithstanding the Council's concerns, I do not consider that the footway proposals on Upper Lane would lead to any significant conflicts between oncoming vehicles in the event of some on-street car parking. In fact, the proposals in Upper Lane would likely result in some relative improvements in pedestrian safety terms. Hence, these positive matters need to be weighed in the planning balance. In reaching the above view, and acknowledging that my site visit was only a snap shot in time, I also noticed that there were in fact very few vehicles parked in Upper Lane.
27. When the proposal is considered as a whole, I find that notwithstanding the proposed alterations to Warburton and its junctions, as well as improvements and extensions to existing public footpaths, for the reasons outlined above the proposal would have a significant and unacceptable impact on pedestrian and highway safety in Warburton. Whilst there may not have been any recorded accidents in Warburton in the past, this does not mean that accidents would not be likely if planning permission were to be approved. My concerns relating to highway and pedestrian safety in Warburton are matters of overriding concern and consequently I conclude that the development would not accord with the highway safety and traffic impact requirements of Policies LP5 and LP21 of the LP; the SPD and paragraph 109 of the National Planning Policy Framework.
28. In reaching the above conclusion, I am cognisant of the Council's preference to access the site from Wentworth Drive which in relative terms would be much better from a highway/pedestrian safety point of view. However, the appellant has pointed out that this option is not feasible/viable as it includes what has been described as four 'ransom strips' into the site with such land owned by numerous owners. There is in fact no policy requirement to access the site from Wentworth Drive: this is merely a Council preference. I have therefore

determined this appeal on its individual planning merits and based on accessing the site from Green Acres Close. Whilst the site is allocated for housing in the LP, this does not justify allowing the proposed development which would cause significant harm to highway and pedestrian safety in Warburton.

Other Matters

29. The proposal would seek to positively boost the supply of houses in the area (including the appellant's agreement to provide affordable housing) and this in turn would also have some positive economic benefits in terms of spending in the local area and construction employment. However, the contribution towards boosting the supply of houses in the area would to some degree be tempered by the undisputed claim made by the local planning authority that it can demonstrate a deliverable supply of more than five years of housing sites. The proposal would seek to make some improvements to existing footpaths in the area and this is also a positive matter to weigh in the overall planning balance.
30. At final comments stage, the appellant has stated that "*Planning Resource has published the predicted 2019 Housing Delivery Test results for each Local Planning Authority*". They claim that the Council has not met its Housing Delivery targets. I have not been provided with this 'predicted' information and the Council has not commented on it. Nevertheless, and even if this were the case, the identified adverse highway and pedestrian safety impacts of the proposed development would significantly and demonstrably outweigh the identified benefits of the proposal when considered against the policies in the Framework taken as a whole.
31. I note that the appellant is content to provide affordable housing (20%) on site; to make a financial contribution towards education provision in the area; to provide public open space on-site and to make a financial contribution towards mitigating against adverse highway safety impacts. Both the appellant and the Council have suggested that this is a matter could be addressed by means of the imposition of planning conditions, with specific and detailed requirements to be secured by a Section 106 agreement in conjunction with the submission of a detailed reserved matters application.
32. In this case, I am not persuaded that it is appropriate to deal with the above matters by way of the imposition of planning conditions. The Planning Practise Guidance (PPG) states that '*ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed*'. I cannot see why such certainty cannot be achieved, even at this outline planning application stage, by means of the completion of a planning obligation. Indeed, this could be framed in such a way that the specific requirements were based on the quantum of residential development to be approved as part of a reserved matters consent.
33. In addition to the above, and taking into account PPG, the exceptional circumstances for including the Council's suggested negatively worded conditions (i.e. conditions 13 to 16) do not exist in so far that (i) there is no evidence that the proposal is at risk and (ii) the proposal is not particularly complex. It has, however, not been necessary for me to pursue the completion of a Section 106 agreement with the main parties as none of the necessary obligations would overcome my conclusion on the main issue.

34. At planning application stage, Sport England issued a holding objection pending the submission of a ball strike risk assessment given the close proximity of the appeal site to the adjacent cricket pitch. A ball strike assessment was not submitted by the applicant and the Council did not pursue this matter any further commenting that an acceptable risk assessment would not have overcome their overriding concern relating to the effect of the development on highway and pedestrian safety. The holding objection from Sport England is still in place. However, it has not been necessary for me to pursue this matter any further given my conclusion on the main issue and as I am dismissing the appeal.

