

Appeal Decision

Site visit made on 18 April 2016

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 27 April 2016

Appeal Ref: APP/Z4718/D/16/3145882

9 York Road, Mirfield, WF14 9RR

- 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 Mandy Mitchell against the decision of Kirklees Metropolitan Council.
 - The application Ref 2015/62/93752/E was refused by notice dated 19 January 2016.
 - The development proposed is a dormer loft conversion on the existing bungalow.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the host dwelling, the pair of dwellings, and the street scene.

Reasons

3. The semi-detached pair of bungalows at nos. 9 and 7 York Road are part of a small development of similar modest-sized dwellings in York Grove. No. 9 differs from most other bungalows in that it fronts York Road, and the rear of the dwelling, which has a conservatory and access to the garage, faces dwellings in York Grove.
 4. York Road differs in character from York Grove in that there is a greater mix of dwelling types with a large block of flats set back opposite no. 9 and a terrace of substantial stone built houses adjacent to it.
 5. The proposal is a dormer on the front of the bungalow facing York Road. Although there is a high fence boundary at the front of no. 9 and the pair of bungalows are set down below street level, the roofs of the pair of bungalows are clearly visible from vantage points on the approach along York Road.
 6. The proposed dormer would involve raising the roof line by about 0.7m. It would occupy a substantial proportion of the front roof slope with only narrow margins remaining at the sides and above the eaves. As such it would appear as a large dormer for the modest size of the roof. It would appear unduly dominating and out of place on the front of the bungalow at no. 9 and it would dominate and unbalance the symmetry of the pair of bungalows.
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7. Although the proposed dormer would also be read in the context of the much larger end of terrace dwelling adjacent, it would appear unduly prominent in the street scene and out of keeping with the design of no. 9 and the pair of bungalows. White or light coloured cladding materials would accentuate the prominence of the dormer. The use of dark colour materials however would not sufficiently mitigate the appearance of a large dormer on the roof slope on account of its excessive size, design and position.
8. Taking all these matters into account, there would be material harm to the character and appearance of the host dwelling, the pair of dwellings, and the street scene. The proposal conflicts with saved Policy BE1 of the Kirklees Unitary Development Plan (UDP), which expects all development to be of a good quality of design, and with saved UDP Policy D2, which indicates that proposals should not prejudice visual amenity and the character of the surroundings.
9. Saved UDP Policy BE15 indicates that dormer extensions to front elevations will normally be permitted provided that, amongst other things, the original roof form remains the predominant feature, it does not exceed more than 50 per cent of the width of the original roof, and it does not project above the ridge. The proposal is also contrary to criteria set out in this policy.
10. The development plan policies are compatible with paragraphs 17 and 60 of the National Planning Policy Framework that seek to secure a high quality of design, and to reinforce local distinctiveness. They are also compatible with paragraph 64, which says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The proposal does not meet the objectives of the Framework in these respects.
11. I am mindful that there would be no adverse effect on the living conditions of nearby residents. I am also aware that the proposal would provide an additional bedroom and en-suite, and that a dormer extension would be required because of the shallow roof height. These matters however do not outweigh the significant harm that I have identified to character and appearance from the appeal proposal.
12. The appellant has indicated that the Council did not provide an opportunity to respond before the decision was taken, but this is a procedural matter for the Council to consider. I have taken into account all other matters, including all the policies in the Framework, and other national planning policy and guidance. The appeal however does not succeed.

Sue Glover

INSPECTOR

Appeal Decision

Site visit made on 13 October 2015

by Mrs A Fairclough MA BSc(Hons) LLB(Hons) PGDipLP(Bar) IHBC MRTPI

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

Decision date: 20 April 2016

Appeal Ref: APP/Z4718/W/15/3066358

Agricultural building opposite Windy Ridge Farm, Denby Lane, Upper Denby, Huddersfield.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order 2015.
 - The appeal is made by Mr Gerry Fisher against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2015/90923, dated 27 March 2015, was refused by notice dated 21 May 2015.
 - The development proposed is described as "prior approval application for the conversion of an agricultural building to form a dwelling at an existing agricultural building opposite Windy Ridge Farm, Denby Lane, Upper Denby".
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Gerry Fisher against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters and Main Issues

3. The appeal before me relates to a refusal to grant prior approval for a change of use to a dwelling of part of a large agricultural building. The appellant is seeking a Certificate of Lawful Use for a dwelling within another part of this large building. I will deal with the appeal on the basis of that the appellant is seeking a change of use and conversion of the part of the agricultural building that is within the site edged in red only.
 4. The appellant's application for prior approval was made on the basis that his proposal represents 'permitted development' under Class MB permitted development rights. However, on 15 April 2015 the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO') came into force. The Class MB permitted development rights are now Class Q rights under the changes introduced. The relevant legislation provides for anything done under the previous provisions will be treated as if carried out under the new provisions. As a result, the application, which was made under Class MB, has effect as if it was made under Class Q. I have dealt with the appeal on this basis.
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5. Planning Practice Guidance (PPG) advises the starting point for Class Q is that the permitted development rights grants planning permission, subject to the prior approval requirements. However, it is necessary to confirm that the proposal falls within permitted development. Class Q of the GPDO states development consisting of Q(a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses); and Q(b) building operations reasonably necessary to convert the building, is permitted development. Where development is proposed under Class Q(a) together with Class Q(b), it is permitted subject to the condition that before beginning the development, the prior approval of the local planning authority will be required as to (a) transport and highways impacts, (b) noise impacts, (c) contamination, (d) flooding, (e) location or siting, and (f) the design or external appearance of the building.
6. The Council refused the application for prior approval because it considered that insufficient information had been provided in order to make an informed assessment as to whether the proposed development would have an acceptable impact on highway safety, residential amenity and the design and appearance of the development with respect to the visual amenity and character of the Green Belt.
7. However, the policy on Green Belts in the *National Planning Policy Framework* is not relevant to Class Q, as it is not referred to in Q.2. Subject to satisfying myself that the proposal represents permitted development under Class Q, my determination of the appeal would be similarly constrained to the considerations relating to Q.2.(1)(a) transport and highway impacts of the development; Q.2.(1)(e) whether the location or siting of the building makes it otherwise impractical for the building to change from agricultural use to a use falling within Class C3 (dwellinghouses) in terms of residential amenity of the proposed development and Q.2.(1)(f) the design and external appearance of the building with regard to the immediate surroundings.
8. On this basis, I consider the main issues to be firstly, whether the proposed conversion of the agricultural building to a single dwelling is permitted. Secondly, if it is permitted development, whether prior approval should be given, having regard to highways issues, residential amenity and the design and appearance of the proposed dwelling.

