
Appeal Decision

Site visit made on 11th April 2016

by Jonathan G King BA(Hons) DipTP MRTPI

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

Decision date: 03 May 2016

Appeal Ref: APP/Z4718/W/15/3140324

Land adjacent to the Spotted Cow public house, New Hey Road, Salendine Nook, Huddersfield HD3 3FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr & Mrs G Jolley against the decision of Kirklees Council.
 - The application Ref 2015/60/90452/W was refused by notice dated 12th June 2015.
 - The development proposed is residential development (outline) and access.
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Decision

1. I allow the appeal and grant outline permission for residential development and access on land adjacent to the Spotted Cow public house, New Hey Road, Salendine Nook, Huddersfield HD3 3FG, subject to the conditions included in the annex to this decision.

Background and procedural matters

2. The application was described as follows when it was initially submitted and determined: *Outline Planning Application is for a residential scheme comprising 22 dwellings, associated car parking, access, landscaping and garages. The Outline Application will reserve all matters except for access and layout. The proposal comprises a mix of residential types and sizes which will incorporate 2 two-bedroom semi-detached homes, 13 Three-bedroom semi-detached and terraced homes, 4 four-bedroom semi-detached homes and 3 four-bedroom detached homes.*
3. The application as submitted was in outline but with approval also sought for access and layout, with the remaining matters reserved.
4. Five reasons for refusal were given in the decision notice relating, briefly, to: the effect of the proposed development on the character and appearance of the area; its effect on trees; the safety of the living conditions for future occupiers; the effect on matters of biodiversity interest; and the potential for flood risk.

5. Subsequent to the making of the appeal, the appellants have indicated that the layout of the development should be removed from consideration, so that it should proceed solely in relation to the principle of development and access, with all other matters reserved. The Council is content to proceed on this basis, and so am I.
6. An amended description of the development has been agreed between the main parties: *Outline Planning Permission for Residential Development with Access agreed*. I have used this as the basis of the description of the development in the preamble to this decision. The parties agreed that there should be no reference to the number of dwellings sought or permitted.
7. For the avoidance of doubt, the parties have agreed that the only plan that remains to be considered is drawing No N-YK-1453-3T-FIGURE 2 Revision 02, dated 15th July 2014 and entitled *Ghost island right turn lane and visibility at proposed access*. In addition to the access being shown, it also indicates the "red line" boundary of the site.

Main Issues

8. The main issues in this case are:
 - (a) whether the use of the site for residential development is appropriate in principle; and
 - (b) the effect of the proposed access on highway safety and the free flow of traffic.

Reasons

9. From the outset, the Council has indicated that it raises no objection to an outline approval for residential use or to the proposed access, subject to a number of conditions being imposed. The Council acknowledges that removal of the initially proposed layout from consideration at outline stage has overcome all of the detailed reasons for refusal. In its appeal statement it makes no submissions concerning the reasons for refusal; and has since stated that it does not intend to rely on, or provide any evidence in relation to them.
10. The site is located fronting New Hey Road which is a main arterial road, carrying the A640 westwards from the centre of Huddersfield towards the M62 motorway. It is a broad road which incorporates cycle lanes, and a number of ghost islands with right-turning facilities. Level with the site is a pedestrian refuge, and there is a bus stop on the frontage. The site is presently vacant and unused, being mostly covered by rough vegetation and the remains of some hard surfacing, formerly tennis courts. To the west is the cemetery and grounds of the large Salendine Nook Baptist Church, a Grade II listed building, while on the other side is a boarded up former public house. The site is roughly flat but to the rear, beyond a line of trees covered by Tree Preservation Orders, an area of undeveloped land rises. Along its frontage is a stone wall with trees behind. Opposite are open air recreational facilities, with a short terrace of housing at the eastern end.

The principle of development

11. The Council has no objection to the principle of residential development on the site, as it is allocated for that use under allocation No H8.60 in the Kirklees Unitary Development Plan (UDP). It considers that the site is in a sustainable location that benefits from good transport links and access to facilities and amenities. Subject to the imposition of appropriate conditions and any reference to a specific number of dwellings numbers being omitted from any decision, it is content for permission to be granted.
12. I agree that the site is sustainably located with respect to access to transport and facilities. I am satisfied that it would be possible to achieve an acceptable layout that incorporated the protected trees, provided that development was set back sufficiently from them. With care, many of the trees on the frontage could probably also be retained, other than where affected by the proposed access. I agree with the Council's conservation officer that the setting of the church would not be harmed. I have reviewed all of the consultation responses contained in the Council's committee report, together with the public representations made at that time, but I have been given no reason to believe that the site is not suitable for housing development in principle. No public representations have been made with respect to the appeal.

Highways and access

13. New Hey Road is busy, but it is straight and broad with good visibility. The position of the proposed main access point, about one third of the way along the frontage from the east, has, I understand, been negotiated with the Council's highways officers. It is considered acceptable, subject to conditions, including the implementation of off-site works to ensure vehicles may turn in and out safely. The submitted plan shows a ghost island, a turning-right lane and visibility splays.
14. I am satisfied that the proposed access would be suitable and not lead to any unacceptable harm to highway safety or to the free flow of traffic.

