



Appeal Decision

Site visit made on 11 December 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 13 December 2017

Appeal Ref: APP/Z4718/F/17/3171173

2 and 4 Haigh Lane, Flockton, Wakefield WF4 4BZ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Chris Martin against a listed building enforcement notice issued by Kirklees Metropolitan Council.
 - The enforcement notice was issued on 27 January 2017.
 - The contravention of listed building control alleged in the notice is as follows:
The breach of a condition attached to listed building consent 2013/90166 granted by the Council 14 March 2013 for internal and external alterations: namely *Condition 8. The replacement of roof slates on the existing building shall be confined to those incapable of repair and re-use. The roof slates shall not be turned and any replacement slates shall match those on the original building in terms of size, colour and texture. The slates shall be re-laid in diminishing courses.*
 - The requirements of the notice are as follows:
Remove all of the concrete tiles and replace them with natural stone tiles matching those on the original building in terms of size, colour and texture. The slates shall be re-laid in diminishing courses
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on grounds (a), (d) and (g), as set out in section 39(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Decision

1. The appeal is dismissed. See formal decision below.

Background information

2. The appeal properties were listed, along with the adjoining two other cottages, at numbers 6 and 8 Haigh Lane, on 16 May 1984. They are close to the junction of the lane with Barnsley Road, in an open rural setting on the western outskirts of the village of Flockton. The two storey cottages date back to the late 18th/early 19th centuries and were constructed of hammer dressed, coursed, local stone with stone slated roofs and brick stacks. The appeal cottages have one three-light mullioned window and entrance at the ground floor and one three-light mullioned window to the first floor. There is a continuous first floor stone sill band and square-profiled stone surrounds to the windows and doors.

3. Listed Building Consent (LBC) was granted for structural works to the appeal buildings in 2012 (2012/918590) and in 2013 a further LBC was granted for internal and external alterations (2013/90166). The external alterations included works to the stone slate roof. Condition 8 of this LBC roof was as follows:
'The replacement of roof slates on the existing buildings shall be confined to those incapable of repair and re-use. The roof slates shall not be turned and any replacement slates shall match those on the original building in terms of size,

colour and texture. The slates shall be re-laid in diminishing courses'. For the reasons set out in the appeal statement, instead of complying with the condition, the Appellant re-tiled the roofs with grey concrete tiles. The roofs to numbers 6 and 8 have retained their original stone slates.

4. There is no appeal under ground (e) which would be on the basis that listed building consent should be granted for the works as carried out; that is, the retention of the concrete tiles.

The appeal on ground (a)

5. An appeal on this ground challenges the listing and is made on the basis that the listed buildings are no longer of special architectural or historic interest and that they should be removed from the list. I do not agree with the view that they are not of special architectural interest, or that the cottages should be removed from the list. These are two cottages in the group of 4 and all are still recognisable from the list description. Despite their simplicity the cottages are sound examples of workers' (miners' or weavers') dwellings in this part of Wakefield.

6. It is contended by the Appellant that the cottages have been renovated to be '*in keeping*' with the era. With regard to the roofs I totally disagree. Whilst accepting that all of the other external works are satisfactory and that a stone staircase may have been retained, the concrete tiles are anything but '*in keeping*'. It is also stated that the two former one-bedroomed cottages do not have any ornate building works/details and that, before they were renovated, they were in a very poor state of repair. That might well be the case but they were listed in the first place because of their simple vernacular detailing which (even following renovation) is still noticeable with the mullioned windows, first floor stone sill and basic natural stone materials.

7. Other than simply saying that '*they are not of special architectural interest*' the Appellant has not provided any firm evidence to justify removing the appeal buildings from the statutory list. Nos 2 and 4 were listed as part of the group of 4 and, having seen all of the properties in context, I consider that they are all still worthy of their listed status. The appeal fails, therefore, on ground (a).

The appeal on ground (d)

8. This ground of appeal addresses situations where essential and urgent works were needed to preserve the listed building. The emphasis is on the words '*essential*' and '*urgent*'. This ground of appeal comprises three tests. The first test is whether the works were urgently necessary in the interests of safety or health; the second test is that it was not practicable to achieve the aims of safety, health or preservation of the building by repair or temporary support and the third test is that the works carried out were the minimum measures immediately necessary to achieve the aims of safety, health or preservation. For an appeal to succeed on ground (d) all three tests must be met and the onus is on an appellant to conclusively show that this is the case.

