



Appeal Decision

Site visit made on 27 March 2019

by **R Bartlett PGDip URP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 June 2019

Appeal Ref: APP/Z4718/W/18/3218142

Bankfield Lodge, Almondbury Bank, Almondbury, Huddersfield, HD5 8HF

- 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 A Sheikh against the decision of Kirklees Council.
 - The application Ref 2018/90356/W, dated 1 February 2018, was refused by notice dated 28 November 2018.
 - The development proposed is erection of new dwelling 'Bankfield Lodge'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The address on the application form is Bankfield Lodge. This is the address of the proposed new dwelling and as such does not currently exist. For the purposes of clarification, the address of the appeal site is Bankfield House.
3. Since the application was determined the Kirklees Unitary Development Plan has been superseded and replaced by the Kirklees Local Plan (local plan). The appeal has been assessed against the relevant policies of the new local plan. Although the status of the local plan policies has changed from emerging to adopted, they are not new and they were referred to in the Council's decision notice. The appellant was therefore also clearly aware of them. Moreover, they have very similar aims to the policies they have now replaced. Consequently, neither main appeal party has been prejudiced by the changes to the policy position.

Main Issues

4. The main issues in this appeal are:
 - the effect of the proposed development on the setting of Bankfield House, a Grade II listed building;
 - whether the proposed development would provide satisfactory living conditions for future occupants with particular regard to noise, disturbance and odour from adjacent commercial premises; and
 - whether residential development of the site would compromise adjacent employment premises.

Reasons

Setting of the listed building

5. The appeal site forms part of the curtilage to Bankfield House, which is a mid-nineteenth century Grade II listed building. The building is currently used as a house in multiple occupation (HMO) and the curtilage comprises a substantial area of hardstanding, bound by a combination of stone walls and timber fencing. The existing vehicular access appears to be shared by the adjoining dwelling 'The Little House', which sits within the same curtilage boundary with no physical or visible sub-division being evident on site. There is a steeply sloping embankment, planted with trees, to the south of the site and there are commercial premises to the north east and north west. The site itself also slopes upwards, with the listed building being situated on higher ground than the appeal proposal.
6. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
7. The significance of the listed building is considered to be its age and architectural interest. The large open frontage and the remaining stone pillars at the site entrance make a positive contribution to its setting.
8. It is proposed to construct a two-storey dwelling, which is intended to replicate the style of an old coach or gatehouse, in a prominent position adjacent to the site entrance. However, Bankfield House and its grounds do not appear to me to be large or grand enough to have required such a building and there is no evidence before me of any former buildings having ever been located on this part of the site. Moreover, the design of the proposal would not, in my view, achieve the aim of replicating an original or traditional small ancillary outbuilding.
9. The siting of the building, set in from the boundary, in between two vehicular access points and directly in front of the principal elevation to Bankfield House, appears awkward and untraditional, detracting from the open setting of the listed building. Furthermore, the design and detailing do not reflect that of the main dwelling and no reasoned justification for the design proposals is included within the submitted supporting statements.
10. I therefore conclude on this main issue that the proposal would be harmful to the open setting of the listed building and thereby the significance of the designated heritage asset. The harm would however be less than substantial.
11. Paragraph 196 of the Planning Policy Framework (the Framework) states that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. In this case, the provision of a dwelling would be a public benefit however such a benefit is clearly very modest.
12. The appellant points out that the dwelling would block the view of the poor quality commercial buildings thereby enhancing the setting of Bankfield House and The Little House. Improving the outlook for existing residents would be a

benefit, albeit not a public one. Furthermore, as the appellant also points out, the adjacent commercial site is up for sale and it could potentially be redeveloped in the future. As such the short term benefit of improving the outlook from the existing dwellings would not outweigh the need to preserve the setting of the listed building for the benefit of future generations.

13. The proposal would therefore be contrary to the historic environment aims of the Framework and would conflict with Policy PLP 35 of the local plan which like the Framework, states that development resulting in harm to a designated heritage asset will only be permitted where the harm is outweighed by public benefits.

Living conditions

14. The proposed dwelling would be situated within the car park of the existing HMO, adjacent to a group of commercial premises comprising, amongst other things, a car repair garage and MOT centre, a printer manufacturer, a fire protection company, a car paint and body shop and a boxing club. I am not aware what, if any, restrictions, apply to these premises for example in terms of opening times, use or mitigation measures. I did observe on my site visit that the MOT garage and the paint and body shop were both working with their doors open.
15. I appreciate that this matter was only brought to the appellant's attention very late in the application process and that as such no assessments of things such as noise or odour have been undertaken. At the time of my visit I could hear some noise from the adjacent commercial buildings although this was at a relatively low level. I noticed a strong unpleasant odour, not of paint spraying, which was the Council's concern, but of burning. I also observed a number of comings and goings by small vehicles. I have no way of knowing whether the conditions I witnessed during my short visit were typical or not.
16. In the absence of a noise and odour assessment it is not possible for me to determine whether or not mitigation measures would be required, what these might be and whether or not they would be sufficient to make the proposal acceptable. Whilst it is relatively easy to protect the internal environment of a new dwelling from noise and odour with the windows and doors closed, it is not so easy to deal with these matters when windows are open or in gardens, although I note in this case there would not in any event be any private enclosed garden space for the future residents. I am also mindful of the fact that double glazing, air conditioning units and vents may not be considered appropriate within the grounds of a listed building.
17. Whilst the appellant states that the paint spray shop is little used I am not aware of any restrictions that would prevent this use from being increased. The appellant has agreed to fund improvements to the paint spraying business, but it is not possible for me to impose conditions requiring works to premises outside of the appeal site and outside of the appellant's ownership or control. I also note that the commercial site is up for sale and that these units may be removed in the future. However, I must make my decision based upon the current situation, albeit taking into account any intensification that may occur without the need for planning permission.
18. Based upon the evidence before me I am unable to conclude that future occupiers of the development would have a satisfactory standard of amenity.

19. For the above reasons, the proposal would be contrary to Policy PLP 24 of the local plan and paragraph 127(f) of the Framework, which seek to promote good design and high standards of amenity.
20. However, I do not find any conflict with Policy PLP 52 of the local plan, which relates to proposals that would generate noise, dust and odour as opposed to those that may be affected by existing sources.