Conditions

15. The Council has put forward a suite of suggested conditions which in its opinion should be imposed in the event that the appeal is allowed. The appellants are content with all but two: (12) relating to the provision of a ventilation scheme to be applied to dwellings on plots adjacent to New Hey Road in the interests of noise attenuation; and (19) relating to the provision of electric charging points.
16. As to the first, I understand the Council's concern that dwellings close to the main road will be subject to traffic noise. This is accepted in the noise report submitted with the application, which describes the road as the dominant noise source affecting the site. The condition has been

requested by the Council's Environmental Services based on an assessment of that report relating to the layout submitted, which concluded that background ventilation could be achieved within the interior sound requirements by using acoustic trickle vents to bedroom windows and conventional trickle vents elsewhere. As that layout has been withdrawn I am not in position to say whether these conclusions would hold true for any other layout that may be submitted in due course, or whether the ventilation measures recommended would be appropriate. In these circumstances, I see nothing unreasonable in the Council's condition. I am satisfied that it meets the requirements of paragraph 206 of the National Planning Policy Framework (NPPF) (ie it is necessary in the interests of providing satisfactory living conditions for future occupiers, which is relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects). I am aware that ventilation may be considered under the Building Regulations, but I do not consider it prudent to rely on the provisions of other legislation, the purpose of which differs from that of planning.

17. With respect to charging points, in the absence of a submitted layout I agree with the Council that the condition should cover the possibility of the dwellings having their own garages or having communal parking areas. The condition relating to the provision of charging points should cover both eventualities. I consider the condition to comply with the tests set out in the NPPF.
18. Conditions 1 - 4 cover the usual time limits for commencement and submission of reserved matters. The remainder mostly require the submission of details of various matters not addressed in the outline application, as follows: (5) the provision of public open space, relating to requirements of UDP Policy H18; (6) the provision of affordable housing, relating to the requirements of UDP Policy H10; (7) (8) (9) & (10) concerning the treatment of contaminated ground in the interests of preventing pollution; (11) implementation of a noise attenuation scheme, in order to protect the amenity of future residents; (13) (14) & (15) concerning the provision of foul and surface water drainage, in order to prevent pollution and flooding; (16) & (17) to ensure provision of appropriate visibility splays and a right turn lane into the site; and (18) to enhance wildlife habitat in the interests of biodiversity.
19. I consider all are reasonable and necessary in the interests of good planning. However, I have amended the wording of some to improve enforceability and conciseness. In particular, I have brought conditions (5) and (6) into line with the others that prohibit commencement of development until an action has been undertaken simply by referring to commencement of development rather than "material operations". In original condition (5) I have removed reference to the public open space being provided and maintained "in perpetuity" as that may be practically unenforceable. It will be for the parties to negotiate appropriate arrangements. The Council will have the reasonable opportunity to refuse to agree to any that in its view are unsatisfactory.

20. For simplicity, I have combined the 3 conditions relating to drainage into a single condition (14). As original condition (17) involves the carrying out of work outside the site, it should be worded in the "Grampian" format. I have revised it accordingly. In original condition (19) I have removed reference to the circuitry ratings for the electrical charging points as I consider this to be too detailed and unnecessary. I have instead added a requirement for a specification to be agreed.
21. For the avoidance of doubt, I have also imposed a condition (new condition (5) identifying the site plan; and required the detailed scheme of highway works to be submitted under original condition (17) to be in broad conformity with what is shown on that plan.

Conclusion

22. Subject to the conditions set out in the annex to this decision, I am satisfied that residential development of the appeal site and the access to it as proposed is acceptable. The appeal may be allowed.

Jonathan G King

Inspector

Annex

Conditions

NB, In these conditions, the Local Planning Authority is referred to as "the LPA"

1. Approval of the details of the layout, scale, appearance and landscaping of the site (hereinafter called the 'reserved matters') shall be obtained from the LPA in writing before any development is commenced.
2. Plans and particulars of the reserved matters referred to in Condition 1 shall be submitted in writing to the LPA and shall be carried out as approved.
3. Application for approval of any reserved matter shall be made to the LPA before the expiration of three years from the date of this decision.
4. The development hereby permitted shall be begun either before the expiration of two years from the final approval of reserved matters, or, in the case of approval on different dates, the final approval of the last such matter to be approved.
5. This permission relates to the site shown edged red on drawing number N-YK1453-3T-FIGURE 2 Revision 02, dated 15th July 2014 and to the access to New Hey Road, the ghost island, right turn lane and visibility splays shown thereon.
6. Development shall not commence until arrangements for the provision of public open space to serve the development in accordance with the requirements of Policy H18 of the Council's Unitary Development Plan have been submitted to and agreed in writing by the LPA. The arrangements shall cover the following matters:
 - (a) the layout and disposition of the public open space;
 - (b) the timescale for the implementation and completion of the works to provide the public open space;
 - (c) the mechanism for ensuring that the public open space will be available for public use; and
 - (d) maintenance of the public open space.
7. Development shall not commence until arrangements for the provision of affordable housing within the development in accordance with the requirements of Policy H10 of the Council's Unitary Development Plan and the Council's Supplementary Planning Guidance (The Provision of Affordable Housing in New Housing Developments) have been submitted to and agreed in writing by the LPA. The arrangements shall cover the following matters:
 - (a) the number and type of affordable housing units to be provided;
 - (b) the layout and disposition of the affordable housing units to be provided;
 - (c) the timescale for the implementation and completion of the affordable housing units; and
 - (d) the mechanism for ensuring that the affordable housing units remain affordable for both the initial and subsequent occupiers.

