



Appeal Decision

Hearing held on 9 January 2008

Site visit made on 9 January 2008

by **Ruth V MacKenzie BA(Hons) MRTPI**

an Inspector appointed by the Secretary of State
for Communities and Local Government

The Planning Inspectorate
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Decision date:
22 January 2008

Appeal Ref: APP/H0738/A/07/2045128

Hill House, Aislaby Road, Aislaby, Eaglescliffe, TS16 0QN

- 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 Mrs R Raper against the decision of Stockton-on-Tees Borough Council.
- The application (Ref No 07/0624/OUT, dated 23 February 2007) was refused by notice dated 20 April 2007.
- The development proposed is the erection of 1 No dwelling.

Application for costs

1. At the Hearing an application for costs was made by the appellant against the Stockton-on-Tees Borough Council. This application is the subject of a separate Decision.

Decision

2. I dismiss the appeal.

Main issues

3. I consider that the main issues in this appeal are:
 - the extent to which the proposed dwelling would comply with sustainability objectives,
 - the impact of the proposed dwelling on highway safety, and
 - the effect of the proposed dwelling on the protected weeping willow.

Inspector's Reasons

The first issue - sustainability

4. I note that the Council's reason for refusal relating to sustainability refers to policy SUS2 in the adopted Tees Valley Structure Plan; a policy that seeks to encourage sustainability. However this policy has expired and has not been saved. I have therefore assessed the proposal against the government's sustainability objectives, set out in Planning Policy Statements 1, 3 and 7.
5. Aislaby is a small village, with no shops or services. It is not on a bus route, and the nearest shops are in Yarm, about 2.5km away. I therefore consider it

reasonable to suppose that nearly all journeys to and from the proposed dwelling would be made by private car.

6. I accept that the appeal site is previously-developed land, because it is part of the garden of Hill House. I also accept that the proposed dwelling could incorporate energy-saving features. Furthermore, additional dwellings in small villages can, over time, lead to improved infrastructure and social cohesion. However, these things do not, to my mind, offset the inevitable reliance on the private car for nearly all trips to or from the proposed dwelling. I have therefore decided that the proposed dwelling would not comply to a sufficient extent with the widely-held sustainability objectives, including the objective of reducing car dependency.
7. For the avoidance of doubt, I can confirm that my decision on this issue has not been influenced by a recent appeal decision to which the Council has drawn my attention. I have assessed the current appeal on its own merits.

The second issue – highway safety

8. The planning application was submitted in outline with all matters of detail, including access, reserved for later determination. The Council wants the shared driveway to be 4.1m wide, and is seeking visibility splays of 2.4m by 70m onto Aislaby Road. Whether or not these things are needed is a matter of debate. However, I heard no evidence, and saw nothing on site, that suggested to me that they would be impossible to achieve.
9. I have therefore decided on the second issue that, provided the access and driveway details were carefully designed, the proposed dwelling would not have a materially adverse impact on highway safety. The access criterion (criterion vi) of policy HO 11 of the adopted *Stockton-on-Tees Local Plan (LP)* could therefore be satisfied.

The third issue – the weeping willow

10. The weeping willow is protected by Tree Preservation Order 1998 No 275. Its canopy spreads across almost the entire width of the appeal site. It is a well-balanced and healthy tree, about 40 years old. In my view it has a potential life expectancy of at least another 40 years.
11. According to the advice in *BS 5837:2005 Trees in Relation to Construction – Recommendations* there should be a Root Protection Area (RPA) with a radius of 8.5m to protect the tree's roots during the construction of the dwelling. In my view, there is enough space outside the RPA but within the village's designated Limit of Development (which bisects the appeal site) in which to build a dwelling; albeit one slightly smaller than that shown on the appellant's illustrative plan. I do not underestimate the difficulties of building a dwelling in this constrained space but, in my view, it would not be impossible. The proposed driveway would pass under the tree but, to my mind, this would cause minimal root damage because most of this area is already covered in tarmac.
12. I am therefore satisfied that the construction of a dwelling, provided that it were sensitively designed and sited, would not cause damage to the protected weeping willow.

13. However, once the dwelling had been built, I anticipate that its residents would quickly find that this large tree was not easy to live with. Many of its branches would be less than 5m from the rooms facing onto Aislaby Road. These rooms would be dark, particularly in summer when the tree was in leaf. Despite their south-facing aspect, the rooms would be deprived of sunlight. Leaves, seeds and other tree debris would fall onto parked cars. Gutters would often need cleaning. The driveway would need regular sweeping. Moreover, these difficulties would worsen over time, because the tree is still growing.
14. In my view, applications to prune or fell the tree would be the inevitable result. In view of the tree's size, and its proximity to the dwelling, I consider that it would be difficult for the Council to resist these applications once the dwelling had been built and occupied.
15. To my mind, the tree's height, the width of its canopy and its balanced shape make it a prominent and attractive feature, despite the fact that it is set back about 20m from the road. I accept that there are other trees closer to the road, but this does not diminish the willow's contribution to the street scene. I noted that it is particularly visible from Black Bull Wynd, the cul-de-sac serving a new development of houses opposite the appeal site.
16. I have considered the appeal proposal in the light of criterion (iv) of LP policy GP1; a criterion that relates to trees and landscape features. In my opinion, the proposed dwelling would threaten the long-term future of the tree. Furthermore, if the tree was felled, or its natural shape was altered by pruning, there would be an adverse effect on the valuable contribution that it makes to the street scene.