Conclusion

35. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

D Hartley

INSPECTOR



Appeal Decision

Site visit made on 3 December 2019

by Sarah Manchester BSc MSc PhD MEnvSc

an Inspector appointed by the Secretary of State

Decision date: 2nd January 2020

Appeal Ref: APP/Z4718/W/19/3237041

Adj 301A Oxford Road, Gomersal, Cleckheaton BD19 4LA

- 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 D Smith against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/62/93471/E, dated 17 October 2018, was refused by notice dated 11 March 2019.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The site visit procedure was altered from an access required site visit to an unaccompanied site visit as I was able to see all that I needed to from public land.

Main Issues

3. The main issues are:
 - i) The effects of the proposal on the character and appearance of the area; and
 - ii) The relationship with protected trees on the site.

Reasons

Character and appearance

4. The appeal site is an undeveloped area of garden land with mature trees in a prominent location at the junction of Pit Lane and Oxford Road. It is part of the former grounds of 301 Oxford Road, a substantial Victorian property that has been divided into several dwellings with associated private outdoor space. By virtue of its historic and architectural interest, the Victorian building is a non-designated heritage asset that, together with its grounds with mature planting and stone boundary wall, makes a positive contribution to the character and appearance of the area.
5. The site is adjacent to the Gomersal Conservation Area (the CA) which includes the properties on the opposite side of Oxford Road at this point and extends along the road as far as Pollard Hall and its grounds. The CA is notable for its

- historic civic buildings and associated residential properties including substantial halls and their grounds, detached dwellings in generous plots and more modest semi-detached and terraced properties. In this context, 301 Oxford Road and its grounds which include the appeal site, its continuous stone boundary wall and mature trees makes a positive contribution to the setting of the CA.
6. The proposal is a detached dwelling with associated parking and garden areas. It would be finished in stone with a blue slate roof and uPVC windows and doors. Part of the boundary wall to Oxford Road would be removed to create a new vehicular access that would sweep round the side of the building beneath the canopy of the mature trees. The dwelling would be constructed partly below ground, and ground levels would be reduced around the building. By virtue of its prominent corner location, it would be visible in its entirety from the surrounding area.
 7. The dwelling would be similar in style to dwellings elsewhere in the area. However, it would be markedly dissimilar to the neighbouring properties, most particularly the adjacent Victorian heritage asset with its long front elevation facing the appeal site, conspicuous arched and oculus windows, projecting cross gable features and decorative stonework. In contrast, the proposal would be a contemporary building that would not relate well to the prominent and distinctive historic building.
 8. The proposal would be located within the setting of No 301 and sited closer to the road. It would therefore disrupt and obscure the views of the distinctive front elevation of the Victorian property. Consequently, by virtue of its design and close proximity, it would be a visually obtrusive and incongruous feature that would detract from the non-designated heritage asset. It would not make a positive contribution to the townscape and it would not maintain a strong sense of place.
 9. Although not in the CA, by virtue of its close proximity and its relationship with the surrounding built environment, the proposal would not be sympathetic to the historic townscape setting of the CA. However, the Council considers that the harm to the CA would be less than substantial in the terms set out in the National Planning Policy Framework (the Framework), and I see no reason to disagree. In this case, the proposal would be a private dwelling and it has not been demonstrated that there would be public benefits that would outweigh the harm to the setting of the CA. Therefore, it would conflict with the Framework.
 10. For the reasons set out above, the proposal would result in harm to the character and appearance of the area including the neighbouring non-designated heritage asset and the setting of the CA. It would conflict with the development plan, including Policies PLP24 and PLP35 of the Kirklees Local Plan Strategy and Policies Adopted February 2019 (the LP). These require, among other things, that development respects and enhances the character of the townscape and heritage assets. The proposal would also conflict with policies in the Framework that require development to be sympathetic to local character and the surrounding built environment and to conserve heritage assets.

Protected trees

11. Trees within the appeal site are protected by a Tree Preservation Order (TPO), including a mature beech part way along the boundary with Pit Lane and an

early mature beech near to the junction of Pit Lane and Oxford Road. By virtue of its height, form and location, the mature beech tree is a dominant and conspicuous feature. The Arboricultural report confirms that it is a prominent specimen in good condition and it is of significant amenity value. In this respect, it makes a positive contribution to the street scene and to the wider network of green infrastructure that punctuates and softens the hard built environment and that characterises the wider townscape. While the early mature beech tree is not so individually significant, it nevertheless also makes an important contribution to the verdant and leafy character and appearance of the area.