8. Development shall not commence until a Phase II Intrusive Site Investigation Report (ISIR) has been submitted to and approved in writing by the LPA.
9. Where site remediation is recommended in the ISIR approved pursuant to condition 8, development shall not commence until a Remediation Strategy (RS) has been submitted to and approved in writing by the LPA. The RS shall include a timetable for the implementation and completion of the approved remediation measures.
10. Remediation of the site shall be carried out and completed in accordance with the RS approved pursuant to condition 9. In the event that remediation is unable to proceed in accordance with the approved RS, or contamination not previously considered [in either the Preliminary Risk Assessment or the ISIR] is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the LPA shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the LPA, works shall not recommence until proposed revisions to the RS have been submitted to and approved in writing by the LPA.
11. Following completion of any measures identified in the approved RS or any approved revised RS, a Validation Report shall be submitted to the LPA. Unless otherwise agreed in writing with the LPA, no part of the site shall be brought into use until such time as the RS and a Validation Report in respect of those remediation measures has been approved in writing by the LPA.
12. Before development is first brought into use, all works which form part of the sound attenuation scheme, as specified in the noise report dated 15th July 2014 by S & D Garrit Ltd shall be completed and written evidence to demonstrate that the specified noise levels have been achieved shall be submitted to and approved in writing by the LPA.
13. Before development commences, a ventilation scheme to show how habitable room windows to plots adjacent to New Hey Road shall be ventilated without the need to open windows shall be submitted to and approved in writing by the LPA. All works that form part of the approved scheme shall be completed prior to occupation of the relevant plots.
14. No development shall take place until details of the proposed means of separate disposal of foul and surface water drainage, including details of any balancing and off-site works, have been submitted to and approved in writing by the LPA. Unless otherwise agreed in writing by the LPA, there shall be no piped discharge of surface water from the development prior to the completion of the approved surface water drainage works, and no buildings shall be occupied or brought into use prior to the completion of the approved foul drainage works.
15. Before development commences, the wall to the site frontage shall be set back to the rear of the proposed 2.4m x 43m visibility splays indicated on drawing number N-YK1453-3T-FIGURE 2 Revision 02, dated 15th July 2014. The splays shall be cleared of all obstruction to visibility and tarmac surfaced to current standards in accordance with details that have previously been approved in writing by the LPA.
16. Prior to development commencing, a detailed scheme for the provision of a right turn lane from New Hey Road into the site with associated signing and white lining shall be submitted to and approved in writing by the LPA in broad conformity with drawing number N-YK1453-3T-FIGURE 2 Revision 02, dated

15th July 2014. The scheme shall include construction specifications, white lining, signing, drainage works and surface finishes together with an independent Safety Audit covering all aspects of the work. Unless otherwise agreed in writing by the LPA, no part of the development shall be brought into use until all of the approved works have been fully implemented.

17. Prior to the commencement of development, details of a bio-diversity habitat enhancement scheme shall be submitted for the written approval of the LPA. The scheme shall include details and potential locations for bat / bird roost opportunities within the new development and surrounding retained trees. The approved scheme shall be implemented prior to the first occupation of any dwellings / plots containing such opportunities.
18. Prior to occupation of any dwellings, electric vehicle recharging points shall be installed for each dwelling with a garage and / or 1 point for every 10 dwellings with communal car parking in accordance with a specification which shall first have been submitted to and agreed in writing by the LPA.

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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: 1st June 2016

Appeal Ref: APP/Z4718/W/16/3144377

Land off Miry Lane, Netherthong, West Yorkshire HD9 3UQ

- 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 Steven Buttershaw and Kust Schramm against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2014/60/92737/W, dated 29 August 2014, was refused by notice dated 26 August 2015.
 - The development proposed is the formation of a new site access and the construction of five detached dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 5 dwellings at Land adjacent to No 8 Miry Lane, Netherthong, Holmfirth HD9 3UQ in accordance with the terms of the application, Ref 2014/60/92737/W, dated 29 August 2014, subject to the attached schedule of conditions.

Procedural matters

2. The application was made in outline with all matters apart from access and layout reserved for future determination. Drawings showing indicative site layout were submitted with the application which indicate that the site is capable of accommodating five dwellings. I have had regard to these in the determination of this appeal.
 3. The Council changed the description and location of the development of application ref: 2014/60/92737/W to 'Outline application for erection of 5 dwellings' at 'Land adjacent to No 8 Miry Lane, Netherthong, Holmfirth HD9 3UQ'. This is an accurate description and location of the development and it is, therefore, the basis on which I have determined this appeal.
 4. A completed planning obligation was submitted under section 106 of the Town & Country Planning Act 1990 (s106). This is a Unilateral Undertaking which provides for the landscaping, management and subsequent transfer of land adjacent to the northern boundary of the site to a Management Company or Nature Conservation Charity for continued use as Public Open Space. I have had regard to this Unilateral Undertaking in the determination of this appeal.
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Main Issues

5. The main issues are:

- The effect on highway safety.
- The effect of the proposed access on the character and appearance of the area having particular regard to the setting of the Netherthong Conservation Area.

Reasons

Highway safety

6. The appeal site comprises approximately the southern part of an existing field with countryside to the north and west and residential development to the south and east. The development proposed is an outline application for five dwellings with all matters other than access and layout reserved for future determination.
7. Access would be off Miry Lane which reduces in width to a single carriageway as it extends northwards passed No 8 Miry Lane and has a relatively steep gradient along the site frontage. The proposal would involve the widening of Miry Lane to 4.5m from the access position to the point where the road widens in vicinity of No 8. A 1.5m wide footway is also proposed to extend from the access and run along the eastern edge of the proposed widened section of Miry Lane to join the exiting footway in the vicinity of No 8.
8. The officer's report to Committee when the application was presented for determination acknowledges that Miry lane is lightly trafficked and that due to geometry constraints vehicle speeds are low. From observations at my site visit I concur with this view.
9. The Council indicate that the proposed access road would afford a 2.4m ('X' distance) x 43m ('Y' Distance) visibility splay onto Miry Lane which is the Manual for Streets (MfS) standard access visibility and is based on stopping sight distance calculations. However, the Council also indicate that the proposed 'Y' is based on access being level and as such the distance does not take into account the gradient of Miry Lane. Using the MfS adjustment the 'Y' distance should be 57m.
10. The position of the access junction on an inclined road is not unusual of semi-rural environments. Given the undulating nature of the land in the vicinity of Netherthong I observed that several other small scale residential developments also take access off inclined roads.
11. Although the 'Y' distance would be slightly less than that recommended in MfS, given the general low levels of traffic on this part of Miry Lane, the relatively low level of vehicular movements that would be generated by the proposal and the existing low vehicular speeds, in my view, vehicles entering Miry Lane would have adequate visibility in both directions. Consequently, I do not consider that the proposed junction visibility would result in a demonstrable detrimental impact on highway safety.
12. The Council indicate that swept path analysis indicates that large vehicles exiting the proposed junction onto Miry Lane would cross the opposite side of the carriageway and cite a refuse vehicle as an example. Whilst this may be

