

Appeal Decision

Site visit made on 23 August 2016

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 1st September 2016

Appeal Ref: APP/Z4718/W/16/3152990

Land adjacent No 1 Highroyd, Kirkburton, Huddersfield

- 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 R Boyles against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93760/W, dated 23 November 2015, was refused by notice dated 20 January 2016.
 - The development is described as proposed dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:
 - (a) The living conditions of neighbouring occupiers with regard to overshadowing, and loss of outlook and light;
 - (b) Highways safety, and;
 - (c) The character and appearance of the area.

Reasons

Living conditions

3. The proposed dwellings would be located between 2 rows of terraced properties. The side gables would be around 10 metres from the rear of the terrace fronting Highgate Lane, and around 12 metres from the terrace to the north east.
 4. Policy BE12 of the Kirklees Unitary Development Plan requires that a distance of 12 metres should normally be retained between a habitable room window of a dwelling and a blank wall. In this case, the proposed south western gable would be around 10 metres from the rear windows of a property in the terrace fronting Highgate Lane. This would have an unacceptable impact on the outlook from these windows, and a significant overbearing impact on the rear garden areas.
 5. With regards to the proposed north eastern gable wall, this would be around 12 metres from the front elevation of the properties on that side of the development. The distance to these properties would comply with Policy BE12.
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However, these properties are located to the north east of the development and would therefore be subject to overshadowing from the high gable wall. This would particularly affect the garden areas to the front of these properties. Whilst the appellant has stated that they would be prepared to replace the proposed gables with a hipped roof design, no drawings have been submitted that illustrate this. I must therefore determine the appeal based on the submitted drawings.

6. I conclude that the development would unacceptably harm the living conditions of neighbouring occupiers with regard to overshadowing, and loss of outlook and light. It would therefore be contrary to the relevant sections of Policies D2, BE1 and BE12 of the Kirklees Unitary Development Plan (Saved in 2007). It would also be at odds with the National Planning Policy Framework (NPPF) which seeks to secure a good standard of amenity for existing occupants.

Highways Safety

7. Highroyd is a narrow road with no parking restrictions along it. The footway in this location is approximately 1 metre in width. The development proposes 2 parking spaces for each dwelling that would be accessible directly from Highroyd.
8. The visibility along the road to the north east would be limited by a large boundary hedge. This would severely restrict visibility for vehicles entering or leaving the parking spaces serving the northernmost dwelling. This would be an unsafe arrangement that could lead to collisions. Whilst there is an existing access that is used by commercial vehicles, this is more centrally located within the site frontage. It is not as close to the hedge as the proposed parking spaces.
9. I conclude that the development would unacceptably prejudice highway safety. It would therefore be contrary to Policy T10 of the Kirklees Unitary Development Plan (Saved in 2007). It would also be at odds with the NPPF which seeks to ensure that development is served by a safe and suitable access.

Character and appearance

10. The appeal site is a small plot of land that is currently used as a builders yard. It is located in an existing residential area and is surrounded by predominantly terraced properties with small gardens.
11. The proposed semi-detached dwellings would be of comparable size to the surrounding dwellings. They would have similar spacing to the front and sides of the properties, and the garden sizes would be typical of the surrounding area. The dwellings would not be unduly cramped in my view. In addition, whilst the frontage would mostly comprise parking/hardstanding, I noted on my site visit that other properties along Highroyd had a similar layout and design. This would therefore not be out of keeping with the area.
12. I conclude that the development would not unacceptably harm the character and appearance of the area. It would therefore be in accordance with the relevant sections of Policies D2 and BE1 of the Kirklees Unitary Development Plan (Saved in 2007).

Conclusion

13. For the reasons set out above, I conclude that the development would unacceptably harm the living conditions of neighbouring occupiers with regard to overshadowing, and loss of outlook and light, and would prejudice highway safety. Whilst there would be a positive benefit in terms of the provision of new housing and the re-use of a previously developed site, this does not alter my view that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

Appeal Decisions

Site visit made on 16 August 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 09 September 2016

Appeal A: APP/Z4718/W/16/3148995

Clough Hall, Clough Hall Lane, Almondbury, Huddersfield HD4 6TF

- 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 Simon Russell against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2016/62/90095/W, dated 31 December 2015, was refused by notice dated 22 March 2016.
 - The development proposed is a single storey extension to rear.
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Appeal B: APP/Z4718/Y/16/3149009

Clough Hall, Clough Hall Lane, Almondbury, Huddersfield HD4 6TF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
 - The appeal is made by Mr Simon Russell against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref: 2016/65/90092/W, dated 31 December 2015, was refused by notice dated 22 March 2016.
 - The works proposed are a single storey extension to rear.
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Decision

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed and listed building consent is refused for a single storey extension to rear.