12. The proposal indicates that both the mature and early mature beech trees would be retained. However, there would be extensive works within their root protection areas (RPAs) including a significant change in ground levels and the construction of vehicular access and parking areas. Although the Arboricultural report includes a tree survey and general design advice, no Arboricultural Impact Assessment (AIA) or method statement has been provided. Therefore, there is no substantive evidence before me to demonstrate that the impacts of the proposal on the protected trees has been assessed or would be acceptable.
13. I appreciate that at least some of the material that would be excavated to facilitate the development is fill material. However, there is little before me in terms of the height of the fill material relative to the original ground levels or its relationship to the protected trees. Therefore, I cannot be certain that the reduction in levels could be achieved without significant disturbance and adverse effects to the root systems of the mature trees.
14. I accept that no-dig construction methods have been found appropriate to construct access roads in the RPAs of trees elsewhere. However, in the absence of an AIA, it has not been demonstrated that such construction methods, particularly in combination with the proposed reduction in ground levels, would be appropriate at this site.
15. The Arboricultural report also emphasizes the need for the shading effect of retained trees to be considered in relation to any proposed buildings. In this respect, the appellant has sought to increase the separation between the dwelling and the mature beech tree and to avoid the creation of habitable room windows in the facing side elevation. Nevertheless, the mature beech would be in close proximity to, and it would be significantly taller than, the dwelling. Consequently, the proposal would result in significant shading to the facing windows, including the rooflights that would serve the study.
16. Furthermore, although there would be a small area of garden between the dwelling and No 301, the majority of the land around the property including the driveway and parking area would be overhung and shaded by the large mature beech tree. As a result, future occupiers would be likely to seek to severely prune or remove the tree due to its potential effects and conflict with the property. Moreover, given the proximity of the early mature beech tree to the proposed access and its low spreading growth form, it seems likely that it would need to be significantly pruned or felled to create the access. Even if the protected trees could be retained within the scheme, the loss or significant pruning of the mature beech trees would result in significant harm to their visual amenity value and to the character and appearance of the area.

17. Therefore, it has not been demonstrated that the proposal would avoid significant harm to or the loss of the protected trees. The proposal would conflict with the development plan, including Policies PLP24 and PLP33 of the LP. These require, among other things, that development should retain valuable or important trees that contribute to public amenity or the distinctiveness of a specific location.

18. Other Matters

19. This is a revised proposal following an earlier refused planning application (ref 2917/92770) for a detached dwelling at this site. I appreciate that the scheme has been amended in an attempt to overcome the concerns of the Council. However, the proposal would nonetheless result in conflict with the development plan.

20. My attention has been drawn to schemes elsewhere in the area that have been granted planning approval. However, in the absence of any details I cannot be certain that any of them is directly comparable to the appeal scheme. Each scheme must in any case be considered on its individual merits.

21. The minimal contribution to the supply of housing from one new dwelling would not be a benefit that would outweigh the harm that I have identified.

Conclusion

22. I have concluded that the proposal would conflict with the development plan and there are no other considerations that outweigh that conflict. For this reason, the appeal should therefore be dismissed.

Sarah Manchester

INSPECTOR



Appeal Decision

Hearing Held on 8 January 2020

Site visit made on 8 January 2020

by A Blicq BSc (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2020

Appeal Ref: APP/Z4718/W/19/3220024

Land adjacent to 6 Dean Fold, Highburton, Huddersfield HD8 0QD

- 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 Matthew Quarmby against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2018/60/92169/E, dated 4 July 2018, was refused by notice dated 6 November 2018.
 - The development proposed is: Erection of one additional dwelling on disused railway line.
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Decision

1. The appeal is dismissed

Procedural Matters

2. The application was for outline permission with all matters reserved except access. During the appeal the appellant submitted a revised arboricultural assessment¹ which showed the footprint of a notional house and which also suggested that fewer trees would be affected than originally thought. As this is an outline application I accepted the appellant's argument that the revision provided additional information and I have used the revised plan as the basis for my reasoning. I am satisfied that this approach would not prejudice the interests of any other parties.
3. There is a discrepancy between the extent of the Woodland Tree Preservation Order (TPO) shown on the arboricultural assessments and that provided by the Council at the hearing². Having compared the two with the original TPO plan I am satisfied that the Council's plan is correct, and I have based my reasoning on this document.
4. At the hearing it was noted that policies from the Kirklees Unitary Development Plan (KUDP), cited on the decision and referred to by both parties in appeal statements, have been superseded. As such, KUDP Policy NE9 and other KUDP policies weigh neither for nor against the appeal.
5. I have used the site address on the decision notice in the heading above as this seems to more accurately reflect the appeal site.