the case, given my findings on the adequacy of the visibility at the junction and the relatively low frequency of large vehicles that are likely to be associated with a small scale development of five dwellings, I do consider that this matter would constitute a sustainable highway safety reason on which to dismiss this appeal.

13. The Council have also indicated that the access road into the development would be retained as a private driveway and that the approach to the junction with Miry Lane would be approximately 1 in 14 (7%). As such, any deterioration in the road surface resulting in a reduction in skid resistance would make it more difficult for vehicles to stop at the junction. Given the relatively low levels of traffic generated by the proposal and the short length of private driveway within the site, vehicle speeds and movements on the driveway would likely be low. In such circumstances, whilst it may take many years for the driveway to deteriorate to the extent that skid resistance is compromised, I am of the view that the occupants of the proposed dwellings would become aware of such deterioration and take either appropriate corrective driver action or maintenance action. In any event, given the likely long period of time before any such deterioration may, or may not, manifest I do not consider that this matter would constitute a sustainable highway safety reason sufficient to dismiss this appeal.
14. The existing highway network in Netherthong is relatively narrow in parts due to the historic pattern of development of the village. Given the relatively large size of the village, in my view, the limited number of additional vehicles associated with a development of five dwellings would not materially impact on the overall volume of traffic using the local network to the extent that highway safety would be compromised. Whilst the Council have cited an example of a refuse vehicle entering and exiting an area not previously accessed, such vehicles would already be using the local network.
15. Moreover, the appellant indicated that the Council had granted outline planning permission for residential development on the site with access from St Mary's Way. Whilst I have no conclusive evidence to confirm this, several local residents also refer to the existence of such planning permission but that it is also subject to the completion of a planning obligation. I have no information to indicate whether the planning obligation has been completed. Nevertheless, it appears to me that vehicles associated with the use of an access from St Mary's Way would also use the same local highway network through the village. As such there would be no material difference on the wider network between vehicles using the wider network that accessed the site via St Mary's Way and those accessed via Miry Lane.
16. Several local residents have also referred to a previous appeal for residential development on land off St Mary's Avenue (Ref: APP/Z4718/A/14/2219016) which also involved traffic using Miry Lane to access the site. I note my colleague Inspector in that case also found no convincing evidence that the proposal would increase traffic flows to the extent it would significantly exacerbate the existing situation and present an impediment to highway safety. I have no evidence to indicate any material changes in circumstances to Miry Lane or the highway network around the village since the Inspectors decision on that appeal to suggest that there should be a different conclusion on highway safety matters in this case.

17. Taking the above matters into consideration, I do not consider that the proposed development would have a detrimental effect on highway safety. It would not therefore conflict with Saved Policy T10 of the Kirklees Unitary Development Plan (Revised 2007) (UDP). This policy seeks, amongst other things, to ensure that new development does not create or add to highway safety problems.

Character and appearance

18. The appeal site is located close to the Netherthong Conservation Area. Whilst I have no evidence of the precise boundary of the conservation area the submitted evidence indicates that this lies to the south and excludes both the site and the part of Miry Lane that would be subject to the proposed widening and access works. Notwithstanding the matters for consideration in this appeal, from the evidence before me it would appear that the Council have accepted that the principle of residential development on the appeal site is acceptable and as a consequence the area in the vicinity of the conservation area would be subject to change.
19. The access works would involve the loss of part of a holly hedge an elder and a sycamore tree together with a small section of stone walling that appeared at my site visit to be substantially overgrown with ivy. I have taken into account the views of the Councils Arboricultural Officer in the Officer's report which indicated that these trees are not included in a protected group of trees and although provide some amenity value, this is limited. I concur with the views of the Arboricultural Officer.
20. The proposal indicates that substantial woodland planting would occur in the area proposed as POS to the north of the site and landscaping with indigenous planting to the western and eastern boundaries of the site. Whilst there would undoubtedly be some localised change to this small part of Miry Lane in my view this is offset by the compensatory mitigation planting which would provide a semi-natural buffer between the new development and the existing hedge line on Miry Lane.
21. Although a small section of Miry Lane would be widened, the eastern side of the road would be subject to substantial indigenous planting and stone wall replacement in the visibility splay which would help to maintain its rural character. Consequently, I do not consider that this localised change would be of an extent that would cause any significant harm to the character and appearance of the area or to the setting of the nearby conservation area.
22. For these reasons, the proposed development would preserve the character and appearance of the Conservation Area as a whole in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and would accord with paragraphs 131 and 132 of the National Planning Policy Framework (the Framework). As a result there would be no conflict with Policies BE1(i) and BE2(iv) of the UDP. These policies, amongst other things, require new development to be of good quality design to retain a sense of local identity and that existing and proposed landscape features are incorporated as an integral part of the proposal.