Preliminary Matters

3. As the proposal affects a listed building I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
 4. The appellant has drawn my attention to an unspecified decision made by a planning inspector with regard to a previous application. As I have no details of this appeal or the full facts of that case before me I give this little weight in the balance of this appeal.
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Main Issues

5. As the appeal site is within the Green Belt and the building is listed the main issues are:
- whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework 2012 (the Framework);
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposal would preserve a Grade II listed building, Clough Hall, and any of the features of special architectural or historic interest that it possesses; and
 - if the proposal is inappropriate development, whether the harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether inappropriate

6. Paragraphs 89-90 of the Framework set out those categories of development which may be regarded as not inappropriate, subject to certain conditions. One of the exceptions is the extension or alteration of a building provided that it does not result in a disproportionate addition over and above the size of the original building. An original building is defined in Annex 2 of the Framework as a building as it existed on 1 July 1948 or as it was originally constructed if it was built after this date. Consequently, when the relative size of a proposed extension is considered its mass is compared to the original extent of the building in combination with any later additions.
7. Whether the entire listed building is considered or the individual dwelling, it is clear that the combined massing, irrespective of the prominence and subservient nature of the proposed extension, would still be disproportionate. Furthermore, it is an undisputed fact that an extension on the side elevation of the dwelling has nearly doubled its original footprint and resulted in an increase in volume of at least 75%. The appellant is of the opinion that case law¹ has established that the extension would not be disproportionate or lead to encroachment. However, the cited judgement relates to the interpretation of a planning policy guidance document² which has since been superseded by the Framework and is therefore of little relevance within the current policy context.
8. As the development would not conform to any of the specified exceptions, I can find no support for the proposal in paragraph 89 of the Framework. Given that it is not one of the other forms of development specified in paragraph 90, I find that the proposal would amount to inappropriate development in the Green Belt. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

¹ R (Heath & Hampstead Society) v. Camden LBC & Vlachos [2008] 3 All E.R. 80 (CA), [2007] 2 P. & C.R. 19 (High Ct).

² Planning Policy Statement 2: Green Belts (24 January 1995)

Openness

9. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. It follows that openness is defined by an absence of buildings or other forms of development. As openness of aspect is a characteristic quality of the countryside, a lack of visual prominence does not mitigate a loss of openness. In this instance the increased extent of building in combination with its later additions would cause significant harm to the Green Belt through the resulting loss of openness. The Framework advises that substantial weight should be attached to any harm to the Green Belt. I have attached such weight in this instance because of the harm that would be caused to the Green Belt by reason of the inappropriateness of the proposal and the loss of openness.

Listed building

10. Clough Hall was listed in 1978 and dates from the late 18th to early 19th century. The main elevation is constructed from red brick with stone quoins and flanked by two hammer-dressed stone façades that are set back from the central section. Flat-faced, two-bay mullioned windows characterise the first floor fenestration whilst three-bay windows characterise the ground floor. Notwithstanding the front porches and modern casement windows, this elevation remains more or less intact.
11. The rear elevation has been subject to more extensive, post construction modification in the form of ad hoc single storey and two storey extensions. Consequently, the only fabric that is visible, which indicates the original line of the rear façade, is associated with the appeal property and the upper section of the rear wall of the adjoining property. Given the above, I find that the special interest of the listed building, insofar as it relates to this appeal, to be primarily associated with the legibility of the original building line and the associated fabric.
12. The appeal property is one of four terraced dwellings situated in open countryside to the south of Huddersfield. An un-adopted track, Clough Hall Lane, runs immediately to the northwest parallel to the rear elevation of the terrace. The track is located on higher ground as a result of the terrace having been constructed within a cutting of a slope. The proposal comprises a ground floor, lean-to extension that would terminate just below the first floor window cills. The extension would be of limited depth and would not project beyond the rear wall of the adjacent property or the side extension of the appeal property.
13. I note from the plans and my site visit that it would lead to the loss of a window opening on the ground floor and obscure a significant proportion of what little remains of the original fabric of the rear elevation. This would reduce the legibility of this elevation and obscure a significant extent of its original fabric. I accept that the original line of the listed building would remain visible on the first floor. However, I find that the additional complexity resulting from a further ad hoc extension to the rear elevation would further erode the special interest and this would not be mitigated by the use of matching materials or its diminutive nature. Given the above, I find that the proposal would fail to preserve the special interest of the listed building and I consequently give this harm considerable importance and weight in the planning balance of this appeal.

