

Appeal Decision

Site visit made on 2 May 2017

by **J C Clarke BSc(Hons) BTP MRTPI**

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

Decision date: 31 May 2017

Appeal Ref: APP/Z4718/D/17/3171776

Mouse House, Stringer House Lane, Emley Moor, Huddersfield, HD8 9SU

- 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 Dr K Deakin against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/94170/E, dated 7 December 2016, was refused by notice dated 1 February 2017.
 - The development proposed is described as 'Single storey side extension. Single storey rear extension'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (a) whether the proposed development would constitute inappropriate development in the Green Belt;
 - (b) the effect of the proposed development on the character and appearance of the host property and the surrounding area; and
 - (c) If the proposal would be inappropriate development in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development

3. Paragraph 89 of the National Planning Policy Framework (the 'Framework') establishes that the erection of new buildings in the Green Belt is, subject to specified exceptions set out in its 6 bullet points, inappropriate.
 4. Under bullet point 3 of paragraph 89, the extension or alteration of an existing building is not inappropriate provided that it does not result in disproportionate additions over and above the size of the original building. The evidence before me indicates that the appeal dwelling has been substantially extended in the past, including through the implementation of planning permission 99/90813, which included a 2 storey side extension, porch and sun lounge.
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5. The current appeal proposal includes two extensions which would be collectively of a more modest scale than the earlier extensions. However, the Council has identified, and the appellant not refuted, that, in conjunction with the earlier extensions, the proposal would result in the footprint of the building exceeding that of the original by about 270% and the volume of the building being about double that of the original.
6. Having regard to these points, the proposal would result in a disproportionate increase in the size of the original building. It would constitute inappropriate development in the Green Belt as defined in the Framework and saved policy D11 of the Kirklees Unitary Development Plan (KUDP).

Character and appearance

7. The appeal dwelling is a semi-detached house built in stone and set within rolling countryside. It can be seen in views from Crawshaw Lane to the west and Stringer House Lane.
8. The proposed dining room extension would project outwards at ground floor level from the gable of the house and have a mono pitched roof. The kitchen extension would project out from part of the rear elevation and be supplemented by a porch with ridged roof projecting at 90 degrees to the orientation of the house.
9. Although the dwelling is likely to have had a simple original built form, this has been affected by the existing extensions referred to earlier in my decision. I also note that the walls of the extensions now proposed would be built using natural stone to match that used on the existing house.
10. However, the proposal would, primarily by adding further to the already considerable number of different wall and roof elements of the building, add materially to its overall complexity of built form. This would add further visual confusion and take the building further away from its likely original character as a simple, traditional Yorkshire house. Whilst I accept that many traditional houses of a similar nature to the appeal dwelling may have lost some or all of their original character, this does not mean that the appeal proposal would not cause harm in relation to this issue. The added complexity of built form would also be noticeable in views from the nearby area.
11. I conclude that the proposal would cause moderate harm to the character and appearance of the host property and the surrounding area. As a result its approval would conflict with the relevant provisions of policies D11, BE1, BE2, BE13 and BE14 of the KUDP and the Framework.

Other considerations

12. In support of the proposal, the appellant has drawn my attention to prior approval 2016/93120, granted in 2016 for the erection of a single storey extension at the rear of the appeal dwelling. That extension, if built, would project 6 metres from the rear wall of the dwelling, and have a large expanse of flat roof. I agree that the extension subject to approval 2016/93120 would cause at least as much harm as the appeal proposal to the openness of the Green Belt and the character and appearance of the property and the surrounding area. I also note that the extension subject to approval 2016/93120 would be located next to the boundary with the neighbouring dwelling.

13. However, the living room extension forming part of the appeal proposal would not encroach within the area of the extension subject to approval 2016/93120. It could therefore be built in addition to that other extension.
14. The appellant has indicated that he would accept a condition on any planning permission for the appeal proposal to ensure that no extension to the rear of the building could be built under the 'prior approval' procedures. However, a planning condition cannot legally be used to revoke the planning permission which is provided for such extensions by the relevant legislation¹. Such a condition could not prevent implementation of a scheme subject to prior approval in advance of implementation of the appeal proposal. Whilst a planning obligation can in some circumstances be used to prevent implementation of a pre-existing planning permission on a particular site, no such obligation has been put before me.
15. Having regard to these points, I attribute only limited weight to the 'fall-back' position provided by prior approval 2016/93120 and the related legislation.
16. The extensions now proposed would help to meet the changing accommodation needs of the appellant. However, as any planning permission would run with the property this point carries only limited weight.
17. I acknowledge that no objections have been received to the appeal proposal from any interested party. However, this does not neutralise the harm that I have identified earlier.

Conclusions

18. Against the proposal, I have found that it would constitute inappropriate development in the Green Belt. Paragraph 87 of the Framework establishes that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 requires that substantial weight be given to such harm. In addition, the proposal would cause moderate harm to the character and appearance of the host property and the surrounding area.
19. Whilst the appellant has put forward other considerations in support of the proposal, these carry only limited combined weight. Consequently, I find that they would not clearly outweigh the harm that I have identified. Therefore, the very special circumstances needed to justify the development do not exist. The proposal would also not accord with the development plan or amount to sustainable development in the terms of the Framework.
20. For the reasons given above I conclude that the appeal should be dismissed.