¹ JCA Arboricultural Impact Assessment October 2019

² Additional evidence

Main Issues

6. The main issues are:

- Whether the development would preserve or enhance the character or appearance of the Highburton Conservation Area (HCA), with particular regard to trees and the protected woodland;
- The effects of the development on the living conditions of future occupiers, with particular regard to light; and,
- The effects of the development on biodiversity.

Reasons

Character and appearance

7. The appeal site is part of a former railway line cut into the hillside to the south of Highburton. Dean Fold is a short ribbon development on the former line to the north of the site. The proposed dwelling would be accessed from the service road for Dean Fold.
8. There is a woodland Tree Protection Order (TPO)³ which covers part of the clearing where the dwelling would be located, as well as much of the access road. This TPO also takes in some of the eastern and western embankments. The entire site is within the HCA.
9. I have not been supplied with a conservation area appraisal. However, at the hearing the Council stated that the woodland associated with the railway line and its embankments provides a linear green buffer between Penistone Road with its sporadic ribbon development, and the settlement of Highburton which is on significantly higher ground. This linear buffer contains three separate woodland TPOs and a protected group. I see no reason to disagree with the Council in this regard.
10. I observed that the separation provided by this woodland in the building pattern is not particularly apparent from Penistone Road, immediately below the woodland, but it is apparent from Woodsome Lees Road and Storthes Hall Road. Viewpoints on these roads afford glimpsed views of the wider landscape from elevated positions on the other side of the valley.
11. Accordingly, the woodland associated with the former track and its embankments is a strong feature in the wider landscape and contributes to the separation of the elevated Highburton from the valley floor. The woodland appears to be largely unmanaged and the juxtaposition of natural woodland and the small-scale residential building pattern gives the locality a distinctive semi-rural character. I conclude that the woodland is a predominant feature within the HCA and its significance is derived from its association with the area's industrial and social history, as well as preventing coalescence between discrete development patterns.
12. The appeal site separates Dean Fold from another ribbon development to the immediate south. It also forms a significant portion of the woodland feature as seen from further afield. I conclude that the appeal site makes a positive and important contribution to the character and appearance of the HCA.

³ TPO No 3 1995

13. The Council was unable to clarify the reasoning behind the making of the TPO, and the appellant argued that when the HCA was designated the woodland TPO was not in place. Whilst I appreciate that this could indicate that the woodland was not seen as an integral part of the HCA at its designation, there was clearly some woodland in 1994 - 1995 otherwise the TPO could not have been made. In any case, the merits of the TPO are not before me as I have to proceed on the basis of the current situation.
14. It was argued by the appellant that it was always the intention to build on the appeal site. This may be the case but in the intervening years the planning context has changed. The site is not allocated as housing land under the recently adopted Local Plan even though the original application preceded that Plan's examination and adoption.
15. Although the two tree surveys are dated 2017 and October 2019 respectively, the survey information is identical. Sample measurements taken at the site visit for two trees on the edge of the clearing confirmed that the canopies of those trees are more extensive than shown on the survey plans. Consequently, although the appeal statement notes that the dwelling would be sited in the open space between the canopy spread, the open space available is less than that shown.
16. I also have concerns that even if I accept that the surveyed area is made up predominantly of young and early-mature pioneer species with a life expectancy of only 10 + or 20+ years, the assessment does not seem to have taken any account of the collective contribution the woodland⁴ makes within the wider landscape. This is of relevance given the site's location within the HCA and the guidance given in BS 5837:2012.
17. Furthermore, within the surveyed area I noticed two early mature oaks identified as sycamores, and what appeared to be a mature hawthorn also recorded as a sycamore. The ecology survey highlights the potential importance of the area for bat foraging and roosting. This is considered later in this decision.
18. As such, I conclude that the tree surveys understate species diversity as well as the woodland's conservation and landscape value. A further report was submitted⁵ but this is concerned with three groups of trees only and although it reiterates the conclusions of the JCA survey, it does not alter my reasoning.
19. The development would require the removal of two groups of early mature sycamores to accommodate a turning head, as well as pruning to trees enclosing the clearing where the dwelling would be sited. Pruning works would be required on two oaks and given that their canopies are some 3 metres above ground level, this would lead to the loss of a significant portion of their asymmetric canopies which lean towards the clearing. This could be detrimental to the trees' ability to recover from those pruning works. It also seems to me that pruning above and beyond that suggested would be needed to accommodate construction traffic and activities. Furthermore, excavation of the turning head into the very steep eastern embankment would result in the loss of some of the more mature trees within the TPO.