9. On the first test it is stated that urgent action was required because the walls of both properties were bowed and that this was causing what was left of the roofs to fall into the houses. It is also indicated that the roofing materials had previously been stolen and that there was no alternative other than to replace the roof tiles with concrete tiles. The cost of stone slates is also put forward as a reason for not complying with the condition of the LBC.

10. From the photographic evidence, I accept that the buildings were in very poor condition prior to the works commencing. However, LBC had been granted for the

renovation works subject to the roof being recovered with stone slates laid to diminishing courses. Instead concrete tiles were used and I do not accept that these were used as an alternative to stone slates because the works were so '*urgently necessary in the interests of health and safety.*' Stone slates would have equally resolved any health or safety issue. The concrete tiles were used because they were a cheaper alternative. Clearly the re-roofing works were urgently '*necessary and essential.*' But it was not '*essential*' to replace the stone slates with concrete tiles. On the contrary, it was a requirement of the LBC in condition 8 that the roof was to be re-covered using stone slates.

11. It cannot be claimed to have been '*necessary*' to use concrete tiles in the interests of health and safety and nor can the fitting of concrete tiles be considered to be the '*minimum measures which were immediately necessary*'. The appeal also fails, therefore, on ground (d).

The appeal on ground (g)

12. An appeal on this ground requires it to be shown that the requirements of the LBEN exceed what is necessary to restore the building to its condition before the works were carried out. Clearly, immediately before the concrete tiles were fitted the buildings were in a semi-derelict state and the stone roof slates were partly tarred over with many broken. However, the notice is not aimed at returning the building to this state. It is aimed at ensuring that the roof works comply with the condition attached to the LBC which was granted for the renovation works.

13. In effect, the arguments and situation under this ground relate to an appeal under ground (k). This would usually be made on the basis that the steps required exceed what is necessary to bring the buildings to the state that they would have been in if the terms and conditions of the listed building consent had been complied with. I have, therefore, taken into account all of the arguments put forward in support of the appeal, including the photographic evidence which indicates the condition of the roofs and walls before restoration works and the uninhabitable condition of the cottages before works commenced.

14. On the appeal form, under ground (g), it is stated that '*had the buildings not been restored over the past 12 months their conservational value would be diminished as they were collapsing on themselves and the roof was falling through, without slates on it.*' It is further added that stone slates had been stolen.

15. I acknowledge these points and also appreciate the difficulties and costs involved in sourcing and providing replacement stone slates. It is also evident that the historic and architecturally interesting features had deteriorated over at least a 10 year period prior to renovation. Having seen the cottages it is clear that significant and commendable restoration works have been carried out. It is also clear that attempts were made to match the colour of the original roof covering.

16. However, these arguments do not overcome the fact that inappropriate concrete tiles have been fitted. In the Council's Report, requesting authority to issue the LBEN, it is contended that the tiles do not conserve the architectural or historic merits of the listed buildings. Reference is made to the condition attached to the LBC. It is indicated that the condition it meets all of the necessary tests including that of being '*reasonable*' in that it follows advice published by Historic England for such works to listed buildings.

17. Although there is no ground (e) appeal (and thus I cannot consider whether or not LBC should be granted for the concrete tiles), I agree with the Council with regard to the effect that the concrete tiles have had on the listed cottages. They

are not appropriate and detract from the integrity, the character, the settings and the architectural and historic features of the buildings (Nos 2 to 8).

18. During my site visit I was able to view the roofs of the 4 cottages from Barnsley Road itself and from the field behind the cottages. Because the lane is narrow and on a slope, it was difficult to get a full view of the roofs from the front of the properties. However, from a point on the opposite side of the road and at a higher level on the lane (close to the bend), it was still possible to get an angled view of the roofs. The contrast between the stone slates and the concrete tiles was most noticeable from all of these viewpoints and a slight dusting of snow emphasised the differences in finish and the depths or thicknesses of components.