Employment Impact

21. Paragraph 182 of the Framework advises that decisions should ensure new development can be integrated effectively with existing businesses. It goes on to state that existing businesses should not have unreasonable restrictions placed upon them as a result of development permitted after they were established.
22. I have not been made aware of any complaints being made to the Council by existing local residents, about noise or odour from the commercial site. However, the proposed dwelling would be located closer to these units than existing dwellings.
23. Given the constrained nature of the adjacent commercial units, physical expansion is unlikely. However, as I am unaware of any restrictions on these units, disturbance could occur as a result of changes such as new machinery, operations or increased working hours.
24. Based on the information before me it is not possible to say whether or not another dwelling in this location, would be likely to result in complaints that may prejudice future operations and flexibility of the established commercial use. As such this has not been a determining factor in my decision. In reaching this view I am mindful of the fact that any significant intensifications of use would affect other dwellings in the area, that are unlikely to benefit from built in mitigation measures and as such complaints would arise regardless of whether or not the appeal proposal goes ahead.

Other Matters

25. The appellant has raised concerns regarding the time taken by the Council to determine the application and the alleged indication that the Council was minded to grant planning permission, subject to amendments that were made, prior to the late involvement of a Councillor, who raised new issues that appear to have not been previously considered by the Council. However, whilst these points are noted, I have determined the appeal on its planning merits.
26. It has also been brought to my attention that planning permission has been granted for 6 dwellings to the rear of Bankfield House, which is also in the curtilage of the listed building. I am not aware of the full details or circumstances of that permission, however I understand from the Council's report that the permission referred to relates to the conversion of an existing building and is located further away from the commercial buildings. As such the two schemes are not comparable.
27. Concerns have been raised regarding potential adverse impacts upon trees and wildlife. I saw from my site visit that nearby trees are all outside of the appeal site, which as previously stated comprises a large area of hardstanding. I do

not consider that the proposal would result in the loss or harm to trees or wildlife.

28. The proposed dwelling would have its own access and parking and no objections have been raised by the local Highway Authority. I see no reason why the access, parking and turning for 'The Little House' would be affected. The private road to the site from Almondbury Bank serves numerous commercial and residential premises and the traffic generated by the proposal would therefore make a negligible difference.
29. Contamination and measures to minimise disturbance during construction, which would be minimal for a development of the scale proposed, could be adequately controlled by conditions had I been minded to allow the appeal.

Conclusion

30. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Rachael Bartlett

INSPECTOR



Appeal Decision

Site visit made on 25 June 2019

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2019

Appeal Ref: APP/Z4718/W/19/3220159

Lowerhouses Road, Quarmby, Huddersfield HD3 4DY

- 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 Dean Mate against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/90723/W, dated 24 February 2017, was refused by notice dated 7 November 2018.
 - The development proposed is the erection of a dormer bungalow on a redundant garden site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Kirklees Local Plan (the Local Plan) was adopted by the Council on 27 February 2019. This replaced saved policies in the 1999 Kirklees Unitary Development Plan (the UDP) cited in the Council's decision notice. Saved UDP Policies D2, BE1, BE3 and BE12 were replaced by Policy LP24 of the Local Plan on its adoption. I shall therefore consider the proposal against Policy LP24.
3. Having reviewed the Council's evidence, I conclude that their concern about harm to future occupiers of the proposed dwelling is with regard to overlooking.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the character and appearance of the area, and;
 - living conditions for existing residents of neighbouring properties with particular regard to outlook, and for future occupiers with particular regard to overlooking.

Reasons

Character and appearance

5. The appeal site lies in a residential area of Huddersfield which has a variety of housing types within a dense development pattern. The site sits between small terraced dwellings on Lowerhouses Road and Reinwood Road, and provides

openness and separation between these closely-built houses. Two bungalows back on to the site to the south west and have a different character from the older terraces, and beyond these are other older bungalows fronting Quarmby Road.

6. The appeal proposal is for a detached dormer bungalow with detached garage. A development of this type would not necessarily be out of keeping with the bungalows on Quarmby Road. However, the design of the dwelling and its siting within the plot appear to have been driven largely by compliance with the dwelling separation distance requirements set out in Saved Policy BE12 of the now-superseded UDP. Consequently, its location and orientation would be unrelated to the established development pattern, and would encroach into the limited openness of its setting. The bland and unattractive appearance of the development would show little respect for or relationship with the character of the street of which it would nominally be part. In the context of the site's location between the opposing terraces it would appear incongruous.
7. I therefore conclude that the development would be harmful to the character and appearance of the surrounding area. As such it would be contrary to the requirements of Policy LP24 of the Local Plan which, among other things, seeks to ensure that in form, scale, layout and details new development respects and enhances the character of the townscape. It would also fail to accord with paragraphs 127 and 130 of the 2019 National Planning Policy Framework (the Framework), which seek to achieve well-designed places.

Living conditions

8. 182 Quarmby Road has a short rear garden which is separated from the appeal site by an open boarded fence. I appreciate that the development would be slightly offset from No 182. Nonetheless, the development's scale and siting would give notable enclosure to views from No 182 and its garden, and appear overbearing. This would result in a significant loss of outlook for the occupiers of that property.
9. Nos 5 and 7 Lowerhouses Road lie to the north of the appeal site, and their frontages would face the development's blank gable. Although the separation distance of around 12 metres would conform to the requirements of saved Policy BE12 of the UDP, in the context of the tight development pattern it would be a dominant and overbearing feature when viewed from either the habitable rooms or the gardens at the front of those properties. It would consequently mean a significant loss of outlook for the occupiers of those homes.
10. The development's rear garden would be overlooked from the first floor windows of the dwellings on Lowerhouses Road to the north. There would also be similar overlooking across a slightly greater distance from the dwellings on Reinwood Road. As a result, I find that the occupiers of the proposed new bungalow would not have the degree of privacy within their outdoor amenity space which they could reasonably expect. Even with boundary treatments I do not consider that this overlooking and consequent loss of privacy could reasonably be mitigated.
11. I accept that many of the existing dwellings in the area are closely set and have limited outdoor space. This is particularly so with the older properties nearby, where the space and privacy standards reflect the expectations of the

time they were built. However, the presence of those existing developments does not justify allowing the harm which would arise from this proposal.

12. Taking all of these points into account, I conclude that the proposed development would be harmful to the living conditions of occupiers of neighbouring properties, in particular 182 Quarmby Road and 5 and 7 Lowerhouses Road. It would also be harmful to living conditions of future occupants of the proposed bungalow with regard to overlooking. It would consequently be contrary to Policy LP24 of the Local Plan, which seeks to ensure that developments provide a high standard of amenity for future and neighbouring occupiers. For the same reasons, it would also fail to accord with the provisions of paragraph 127 of the Framework.