⁴ In this context I refer to the surveyed area rather than the TPO

⁵ Bagshaw Ecology June 2018

20. It is argued that pruning works or the loss of trees around the clearing would not have a noticeable effect on the wider appreciation of the woodland in the landscape. To some extent I agree that this could be the case if the works were limited to that indicated. However, I concur with the Council that the space available for the dwelling would be so limited that it is highly likely that applications would be made for further pruning works or tree removal either during the works or post-development. I conclude that it is likely that the identified and other works would result in a thinning out of the woodland and exposure of the remaining trees to wind loading and subsequent issues with stability. This would be detrimental to the future health and longevity of the woodland and would have an adverse effect on the character and appearance of the HCA.
21. Although the associated TPO application has been withdrawn, the appellant argues that the woodland requires management. However, to my mind woodland only requires management if it is to serve a particular purpose. Trees and woodland are able to develop into sustainable ecosystems without human interference.
22. It was argued that if left alone the woodland would develop into a dank and dark sycamore wood. However, I see no reason to dispute the Council's argument that sycamores are naturalised and may be useful as a replacement for local ash, which is now succumbing to ash die-back. Even if some of the existing trees fail, there are biodiversity benefits from decomposition. Moreover, I noticed a high percentage of oak saplings on slightly shallower slopes to the immediate south of Dean Fold, as well as within the survey area, which suggests that oak is colonising the embankments.
23. Furthermore, the woodland to the immediate east of the site has established on very steep slopes where safe access for management would be problematic. Even if the steeper sections of the embankment become wholly dominated by sycamores, it is unclear to me why this is considered inherently harmful to the HCA or to the ongoing health of the woodland. There is no regularised public access, and consequently I cannot see what purpose a formal management plan would serve. As such, I give limited weight to the benefits or practicalities of woodland management.
24. With regard to the access road and turning head, it seems to me that no-dig operations could limit root damage to established trees but pruning would be required either in the short or longer term to allow vehicles to pass. Given that most of the trees lining the access route and on the embankment have asymmetric canopies this would have a disproportionate effect on their ability to recover. As noted above, this could open up nearby trees to additional wind loading.
25. The appellant argues that a dwelling in this situation would be continuation of the existing building pattern. I appreciate that there are dwellings to the immediate south of the site, as well as those on Dean Fold but this in itself does not justify further development.
26. In the light of the above I disagree that the development would avoid any impact on the surrounding trees and find that it would neither preserve nor enhance the character or appearance of the HCA, with particular regard to trees and the protected woodland. This would be contrary to Policy LP33 which states that the Council will not grant planning permission for developments

which directly or indirectly threaten trees or woodlands of significant amenity. It would also be contrary to the provisions of the Act⁶ which require me to pay special attention to the desirability of preserving or enhancing the character or appearance of the HCA.