19. The concrete tiles also contrast markedly with the stone slates on the adjacent outbuilding to No 2. What was most noticeable in this respect was the difference in the appearance of the verges to the outbuilding and the main gable end to No 2. The architectural and historic feature of the stone tiles has been lost on Nos 2 and 4 and thus the works carried out have harmed this original feature which is referred to in the list description. The unauthorised works detract from the simple vernacular detail which is obvious in the rest of the properties.

20. For these reasons, I do not consider that the requirements of the LBEN are unreasonable or excessive. The requirement is to comply with the condition which was attached to the LBC granted for the renovation works. If the requirement is carried out there can be no argument that the buildings would not be brought into the state which they would have been in, if the terms of the LBC had been complied with. The appeal also fails, therefore, on the arguments put forward on ground (g) and the implied ground (k) points.

Other Matters

21. In reaching my decision I have taken into account all of the other matters raised in support of the appeal. These include the planning history; the other commendable repair and alteration works carried out (externally and internally); the initial grounds of appeal set out in the appeal form (including the issues with stolen tiles and the urgent need to repair the properties); the photographic evidence; the documents submitted for the appeal and the initial LBC application and the Appellant's final comments dated 18 August 2017.

22. With regard to these latter comments, I note that the occupant at No 6 has been fully aware of the works and might well have been complimentary about the other restoration works generally. I also note that the neighbour achieved his result by turning the tiles which were said not to be an option in the case of Nos 2 and 4.

23. However, none of these other matters outweighs my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision that the appeal should fail on all grounds.

Formal decision

24. The appeal is dismissed and the Listed Building Enforcement Notice is upheld.

Anthony J Wharton

Inspector



Appeal Decision

Site visit made on 3 January 2018

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2018

Appeal Ref: APP/Z4718/W/17/3184897

85 Dark Lane, Batley WF17 7PW

- 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 and Mrs Rajah against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/92449/E, dated 22 July 2016, was refused by notice dated 23 May 2017.
 - The development proposed is a single storey side and shop extension.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) the effect of the proposal on the character and appearance of the area; (ii) the effect of the proposal on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street; and (iii) the effect of the proposed retail use on the vitality and viability of centres, in particular the Mount Pleasant local centre and Batley town centre.

Reasons

Character and Appearance

3. The appeal property comprises a detached house which is located at the corner of Dark Lane and Oxford Street. The side elevation of the house faces towards Oxford Street and is set back from this frontage. The side of the rear garden also abuts Oxford Street, as does the access to the property's garage. The rear garden area, along with those on other properties on Dark Lane, provides a visual break between buildings. Beyond the rear boundary of the site is a service road. The area comprises a mix of property types, with a predominance of terraced properties on Oxford Street, where the proposal would primarily be visible from.
4. The proposal would infill the gap along the Oxford Street frontage, presenting an elongated single storey projection of some length from the side and rear of the house. It would also be markedly apparent in the streetscene with its proximity to Oxford Street and the property's location on a street corner. With its scale, contrast in the design with the house and its prominence, it would not sit comfortably in its surroundings, but would appear as a discordant feature. With its length, the visual break that the rear garden provides along the more

densely formed pattern of development along Oxford Street would be substantially reduced, and so this element of character would also be lost.

5. I have noted the extensions to properties in Dark Lane as referred to by the appellant, and I agree that the proposal would to a limited degree screen them from view from Oxford Street. However, any benefits this would bring would in my judgement be considerably outweighed by the harm that I have identified from the proposed development. The removal of an existing garage on the appeal site does not alter my view.
6. I conclude the proposal would have an unacceptable effect on the character and appearance of the area and, as such, it would not comply with 'Saved' Policies D2, BE1 and BE2 of the Kirklees Council, Kirklees Unitary Development Plan (1999) (UDP) which, collectively, state that all development should be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity, and that new development should be in keeping with its surrounding development. It would also not accord with the relevant parts of the Framework.