Jonathan Clarke

INSPECTOR

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

Appeal Decision

Site visit made on 27 March 2017

by Thomas Shields MA DipURP MRTPI

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

Decision date: 12 May 2017

Appeal Ref: APP/Z4718/X/16/3163422

5 Coachgates, Flockton, Wakefield, WF4 4TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Adrian Harris against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/CL/92434E, dated 19 July 2016, was refused by notice dated 13 October 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the proposed erection of a detached swimming pool and detached barn store.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Preliminary matters

2. Where an LDC is sought, the burden of proving relevant facts rests with the appellant, and the test of the evidence is the balance of probability. The relevant date for determining lawfulness is 19 July 2016, the date of the application.
3. A number of planning appeal decisions have been referred to by the parties. While they are similar in terms of the subject matter of this appeal and contain references to case law, I do not have knowledge of the plans or particulars of those appealed matters or the detailed relevant circumstances upon which those decisions were made. I therefore attach no weight to them in reaching my decision which I make on the facts and circumstances of the particular case before me.

Main Issue

4. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns on the point of dispute between the parties as to whether or not the land upon which the outbuildings are proposed to be sited falls within the curtilage of the dwelling; a necessary prerequisite of Class E permitted development under the GPDO¹.

¹ Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO)

Reasons

5. Planning permission was granted in 2000 for a large two storey detached dwelling house within a roughly square plot of land at No. 5 Coachgates. The land subject of this appeal ("the appeal site") is also roughly square in shape located immediately to the north and adjoining the residential plot granted planning permission in 2000. It was annotated on the submitted 2000 application plans as being a field.
6. Planning applications for a livestock building and stables within the appeal site land were submitted in 2001 and 2002. The plans in those applications replicated the annotation of land use as shown in the 2000 planning permission. A further application for extensions to No.5 in 2015 also indicated the same demarcation of land use.
7. Notwithstanding the above, in 2015 an application for an LDC was submitted for the appeal site land seeking to confirm its lawfulness as a domestic garden. The evidence of its use as a garden since 2002 included photographs and affidavits from the previous owner and from gardeners contracted to maintain the land as a garden. It is clear from all the submitted evidence that the annotations indicating the different land uses on the plans submitted to the Council in the 2001, 2002 and 2015 planning applications were unreliable indicators of the actual use being made of the appeal site land. The Council granted the LDC confirming use of the appeal site land as a domestic garden in 2016, and its use as such is therefore beyond doubt.
8. However, 'garden' use is not synonymous with 'curtilage'. Curtilage is a legal term describing the relationship of land to a building; it is not a use of land for planning purposes. Hence the use of the appeal site land as a domestic garden is only one of a number of relevant factors in determining the extent of a building's curtilage. Other factors to be considered are set out in established case law which I discuss in the following paragraphs.
9. There is no authoritative or precise definition of the term 'curtilage'. However, to fall within the curtilage of a building, land should serve the purpose of the building in some reasonably necessary or useful manner. This was established in *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195. In *Methuen-Campbell v Walters* [1979] 1 QB 525 (CA) it was found that for land to fall within the curtilage of a building or other land there must be an intimate association. In *Dyer v Dorset CC* [1988] 3 WLR 213 it was held that curtilage is a small area forming part and parcel with the house or building which it contained or to which it was attached. In that context, Nourse LJ commented that the kind of ground most usually attached to a dwelling house is a garden.
10. These authorities, including *Methuen-Campbell*, were reviewed in the later judgement referred to by the parties in *McAlpine v SSE* [1995] JPL B43 which indicated, amongst other things, that curtilage is a small area about a building, that the curtilage land must be intimately associated with the building, and that the size of the area of ground is a matter of fact and degree. *McAlpine* also reiterated the finding in *Sinclair-Lockhart* that curtilage land should serve the purpose of the building within it in some reasonably necessary or useful manner.
11. The appellant also refers to the High Court case of *Sumption v London Borough of Greenwich and Rokos* [2007] EWHC 2776 (Admin). However, *Sumption* does

not undo the precedent set by the Court of Appeal, and so does not establish, as a matter of law, that the curtilage of a dwellinghouse can be expanded simply by annexing adjoining land, which itself is being used for garden purposes. Clearly then all relevant circumstances, as outlined by the Court of Appeal in *Methuen-Campbell*, and in *McAlpine*, should be considered and the decision in any particular case will very much depend on the particular facts.