Living conditions

27. The clearing proposed as the site of the dwelling is less than 15 metres wide and has steep embankments on both sides. Trees located at the edge of the clearing oversail the clearing and it is also the Council's intention to locate a cycleway through the flat area of the site. This intention was not disputed by the appellant. Even without the proposed cycleway this is a very modest site and consequently options for locating a dwelling within the space are extremely limited.
28. The eastern embankment is of some considerable height and it would overshadow the site until mid-morning, whatever the time of year, as well as affecting light entry into the dwelling. For the rest of the day the dwelling would be in the shade path of trees to the immediate south and west. There are also mature trees to the south and west outside the appeal site which would cast shade across the likely location of the dwelling and associated amenity areas.
29. The appellant had prepared a shade path drawing but this was for one tree only. Occupiers of an adjacent dwelling to the immediate south noted that in the summer the site is wholly shaded. This reinforces my conclusions reached from an assessment of the site, topography and tree distribution. During the winter months the effects of tree shading will be lessened due to the lack of leaves but the angle of the sun will be lower and likely to meet other obstructions to the south, including nearby dwellings, in particular. The significant shade cast by the embankment would remain unchanged throughout the year.
30. I appreciate that there may be potential occupiers who wish to live in such shady conditions and my experience of people who are intolerant of the proximity of trees or shade may be unrepresentative. However, it remains that many people occupy dwellings in proximity to protected trees without being fully aware of the implications. The additional maintenance associated with leaf litter and debris and having inadequate light in the dwelling or amenity areas is not always welcomed or accepted, and those concerns can over time outweigh the perceived advantages. Moreover, family circumstances and the requirements of the dwelling may change. In this case, not only would the dwelling and its external areas be heavily shaded at times by nearby trees, but shading and light loss would be exacerbated by the eastern embankment.
31. 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, especially as the trees grow or become unstable or fail, as the appellant argues. It is not necessarily the case that the Council would have ultimate control over any works as a refusal could lead to an appeal. In any case, given that the Council has expressed concern at this early stage, it seems likely that arguments advanced that the dwelling was in excessive shade could have a sympathetic hearing. Any pruning or removals to

⁶ Planning (Listed Buildings and Conservation Areas) Act 1990

nearby trees would increase visibility into the site from a distance and the screening effects of the tree cover would diminish. This reinforces my concerns in relation to the impact of the development on the character and appearance of the area.

32. I conclude therefore that the development would have an adverse effect on living conditions for future occupiers with particular regard to light. It would be likely to lead to the removal or pruning of trees in the vicinity, contrary to Policy LP33 which states that the Council will not grant planning permission for developments which directly or indirectly threaten trees or woodlands of significant amenity. In this case, notwithstanding that the appellant argues that the trees have little value, it remains that they have the protection of the TPO and the HCA.
33. The development would also fail to comply with the provisions of Paragraph 127 of the National Planning Policy Framework (the Framework) which requires development to provide a high standard of amenity for future occupiers.

Biodiversity

34. A preliminary ecology survey concluded that there was moderate to high potential for both bat roosting, as well as foraging and commuting bats within the survey area. Of those trees with roosting potential, only G6 would be directly affected and this has low potential. However, there are groups of trees lining the access route which have moderate roosting potential. It is not disputed that the linear edge habitats provided by the trees growing alongside the former track are likely to provide a food source, should bats be present.
35. The survey recommended that further work be undertaken to confirm whether bats are present, and their levels and patterns of activity. This could be used to inform details of appropriate mitigation or compensation. However, no such additional survey work has been undertaken.
36. An aerial inspection was undertaken of one group of trees to identify bat roosts⁷. However, as this group would not be removed, this weighs neither for nor against the appeal. Nor does it show that other non-surveyed trees lack actual roosts.
37. I am unable to conclude that the development would not have an adverse impact on a protected species. Circular 06/2005⁸ states that it is essential to establish the extent to which protected species may be affected by a proposed development before planning permission is granted.
38. I also note that it was suggested that there are bird and mammal species associated with the site, including other protected species. The increased noise and disturbance of movement along the access road and associated with the dwelling would be likely to be detrimental to at least some of those species, whether protected or not. This would be detrimental to local biodiversity. On the basis of the evidence before me I am not satisfied that any modifications or imposition of conditions could prevent increased noise and disturbance, and the fragmentation of an unmanaged habitat.

⁷ Bagshaw Ecology 30 May 2018

⁸ Biodiversity and Geological Conservation, Statutory Obligations and their impact within the planning system

39. Accordingly, I conclude that the development would have an adverse effect on biodiversity. There is nothing before me to suggest that this is something that could reasonably be addressed by condition. This would therefore be contrary to Policy LP30 which is concerned with the safeguarding of biodiversity. This policy is reinforced by Paragraph 175 of the Framework which states that if significant harm to biodiversity cannot be adequately mitigated or compensated for, permission should be refused. As noted above, it is unclear to me whether there would be harm and whether such harm would be significant, but as the decision maker I have to take a precautionary approach.