Highways Safety

7. Oxford Street operates as a one way road nearest the site and up to the junction with Dark Lane. There is a reliance on on-street parking, in particular on Oxford Street from local residents as well as the commercial uses in proximity to the appeal site. I observed a high level of on-street car parking on both sides of Oxford Street, as well as around the Dark Lane junction. I also noted the difficulties for vehicles accessing the service road at the rear of the appeal site and delays for vehicles attempting to reach the Dark Lane junction.
8. While I appreciate that some customers of the proposed shop unit may be local and would travel on foot, little evidence is before me which dissuades me that there would be an inevitable additional demand, and competition for on-street car parking. With the limited on-street space availability, little evidence is before me which demonstrates that further demand for these spaces would not create additional difficulties for the manoeuvring of traffic along Oxford Street and the Dark Lane junction, which is already I find readily apparent.
9. Whilst other uses in the area clearly already contribute to the existing high demand for on-street car parking, I find that this demonstrates the sensitivity of this location to accommodate the proposal, as it is likely to attract further demand for on-street car parking.
10. I conclude on the evidence before me that the proposal would have an unacceptable effect on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street. It would, therefore, not comply with 'Saved' Policy T10 of the UDP which states that development will not normally be permitted if it will create or materially add to highway safety, 'Saved' Policy T19 as regards the parking standards that it refers to, or with the relevant parts of the Framework.

Vitality and Viability of Centres

11. The proposal would result in the provision of a modest area of retail floorspace. The Council consider it would be located outside of a defined centre under the UDP, the nearest of which is the Mount Pleasant local centre, which is located close to the site. This centre contains a small number of shops and services,

- aimed at a local catchment. Batley town centre contains a larger number of shops and services, and is located approximately 1 km from the site.
12. The rationale for the sequential test is for supporting the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking. I accept that the Appellant has submitted limited information in this regard. However, the appeal site is, I find, effectively an edge of centre location because of its proximity to Mount Pleasant. Having regard to the modest scale of the proposal in respect of the floorspace and its edge of centre location, and that paragraph 24 of the Framework does state that applicants and local planning authorities should demonstrate flexibility on scale, I consider the proposal does not fail the sequential test.
 13. The Mount Pleasant local centre, at the time of my site visit, was relatively busy with consumer trade and footfall, and I did not observe any particular high level of shop unit vacancy. I am therefore not persuaded that the modest amount of floorspace that would be created from the proposed development would significantly draw trade away from this centre. Moreover, because of its relative closeness to the centre, I find no obvious reason why there would not be the potential for some linked trips, and it would provide further retail services for the local community. I am also satisfied that the proposed retail unit would be sufficiently distant from Batley town centre not to undermine its viability and vitality.
 14. 'Saved' Policy S1 of the UDP does not provide a locally set threshold for the submission of an impact assessment of main town centre uses that are not in an existing centre. Paragraph 26 of the Framework does, however, state that if there is no locally set threshold, the default threshold is 2,500 sq m. The proposal would therefore be substantially lower in floorspace than the default threshold with regard to the need to provide such an assessment, based on more up to date national policy. This further reflects the small scale nature of the proposal as regards its likely limited effect on existing centres.
 15. I consider there is sufficient evidence to conclude that the likely effect of the proposed retail use would not unduly affect the vitality and viability of the Mount Pleasant local centre and Batley town centre. I consider it would, therefore, comply with 'Saved' Policy S1 of the UDP, and paragraphs 23 to 27 of the Framework which seek, amongst other things, to ensure the vitality of town centres is maintained.

Conclusion

16. The proposal would have an unacceptable effect on the character and appearance of the area, and on highways safety, including on the free flow of traffic on Dark Lane and Oxford Street. The effect on the vitality and viability of existing centres would be acceptable, although this is neutral. The provision of a further shop for the local community would be of a moderate benefit. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm. For these reasons, the appeal should be dismissed.

Darren Hendley

INSPECTOR



Appeal Decision

Site visit made on 3 January 2018

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2018

Appeal Ref: APP/Z4718/W/17/3184077

Corn Mill Bottom, Long Lane, Shelley, Huddersfield HD8 8JJ

- 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 Chris Walker against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/62/94312/E, dated 23 December 2016, was refused by notice dated 30 March 2017.
 - The development proposed is a new house to replace workshop buildings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. At the application stage a Flood Risk Assessment (FRA) was submitted and a revised FRA was submitted as part of the appeal submission. The appellant then submitted amended plans and a further revised Flood Risk Assessment (rFRA) at the final comments stage in response to the appeal representation made by the Environment Agency (EA). The Procedural Guide, Planning Appeals - England (August 2016) makes it clear, however, that no new evidence is allowed to be submitted at this stage of the appeal and that the appeal process should not be used to evolve a scheme, and I appreciate that the Local Planning Authority and the EA have not had the opportunity to comment on the rFRA's contents. Notwithstanding this, I have taken the rFRA into account as it does not change the appellant's position in relation to my concerns over flooding, so there is no possible prejudice to interested parties.

