



---

# Appeal Decision

Site Visit made on 12 May 2021

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 October 2021**

---

**Appeal Ref: APP/X4725/W/21/3268490**

**Land off Wakefield Road, Town End, Pontefract, West Yorkshire WF8 4HW**

- 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 Duffy, Mr Duffy & Mr Davies against the decision of Wakefield Metropolitan District Council.
  - The application Ref 19/02277/OUT, dated 23 September 2019, was refused by notice dated 11 August 2020.
  - The development proposed is twenty-two (22) dwellings including associated works.
- 

## Decision

1. The appeal is allowed and planning permission is granted for twenty-two (22) dwellings including associated works (Outline including access and layout) at Land off Wakefield Road, Town End, Pontefract, West Yorkshire WF8 4HW in accordance with the terms of the application, Ref 19/02277/OUT, dated 9 October 2019, subject to the conditions set out in the attached schedule.

## Applications for costs

2. An application for costs was made by Mr Duffy, Mr Duffy & Mr Davies against Wakefield Metropolitan District Council. This application is the subject of a separate Decision.

## Preliminary Matters

3. The application form lists the Applicants as "Mr Duffy, Mr Duffy & Mr Davies", whereas the appeal form details the Appellants as "Mr Mr Duffy, Mr Duffy & Mr Davies Mr Duffy, Mr Duffy & Mr Davies". The right to appeal rests with the original Applicants only and this is therefore reflected in the banner heading above.
4. The planning application from which this appeal results was made in outline including details of access and layout, with all other matters reserved. I have determined the appeal on this basis.

## Main Issues

5. The main issues are the effect of the proposed development on:
  - i. The character and appearance of the area, with particular regards the loss of trees
  - ii. Highway safety, with particular regard to the volume of traffic on Wakefield Road and access to the site
  - iii. trees and ecology on the site

## Reasons

### Character and Appearance

6. Policy D9 of the Wakefield Metropolitan District Council Local Development Framework Development Policies Document (the DPD) refers to the design of new development and seeks, amongst other matters, to ensure that new development respects, retains and “where appropriate enhance” natural features.
7. The area around the appeal site includes a mix of uses and building styles, the area is nonetheless predominantly residential. While the character and appearance of the area is heavily influenced by the tight urban grain of the built environment and nearby busy road junction, I saw at the site visit that there are a number of parks nearby and that trees are a feature of many residential streets.
8. The appeal site is located towards the rear of terraced residential properties fronting on to Wakefield Road and residential properties on Mill Hill Road, the site is described by the appellant as including “the residential curtilage of The Priory (a former dwelling now vacant/derelict)”.
9. I note that parts of the site have previously been subject of sand extraction operations resulting in a steep stone face to the southern boundary of the appeal site. Much of the appeal site is covered by a Tree Preservation Order, which extends beyond the boundaries of the site.
10. At the site visit I saw that the trees that are present across much of the site contribute positively and the existing derelict structures on the site have a negative effect on the character and appearance of the area. Consequently when taken as a whole, it is my planning judgement that the site has a largely neutral effect on the character and appearance of the area.
11. Consent is sought in outline, including details of access and layout, with all other matters reserved. Nonetheless, the proposed layout plan and supporting evidence clearly shows that a substantial number of trees would be lost as a result of the appeal scheme.
12. The appellant’s Design and Access Statement (the Statement) details that “the public space and road infrastructure devolve gradually into private spaces within the property curtilages” with open front gardens. The Statement details that trees have been retained where “appropriate to provide natural screening within the site, as well as new trees proposed for same purpose.”
13. Furthermore, the plan showing landscaping proposals for the site, while a reserved matter, and the appellant’s Statement of Case, detail that “at least 52 new trees” would be planted at the site “including several heavy standard trees that would make an immediate impact on the character of the development” in mitigation for the trees lost. I am satisfied that such details could be resolved at the appropriate reserved matters stage.
14. It is my planning judgement that the proposed tree planting, which can be controlled by condition, would adequately mitigate the loss of the existing trees, many of which have been identified as being in poor condition.

15. The development shown on the submitted plans appears to be largely in keeping with the character and appearance of the area. The appeal scheme would redevelop a site, parts of which are of a derelict appearance and have a negative impact on the character and appearance of the area, while retaining a significant proportion of the trees that make a positive contribution to the area.
16. Therefore, I find that on the basis of the evidence before me and for the reasons detailed above the appeal scheme would retain and enhance the natural features of the site. Thus, the appeal scheme would not harm the character and appearance of the area with particular regards to the loss of trees, as such the appeal scheme is not contrary to policy D9 of the DPD.