Conclusion

17. Despite my favourable decision on the highway safety issue, I have decided that the proposed dwelling would not sufficiently comply with sustainability objectives, and it would threaten the long-term future of the tree. Therefore, on balance, I have concluded that the proposed dwelling is unacceptable.
18. In reaching this conclusion I have taken into account all other matters raised, including the fact that an application to build a dwelling on the appeal site was dismissed on appeal in 1999 solely on drainage grounds which have since been addressed. However, in the intervening years, sustainability has become an important issue and the tree has grown. I do not feel constrained by that earlier decision.
19. Neither this, nor any other matter, outweighs the considerations that have led me to my decision that the appeal should be dismissed.

Ruth V MacKenzie

INSPECTOR



Costs Decision

Hearing held on 9 January 2008

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Decision date:
22 January 2008

Costs application in relation to Appeal Ref: APP/H0738/A/07/2045128 Hill House, Aislaby, Eaglescliffe, Stockton-on-Tees, Cleveland TS16 0QN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs R Raper for a partial award of costs against Stockton-on-Tees Borough Council.
- The Hearing was in connection with an appeal against the refusal of the Council on an application for outline planning permission for the erection of 1 No dwelling.

Decision: The application is allowed and partial costs awarded in the terms set out below in the Formal Decision and Costs Order.

The Submissions on behalf of the appellant, Mrs R Raper

1. Three out of the Council's 4 reasons for refusal are unfounded. They relate to detailed matters, and fail to take into account the fact that the planning application was made in outline with all matters reserved. There is nothing on which to base the Council's view that adequate visibility could not be achieved. Reason for refusal No 2 is therefore without substance. The revised indicative plan shows how 2 parking spaces and a turning area could be accommodated; reason for refusal No 3 is therefore without substance. The same indicative plan shows how the weeping willow could be protected, subject to appropriate conditions, thereby overcoming reason for refusal No 4.
2. Despite the shortcomings of reasons for refusal Nos 2, 3 and 4, the appellant nevertheless had to incur the unnecessary expense of employing the services of a highway consultant and a tree specialist in order to prepare for the appeal. A partial award of costs is therefore sought in respect of reasons for refusal Nos 2, 3 and 4. The Council has behaved unreasonably, and this has caused the appellant unnecessary expense.

The Response on behalf of Stockton-on-Tees Borough Council

3. The proposed development was assessed against the Council's highway design guide, and found to be sub-standard. It was therefore reasonable to impose reason for refusal No 2 on the grounds of inadequate visibility and driveway width. Furthermore, there was no certainty that sufficient parking and turning space could be provided within the boundary of the appeal site; and this led to reason for refusal No 3. The indicative plan showed a potential conflict between the proposed dwelling and the weeping willow; and it was therefore reasonable to impose reason for refusal No 4. The Council has behaved reasonably in all respects. Any costs incurred by the appellant in relation to highway and tree matters were not unnecessarily incurred. The application for partial costs is unjustified.
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Conclusions

4. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
5. I consider that the Council was unable to provide substantial evidence in support of its reasons for refusal Nos 2 and 3, relating to highway safety. It was unable to claim with any certainty that adequate visibility, driveway width, parking and turning areas could not be achieved. Its failure to substantiate these reasons for refusal is contrary to the provisions of Paragraph 12 of Annex 3 of Circular 8/93. In contrast, I consider that the Council was able to support most of its reason for refusal No 4, relating to the willow tree. Siting is a reserved matter, but the proposed dwelling would have had to be located somewhere within a small area between the willow tree (to the south) and the boundary line of Aislaby's Limits to Development (to the north). In my view, it was reasonable for the Council to reach the view that, wherever the dwelling was built within that small area, living conditions would inevitably be affected by the tree's proximity.
6. Because of the Council's unreasonable behaviour in relation to reasons for refusal Nos 2 and 3, I have decided to award partial costs in respect of the highway specialist advice that the appellant had to employ. However, I have not awarded costs in respect of the arboricultural advice sought in relation to reason for refusal No 4 because, in my view, the Council behaved reasonably in that aspect of the appeal.

Formal Decision

7. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Stockton-on-Tees Borough Council shall pay to Mrs R Raper the costs of the appeal proceedings limited to those costs incurred in relation to reasons for refusal Nos 2 and 3, relating to highway safety, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the refusal of outline planning permission for the erection of 1No dwelling on land at Hillside, Aislaby, Eaglescliffe, Stockton-on-Tees, Cleveland TS16 0QN.
8. The applicant is now invited to submit to Stockton-on-Tees Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Ruth V MacKenzie

INSPECTOR