12. In this case the original residential plot and the appeal site (garden) land had no physical barrier or other visible separation between them at the date of the application. Both appeared from the evidence before me as an integrated and single unit of land enclosed together with the house by the driveway and long established boundaries separating the whole parcel of land from adjoining land to the north, east and west. Both parts of the land appeared to be in use for the same purpose as a residential garden to the house.
13. Smallness (*Dyer*) of the land in question is a relative factor; a matter of fact and degree. The appeal site land is approximately the same size as the original residential plot. In my view it is not disproportionately large in width, length or area given the large size of the detached dwelling house and its original plot. As a matter of fact and degree, I consider it to be small *relative* to the size of the dwelling. Moreover, it is not so large that the furthest extent of it could be said to be unable to have an *intimate association* (*Methuen-Campbell*) with the house. Its use as a cultivated garden with play equipment, still in situ at the time of my visit, indicates to me that it does have an intimate association with the use of the house, and as a domestic garden it serves the purpose of the dwelling house in a *reasonably useful manner* (*Sinclair-Lockhart*). This appears likely to have been the case for a number of years prior to the date of the application.
14. On the balance of all the evidence before me I conclude as a matter of fact and degree that the appeal site land forms part of the curtilage of the dwelling. Consequently, an LDC can be granted for the proposed outbuildings as they would be permitted development within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

15. For all the above reasons, I conclude that the Council's refusal to issue an LDC was not well founded. The appeal succeeds accordingly and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 19 July 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the detached swimming pool and detached barn store is permitted development within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Thomas Shields

INSPECTOR

Date 12 May 2017

Reference: APP/Z4718/X/16/3163422

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 May 2017

by Thomas Shields MA DipURP MRTPI

Land at: 5 Coachgates, Flockton, Wakefield, WF4 4TT

Reference: APP/Z4718/X/16/3163422

Scale: DO NOT SCALE



Appeal Decision

Site visit made on 18 April 2017

by **D Guiver LLB(Hons) Solicitor**

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

Decision date: 15th May 2017

Appeal Ref: APP/Z4718/D/17/3168357

41 Savile Road, Savile Town, Dewsbury, West Yorkshire WF12 9PJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mohammed Hussain against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/92910/E, dated 29 August 2016, was refused by notice dated 24 October 2016.
 - The development proposed is the erection of second floor extension, 3 metre rear extension over 6 metre extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The effect the proposed development would have on the character and appearance of the area, and on the living conditions of the occupiers of neighbouring properties at 39 and 43 Savile Road.

Reasons

Character and Appearance

3. The proposed development site is in the middle of a short terrace of similar two-storey buildings in a prominent position facing a main road into Dewsbury. The properties are of modest size, with short front and rear yards, and are of similar height and appearance, with a continuous roof line and a uniform front roof pitch. The position of the terrace on a main road gives it an important role in setting the character of the residential area that sits behind it.
 4. The proposed extension above the existing roof would dominate both front and rear elevations of the terrace and would adversely disrupt the coherent roof line. Because of its mid-terrace position, the extension would fundamentally alter the shape of the terrace and undermine its contribution to setting the overall character of the area. The rear element of the extension would be an obtrusive, three-storey structure that would be the only part of the terrace projecting from the building on the first and second floor and from the roof.
 5. The appellant referred to a number of nearby properties that have second-storey extensions. With exception of 53 Savile Road, the properties identified do not have a prominent position on a main road and therefore do not have the
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same harmful impact on the character of the area that would result from the proposed development. Unlike the development site, No 53 is an end of terrace property and has a different relationship with the street scene so is not directly comparable. I have no evidence before me relating to any permission given for that extension that could assist me in determining this appeal and I therefore give little weight to this and other extensions to houses in the area.

6. The height and scale of the proposed development would significantly harm the character and the appearance of the area as a whole. Therefore, the proposed development would be contrary to saved policies D2, BE2 and BE14 of the Kirklees Unitary Development Plan 2007 (the Plan), which together seek to ensure, amongst other things, that development does not prejudice the character and appearance of its surroundings.

Living Conditions

7. The occupiers of No 39 enjoy direct afternoon sunlight to the rear elevation, and specifically to the window of a first-floor habitable room. By reason of its height and location along the boundary, the proposed development at No 41 would cause significant overshadowing to the rear yard and windows of No 39. Consequently, the development would have a substantial detrimental effect on the living conditions of the occupiers of No 39.
8. Given the limited size of the yards to the rear of the terrace, the scale and height of proposed development would have an oppressive and overbearing effect on the sense of rear space at Nos 39 and 43 and as such would be harmful to the living conditions of the occupiers of both properties.
9. Therefore, I conclude the development would unreasonably harm the living conditions at No 39 and No 41, and so would be contrary to policies D2 and BE14 of the Plan, which seek to ensure, amongst other things, that development does not have a detrimental effect on the occupiers of neighbouring properties.

Conclusion

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

D Guiver

INSPECTOR

Appeal Decision

Site visit made on 21 March 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/Z4718/W/16/3166078

Holmfield, Clayton West, Huddersfield HD8 9LY

- 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 Stephen Cosgrove against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/92432/E, dated 11 July 2016, was refused by notice dated 30 September 2016.
 - The development proposed is the demolition of existing single storey garage block on the site comprising 4no garages and the erection of a two storey dwelling on land at Holmfield, Clayton West, Huddersfield.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The Council has referred to Policy NE9 of the Kirklees Unitary Development Plan (the UDP) in their reasons for refusal. However, the Council has not submitted a copy of the policy to the appeal. Notwithstanding this, I am aware of the policy and its content due to the undertaking of other casework in the local planning authority area. As a result, I have referred to Policy NE9 in my decision. Given that Policy NE9 was referenced in the Council's reasons for refusal and that the appellant was aware of its inclusion as such in this appeal, I consider that the appellant would not be prejudiced by reference to the policy in my decision.