14. Paragraph 132 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets. Given the extent of the proposal, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 134 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of listed buildings.
15. The appellant is of the opinion that the proposal would be beneficial because it would make the property more marketable through the introduction of additional facilities, i.e. a WC and a utility room. Whilst I accept that this would lead to a more modern layout, the continued viable use of the appeal property as a residential dwelling is not dependent on the proposal as the building has an ongoing residential use that would not cease in its absence. The appellant has also suggested that wider economic benefits would accrue from a 'more vendible' property and the employment of local building contractors. However, these alleged economic benefits are based upon speculative assumptions that are not supported by the facts before me.
16. Given the above and in the absence of any substantiated public benefit, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed building. This would fail to satisfy the requirements of the Act, paragraph 134 of the Framework and conflict with saved policy BE13 of the Kirklees Unitary Development Plan that seeks, among other things, to ensure that extensions retain the intrinsic value of listed buildings. As a result the proposal would not be in accordance with the development plan.

Other consideration

17. The Council is of the opinion that the majority of the proposed structure could be built under permitted development rights. However, I am not satisfied that this would constitute a viable fall-back position. This is because any implementation would be unlikely due to a requirement for listed building consent, as noted by the Council. Consequently, any such fall-back carries little weight in favour of the development because it does not represent an alternative that has a realistic chance of implementation.

Overall balance

18. The Framework states that inappropriate development should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Substantial weight must be given to the harm to the Green Belt due to the inappropriate nature of the proposed development and the harm that it would cause to openness. Considerable weight must also be given to the harm that would be caused to the special interest of the listed building. As there are no substantiated benefits that would arise from the proposal I consider that, on balance, there are no factors that would outweigh the harm that would be caused to the Green Belt and the listed building.

Conclusion

19. Having considered all the matters in support of the proposal, I conclude that, collectively, they do not clearly outweigh the totality of harm and consequently very special circumstances do not exist to justify the development. Accordingly, the proposal would be inconsistent with the advice in the Framework. For the above reasons and having regard to all other matters raised, I therefore conclude that the appeals should be dismissed.

Roger Catchpole

INSPECTOR

Appeal Decision

Site visit made on 17 May 2016

by Matthew Birkinshaw BA(Hons) Msc MRTPI

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

Decision date: 3rd August 2016

Appeal Ref: APP/Z4718/W/16/3145867

Holmfirth Vineyard, Woodhouse Farm, Woodhouse Lane, Holmbridge, Holmfirth, HD9 2QR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Holmfirth Vineyard Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/91523/W, dated 18 May 2015, was approved on 7 September 2015 and planning permission was granted subject to conditions.
 - The development permitted is engineering works to form public area.
 - The condition in dispute is No.2 which states that: *"Notwithstanding the provisions of Schedule 2, Part 4 Classes A and B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification) the public area outlined in red on the location plan shall not be used for any temporary material change of use and no building shall be erected upon it."*
 - The reasons given for the condition are: *"In the interest of visual amenity and to protect the openness of the green belt in accordance with Policies BE1 & BE2 of the Council's Unitary Development Plan and Chapters 7 & 9 of the National Planning Policy Framework."*
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Decision

1. The appeal is allowed and the planning permission Ref 2015/62/91523/W for engineering works to form public area at Holmfirth Vineyard, Woodhouse Farm, Woodhouse Lane, Holmbridge, Holmfirth, HD9 2QR, granted on 7 September 2015 by Kirklees Metropolitan Borough Council is varied by deleting condition no.2.