Other matters

23. The Council have raised concerns that the gradient of the proposed footway into the site from Miry Lane may be too steep for wheelchair users. The Council indicate that the gradient over a 12 metre stretch is 1 in 14 (7%) and as a general rule a gradient of 1 in 12 (8%) should be used as a maximum. In my view, the gradient of the proposed access road and footway is reflective of that which exists on the footways in many Pennine villages as a consequence of the characteristic topography of such areas. It appears to me that the gradient of the proposed access road would actually be less steep than that which the Council indicate is used as a norm. Consequently, I have attached little weight to this matter.
24. Local residents have raised concerns regarding the drainage and flooding. I note that the Council's Strategic Drainage Officers have indicated that additional information submitted by the appellant during the determination of the planning application was sufficient to demonstrate that, subject to the imposition of suitable drainage conditions, the site can be adequately drained during both construction and on completion without risk to surrounding properties. Given the importance of this matter, and for the reasons explained below, I have attached all of the Council's suggested drainage conditions. I am therefore satisfied that these matters need not preclude the development.
25. My attention has also been drawn to the effect of the proposal on local wildlife. The comments of the Council's Biodiversity Officer are relevant in this regard who advises that the site is improved grassland and is of little ecological interest. Moreover, it is further advised that the removal of the short strip of hedge to accommodate the access would be compensated by the proposed planting and mitigation works. I therefore conclude that the impact of the proposal on local wildlife would be limited and would be offset by the proposed mitigation measures which can be secured by condition and the submitted Unilateral Undertaking.
26. Local residents have referred to the fact that planning permission has already been granted for residential development on the site subject to the completion of a Section 106 Agreement with access proposed off St Mary's Way. For the reasons explained above, I have no information regarding this permission, whether the s106 has been completed or indeed whether the permission has actually been issued. However, the fact that planning permission may have been granted for an alternative access is not a matter in itself to dismiss this appeal on that ground. I am obliged to determine this appeal on the basis of the information before me and the consideration of its planning merits. Accordingly, I have attached limited weight to this matter.

Unilateral Undertaking and Conditions

27. The planning officer's report to committee when the application was presented for determination identified that Policy H18 of the UDP requires the provision of POS on housing sites of more than 0.4 hectares or more at a ratio of 30 sq m per dwelling. Although the area of land to the north is well in excess of the 150 sq m of POS the appellant confirmed a willingness to enter into a planning obligation that provides for the identified land to the north to be made available as POS.

28. The Unilateral Undertaking would provide for the landscaping, maintenance, and public access to the land immediately to the north of the site for use as POS. For any weight to be given to this the provisions need to be in accordance with the tests set out in paragraph 204 of the National Planning Policy Framework (the Framework). Given the provisions of Policy H18 of the UDP, the Unilateral Undertaking would enable the requirements of the policy to be met. Consequently I find that the Unilateral Undertaking would meet the tests in the Framework.
29. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the government's Planning Practice Guidance. As a result, I have amended some of them for clarity and eliminated some for the reasons set out below.
30. In addition to the standard conditions for outline applications, I have imposed a condition requiring that the development is carried out in accordance with the approved plans in so far as they relate to the layout and means of access. This is for the avoidance of doubt and in the interests of proper planning. In the interests of protecting the living conditions of the occupants of nearby properties I have imposed a condition relating to working hours.
31. Although the submitted plans show the position of the access I agree that a more detailed scheme which details the construction works proposed to Miry Lane including structural calculations and details of any retaining structures is required in the interests of highway safety. For the same reason, adequate provision is also required within the curtilage of the proposed dwellings for the surfacing of vehicular parking and access areas and a requirement to maintain the visibility sight line at the junction with Miry Lane.
32. To safeguard trees, those shown in the arboricultural assessment should be protected and managed. Given the semi-rural locality of the site I agree that a condition is required to provide bat roosting and bird nesting facilities. Given that landscaping would be subject to reserved matters, the suggested condition is not necessary. The landscaping scheme for the proposed area of Public Open Space (POS) is provided in the submitted Unilateral Undertaking. However, in the interests of protecting the living conditions of the occupants of adjacent properties I agree that a condition requiring the provision of suitable boundary treatment is necessary.
33. To avoid the risk of flooding both during and post construction surface water drainage needs to be controlled and managed where possible through sustainable drainage techniques. As the application is in outline form, control of permitted development would be unnecessary at this stage. Although there is no evidence of contamination at this stage, I agree that a condition is necessary to suitably remediate the site in the event that this is encountered during the course of construction works.

Conclusion

34. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

- 1) Details of the appearance, landscaping and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development is commenced and the development shall be undertaken in accordance with the approved details.
- 2) Application for the approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 3711/01/A; 1405401B; 3711/03/G and 3711/04.
- 5) Engineering or construction works shall not take place outside of 07.30 hours to 18.00 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays and not at any time on Sundays or Bank or National Holidays.
- 6) Notwithstanding the details shown on the approved plan No 1405401B, construction work shall not commence until a scheme detailing the widening of Miry Lane to 4.8m and the provision of a 1.5m wide footway, construction specification, retaining walls, surfacing, drainage, kerbing and street lighting and associated highway works together with an independent safety audit covering all aspects of work has been submitted and approved in writing by the local planning authority. The dwellings shall not be occupied until the approved scheme has been implemented. The works comprised in the approved scheme shall thereafter be retained.
- 7) No construction work shall take place until details of the siting, design, structural calculations and material to be used in the construction of retaining walls/ structures near or abutting highways have been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the approved works have been completed in accordance with the approved details.
- 8) Prior to the occupation of the hereby approved dwellings all new areas indicated to be used for vehicular access and parking for the approved dwellings as shown on drawing no. 03 Rev G shall have been laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agency's 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 as amended or superseded by any successor guidance; Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order with or without modification) these areas shall be so retained, kept free of obstructions and available for the use as vehicular access and parking areas throughout the lifetime of the development.
- 9) The dwellings shall not be occupied until sightlines of 2.4m x 43m have been cleared of all obstructions to visibility exceeding 1m in height and retained as such at all times.