Reasons

Whether the proposed conversion is permitted development

9. The large agricultural building forms one of a several structures used for the agricultural enterprise, which includes sheds, containers and other structures. Planning permission was approved in 2004 for an agricultural unit¹. The appeal site includes a specific part of an existing agricultural building and a small area of land to the front and side of it to form a curtilage. The large building is constructed in modern materials and it is single storey but with a high roof. Currently the relevant part of the agricultural building is used for storage purposes associated with the agricultural holding and it includes the storage of tools and a tractor. The land surrounding the appeal site is agricultural with evidence of small-scale poultry farming amongst other things.

¹ 2004/62/94719/E3

10. Before the individual merits of the proposal under Class Q can be evaluated, it is necessary to determine whether the development is permitted. In situations where this is not the case, the appeal must be dismissed.
11. With reference to Q(a), the appellant states that the agricultural storage building was used exclusively for agricultural purposes on 20 March 2013 as part of the related agricultural unit of 10.5 acres and the appellant has an agricultural holdings certificate. I note the Council does not dispute this. However, the Council refers to a car repair business and a residential unit. At the site visit I saw tools and a tractor within the agricultural building but no other vehicles. However, I noted that part of the agricultural building, within which the prior approval for change of use is sought, accommodates a dwelling which is subject to the application for Certificate for Lawful use as referred to above in paragraph 3.
12. The curtilage, as described in paragraph 10, is defined in the plan edged in red. It would include an area of land to the front of the building, which would be used for parking and a side area, which would be used to access the main entrance of the proposal. For the purposes of Class Q, 'curtilage' means the piece of land immediately beside or around the building, which is closely associated to it, or an area of land immediately beside or around it no larger than the area occupied by the building, whichever is the lesser². The curtilage would be less than the land area occupied by part of the agricultural building for which prior approval is sought. On this basis, the appeal proposal would comply with paragraph Q (a).
13. Paragraph Q (b) requires that only building operations that are reasonably necessary to convert the building to a dwelling house would be permitted development. Recent amendments to the PPG state that "it is not the intention of the permitted development right to include the construction of new structural elements for the building. Paragraph Q.1(i)(aa) states that development under Class Q(b) would consist of building operations other than the installation or replacement of windows doors, roofs, or exterior walls to the extent reasonably necessary for the building to function as a dwelling house.
14. Therefore, it is only where the existing building is structurally strong enough to take the loading which comes with the external works to provide for residential use that the building would be considered to have the permitted development right³".
15. The appeal building has a slender steel portal frame with approximately 4.7m centres and the frame is partially restrained by a 2m high block wall. Externally the building is timber clad at high level. The shallow pitched roof is covered in corrugated metal interspersed with full length sheets of transparent sheet panels to allow for natural illumination. There are several timber purlins fixed to the portal frame, which carry the load of the existing roof covering and under cladding.
16. I have not been provided with structural calculations or a survey. However, the appellant has submitted some information in letter from a structural engineer dated 7 January 2016 that states that the additional loading of 4 velux rooflights plus the likely extra weight of insulation to the roof/under

² GPDO, Schedule 2, Part 3 Paragraph X

³ Paragraph: 105 Reference ID: 13-105-20150305

cladding would have no adverse effect on the structural performance of the existing portal frame building.

