

Appeal Decision

Site visit made on 31 January 2017

by Philip Major BA(Hons) DipTP MRTPI

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

Decision date: 10th February 2017

Appeal Ref: APP/A4710/W/16/3162415

Land north-east of Upper Bentley Royd, Sowerby Bridge HX6 1DS.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Earnshaw against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref: 16/00052/OUT, dated 13 January 2016, was refused by notice dated 13 May 2016.
 - The development proposed is a detached dwelling.
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Preliminary Matter

1. The application is made in outline, with all matters reserved for future determination except means of access, as clearly set out on the application form. I take the Appellant's reference to approval being sought for layout (appeal statement paragraph 4.1) to be an error. The access is shown on drawing No E851, sheet No 02, dated 20 November 2015. So far as other matters indicated on that drawing are concerned I have treated them as being for illustrative purposes only, and not definitive of the Appellant's intentions.

Decision

2. The appeal is dismissed.

Application for costs

3. An application for costs was made by Mr R Earnshaw against Calderdale Metropolitan Borough Council. This application is the subject of a separate decision.

Main Issue

4. The main issue in the appeal is whether the proposal would provide a satisfactory form of development, with particular reference to highway safety, drainage and land stability.

Background

5. There have been a number of applications made in relation to this site. They have been refused (and dismissed on appeal) at various times. However, I acknowledge that matters have moved on and that the site is in an area described as a Primary Housing Area in the development plan (Calderdale Replacement Unitary Development Plan – the UDP). It is reasonable to take this as meaning that some residential development would be acceptable on the site, in principle, subject to satisfactory details being provided and/or suitable evidence that there would be no unacceptable impacts resulting from the development. There remain matters which have been raised by both the
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Council and local residents which require consideration prior to any permission being granted. I have set out the principal matters in the main issue above.

Reasons

6. The appeal site is on the side of a hill, with highway frontage to the narrow lane known as Upper Bentley Royd. The site boundary to the lane is a stone wall. Upper Bentley Road is a relatively short lane, running between Sowerby New Road and Springfield/Fore Lane. At my site visit I noted that the lane was lightly used by vehicles during that period, and the Appellant's evidence suggests that this is the case for most of the time. In addition I see no reason to doubt that vehicle speeds are low.
7. Notwithstanding the light use and low speeds though, the lane is currently not wide enough for 2 vehicles to pass, and as a result the proposed development is intended to include widening along the site frontage. This would increase visibility from the site access and allow vehicles to pass. These alterations would have acknowledged benefits.
8. However, the lane would still have restricted width at other points, and the north-western end of the lane also includes blind bends and a steep gradient on the approach to Sowerby New Road. Even with the widened section of the lane, therefore, the approach to the site would be far from ideal. Coupled with the difficulties associated with the visibility at the access onto Sowerby New Road this was one of the principal reasons why previous decisions had resulted in planning permission being refused. Whilst there have been no recent recorded accidents, and noting the traffic calming measures and other alterations at Sowerby New Road (although the date of these alterations are in dispute) I am not persuaded that the situation is so different to that considered in the 2005 appeal such that circumstances suggest that a different decision should be reached on highway safety. In reaching this finding I am well aware that the Council's highway officer has expressed the view that there are no strong reasons for refusal on highway grounds. As set out in this decision I disagree with that view.
9. I am conscious that Upper Bentley Royd meets a footpath access to the nearby school, and that reference has been made to children using that footpath. This would result in their emerging onto Upper Bentley Royd at a position where there is no footpath alongside the carriageway. Indeed I saw pedestrians using Upper Bentley Royd at my site visit, and it was clear to me that any vehicle using the lane at that time would result in the potential for conflict with pedestrians, particularly when close to the blind bends.
10. As a result I do not consider that the provision of a wider carriageway alongside the site would bring sufficient benefit to enable planning permission to be granted. In my judgement even the small amount of extra traffic using the lane and the junction with Sowerby New Road would be prejudicial to highway safety. In reaching that view I accept that a proportion of traffic from the site would travel away from Sowerby New Road, but this could not be controlled. On balance I consider that the proposal would be harmful to highway safety and in conflict with UDP Policy BE5 which, amongst other things, requires that the design and layout of accesses should ensure the safe and free flow of traffic.
11. I turn then to drainage and land stability. The site has a slope adjacent to the road which becomes precipitous about half way across the site. The Appellant is clearly confident that the land is stable, but local residents have indicated

that there has been land movement. In addition there have been concerns expressed in relation to the drainage of the site, and its potential to interfere with the natural water table or springs. Notwithstanding the fact that conditions could be imposed on any permission granted these are legitimate concerns on a site such as this, and I have seen nothing which persuades me that these matters are not crucial to any successful development of the land. I cannot agree that it would be acceptable to grant an outline planning permission when there must be some doubt, given the differences between consultees (both professional and local people) as to how development could be achieved on this site without causing difficulties further down the slope.

12. In particular there is no indication of how the proposed road widening would be carried out, and its impact on ground stability, and nothing to indicate that a dwelling could be successfully located on the land whilst providing the necessary parking and turning facilities. It seems to me that these are matters which are important in a case such as this. Although not part of the application before me the illustrative siting of a dwelling across the break in the slope on the land suggests that as yet the engineering solutions necessary to develop the site have not been fully established. In my judgement that is something which would require attention prior to planning permission being granted. The National Planning Policy Framework (NPPF) indicates that in order to prevent unacceptable risk from pollution and land instability decisions should ensure that new development is appropriate for its location. The NPPF also indicates that decisions should ensure that adequate site investigation information is presented. In the absence of more detailed information in this case I am not satisfied that it has been shown that this proposal is appropriate for its location.
13. Taking these matters in the round I consider that the information provided by the Appellant does not satisfactorily demonstrate that the proposed development can be carried out without undue risk. In my judgement the risk to highway safety remains largely unchanged from the situation in previous unsuccessful appeals, and the lack of information on site investigation means that I cannot rule out potential risk resulting from drainage difficulties and land instability.

Other Matters

14. Concern has been expressed in relation to the potential for overlooking of adjacent property from a dwelling on the site. However the distances involved and the opportunity to design a dwelling which would preclude overlooking lead me to the view that this is not a matter which weighs against the proposal. I note that the Council is unable to demonstrate a 5 year supply of deliverable housing land. This proposal would therefore assist in addressing the shortfall in a small way. But the harm I have identified above is not outweighed by the provision of a single dwelling on this site. Neither these nor other matters brought to my attention are sufficient to alter the balance of my conclusions.

Overall Conclusion

15. For the reasons given above I conclude that the appeal should be dismissed.

Philip Major

INSPECTOR