#### Highway safety

17. Policy D14 of the DPD relates specifically to access and highway safety requiring that, amongst other matters, new development demonstrate that they can be accessed conveniently and safely.
18. That the appeal site has previously benefitted from planning permission<sup>1</sup> for 22 residential units is not at dispute between the parties. However, it is the Council's case that there has been "a change in circumstances" since that consent was granted in form of junction alterations which has led to "a more continuous follow of traffic".
19. At the site visit, carried out in the afternoon on a typical weekday, I saw that Wakefield Road, from which the site is proposed to be accessed from, is heavily trafficked. This matter, and related concerns, is referred to by many objectors to the appeal scheme.
20. The appellant details that the proposed access off Wakefield Road would create a wide carriageway into the site with 2m footways, including improvement to the footway on Wakefield Road to the front of the appeal site, and adequate visibility splays.
21. The document titled Transport Assessment by Cora IHT (the TA) includes detailed surveys of the existing traffic conditions and an assessment of the traffic impacts of the appeal scheme, concluding that the "proposed development would generate less traffic than what was previously assessed" and that "it can be deduced that the proposed development would not have a severe impact on the highway network when compared to what was previously approved".
22. The Council's Highways consultation response to the application did not raise any unresolved objections to the appeal scheme. Both the TA and the Council's highway consultation response clearly considered the functionality of the proposed access, including footways and visibility splays. The detail and provision of such can be controlled by a suitably worded condition.
23. While Wakefield Road is clearly a busy road, on the basis of the evidence before me I am satisfied that the proposed access to the appeal site at Wakefield Road will function safely.
24. For the reasons detailed above I find that the appeal scheme will not harm Highway safety, with particular regard to the volume of traffic on Wakefield

---

<sup>1</sup> 13/02705/OUT, dated 11 Feb 2014

Road and access to the site and as such is not contrary to policy D14 of the DPD.

#### Protected trees and ecology

25. Policy D7 of the DPD is referred to in the Council's reasons for refusal and requires that, amongst other matters, development that would damage or result in loss of trees will only be permitted if "harm can be reduced to acceptable limits through the implementation of positive environmental mitigation measures either on site or in a suitable alternative location"
26. The submitted Ecological Appraisal by Middleton Bell Ecology (the Appraisal) identifies that "The woodland on site is unmanaged with extensive growth of ivy *Hedera helix*, consequently, the understorey and ground flora is restricted and species poor. Nevertheless, given the woodland's urban location it is considered to be of local level importance to nature conservation" and based on the evidence before me I find no substantive reason to disagree.
27. The Council specifically make reference to their acknowledgement of a Climate Change Emergency as being a change in circumstance since the earlier planning permission was granted.
28. As detailed previously, the appeal scheme would result in the loss of many trees, with replanting proposed in mitigation at a rate of 2:1 for trees lost, including the planting of larger trees to provide a greater effect in the short term. Furthermore, enhancements referred to in the Appraisal includes bird and bat boxes, specifically including "house sparrow *Passer domesticus* boxes".
29. I note that the Council's consultation response on the Appraisal acknowledged that several of the trees to be removed are of a "low quality or for reasons of sound arboricultural management".
30. It is my planning judgement that while the appeal scheme will undoubtedly change the appeal site, resulting in the introduction of significant build development and the removal of many trees from the site, the mitigation planting, including larger specimens referred to by the appellant, can effectively mitigate the harm and could be controlled by suitably worded conditions.
31. While I give some weight to the Council's concerns and their acknowledgement of a climate change emergency, I am nonetheless satisfied that the appeal scheme would not cause unacceptable harm to trees and ecology on the site. The appeal scheme is not therefore contrary to Policy D7 of the DPD.

#### **Other Matters**

32. A local resident has objected to the appeal scheme referring, amongst other matters, to "amenity loss due to increase in activity". The resident details that they live on Mill Hill, to the south of the appeal site. The submitted plans show that a significant buffer would remain between the rear of properties on Mill Hill and the proposed dwellings, including existing trees and changes in levels. As such, I am satisfied that the appeal scheme would not have a detrimental impact on the living conditions of the occupiers of properties on Mill Hill.