17. The drawing indicates that the appeal proposal is contained within one part of the appeal building, which covers an area of approximately 1.5 bays of the portal frame. It includes 2 widely-spaced purlins on each roof slope between the ridge and the eaves purlins. The letter from the structural engineer (dated 7 January 2016) indicates that in order to install the new velux windows, the support would be trimmed from the purlins on either side of the openings and insulation and breather membrane (as required) could be located within the depth of the purlins/trimmers with under boarding fixed to the underside of the timbers.
18. However, the drawing also indicates that the 4 proposed rooflights would be positioned within the roof slope that would likely cut through 2 of the existing purlins as seen on site. I have no information before me to clarify whether the loss of these long spanning, timber purlins supporting a simple sheet covered portal roof structure would affect the performance of the roof structure above the relevant part of the building such that new purlins would be required. Moreover, it is likely that all the transparent corrugated roof covering would need to be removed. Therefore, it is not clear from the evidence before me whether the existing roof of the entire part of the building edged in red would need removing. This would leave only one element of the roof, the one portal frame bay within the area edged in red. Thus the works to the roof of the proposed dwelling could go beyond the extent reasonably necessary to carry out operations allowed by paragraph Q1(i)(i). Given that this could include the roof covering of the entire area edged in red, it could amount to a significant amount of rebuilding.
19. Taking this into account, it is likely that the proposed dwelling would require the construction of a significant new structural element to accommodate velux windows to provide the only light and ventilation for the proposed first floor, the extent of which could go beyond conversion works. Based on the submitted evidence, the proposal would not meet the requirements of Class Q, and would not be development permitted by it.
20. The PPG seeks to make a distinction between structural and non-structural works. However, I am aware that the GPDO itself places no restriction on whether works are structural or not. As referred to above in paragraph 14, the GPDO requirement is that the building operations are "reasonably necessary to convert the building" Q(b) and fall within the works permitted by Q.1(i).
21. I note the appellant's reference to a weblog and acknowledge that some works do not need to be covered by the permitted development right, by reference to s55(2)(a) of the Town and Country Planning Act 1990 (TCPA). This states that "the carrying out for the maintenance improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building" does not constitute development. Thus works falling within s55 (2)(a) of the TCPA do not need to be covered by Class Q, as they do not constitute development and so do not need to be covered by the planning permission granted by Article 3 and Class Q of the GPDO.
22. However, s55(2)(a) of the TCPA only applies to works of "maintenance, improvement or other alteration", and Class Q only relates to works reasonably

necessary to convert the building. Thus, there is a difference between maintenance and rebuilding.

23. I note that the appellant states that the Council has raised no objections to the structural suitability of the building for the conversion. However, whilst I accept the PPG has provided clarification, it has not changed the requirements of Class Q, including the requirement for building operations that are reasonably necessary to allow functioning as a dwelling house. Moreover, with paragraph W the onus is on the developer to provide sufficient information to establish whether the proposed development complies with any conditions, limitations or restrictions specified in this part as being applicable to the development in question in Part 3. The appellant has failed to do this in respect of providing sufficient information regarding the roof structure.

Highway safety, residential amenity and the design and appearance of the development

24. The Council have also refused the application for highway safety, residential amenity and the design and appearance of the development. However, for the reasons given above, the proposed conversion would not be development permitted under Class Q, and as the consideration highway safety, residential amenity and the design and appearance of the development would not alter the outcome of the appeal, I have not considered these matters further.

Conclusion

25. Thus the proposed change of use would not satisfy the requirements of Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 and therefore is not development permitted by it. For the reasons given above, the appeal is dismissed.

Mrs A Fairclough

INSPECTOR

Costs Decision

Site visit made on 13 October 2015

by Mrs A Fairclough MA BSc(Hons) LLB(Hons) PGDipLP(Bar) IHBC MRTPI

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

Decision date: 20 April 2016

**Costs application in relation to Appeal Ref: APP/Z4718/W/15/3066358
Agricultural Building opposite Windy Ridge Farm, Denby Lane, Upper
Denby, Huddersfield.**

- 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 Mr Gerry Fisher for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 for prior approval application for the conversion of an agricultural building to form a dwelling at an existing agricultural building opposite Windy Ridge Farm, Denby Lane, Upper Denby.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The application is for a full award of costs. The applicant submissions and the response by the Council have been made in writing.
 4. The applicant considers that the Council behaved unreasonably by assessing that insufficient information had been provided in order to assess whether the proposed development would have been acceptable in terms of highway impact and residential amenity and by refusing the application on the design and appearance of the proposal.
 5. The applicant states that he should not have needed to submit an appeal and he has incurred unnecessary expense in having to do so. An additional costs claim was submitted by the applicant on the basis that the Council did not submit an appeal statement even though one was referred to on the Council's appeal questionnaire. The applicant states that he has had no opportunity to comment on an appeal statement.
 6. The Council's officer report explains the reasoning for the decision. With regard to highway issues and residential amenity, the Council considered that there was insufficient information. This lack of information related to both the existing character and use at the appeal site and the nature of the proposed
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- use. The Council stated that this information is necessary to assess properly the impact of the appeal proposal on the access, the drive plus the parking and whether any turning or passing places are required for vehicles such as refuse trucks. The Council also considered that there was insufficient information to assess the impact of the existing use at the site on residential amenity in terms of the type and nature of nearby activities.
7. In addition to this, the Council considered that the domestication of a part of the agricultural building by the insertion of domestic style and scale fenestration would harm the character and appearance of the locality including the Green Belt.
 8. Although the originating application was submitted under Class MB of the Town and Country Planning (General Permitted Development) Order (GPDO) 1995. The Council considered that the proposal was development permitted by Class Q(a) and (b) of the Town and Country Planning (General Permitted Development)(England) Order 2015. However, the Council did not consider that it was unreasonable to refuse the application in relation to Paragraph Q.1. The Council refused the application for prior approval because it considered that insufficient information had been provided in order to make an informed assessment as to whether the proposed development would have an acceptable impact on highway safety, residential amenity and the design and appearance of the development with respect to the visual amenity and character of the Green Belt.
 9. Class W(3)(b) states that the local planning authority may refuse an application where the opinion of the authority the developer has provided insufficient information to enable the authority to establish whether the proposed development complies with any conditions, limitations or restriction specified in this part as being applicable to the development. However, my decision did not address these matters as I was not satisfied that the proposal represented permitted development under Class Q. Moreover, there is nothing persuasive before me to demonstrate that the Council acted unreasonably on these matters.
 10. With regard to the further application for costs made by the applicant in relation to the Council's lack of appeal statement, I note that the Council stated in the appeal form that they would submit an appeal statement. However, they did not. They relied on the Council Officer's report. This document was detailed and I consider that an appeal statement would have repeated most if not all the contents if an appeal statement was submitted.
 11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense has not been demonstrated.