Planning balance

13. At the time the original application was made and determined it was common ground between the parties that the Council could not demonstrate a 5 year housing land supply. However, the Local Plan has subsequently and very recently been adopted, and there is nothing before me to suggest that I should not give the relevant policies in the Local Plan full weight. Consequently, the tilted balance set out in paragraph 11d of the Framework does not apply. In any event, even if it the tilted balance did apply, the adverse effects of the development would significantly and demonstrably outweigh the limited economic and social benefits that would arise if the appeal was allowed.

Conclusion

14. For the reasons given above, and having taken into account all other relevant matters raised, I conclude that the appeal should be dismissed.

M Cryan

Inspector



Appeal Decision

Site visit made on 20 May 2019

by Steven Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State.

Decision date: 9th July 2019

Appeal Ref: APP/Z4718/W/19/3222623

**Birks Farm, Arkenley Lane, Almondbury, Huddersfield, West Yorkshire
HD8 0LH**

- 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 Ms Prudence Louise against the decision of Kirklees Council.
 - The application Ref 2018/62/93117/W dated 26 September 2018, was refused by notice dated 28 November 2018.
 - The development proposed is the demolition of an existing barn and the erection of a detached dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address of the proposed development is given as stated above on the application form. The Local Planning Authority (LPA), in its decision notice, gives the address as Birks Farm, Birks Lane, Fenay Bridge, Huddersfield HD8 0LH. I have used the address on the application form.
3. Since the submission of the appeal, an updated version of the National Planning Policy Framework (February 2019) (the Framework) has been published by the Government. This is a material consideration in planning decisions. In relation to the main issues in this appeal, Government policy has not materially changed, and it was not therefore necessary to invite any further comments from the different parties involved.
4. The LPA, in its decision letter, refers only to the Framework and not to policies in the development plan for the area. However, its submission documents refer to policies in its Unitary Development Plan (UDP) and to those in its Local Plan, at Public examination stage at the time of the application decision. The appellant has likewise referred to these. On 27 February 2019, Kirklees Council adopted its Local Plan (LP). It has confirmed that policies in the earlier UDP have been superseded and have no effect. It considers that policy PLP59 (relating to infilling and redevelopment of brownfield sites in the Green Belt) and policy PLP24 (relating to design in general) are pertinent policies. The appellant has been given an opportunity to comment on the new policy situation. Therefore, I have determined the appeal based on policies in the LP and on the Framework.

Main Issues

5. The main issues in this case are:

- whether the proposal would be inappropriate development in the Green Belt, having regard to relevant development plan policies, the Framework and the effect of the proposal on the openness of the Green Belt;
- the effect of the development upon the character and appearance of the area and
- whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to very special circumstances required to justify the proposal.

Reasons

Site and proposal

6. The appeal site lies in open countryside within the Green Belt and is a roughly rectangular plot of land at a short distance south of Almondbury Village. It is situated on a sharp bend in the road where Birks Lane meets Arkenley Lane. The proposed and existing access is from Birks Lane, a rural lane with hedging and trees to the sides and no footpath. There is a scattering of mainly stone built, one and two storey dwellings along the lane and in the general vicinity, all within a rural setting.
7. The appeal site is a level area of land with hedgerows on the south-west, south-east and north-eastern boundaries, and sporadic trees along the rear or north-western boundary. The building can be seen through the hedging bordering the lane. The existing main building is near the western end of the site and has two storeys with a flat roof. It is constructed of timber with timber sheets to about 2 metres high (some covered with felting) and with vertical Yorkshire boarding above. Internally the ground floor has concrete partitions to provide stabling. The site also includes a small shed and some chicken coops but the main building is dominant on the site and appears as an isolated structure in the landscape. The north-eastern area of the site includes equestrian equipment.
8. The proposed detached dwelling would be constructed on the site of the existing building though the LPA and the appellant disagree whether the footprint would be greater or lesser than that of the existing building. It is agreed that the proposed dwelling would have a greater height than the existing structure. The exterior of the roof and walls would have timber cladding.

Whether inappropriate development

9. Paragraph 143 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. However, paragraph 145 lists certain categories of development which form an exception to the general policy of restraint. Part (g) of that paragraph relates to development involving the partial or complete redevelopment of previously developed land, whether redundant or in continuing

- use, (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt than the existing development, or would not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the LPA.
10. The appeal is not submitted on the basis of providing an affordable housing need. Furthermore, the proposed dwelling would not have other buildings immediately around it: it is not therefore an infill site which accords with policy PLP59 of the LP or a site which can be regarded as an exception to Green Belt policy in the Framework and which opposes new development.
 11. However, the existing building and the site is used for equestrian purposes. I agree with the LPA that it is previously developed land. However, paragraph 145(g) is dependent on the proposed development not having a greater impact than the existing development on the openness of the Green Belt.
 12. The LPA and the appellant disagree as to the size of the proposed footprint when compared to that of the existing building. The LPA concludes that the two would be virtually the same: the appellant maintains that the proposed new footprint would be smaller. I find that any difference would not be significant when assessing the impact on openness. However, the proposed building would be significantly taller than the existing building. I consider that this would have a substantially adverse impact on openness.
 13. In addition, the proposed development would involve the establishment of an area of hard standing. The appellant considers that this would not harm the openness of the Green Belt as there is already an access into the site and because the proposed development would include the use of Grasscrete for the access and parking. In addition, the appellant considers that, as the site is very well screened by hedging and trees, there would be no impact on openness.
 14. The proposed use of Grasscrete would be advantageous in retaining the character and appearance of the area but would be a neutral matter when assessing openness. However, the likely inclusion of domestic paraphernalia would give rise to a significantly adverse impact.
 15. The existing and proposed boundary hedging and trees would have a screening effect when seen from the adjacent road. However, the openness of the Green Belt has a spatial as well as a visual aspect: the absence of visual intrusion does not mean that there is no impact on the openness of the Green Belt. In any event, the proposed development would not be so comprehensively screened in the winter months. I therefore give only very limited weight to the visual impact of the proposed development on the openness of the Green Belt.
 16. The Framework states that 'the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence'. (para 133).
 17. On this basis, and for the reasons outlined above, I conclude that the proposed development would constitute inappropriate development in the Green Belt.

Any other harm - character and appearance

18. There is already an existing building on the site which is screened by hedging and trees. While the proposed building would have a greater height, and while I have concluded that it would adversely affect the openness of the Green Belt, I do not consider that, by its height and mass alone, it would significantly adversely affect the character and appearance of the area.
19. For this reason, I conclude that the building itself would accord with LP policy PLP 24 concerning the need for good design. However, I further conclude that the domestication of the site would have an urbanising effect which would adversely and significantly affect the visual character and appearance of this rural area, contrary to the provisions of paragraph 127 of the Framework which require proposed development to be sympathetic to their landscape setting.