- 10) The development shall be undertaken in accordance with the advice and directions (recommendations) contained in the Arboricultural Assessment reference No 14106MS. Works defined in this Assessment shall be implemented and maintained throughout the construction phase and any works so identified for retention shall be retained thereafter.
- 11) Details of bat roost features in the form of a Schweglar type 1FR bat box or similar and bird nesting features in the form of woodcrete swift boxes, to be incorporated integral to the new dwellings shall be submitted to and approved in writing by the local planning authority. The development shall be completed in accordance with the approved details before the dwellings are first occupied and shall thereafter be retained.
- 12) Development shall not commence until a scheme detailing foul, surface water and land drainage, (sustainable drainage assessment, off site works, outfalls, balancing works, plans and longitudinal sections, hydraulic calculations, phasing of drainage provision, existing drainage to be maintained/diverted/abandoned, and percolation tests, where appropriate) has been submitted to and approved in writing by the Local Planning Authority. None of the dwellings shall be occupied until such approved drainage scheme has been provided on the site to serve the development or each agreed phasing of the development to which the dwellings relate and shall thereafter be retained.
- 13) The site shall be developed with separate systems of drainage for foul and surface water on and off site.
- 14) Where infiltration techniques are not viable or carry an unacceptable risk as a means of draining surface water, the development shall not commence until a scheme restricting the rate of surface water discharge from the site to a maximum of 5 litres per second has been submitted to and approved in writing by the local planning authority. The drainage scheme shall be designed to attenuate flows generated by the critical 1 in 30 year storm event as a minimum requirement. Volumes in excess of those generated by the critical 1 in 30 year event, up to and including the critical 1 in 100 year events, with an appropriate allowance for climate change, shall be stored on site in areas to be approved in writing by the local planning authority. The scheme shall include a detailed maintenance and management regime for the storage facility including the flow restriction. There shall be no piped discharge of surface water from the development and no part of the development shall be brought into use until the flow restriction and attenuation works comprising the approved scheme have been completed in accordance with the approved details. approved maintenance and management scheme shall be implemented and adhered to at all times.
- 15) The development shall not commence until an assessment of the effects of 1 in 100 year storm events with an additional allowance for climate change, blockage scenarios and exceedance event, on drainage infrastructure and surface water runoff (overland flows) pre and post development between the development and the surrounding area, in both directions, has been submitted to and approved in writing by the local planning authority. The dwellings shall not be occupied until the works comprising the approved scheme have been completed and such approved scheme shall be retained thereafter.

16) Development shall not commence until a scheme, detailing temporary surface water drainage for the construction phase (after soil and vegetation strip) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- phasing of the development and phasing of temporary drainage provision.
- include methods of preventing silt, debris and contaminants entering existing drainage systems and watercourses and how flooding of adjacent land is prevented.

The temporary works shall be implemented in accordance with the approved scheme and phasing. No phase of the development shall be commenced until the temporary works approved for that phase have been completed. The approved temporary drainage scheme shall be retained until the approved permanent surface water drainage system is in place and functioning in accordance with written notification to the local planning authority.

18) Prior to the first occupation of the dwellings a scheme detailing boundary treatments for the whole site shall be submitted to and approved in writing by the Local Planning Authority. This shall include a 2.1m high screen/fence along the full length of the northern boundary, above finished ground levels. The dwellings shall not be occupied until the works comprising the approved scheme have been completed and shall thereafter be retained as such.

20) In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the local planning authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.

Appeal Decisions

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: 10 May 2016

Appeal A: ref. APP/Z4718/D/16/3146148
45 Clara Street, Fartown, Huddersfield HD1 6EN

- 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 Mohammed Hameed against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93625/W, dated 9 November 2015, was refused by notice dated 11 January 2016.
 - The development proposed is two storey plus basement front extension.
-

Appeal B: ref. APP/Z4718/D/16/3146154
47 Clara Street, Fartown, Huddersfield HD1 6EN

- 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 Zahid Hameed against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93626/W, dated 9 November 2015, was refused by notice dated 11 January 2016.
 - The development proposed is two storey plus basement front extension.
-

Decisions

Appeal A: ref. APP/Z4718/D/16/3146148

1. The appeal is dismissed.

Appeal A: ref. APP/Z4718/D/16/3146154

2. The appeal is dismissed.

Procedural Matters

3. These appeals relate to adjoining properties with proposed matching designed front extensions. They have the same submission plans and the same reason for refusal. Consequently, I have dealt with them both in this one decision letter.
 4. The Council changed the description of the development in planning application Nos 2015/62/93625/W and 2015/62/93626/W to 'erection of front extensions with dormer'. I consider that this description more accurately reflects the development proposed.
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Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the surrounding area.

