Appeal Decision

Hearing held on 24 July 2013
Site visit made on 24 July 2013

by Richard McCoy  BSc MSc DipTP MRTPi IHBC
an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 September 2013

Appeal Ref: APP/B2355/A/13/2191342
Site of former Scout Hut, New Line, Bacup, Lancashire

- 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 Mr D Graham against the decision of Rossendale Borough Council.
- The application Ref 2012/0515, dated 7 November 2012, was refused by notice dated 17 January 2013.
- The development proposed is erection of a terrace of 3 no. dwellings.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues are the effect of the proposal on protected trees, the setting of the Grade II listed Church of St Saviour and the character and appearance of the area, and whether the Council can demonstrate a 5 year supply of housing land having regard to local and national policy.

Reasons

Background

3. The appeal site is located in a predominantly residential area on a busy road. It stands within an area identified in Figure 24 of the adopted Rossendale Core Strategy Development Plan Document (CS), as part of Rosendale’s Green Infrastructure. Several trees on the site are subject to Tree Preservation Order T2/138 (Scout Hut, New Line, Bacup) Order 2008 (TPO). A previous grant of planning permission (ref. 2007/555 and renewed under 2010/632) at the appeal site, allowed the erection of a single bungalow.

4. Proposed under this appeal is the erection of a 2 storey terrace containing 3 no. dwellings and the creation of a parking area. I note from the officer report that the highway authority is satisfied with the proposed access and parking arrangements. In addition, given the orientation and intervening distances, the Council is satisfied that the proposal would not harm the living conditions of nearby residents. From my assessment I have no reason to disagree.

Trees

5. The appellant has submitted a Tree Survey dated 12 March 2012 and a document entitled Protection to Trees, dated November 2012. The Tree Survey
includes a table that highlights which trees are suitable for retention and which are to be felled. The references given to trees within the report do not correspond with those in the TPO but for the sake of clarity I shall refer to the references within the TPO schedule. I am satisfied that the Protection to Trees document demonstrates that the proposal could be constructed with the protected trees being safeguarded within a Protected Area. This could be made a condition were planning permission to be granted.

6. However, I heard that a further tree is proposed for removal in addition to those to be felled under the extant permission. While the additional tree is not subject to the TPO its removal would further denude this designated Greenland of tree cover. Moreover, the footprint of the terrace would be closer than the approved bungalow to protected trees T3, T7 and T8, to the extent that the canopy of T8 would overhang the proposal. Added to which, the greater bulk of the terrace would result in it having a taller front elevation than the approved bungalow, bringing its roof and upper floor windows closer to the canopies of the trees.

7. This would create an oppressive relationship with the proposed terrace, harming the living conditions of future occupiers and would be likely to lead to pressure to have the trees removed or reduced in stature. In addition, the works to form the parking area would be likely to require a retaining wall and alterations to ground level. This would require works in very close proximity to protected tree T3.

8. Although rather overgrown at the moment, the appeal site because of the presence of the protected trees, makes a very positive contribution to the amenity of the area and this is reflected in its inclusion as part of the Borough’s Green Infrastructure under CS Policy 17. This seeks to continue to protect Greenlands (as designated under Policy E1 of the adopted Rossendale District Local Plan 1995). While the principle of development is established, I nevertheless consider that the position and height of the proposal along the site frontage would result in the site having a more developed appearance than would be the case with the extant permission, and would create conflict between the residential use and the protected trees, to the detriment of the site’s green characteristics.

9. Against this background, although root protection for trees could be covered by a condition were planning permission to be approved, and future tree management would be subject to the TPO regime, I nevertheless consider that the proposal would be harmful to the protected trees on the site. Accordingly, it would conflict with CS policies 17, 18, 23 and 24 which seek to ensure that all new developments respect and respond to local context, distinctiveness and character and positively contribute to the provision of “Green Infrastructure”.

Setting of the listed building

10. The proposal would be located opposite the Grade II listed Church of St Saviour. A listed building, as a heritage asset, possesses significance which the National Planning Policy Framework (NPPF) defines as its value to this and future generations because of its heritage interest. Significance derives not only from the asset’s physical presence, but also from its setting. The NPPF defines setting as the surroundings in which the asset is experienced. Elements of a setting may make a positive or negative contribution to the
significance of an asset, may affect the ability to appreciate that significance, or may be neutral.

11. In my judgement, the significance of the church is partly derived from its commanding position and presence within the street-scene. The proposed development would stand within this setting and would have an effect on the significance of the heritage asset. Having special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the proposed terrace would be a subservient counter-balance to the church in terms of scale and appearance. However, the trees at the appeal site are an important element in the setting of this heritage asset as they provide a soft, verdant foil to the church when viewed along New Line.

12. The proposed removal of an additional tree, allied to any works to the protected trees resulting from any conflict with the living conditions of future occupiers, would reduce the positive contribution the verdant character of the appeal site makes to the listed building's setting, thereby causing less than substantial harm to its significance. Accordingly, the proposal would conflict with paragraphs 132 and 137 of the NPPF and CS Policy 16. Furthermore, from the evidence I am unable to conclude that sufficient public benefits would arise from the proposal such that they would outweigh the less than substantial harm, contrary to paragraph 134 of the NPPF.

**Character & appearance**

13. While the proposal would have a similar footprint to the extant permission for a bungalow and would be of a similar height and detailing to nearby housing terraces, the adverse impact of its scale and layout on the verdant characteristics of the appeal site and the setting of the listed building would mean it would not contribute positively to local identity/distinctiveness, townscape, historic environment, heritage and provision of “Green Infrastructure” contrary to CS Policies 23 and 24.

