The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 01st March 2017

Appeal Ref: APP/Z4718/D/16/3158482
2 Broadgate, Almondbury, Huddersfield, HD5 8HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Z Hussain against the decision of Kirklees Metropolitan Borough Council.
- The application Ref: 2016/62/92220/W dated 1 July 2016, was refused by notice dated 26 August 2016.
- The development proposed is the erection of first floor front and side extensions and a single-storey front extension with balcony above.

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the description of the proposed development from the Council's decision notice. Although it differs from that stated on the application form, I consider it more accurately describes the proposal.

Main Issues

3. The Council has raised no objections to the effect of the proposal on the living conditions of neighbours. Based on the evidence and my own observations, I find no reason to disagree and consider there are two main issues in this case:

4. Firstly, the effect of the proposed development on the character and appearance of the host dwelling and surrounding area; and secondly, the effect of the proposed development on local biodiversity.

Reasons

5. The appeal concerns a detached property in an elevated position at the junction of Broadgate and Templar Drive on a corner plot. The proposal comprises several elements: Firstly, a front facing first floor extension over the existing flat roofed extension. This would feature a double-pitched roof with twin gables; secondly, a smaller first floor extension with mono-pitch roof over the existing flat roofed side extension; and finally, a recessed ground floor front extension with its flat roof forming a balcony. It is also proposed to render the whole building (which I understand has had some fire damage). The roof would be covered with concrete roof tiles to match the existing.

6. The *National Planning Policy Framework* (the Framework) requires local planning authorities to encourage high quality design. However, it also says

policies and decisions should not attempt to impose architectural styles or particular tastes, should avoid unnecessary prescription of detail, and should concentrate on guiding the development in relation to neighbouring buildings and the area generally.

7. Amongst other considerations, saved Policy BE1 of the *Kirklees Unitary Development Plan* (UDP) requires development to (i) create or retain a sense of identity in terms of design, scale, layout and materials, and (ii) respect the local topography. Policy BE2 has similar aims, and says new development should be in keeping with its surroundings. Policy BE13 specifically concerns extensions, and says these should respect the design features of the existing house and adjacent buildings. Policy BE14 says, amongst other considerations, that extensions will normally be permitted unless they would have a detrimental effect on visual amenity.

8. The Council accepts that the appeal dwelling is unique locally in terms of its style and appearance. It is certainly not typical of the surrounding development which mainly comprises attractive regularly spaced stone built and slate roofed dwellings of traditional appearance fronting the street. No 2 has also been previously extended to the rear in a not particularly sympathetic manner with a tall, tower-like extension with a very shallow pitched roof, and the flat-roofed sections may not be part of the original design. Nonetheless, the Council considers that the design of the extensions is poorly conceived, particularly in terms of the first-floor front element, and would result in a development that is incongruous within the area. It adds that the mixture of gabled and lean-to roofs do not reflect others typically found in the area, and as such would not reflect local distinctiveness.

9. I too have considerable reservations about the design of the proposed extensions; with the roof form in particular being somewhat confused and not wholly resolved. However, whilst not entirely convinced that the extensions would improve the overall appearance of the host dwelling, I consider on balance that they would not materially detract from its appearance or harm the established character and appearance of the area. Furthermore, the proposal to clad the building in a uniform painted render would, to my mind, represent an improvement in the appearance. This is one situation where it would be difficult and perhaps inappropriate to devise a form and style of extension which would reflect local distinctiveness.

10. To summarise, I am satisfied on this issue that the proposed development would harmonise with the design of the host dwelling and respect the character and appearance of the surrounding area. As such, I find no conflict with saved UDP Policies BE1, BE2, BE13 and BE14.

Biodiversity

11. The Council's second reason for refusal states that the appellant has failed to demonstrate that there would not have no adverse effect on bats or areas of bat roost potential, arising from the proposal, which (in the absence of a survey) may be present. Bats are protected principally under the *Conservation of Habitats and Species Regulations (2010),* and UDP Policy D2 (vii) says planning permission will only be granted where proposals do not prejudice wildlife interests. Additionally Paragraph 118 of the Framework states that planning permission should be refused if significant harm to biodiversity cannot be avoided or mitigated against.

12. The site is within the 'bat alert layer' identified on the West Yorkshire Ecology website, is close to woodland, and the property has some damaged eaves and boarding. Consequently the Council's Biodiversity Officer considers that the dwelling and site has bat roost potential, and in the absence of a bat survey I find no reason to take a contrary view. It follows that without a survey I am unable to make an informed decision as to the impact of the proposal on local biodiversity (including appropriate mitigation measures if bats are identified as being present).

13. Circular 06/2005[1] makes it clear that a survey should be carried out before planning permission is granted where there is a reasonable likelihood of a protected species being present on site or affected on site or affected by the proposed development. It further advises that surveys should only be required by planning condition in exceptional circumstances. No exceptional circumstances apply here, and consequently I cannot conclude on this issue that the proposal would not be harmful to the site's ecological interest. As such it would conflict with UDP Policy D2 (viii), Circular 06/2005, and National policy in the Framework.

Conclusion

14. I have found that the proposal would not materially harm the character and appearance of the host dwelling and surrounding area. However, without a bat survey prepared by a competent authority I cannot conclude that the proposal would not harm local biodiversity. This represents an overriding objection which must be decisive. As such, the proposal would conflict with the policies in the development plan and the Framework taken as a whole.

15. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR

[1] Circular 06/05: Biodiversity and Geological Conservation –Statutory Obligations and Their Impact Within the Planning System

The Planning Inspectorate

Appeal Decision

Site visit made on 14 March 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 24 March 2017

Appeal Ref: APP/Z4718/W/16/3165469
Former fish & chip shop/garage, Woodhead Road, Holmbridge, Holmfirth HD9 2NW

- 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 Richard Hallam against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/62/90914/W, dated 15 March 2016, was refused by notice dated 4 November 2016.
- The development proposed is a detached single dwelling with integral garage, including demolition of former fish & chip shop and garage.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

3. The appeal site comprises a former fish and chip shop and garage located on the south side of Woodhead Road. Several blocks of stone built terraced properties are located to the east which have rendered gable ends that have considerably weathered to be a colour that is similar to the stone. The topography rises to the north of the road and the hillside is occupied by a variety of residential properties of varying size, construction ages and design styles but are predominantly constructed of natural stone.

4. A recreation ground is located to the south of the site which forms part of the River Holme valley floor before the land rises the to the south with the hillside also being occupied by a variety of residential properties constructed of a variety of materials.

5. The fish and chip shop is vacated and is in a poor state of repair. Owing to its external walls being painted in a white colour it appears quite prominent in views along the road and from views across the valley to the south, particularly from Dobb Top Road, due to its contrast in colour with the stone material of the neighbouring buildings.

6. The proposed development would involve the demolition of the former fish and chip shop and garage and the construction of detached three storey dwelling. The dwelling would be set behind the boundary wall to Woodhead Road and at a floor level that would be slightly above the ground level of the recreation ground. The lower ground floor would be constructed in regular coursed stone with antique white coloured render to the ground and first floor.

7. I agree with the Council that the scale, mass, position and design of the proposed dwelling would be appropriate. Owing to it being set behind the highway boundary wall and at a lower level than the existing fish and chip shop, I agree that the majority of the proposed dwelling would be barely visible in views along Woodhead Road.

8. However, in views across the valley, particularly from Dobb Top Road and from the recreation ground, I consider that the use of white render would contrast markedly and unacceptably with the stone of the immediate building group and the dwellings to the north. This would result in the proposed dwelling having an unacceptable degree of prominence and appearing at odds with its setting and the character of development in the surrounding area.

9. Whilst I accept that the appeal site is not located within a Conservation Area and that the south side of the valley has dwellings constructed in a variety of materials, the northern side is characterised by buildings where the use of natural stone is both prevalent, dominant and prominent in views and strongly contributes to the character and local identity of this part of Holmbridge. The contrasting use of the render would fail to respect this character and the local identity of the surrounding area.

10. I do not share the appellant's views that the proposed dwelling would integrate harmoniously into the site due to the nature of the banking to Woodhead Road. In my view, the visual backdrop that this banking creates in views from the south is dominated by the preponderance of stone built properties in vistas. Whilst there is some degree of mature vegetation along Dobb Top Road, I observed at my site visit that the appeal site remains quite visible across the valley and the prominence of the existing fish and chip shop in such views reinforces my findings that the use of white render on the ground and first floor of the proposed dwelling would be inappropriate in this location.