Mrs A Fairclough

INSPECTOR

Appeal Decision

Site visit made on 4 April 2016

by Susan Ashworth BA (Hons) BPI MRTPI

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

Decision date: 19 April 2016

Appeal Ref: APP/Z4718/D/16/3144924

10 Liversedge Hall Lane, Liversedge, WF15 7DB

- 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 & Mrs David Brooke against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93227/E, dated 16 October 2015, was refused by notice dated 23 December 2015.
 - The development proposed is erection of two storey and single storey rear extensions to create a dwelling forming annex accommodation associated with 10 Liversedge Hall Lane and detached garage to front garden and demolition of existing single storey rear extensions and double garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 1. The effect of the proposal on the living conditions of the adjacent residents at 8, Liversedge Hall Lane with particular regard to outlook.
 2. The effect of the proposal on the character and appearance of the area including the likely long-term effect on a mature tree within the front garden.

Reasons

Living Conditions

3. 10 Liversedge Hall Lane is an imposing property set to the rear of its plot with a garden to one side. It lies in a well-established residential area comprising properties of a mix of styles and ages. The neighbouring property, No 8, is a smaller semi-detached two-storey dwelling, which has been extended at the side and rear in close proximity to the common boundary with No 10. It is set at a lower level to No 10.
4. It is proposed to demolish an existing detached garage and rear extensions and to replace them with a larger extension that would be partly two and partly single storey in height. The development would extend across the rear of the property and project out at the side towards No 8. In addition it is proposed to erect a detached garage to the front of the dwelling.

5. I noted at my site visit that as a result of its proximity to the boundary, the change in land levels and the angle of the boundary, the existing garage which has a flat roof is prominent when viewed from the rear windows of the neighbouring house and from within its garden. The two storey element of the proposed extension, which would replace the garage, would be set back from the boundary. However, at two storeys in height with a hipped roof, the extension would have a considerably greater impact on outlook than the existing structure. As a result of its height and massing, and proximity to the boundary, the extension would appear dominant and thereby overbearing when viewed from the rear of No 8.
6. I have taken into account the suggestion by the appellant that the impact of the development could be softened by planting although there are no landscaping proposals before me for consideration. Given the limited amount of space that would be available at the side of the extension, such planting is unlikely to be substantial and moreover would not have a significant effect on the appearance of what would be a substantial building mass.
7. There would be no windows facing No 8 and although there would be a path around the garage a boundary fence on the appellant's side would prevent undue overlooking. As such the development would not result in a loss of privacy to neighbouring residents. Nor is there any convincing evidence that it would result in a material loss of direct sunlight. However, this does not outweigh my concerns about its overbearing impact.
8. I therefore conclude on this main issue that for above reasons the side element of the proposal would result in unacceptable harm to the living conditions of the residents at No 8. As such the proposal would be contrary to Policies D2, and BE14 of the Kirklees Unitary Development Plan (UDP) which, amongst other things, seek to ensure that the residential amenity of adjoining occupiers is maintained. This is consistent with advice in the National Planning Policy Framework, one of the core planning principles of which is to seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Character and Appearance

9. No objection has been raised by the Council to the impact of the design of the proposed development on the character and appearance of the area. However, the proposed replacement garage would be sited adjacent to the front boundary of the site in close proximity to a mature tree which is protected under a provisional Tree Preservation Order. The tree is of a substantial size and is highly prominent in the street scene and therefore makes a valuable contribution to the character and appearance of the area.
10. Plans indicate that the garage would be sited in close proximity to the trunk of the tree canopy and therefore within the tree's likely root system. The application was not accompanied by an assessment of the tree or the effects of the development on it. Consequently I cannot accurately conclude that the development would protect the viability of the tree in the long term. Whilst I have taken into account the appellant's suggestion that any excavation could be undertaken by hand, as there are no details of the either the tree's root system or the garage's construction before me I am unconvinced that this would be a satisfactory arrangement.

11. I acknowledge that the appellants are challenging the Tree Preservation Order but nevertheless it is incumbent on me to determine the appeal before me on its own merits.
12. The loss of the tree would have a detrimental impact on the character and appearance of the area. As a result, the proposal would be contrary to Policy NE9 of the UDP which seeks to ensure that mature trees are retained.

Other matters

13. The Council is concerned that the loss of the tree would result in the loss of a habitat for bats. There is no evidence before me as to whether bats are present in the area but, be this as it may, it seems to me that there are other opportunities for bat foraging in the vicinity of the site.
14. There is also some concern by local residents that the garage would affect visibility along the highway, particularly when emerging from the neighbouring driveway. There is no evidence before me on this matter and I note that no objection to the proposal was raised by the Council on highway safety grounds. It seems to me that visibility is presently partly restricted by the boundary walls. The garage would be positioned behind the wall and I am unconvinced therefore it would have any significant effect on visibility.
15. I have taken into consideration the concerns of residents of properties fronting Huddersfield Road at the rear of the site. The Council advise that these properties lie some 25m away from the site and I note that they are set at an oblique angle to the appeal property. The proposal would introduce three windows, two of which would be to non-habitable rooms, at first floor level in close proximity to the rear boundary. It seems to me that given the distance between the buildings, the angle at which they were set and the substantial, mature boundary planting, any opportunity for overlooking would not result in a material loss of privacy to the occupiers of those properties.

