



Appeal Decision

Site Visit made on 12 August 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2021

Appeal Ref: APP/Z4718/W/21/3272237

1 The Copse, Scholes BD19 6NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Z Celensu against the decision of Kirklees Metropolitan Council.
 - The application Ref 2020/62/90125/E, dated 8 January 2020, was refused by notice dated 9 February 2021.
 - The development proposed is a detached house within garden.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. On 20 July 2021, the Government published its revised National Planning Policy Framework ('the Framework'). It replaces the previous version published in February 2019. The Framework represents the Government's up-to-date planning policies for England and how they should be applied. Both main parties have had the opportunity to comment on any relevant implications for the appeal. I have had regard to the Framework in reaching my decision.

Main Issues

3. The main issues are 1) the effect of the proposed development on the character and appearance of the Hartshead Moor Top Conservation Area 2) whether acceptable living conditions would be provided for future occupants with regard to light and 3) the effect of the proposed development on highway safety.

Reasons

Character and appearance

4. The appeal site consists of land to the side of 1 The Copse, which is a two-storey detached dwelling. The site is currently part of the side garden of the property. The Copse is a particularly attractive cluster of detached properties with an overriding sense of greenery and spaciousness. It is located within the Hartshead Moor Top Conservation Area (HMTCA) that is characterised as being predominantly made up of dwelling houses in a landscape setting.
 5. The appeal site currently contains a number of trees that are protected by a Tree Preservation Order, with the remaining trees being protected due to their location within a conservation area.
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6. Due to the size of the appeal site, the proposed dwelling and its subsequent curtilage, would conflict with the established make-up of The Copse, that being dwellings in spacious plots. In this context it would appear squeezed into the site and out of character with the established formation of the surrounding built environment. Although the design of the dwelling would be compatible with that of the existing dwellings, the resulting intensification would nevertheless cause harm.
7. A number of trees are required to be felled to facilitate the development, most notably a particularly prominent Weeping Willow at the front of the site that forms a key feature of the street-scene, visible from the access. It makes a hugely positive contribution to the character and appearance of this part of the HMTCA.
8. In total five trees and a group of shrubs are proposed to be felled to facilitate the proposed development. The five trees that are proposed to be removed are identified in the submitted Arboricultural Report (JCA Ref: 15617a/TP) as category B1 trees of moderate quality and value with a reasonable life expectancy (usually with an estimated life expectancy of at least 20 years) identified mainly for their arboricultural qualities.
9. The trees that are proposed to be removed have substantial amenity value and enhance the verdant character of the HMTCA. Their removal would cause significant harm to the character and appearance of the HMTCA. Although some mitigation is proposed through the planting of two Beech hedges at the front of the proposed dwelling, this would not make the same contribution to the character and appearance of the HMTCA and would be of almost negligible comparable value to the trees that would be lost.
10. I therefore find that collectively, the formation of a dwelling and removal of trees would cause significant harm to the character and appearance of the HMTCA. It would be contrary to Policies LP24, LP33 and LP35 of the Kirklees Local Plan (2019) which requires, amongst other things, that proposals should promote good design by ensuring the layout of all development respects and enhances the character of the townscape, ensures the retention of valuable or important trees, and that proposals within Conservation Areas conserve those elements which contribute to their significance.
11. The proposal would be contrary to the Framework which outlines that developments should add to the overall quality of the area and are sympathetic to local character including the landscape setting.

Living conditions

12. The development includes the provision of a rear garden area to serve the proposed dwelling. This would contain the large mature trees that are to be retained on the site. The proposed rear garden would also be directly looked onto from the proposed living/kitchen and bedrooms 1 and 4. During my site visit, that was undertaken around midday on a sunny day in August, I observed that the trees were in full leaf and that the area of the proposed garden was almost in full shade.
13. The garden and the specified rooms would therefore receive limited light as a result of overshadowing from the tree canopies which would give the rear of the dwelling a dark and gloomy character. As demonstrated in the submitted

Tree Shadows Plan, this would be to varying degrees throughout the day. It would also be of varying degrees throughout the year when the sun is lower, and the deciduous trees are not in leaf. Nevertheless, despite this variation, I find that overall, due to the siting of the dwelling in relation to the positioning and massing of the trees that are to be retained, there would be unacceptable living conditions as a result.