11. I therefore conclude that the development would harm the character and appearance of the area and would be contrary to Saved Policies BE1 (i) (ii), BE2 (i) and D2 (vi) (vii) of the Kirklees Unitary Development Plan 2007. These policies, amongst other things, require that new development should be in keeping with the surrounding area in respect of materials, contributes to a sense of local identity and does not prejudice the character of the surrounding area.

Other matters

12. I accept that the removal of the garage and fish and chip shop would result in a localised visual improvement. I have also taken into account the modest contribution that the proposed development would make to housing supply. However, I do not consider that these benefits outweigh the harm that would be created to the character and appearance of the area by the use of white render on the proposed external surfaces of the dwelling.

Conclusion

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

Stephen Normington

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 14 March 2017

by Siobhan Watson BA(Hons) MCD MRTPI

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

Decision date: 22 March 2017

Appeal Ref: APP/Z4718/W/16/3162769
Dutch Barn, Hey Farm, Holt Head Road, Slaithwaite, Huddersfield, West Yorkshire, HD7 5TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Mrs Alison Smith against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/92906, dated 6 August 2016, was refused by notice dated 28 October 2016.
- The development proposed is to convert the existing agricultural building which is sited on the south/west edge of the domestic curtilage of Hey Farm to two dwelling houses.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development is permitted under the above order.

Reasons

3. Subject to certain limitations and conditions, Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 permits the change of use of an agricultural building to a dwelling.

4. Some external works are permitted under the Order. However, The Planning Practice Guidance specifically relates to Class Q and explains that it is not the intention of the permitted development right to include the construction of new structural elements for the building. Therefore it is only where the existing building is structurally strong enough to take the loading which comes with the external works that the building would be considered to have the permitted development right.[1]

5. At my visit I noted that the barn is constructed of block walls and a corrugated material, with the appearance of asbestos. There is also slatted timber forming part of the elevations. The blockwork is only on the lower portions of the walls and the corrugated material forms the majority of the external elevations and the roof. Clearly, this construction could not function as a dwelling as it is

[1] Paragraph: 105 Reference ID: 13-105-20150305

predominantly of thin and flimsy material. Furthermore, the plans show that one elevation would be completely new.

6. I note the appellant's comments that the existing roof frames would be used as part of the conversion but it is not evident how this would be achieved. It is not clear from the plans that the existing building is capable of providing the structural support for the new dwellings and it appears that the external walls would have to be substantially re-built.

7. Due to a lack of existing solid external walls and the clear intention that one elevation would be a completely new construction, it appears from the information before me that it would not be possible to convert the building without the creation of substantial structural elements (i.e. supporting walls).

8. In the absence of any technical evidence to lead me to a different view, I conclude that the building is so insubstantial that it would require almost complete demolition and reconstruction in order to form a dwelling and therefore, it clearly falls outside the scope of the Order, i.e., it would not be a change of use but a new building.

9. Therefore, the proposed development is not permitted under the above Order. Given this conclusion, I do not have to consider whether the Conditions under Q.2 would be met.

10. For the above reasons, I dismiss the appeal.

Siobhan Watson

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 14 February 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 08th March 2017

Appeal Ref: APP/Z4718/D/16/3166329
11 Gisbourne Road, Bradley, Huddersfield HD2 1SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs L Craven against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/62/92891/W, dated 24 August 2016, was refused by notice dated 25 November 2016.
- The development proposed is demolition of outbuilding and erection of two storey extension to side.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the character and appearance of the host property and the street scene.

Reasons

3. Gisbourne Road is characterised by regularly spaced pairings of semi-detached houses of mainly uniform design. Very few of the houses have been extended or have undergone significant external alterations. The houses on the south side follow a common building line but the sloping nature of the road provides for some variety in roofscape as each pair of properties steps down to accommodate the change in ground levels.

4. There is a standard separation distance between each pair of houses. At ground floor level, this gap is filled by the front elevation of the shared outhouse on the common boundary and a connecting, front boundary wall that extends to the side elevation of each house and frames a door or gate giving access to a side passageway. Because these connecting walls and front elevations to the outhouses are of limited height and are set back by about 0.5 metre (m) from the main façades of the houses, a clear physical and visual break between each pair of properties is maintained.

5. The 2 storey extension proposed would achieve a degree of subservience to the host property by means of its first floor elevation being set back by about 0.6m and its roof ridge being set below that of the existing dwelling. However, the positioning of its front elevation flush with that of the existing dwelling would significantly increase the width of the dwelling at ground floor level and create

a visual imbalance with the other half of the semi-detached pairing. It would also be discordant in the street scene because it would not respect the set back that has been used in the design of all of the outhouses and associated front boundary walls.

6. By reason of its projection to the shared boundary between Nos. 11 and 13, the proposal would lead to a substantial diminution in the visual break between the two houses, notwithstanding the set-back at first floor level. It would result in a terracing effect and, if No. 13 was to be extended in the same way, the physical and visual break between the two pairs of semi-detached properties would be lost completely. The introduction of an upper storey extension of the width proposed would also introduce a prominent and incongruous element into an otherwise uniform street scene.

7. The plans show no proposals for the infilling or other treatment of the open gap to the side of No 13 that would result from the demolition of the outbuilding and the front boundary wall that it supports. The presence of such a gap or its filling in by some alternative means would be likely to interrupt the existing rhythm of the street and add a further discordant element to the street scene.

8. For these reasons I find that the proposal would result in material harm to the character and appearance of the host property and of the wider street scene in Gisbourne Road. Notwithstanding the appellant's comments as to the circumstances required for other householders to be able to propose similar extensions, I consider that a grant of planning permission for the proposed development would create a precedent that could, over time, result in substantial harm to the character and appearance of the area.

9. The proposal would, therefore, conflict with saved Policy BE1 of the revised Kirklees Unitary Development Plan (UDP) (2007), which states that all development should be of good quality design, and saved Policy BE2 which requires that new development should be designed so that it is in keeping with any surrounding development. Conflict would also arise with saved UDP Policy D2 which states that planning permission will be granted for new development provided that the proposals do not prejudice visual amenity and the character of the surroundings.

Other Matters

10. I note the appellant's reference to extensions carried out to other properties in the local area. I have no information as to the planning history of those developments and am unable to form any view as to whether or not the Council has consistently applied its policies with regard to residential extensions. However, I observed on my site visit that many of the examples are not comparable due to their siting and orientation relative to the nearest neighbouring properties. Although others might be more similar to the appeal proposal there are no such developments within Gisbourne Road where the uniform character and appearance of the properties remains largely intact.

11. I accept that the proposal would benefit the appellants in terms of the additional accommodation that it would provide. However, this would be a wholly private benefit that would not outweigh the harm to character and appearance of the area or the resultant conflict with the development plan.

Conclusions

12. For the reasons set out above and having regard to all matters raised I concluded that the appeal should be dismissed.

Paul Singleton

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 March 2017

Appeal Ref: APP/Z4718/C/16/3157226
Land off Lumb Lane, Almondbury, Huddersfield HD4 6SZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ['the Act'].
- The appeal is made by Mr W H Airey against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 28 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
- The requirements of the notice are to wholly demolish the building, clear any resultant debris from the site and restore the land to its previous condition prior to the development taking place.
- The period for compliance with the requirements is within 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

1. The appeal is allowed on ground (g), and the enforcement notice is varied by the deletion of the digit and text *'1 month'* in section 5, *what you are required to do*, and the substitution therefor by the following digit and text: *'3 months'*. Subject to this variation, the enforcement notice is upheld.

Reasons - ground (f)

2. Mr Airey should show that the steps specified in the notice exceed what is required to remedy the breach of planning control or, as the case may be, any injury to amenity caused by the breach. As a lesser step, he contemplates an alternative scheme for this agricultural building by fixing timber cladding to the external elevations and re-roofing. A similar proposal was submitted to the Council in 2015 but subsequently refused in May 2016[1]. The submission before me is that this lesser step would remedy the breach, because the perceived harm to the Green Belt would be addressed.