### **Conditions and Planning Obligation**

33. The Council has provided a list of suggested conditions that it considers would be appropriate. I have included and adapted some of these in my attached schedule, in light of the Planning Practice Guidance (PPG). The main parties to the appeal have had sight of the conditions and the appellant has agreed to the pre-commencement conditions.
34. Other than the standard outline conditions dealing with reserved matters and time limits, I have set out a range of other conditions to control the development. These include the approved plans and maximum number of dwellings to clarify the development approved, floor levels, the provision of public open space. In the interests of residents and the environment I have included conditions controlling details relating to foul and surface water disposal.
35. I have included conditions requiring the submission of a construction method statement to control construction activities in the interests of highways safety and the living conditions of nearby occupiers; investigations to address any potential contamination on or under the site, to guard against the harmful effects of any contamination; and tree protection measures, ecological mitigation and enhancement measures, to protect and enhance biodiversity.
36. To comply with policies D27 and D28 of the DPD and in the interests of the environment I have required the submission of a scheme for the provision of electric vehicle charging points and renewable energy generation. In the interests of highway safety, I have included a condition relating to the details of the access and internal roads. In the interests of the character and appearance of the area I have included conditions relating to the boundary treatments of the site and the external materials to be used for the dwellings
37. The appellant has submitted a planning obligation securing the provision £13,000.00 to provide off-site Affordable Housing. I am satisfied that, as a result of the Covid-19 pandemic, there are exceptional circumstance which dictate that the use of counterpart documents are a practical solution and while the use of a clause relating to the use of counterparts would have been beneficial, the absence of such is not fatal in this instance.

### **Conclusion**

38. For the reasons given above I conclude that the appeal should be allowed.

*Mr M Brooker*

INSPECTOR

### Schedule of Conditions

- 1) Details of the appearance, landscaping, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall, except in respect of the reserved matters, be carried out in accordance with the following approved plans: Landscape Masterplan R2305-1A, Existing layout 3132-1-002, Location Plan 3132-1-000, topographical survey 166/001, Proposed layout 3132-1-001-M, Proposed Access Arrangements 001 Rev A and Vehicle Tracking Drawing 002.
- 5) The development shall not be brought into use until a scheme detailing all areas of public open space (POS) has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail the specific areas to be used as POS, measures to ensure their availability for use by the public at all times and details of the continued maintenance of the areas of POS set out within the scheme. The development shall not be brought into use until the scheme has been implemented. The approved scheme shall be thereafter retained and maintained for the life time of the development.
- 6) The development shall not be brought into use until a scheme detailing foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The scheme shall detail the phasing of the development and phasing of drainage provision, where appropriate. Principles of sustainable urban drainage shall be employed wherever possible. The works shall be implemented in accordance with the approved phasing. No part or phase of the development shall be brought into use until the drainage works approved for that part or phase have been completed.
- 7) Development shall not commence until a scheme restricting the rate of runoff from the site has been submitted to and approved in writing by the Local Planning Authority. The flowrate shall be restricted to the maximum flowrate of 3.5 litres per second. A 40% allowance shall be included for climate change effects for the lifetime of the development. Storage shall be provided to accommodate the minimum 1 in 100 year plus climate change critical storm event. The scheme shall include a detailed maintenance and management regime for the storage facility. No part of the development shall be brought into use until the development flow restriction works comprising the approved scheme have been completed. The approved maintenance and management scheme shall be implemented throughout the lifetime of the development.



8) Development shall not commence until a remediation strategy that includes the following components to mitigate the risks associated with contamination of the site has been submitted to and approved, in writing, by the Local Planning Authority:

- i. A site investigation scheme, based on the recommendations in the Phase 1 Geoenvironmental Report [Haigh Huddleston, July 2013, Ref. E13/5816/R001A] to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- ii. The results of the site investigation and the detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how that is to be undertaken.

The approved remediation measures must be carried out in accordance with the approved strategy prior to the commencement of any development other than that required to carry out the approved remediation. Any change to the components requires the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

9) No part of the development hereby approved shall be occupied or brought into use until a verification report demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation has been submitted to and approved, in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

10) In the event that contamination is found at any time when carrying out the approved development, works must cease, and it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with best current guidance and practice, and where remediation is necessary a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. Following the completion of the measures identified within the approved remediation scheme, a verification report must be prepared, submitted to, and approved in writing by the Local Planning Authority in accordance with the timescales set out in the approved remediation scheme.

11) Development shall not commence until the following has occurred in consecutive order:- (i) a scheme of further intrusive site investigation works has been submitted to and approved in writing by the Local Planning Authority; (ii) the intrusive site investigation works comprising the approved scheme have been undertaken; (iii) a report detailing the findings arising from the intrusive site investigations has been submitted to and approved in writing by the Local Planning Authority in consultation with the Coal Authority; (iv) a scheme detailing any remedial works required has been submitted to and approved in writing by the Local Planning Authority in

consultation with the Coal Authority; and (v) the remedial works comprising the approved scheme have been implemented which shall thereafter be retained and maintained.