Other considerations

20. The proposed extra planting would have some limited landscaping and ecological benefit.
21. The appellant considers that the design of the proposed dwelling is such as to be of an exceptionally exemplar design and would also be highly efficient in terms of the use of energy and other resources. However, I find that such efficient dwellings are not so rare as to result automatically in exemplar status, nor do I consider that the particular design of the building is so exceptional as to merit such a description. I thus give these matters only limited weight.
22. Whilst in a countryside location, the site is relatively close to services in Almondbury. However, access is, at least in part, along roads with no footpaths and the occupiers of the proposed dwelling would be largely reliant on car journeys to services. I therefore give the issue of its sustainable location only limited weight.
23. The LPA concedes that it cannot demonstrate a 5 year supply of housing land. I have no information before me as to whether or not this situation has changed in the light of the Government's advice on the calculation of housing need. However, the Framework is clear in stating in footnote 34 to paragraph 71, that meeting housing needs should not compromise the protection given to areas or assets of particular importance and which include Green Belts. In addition, while the proposed development would contribute an additional dwelling, it would make a very minor addition to the housing requirement.

Conclusion and planning balance

24. I have found that the proposal would be inappropriate development in the Green Belt as the harm to openness would be substantial and therefore contrary to the terms of the Framework. In addition, while I find that the proposed design of the building would not be out of place in its rural setting, the domestication of the site would lead to an urbanising affect which would significantly and adversely affect the character and appearance of the area.
25. In terms of other considerations, I attach moderate weight to the landscaping and ecological benefits of the proposed extra planting. I attach very limited

weight to the efficient nature of the proposed development and to its contribution to housing supply.

26. My overall conclusion is that these benefits do not clearly outweigh the identified, substantial harm to the Green Belt and do not amount to sufficient very special circumstances necessary to justify the appeal proposal.
27. For the reasons outlined above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Steven Hartley

INSPECTOR



Appeal Decision

Site visit made on 10 May 2019

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2019

Appeal Ref: APP/Z4718/W/19/3223233

33 Woodside Lane, Fixby, Huddersfield HD2 2HA

- 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 M Mehat against the decision of Kirklees Council.
 - The application Ref 2017/62/93544/W, dated 13 October 2017, was refused by notice dated 22 August 2018.
 - The development proposed is erection of 5 detached dwellings and garage ancillary to 33 Woodside Lane.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description of development from the Council's Decision Notice in the banner heading above as this was agreed by the parties.
3. Since the application was determined by the Council, the Kirklees Unitary Development Plan has been replaced by the Kirklees Local Plan (February 2019). The policies relevant to this appeal have not altered substantively since the Publication Draft referenced in the Council's Decision Notice. I have therefore considered this case against the policies of the adopted Local Plan.

Main Issues

4. The main issues are the effect of the proposed development on a) the character and appearance of the host dwelling and surrounding area; b) highway safety; c) protected trees; and d) bats as a protected species.

Reasons

Character and appearance

5. The appeal site is formed of 33 Woodside Lane (No 33) a large detached house set in substantial grounds. No 33 and adjoining 25 and 27 Woodside Lane are characterised by large houses with spacious plots and a wooded setting. It is proposed to construct five new houses sited around No 33 and a detached garage for the existing house. This would inevitably reduce the size of the plot for No 33, and although it would still be set in the formal gardens, the siting of the proposed houses on three sides of No 33 results in the loss of its spacious character. No 33 would appear part of a new close knit cul-de-sac. This would both cause harm to its setting and be out of character with its surroundings.

6. Whilst I note that Nos 1 to 21 Woodside Lane have less substantial plots than No 33 they nonetheless have a spacious character and benefit from very generous front and back gardens. The proposed houses are large, set on comparatively small plots. The result of this for Plots 3, 4 and 5 are little or no gardens to the front and small gardens to the side and rear. This would be at odds with the prevailing character of Woodside Lane. Although due to the bend in Woodside Lane, the site is not visible within the street scene it would be visible from the bridleway in the adjacent woodland which is slightly elevated. From here, the development would appear cramped.
7. I recognise that the appeal site is close to development of higher or similar density to that proposed. However, I saw from my site visit that these developments, notably The Ghyll and Beechwood Grove, which are closest to the site, are quite different in character to Woodside Lane forming part of a larger housing development. In contrast, Woodside Lane is a single residential lane that adjoins woodland and is therefore quite separate from surrounding development. It is therefore appropriate to assess the proposal within its immediate character context, rather than this wider development.
8. To accommodate the proposed houses, around twenty trees would need to be removed. Although these trees vary in quality and the trees on the boundaries of the appeal site have been retained where possible, they nonetheless positively contribute to the wooded or Sylvan character of Woodside Lane. The loss of such a large number of trees would cause harm to that character.
9. For the reasons above, I find the proposed development would cause significant harm to the character and appearance of the host dwelling and surrounding area. It would therefore conflict with Policy LP24 of the Kirklees Local Plan (2019) (LP) because its scale and layout fails to respect and enhance the character of the townscape. Further, it would be contrary to guidance at paragraph 130 of the National Planning Policy Framework (the Framework) that development should take the opportunities available for improving the character and quality of an area.

Trees

10. There is a group of mixed trees, including Sycamore and English Oak, located just outside the appeal site between its boundary and the access to 25 Woodside Lane. These trees are subject of a Tree Preservation Order (TPO). They have a high amenity value and are particularly prominent from the bridleway in the adjacent woodland. The Arboricultural Impact Assessment submitted as evidence by the appellant shows the canopy spread of these trees extends a reasonable distance into the site. I also saw on my site visit a number of branches of these trees overhanging the boundary.
11. Plots 4 and 5 would be located close to the canopy spread of the protected trees and large parts of the gardens would be shaded by them, as well as others on site. The gardens are small relative to the size of the proposed houses and because of this and the likely shading, there would be pressure from occupiers to prune or fell the trees in the future to make the gardens more usable. This would cause harm to the wooded character I describe above.
12. Whilst I note that Plot 3 of the three house scheme approved by the Council (ref. 2018/93212) is in broadly the same location as Plot 4, it would benefit

from a substantially larger garden. It would be the equivalent in size to Plot 5 now proposed. The result of this is much more garden area unaffected by the tree canopies and therefore less pressure to prune or fell the protected trees on the boundaries.