3. Planning merits are to be considered only where ground (a) has been pleaded and the fee has been paid. It is not appropriate to introduce planning merits in the context of this ground (f) appeal. Section 174(2)(f) provides more limited powers than ground (a) in terms of instituting a solution short of total demolition. The power available to me under s 176(1) to vary the terms of the notice cannot be used to attack the substance of the notice.

[1] Application describes proposed development as retention and alteration of agricultural storage buildings (part retrospective), dated 12 June 2015, ref: 2015/62/91857/W, refused permission on 23 May 2016.

4. Unlawful building operations occurred as a matter of fact and express planning permission is required for the erection of the subject building. The reasons for taking enforcement action are clearly set out in the notice. The requirement is to demolish the building and it is necessary to consider whether that requirement is excessive.

5. The notice should divulge its purpose. From the whole document, it is clear the aim is to remedy the breach of planning control by restoring the land to its condition before the breach occurred; that falls within the meaning of s 173(4)(a) of the Act. It does not simply seek to remedy injury to amenity as claimed by Mr Airey, who is best placed to know the condition of the land prior to the erection of the building.

6. The advanced lesser step falls short of what is necessary to remedy the breach. Such a variation has the potential to turn the notice into requiring something less through under-enforcement. A variation of the kind advanced would not achieve the purpose behind the requirements because the building would remain in place, albeit with a materially different external appearance.

7. Even if a different view is to prevail and the notice could be varied to bring about the alternative scheme, it seems to me significant building operations would be required to alter the appearance of the agricultural building. The notice's terms would need to be substantially reworded to require cladding and re-roofing in suitable materials. I do not consider the notice can require the submission of details for the Council's subsequent written approval as that would go beyond its powers and create imprecision in its terms.

8. There is nothing before me showing how anticipated work could be achieved by rephrasing the notice's terms with sufficient specificity. In my opinion, formulating suitable requirements of this kind would introduce considerable degree of ambiguity and imprecision. In turn, that would potentially create interpretative problems likely to generate considerable debate as to the exact meaning of the requirements. Given the potential criminal liability that comes with a failure to comply with the terms of notice, I find such a potential outcome to be unacceptable.

9. Pulling all of the above threads together, I find that the steps required by the notice are not excessive. For all of the above reasons and applying current Case Law to the facts and circumstances of this case, I have no hesitation in dismissing this ground (f) appeal.

Ground (g)

10. I am of the opinion that one month is too short given the nature of the work required by the notice. However, the breach of planning control should not be allowed to continue more than absolutely necessary. So I also reject the claim that six months is required. Nonetheless, suitable contractors would need to be found and appointed; it is likely to take some time. Having regard to the scale and type of work involved in complying with the notice's terms, a compliance period of three months from the date of my decision is reasonable. I have therefore varied the period of compliance as stated above. Ground (g) succeeds.

Conclusion

11. Having regard to all other matters relevant to the appeal, I conclude that the Appeal should not succeed on ground (f), but a reasonable period for compliance would be 3 months. I have varied the enforcement notice, prior to upholding it.

A U Ghafoor

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 27 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 27 March 2017

Appeal Ref: APP/Z4718/C/16/3154329
Land at 28 New Street, Meltham, Holmfirth HD9 5NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ['the Act'].
- The appeal is made by Mr Haigh against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 6 June 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a raised platform.
- The requirements of the notice are to demolish the raised platform and restore the land to its previous condition.
- The period for compliance with the requirements is within 28 days.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by:

   a) The deletion of all of the text in section 5, *what you are required to do*, and the substitution therefor by the following text:

   Step (1) demolish the raised platform and restore the land to its previous condition.

   b) Insertion of the following text below step (1):

   The period of compliance with the enforcement notice is six months.

2. Subject to the above variations, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the deemed application

Reasons

3. The main issue is the effect of the development upon: (1) The character and appearance of the host building and that of the locality and (2) the function and openness of a green corridor.

Character and appearance

4. The surrounding area is mainly residential in character with a mix of detached and terraced dwellings. Meltham Dike forms a welcome visual break from built development, because of its wooded and tranquil quality. This green corridor functions as an open space for both humans and wildlife. In contrast,

the raised platform is a substantial structure. While an attractive human-made intervention, its overall height and scale is inconsistent with the external appearance of the host building. It forms a visually dominant addition to the rear elevation. It is prominent in views along the embankment due to its siting. The dimension of the timber deck draws the naked eye and represents spread of residential paraphernalia in this part of the green corridor. It causes significant visual harm to the pleasant setting of the open space and is out of keeping with the residential character of the locality, because of its prominent location. In my assessment, the extent and layout of the platform adversely interrupts the natural rhythm of the Dike and its setting.

5. I therefore conclude that the development has a materially harmful visual effect upon the character and appearance of the host building and that of the locality. Accordingly, the development conflicts with policies BE1 and BE2 of the Kirklees Unitary Development Plan ['the UDP'] 1999, saved by Direction of the Secretary of State, which seek good quality design. The development is odds with national policy found in paragraph 56 of the National Planning Policy Framework, which these local policies are broadly consistent with.

Green corridor

6. The UDP identifies the whole length of Meltham Dike as a green corridor from the centre of the town to its outskirts from where there is access to a local walk, the Meltham Way and, eventually, the Pennine moors. Public access to these corridors is important and whenever development is proposed that would affect a green corridor agreement may be sought to incorporate, as part of the development, measures to enhance the quality of the corridor. These measures might include providing footpath or cycle links. The Council will seek to take advantage of any potential for creating new links in the public footpath network.

7. The green corridor is in reasonable proximity to the community it serves and has potential long-term amenity and recreational value. This is because of its wooded setting, wildlife and tranquil qualities. The raised platform prevents public access given its location. It physically obstructs its continuity and potentially restricts recreational opportunities and fails to safeguard this open space in the public interest. It has an adverse effect on public access and enjoyment of this green corridor. While the development does not affect plant or animals within the corridor nor the watercourse, the land's use fails to retain the strip of land outside the residential garden so that it can be incorporated in a public path in the future. Mr Haigh suggests no alternative green corridor to overcome my concerns.

8. I therefore conclude that the development has a harmful effect on the function and openness of the green corridor and there is conflict with UDP policy D6, which seeks to protect designated green corridors. The retention of the raised platform is therefore at odds with national policy at paragraphs 58, 76 to 78 to the NPPF.

Other considerations

9. Uncontested evidence is that planning permission was granted for five dwellings in 1997. Pursuance to local planning policy then in force, a planning

obligation was agreed that required the developer to construct a footbridge over Meltham Dike and a footpath between the stream and the rear of the houses. From the end of the houses, the footpath was to have turned along the property boundary into and through a closed graveyard, from where an existing gate would give access onto Westgate. Before occupation of the dwellings, the bridge and footpath were to be constructed dedicated for public use and a commuted sum for maintenance of £6187 paid to the Council. However, the owners of the graveyard would not allow public access.

10. Subsequently, a new agreement was entered into which modified the obligation by omitting the requirement to form a link to the graveyard. The practical consequence of this modification is that the footpath then became a dead-end. Although they were constructed, dedication of the footbridge and footpath for public use has not occurred and no commuted sum for maintenance has been paid to the Council.

11. Mr Haigh's property is subject to the s 106 agreement. It is the nearest property to the footbridge. He acquired from the developer the whole of the strip of land including the footpath situated between the rear gardens and the stream. He has extended its residential garden and built the subject decking over the footpath installing a gate at the end of the footbridge. Because of this work, the footpath is no longer accessible from the footbridge or from anywhere else. Given the evidenced incidents of anti-social behaviour, Mr Haigh applied to the Council to have the obligation discharged. That application was refused consent and subsequently dismissed on appeal[1].

12. Inspector Hellier found that the footpath could be extended to a bridge at Badger Gate that is about 50 m further upstream. From this point there is an existing public footpath following the south bank of the stream for some 300 m to a road bridge. This was completed in 2001 by means of s 106 agreement entered into in relation to an adjacent housing scheme. The provision of a footpath along the stream from the town centre to Badger Gate would not be inherently unsafe. Nor would it be inherently likely to lead to unacceptable levels of criminal activity. While the Council has attempted to negotiate public access to third party land since that decision, I have seen nothing to doubt the previous Inspector's findings. There is nothing that indicates these circumstances have materially changed.