Main Issues

3. The main issues are a) whether the proposal would constitute inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework) and the development plan policy, b) its effect on the openness of the Green Belt c) the effect on the character and appearance of the area, d) the effect on flood risk, and e) if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

4. The appeal site comprises of a number of buildings, a grassed area and a vehicular access which is taken from Long Lane. The nearest building to this

access is a double garage, directly beyond which is a workshop type building with an elongated appearance and is of a modest height. To its rear is a more substantial building which is of a barn-like appearance and which is timber clad and partly open-fronted. Directly adjacent to the site is the Shepley Dike watercourse. The site is at the bottom of a steep sided valley, where there is a small cluster of attractive period stone cottages or more substantial dwellings that make up Corn Mill Bottom. These extend for a short distance away from the appeal site up the side of the valley towards the end of Long Lane. The backdrop of woodland to the dwellings gives the small settlement a sylvan quality.

Inappropriate Development

5. Paragraph 89 of the Framework states that the construction of new buildings is inappropriate in the Green Belt unless, amongst other exceptions, it involves limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development. The definition of previously developed land under the Framework excludes land that is occupied by agricultural buildings.
6. The building to the rear of the site has been used historically for agricultural purposes and, based on the evidence before me, has not subsequently changed use. Although there is not a physical boundary between buildings across the site, the agricultural unit is clearly distinguishable from other buildings on the appeal site.
7. The appellant considers the agricultural building should fall within the definition of previously developed land because of a planning permission¹ for the change of use of the existing garage and workshop to one dwelling (the approved scheme). I disagree. While I acknowledge that the Council opined that the removal of the agricultural building was viewed as a benefit to the Green Belt, this was, however, in the context of the effect on openness, not whether or not the building would fall under the definition of previously developed land. Moreover, that development concerned a different exception related to the extension or alteration of a building and, therefore, a different policy test was applied.
8. I find that the proposal would extend into the part of the site which contains the agricultural building, and as such it would involve land that is not previously developed. The exception therefore does not apply, and neither do any of the other exceptions. When judged against the Framework, the proposal would therefore be inappropriate development in the Green Belt. Paragraph 87 of the Framework states that inappropriate development is by definition harmful to the Green Belt. I attach considerable weight to this harm.

Openness

9. Openness is an essential characteristic of the Green Belt. The proposal would alter the area of the land on which it would be sited by removing the buildings, including the substantial form of the agricultural building, to one with a smaller footprint size compared to the existing buildings and a slightly larger volume

¹ Council ref: 2013/92121.

size. The proposal would, though, be of a considerably greater height than the workshop building, whose footprint it would be largely sited on.

10. With regards to the visual component of openness, the proposed building would be more prominent towards Long Lane than the existing buildings, although with the location of the site at the bottom of the valley and, with the proximity of trees and woodland, broader views would be of a limited nature.
11. Overall, I consider the effect on the openness of the Green Belt would be limited.

Character and Appearance

12. The form of the proposal with its extensive areas of flat roof and distinctly contemporary design would be in stark contrast to the existing properties in Corn Mill Bottom. These properties are of historical significance as far as they represent the traditional form of a rural hamlet sitting alongside Shepley Dike, with the landscape backdrop of the woodland. They do present a pleasing and cohesive arrangement within this setting, despite variations in the design of individual properties. Flat roofs are not a feature, and this is not a rural context where the extent of the flat roofed areas, as proposed, would be in keeping. Even though stone would be used to construct the external walls, with its form and design, I find that the proposal would sit uncomfortably in these surroundings.
13. Furthermore, the proposal would also lie in a sensitive and prominent position, as Corn Mill Bottom is approached down Long Lane. With its positioning towards the site frontage, it would appear markedly discordant in its form despite the fact that it would be set down in overall height compared to rising land and a boundary wall beyond the site.
14. The existing garage and workshop, whilst they are simple in design and not reflective of the buildings in the rest of the settlement, are unobtrusive due to their height and scale. The agricultural building appears largely in keeping with its surroundings. With its overall size and design, the proposed dwelling, in contrast, would be considerably more dominant when viewed from Long Lane. I find that whilst its appearance would offer some improvements compared to the garage and workshop, this would not address or outweigh the broader harm that would arise to the character and appearance of the area.
15. I conclude the proposal would have an unacceptable effect on the character and appearance of the area and, as such, it would not comply with 'Saved' Policies BE1 and BE2 of the Kirklees Council, Kirklees Unitary Development Plan (1999) which state that all development should be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity, and that new development should be in keeping with its surrounding development.
16. I also conclude the proposal would not comply with paragraph 60 of the Framework because whilst planning decisions should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles, it is, however, proper to seek to promote or reinforce local distinctiveness.