13. For the reasons above, I find the proposed development would cause risk to the longevity of the trees subject of a TPO resulting in harm to the character and appearance of the area. The proposed development would therefore conflict with LP Policy LP33 because it would directly threaten trees or woodland of significant amenity value.

Highway safety

14. Access to the proposed houses would be from Woodside Lane, a quiet residential lane which is also the route of two bridleways. The Transport Statement submitted with the application assessed a six house scheme and demonstrated that there would be just five two-way trips associated with the development in the morning and evening peaks. In the absence of any contrary evidence, I have no reason to dispute these figures and I note that Highways Development Management had no objection to the principle of the development.
15. Even with an additional house, whilst there would be some intensification in use, the trip generation is low and given the good visibility along its length there would be no harm to the safety of pedestrians or vehicles using Woodside Lane. The proposed development would not therefore conflict with LP Policy LP21 or paragraph 109 of the Framework because it provides a safe and suitable access to the site.

Bats

16. The appeal site is adjacent to Upper Fell Greave Ancient Woodland connected to the site by hedgerows and mature trees. Transect Surveys, as part of the Ecological Impact Assessment (EIA), were undertaken on behalf of the appellant during September 2017 and August and September 2018. These identified common pipistrelle bats mainly foraging along the boundary tree canopies and hedgerows. Further, No 33 has a confirmed bat roost and the EIA advised that the development of Plot 4 would have an impact on existing flight lines without any mitigation.
17. The EIA recommended a number of mitigation measures including a buffer zone between the woodland and the nearest house; in this case Plots 4 and 5. It was recommended that the buffer zone covered the tree protection areas of the largest trees in order to retain the ecological function of the woodland edge. For the reasons I set out above, I have found the proposed houses would risk the longevity of the trees on the boundary with the woodland. I am not therefore persuaded on the evidence before me that the potential significant harm to bats, a European Protected Species, can be adequately mitigated in this case. As a consequence, the proposed development would conflict with LP Policy LP30 and paragraph 175 of the Framework which requires no significant loss or harm to biodiversity through avoidance, adequate mitigation or, as a last resort, compensatory measures.

Other Matters

18. The Council accepts that it is not able to demonstrate a 5-year supply of deliverable housing sites. This represents a housing shortfall. In such circumstances, paragraph 11 of the Framework indicates that housing policies should be regarded as out of date and that there is a 'tilted balance' in favour of granting permission. I acknowledge that provision of five detached dwellings contributes to the supply of housing. However, the contribution in this case is modest and my finding is that the harm to the character and appearance of the area, protected trees and bats would significantly and demonstrably outweigh the tilted balance in favour of granting permission.

Conclusion

19. Although I find no harm to highway safety, I do find harm in respect of the other main issues. Therefore, for the reasons above, and having regard to all other matters raised, the appeal should be dismissed.

R. Jones

INSPECTOR



Appeal Decision

Site visit made on 20 May 2019

by Steven Hartley BA (Hons) Dist.TP (Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State.

Decision date: 25 July 2019

Appeal Ref: APP/Z4718/Z/19/3223512

Gohar Superstore, Church Street, Paddock, Huddersfield HD1 4TR

- 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 Abbah Hussain against the decision of Kirklees Council.
 - The application Ref 2018/62/94134/W dated 14 December 2018, was refused by notice dated 21 February 2019.
 - The development proposed is the formation of a canopy with roller shutters to the front of the shop.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 1 July 2019.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the submission of the appeal, an updated version of the National Planning Policy Framework (February 2019) (the Framework) has been published by the Government. This is a material consideration in planning decisions. In relation to the main issue in this appeal, Government policy has not materially changed, and it was not therefore necessary to invite any further comments from the different parties involved.
3. On 27 February 2019 and after the refusal of the application, Kirklees Council adopted its new Local Plan. It has confirmed that policies in the earlier Unitary Development Plan have now been superseded. It has submitted copies of the newly adopted policies and the appellant has been given an opportunity to comment upon them. Therefore, I have determined the appeal based on policies in the Kirklees Local Plan 2019 (LP) and in the Framework.
4. The appellant has stated that he would be willing to negotiate with regard to the size, position and design of the proposed development. However, I have determined the appeal based on the submitted plans.

Main Issue

5. The main issue is the effect of the proposed development upon the character and appearance of the area.

Reasons

6. The appeal building is a two storey, stone built, detached Victorian property. There are no abutting buildings and there are highways both to the front and to the rear: it stands alone.
7. The area is generally characterised by a mixture of two storey, stone built, terraced, Victorian properties and more modern, brick built terraced residences including a high rise block. There are several commercial premises, mostly concentrated along Church Street, some of which have perforated roller shutters. Buildings are generally sited with an open area between their front elevations and the adopted pavement, and generally they have flat frontages with a general absence of additions or canopies, especially on Church Street. Properties directly opposite the appeal building are terraced dwellings with individually allocated grassed front amenity spaces.
8. The appeal property is set back from the adopted pavement and the intervening area is used for the display of goods for sale including items such as fresh fruit and vegetables.
9. The proposed development is described as a canopy but is a single storey extension with a roller shutter facing Church Street: it would provide protection for the goods on display. It would be a single storey canopy extending the full length of the building of some 9.5 metres and would project in front of the ground floor elevation by about 2.4 metres. It would have an eaves height of approximately 3 metres and an overall height of about 4 metres. It would be constructed with steel posts with a lean-to slate or tile roof. The front of the canopy, facing Church Street, would have a roller shutter and which the appellant suggests could be of a perforated form.
10. The appellant refers to similar canopies elsewhere in the area. However, I have no further details before me of such other canopies. In any event, I have considered the proposed development on its individual merits.
11. The proposed development, by reason of its position in front of the existing building, would be an incongruous feature in the street scene where such canopies and additions are absent. Moreover, its proposed size would have a significant, adverse visual impact when seen alongside the smaller commercial properties and dwellinghouses in the street scene. In addition, even though there are already roller shutters on properties in the immediate area they are not as large as the proposed roller shutter which would, as a result, have a substantial adverse effect on the character and appearance of the area.
12. I therefore conclude that the proposed development would be contrary to policy PLP24(b) of the LP which requires developments to respect and enhance townscape character, and with policy PLP25 (a and c) which requires that shop fronts should be consistent with the design of their existing buildings and with

the character of the locality. Furthermore, I conclude that it would be contrary to chapter 12 of the Framework which places great emphasis on the need for good design.