**Housing supply**

14. The parties disputed whether or not the Council can demonstrate an up-to-date 5 year supply of deliverable housing sites. In this regard, the Council refers to an historic under provision of housing sites due to a now replaced Lancashire Structure Plan (SP) policy which restrained housing provision in the Borough in favour of regeneration schemes in large urban areas. This under provision was further exacerbated by the recent economic recession. The Inspector’s report (October 2011) on the adoption of the CS noted the impact of the housing restraint policy between 2006-08 and accepted that this did not amount to an under-supply. However, the market recession did accrue a shortfall in the provision of around 365 dwellings. The CS Inspector supported the Council’s approach of an exponential housing trajectory over the plan period to make up for this shortfall and a further likely shortfall due to the time taken for the house building industry to emerge from recession. The Council alluded to a similar approach that was accepted by the Inspector in appeal decision ref APP/K2420/A/12/2181080.

15. Anticipating the NPPF, the CS Inspector noted that any requirement to frontload allocations, to ensure a viable and deliverable 5 year housing supply,
could be addressed through the phasing provisions of the Site Allocations DPD. Against this background and with reference to its 5 Year Housing Land Supply Report 2012-2017 (HLSR), published in September 2012, the Council argued that it has a 5 year supply. The HLSR, in response to the 15 year CS target of 3700 dwellings, identifies a target of between 1447 and 1482 dwellings that would meet the 5 year supply, including a 20% under provision allowance.

16. In response to a criticism by the appellant, the Council conceded that its Site Allocations DPD is in the early stages of preparation and several of the ‘specific deliverable sites’ relied on as likely to come forward (the HLSR schedule of housing units from ‘specific deliverable sites’ is estimated at around 1379 dwellings) would require amendments to urban boundaries or have other policy constraints that would need to be addressed by the site allocations process. In response, the Council updated its housing land supply evidence in its appendix 6 to show that there are 555 units in developments that are under construction, 387 units in un-implemented residential planning permissions and 598 units within unconstrained, available sites. This gives a total of 1540 units. The 598 units are a reduction of the 1379 figure and are based on a revised schedule of 14 sites regarded as deliverable within the current urban boundary.

17. The appellant accepted a total of 942 (555 + 387) but disputed the 598 figure, claiming that several of the sites lack planning permission and are affected by unresolved impediments which hinder residential planning permissions being obtained. The appellant argued that Footnote 11 to NPPF paragraph 47 requires sites to have planning permission to be considered deliverable and referred to appeal decisions ref. APP/H1033/A/11/2159038, APP/R3325/A/12/2170082 and APP/H1840/A/12/2171339 in support of this position.

18. However, I am not aware of the particular circumstances of these cases or the detailed arguments about housing land supply considered by those Inspectors. I also note the Council’s argument that an extant planning permission is not necessary in order for a site to be considered deliverable pointing out that NPPF, paragraph 47, footnote 11, makes clear that sites can be considered deliverable so long as they meet the criteria of being available, suitable for development now, achievable within 5 years and that the development of the site is viable.

19. I heard that the housing restraint imposed by the SP policy that artificially depressed the housing market in the Borough also accounts for some past refusal of planning permissions on some of the ‘specific deliverable sites’. This situation was exacerbated by the economic downturn. However, the restraint policy no longer applies and the Council claimed to have had some active developer interest in these sites. Table 2 of its appendix 6 shows that some 257 units of the 598 are on sites where planning permission has been obtained, or have a resolution to permit since the time of the Housing Land Supply Update in September 2012. In addition, the Council pointed out that its calculations do not account for “windfalls” which should increase its housing supply figures. Consequently, from the evidence and given the inherent uncertainties in the calculation of housing land supply, I am unable to conclude that these disputed sites should not be taken into consideration as part of the Council’s 5 year housing land supply.

20. The appellant further argued that a 10% reduction should be applied to the 598 figure to account for the historically slow build out rates on housing sites.
with planning permission in the Borough. My attention was drawn to appeal decision APP/H1840/A/12/2171339 in this regard. Nevertheless, while such a discount may have been applied on housing figures in the past, I find nothing in the up-to-date guidance of the NPPF to endorse such an approach. This was the conclusion of the Inspector in appeal decision ref. APP/R3325/A/12/2170082 which also drew to my attention by the appellant.

21. In which case, I find that the Council’s estimate of 1540 dwellings is reasonable and would exceed the target range for the 5 year housing land supply + the 20% buffer. It has not therefore been demonstrated that the Council’s housing policies are out-of-date. That being the case, the housing land supply situation does not lend additional weight in support of the proposal. Therefore, while some aspects of the proposal would find favour with the economic and social roles of sustainable development as set out in NPPF paragraph 7, it would not satisfy the environmental role as a result of the harm to protected trees, the setting of the listed building and the character and appearance of the area.

**Conclusion**

22. Taking account of all matters raised, including the appellant’s frustration at the Council’s handling of the application in respect of NPPF paragraph 187, I find that there are no material considerations that would outweigh the harm arising from the proposal. In coming to this decision, I have had regard to the effect of the revocation of the Regional Strategy but in the light of the facts in this case the revocation does not alter my conclusions, which for the reasons given above, are that the appeal should be dismissed.

*Richard McCoy*

INSPECTOR

**APPEARANCES**

FOR THE APPELLANT:

Mr S Hartley MRTPi, MRICS Director, Hartley Planning and Development Associates Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Whyatt Barrister of 15 Winckley Square Chambers, Preston

Mr S Stray MRTPi Planning Manager, Rossendale Borough Council

INTERESTED PERSONS:

Mr S Johnson Local Resident

**DOCUMENTS**

1 Council’s letters of notification of the Hearing