Flood Risk

17. The site lies partly within flood zone 3, which the Planning Practice Guidance (PPG) section on Flood Risk and Coastal Change considers is an area at risk of flooding, for the purposes of the Framework. The PPG also states that the type of use proposed is 'more vulnerable' to flooding under the Flood Risk Vulnerability Classification. With its location partly in Flood Zone 3 and the proposed use, for the proposal to comply with paragraph 101 of the Framework and the PPG, the proposal must pass the Sequential Test which seeks to steer new development into flood zone 1.
18. The appellant has responded to the Sequential Tests in the various submitted FRAs. However, the sequential test information in the Flood Risk Assessments that formed part of the original appeal submission, though, does not provide evidence which concerns whether or not there are reasonably available sites in flood zone 1 and, failing that, whether there are sites in flood zone 2. The rFRA does not provide further substantive information in relation to the sequential test. This does not constitute information which enables me to be able to come to a view that the sequential test is passed. This weighs against the proposal.
19. I have noted the information submitted about the specific flood risk concerning the proposal. However, as I find the appellant has not demonstrated under the sequential test that it is not possible to locate the development in zones with a lower probability of flooding, I am not, therefore, required to apply the exception test, including whether or not the rFRA, would demonstrate the proposal would be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible would reduce flood risk overall.
20. I am, therefore, unable to conclude that the proposal would not cause an unacceptable level of flood risk. As such, the proposal would not comply with paragraph 100 of the Framework which states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. It would also not comply with paragraphs 100 and 101 of the Framework, as well as the PPG, with regards to the application of the sequential test.

Other Considerations

21. The appellant considers that the approved scheme for a dwelling represents a 'fallback' in respect of design and flood risk. I accept it is of relevance to consider the architectural qualities of the proposal compared to the approved scheme, with reference to the approach in the Honley appeal decision² which the appellant has referred me to. Although there would be benefit arising from the proposal's appearance compared to the approved scheme, as well as the construction and energy efficiency credentials, this would not outweigh the broader harm to the character and appearance of the area that I have identified. Concerning flood risk, as I have set out above, national planning policy requires that the sequential test must be passed first, which the proposal has failed to achieve, before the exception test is considered, including the rFRA and associated flood resilience and protection measures. This also limits the weight I can give to such measures in the proposal as a betterment

² Appeal Ref: APP/Z4718/W/15/3138243.

compared to the approved scheme. I therefore, overall, give limited weight to the fallback position.

22. The proposal would make a contribution to the supply of housing as one additional dwelling would be provided. Consequently, this would be a benefit of the scheme that must be given weight, albeit a moderate one.

Conclusion

23. The proposal would be inappropriate development in the Green Belt and, in addition, there would be a limited loss of openness. I find that further harm would arise with regard to both the effect on the character and appearance of the area, and flood risk. The contribution to the supply of housing would be of a moderate benefit. Other considerations which arise do not clearly outweigh the totality of the harm. Consequently, very special circumstances do not exist. The proposal would not, thus, comply with the Framework in respect of Green Belt national policy.

24. For these reasons, I conclude the appeal should be dismissed.

Darren Hendley

INSPECTOR



Appeal Decision

Site visit made on 29 January 2018

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 5th February 2018

Appeal Ref: APP/Z4718/W/17/3184016

Land to rear of 2-5 The Crescent, Hightown, West Yorkshire

- 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 Mrs Marilyn Grummitt against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/60/92862/E, dated 18 August 2016, was refused by notice dated 17 March 2017.
 - The development proposed is detached bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appeal is in outline with details of access, but with all other matters reserved and I have dealt with the appeal on this basis treating the site layout plan as illustrative, with the exception of the access.