Conclusion

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

Steven Hartley

INSPECTOR



Appeal Decision

Site visit made on 11 December 2018

by **D Child BA BPL MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 06 August 2019

Appeal Ref: APP/Z4718/W/18/3213672

Plots 34 to 37, Land off Vicarage Road adjacent to No 311, Longwood, Huddersfield HD3 4HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Anthony Dann of I.E.S. Management Ltd against Kirklees Metropolitan Borough Council.
 - The application, Ref 2018/92381, is dated 19 July 2018.
 - The development proposed is erection of 4 dwellings on plots 34 to 37.
-

Decision

1. The appeal is allowed, and planning permission is granted for the erection of 4 dwellings on plots 34 to 37 at land off Vicarage Road adjacent to No 311, Longwood, Huddersfield HD3 4HJ, in accordance with the terms of the planning application, Ref: 2018/92381, dated 19 July 2018, subject to the conditions set out in the schedule below.

Procedural Matters

2. The appeal results from the Council's failure to reach a decision on the information submitted by the appellant. There is therefore no formal decision, as jurisdiction over that was taken away when the appeal was lodged. However, the Council has provided a statement which confirms it would have approved the application.
3. The Council has confirmed that on 27 February 2019 it adopted the Kirklees Local Plan (the Local Plan), replacing the saved policies of the Kirklees Unitary Development Plan (March 1999). I shall proceed to consider the appeal on this basis.
4. In their submission the Council refers to the National Planning Policy Framework published in February 2018. However, as policies of the Framework that are material to this case have not changed fundamentally, I have had regard to the revised Framework (the Framework) in reaching my decision.
5. From the evidence before me, there are no substantive grounds of dispute between the appellant and the LPA. But there is concern from a neighbour about the effect of the development on the privacy of the occupants of neighbouring dwellings, and, logically therefore, that of future occupants of the development, and this therefore forms the main issue to be considered.

Background

6. The appeal site forms part of a larger area of land that received outline planning permission for residential development in 1993¹. Following a subsequent approval², an access road has been partially constructed and a number of dwellings built out opposite the appeal site. Some groundworks involving importation and compaction of fill, and some drainage works, have also been carried out.
7. Planning permission was subsequently granted for the erection of four dwellings on the appeal site³. Conditions of that permission were the subject of an appeal⁴ under which they were varied. The application details describe an amended siting of dwellings on plots 36 and 37, in order to allow parking in front of the houses, and, so as not to impede the public footpath.

Main Issue

8. The main issue is the effect of the proposal upon the living conditions of the occupants of neighbouring dwellings and future occupiers of the proposed development, having particular regard to privacy.

Reasons

Living conditions

9. The Council has assessed the application in relation to the privacy of neighbouring residents, and, raises no objection. From the plans before me and what I saw during my visit, I see no reason to disagree. The nearest neighbouring dwellings are located to the southeast of the appeal site fronting Vicarage Road. Due to the slope of the land, the proposed layout and the separation distances between existing and proposed dwellings, the scheme would not cause any unacceptable harm to the privacy of the occupants of neighbouring dwellings, or future occupiers of the development.
10. Accordingly, the proposed development would comply with Policy LP24 of the Local Plan, which, amongst other things, requires that proposals should promote good design by ensuring they provide a high standard of amenity for future and neighbouring occupiers. It would accord with Paragraph 127(f) of the Framework, which states that planning decisions create places with a high standard of amenity for existing and future users.

Other Matters

11. A resident has commented that there is a public footpath adjacent to the site that needs to remain in place. From the plans before me, it would be retained. Planning permission does not alter the status of the footpath, any diversion of which would be through other statutory processes.
12. There are several mature trees above the site, to the north, beyond the adjacent footpath. The Council in its statement has not raised any objection in this regard. Due to the difference in land levels and the amount of physical

¹ Local Planning Authority reference 89/00587

² Local Planning Authority reference 94/93648

³ Local Planning Authority reference 2013/90795

⁴ Appeal Reference: APP/Z4718/A/14/2216452

separation between the trees and the nearest dwelling, the proposed development would not place any undue pressure on their health.

Conditions

13. I have considered the Appellant's comments on the Council's recommended conditions, and the earlier appeal decision.
14. A 3-year time limit for commencement condition is necessary, and, to provide certainty, the approved plans, which include those relating to levels, need to be specified. While I note the appellant's comments, I agree with the Inspector's earlier reasoning that conditions remain necessary to ensure that the development is appropriately drained, to prevent flooding and pollution, and to ensure that the site is free from contamination.
15. Conditions are necessary to require landscaping details and their implementation, and, in the interest of protecting the visual amenity of the area, conditions are necessary to specify the external facing and roofing materials and the boundary treatment to be used.
16. There is no clear justification for the removal of permitted development rights. However, to ensure the development accords with Local Plan Policy L24(d)(v) and Paragraph 110(e) of the Framework, I agree with the Council that a condition is necessary to require charging facilities for plug-in ultra-low emission vehicles.

Overall Conclusion

17. For the above reasons, the appeal should succeed, and planning permission should be granted subject to the specified conditions.

D Child

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun within three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in strict accordance with the following approved drawings: 'Site Layout and Location Plan' 701.H; 'Phase 2 Site Layout' 701/29HB; and 'Planning Drg. Modified House Types (Plots 34, 35, 36 & 37)' 2012/008/02 Rev A.
- 3) Development shall not begin until details of the proposed means of foul and surface water disposal have been submitted to, and approved in writing by, the local planning authority. The approved details shall be implemented in full before any of the dwellings are occupied, or in accordance with a phasing scheme agreed in writing by the local planning authority as part of the approved details.
- 4) Development shall not begin until a report of an investigation into potential contamination of the site, and of any imported fill material to be brought onto the site, along with any necessary remediation measures, has been submitted to, and approved in writing by the local planning authority. None of the dwellings hereby permitted shall be occupied until the approved measures have been implemented in full.
- 5) Development shall not begin until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained, and set out measures for their protection throughout the course of development.
- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building(s), or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to first occupation of any of the hereby approved dwellings an electric vehicle charging point shall be installed to serve one of the parking spaces to each of the dwellings. Cable and circuitry ratings shall be provided to ensure a minimum continuous current demand of 16 Amps and a maximum demand of 32Amps. Thereafter the electric vehicle charging points so provided shall be retained.
- 8) The development shall not be brought into use until all areas indicated to be used for parking on the submitted plan 701/29HB have been marked out, and laid out with a hardened and drained surface in accordance with the Communities and Local Government; and Environment Agencies 'Guidance on the permeable surfacing of front gardens (parking areas)' published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any Order revoking or re-enacting that Order) these areas shall be so retained, free of obstructions and available for the use specified on the submitted plans and retained thereafter.