14. Although potential residents would be aware of the positions of trees, the implications of living next to extensive tree canopies would not be fully appreciated until occupation. I consider that this would raise undue pressure in the future for further works to the trees or potential removal, which would exacerbate the harm identified previously in relation to the loss of trees.
15. The Council, in their reason for refusal, consider that due to the presence of the trees, the dwelling would have limited useable outside amenity space. Although it is clear there would be overshadowing of the garden that would make it less attractive, I do not consider that this would be to the extent that it would not be usable.
16. The appellant has referred to the landscaping plan for a development at Oldfield Nook¹, on the opposite side of Scholes Lane. I observed that the development was under construction. It did not, however, appear to have the exact same constraints, in terms of tree positions and heights, as at the appeal site. I have in any event determined the appeal on its own individual planning merits.
17. I therefore conclude that the overshadowing that would be caused from the retained trees would result in unacceptable living conditions for future occupants of the property in terms of light. The proposed development would therefore be contrary to Policy LP24 of the Kirklees Local Plan (2019) which requires, amongst other things, that developments provide a high standard of amenity for future occupiers.
18. The proposal would also be contrary to the Framework which outlines, amongst other things, that decisions should ensure that developments create places that promote health and well-being, with a high standard of amenity for future users.

Highway safety

19. The proposed dwelling would be accessed via The Copse which, it is outlined, is a shared private driveway. This is in turn accessed from Scholes Lane and serves five dwellings. The proposed additional dwelling would result in six dwellings utilising the private driveway and the access.
20. The existing driveway and access is narrow and does not allow for two vehicles to pass. There is currently also no turning area for refuse, emergency or service vehicles.
21. Although the proposed development would result in an additional dwelling, in going from five to six dwellings, I do not consider that it would exacerbate the existing situation to an unacceptable level that would be likely to cause severe harm to the highway network.

¹ 2016/62/90646/E

22. Given the quantum of development that is proposed, in addition to the existing dwellings, I find that the likelihood of instances of simultaneous use of the access would be limited. It also does not automatically follow that in the unlikely event of the access being required to be used simultaneously, that the resulting impact would have an unacceptable impact on highway safety, particularly considering the speed limit on the road, the level of use and the visibility that is achievable.
23. The Council also refer to the fact that information regarding the maintenance of the access lane has not been provided. As an existing private road that serves five dwellings, when taking into account the addition of another dwelling as proposed, I do not consider that the failure to provide such information equates to material planning harm that would be attributable to the proposed development. Regardless, as a private road, the appellant comments that any new owner of the proposed dwelling would have shared responsibility for the maintenance of the access road in accordance with the existing arrangements for existing owners of the other properties on The Copse.
24. The proposed development would therefore not have an unacceptable impact on highway safety. It would comply with Policy LP21 of the Kirklees Local Plan (2019) which requires, amongst other things, that safe and suitable access can be achieved, the residual cumulative impacts of development are not severe, and avoid a detrimental impact on highway safety and the local highway network.
25. The development also complies with the Framework which outlines that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

26. The appellant has provided a copy of a pre-application enquiry which they consider gave favourable consideration to the proposed development. As the response highlights, it is given without prejudice to the Council's formal consideration of a planning application. I therefore give it limited weight. I have considered the appeal based on the evidence before me and its own planning merits.

Planning Balance and Conclusion

27. Having regard to paragraph 202 of the Framework, I find that the harm to the HMTCA is relatively localised and therefore the proposal would cause less than substantial harm to the significance of the designated heritage asset. I do not, however, find that this harm is outweighed by the provision of an additional dwelling or any other public benefits of the proposal.
28. For the reasons set out above, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

A M Nilsson

INSPECTOR