Main Issue

3. The main issue in this case is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site is a patch of elevated open land bounded in the main by the rear gardens of properties and Quarry Lane, with further rear gardens beyond that. An existing access track serves both the appeal site and the adjacent garages.
5. Development around the site is suburban in character, predominately of two storeys and sitting within, in the main, generous plots. Properties are mainly semi-detached on The Crescent and St Barnabas Road, although some short terraces exist on the latter. To the north of the site Hightown View comprises mainly of detached properties. Properties are set back from the road behind modest front gardens with low boundary walls and hedges and relatively large gardens to the rear. Although the majority of properties are set back they, nevertheless, address the road.
6. The appeal site previously comprised mature trees which have now been cleared and I noted on my site visit that the site is significantly overgrown. Nonetheless, the site provides relief from the built development and contributes to the spacious character of the area.

7. The plans indicate that the proposed development has been reduced in scale from two dwellings in the previous appeal proposal¹ to one dwelling in the current proposal. This would address the previous Inspector's concerns regarding the development appearing cramped and the intimacy of the proposed dwellings. Depending on the location of the dwelling within the plot it may also reduce the potential for overlooking.
8. Nonetheless, the proposal would result in a dwelling situated on land enclosed predominately by the rear gardens of surrounding properties. Unlike the surrounding properties, the dwelling would relate to an un-adopted access track serving garages rather than an established road. Consequently, I agree with the previous Inspector that the site has a strong back land character. I saw no evidence of other backland development in the immediate vicinity on my site visit. Although the plot size would not be inconsistent with surrounding properties, the proposed dwelling would sit in isolation with no relationship to the predominant pattern of frontage development. Consequently, I do not consider that the concerns of the previous Inspector have been overcome in this regard.
9. Furthermore, although only illustrative in terms of the position of the proposed dwelling, the submitted plan shows the details of turning and parking facilities to support the application for the access. Due to the position of the access and the need to accommodate the turning area it is likely that the proposed dwelling would be situated towards the rear of the site. The application form indicates that the development would be a detached bungalow as opposed to a two storey development. Nevertheless, due to its elevated position, the proposal would be highly visible to occupiers of surrounding properties and users of Quarry Lane. Taking these factors in combination, I consider that the proposal would result in an incongruous form of development at odds with the predominant form of development. It would, therefore, harm the character and appearance of the area.
10. The appellant draws attention to the fact that the Council does not have a five year supply of housing land. Whilst there is limited evidence before me relating to housing land supply, this is not disputed by the Council.
11. Paragraph 49 of the National Planning Policy Framework (the Framework) states that 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 housing sites. Paragraph 59 of the recent Supreme Court judgment² of 11 May 2017 makes it clear that the primary purpose of paragraph 49 is to trigger the operation of the tilted balance in paragraph 14 where the Local Planning Authority cannot demonstrate a five year supply of deliverable housing sites.
12. On the one hand, the proposal would make a contribution, albeit limited, to housing supply. It would also have some economic benefits in the short term during the construction phase and in the longer term as occupiers would support local businesses. Furthermore, the proposal would make use of a vacant site. These factors weigh in favour of the proposal.
13. On the other hand, I have concluded that the proposal would result in significant harm to the character and appearance of the area and it would, therefore, be contrary to paragraphs 17 and 56 of the Framework which seek to secure high quality design which contributes positively to making places better for people. Furthermore, conflict arises with paragraph 64 of the Framework which states that

¹ Appeal reference: APP/Z4718/W/15/3137035

² Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Consequently, having regard to the Framework as a whole, I conclude that the adverse impacts of granting permission for this scheme would significantly and demonstrably outweigh the benefits. The proposal would not, therefore, constitute sustainable development.

14. For the reasons stated, I conclude that the proposal would harm the character and appearance of the area. It would, therefore, be contrary to saved Policies BE1, BE2 and criterion vii of Policy D2 of the Kirklees Unitary Development Plan 1999 which collectively seek to ensure that new development is of a high quality design which is in keeping the character of surrounding development.
15. I have had regard to the indicative plans of the proposal in reaching this conclusion. Moreover, it appears to me that it would not be possible to develop the site for one dwelling in any other way without causing similar harmful effects on the character and appearance of the area.