Conclusion

16. It seems to me that the Council does not object to the principle of an extension at the property and I have no reason to disagree. However, for the reasons set out above, the proposal before me would have a harmful effect on the living conditions of residents at No 8. In addition, on the basis of the evidence before me I am unable to conclude that the development would maintain the future viability of a mature tree, the loss of which would be harmful to the character and appearance of the area. For these reasons and taking into account all other matters raised, the appeal is dismissed.

S Ashworth

INSPECTOR

Appeal Decision

Site visit made on 6 May 2016

by Helen K Heward BSc (Hons) MRTPI

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

Decision date: 18 May 2016

Appeal Ref: APP/Z4718/Z/16/3146253

**Ravensthorpe WMC, Huddersfield Road, Ravensthorpe, Dewsbury
WF13 3ET**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Mr A Hussain against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/64/93294/E, dated 13 October 2015, was refused by notice dated 19 January 2016.
 - The advertisement proposed is a non-illuminated sign.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is retrospective. However, for the avoidance of doubt this decision relates to the sign as described in the application documents.

Main Issue

3. The effect of the sign upon the character and appearance of the locality.

Reasons

4. Paragraph 67 of the National Planning Policy Framework (the Framework) advises that poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. The Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (the Regulations), the Framework and the Planning Practice Guidance (the PPG) require that decisions on advertisements be made only in the interests of amenity and public safety.
 5. The Council do not raise any public safety concerns and nor do I. The PPG includes advice on the consideration of amenity issues that *"in assessing amenity, the local planning authority would always consider the local characteristics of the neighbourhood: for example, if the locality where the advertisement is to be displayed has important scenic, historic, architectural or cultural features, the local planning authority would consider whether it is in scale and in keeping with these features. This might mean that a large poster-boarding would be refused where it would dominate a group of listed buildings, but would be permitted in an industrial or commercial area of a major city (where there are large buildings and main highways) where the advertisement*
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would not adversely affect the visual amenity of the neighbourhood of the site¹".

6. The sign is located on a prominent section of a rendered large three storey side elevation that has few openings. The sign is approximately 7m above ground, and appears above most buildings in the locality. Approximately 4m wide and 1.35m high, the sign appears as a large, prominent and uncharacteristic feature. It draws the eye. In these ways the advertisement is harmful to visual amenity and the character and appearance of the locality.
7. The advertisement subject of this appeal is positioned at a higher level and appears more set back than most of the wide variety of signage in this locality centre, including brightly coloured and illuminated signs. For these reasons I attach limited weight to the other signage.
8. I am informed that the site is not within a conservation area and that there are no listed buildings immediately adjacent to the site. The sign has a purpose in advertising the premises. However, these factors do not outweigh the harm to visual amenity that I have found.
9. The Council refer to Policies D2 and BE2 of the Kirklees Replacement Unitary Development Plan (2007). As the Regulations require that decisions be made only in the interests of amenity and public safety, these policies are not determinative.

Conclusion

10. The sign helps advertise the premises in this busy local centre where there is a plethora of signage. However, I find that due to the size and position, the advertisement subject of this appeal has a negative impact upon the character and appearance of the locality. As such the advertisement fails to satisfy advice in the Framework and PPG and the harm to amenity outweighs the benefits and mitigating factors. The appeal is dismissed.

Helen Heward

PLANNING INSPECTOR

¹ Paragraph 079 reference ID: 18b-079-20140306

Appeal Decision

Site visit made on 3 May 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 18/05/2016

Appeal Ref: APP/Z4718/W/6/3144201

Land off High Street, Thornhill, Wakefield WF12 0PR

- 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 J Greening against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/91256/E, dated 24 April 2015, was refused by notice dated 22 December 2015.
 - The development proposed is described as detailed application for 1 No dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - The effect on the character and appearance of the area.
 - Whether the proposal would provide adequate living conditions for future occupiers of the dwelling having particular regard to outlook.