Background and Main Issue

2. The appeal relates to an existing vineyard and winery located on the side of a valley above Holmbridge. In 2015 planning permission was granted for engineering works to create a broadly circular, flat area of land roughly in the middle of the vineyard (Ref 2015/62/91523/W). Despite being initially created to accommodate a marquee for the 2014 Tour de France, it now provides a flat area for visitors to use as part of organised tours of the site.
 3. In granting planning permission the Council identified that the site occupies a prominent position and can be viewed from a number of vantage points. As such, and taking into account the appearance of a dome shaped marquee previously erected on the site, it was considered that a temporary structure would harm the character of the area which also falls within the Green Belt.
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4. Condition no.2 therefore removes the appellant's rights under Schedule 2, Part 4, Classes A and B of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
5. In response the appellant states that the condition is unnecessary as the engineering works have already formed a public area that people can use, and that the GPDO only permits temporary buildings and moveable structures which have a limited visual impact. It is also argued that the erection of a marquee would require the submission of a planning application every time the appellant had an event, which unreasonably and unfairly restricts operation of the vineyard compared to other businesses nearby benefitting from such rights.
6. Taking this into account, the main issue is;
 - Whether or not condition no.2 is reasonable and necessary in the interests of the character and appearance of the area and the openness of the Green Belt.

Reasons

7. Schedule 2, Part 4, Class A of the GPDO relates to the provision of buildings or moveable structures required temporarily in connection with, and for the duration of, operations being carried out on, in, under or over the land. However, in this case the engineering operations required to construct the 'public area' have already been completed. The removal of Schedule 2, Part 4, Class A rights is therefore unnecessary, and this part of the condition fails to meet the relevant tests set out in the National Planning Policy Framework ('the Framework').
8. Schedule 2, Part 4, Class B allows any use of the land for not more than 28 days in any calendar year along with the provision of a moveable structure for the purposes of the permitted use. Essentially, condition no.2 prohibits the appellant from erecting a moveable structure such as a marquee for a wedding or function, for example.
9. During my site visit I saw that the circular grass mound at the vineyard is clearly visible from several public vantage points throughout Holmbridge. Views of the site are also possible from parts of Field End Lane and Roods Lane on the opposite side of the valley close to the boundary with the Peak District National Park. I therefore appreciate the concerns raised by the Council and local residents regarding the visual impact of a temporary structure such as a marquee.
10. However, advice contained in the National Planning Practice Guidance¹ states that conditions restricting the future use of permitted development rights or changes of use will "*rarely pass the test of necessity and should only be used in exceptional circumstances*". Although a marquee would be clearly visible on the appeal site, this would be the case for any number of fields along the Holme Valley, including elsewhere at the vineyard which is not bound by condition no.2. Moreover, by reason of its temporary nature, restricted to just 28 days in any one calendar year, the visual harm of a transient moveable structure would be limited.