13. Mr Haigh considers objections can be overcome because the raised platform could be removed at a later date if and when public access is required to the green corridor. The thrust of the main argument is temporary planning permission could be granted for the platform. I concur that unless and until the footpath becomes a through route there is no need for public access. However, pivotal to all of this is the retention of the footpath and strip of land outside the residential garden so that it can be incorporated in a public path at a later date as and when the opportunity arises. Otherwise the objectives of providing a green corridor would be defeated and seriously undermined by a grant of planning permission for the raised platform. I do not consider that such an outcome would be acceptable in the public interest.

[1] Appeal reference has the same digits ending with /Q/15/3005117. I have adopted descriptive elements of that decision as nothing has materially changed.

14. I am not persuaded that the removal of the raised platform could be achieved by imposing a condition on grant of planning permission. A condition would need to limit the duration of the planning permission which, in these circumstances, would be unreasonable. This is because it is unclear how long it will take for a public path to be constructed and linked to the local network, given the apparent difficulties in securing access rights over third party land.

15. Circumstances may materially change in the future and public access might be required in the longer term. As an alternative to imposing conditions, Mr Haigh offers a unilateral undertaking ['UU'] pursuant to s 106 of the Act. This is a material consideration and provides a means to retain control over the development in the public interest.

16. The initial UU contained significant discrepancies that rendered it invalid. Apart from erroneous clauses, it referred to a retrospective planning application refused permission by the Council (ref: 2016/62/90997/W). It did not even identify the enforcement notice appeal and the potential grant of planning permission by virtue of this deemed planning application. I also had some concern about the effectiveness of the obligation and in the interests of fairness I invited additional comment and gave a further opportunity to submit a properly drafted and executed UU within certain timescales[2].

17. The UU is a binding deed on owners and successors in title and it refers to the relevant legislative provisions. However, there are significant problems. Firstly, it is not properly executed; despite having an opportunity to redraft the document. A tracked document was submitted for my comment; I cannot draft the document for Mr Haigh and request him to submit it as a legally binding contract. That is his responsibility. Secondly, even if a signed and dated version had been submitted for my examination, there is a fundamental issue in the meaning and application of the planning obligation.

18. The obligation states the following:

> *To remove the decking which is the subject of the enforcement notice from the property within 28 days of written notice to do so by the council in order to restore a footpath through the property in the event that the council require that the said footpath will then operate as a green corridor link to other footpaths in the area*.

The UU might address the development's impact on the function and openness of this green corridor because it seeks to secure public access to the footpath in the long term, which is in the public interest. Eventually the raised platform could be removed thereby limiting the duration of visual harm. The problem, however, is the terminology in the obligation. For example, the mechanics of achieving the removal of the decking, ceasing the residential use of the land, and reinstating the footpath is too vague and ambiguous. The document lacks precision and detail as to how operations are to be carried out in order to remove the raised platform and restore public access to the footpath. There is no obligation to submit a restoration scheme.

[2] Correspondence dated 16 March 2017 setting deadline of 24 March 2017. The letter made clear that any revised UU, properly executed, must be submitted by the deadline. I made it clear that I shall proceed to a determination on the evidence before me.

19. Additionally it is unclear as to what is exactly meant by the following purpose:

> *'…in order to restore a footpath through the property in the event that the council require that the said footpath will then operate as a green corridor link to other footpaths in the area'*.

This statement seems to bind the Council yet it is not a party to the UU and introduces significant doubt over the purpose and effectiveness of the planning obligation.

20. I consider that the UU has the potential to create substantial interpretational problems as to its meaning and effect. While a planning obligation is necessary to secure public access to the footpath in the long-term, the submitted document amounts to an ineffective vehicle in achieving that purpose. In its current form, the obligation fails both the statutory and policy tests. Having regard to relevant Case Law and planning policy on this topic, on the balance of probabilities, I find that the UU would not achieve its intended purpose. In my judgement, it does not fall within the scope of s 106(1) subsections (a) – (c), and is unlikely to be enforceable.

21. It may be the case that these minor drafting problems could be addressed. Given Mr Haigh's willingness to enter into a UU, I have considered the possibility of requiring a revised planning obligation by imposing a condition instead of refusing planning permission. However, permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation. Such a condition is unlikely to pass the test of enforceability. A negatively worded condition limiting the development that can take place until an obligation has been entered into is unlikely to be appropriate in the majority of cases. It is certainly not appropriate here because unauthorised development has already occurred.

Planning balance

22. The development causes significant adverse visual harm to the character and appearance of the locality. The raised platform physically obstructs public access to a designated green corridor. The development fails to retain the strip of land outside the residential garden so that it can be incorporated in a public path at a later date as and when the opportunity arises. The development therefore fails to accord with local and national planning policies cited elsewhere. To these findings I attach substantial weight.

23. On the other hand, it is difficult to control the development and make it acceptable in planning terms by imposing reasonable and enforceable conditions. A planning obligation is required to meet the long-term policy aims of securing the land for public access. However, the UU provided by Mr Haigh is fundamentally flawed as is ineffective. I attach it little weight in support of planning permission. On balance, the other considerations advanced, considered individually or collectively, do not overcome my findings on the main issues above.

Ground (f)

24. Mr Haigh should show that the steps specified exceed what is required to remedy the breach of planning control or, as the case may be, any injury to

amenity caused by the breach. The terms of the notice is to demolish the raised platform and restore the land to its previous condition; firmly falling within the scope of s 173(4)(a). Apart from rehearsal of the merits arguments advanced on ground (a), there is no lesser step advanced to remedy the breach of planning controls. I consider that the purpose behind the remedial requirements can only be achieved by full compliance and steps required are not excessive. Therefore ground (f) fails.

Ground (g)

25. For the following reasons, I am of the firm opinion that the specified compliance period, 28 days, is unreasonable. This is because of the nature and scale of the work required, which probably involves specialist operations and needs to be quoted and arranged. To overcome the planning difficulties short of total demolition, there is potential for the submission of a revised planning application together with a materially different, properly drafted and executed enforceable UU to the Council for determination. All of this will take time and an extended period of compliance of six months is reasonable and proportionate in the circumstances. Ground (g) succeeds.

Overall conclusions

26. For the reasons given above and having regard to all other matters, I conclude that the appeal should not succeed on grounds (a) and (f). I have varied the period of compliance and upheld the enforcement notice and refused to grant planning permission on the deemed application.

A U Ghafoor

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 21 March 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/Z4718/W/16/3165564
Land off Broomfield Road, Fixby, Huddersfield HD2 2HQ

- 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 Space Architecture and Design Limited against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/62/91515/W, dated 6 May 2016, was refused by notice dated 31 October 2016.
- The development proposed is the erection of three houses.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal upon the character and appearance of the area.

Reasons

3. The appeal site comprises a triangular area of mainly grass land and part of a private access drive (formerly a tramway) which leads to a detached residence known as Jilley Royd. The site is surrounded by residential development on two sides and immediately to the east of the access drive is ancient woodland. Access to the site is from Broomfield Road and the access drive is lined with trees.

4. It is proposed to erect three detached dwellings on the site which would be parallel with the detached dwellings on Saint Francis Gardens and with the front elevation of each of the properties, including private driveways, fronting the access drive. The dwellings would each have a front and rear garden and would be built in sandstone with blue slate roofs.

5. The site includes a long planning history. An appeal for two dwellings on the site was determined on 8 January 2013. In dismissing the appeal the Inspector commented that *"the site was considered to be a greenfield site within a built up area in the 2003 appeal decision relating to the site. I find no reasons to depart from that view now".* The appellant considers that the site is previously developed as the access drive was once a tramway and as there is *"anecdotal evidence"* that the part of the appeal site where houses are proposed was used as a *"tram turning area"*. Whilst the access drive is developed, and the plans do indicate a previous use as a tramway, I consider

that even if the main part of the site was historically developed it is now essentially a grassed area. Therefore, the remains of any permanent structure or fixed surface structure have essentially now blended into the landscape in the process of time. Consequently, and having regard to the definition of *"previously developed land"* in the glossary to the National Planning Policy Framework (the Framework), I consider that the main part of the appeal site is greenfield.

6. In considering the above appeal the Inspector also commented that "*there is a clear change in the character of the area from the relatively built-up linear form of residential development along surrounding roads, to the more natural wooded appearance of the land along the access beyond the boundaries of rear gardens…..There are no active frontages to properties along the site and access. Instead private rear gardens abut the appeal site and access".* I do not disagree with the comments made by the Inspector in terms of the character and appearance of the appeal site. The appeal site, along with the ancient woodland to the east, provides a relatively green, spacious and undeveloped soft edge to the otherwise built up residential areas to the south and west. This adds distinctive character to the locality.