Reasons

6. The appeal properties comprise of an end terrace and a mid terrace stone built two storey dwellings that form part of a prominent 'L' shaped block located at the junction of Clara Street and Honoria Street. Together with the side elevation of No 7 Honoria Street, they form the part of the block that fronts Clara Street and are of similar design and fenestration. Clara Street is predominantly comprised of relative uniformly designed two storey terraced properties. The appeal properties have a similar building line, eaves height and ridge height to other properties on this part of the street.
7. The appeal properties are of single room width and depth and have a basement converted to a kitchen and a loft converted to a bedroom. The proposal is to extend the front elevation by approximately 2.7m and continue the roof slope down over the extension to facilitate the insertion of a small dormer in the roof. The ceiling heights of the ground floor and first floor would be lowered in order to create sufficient room height in the loft.
8. The proposals would result in a front projection that extends beyond the well established building line on this part of the street. There would be a distinct visible lowering of the window frames and eaves height with the consequence that the uniformity of the fenestration of this part of the block would be lost. I accept that the windows of No 7 that front Clara Street are side windows. Nevertheless in the context of views along Clara Street these are seen as fenestration elements that have synergy with the adjoining appeal properties and as such any significant changes in their alignment and appearance would be visibly noticeable. The combination of these factors would mean that the extensions would appear unacceptably at odds with the adjoining property at No 7. As such, they would form an incongruous addition to this part of the block.
9. The proposals would result in the dwellings having a larger expanse of roof and much reduced front façade than other properties on the street. In addition they would have a front projection beyond that of the adjoining property. This which would be an alien feature in this part of the street scene given the relatively uniform design of the other terraced properties that predominantly have a common front façade alignment. Consequently the uniformity of the street as a whole would be interrupted by the proposed extensions to a prominent part of the street. As such the proposals would not be in keeping with the surrounding development and would have a detrimental impact on the relatively uniform character and appearance of the street.
10. The appellant drew my attention to the property at the other end of the street comprising No 1E which has been constructed in front of the established building line. However, this property appears to be a recently constructed detached property that is sited adjacent to a smaller block of terraced properties (Nos 1A–1D) of similar construction age and design style. I have no evidence to indicate the circumstances which led to these proposals being considered acceptable. However, they are relatively recently constructed dwellings as oppose to extensions and as such they are not representative of

the circumstances in this appeal. Consequently I have determined these appeals on their own merits and I have attached little weight to his matter.

11. I have some sympathy with the appellants' desires to improve the living conditions of the occupants of the existing properties. However, this does not outweigh the harm that I have found that the appeal proposals would cause to the character and appearance of the area.
12. I therefore conclude that the proposed developments would harm the character and appearance of the host dwelling and the street scene. They would be contrary to Saved Policies D2, BE1, BE2, BE13 and BE14 of the Kirklees Unitary Development Plan (1999). These policies, amongst other things, require extensions to be in keeping with surrounding development, not prejudice the visual amenity of the area and respect the design features of the existing house and buildings.

Conclusions

13. For the above reasons, and taking into account all other matters raised, I conclude that the appeals should be dismissed.

Stephen Normington

INSPECTOR

Appeal Decision

Site visit made on 27 May 2016

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 15 June 2016

Appeal Ref: APP/Z4718/W/16/3146262
392 Bradley Road, Bradley, Huddersfield HD2 1PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr B Hirst and C Adamson against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/60/92507/W, dated 6 August 2015, was refused by notice dated 18 December 2015.
 - The development proposed is two bungalows.
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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 surrounding area.

Reasons

3. The appeal site is located within a predominantly residential area. The surrounding area is characterised in the main by detached dwellings set in spacious grounds, with gardens to the front and larger plots to the rear. Mature planting and trees form a natural backdrop to the houses, contributing to the pleasant, suburban appearance of the area.
 4. The proposal would divide the back gardens of 392 and 394 Bradley Road, and create two new detached dwellings, with a new drive formed immediately adjacent to No 392. The application was made in outline, but it is confirmed that the new buildings will be bungalows.
 5. Photomontages have been submitted to show the visual impact the development would have on the street scene. From the road, the garages and corners of the new buildings would be visible through the gap between Nos 392 and 394, and the eastern-most dwelling would also be seen along the existing driveway of No 392. Although single storey, the structures would be clearly visible from the street, and their presence would indicate a departure from the characteristic layout of the area, whereby dwellings sit individually in their plots. The new dwellings would sit uncomfortably within the backdrops of Nos 392 and 394, thus harming the character of the street scene.
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6. The provision of the new access to the development would require the removal of a section of stone wall and hedging to the front of No 392. Whereas the frontages of the adjacent dwellings are characterised by low walls, gates and mature planting, the proposal would create a wider, more sterile access without any means of enclosure. The new drive would thus appear out of keeping with the immediate surroundings.
7. Taking these factors in combination, I find that the proposal would be an uncharacteristic and incongruous form of development which would unacceptably harm the character and appearance of the surrounding area.
8. I conclude that the proposal would conflict with Policy BE1 of the Kirklees Unitary Development Plan (UDP, September 2007), insofar as it seeks to preserve visual amenity and the character of the surroundings, UDP Policy BE2, insofar as it requires development to be in keeping with the surroundings in terms of layout, and UDP Policy D2, which, amongst other things, also seeks to preserve visual amenity and the character of the surroundings.
9. I agree that the location of the appeal site is, in principle, sustainable for housing development. The Council is unable to demonstrate a five year housing land supply, and therefore the contribution of two dwellings is to be given weight. However, the National Planning Policy Framework sets out that a core element of sustainability is the impact on the built environment. As they are not relevant policies for the supply of housing land, UDP Policies BE1, BE2 and D2 are not rendered out of date by the lack of a five year housing land supply. Therefore, I consider that the modest contribution of two dwellings to the housing supply would be insufficient to outweigh the visual harm and conflict with policy identified.
10. My attention has been drawn to the property to the west of the appeal site, which was granted planning permission in 2006. I do not have the full details of the circumstances that led to this proposal being accepted, and I cannot be sure that they represent a direct parallel to the appeal proposal. In any event, this previous decision cannot justify the harm I have identified.
11. For the reasons above, and taking all other matters into account, I therefore conclude that the appeal should be dismissed.