¹ Paragraph: 017Reference ID: 21a-017-20140306

11. Based on the evidence provided and observations at my visit I am therefore not persuaded that the prominence of the site, or its designation as Green Belt land, amounts to the 'exceptional circumstances' necessary to justify the removal of permitted development rights as set out in the National Planning Practice Guidance. Consequently, the condition fails the test of necessity.
12. Furthermore, the vineyard is an existing, established business and clearly provides public tours and tasting alongside wine production. At present the appellant would have to prepare, submit and await the determination of a planning application each and every time they had a requirement to use the mound temporarily for another purpose. In the absence of any evidence to indicate that other businesses in the area have had permitted development rights removed for similar reasons, I consider that this places an unreasonable and disproportionate burden on the vineyard. The condition therefore fails the test of reasonableness.
13. It is also pertinent to consider that the GPDO does not permit the erection of substantial buildings with an element of permanence for prolonged periods of time. Thus, whilst I note local residents' apprehension about the appellant's intentions and reference to a large 'dome' on the site in the past, allowing the appeal would not permit the erection of a marquee with foundations, electrical connections and drainage for the duration of the summer months. Essentially, if a structure falls outside the scope of the GPDO, it would be enforceable by the Council. Schedule 2, Part 4, Class B also relates to the use of land for no more than "*28 days in total*", rather than necessarily consecutive days. Should the appellant wish to erect a structure for longer, or outside of the scope of the GPDO, it would require planning permission and would be subject to a planning application process.
14. That being the case, I have taken into account concerns that previous events at the vineyard resulted in noise nuisance due to the open nature of the site and congestion on local roads. Nonetheless, the Council has not raised any objections with regard to the living conditions of neighbouring residents or highway safety. There is also no information which points to any complaints being made to Environmental Health or the Highways Authority regarding noise nuisance or hazardous parking and/or congestion nearby. In the absence of any robust evidence to substantiate these concerns, they do not justify dismissing this appeal.
15. Finally, several representations submitted by local residents refer to the history of the site and assert that the appellant has continuously disregarded planning laws. However, issues relating to the use of buildings on the wider site or other developments, such as eco cottages and wind turbines, are not matters for me. Similarly, it is not necessary to determine whether or not the 'dome' like structure referred to by the parties, for which no plans have been provided, constitutes permitted development. Instead, I am required to consider the appeal on its specific merits, having due regard to relevant policy and guidance. Any issues relating to other forms of development or alternative uses would be for the Council to consider as required outside the scope of this appeal.

16. I therefore conclude that condition no.2 is neither necessary nor reasonable in the interests of the character and appearance of the area or the openness of the Green Belt. As a result, the removal of condition no.2 would not conflict with Policies BE1 or BE2 of the *Kirklees Unitary Development Plan* which, amongst other things, seek to ensure that all development is of good quality design, creates or retains a sense of local identity, is visually attractive, is in-keeping with surrounding development, takes into account topography and incorporates existing and proposed landscape features. For the same reasons there is also no conflict with the Framework in this regard.

Conclusion and Conditions

17. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed and condition no.2 deleted.
18. At the appeal stage the Council has requested that an additional condition is imposed specifying that the landscaping scheme (submitted to discharge condition no.1) is implemented within 1 month of the date of this decision. However, the condition already has an implementation clause requiring the works to be carried out within 1 month of their approval by the Council. It is therefore unnecessary to replicate this, which remains enforceable under planning permission Ref 015/62/91523/W.

Matthew Birkinshaw

INSPECTOR

Appeal Decision

Site visit made on 28 June 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 5 August 2016

Appeal Ref: APP/Z4718/W/16/3148639

**Master Pizza Bar, 75 Huddersfield Road, Holmfirth, West Yorkshire
HD9 3AS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Abdul Latif against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/70/90010/W, dated 21 December 2015, was refused by notice dated 5 April 2016.
 - The application sought planning permission for change of use from bakery to pizza take-away (within a Conservation Area) without complying with a condition attached to planning permission Ref 2009/62/93008/W1 dated 13 May 2010.
 - The condition in dispute is No 4 which states that: the premises shall not be open to customers except between the hours of 1600 to 2300 on any day.
 - The reason given for the condition is: in the interests of preventing loss of amenity to residential properties in the vicinity of the site arising from noise, and in the interests of highway and pedestrian safety, and to accord with the aims of Policies S14, EP4 and T10 of the Unitary Development Plan and advice in PPG24-Planning and Noise.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from bakery to pizza take-away (within a Conservation Area) at Master Pizza Bar, 75 Huddersfield Road, Holmfirth, West Yorkshire HD9 3AS in accordance with the application Ref 2016/70/90010/W dated 21 December 2015, without compliance with condition number No 4 previously imposed on planning permission Ref 2009/62/93008/W1 dated 13 May 2010 but subject to the following conditions:
 - 1) The premises shall not be open to customers except between the following hours: -
 - a) 1600 to 2300 Sundays – Thursdays; and
 - b) 1600 to midnight Fridays and Saturdays
 - 2) The kitchen extraction and ventilation system shall be installed in total accordance with plan ref. FT2758/04 before the use as a hot food takeaway is commenced, and shall thereafter be operated in accordance with the manufacturer's instructions whenever the takeaway is in use and maintained in accordance with the operator's instructions.
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Procedural Matters

2. Condition No 4 attached to the original planning permission, Ref 2009/62/93008/W1 restricted the opening hours of the appeal premises to between 1800 and 2300 on any day. That condition was substituted at appeal, Ref APP/Z4718/A/10/2133514, for another which extended the opening hours to between 1600 and 2300 on any day. In this case the appellant is seeking a further extension of the opening hours to between 1600 and midnight on Fridays and Saturdays. No change to the permitted hours of opening on Sundays –Thursdays is proposed.