7. Notwithstanding the above, I note that since the above appeal was determined planning permission has been approved (Ref 2014/62/93699/W) for the erection of one detached dwelling on the appeal site. This planning permission is still capable of being implemented until April 2018 and so it is a weighty material planning consideration. However, and unlike the planning permission for one dwelling on the site, the three large detached dwellings, including the associated driveways, would be positioned in very close proximity to the road, would occupy almost the full width of each plot and would include very active/urban frontages along the access drive.

8. In addition to the above, and unlike the approved dwelling which would occupy a central position within the plot and with significant space around it, owing to the position, scale and bulk of the three dwellings they would appear cramped and dominant within the sylvan and relatively undeveloped setting. Whilst the proposed linear form of development would be similar to the pattern of development at Saint Francis Gardens, this would be at odds with the more sporadic pattern of development along Jilley Royd and within what is a less urban environment. Overall, the proposal would significantly detract from the relatively green, spacious and undeveloped soft edge to the surrounding built up area.

9. For the collective reasons outlined above, the proposal would cause significant harm to the character and appearance of the area. Therefore, the proposal would not accord with the design aims of Chapter 7 of the Framework and saved Policies D2, BE1 and BE2 of the Kirklees Unitary Development Plan 1999.

Other Matters

10. Whilst I consider that the main part of the site is greenfield, this has not in fact been been a determinative issue. I have not been made aware of any policies which would specifically preclude the erection of dwellings on greenfield sites, and I am aware that there is a planning permission in place for the erection of one dwelling on the site. Even if the whole site were to be considered as previously developed, this would not have altered my overall conclusion on the main issue.

11. I accept that the erection of three dwellings on the site would help to boost the supply of houses in the area. The Council has not disputed the appellant's claim that the local planning authority cannot demonstrate a five year supply of deliverable housing sites. However, the contribution to the supply of housing from three dwellings would be relatively limited. This contribution would not outweigh the significant harm that would be caused to the character and appearance of the area.

12. I have taken into account representations made by other interested parties. Some of the comments made have been addressed in my reasoning above. I note the concerns raised about traffic generation and the safety of the junction of Broomfield Road with Fixby Road. However, there is an extant planning permission in place for one dwelling and on the evidence that is before me, I do not consider that an additional two dwellings would lead to significant congestion or highway safety impacts. Furthermore, the proposal includes some improvements to the junction onto Broomfield Road. I have no reason to depart from the conclusion reached by the Highway Authority who raised no objection to the proposal.

13. None of the others matters raised outweigh or overcome my conclusion on the main issue.

Conclusion

14. For the reasons outlined above, and taking into account all other matters raised, I conclude that the proposal would not accord with the development plan for the area. Therefore, the appeal is dismissed.

Daniel Hartley

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 16th March 2017

Appeal Ref: APP/Z4718/W/16/3164940
42A Station Road, Fenay Bridge, Huddersfield, HD8 0AD

- 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 Gary Oldroyd against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2016/60/91893/W, dated 7 June 2016, was refused by notice dated 8 November 2016.
- The development proposed is a detached house.

Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline with matters other than access and layout reserved for future consideration and I have dealt with the appeal on this basis. Nevertheless, indicative section plans have been provided showing two alternative schemes, one for a two storey house, and the other for a dormer bungalow, to which I have had regard.

Main Issues

3. The main issues in this case are:

    - The effect of the proposal on the character and appearance of the surrounding area; and
    - The effect of the proposal on the living conditions of the occupiers of 42 Station Road, with particular reference to outlook; and
    - Whether the proposal represents an acceptable form of development having regard to its location within the Coal Authority's Development High Risk Area.

Reasons

Character and appearance

4. The appeal site is an area of hardstanding used for car parking adjacent to No 42A which is a split level detached house accessed via a driveway from Station Road. The hardstanding is elevated in relation to the terraced garden area to the rear and side of No 42A. The properties beyond the appeal site to the north and west are at a significantly lower level than it.

5. In the immediate vicinity of the appeal site properties are set back from Station Road and Fenay Bankside at various distances and are spaced out at differing intervals. There is no particularly uniform pattern of development or layout to the buildings which are arranged on a more ad hoc basis largely in response to the topography. Notably Nos 42A, 44 and 46 are set well back from Station Road. There is also a mix of house types, sizes, designs and use of materials in the area.

6. The Council refers to generous separation distances between the properties on Station Road and those on Fenay Drive. It estimates that Nos 38, 40 and 42 Station Road are at least 15 metres from the adjoining rear boundaries of the properties in Fenay Drive with good size gardens separating them. In contrast, the Council estimates that the rear wall of the proposed dwelling would be 7 metres from the boundary with 21 Fenay Drive (a semi-detached bungalow to the west) and 20 metres from its rear wall.

7. I accept that the proposed house would be closer to the properties in Fenay Drive than Nos 38 to 42 and would not have such a deep rear garden. On the other hand, it would be no further rearwards into the site than No 42A which has a short rear garden and backs on Fenay Drive. Whilst I note that it is adjacent to a garage in Fenay Drive, No 42A nevertheless has a close relationship with the properties in the road below. The proposed house would be no closer to them than this existing property.

8. Although the appeal site provides a degree of openness and separation between the existing properties, such large gaps are not generally characteristic of the area, where the buildings are for the most part located closer together. In any event, No 42A is set back in its plot which widens to the rear and has only a narrow site frontage comprising its driveway. This being so, the open gap currently afforded by the appeal site is not immediately appreciated in the street scene. Additionally, the proposed house would be set off the boundary with No 42 by 1.5 metres and separated from No 42A such that some space would be maintained around both buildings.

9. In this context, even though the proposal would diminish the openness of the site, I am not persuaded that it would appear as a particularly constrained form of development that would be unduly at odds with the pattern of development nearby or unsympathetic to the character of the surrounding area.

10. I therefore conclude on this issue that the proposal would cause no harm to the character and appearance of the surrounding area. Thus, I see no conflict with Policy D2 of the Kirklees Unitary Development Plan (UDP) which is permissive of proposals provided that they do not prejudice the avoidance of over-development (ii), visual amenity (vi) and the character of the surroundings (vii). The proposal would align with UDP Policy BE1 which requires development to be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity (i), and is visually attractive (ii). It would not undermine UDP Policy BE2 which indicates that new development should be designed so that it is in keeping with any surrounding development in respect of design, materials, scale, density, layout, building heights or mass (i). Nor would it be at odds with the core planning principle of the National Planning Policy Framework (the Framework) to seek to secure high quality design.

Living conditions No 42

11. The proposed dwelling would be set at the level of the existing garden area, about 1.4 metres below that of the parking area. The Council is satisfied that with appropriate screening and positioning of windows a single storey dwelling on the site would meet its guidance in terms of separation distances and would not have a harmful effect on the living conditions of nearby occupiers in either Fenay Drive or Station Road in relation to privacy.

12. Despite the concerns of local residents the Council is also content that the proposal would cause no harm to the living conditions of the occupiers of Nos 44 and 46 Station Road which are immediately adjacent to the appeal site's driveway and proposed visitor parking. I am mindful that the driveway is already used by the occupiers of No 42A. Whilst there would be more activity in terms of both pedestrian and vehicle movements to and from the site, given the modest size of the scheme any such increase would not be so great as to have an unduly adverse effect on the occupiers of Nos 44 and 46 in terms of noise and disturbance.

13. However, although it would meet UDP Policy BE12 in providing a separation distance of 1.5 metres from the boundary with No 42 (if a blank gable wall is assumed), I share the Council's concern about the effect of the proposal on the occupiers of No 42. Despite being set off the boundary, and even assuming a single storey structure, given the significant difference in levels between the appeal site and No 42, the proposal's flank wall would be in an elevated position close to the boundary. As such it would appear as an unduly imposing and overbearing feature from No 42's rear garden.

14. I therefore conclude on this issue that the proposal would be harmful to the living conditions of the occupiers of 42 Station Road, with particular reference to outlook. This would be contrary to UDP Policy D2 which is permissive of proposals provided that they do not prejudice (amongst other things) residential amenity (v). It would also be at odds with the core planning principle of the Framework to ensure a good standard of amenity for all existing and future occupants of land and buildings.