Conclusion

16. For the reasons stated and taking all other considerations into account, the appeal should be dismissed.

Caroline Mulloy

Inspector



Appeal Decision

Site visit made on 30 January 2018

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2018

Appeal Ref: APP/Z4718/D/17/3189897

33 Walker Street, Earlsheaton, Dewsbury West Yorkshire WF12 8LB

- 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 James Wilby against the decision of Kirklees Metropolitan Council.
 - The application Ref 2017/62/92993/E, dated 30 August 2017, was refused by notice dated 2 November 2017.
 - The development proposed is 'proposed alterations and extensions to front of house'.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Kirklees Publication Draft Local Plan (KPDLP) was submitted to the Secretary of State on 25 April 2017 and the Examination is underway. The reason for refusal refers to KPDLP Policy PLP 24. Although the plan is at an advanced stage of preparation, there is no further evidence of the extent of any unresolved objections to that policy. Therefore in accordance with Paragraph 216 of the National Planning Policy Framework (the Framework), only limited weight can be attached to Policy PLP 24 in coming to my decision.

Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the host dwelling and the street scene in Walker Street.

Reasons

4. The appeal property is a two storey semi-detached back-to-back house located in a residential area to the south-east of Dewsbury town centre. Walker Street comprises a mixture of semi-detached and terraced dwellings set back from the road and enclosed by low stone walls and fences. The regular building line, traditional materials and detailing and regular pattern of door and window openings contribute to the similarity in the appearance of the dwellings along the road. This creates a pleasing character and appearance and a sense of uniformity in the street scene.
5. Ground levels fall sharply from west to east from the junction of Walker Street with Long Lane. Ground levels also fall across the appeal site. The extension

would incorporate and extend the dwelling's existing basement level with a kitchen extension above. The eaves level of the proposed extension would be approximately 4.2 metres above the level of the access drive between the appeal property and No 39 Walker Street. The ground floor level of the extension would be between 1 metre and 1.5 metres above the ground level of the front outdoor area.

6. Although the extension would be constructed in matching materials, the difference in ground levels would result in a large expanse of walling which would have a dominant appearance within the front elevation. The existing door and window openings and their stone lintels would also be obscured, undermining the traditional features which contribute to the dwelling's character and appearance. It would have a conspicuous and prominent appearance within the street scene which would draw the eye. The forward projection from the front wall would disrupt the regular position of the dwelling frontages which contributes to the uniformity and character of the street scene.
7. The appellant indicates that the development on the north side of Walker Street is more mixed in terms of dwelling styles and materials and by way of an example refers to No 45 Walker St. However, that property is orientated with its side gable facing onto Walker Street rather than its front elevation. The circumstances of that dwelling are therefore not comparable with the appeal property. Furthermore, No 45's side lean-to extension is subordinate in form and appearance to the host dwelling whereas the appeal proposal would appear as a dominant addition to the property. There are no other front extensions in the street that are comparable to the appeal proposal.
8. My conclusion in relation to the main issue in this case is that the proposed extension by virtue of its scale and dominant appearance would cause material harm to the character and appearance of the host dwelling and would disrupt the similarity between the dwellings on the road which contributes to the uniformity of the street scene. As such, it would be contrary to Policies BE1, BE13 and BE14 of the Kirklees Unitary Development Plan 2007 (UDP) which indicate that front extensions should be of an appropriate scale, respect the design features of the host dwelling and should not be harmful to visual amenity.
9. The development would also be at odds with the provisions of the Framework to require good design as a key aspect of sustainable development.
10. I have considered that the options for extending the property are limited due to its layout and that the proposal would provide additional accommodation for the appellant's family and enable them to continue living in the local community. However, these are personal circumstances which can change over time and the development would remain long after such circumstances have ceased to be relevant. Accordingly, I do not consider that the personal circumstances in this case are sufficient to outweigh the conflict with the policies in the UDP and the harm that would be caused to the character and appearance of the host dwelling and street scene.

11. For the reasons given above and having had regard to all of the matters raised in this case, I conclude that the appeal should be dismissed.

Sarah Housden

INSPECTOR