9) Details of the siting, design and materials to be used in the construction of walls or fences for boundaries, screens or retaining walls shall be approved in writing by the Local Planning Authority before any of the hereby approved dwellings are first brought into use. The approved walls/fences shall be erected before the development hereby approved is occupied or brought into use and shall be thereafter retained.

10) The external walls and roofing materials of the hereby approved dwellings shall in all respects match those used in the construction of 303-311 Vicarage Road, or, alternatively, samples of all facing and roofing materials shall be inspected on site and approved in writing by the local planning authority before the materials are first used, and the development shall be implemented using the approved materials.



Appeal Decision

Site visit made on 8 July 2019

by **D H Brier BA MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 July 2019

Appeal Ref: APP/Z4718/C/18/3218533 & 3218534 33 Wilshaw Road, Meltham, Holmfirth, HD9 4DZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr & Mrs A Smith against an enforcement notice issued by Kirklees Metropolitan Borough Council.
- The enforcement notice was issued on 2 November 2018.
- The breach of planning control as alleged in the notice is the unauthorised erection of rear extensions and timber outbuilding with two octagonal roofs linked with a dual pitched roof.
- The requirements of the notice are:
 1. Within 1 month of the date the notice takes effect wholly demolish the timber outbuilding with octagonal roofs linked with a dual pitched roof and within two months of the date the notice takes effect remove all resultant debris and material.
 2. Within 4 months of the date the notice takes effect demolish all extensions that project beyond the external walls of the original dwelling house and within 6 months of the notice taking effect remove all resultant debris and material.
 3. Within 6 months of the date the notice takes effect restore the land levels to those prior to the unauthorised development commencing.
- The appeal by Mrs L Smith (ref C/18/3218534) is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- The appeal by Mr A Smith (ref C/18/3218533) is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the notice is upheld with corrections.

Application for costs

1. An application for costs was made by Kirklees Metropolitan Borough Council against Mr & Mrs A Smith. This application is the subject of a separate Decision.

Background

2. The appeal property is a detached house. It lies within both the Green Belt and the Wilshaw Conservation Area.
3. The planning history of the site is set out in the Council's appeal statement. Two items are of especial relevance to the current appeal:
 - Planning permission for the demolition of garage and erection of two storey and single storey rear extension with first floor balcony and detached

garage, granted in August 2017 (reference 2017/92124). Condition 5 of that permission states "*Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 2015¹ as amended (or any Order revoking or re-enacting that Order) no development included within Classes A, B, C, D and E of Part 1 of Schedule 2 to that Order shall be carried out without the prior written consent of the Local Planning Authority.*"

- Application for planning permission for demolition of garage and erection of two storey and single storey rear extension with first floor balcony and attached lower ground garage with terrace over, refused in January 2018 (ref 2017/62/93405/W). A subsequent appeal under section 78 of the 1990 Act was dismissed in May 2018 (ref APP/Z4718/D/18/3197229).
4. The appeal property has been enlarged on the lines of the scheme approved in 2017, but as well as this, a further flat roofed single storey component has been added at the rear². This addition extends across the full width of the rear of the house (11.26m according to the plan approved in 2017³) and, according to the refused drawing, is 5.3m deep⁴. The detached garage shown on the approved scheme⁵ has not been built; instead, the additional extension accommodates an integral garage.
 5. The timber outbuilding referred to in the allegation has been removed. While this indicates that the notice may well have been complied with in part, as this structure is still a component part of the development being enforced against, my decision will encompass this matter.

Unilateral Undertaking

6. A planning obligation under the provisions of section 106 in the form of a unilateral undertaking has been submitted by the appellants. The nub of the obligation is that (subject to planning permission being granted), the property owners covenant "*Not to develop the land nor allow or permit the development of the land pursuant to the previous permission for the construction of a detached garage authorised by the previous permission (and to demolish any part of the detached garage that may have been already constructed)*".

The Enforcement Notice

7. Before proceeding to consider the individual grounds of appeal, I am concerned about a particular matter that arises from the parties' submissions in respect of the appeal on ground (f).
8. The enforcement action appears to have been prompted by the erection of the timber outbuilding and the single storey addition at the rear of the property. However, from the manner in which both the allegation and the second requirement are framed, the notice attacks not only the rear addition, but also the works carried out pursuant to the planning permission granted in 2017. The Council's justification for this approach appears to be twofold. Firstly, the view that the approved works were not substantially complete prior to the erection of the addition, so that the whole of the works do not benefit from any

¹ I take this to be an abbreviation of Town and Country Planning (General Permitted Development) (England) (Order) 2015.

² The appellants refer to this as additional terrace and undercroft garage.

³ Drawing no.17/06 02.

⁴ Drawing no.17/14 02.

⁵ Drawing no.17/06 03.

- extant planning permission. And, secondly, in these circumstances, if the requirement applied solely to the addition, and not to the rest of the works, the resultant underenforcement would mean that, unlike the approved scheme, the remaining structure would benefit from a deemed unconditional planning permission by virtue of the provisions of section 173(11) of the 1990 Act⁶.
9. In claiming that it is not unreasonable to require the full demolition of the extension, the Council also state that the appellants would continue to have the option to implement the 2017 planning permission. This may be so, but if this were to be carried through, it would effectively mean that a significant proportion of the works required to be demolished could be replaced on a like to like basis. To my mind, this approach would be perverse, absurd, disproportionate, and generally unreasonable.
 10. Having regard to condition 5 of the 2017 permission, I can understand why the Council are concerned about the possible creation of an unconditional planning permission. That said, no reason why the Council believe that the approved scheme was not substantially completed, and the works as a whole formed a continuous building operation, has been given. Indeed, this point is disputed by the appellants who indicate that the decision to create an undercroft garage with a terrace above was taken after the completion of the approved extension. In this respect, the appellants have drawn my attention to a letter from an individual who purports to be one of the builders involved. In the letter he states that "*the underground garage was added once the extension had been completed*".
 11. The appellants' claim is not backed up by any other documentary evidence, and the veracity of the builder's comments cannot be tested in an appeal determined by written representations. However, while this tends to reduce the weight to be attached to this part of the appellants' case, I am not inclined to attach a great deal of weight to the Council's unsubstantiated assertion either. What I do attach much more significance to though, is the 2018 appeal decision. In it, the Inspector observes that "*It was clear at my site visit that the construction of the permitted scheme is substantially complete*"⁷, but the additional work is referred to as "*proposed*"⁸. This strongly suggests to me that on the balance of probability the appellants' version of events is to be preferred to that of the Council.
 12. All this leads me to conclude that while the description of the application that gave rise to the section 78 appeal suggested a comprehensive scheme of works, there is a compelling case for viewing the flat roofed addition as a separate entity insofar as the enforcement action is concerned. The addition is not shown on the approved plans, and although it is attached to the main body of the extension, it did not appear to me to be an integral part of it. I regard it as potentially severable.
 13. In the light of the foregoing, and having regard to the works deemed acceptable by virtue of the 2017 planning permission, it seems to me that the circumstances of this case are such that a more pragmatic and equitable approach would be to correct the allegation so that it focuses on the flat roofed rear addition to the property and does not impinge upon the works approved in

⁶ The Council cite section 173(12), but this applies to the construction of a replacement building.