Reasons

Character and appearance

3. The appeal site is located at the head of a residential cul-de-sac and comprises a relatively flat rectangular plot of land positioned on the top of a steep embankment with substantial detached properties on Daleside below. Properties on High Street are predominantly large detached dwellings set in relatively large gardens with the consequence that the area is spacious in character. Those on the south side of the High Street have particularly long rear gardens. The dwellings are of various design styles and construction ages and are arranged with primary windows positioned on a north-south axis to take advantage of the extensive views to the south.
 4. Although there is no consistent architectural design style of the buildings themselves, there is some degree of limited uniformity in the form of local development due to orientation, set back of the dwellings from the road, spacious nature of plot sizes and primary southern aspect of a north-south axis of dwellings.
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5. In order to accommodate the development the ground level of the site would be lowered by approximately 1.8m from its current level which is broadly commensurate with the level of the road. The proposed dwelling is an L shaped bungalow which would be positioned close to the southern and eastern boundary of the site. The property would have a main aspect facing in a west and north direction. Owing to the configuration of the plot the property would be positioned close to the existing public footpath which extends easterly from the cul-de-sac turning head and passes along the northern boundary of the appeal site.
6. In contrast to other development on High Street the proposed dwelling would occupy a much smaller plot size. The plot would have a shallower depth than others in the vicinity and would be orientated in a west-east direction and hence at right angles to the orientation of existing plots on the street. Consequently the proposal would not have a rear garden which is an established characteristic of other properties on the street. Instead the private amenity space would be provided by a modest side garden. Although the dwelling has been set back further from the road than that considered in the previous appeal, it would still be positioned much closer to the road than other properties on this side of High Street.
7. The dwelling itself would have a smaller floor area than others on the street and its aspect would be on a west-east axis as oppose to the dominant north-south axis of other properties. In addition the dwelling would be positioned close to the northern, southern and eastern boundaries of the site resulting in a form of development that appears cramped in contrast to the spaciousness nature of other development on the street. I agree with my colleague Inspector in the previous appeal that the site would be of inadequate depth to accommodate a dwelling on a plot comparable to others nearby.
8. My attention has been drawn to the planning permission recently granted at No 39 Daleside. I have no details of this proposed development or of the circumstances that led to this being approved by the Council. Whilst it is clear that some works have occurred on the site of this development, in views from public vantage points I did not observe that any foundation works have occurred to conclusively indicate that the permission has been implemented.
9. In any event, both of the main parties in this appeal indicate that the development at No 39 Daleside has a larger plot size than the appeal proposal and is positioned closer to the host property. The Council also indicate that this development would have a south facing primary aspect. Consequently, I cannot be certain that the development to the rear of No 39 Daleside is comparable to the circumstances in this appeal and whilst it is a material consideration to which I have attached moderate weight, I have considered this appeal on its own merits.
10. Taking the above matters into account, the proposed development would be visibly at odds with the established character of other development in the locality. Consequently, I conclude that the development would harm the character and appearance of the area and would be contrary to Saved Policies BE1, BE2 and D2 of the Kirklees Unitary Development Plan (2007) (UDP). These policies, amongst other things, require new development to be in keeping with surrounding development in respect of density and layout and not prejudice the character of the surrounding area.

Living conditions

11. I have taken into account the extracts provided from the Inspectors decision letter in relation to the previous refusal of planning permission (Ref: 2010/92779) for residential development of the site and I recognise that the development proposed in this appeal has been designed to reduce the impact on the living conditions of the properties to the south with regard to overlooking.
12. Notwithstanding my findings in respect of the impact on character and appearance above, the proposed plot size would be adequate for the size of the dwelling proposed. Whilst the boundary fence would be positioned close to the southern and eastern elevation of the property the primary aspect is to the north and west.
13. Views from the west would be over the garden area and in my view the aspect from lounge/dining room and bedroom windows would be acceptable. Views from the bedroom windows towards the north would face the 2m high embankment approximately 3.6m away. Although the views from these windows would be compromised by the presence of the embankment, the intervening distance would be adequate to maintain acceptable levels of light to these windows.
14. The proposed dwelling would have an outlook that primarily faces the site boundary fencing. As such it would not have the same degree of outlook that is enjoyed by other properties in the area. However, given the available modest garden space I do not consider that the reduction in outlook would be of an extent to cause material harm to the living conditions of future occupants of the property.
15. Consequently, the proposal would not be contrary to Saved Policy D2 of the UDP. This policy, amongst other things, requires that new development does not prejudice residential amenity.

Other matters

16. I have taken into account the concerns of residents on Daleside regarding potential overlooking and loss of privacy. However, I agree with the Council that the design changes from the development that was previously considered, together with the position and height of screen fencing and the high sill obscurely glazed window in the south elevation, would ensure that there would be no overlooking or loss of privacy of an extent that would constitute a reason to dismiss this appeal on those grounds.
17. My attention has been drawn to potential drainage issues that may be caused as a consequence of water run-off from the appeal site on to properties at a lower level to the south. In my view that this is a matter that could be adequately dealt with by a suitably imposed planning condition were I minded to allow the appeal.
18. I have taken into account the modest contribution that the development would make to housing supply within the Borough. However, this does not outweigh the harm that I have found to the character and appearance of the area.

Conclusion

19. Whilst I have found that the development would provide adequate living conditions for the future occupants of the property this does not outweigh the harm that I have found to the character and appearance of the area. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Stephen Normington

INSPECTOR

Appeal Decision

Site visit made on 4 April 2016

by Louise Nurser BA (Hons) Dip Up MRTPI

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

Decision date: 25 May 2016

Appeal Ref: APP/Z4718/W/16/3142436

Flockton Hall Farm, Flockton, West Yorkshire WF4 4DW

- 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 Matt Burrow (Charles Church (West Yorkshire)) against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/62/94027/E, dated 23 December 2014, was refused by notice dated 10 November 2015.
 - The development proposed was originally described as, *'Residential development of 46 dwellings and associated works including access, public open space, landscaping, parking and ancillary works. The proposals also include the retention of the farm cottage addressed as 49 Barnsley Road and associated outbuilding which lie within the redline boundary for future use plus the provision of a new access and parking court for these buildings'*.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Matt Burrow (Charles Church (West Yorkshire)) against Kirklees Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The description of the development in the heading above has been taken from the planning application form. However, in Part E of the appeal form, the description of the development has changed to reflect alterations made to the proposed development prior to the determination of the application. These changes include amendments to the proposed access; the proposed demolition of the farm cottage and associated farm buildings, and an increase in the number of dwellings to 47.
 4. I am aware that the site is identified as a housing option within the emerging Kirklees Local Plan. However, as I have been provided with little detail of the plan's progress, I have, in accordance with Paragraph 216 of the Framework given this limited weight in my consideration of the appeal.
 5. Following the determination of the application, an amended layout plan was submitted which included a double timber gate (FLO-2014-01 Rev K) leading to the arable fields beyond. In addition, following the site visit I requested a
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revised plan be supplied which superimposed the AutoTRACK drawings for the combine harvester onto the revised layout, together with a missing plan relating to refuse vehicles. The appellant provided similar plans illustrating the AutoTRACK analysis for both the combine harvester and refuse vehicles. As all of these plans have been copied into the Council for information, and as the plans provide clarity rather than alter the substance of the appeal before me, no third parties would be prejudiced by my accepting the plans.