Main Issue

3. The main issue in this case is whether condition No 4 is reasonable and necessary having regard to the effect of the proposed extended opening hours on the living conditions of nearby residents, with particular regard to noise and disturbance.

Reasons

4. The appeal premises are located on the A6024 on the fringe of the main shopping area of Holmfirth and within a short row of three-storey commercial units, some of which have living accommodation above. There are residential properties nearby, both opposite the site, on neighbouring Beech Street and Huddersfield Road to the northeast. At the time of my visit none of the neighbouring commercial units were in use as food or drink establishments, nor did they appear to open late into the evening.
5. The premises are currently able to open until 2300 hours on any day. The Planning Practice Guide advises that a temporary permission may be appropriate where a trial run is needed to assess the effect of the development on the area. For a six month period during 2015, the Council granted a temporary consent to allow opening between 1600 and midnight on Fridays and Saturdays. These are the hours the appellant is seeking to establish permanently in this case.
6. I have had regard to the most recent appeal decision relating to the appeal premises,¹ where the Inspector dismissed an appeal to vary the opening times on Fridays and Saturdays to between 1600 and 0100 hours on the following day. However, the appeal proposal is for more restrictive opening hours than those considered by the Inspector in that appeal. Moreover, the hours proposed in this case have been previously trialled for a six month period through the implementation of the temporary consent described above. The Council Officer's report states that during the six month period of later opening, no complaints relating to the use of the appeal premises were received by Environmental Services, Licensing Services or West Yorkshire Police.
7. I accept that the nature of a hot foot takeaway is that many customers will come by car and wish to park as close as possible to the premises. I also recognise that there is no parking restriction outside the neighbouring residential properties during the evening period, and therefore some additional noise may be generated by visitors or delivery vehicles parking close to the premises during the late evening hours proposed. However, the site is in a sustainable location, close to the commercial centre and there is a public car

¹ APP/Z4718/A/13/2190469

park only a couple of minutes walking distance away. Furthermore, evidence provided by the appellant suggests that during the trial period, business generated during the extra hour was predominantly through delivery orders rather than passing trade.

8. I accept that increased opening hours would have some impact on the living conditions of nearby residents with regard to noise and disturbance. However, noise levels on a Friday and Saturday evening in this location are already likely to be above those that could be expected on a weekday evening. In view of the evidence provided by the 6 month trial run, and for the reasons given above, I am not persuaded that any additional noise and other disturbance would be to an unacceptable level.
9. I conclude that the proposed extension of opening hours would not cause significant or demonstrable harm to the living conditions of nearby residents, with particular regard to noise and disturbance. I therefore find neither conflict with Policies EP4 and S14 of the Kirklees Unitary Development Plan which seek to protect the amenities of residential properties, nor conflict with one of the core planning principles of the National Planning Policy Framework to provide a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

10. There is no substantive evidence before me to indicate that the proposal would give rise to an increase in anti-social behaviour in the area, and problems of illegal parking on this section of Huddersfield Road should be addressed through the appropriate enforcing authority.
11. The appeal proposals are located within the Holmfirth Conservation Area. However the Council has not raised any issues with regard to the effect of the proposal on the conservation area. I find no reason to disagree, and I am satisfied that the character and appearance would be preserved.

Conclusion

12. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed. The planning permission I have granted allows the appeal premises to open between 1600 and 2300 Sundays to Thursdays and between 1600 and midnight on Fridays and Saturdays. A condition limiting opening hours is necessary to prevent activity late at night to protect the living conditions of neighbouring residents. The condition previously imposed relating to odour control is also required to protect the living conditions of neighbouring residents. Given that the change of use has already taken place, there is no need for a commencement condition.