The Coal Authority's Development High Risk Area

15. The site falls within the defined Development High Risk Area. Within the site and surrounding area there are coal mining features and hazards which need to be considered, specifically the likely historic unrecorded underground coal mine workings at shallow depth. The information submitted with the planning application provides basic coal mining information in relation to the site, but does not include an assessment of the risks to any proposed new development. This being so, the Coal Authority considers that it does not adequately address the impact of coal mining legacy on the proposal and therefore objects to the scheme. It suggests that a Coal Mining Risk Assessment Report is submitted.

16. Paragraph 120 of the Framework advises that to prevent unacceptable risks from pollution and land instability, planning decisions should ensure that new development is appropriate for its location. Paragraph 121 further requires decision to ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from former activities such as mining. National Planning Practice Guidance (the Guidance) advises that proposals in the defined Development High Risk Area must be accompanied by a Coal Mining Risk Assessment.

17. The Council indicates that the appellant is aware of the need to provide a risk assessment, but did not wish to go to that expense to support the planning application in the face of the Council's other reasons for refusal. However, despite the officer's report referring to the opportunity for a risk assessment to be provided to support any subsequent appeal, one has not been provided. The appellant's grounds of appeal are silent on this matter.

18. As described above, the appeal site is set well above the existing properties to the west and north. Additionally the proposed house would be dug into the site and considerable excavation works would be required in an area where local residents raise concerns of land stability and movement. Overall, in the absence a risk assessment, I cannot be satisfied that the proposed development is appropriate for its location, or suitable for its proposed use. Nor can I be content that past mining activity in the area poses no unacceptable risks to the future occupiers of the proposed house, or to the occupiers of neighbouring properties.

19. I therefore conclude on this issue that the proposal would not represent an acceptable form of development having regard to its location within the Coal Authority's Development High Risk Area. It would be contrary to UDP Policy G6 which advises that development proposals will be considered having regard to available information on the contamination or instability of the land concerned. It would also conflict with the advice in the Framework and the Guidance.

The planning balance

20. The Council acknowledges that it is unable to demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.

21. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development and indicates that, where the development plan is out-of-date, this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

22. In this case, the appeal site is within the the existing urban area, accessible by public transport and close to services and facilities. As a windfall site the proposal would add to the supply and choice of new housing in the area and the resultant dwelling would be occupied by the appellant's elderly parents in law, who wish to downsize and to live close to their family. These are benefits of the scheme which accord with the social role of sustainable development. However, given its limited scale for a single dwelling, the scheme's contribution to the supply of housing would not be great. Although not cited by the appellant there would also be some limited economic benefits in terms of construction jobs and spending along with the ongoing support to local shops and services that would arise from the future occupants of the proposed house.

23. Although I have found that there would be no harm to the character and appearance of the area, that factor counts neither for, nor against the proposal. Moreover, I have concluded that the proposal would be harmful to the living conditions of the occupiers of No 42 (with particular reference to outlook) and would not represent an acceptable form of development having regard to its

location within the Coal Authority's Development High Risk Area. As such, it would not be in accordance with the development plan as a whole, and in my view the adverse impacts of granting permission in this case, would significantly and demonstrably outweigh the benefits. Accordingly, I do not regard the proposal to constitute sustainable development.

Conclusion

24.For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 15 March 2017

by J D Clark BA (Hons) MCD DMS MRTPI

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

Decision date: 30th March 2017

Appeal Ref: APP/Z4718/D/17/3168075
74 Rawthorpe Lane, Dalton, Huddersfield HD5 9NU

- 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 Muhammed Waseem against the decision of Kirklees Council.
- The application Ref 2016/62/93236/W, dated 19 September 2016, was refused by notice dated 15 November 2016.
- The development proposed is two storey side extension and single storey rear.

Decision

1. The appeal is dismissed.

Main Issue

2. I consider that the main issue is the effect of the two storey side extension on the character and appearance of the area.

Reasons

3. The proposal includes a rear extension but the Council has not raised any concerns about this. I also am not concerned about this. The boundary between Nos 72 and 74 is angled and the proposed two storey extension would be staggered to accommodate this angle. This would take the extension fairly close to the side boundary with No 72 leaving a narrow gap at the front. Its ridge height would follow the ridge line of the existing house and it would extend from the front to the rear of the house.

4. UDP Policy BE14[1] indicates that unless the proposal would have a detrimental effect on visual amenity, extensions to semi-detached houses will normally be permitted where is does not result in an undesirable terracing effect being established in relation to adjoining dwellings, amongst other things. Although the pair of semi-detached houses at Nos 74 and 76 differ in appearance to the pair of semi-detached houses at Nos 70 and 72, they are of a similar design and a terracing effect could occur. There is currently a generous gap between Nos 72 and 74 and this would be eroded. Due to the scale and proximity to the side boundary, the extension would appear imposing and have a harmful effect on the character and appearance of the area.

[1] Kirklees Unitary Development Plan Written Statement – Revised with effect from 28 September 2007 (UDP).

5. I note that an extension has been built to the side of No 78 but I have no information about this. I have taken all matters raised into consideration, including a number of other UDP policies that I have not mentioned here and I also note the concerns raised by the neighbour at No 76 but these do not alter my conclusion. I conclude that the two storey side extension would have a harmful effect on the character and appearance of the area, it would be contrary to Policy BE14 and therefore the appeal fails.

J D Clark

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 28 March 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 03 April 2017

Appeal Ref: APP/Z4718/W/16/3162904
Lidl UK Gmbh, Huddersfield Road, Holmfirth, Kirklees HD9 7AG

- 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 Lidl Uk Gmbh against the decision of Kirklees Metropolitan Borough Council.
- The application Ref 2015/70/91832/W, dated 4 June 2015, was refused by notice dated 16 May 2016.
- The application sought planning permission for the demolition of existing building and the erection of a food store with associated car park, landscaping, highway works and to relocate an existing sub-station without complying with conditions 27 and 39 attached to planning permission Ref 2011/65/92600/W, dated 13 March 2012.
- The conditions in dispute are Nos 27 and 39 which state that:
- (27) *"The store hereby permitted shall not be open to customers outside the hours of 0700 to 2000 Monday to Sunday inclusive, other than up to ten occasions per annum when the store is permitted to open until 2200 hrs".*
- (39) *"The floodlights hereby approved shall not be operated between the hours of 2100 to 0730 on any day of the week"*
- The reasons given for the conditions are:
- (27) *"In the interests of safeguarding the amenities of residents arising from noise, and to accord with Policies D2 and EP4 of the Unitary Development Plan, and national planning policy guidance in PPG 24"*
- (39) *"In the interests of safeguarding the amenities of residents arising from stray light during unsociable hours / night time; and to accord with Policies D2 and EP4 of the Unitary Development Plan, and national planning policy guidance in PPS 23".*

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and for the erection of a food store with associated car park, landscaping, highway works and to relocate an existing sub-station in accordance with the application Ref 2015/70/91832/W dated 4 June 2015, without compliance with condition numbers 27 and 39 previously imposed on planning permission Ref 2011/65/92600/W dated 13 March 2012 and subject to the attached schedule of conditions.

Background and Main Issue

2. The appellant seeks to modify condition No 27 of planning permission Ref 2011/65/92600/W so that instead of reading *"the store hereby permitted shall not be open to customers outside the hours of 0700 to 2000 Monday to Sunday*

inclusive, other than up to ten occasions per annum when the store is permitted to open until 2200 hrs" it reads *"the store hereby permitted shall not be open to customers outside the hours of 0700 to 2200 Monday to Sunday inclusive".*

3. The appellant also seeks to modify condition No 30 of 2011/65/92600/W so that instead of reading *"the floodlights hereby approved shall not be operated between the hours of 2100 to 0730 on any day of the week"* it reads *"the floodlights hereby approved shall not be operated between the hours of 2300 to 0730 on any day of the week".*

4. In considering the Council's refusal notice, the main issues are whether or not the above proposals would cause harm to the living conditions of the occupiers of neighbouring residential properties in respect of (i) noise and disturbance from vehicular and pedestrian activity as a result of the proposed extended hours of customer use and (ii) light pollution from the proposed extended hours of use of the existing floodlights.