Elaine Gray

Inspector

Appeal Decision

Site visit made on 27 May 2016

by Elaine Gray MA(Hons) MSc IHBC

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

Decision date: 15 June 2016

Appeal Ref: APP/Z4718/W/16/3147057

Video Tech, 2 Cross Church Street, Huddersfield HD1 2PT

- 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 Mohammed Akram against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/92055/W, dated 25 June 2015, was refused by notice dated 1 October 2015.
 - The development proposed is creation of a taxi booking office.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on the safety of vehicular and pedestrian traffic in the vicinity, and whether the proposal would be likely to increase opportunities for crime, disorder and anti-social behaviour in the town centre.

Reasons

Safety of vehicular and pedestrian traffic

3. The appeal site is located within a predominantly commercial area in the town centre. Cross Church Street is a narrow one-way street with a single vehicle carriageway, a cycle lane, and parking bays and a taxi rank for Hackney carriages on the east side. Although my early afternoon site visit did not coincide with the peak morning or evening rush hours, I observed that there was a steady flow of traffic along Cross Church Street. There was a high level of on-street parking, and I also saw a number of vehicles parked in the area without authorisation.
 4. The appellant proposes to operate three cars on a 24 hours a day, 7 days a week basis. The cars would be located remotely at Miln Road, which lies one mile north of the appeal site. I accept that there would be occasions when the cars would be dispatched directly to other locations in the area. Nonetheless, they would frequently be called to pick up customers from the office at 2 Cross Church Street.
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5. The car parking bays close to the appeal site are unrestricted during the evenings. The appellant states that these spaces could be used by cars which had approached the office along Cross Church Street. However, these spaces were occupied at the time of my visit, and I have little doubt that they would be busy at other times, both during the day and into the evening. The appellant would not be able to control the availability of these spaces and therefore could not rely on them for business purposes. If a car arrived to pick up a customer, and was unable to use a designated parking space, the driver would either have to wait on the carriageway, or pull to one side of the road, thus potentially obstructing road users and/or putting pedestrians at risk.
6. The appellant states that vehicles could access the site via Kirkgate, when restrictions were not in force. However, there is a bus stop immediately outside No 2, and there would be nowhere for taxis to pull off the carriageway whilst collecting customers. Therefore, cars stopping in this area, particularly so close to the Cross Church Street junction, would also be hazardous to pedestrians and other road users.
7. I therefore conclude that the proposal would unacceptably compromise the safety of vehicular and pedestrian traffic in the vicinity. It would therefore conflict with Policy T10 of the Kirkless Unitary Development Plan (UDP, September 2007), insofar as it resists development that would materially add to highway safety problems.

Crime, disorder and anti-social behaviour

8. Concerns have been raised regarding the potential effect of the proposal on crime, disorder and anti-social behaviour in the area. West Yorkshire Police state that Cross Church Street is one of the worst areas in the town centre for crime and disorder relating to the night-time economy. They have voiced concerns that the proposal would draw additional people and vehicles to an area that already suffers from the problems associated with high levels of congestion.
9. On my visit, I saw that there would be ample space inside the premises for customers to wait, which the appellant contends would alleviate the potential of more people lingering on the street. However, customers could not be compelled to use this facility, and some might choose to wait for their taxi outside in any case, thus compounding the problem.
10. I accept that customers would be unlikely to come from different parts of town to get a taxi from the appeal site. However, those within a convenient distance would do so, thus inevitably concentrating greater numbers of people within the area whilst using the service. The development would thus unacceptably increase the potential for crime, disorder and anti-social behaviour in the area.
11. On this issue, I therefore conclude that the proposal would fail to comply with paragraph 69 of the National Planning Policy Framework, which, amongst other objectives, seeks to achieve safe and accessible environments where crime and disorder, and the fear of crime, do not undermine quality of life or community cohesion.
12. The appellant has suggested a number of safety measures, including the installation of CCTV and the employment of taxi marshals at the busiest times. However, in view of the extent of the problems already experienced in Cross

Church Street, such measures, although welcome, would not overcome my concerns regarding the proposal.

13. My attention has been drawn to the temporary permission which was granted in 2011 for a taxi office at 11 Cross Church Street, although I understand that this permission was not implemented. The appellant highlights a number of differences between that proposal and the scheme before me. I accept that the circumstances of the cases are not directly comparable, but this has not led me to a different conclusion, and I have considered the appeal scheme on its own merits.
14. I accept that the proposal would provide employment and contribute to the town's economy, which is an important local and national policy objective. However, this benefit would not outweigh the harm I have identified above.
15. The appellant would be willing to accept the grant of a temporary permission for the development, in recognition of the concerns raised. However, in view of the serious problems that exist in the area, and the potential of the proposal to add to these, a temporary permission would not be appropriate in this instance.

Other Matters

16. The property at No 2 is a grade II listed building, and therefore I am required to have special regard to the desirability of its preservation. As the scheme is for a change of use, and does not propose any operational development that would affect the character or appearance of the listed building, I conclude that the duty would be satisfied in this instance.
17. The appeal site also lies in the Huddersfield Town Centre Conservation Area (CA), and so I am required to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area. Again, the proposal would not affect the character or appearance of the CA, and so this duty is satisfied.

Conclusion

18. For the reasons above, and taking all other matters into consideration, I conclude that the appeal should fail.

Elaine Gray

Inspector