Elizabeth Pleasant

INSPECTOR

Appeal Decision

Site visit made on 5 September 2016

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 08 September 2016

Appeal Ref: APP/Z4718/D/16/3154064

133 Helme Lane, Meltham, Holmfirth HD9 5RL

- 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 T Wood against the decision of Kirklees Council.
 - The application Ref 2016/62/90975/W, dated 22 March 2016, was refused by notice dated 3 June 2016.
 - The development proposed is a first floor rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor rear extension at 133 Helme Lane, Meltham, Holmfirth HD9 5RL in accordance with the terms of the application, Ref 2016/62/90975/W, dated 22 March 2016, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15/352/02, 06 and 07.
 - 3) The materials used in the construction of the external surfaces of the extension hereby permitted shall match those of the existing dwelling.

Main Issues

2. The main issues are whether the proposal would amount to inappropriate development within the Green Belt; whether there would be any other harm to the Green Belt; and whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

3. The proposal would result in a modest 1.9 metres deep first floor extension to the rear of the property. Policy D11 of the Kirklees Unitary Development Plan 1999 requires that when assessing extensions to properties in the Green Belt consideration should be had for the impact on openness and the character of the Green Belt; the size of the extension in relation to the original building which should remain dominant; and the effect on the character of the building.
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4. The *National Planning Policy Framework* advises that new buildings should be regarded as inappropriate unless they fall within an exception set out in paragraph 89. This allows for extensions providing they do not result in disproportionate additions over and above the size of the original building. Generally, the Council's policy is consistent with the Green Belt and design requirements of the *Framework* and it can be afforded significant weight.
5. The planning history indicates that a two storey extension, a porch and a single storey rear extension have been added to the dwelling. A garage has also been permitted and erected. The Council consider that the garage represents an extension to the dwelling. The appellant has provided figures that indicate that the proposal, together with the existing works, would represent a 37% increase in volume compared to the original dwelling. These figures do not appear to include the front porch or the garage. The appellant does not consider that the garage should be considered as an extension.
6. The garage is physically and visually distinct from the dwelling. It is separated from it by the driveway and its forecourt. Although it remains ancillary to the use of the dwelling and within its curtilage, it represents a building in its own right rather than an extension to the house. The front porch is of modest proportions and would not add significantly to the calculations provided by the appellant. No calculations have been presented by the Council and they have not had an opportunity to dispute the figures provided. However, I have no reason to doubt their accuracy.
7. An increase in the volume of the house by just over a third would not cumulatively, in my view, represent disproportionate additions over and above the size of the original dwelling. The works would not have a significant impact on the openness of the Green Belt. I am satisfied that the proposal would fall within the exceptions set out in paragraph 89 of the *Framework* and would not represent inappropriate development within the Green Belt. Very special circumstances are not therefore necessary to justify the proposal.
8. Cumulatively, the works would not significantly alter the character or appearance of the property. The new extension would be of a satisfactory design and of matching materials. It would not therefore conflict with Policy D11 or the additional design requirements of Policies BE1 and BE2. Overall, I do not find that there are any matters that weigh against the proposal. I therefore allow the appeal.
9. I have imposed conditions relating to the commencement of development and the details of the approved plans for the avoidance of doubt and in the interests of proper planning. I have required that the materials match to ensure that the development would have a satisfactory appearance.

Peter Eggleton

INSPECTOR

Appeal Decision

Site visit made on 23 August 2016

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 15th September 2016

Appeal Ref: APP/Z4718/W/16/3152204

79 Greenhead Road, Huddersfield, Kirklees, HD1 4EZ

- 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 2015/62/92881/W, dated 9 September 2015, was refused by notice dated 26 April 2016.
 - The development proposed is the erection of two one bed flats.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two one bed flats at 79 Greenhead Road, Huddersfield, Kirklees, HD1 4EZ in accordance with the terms of the application, Ref 2015/62/92881/W, dated 9 September 2015, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1156.2; 1156.3; 1542.1; 1542.2; 1542.3A; 1542.4; 1542.5B; Section; Second Floor.
 - 2) No dwelling shall be occupied until the first floor window in the side elevation has been obscurely glazed. 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) the obscure glazing shall thereafter be retained.
 - 3) Notwithstanding condition 1) no dwelling shall be occupied until revised details of the car parking arrangements have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 4) No dwelling shall be occupied until the parking arrangements have been laid out in accordance with the approved details, and thereafter shall be kept available at all times for those purposes.