⁷ Appeal decision APP/Z4718/D/18/3197229 paragraph 8.

⁸ Ibid paragraph 14.

2017. I have the power to correct the notice, and I am satisfied that to do so in the manner indicated would not give rise to injustice to the parties. This measure would also necessitate consequent amendments to the requirements and the plan attached to the notice.

Appeal on Ground (c)

14. In order for the appeal to succeed on this ground it has to be shown that the matters alleged in the notice do not constitute a breach of planning control. Ground (c) is a legal ground of appeal, distinct from any planning merits. The Courts have held that the onus on proving it lies with the appellant(s).
15. As no case has been advanced in respect of the (now removed) outbuilding, and I have no information regarding it other than the description set out in the allegation, the onus that lies with the appellants in this respect has not been discharged. It has not been demonstrated that the erection of this structure did not constitute a breach of planning control.
16. The appellants' case includes an explanation of why the additional work was carried out. However rather than supporting the appeal on ground (c), the representations made in this respect are essentially directed at the merits of the development in question. They are not matters which carry weight in the context of the appeal on ground (c). And, given my conclusions in the previous section, the implications of the 2017 planning permission no longer have a direct bearing on the appeal on this ground either.
17. The appellants accept that the additional terrace and undercroft garage does not benefit from the 2017 permission. Nor, regardless of condition 5 attached to the 2017 permission, is it claimed that the addition constitutes permitted development under the provisions of the GPDO. Indeed, as the plans approved in 2017 indicate that the rear extension is 4m deep, the additional 5.3m attributable to the addition means that it would not fall within the parameters of Class A of Part 1 of Schedule 2 of the GPDO and so does not constitute permitted development.
18. In the light of the foregoing, in the apparent absence of any relevant planning permission, I find that the erection of the flat roofed rear addition constitutes a breach of planning control. Accordingly, therefore, the appeal on ground (c) fails.

Appeal on Ground (a) and the Deemed Application

19. The appeal is silent insofar as the merits of the (removed) timber outbuilding are concerned, nor has any information appertaining to this structure been put forward. Having regard to this, and as the reasons why enforcement action was taken against it have not been called into question, I see no basis for viewing it in a favourable light.
20. I consider the main issue is whether there has been any material change in the circumstances since the 1 May 2018 appeal decision.
21. No claim has been made that this is the case. I am mindful that since May 2018 the Kirklees Local Plan was adopted in February 2019 and prior to that a revised version of the National Planning Policy Framework (The Framework) was published in July 2018. Despite this, however, the approach towards development in the Green Belt, within Conservation Areas, and design has not

changed significantly. Likewise, judging from the previous Inspector's remarks, the main thrust of the current planning obligation remains the same. And, over and above all this, from what I saw at my site inspection, I see no reason to take issue with the findings of the previous Inspector, as set out in the section 78 appeal decision. My concerns are essentially the same and would not be overcome by conditions, including one on the lines of that suggested by the Council.

22. Two fallback positions have been identified by the appellant. The first concerns the backfilling and the erection of a detached garage related to the approved scheme. I accept that the approved freestanding garage would impact on openness to some extent, but as the mass of this structure is appreciably less than the flat roofed rear addition, I am unable to concur with the appellant's view that this fallback position amounts to a very special circumstance. It is not a matter to which I attach much weight.
23. The other fallback position concerns permitted development rights. As I have concluded that the flat roofed rear addition should be regarded as a separate entity, I consider that the rest of the extension at the rear of the house accords with the 2017 planning permission and, following on from that, condition 5, which effectively removes permitted development rights, still bites. In these circumstances I am not inclined to regard the second claimed fallback position as a weighty factor.
24. My overall conclusion is that there has not been any material change in the circumstances since the earlier appeal decision. Accordingly, therefore, the appeal on ground (a) fails and planning permission will not be granted on the deemed application.

Appeal on Ground (f)

25. This ground of appeal is directed at the requirement to remove the full rear extension. In the light of my findings regarding the extent of the notice, there is no need for me to consider this point further. Indirectly, therefore, the appeal on this ground succeeds to this extent.
26. I note that the appellants agree that if the notice is upheld, the only elements that should require removal are the rear terrace with undercroft garage and the timber outbuilding.

Appeal on Ground (g)

27. Although I propose to reduce the scope of the notice considerably, I appreciate that compliance with the notice will still have a disruptive effect on the appellants' home. However, while the personal circumstances that have been indicated are not matters I set aside lightly, I do not consider the 4 month compliance period insofar as the rear addition is concerned is unreasonably short. And, as noted above, the timber outbuilding has already been removed.
28. The appeal on ground (g) therefore fails.

Other Matters

29. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

Formal Decision

30. I direct that the enforcement notice be corrected:

A. In section 3 by the deletion of the allegation and its substitution by "The erection of a single storey flat roofed rear extension and a timber outbuilding with two octagonal roofs linked with a dual pitched roof."

B. In section 5 by the deletion of "demolish all extensions that project beyond the external walls of the original dwelling house (as hatched blue on the attached plan)" from the second requirement and its substitution by "demolish the single storey flat roofed rear extension".

C. By the deletion of the plan attached to the enforcement notice and its substitution by the plan attached to this decision.

D. By the deletion of "(shown in the vicinity of the area hatched black)" from the first requirement.

31. Subject to these corrections, I dismiss the appeal and uphold the enforcement notice. In the case of the appeal by Mrs L Smith (ref C/18/3218534), I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D H Brier

Inspector



Plan

This is the plan referred to in my decision dated: 15 July 2019

by **D H Brier BA MA MRTPI**

Land at: 33 Wilshaw Road, Meltham, Holmfirth, HD9 4DZ

Reference: APP/ Z4718/C/18/3218533 & 3218534