Main Issues

3. The main issues are the effect of the proposed development on the:
 - character and appearance of the surrounding area, including the protected trees to the north of the site; and
 - living conditions of neighbouring occupiers with regard to outlook, daylight and sunlight and future occupiers with regard to private outdoor space.

Reasons

Character and appearance

4. The appeal site is a narrow area of land to the north of Holmfield. There is a single-storey garage block on the appeal site which is in a poor state of repair.
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The western part of the site is overgrown and was previously used as an allotment garden. There are mature trees close to the northern boundary of the site, some of which are the subject of a tree preservation order. To the north is 33a Church Lane (No 33a) which is a single-storey dwelling set on lower ground to the appeal site. To the south are several single-storey properties which are on higher ground. To the east is a two-storey residential property of stone construction and access to the appeal site is principally via Holmfield from the east.

5. The proposal would extend to effectively the full width of the site and trace the footprint of the existing garage building. It would be positioned close to the northern, eastern and southern boundaries of the site. As a result, it would fail to meet the required 1.5 metre distance from the eastern and northern site boundary as set out in Policy BE12 of the UDP. As a result, the dwelling would appear cramped within its setting due to the space constraints of the site.
6. There is a variety of property styles within the immediate area of the site. However, the design of the proposed dwelling would introduce another style into the area. The split level dwelling would stand adjacent to an existing two-storey detached property. Due to the site constraints, the scale of the proposed dwelling would be less than the adjacent property and would result in the dwellings height would reduce twice to 1.5 storeys. The reduced scale of the proposal, relative to other two-storey properties in the area, would highlight the size and site constraints of the scheme. This, in tandem with the dwelling being built so close to site boundaries, would result in a cramped form of development and appear as an overdevelopment of the site.
7. The appellant has sought to address overlooking and privacy constraints by proposing no windows in the front and rear elevations of the 1.5 storey part of the dwelling. Whilst this would remove the requirement for a 21 metre distance between any proposed habitable room windows and No 5 Holmfield, it would result in a 5.5 metre high blank wall facing the streetscene. This would have a detrimental effect and would be out of keeping with the character and appearance of the locality.
8. The land at the western end of the appeal site is proposed to be paved to provide off-street parking, a small patio area and bin storage to serve the dwelling. Notwithstanding this, given the space constraints and narrowness of the site and based on the evidence before me, I find that cars would only be able to be parked on the site 'in-line' with the property. As a result, a significant part of the available outdoor space would need to be retained for parking and manoeuvring vehicles. This would leave a very small area of hardstanding for outdoor amenity space. From what I have seen and read, I find that this supports the view that the proposal would be an inappropriate overdevelopment of the site.
9. I now turn to matters relating to the protected trees positioned close to the northern boundary of the site. I note the proximity of the proposed dwelling, particularly the 1.5 storey element, to the trees. The Council argues that this would likely result in pressure to excessively prune or fell the trees. This would be particularly so as the scheme would have no windows in the north and south elevations of that part of the dwelling. Therefore, it would rely on rooflights to provide adequate daylight within the dwelling.

10. The appellant submitted an arboricultural report to address concerns regarding the impact on these trees and argued that the trees have reached the end of their natural growth cycle. Therefore, the appellant states that there would be no potential for the trees to reduce the amount of daylight and sunlight reaching the proposed dwelling or its outside space.
11. As the trees are to the north of the site, I find that their impact on sunlight would be limited. However, I note that the crowns of the trees would overhang the proposed dwelling and its outdoor space. I find that this would result in some adverse impact on the level of daylight reaching the dwelling, particularly given that the principal source of daylight for a significant part of the building would be through rooflights.
12. The arboricultural report indicates that the protected trees would not be significantly harmed by the proposal. Notwithstanding this, I note that the proposed dwelling would encroach on the identified root protection area (RPA) of one of the trees (T1) and that the hardstanding proposed for the outdoor space and parking area would be within the RPA of all three trees (T1, T2 and T3). Furthermore, the proposal would be constructed within the crown spread of the nearest tree (T1).
13. I appreciate that the above impacts could be mitigated by planning conditions. Nonetheless, I find that matters such as the overhanging of the trees and their position in relation to the proposed dwelling would increase pressure to extensively prune or fell the trees regardless of whether they had reached the end their natural growth cycle. In the event of the trees being extensively pruned or felled, which I consider to be likely as a result of the proposed development, I find that there would be a significant adverse effect on the character and appearance of the area.
14. Consequently, I conclude that the proposal would have a significant detrimental effect on the character and appearance of the surrounding area, including the protected trees adjacent to the site. It would therefore be contrary to Policies D2, BE1, BE2, BE12, T10 and NE9 of the UDP and the relevant guidance within the National Planning Policy Framework (the Framework). Amongst other matters, these policies and guidance seek to ensure that development respects and has no significant adverse effect on the character and appearance of its surroundings, including any mature trees.