- 12) The development shall not be occupied until a scheme for the provision of electric vehicle charging point infrastructure has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the approved scheme has been implemented. The approved scheme shall thereafter be retained and maintained for the lifetime of the development.
- 13) Notwithstanding the plans submitted, the development shall not be brought into use until a scheme detailing the boundary treatment of the site has been submitted to and approved in writing by the Local Planning Authority. The development shall not be brought into use until the works comprising the approved scheme have been completed. The scheme shall thereafter be retained and maintained for the lifetime of the development.
- 14) Notwithstanding the submitted drawings, construction of the dwellings hereby approved shall not commence until details of all external materials to be used have been submitted to and approved in writing by the Local Planning Authority. No materials other than those approved in accordance with this condition shall be used which shall thereafter be retained and maintained for the lifetime of the development.
- 15) Development shall not commence until a Tree Protection Plan indicating the location and a specification of Tree Protective Fencing has been submitted to and approved in writing by the Local Planning Authority. The Local Planning Authority shall be notified in writing of the erection of the Tree Protection Fencing and notified in writing that the tree protection plan has been implemented in accordance with the approved details. The approved protective fencing and measures shall be retained and maintained for the duration of the construction period.
- 16) Development shall not commence until a scheme detailing the location, and method of works within all root protection areas relating to trees to be retained as part of the development has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail measures to ensure there is no storage and vehicular parking within the root protection areas and the method of any works relating to excavation, construction or any other type of development to be undertaken within the identified root protection areas. Construction shall be undertaken in accordance with the approved scheme, which shall be retained and maintained for the duration of the construction phase of the development.
- 17) Development shall not commence until a scheme detailing the finished slab and floor levels of the buildings hereby approved together with corresponding existing and finished ground levels and of surface and land drainage associated with any works, has been submitted to and approved in writing by the Local Planning Authority. The construction of the building(s) shall be carried out in accordance with the details so approved and the occupation of the building(s) hereby approved shall not take place until the works relating to the building(s) have been completed. The approved levels



shall be so retained for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority

- 18) The development hereby approved shall not commence until a scheme relating to the means of pedestrian and vehicular access has been submitted to, and approved in writing by, the Local Planning Authority. The submitted scheme shall detail all areas of highway intended to be adopted. The scheme shall include full sections, drainage works, street lighting, signing, surface finishes and the treatment of sight lines, together with an independent safety audit covering all aspects of works; details of the of the siting, design and materials of retaining structures to support the adopted sections of the highway plus any that are within 3.66m of the proposed adopted highway; details of all areas to be used for pedestrian and vehicular access and details of the surfacing to be used. The development shall not be brought into use until the means of access has been implemented in accordance with the approved scheme. The means of vehicular access approved by this condition shall be thereafter retained and maintained for the lifetime of the development.
- 19) Development shall not commence until a scheme detailing proposals for renewable energy generation and sustainable construction and efficient use of resources, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the inclusion of on-site renewable energy generation technology or alternative decentralised renewable or low carbon energy services, energy and water conservation, and the use of sustainable construction methods and materials. The scheme shall identify the overall reduction in carbon emissions per annum which it is estimated will be achieved by the proposed measures. The approved scheme shall be implemented prior to the development hereby approved being brought into use and thereafter retained and maintained for the lifetime of the development.
- 20) The development shall not be brought into use until a scheme of measures relating to the provision of habitat for wildlife and biodiversity enhancement has been submitted to the Local Planning Authority. The submitted scheme shall include details relating to (i) Provision of bat tubes, (ii) provision of bird boxes, (iii) provision of hedgehog holes within boundaries and (iv) planting of native species of trees and bushes across the site. The development shall not be brought into use until the approved scheme has been implemented. The approved scheme shall be thereafter retained and maintained for the lifetime of the development.
- 21) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for: [delete or add items as necessary]
- i) the parking of vehicles of site operatives and visitors;
  - ii) loading and unloading of plant and materials;
  - iii) storage of plant and materials used in constructing the development;

- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) delivery, demolition and construction working hours.
- ix) A scheme for the control of surface water drainage during the construction work on site.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 22) The residential development hereby approved shall not exceed a maximum of 22 dwellings.

End of Schedule