Reasons

Noise and disturbance

5. Planning permission No 2011/65/92600/W already permits customer visits to the Lidl store up to 22:00 hrs on up to ten occasions per annum. I do not know the background to the up to ten occasion's restriction, but, in any event, the appellant has submitted a noise assessment report which considers the noise effect of the proposed extended hours of customer use of the retail store. I have no reason to doubt the conclusions of the noise assessment report which states, with reference to the noise exposure hierarchy table in the National Planning Practice Guidance (PPG) on noise, that there would be *"no observed adverse effect",* meaning that in respect of noise the site could operate within the *"lowest observed adverse effect level"* based on the proposed customer opening hours. Taking into account the PPG noise hierarchy table, no specific actions are required in respect of noise and the evidence indicates that there would not be a perceived change in the quality of life of surrounding residents. The Council's Environmental Services team were also consulted on the planning application and raised no objection to the proposed extension of the customer opening hours.

6. Given the findings of the noise report, the evidence before me indicates that in respect of noise the proposed extended hours would not result in a level of customer activity which would cause material harm to the living conditions of the occupiers of surrounding residential properties. I note that the Council has not received any noise complaints from members of the public based on the current customer opening hours which includes customer use of the store up to 22.00 hrs ten times per annum.

7. I do acknowledge that when compared to the current situation there would be additional customers coming and going (i.e. at all times of the year) between the hours of 20.00 hrs and 22.00 hrs. However, I do not consider that this would result in significant levels of disturbance and I consider that it is reasonable to conclude that customer visits/movements would likely tail off later into the evening. In any event, the noise assessment does not indicate that significant harm would be being caused as a result of customer activity during this period. Indeed, and based on the findings in the noise assessment

report, it is likely that noise associated with the A6024 Huddersfield Road would remain the dominant source of noise. I was able to hear this dominant noise source as part of my site visit.

8. I note that the Council officers recommended approval of planning permission subject to a temporary one year planning condition. I have not been provided with any reasonable evidence to substantiate why it would be necessary to opt for a trial run. This may have been necessary if, say, there was a need for some form of noise mitigation, but for the reasons outlined above this would not be required. In conclusion, the evidence before me indicates that the proposed extended customer opening hours would not cause material harm to the living conditions of the occupiers of surrounding residential properties in respect of noise and disturbance. I consider that a closing time of 22.00 hrs is reasonable as this would ensure that the residents would continue to benefit from a much quieter late evening/early morning environment (when most would sleep) and where there would be no comings and goings from customers. Therefore, the proposal would accord with the amenity aims of saved Policies BE1(iv) and D2(v) of the adopted Kirklees Unitary Development Plan 1999 (UDP); the National Planning Policy Framework (the Framework) and the PPG.

Floodlights

9. It is proposed to extend the operation of the car park floodlighting to facilitate the extended opening hours above. There would be a slight overlap in times, but this is reasonable in so far that it would allow a period of time for both staff and customers to leave the site, after the closing of the store, in a lit and therefore safe environment.

10. I note that the existing floodlights have been approved at lux level (10) with a uniformity of 0.25. Such floodlights are well within industry standards in terms of the lux level and based on the details submitted by the appellant they have been designed to minimise light spillage and glare to neighbouring land and properties. According to the Council, they have received no complaints in terms of the effect of the use of the lights upon the living conditions of the occupiers of surrounding residential properties.

11. It is proposed that the lights would not be on between the hours of 23.00 hrs and 07.30 hrs. I consider that these are reasonable times in so far that the lights would not be turned on during periods of the very late evening/early morning when most people would be asleep. The imposition of the proposed varied condition is, however, necessary as it is reasonable for the occupiers of surrounding residential properties (some dwellings face directly onto the car park) to have a reasonable period of time in the evening/early morning when there is relative darkness.

12. For the reasons outlined above, I conclude that proposed extended hours of operation for the floodlights would not cause significant harm to the occupiers of surrounding residential properties. Therefore, the proposal would accord with the amenity aims of saved Policies BE1(iv) and D2(v) of UDP and the Framework.

Other Matters

13. I have taken into account representations made by other interested parties. A number of the comments made have already been addressed in the reasoning above.

14. The use of the Lidl car park, perhaps by non-customers, is a matter to be considered/enforced by the land owner. The land owner may wish to consider the use of bollards and/or other security measures for the site, but this is not relevant to the determination of this appeal.

15. A comment has been made that the supermarket appears to be little used by 20.00 hrs. I do not have details of average visitor numbers by time/day, but I have no reason to doubt that the proposal would make the Lidl store more competitive in the area and that the proposal would have some economic advantages. I am satisfied that subject to the imposition of planning conditions, the appeal can be allowed without material harm being caused to the living conditions of the occupiers of surrounding residential properties.

16. The Neighbourhood Policing Team was consulted at planning application stage and raised no objection to the proposal. There is no evidence of existing problems of anti-social behaviour at the site. I do not consider that there is any evidence to suggest that the proposals would give rise to an increase in anti-social behaviour.

17. None of the other matters raised outweigh my conclusions on the main issue.

Conditions

18. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission (notwithstanding the fact that the Lidl store is built), I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

19. I have amended condition No 40 of planning permission 2011/62/92600/W so that it refers to the more up to date Town and Country Planning (General Permitted Development) (England) Order 2015 including reference to the relevant part/classes of development. The appellant and the Council have agreed to the amended wording of this condition.

Conclusion

20. For the reasons outlined above, and the evidence before me, I conclude that the appeal should be allowed.

Daniel Hartley

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in complete accordance with the approved plans and specifications except as may be required by other conditions.

2) The front and side elevations of the building shall be constructed of regular coursed natural stone. No development shall take place until a sample of coursed natural stone and the materials to be used for stone heads, cills and surrounds have been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and maintained as such.

3) No development shall take place until samples of all facing, roofing, hard landscaping materials has been submitted to and approved in writing by the Local Planning Authority and the development shall thereafter be constructed using the approved materials and maintained as such.

4) Notwithstanding the submitted details, no development shall take place until a revised soft landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a proportion of heavy standard / semi-mature trees. The approved scheme shall be carried out during the first planting, seeding or management season following the commencement of development, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained in accordance with the approved Landscape Management Plan referred to in Condition 5. All specimens which die within a five year period shall be replaced on a like for like basis.

5) Within three months of the development becoming operational, a Landscape Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The principal aims of the Plan shall be to optimise biodiversity interests and shall include a timescale for implementation. The measures contained in the Landscape Management Plan shall be implemented in accordance with the approved timescale and the vegetation shall be maintained in accordance with the principles of the Plan for the lifetime of the development.

6) No development shall take place until details of the siting, design and materials to be used in the construction of walls or fences for boundaries, screens or retaining walls have been approved in writing by the Local Planning Authority. The approved walls / fences shall be erected before the development hereby approved is occupied and shall thereafter be retained.

7) The development shall be carried out in accordance with the recommendations set out in the submitted Bat Method Statement Document 2 dated December 2011, unless otherwise directed by the Local Planning Authority or Natural England in connection with the Protected Species Licensing Process. In addition to the measures outlined in the Bat Method Statement, no development shall take place until an appendix Bat Method Statement to address works to the retaining wall adjacent to the River Holme and / or the Hebble Dike Culvert has been submitted to and approved in writing by the Local Planning Authority. Any subsequent demolition / rebuilding works to the culvert and / or retaining wall shall be completed in accordance with the appendix Bat Method Statement unless otherwise

directed by the Local Planning Authority or Natural England in connection with the Protected Species Licensing Process.

8) No development shall take place until details of bird boxes and / or cavities for Swifts to be incorporated into the build structures has been be submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be implemented in full accordance with the approved details prior to the first occupation of the development, and thereafter maintained as such.

9) In the event that works on the retaining structures involve in-channel works on the river, a Mitigation Method Statement to take into account the possible presence of White-clawed Crayfish shall be submitted to and approved in writing by the Local Planning Authority. Thereafter the works within the river shall be implemented in full accordance with the approved details.

10) Prior to any river bank works taking place, a search shall be carried out for Otter holts by a qualified Ecologist. In the event that Otter holts are discovered no river bank works shall take place until an Otter habitat Mitigation Strategy has been submitted to and approved in writing by the Local Planning Authority. Thereafter the works within the river bank shall be implemented in full accordance with the approved details.