Living conditions: neighbours

15. I note that the proposed development would be to the south east of the dwelling at 33a Church Lane (No 33a). No 33a is situated on significantly lower land than the appeal site. The existing garage block on the appeal site is single storey and as such its impact on the occupier of No 33 is limited in terms of overshadowing and appearing overbearing. However, I note that the existing protected trees, which are within the garden area of No 33a, would have a significant overshadowing effect on No 33a and its occupier.
16. From what I have seen and read, the overshadowing effect of the proposed development on No 33a would only extend to a limited part of its garden area, close to the garage serving No 33a. Notwithstanding this, I find that the proposal would have a significant adverse impact on the amount of natural daylight and sunlight reaching the dwelling at No 33a, particularly in the morning. As I noted during the site visit, the part of the dwelling at No 33a

most affected would be a habitable room used at the south end of the property. The overshadowing resulting from the proposal would be particularly felt by the occupier given that the dwelling at No 33a is overshadowed by the protected trees for much of the rest the day.

17. With regard to the proposal being overbearing and its effect on the outlook of the occupier at No 33a, I find that the positioning of the 1.5–2 storey dwelling coupled with a blank stone wall elevation facing the garden area and dwelling at No 33a would have a significant effect on outlook. The garden area of No 33a is between 1–1.5 metres below the appeal site. In my view, the cumulative effect of the above would result in an undue sense of enclosure for the occupier of No 33a when viewing the site from the nearest windows of the property. This was reinforced by what I saw from inside No 33a during my site visit. The elevated nature of the site, the proposed height of the dwelling, the blank facing elevation and its proximity to the dwelling at No 33a would result in the proposed dwelling appearing substantially overbearing to the occupier at No 33a.
18. There is some existing impact on the outlook of the occupier of No 33a as a result of the existing garage block on the appeal site. However, as the garage is a single-storey structure with a shallow sloping roof, I find that the proposed dwelling would be significantly higher than the garage block and therefore would have a greater adverse impact on the outlook of the occupier of No 33a. Moreover, I find that the adverse impact of the proposed scheme would only be exacerbated by its elevated position. Therefore, the cumulative impact of the above would have a significant detrimental effect on the outlook of the occupier of No 33a and would appear unduly overbearing.

Living conditions: future occupiers

19. The proposal identifies an area of hardstanding which would provide some private outdoor space for its occupiers and would be shared with an area for the parking and manoeuvring vehicles on the site and an area for bin storage. Due to the space constraints of the site and its narrowness, I note from the submitted drawings that much of this outdoor space would be taken up by the parking and moving of vehicles. As a result, I find that there would be limited useable space for the outdoor enjoyment of future occupiers. Whilst I appreciate the appellant's points that the proposed dwelling would be suited to one or two occupants or possibly a small family, I find that the small amount of useable private outdoor amenity space would not be adequate or satisfactory in meeting the needs of future occupiers and would therefore have a detrimental effect on their living conditions.
20. The appellant states that this part of the appeal site has previously been used as an allotment and as such enjoyed direct sunlight for a sizeable portion of the day. Whilst this area may enjoy some direct sunlight, from my observations, I find that the overhanging trees may become bothersome for future occupiers in terms of limiting daylight into the proposed property through rooflights. Furthermore, I find that such impacts would contribute to the likelihood of increased pressure to significantly prune or fell the nearby protected trees.
21. Consequently, I conclude that the proposed development would have an adverse impact on the living conditions of neighbouring occupiers with regard to outlook and daylight and future occupiers with regard to inadequate private outdoor amenity space. Therefore, it would be contrary to Policies D2 and BE1

of the UDP as well as a core planning principle set out in the Framework, which states that a key aim of planning is to secure a good standard of amenity for all existing and future users of land or buildings. Amongst other matters, these policies and guidance seek to ensure that development is not detrimental to neighbouring or future occupiers with regard to outlook, daylight and sunlight.

Other Matters

22. The highways authority initially raised no objection to the proposed scheme. However, I note that concerns were subsequently raised during the application process relating to access and the movement of vehicles into and out of the site. The Council states that further information regarding swept paths was requested by the highways authority in order to demonstrate that the turning manoeuvres can be satisfactorily achieved. However, as the application was recommended for refusal, the appellant was not asked for such information. Notwithstanding this, these matters are not before me in this appeal. As a result, I have not considered them any further. However, in any event, I find that the outcome of my consideration of such matters would have no material effect on my overall decision.

Conclusion

23. I appreciate that the proposal would create a new dwelling in a sustainable and accessible location and improve the visual amenity of the site by using materials which would be in keeping with adjacent buildings. Furthermore, it would provide a more readable end to the row of properties on the north side of Holmfield. Notwithstanding this, having due regard to the evidence before me, I find that the benefits of the proposed development, when considered individually and cumulatively, would not outweigh the harm I have identified.
24. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

Appeal Decision

Site visit made on 23 May 2017

by **Darren Hendley BA(Hons) MA MRTPI**

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

Decision date: 5 June 2017

Appeal Ref: APP/Z4718/D/17/3170261

16 Hall Lane, Kirkburton, Huddersfield, West Yorkshire HD8 0QW

- 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 Gill against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/90093/E, dated 11th January 2016, was refused by notice dated 19th December 2016.
 - The development proposed is a side extension to replace outdoor stores.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the occupiers of 8 and 6 Hall Lane, and 52 Slant Gate, by virtue of visual impact, outlook, light and privacy.