Other matters

40. The appeal statement highlights a lack of housing supply. However, the Local Plan was adopted in January 2019 and the Council stated that the current housing supply is currently just over 5 years. Although the appellant noted that the figure is close to the threshold and that not all the sites are deliverable, there was no evidence presented to identify the non-deliverable sites. As such, given that the plan was examined and found sound only a year ago I have concluded that the Council has sufficient housing supply and that the tilted balance set out in the Framework does not apply. In any case, even if the Council did not have sufficient housing supply land it remains that the development would fall within a woodland TPO and a conservation area. The limited benefits to local housing supply from one additional dwelling would be significantly and demonstrably outweighed by the adverse impacts outlined above, when assessed against the policies in the Framework taken as a whole.
41. The appellant argued that future occupiers could be required to undertake woodland management within the dwelling's curtilage and the landowner would be prepared to accept a Section 106 agreement to manage the remaining woodland within his ownership. Notwithstanding that this would place a rather onerous commitment on future occupiers, which could be time consuming for the Council to monitor and enforce, even a period of twenty years would fall short of the lifetime of the dwelling. In any case, it remains, particularly given the apparent oak colonisation, that I see no compelling reason for this woodland to be formally managed. Furthermore, I am not aware that there is or has been anything preventing the landowner from carrying out woodland management if indeed it is needed.
42. It also seems to me that if mitigation on such a scale is required to make one dwelling acceptable, it suggests that the development is in itself unacceptable.
43. The appellant argues that the dwelling would be innovative and that similar dwellings have been designed in similar situations. However, no examples were given. I appreciate that this is an outline application. Nonetheless, I have outlined above my concerns in relation to the size of the site and the immediate topography and vegetation. In these particular and highly constrained circumstances it seems to me that the Council is entitled to require reassurance that a successful dwelling could be built without affecting the surrounding protected woodland and other trees, or having an adverse effect on living conditions and biodiversity. It cannot be presumed that further consideration at reserved matters stage would be sufficient to address those issues.
44. With regard to Paragraph 131 of the Framework, great weight should be given to outstanding or innovative designs so long as they fit in with the overall form

and layout of their surroundings. Given the site constraints I am unclear how a dwelling would fit in with the underlying form and layout of the surroundings, particularly as the site provides separation between distinct areas of buildings. Moreover, whilst I do not disagree that the site is accessible and that small windfall sites can contribute to housing supply, the Framework also states that the presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making.

45. The fact that the woodland is not part of any established woodland is not determinative. An interested party noted that the railway ceased to be operational in 1965 and by 1994 there was sufficient woodland on and around the former railway line to warrant TPOs. The appeal statement notes that the site was acquired about by the appellant's father 20 years ago. Consequently, it is not the case that the existing trees are there by default and at the discretion of the appellant. They have benefited from the protection of the woodland TPO or the conservation area status since before its acquisition by the current owner.
46. The appeal statement also states that the trees could not be realistically retained for longer than ten years. However, this is taken from the description of category U trees from BS 5837:2012. There are no category U trees identified in the survey.
47. I appreciate that the track construction may not support long lived or sizeable trees but it is noticeable that the trees are aligned in largely linear groups. This suggests that the track sub-base is breaking down along the edges and some self-seeded trees are finding adequate substrate or are able to break it up. In any case, pioneer species such as these are adapted to harsh conditions and the pattern of colonisation I observed is not atypical of the long-term establishment of climax woodland on post-industrial sites.

Conclusion

48. In the light of the above I conclude that the development would be contrary to the relevant policies of the Local Plan as well as the provisions of the Framework and other government guidance. The appeal is dismissed.

A Blicq

INSPECTOR

APPEARANCES

APPELLANT

Mr Jonathan Cocking	JCA Ltd
Mr Adrian Rose	Rose Consulting
Ms Emily Wilde	JCA Ltd

COUNCIL

Ms Rebecca Drake	Kirklees Metropolitan Council
Mr Nick Goddard	Kirklees Metropolitan Council
Mr Tom Stephenson	Kirklees Metropolitan Council

INTERESTED PARTIES

Mr Oliver Sutcliffe

ADDITIONAL EVIDENCE

1. Drawing showing extent of Woodland TPO and Conservation Area (submitted by Council)
2. Plan showing shade patterns around proposed site (submitted by Council)