6. The appellant has submitted a signed Unilateral Undertaking (UU) following the submission of the appeal. This would secure 9 dwellings as affordable units and financial contributions of £134,347 towards education provision; £10 000 for the provision and maintenance of a bus shelter, £22,360.25 towards a MetroCard contribution, £70,000 for off- site highway drain upgrade, and £20,000 towards the provision or improvement of equipped play space within Flockton.
7. I note that the Council has stated the UU was satisfactory and are agreeable to the Public Open Space being dealt with by way of condition¹. I have carefully considered the affordable housing element of the UU, and have concluded in the absence of evidence to suggest otherwise, that it would provide adequate levels of affordable housing and would therefore provide a benefit to which I refer in my conclusion.
8. I have also considered the provision of the bus shelter and the contribution to the Residential Metrocard Scheme for future residents to which I refer later in my decision, and conclude that this would be directly related to the site, fairly related in scale and kind, and necessary as a means of encouraging sustainable travel in accordance with Saved Policy T19 of the Kirklees Unitary Development Plan, adopted 1999 (UDP).
9. However, given that the proposal is to be dismissed, I have not considered the other matters set out within the UU in detail.

Background and Main Issue

10. The majority of the appeal site is identified as Provisional Open Land and has been safeguarded for development within Saved Policy D5 of the UDP. As such, and in the context of not being able to demonstrate a five year supply of housing, in line with Paragraph 14 of the Framework and the presumption in favour of sustainable development, the Council has no objection in principle to the development of the site.
11. The proposed housing development would be built on the site of the demolished farm cottage, farm buildings and on land currently used for arable farming. This is part of a larger land holding of around 10 hectares served by the current access off Barnsley Road. It is proposed that the farm traffic continues to access the farmland through the new development via a timber gate at the rear of the site. The main issue is the effect of agricultural vehicles travelling through the residential development on the safety and security of other road users within the development, including children playing out, pedestrians and cyclists.

¹ Letter from Kirklees Council to appellant 22 March 2016

Reasons

Shared space

12. The proposed development is accessed off Barnsley Road. The road then splits with housing laid out in the typical form of a modern estate based around a shared surface. However, as no practical alternative access has been found² to the remaining extensive area of farmland of approximately 9 hectares, and that an additional dedicated access off the main road is considered by the appellant to be inappropriate³, it is intended that substantial agricultural machinery will be driven past the housing, into and out of, the remaining fields on average once a week. This is unlike most developments where shared surfaces are promoted, where large vehicles are likely to be the exception.
13. Paragraph 35 of the Framework sets out a number of design objectives for new developments to include, where practical, the creation of safe and secure layouts which minimise conflicts between traffic and cyclists or pedestrians, avoiding street clutter and, where appropriate, establishing home zones. It is generally accepted that a shared surface is designed to allow all road users including pedestrians, cyclists and young children to feel safe and secure.
14. The appellant has provided detailed information relating to the type, and numbers of journeys by agricultural farm machinery which could be expected to travel through the development. I note that on average that this could result in around two movements a week. However, clearly, at certain times of the year such as at harvest, which may correspond with school holidays, or during fertiliser application or muck spreading, there are likely to be periods of more intensive activity. Moreover, the maximum figure cited of around 110 movements per annum is predicated on only one crop being grown. Were different crops to be grown in the individual fields this could significantly increase the number of agricultural traffic movements experienced. Consequently, this could increase the access requirements for a combine harvester.
15. The AutoTRACK analysis that has been provided demonstrates that it would be possible for a combine harvester to use the proposed layout and I am aware that the carriageway has been widened to 6 m to facilitate this. However, due to its width, it would take up the whole of the shared surface and would not provide for any safe haven for pedestrians or cyclists to shelter without going on private land. In addition, in theory, there should be no need for any cars to park on the street as adequate parking is proposed to be provided in line with Saved Policy T19 of the UDP, and the UU is intended to provide for financial contributions to encourage public transport use by future occupants. However, in my experience cars will often park at the side of roads in such estates. I note that the appellant's transport consultant accepts that the combine harvester would require clear access to be able to get to the fields⁴. Therefore, were cars to be parked on the road at the same time as the combine harvester were to attempt to access the fields it would require the combine harvester to reverse along the shared space.

² Highways Statement Prepared by Fore Consulting Limited Dated 4 January 2016- Appendix B Letter from Carter Jonas to Persimmon Homes (West Yorkshire) 23 December 2015

³ Letter from Paul Corfoot Fore Consulting Limited to Kirklees Planning Services 24 September 2015

⁴ Paragraph 5.18 Highways Statement Prepared by Fore Consulting Limited Dated 4 January 2016