Reasons

3. The appeal property lies at the end of a row of two storey cottages that are set off Hall Lane with a shared access in front of the cottages. The property contains a storage building attached to its side wall, which reaches a maximum height of approximately 4 metres to the ridge of its mono pitch roof and with a low eaves height to the rear. The storage building is also set on the boundary wall with No 8.
 4. No 8 forms the end property of a further row of attached cottages that extend in a close knit pattern to the side and rear of the appeal property, and which are accessed via a communal courtyard around the rear of the appeal property. Whilst a number of these properties also have a direct access onto Slant Gate, the properties at the end of courtyard, including No 8, rely on the courtyard for access.
 5. The elevation of No 8 which faces the appeal property contains the main entrance door, together with a secondary lounge window, and two small landing windows at the first floor level. This elevation is set close to the boundary with the appeal property, separated by the access path from the end of the courtyard which serves the main entrance door and the garden beyond. With the arrangement of No 8, I do not consider whether this elevation is the
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front or rear is in itself of particular relevance in respect of assessing the effect on the living conditions of its occupiers.

6. The proposal would only be fractionally set off the boundary with No 8 within the appellant's land ownership, utilising the boundary wall and would therefore be in close proximity to the access path and elevation of No 8 that would face the proposal. The increase in massing, compared to the storage building, would be marked, due to both the proximity to No 8 and because the eaves height would be maintained across this elevation and would not decrease in height, like the current mono-pitch arrangement.
7. I consider that when utilising the access and entrance door to No 8, the proposal would appear overbearing and domineering, due to this massing and proximity. The resultant effect on views from the secondary lounge and landing windows would be to have a significant visual impact and considerably reduce the outlook. Although the secondary lounge window would be sited marginally beyond the proposal, with its proximity and massing, the proposal would be noticeably visible. I accept the main habitable room windows of No 8 are on the opposing elevation and would be unaffected. However, the windows that would be unduly affected are the only ones that provide the occupiers of No 8 with an outlook from the elevation in which they are found.
8. The proximity and massing of the proposal would also noticeably reduce daylight reaching the access and the windows on this side elevation of No 8, and it would decrease the amount of already limited light which this side of No 8 receives. I accept that due to the orientation, there would not be undue loss of sunlight, although this does not address my concerns over loss of daylight.
9. The orientation of the windows on the proposal is over the access in front of the appeal property, and any overlooking of No 8 would not be unreasonable due to the angles involved.
10. The proposal would reduce the footprint, compared to the storage building, although this is slight and would not overcome the harm I have identified caused by the proximity and massing of the proposal. The kitchen window of No 8, which is orientated over its rear garden, would not be unacceptably affected, but this does not address my concerns over the effect on the windows on the side of No 8 that would face the proposal.
11. No 6 is positioned towards the rear elevation of the appeal property, with its windows orientated down the courtyard. The proposal would be positioned well forward of No 6 and there would be limited visibility at a direct angle. No 52, which contains a number of narrow windows, is orientated towards the rear of the appeal property. The proposal would appear as a subordinate part of the appeal property when viewed from the windows of No 52. It would not unduly result in loss of light, as the proposal would be sited well back from the elevation of the existing appeal property which faces No 52, and which is significantly greater in massing than the proposal. The proposal would not appear unduly overbearing or domineering from either No 6 or No 52.
12. I consider however that the proposal would have an unacceptable harmful effect on the living conditions of the occupiers of No 8, by virtue of visual impact, outlook and light. The proposal would therefore not comply with 'Saved' Policy D2 of the Kirklees Unitary Development Plan (1999) (UDP) which seeks to protect the living conditions of residents. I also consider the proposal

does not comply with paragraph 17 of the National Planning Policy Framework because it would not secure a good standard of amenity for all existing and future occupiers of land and buildings.

Other Matters

13. The irregular arrangement of terraced cottages contributes considerably to the significance of this part of Highburton Conservation Area. The cottages are of varying shapes and sizes, and a number contain elements which are subordinate to the main property. The proposal would maintain a subordinate appearance and be constructed of matching stone with a slate roof. The appeal property already contains a front single storey extension, although this is modest in size, and when combined with the proposal, the original cottage would still remain the dominant element. I therefore consider the proposal would preserve the character and appearance of the Conservation Area.
14. I accept that the guttering on the proposal would provide for a means of rainwater disposal, which is not found on the storage building. Nevertheless, it would not outweigh the harm regarding the effect on the living conditions of the occupiers of No 8.
15. I also note that the Council's Planning Committee took their decision against Planning Officer recommendation, which they are entitled to do where there are sound planning grounds. I am also aware the planning application submission was amended in order to attempt to address the concerns of the Council. Nevertheless, I have determined the appeal on the merits of the proposal before me.

Conclusion

16. The proposal would have an unacceptable effect on the living conditions of the occupiers of No 8 by virtue of visual impact, outlook and light. Accordingly, I conclude the appeal should be dismissed.