Main Issues

2. The main issues are the effect of the development on, firstly, the character and appearance of the host building and the surrounding area and, secondly, the living conditions of future occupiers with regard to access to amenity space and adequate parking provision.
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Reasons

Character and appearance

3. The appeal building has already been constructed, and most of its external design was approved by the local authority under application ref 2011/93075. The additional door and windows that are proposed have already been installed. The building is located on a corner plot, opposite the Greenhead Park Conservation Area.
4. The exterior of the building, aside from the proposed door and fenestration details, has already been approved by the Council. The appearance of the development has therefore already been largely accepted. In this context, I do not consider that the proposal constitutes an overdevelopment of the site or an incongruous feature within the street. Whilst the door and fenestration details differ slightly from the original semi-detached properties, this difference is not significant, and does not unacceptably harm the appearance of the building.
5. The rear car parking area has also been previously approved by the Council. Having viewed the parking area on my site visit, I am satisfied that this does not unacceptably harm the appearance of the area.
6. The contrast between the new brickwork and the original brickwork in the front elevation is not significant, and is likely to be due to accumulated soot and weathering of the older bricks. This difference will lessen over time as the newer bricks age. The contrast is more pronounced on the rear elevation, which may be due to the use of stock rather than facing bricks on the rear of the original properties. However, this elevation is less prominent and does not face the Conservation Area. Again, this contrast will lessen over time.
7. For these reasons, I conclude that the development would not unacceptably harm the character and appearance of either the host building or the surrounding area. It would therefore be in accordance with Policies D2, BE1, and BE2 of the Kirklees Unitary Development Plan. It would also accord with the National Planning Policy Framework which seeks to secure good design.

Living conditions

8. The proposed apartments would not have access to private amenity space, other than that located to the front of the building. In addition, the existing parking area to the rear would be subdivided between the proposed and existing apartments.
9. The proposed apartments are one bedroom units and therefore do not comprise family accommodation. As I observed on my site visit, they are also only a short distance from Greenhead Park. In these circumstances, I do not consider that the lack of private amenity space would be unacceptably harmful.
10. Turning to parking provision, the Council have expressed concern regarding the ability to safely manoeuvre in and out of the four proposed spaces. However, the Council's Highways Officer has suggested that a solution would be to widen each of the existing spaces to three metres in width. This could be achieved by using the land on either side of the proposed spaces (as I observed on my site visit). This land already comprises hardstanding and other hard landscaping, and the wider spaces could therefore be accommodated without any unacceptable harm to the character and appearance of the area. Accordingly, I

am satisfied that this area is capable of accommodating the wider parking spaces that are required. Revised parking arrangements to reflect this could be secured through a suitably worded condition.

11. I conclude that the development would not unacceptably harm the living conditions of future occupiers with regard to access to amenity space and adequate parking provision. It would therefore be in accordance with Policies D2, BE1, BE2, T10, and T19 of the Kirklees Unitary Development Plan. It would also accord with the National Planning Policy Framework which seeks to ensure a good standard of amenity for future residents.

Other Matters

12. The first floor window in the side elevation of the building would overlook the front garden and habitable room windows of the property on the opposite side of Springwood Hall Gardens. However, this matter could be resolved by a condition requiring this window to be obscurely glazed.
13. The Council has not objected to the development on the grounds of highways safety, and I see no reason to take a different view in this case.

Conditions

14. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. I have imposed a condition that requires the development to accord with the approved plans. This is for the avoidance of doubt and in the interest of proper planning. I have also imposed a condition that requires obscure glazing to be used in the first floor window in the side elevation of the building. This is necessary in order to protect the privacy of neighbouring properties.
15. I have imposed a condition that requires the submission of revised parking arrangements to be submitted to and approved in writing by the local planning authority. This is necessary to ensure that parking spaces of sufficient width are provided that allow for safe and convenient manoeuvring. In addition, I have imposed a condition that requires the revised parking arrangements to be laid out before the development is occupied. This is necessary to ensure that future occupants of the development have access to these facilities.
16. Separately, a condition requiring the brickwork to be altered to match that of No 79 is not necessary, for the reasons set out above.

Conclusion

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

Thomas Hatfield

INSPECTOR