11) Trees within or on the boundary of the site shall be neither felled, topped or lopped except with the prior written approval of the Local Planning Authority, nor shall they be damaged or killed by fire or by the application of toxic or injurious substances.

12) Unless otherwise agreed in writing by the Local Planning Authority, before any materials are brought onto site or development commences the developer shall erect protective chestnut paling or similar fencing around all trees, shrubs or hedges to be retained, to the branch spread of individual trees or groups of trees/shrubs. The fence shall be maintained and such fencing unaltered until the development is complete. No work shall be carried out within the protected area.

13) No development shall take place until details of a scheme to eradicate Japanese Knotweed have been submitted to and agreed in writing by the Local Planning Authority. All works to eradicate the species shall be completed prior to the store first opening.

14) Development shall not commence until a Phase II Intrusive Site Investigation Report has been submitted to and approved in writing by the Local Planning Authority.

15) Where site remediation is recommended in the Phase II Intrusive Site Investigation Report approved pursuant to Condition 14 development shall not commence until a Remediation Strategy has been submitted to and approved in writing by the Local Planning Authority. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures.

16) Remediation of the site shall be carried out and completed in accordance with the Remediation Strategy approved pursuant to Condition 15. In the event that remediation is unable to proceed in accordance with the approved Remediation

Strategy or contamination not previously considered (in either the Preliminary Risk Assessment or the Phase II Intrusive Site Investigation Report) is identified or encountered on site, all works on site (save for site investigation works) shall cease immediately and the Local Planning Authority shall be notified in writing within two working days. Unless otherwise agreed in writing with the Local Planning Authority, works shall not recommence until proposed revisions to the Remediation Strategy have been submitted to and approved in writing by the Local Planning Authority. Remediation of the site shall thereafter be carried out in accordance with the approved revised Remediation Strategy.

17) Following completion of any measures identified in the approved Remediation Strategy or any approved revised 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 remediation measures for the whole site have been completed in accordance with the approved Remediation Strategy or the approved revised Remediation Strategy and a Validation Report in respect of those remediation measures has been approved in writing by the Local Planning Authority.

18) No development shall take place until a scheme detailing crime prevention measures to protect the store, car park, staff, customers and cash in transit operations has been submitted to and approved in writing by the Local Planning Authority. The development shall be operated in accordance with the approved scheme upon the store first being operated and retained as such for the life of the development thereafter unless otherwise agreed in writing by the Local Planning Authority.

19) No development shall take place until a scheme to upgrade the existing culvert as proposed within the submitted FRA by EJS Associates, dated December 2011 Ref 2011-1-3 rev05, has been submitted to and approved in writing by the local planning authority. Details must include appropriate access to the culvert for inspection, maintenance and repair, and confirmation that utilities will not be routed through the new culvert. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed in writing by the Local Planning Authority.

20) Treatment of all surface water flows from parking areas and hardstandings shall be through the petrol / oil interceptors. Use of the parking areas/hardstandings shall not commence until the petrol / oil interceptors have been installed. Treatment shall take place prior to discharge from the petrol / oil interceptors. The treatment scheme shall be retained, maintained to ensure efficient working and used throughout the lifetime of the development. Roof water shall not pass through the interceptor.

21) The development hereby permitted shall not be commenced until such time as a scheme to improve the existing surface water disposal system (to a maximum of 70% of the existing pre-development flow rate) 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. Flows between the critical1 in 30 and critical 1 in 100 year storm events shall be stored on site in areas to be approved in writing by the Local

Planning Authority unless it can be demonstrated that discharge from site does not cause an increased risk in flooding elsewhere. The scheme shall include a detailed maintenance and management regime for the storage facility including the flow restriction. The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

22) Development shall not commence until a scheme detailing foul, surface water and land drainage, (including outfalls, balancing works, plans and longitudinal sections, hydraulic calculations, existing drainage to be maintained / diverted / abandoned etc) has been submitted to and approved in writing by the Local Planning Authority. Sustainable systems of drainage (SuDS) shall be employed to manage flows and/or improve water quality of surface water where possible. 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. The completed works shall be retained thereafter.

23) 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, on drainage infrastructure and surface water run-off (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 assessment should include alterations to ground levels including at site boundaries, designing for exceedance and flow blockage scenarios and flood routing. Mitigation measures to reduce flood risk recommended by the approved assessment shall be implemented prior to the development being brought into use and retained thereafter.

24) Unless otherwise agreed in writing by the Local Planning Authority, no building or structure and shall be located over or within 3m either side of the centre line of the water main, which enters the site.

25) Unless otherwise agreed in writing by the Local Planning Authority, no building or structure and shall be located over or within 3m either side of the centre line of the 225mm public main sewer, which crosses the site.

26) The store hereby permitted shall not be open to customers outside the hours of 0700 to 2200 Monday to Sunday inclusive.

27) Unless otherwise agreed in writing by the Local Planning Authority, there shall be no deliveries to or dispatches from the store outside the hours of 0730 to 20.00 Monday to Saturday, and 1000 to 1600 Sundays and Bank Holidays inclusive.

28) The net sales area of the store hereby permitted shall not exceed 1,063m² and the floorspace devoted to the sale of comparison goods within this net sales area shall not exceed 213 m².

29) No development shall take place until a scheme detailing the proposed highway improvement works on Huddersfield Road/New Road, as shown for indicative purposes only on Sketch 10 has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include full sections, drainage works,

street lighting, signals, signing, surface finishes and the treatment of sight lines, together with an independent road safety audit covering all aspects of work. The approved scheme shall be implemented in full before the development is first brought into use.

30) The development shall not be brought in to use until the areas to be used by vehicles and/or pedestrians have been surfaced and drained in accordance with details that have previously been approved in writing by the Local Planning Authority.

31) Concurrently with the construction of the new access being brought into use, all existing redundant vehicular accesses shall be permanently closed off with a full kerb face, and the footway returned to full footway status.

32) Prior to development commencing details of the specification and location of a real time bus information display to be sited in the store entrance foyer shall be submitted to and approved by the Local Planning Authority. The real time bus information display shall be provided in accordance with the approved scheme before the store is brought into use and shall thereafter remain operational.

33) Unless otherwise agreed in writing by the Local Planning Authority, prior to development commencing a scheme shall be submitted to and approved in writing by the Local Planning Authority for the introduction of two car parking spaces reserved for use by Hybrid/Electric vehicles. The spaces shall be located in a convenient and visible location and provide fast charging points (Specification to be agreed). The approved scheme shall be implemented prior to development becoming operational and retained thereafter throughout the life of the development.

34) No development shall take place until the design and construction details of all temporary and permanent highway retaining structures within the site have been submitted to and approved in writing by the Local Planning Authority. The details shall include a design statement, all necessary ground investigations on which design assumptions are based, method statements for both temporary and permanent works and removal of any bulk excavations, structural calculations and all associated safety measures for the protection of adjacent public highways, footpaths, culverts, adjoining land and areas of public access. All highway retaining structures shall be constructed in accordance with the approved details and shall be so maintained throughout the life of the development unless otherwise agreed in writing by the Local Planning Authority.

35) In advance of the completion/implementation of the Full Travel Plan for the development, the development shall be operated in accordance with the details set out in the submitted Framework Travel Plan dated August 2011.

36) Within 3 months of the development becoming operational, a Full Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Full Travel Plan shall adhere to the criteria/content of the Framework Travel Plan and shall be operated from the time of approval for the lifetime of the development, unless otherwise approved in writing by the Local Planning Authority.

37) No development shall take place until a scheme detailing how a minimum of 10% of the energy to be utilised by the development hereby approved will be

secured from decentralised or renewable/low carbon sources. All works which form part of the approved scheme for each part of the development shall be completed prior to the occupation of the development, and shall thereafter be maintained.

38) The floodlights hereby approved shall not be operated between the hours of 2300 to 0730 on any day of the week.

39) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order) no extensions to the store either on or projecting beyond the northern elevation included within Classes A, B, C and D of Part 7 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority.

40) All new areas of retaining wall adjacent to the River Holme shall be a green 'living' wall design and details of the proposed planting of the outer surface shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out during the first planting, seeding or management season following the commencement of development, or as otherwise may be agreed in writing by the Local Planning Authority, and shall be maintained in accordance with the approved Landscape Management Plan referred to in Condition 5. All specimens which die within a five year period shall be replaced on a like for like basis.