Darren Hendley

INSPECTOR

Appeal Decision

Site visit made on 25 October 2016

by Beverley Wilders BA (Hons) PgDurb MRTPI

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

Decision date: 18 November 2016

Appeal Ref: APP/Z4718/W/16/3155645

Hollinroyd Road, Dewsbury, West Yorkshire WF12 9AH

- 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 Greenside Developments against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93452/E, dated 28 October 2015, was refused by notice dated 24 December 2015.
 - The development proposed is residential development of 2 detached dwellings at land off Hollinroyd Road, Dewsbury WF12 9AH.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposal on:
 - the character and appearance of the area including its effect on the Urban Greenspace, the Green Corridor and on protected trees and the woodland;
 - the biodiversity of the Habitat Network and Habitat of Principal Importance.

Reasons

Character and Appearance

3. The appeal site comprises a relatively large area of woodland located adjacent to Hollinroyd Road. The road is largely narrow and unmade where it adjoins the site and is a public footpath forming part of the Kirklees Way providing a pedestrian link between Hollinroyd Road and Sugar Lane. There is also a pedestrian track which cuts through the site linking the footpath to Sugar Lane. The immediate surrounding area is largely residential in character with a mixture of dwelling styles and materials. The appeal site is steeply sloping with dwellings on Pennine Road set at a much higher level than Hollinroyd Road and dwellings on William Street set at a slightly lower level than the road.
 4. Trees on the appeal site are protected by a Tree Preservation Order (TPO) and the site is designated as Urban Greenspace on the Kirklees Unitary Development Plan (UDP) and also forms part of a Green Corridor.
 5. The proposal to erect two detached dwellings on the site would result in the loss of a number of protected trees. No up to date tree information was
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submitted with either the application or appeal though a tree survey dated January 2007 accompanies the appeal and references a scheme for the construction of five units on the site. Though out of date the 2007 survey nevertheless confirms that the majority of trees on the site are native species and that they are highly visible from the public highway and form an important landscape feature.

6. Whilst I note the view of the author of the 2007 tree survey that the construction of a sympathetic small scale development would not adversely affect the overall amenity value of the site, I attach limited weight to the 2007 survey given its age and the fact that it refers to a different proposal. I also note reference to the fact that the proposed dwellings are to be located in area of the site where fewer trees have been established due to poor ground conditions and that woodland curtilages are proposed. However though I consider the design of the dwellings to be acceptable given their location relative to existing dwellings and given the lack of design consistency in the locality, I consider that the erection of the dwellings and the associated changes to Hollinroyd Road to enable vehicular access together with the proposed loss of trees would adversely affect the character and appearance of the area.
7. The proposal would introduce development into an undeveloped wooded area that would be visible from the adjacent footpath and would diminish the existing quality of the landscape feature. It would also introduce development into a designated Urban Greenspace and Green Corridor where UDP policies D3 and D6 require, amongst other things, development to protect visual amenity and quality. Additionally in Urban Greenspaces UDP Policy D3 states that any development proposed should be necessary for the continuation or enhancement of established uses, or involve a change of use to alternative open land uses, or would result in a specific community benefit. Whilst the proposal would involve improvements to the existing pedestrian track through the site, I do not consider that this community benefit or any tidying up or improved management of the woodland would outweigh the harm identified to character and appearance. In addition though I note that UDP Policy D6 does not preclude development, I consider that the scale of the proposal is such that it would have a significant adverse impact on the continuity of the Green Corridor.
8. Taking the above matters into consideration, I conclude that the proposal would have a significant adverse effect on the character and appearance of the area including its effect on the Urban Greenspace, the Green Corridor and on protected trees and the woodland. It is therefore contrary to UDP policies D3, D6, BE1, BE2 and NE9 and to relevant paragraphs of the National Planning Policy Framework (the Framework). These policies seek, amongst other things, to ensure that development retains a sense of local identity, protects Urban Greenspace and Green Corridors and normally retains any mature trees within the application site.

Biodiversity

9. The appeal site comprises woodland and I understand from the Council that lowland deciduous woodland is a Habitat of Principal Importance and that the site forms part of the districts Habitat Network.

10. No up to date ecological information was submitted with either the application or appeal though an Ecological Survey and Assessment dated January 2008 accompanies the appeal and references a previous scheme for development on the site. Whilst I note that the author of the 2008 survey considered that none of the habitats on site were of substantive ecological importance and that no evidence of protected species was found, I attach limited weight to the 2008 survey given its age and the fact that it refers to a different proposal. I also note that the site was considered to have the potential to support bats and breeding birds and that the appellant is willing to comply with the recommendations of the 2008 survey.
11. However having regard to the nature and scale of the proposal, the fact that it would involve the loss of existing trees and the lack of up to date ecological information regarding the site, I conclude that based on the available evidence the proposal is likely to result in an adverse impact on the biodiversity of the Habitat Network and Habitat of Principal Importance. It is therefore contrary to relevant paragraphs within Part 11 of the Framework. These policies seek to ensure, amongst other things, that development proposals conserve and enhance biodiversity.