16. I am aware that in rural areas agricultural traffic is a common sight on the public highway. However, there is a fundamental difference between a public highway whose primary objective is to be used for vehicular traffic and a shared surface which is designed with no hierarchy of road users. Shared surface streets should be designed to create an environment in which pedestrians can walk, or stop and chat without feeling intimidated by motor traffic: and to make it easier for people to move around without vulnerable road users feeling threatened by having no space protected from vehicles.
17. A development of predominantly family housing, such as that proposed here, is likely to mean activity throughout the day and evening and more pedestrians, cyclists and young children playing out in a "secure" environment. However, the appellant's conservative estimate of around two movements per week of farm vehicles, ranging at the most common, from a tractor with a trailer, to at its rarest, a combine harvester, would be incompatible with this objective. It would not result in a secure environment, nor engender one where parents would feel confident in allowing their children to play out. Indeed, the planned development would share some of the attributes identified in the HSE leaflet which relates to the incompatibility of moving farm vehicles and pedestrians⁵ as a shared surface by definition does not delineate the space for vehicles and pedestrians and would run against the advice that pedestrians and moving farm vehicles do not mix.
18. I have been referred to Paragraph 32 of the Framework which refers to development only being refused or prevented on transport grounds where the residual cumulative impacts are severe. However, it is not part of the Council's case that the residual cumulative impacts of the development are severe, rather that there are specific safety issues related to the proposed development given the relationship with the housing and the proposed farm traffic.
19. Consequently, I conclude the proposed development would be contrary to Saved Policy T10 of the UDP as it would create or materially add to highway safety problems, by embedding the incompatible movement of farm traffic through a housing development whose design does not provide adequate provision for the safety of other road users, and would not be perceived as a safe and secure environment for future occupants. In accordance with Paragraph 215 of the Framework I have given the policy considerable weight given its consistency with paragraph 35 of the Framework.

Other matters

20. My attention has been drawn by the appellant to an appeal⁶. However, whilst there are clearly similarities between it and the appeal before me, such as the housing supply situation, the weight to be accorded to Policy D5 of the UDP and the presumption in favour of sustainable development, there is also a significant difference in that the appeal site to which I have been referred did not include a proposal for agricultural traffic to drive through it. Accordingly, I have reached my own conclusion on the basis of the evidence before me.
21. I appreciate that the planning officer recommended that the proposal should be approved, and that the Council's highway officers raised no objection to either

⁵ HSE- Guidance/ Agricultural resources/Case Studies/Transport/ segregating Pedestrians from vehicles.

⁶ APP/Z4718/A/13/2201353

the internal road layout or the access to the site from Barnsley Road.
Nonetheless, this does not overcome my significant concern outlined above.

Conclusion

22. The Council is currently unable to demonstrate a five year supply of housing. The Framework states that in such circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
23. The proposal would make a sizeable contribution to the housing supply, as well as providing affordable housing to meet local needs, which together provide a significant social benefit. The majority of the site is safeguarded for development as a result of Saved Policy D5 of the UDP and the rest in principle could be redeveloped in line with Saved Policy DP2 of the UDP. The proposed development would bring economic benefits through the construction of new housing, and new customers to local businesses, including supporting local bus services. However, these matters are not determinative.
24. The lack of a five year housing supply does not automatically lead to the grant of planning permission, even where there are benefits. However, I conclude that the adverse impacts I have identified in relation to pedestrian and cyclist safety would significantly and demonstrably outweigh the benefits of the scheme before me. Therefore, this leads me to conclude that the proposed development is not sustainable development.
25. For the reasons set out above I conclude that the appeal should be dismissed.

L Nurser

INSPECTOR

Costs Decision

by Louise Nurser BA (Hons) Dip Up MRTPI

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

Decision date: 25 May 2016

**Costs application in relation to Appeal Ref: APP/Z4718/W/16/3142436
Flockton Hall Farm, Flockton, West Yorkshire, WF4 4DW**

- 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 Mr Matt Burrow (Charles Church (West Yorkshire) for a full award of costs against Kirklees Metropolitan Borough Council.
 - The appeal was against the refusal of planning permission for development originally described as, *'Residential development of 46 dwellings and associated works including access, public open space, landscaping, parking and ancillary works. The proposals also include the retention of the farm cottage addressed as 49 Barnsley Road and associated outbuilding which lie within the redline boundary for future use plus the provision of a new access and parking court for these buildings'*.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expenses in the appeal process.
3. The appellant is of the view that the Council has behaved unreasonably in a substantive way. Paragraph 49¹ sets out examples of behaviour that might give rise to a substantive award of costs against a Local Planning Authority and this includes preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The application was recommended for approval by Council officers at the meeting of the Heavy Woollen Planning Sub Committee of the 17 September 2015, and, following concerns raised relating to highway matters, the application was deferred. Following this meeting further liaison took place between the appellant's transport consultants and further information was submitted. At the meeting of the Heavy Woollen Planning Sub Committee of the 30 October 2015 the proposed development was again recommended for approval. The Council's Highway officers concurred that agricultural vehicles would be able to move safely through the proposed development. The conclusion drawn in the officer's report was that there were no adverse impacts

¹ Planning Practice Guidance: Reference ID: 16-049-20140306

that would outweigh the benefits of the scheme. Subsequently, the application was recommended for approval but subsequently refused.

5. Consideration of planning applications necessarily involves matters of planning judgement and Local Planning Authorities are not bound to accept the recommendations of their officers. Nevertheless, if officers' professional or technical advice is not followed authorities will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence to support the decision in all respects.
6. In this case, the Local Planning Authority took the view that that the use of the residential estate as a means of access to working farmland would not result in a safe and secure environment for future residents. I have carefully considered and assessed the planning merits within my main Decision and have found that the appeal should not succeed.
7. As such, I consider that the Council has not behaved unreasonably. The matter is one of disagreement between the parties which could only have been resolved at appeal. Therefore, the appellant has not been put to unnecessary or wasted expense. Consequently, the application for an award of costs against the Council is dismissed.

L. Nurser

INSPECTOR