Other Matters

12. From other appeals that I am determining elsewhere within the Council's area I am aware that the Council does not currently have a five year housing land supply. However irrespective of this, in terms of paragraph 49 of the Framework, policies D3, D6, BE1, BE2 and NE9 are not relevant policies for the supply of housing, they deal with more detailed matters including the potential impacts of development. In any event whilst I note that the appeal site is in a reasonably accessible location, I consider that the economic and social benefits of providing two dwellings is significantly and demonstrably outweighed by the harm that would result to the character and appearance of the area and to biodiversity.
13. In reaching my decision I have had regard to the fact that the appellant considers the proposal to be enabling development that would allow for improved management and public access to the woodland and that it is stated that this could be secured by planning conditions. I also note that the site is currently un-managed and that there is evidence of fly tipping and anti- social behaviour having taken place within it. Whilst I note that the scale of the proposal is reduced when compared to previous proposals for dwellings on the site and whilst I have had regard to the arguments put forward regarding enabling development, for the reasons stated I do not consider that the benefits of the proposal outweigh the harm identified.
14. Though I note the sustainable credentials of the dwellings proposed and the proposed use of renewable energy, I do not consider the proposal to be sustainable development.
15. I have some sympathy with the fact that the appellant was unable to access the Council's Officer Report in order to fully understand the Council's concerns regarding the proposal. However it has been made available during the appeal process and I note that following the determination of the application it appears that some discussions regarding the proposal took place between the appellant and the Council. In any event these matters do not affect my decision.

Conclusion

16. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

Beverley Wilders

INSPECTOR

Appeal Decision

Site visit made on 27 September 2016

by Elizabeth Pleasant DipTP MRTPI

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

Decision date: 2nd November 2016

Appeal Ref: APP/Z4718/W/16/3154725
250 White Lee Road, White Lee, Batley WF17 9AJ

- 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 Martin Hughes against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2015/62/93153/E, dated 2 October 2015, was refused by notice dated 4 March 2016.
 - The development proposed is a pair of semi-detached dwellings with new driveway.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the proposal on highway safety.

Reasons

3. Access to the proposed development would be taken from White Lee Road adjacent to the north-western boundary of the appeal site. It would provide access for the proposed development and also Nos. 248 and 250 White Lee Road. The existing access serving these properties, and which adjoins the south eastern boundary of the site, would be closed.
4. White Lee Road is a classified road with a speed limit of 30mph. The appeal site is located between two crossroad junctions, a traffic light junction with the main Leeds Road about one hundred metres away to the north-west and an uncontrolled crossroads a similar distance away to the south-east. At the time of my visit there was a steady stream of traffic in either direction.
5. The proposed new access would have visibility splays achieving 2.4m x 23.2m in a north-westerly (NW) direction and 2.4m x 33.5m in a south-easterly (SE) direction. The application was supported by a traffic speed survey¹, and based on this evidence the Council has assessed visibility figures for the 85 percentile wet weather speed of vehicles using Manual for Streets Guidance which recommends visibility splays of 2.4m x 37.45m in the NW direction and 2.4m x 33.21m in the SE direction. It is clear that the visibility splay in the NW direction falls considerably short of the recommended distance.

¹ ABACUS Traffic Surveys, dated 02/12/15.

6. It was evident from my visit to the site that the existing site access is severely substandard in a SE direction with only a 2.4m x 7m visibility splay currently achievable due to the adjoining high fence. However, the existing NW direction splay from this access is 2.4m x 34m, and consequently only just falls short of that recommended for recorded vehicle speeds. I understand that the appellant considers the SE direction to be the more critical direction, however whilst the appeal proposal would provide an access with improved visibility to the SE; visibility in the NW direction would be significantly reduced. Furthermore the amount of vehicular traffic using the proposed access would be double the amount which currently uses the existing site access.
7. It is clear that the proposed access would achieve 2.0m x 43m visibility splays in both directions. Manual for Streets 2 advises that a minimum X distance of 2m may be considered in some slow-speed situations when flows on the minor arm are low. It further advises that an X distance of 2.4m should normally be used in most built-up areas. From the evidence I have before me I would not consider vehicle speeds to be slow in the vicinity of the appeal site, which also lies within a built-up area. It would therefore seem to me that the most appropriate X distance to apply would be 2.4m. I recognise that the Council may have accepted 2.0m x 43m visibility splays on a previous approval for an additional dwelling on this site, but that permission is no longer extant. Furthermore the approval was for a single additional dwelling and not therefore directly comparable.
8. I have taken into consideration the sites accessibility and the appellant's contention that there have not been any recorded injury accidents across the site frontage. However, the proposed new access would also have restricted visibility and would be used by double the amount of vehicles currently using the existing access. White Lee Road is a main road and the proposed access would be located relatively close to two crossroad junctions and on a rise in the road. For these reasons, I consider that it would be inappropriate to relax the sight lines recommended in national guidance. To allow the proposal would result in increased vehicular movements to and from the site via a proposed access which is substandard in visibility. This would result in an increased danger to other road users and occupiers of the site.
9. I conclude that the appeal proposal would cause harm to highway safety and as such would be contrary to Saved Policies BE1, D2 and T10 of the Kirklees Unitary Development Plan, 1999 which seek to ensure, amongst other things that new development does not prejudice highway safety.

Conclusion

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

Elizabeth Pleasant

INSPECTOR