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## Appeal Decision

Site visit made on 23 January 2017

**by Gareth Wildgoose BSc (Hons) MSc MRTPI**

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

**Decision date: 13 February 2017**

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**Appeal Ref: APP/W4223/W/16/3162230**

**Land at Den Lane, Uppermill, Oldham OL3 6DD**

- 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 Taylor against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/338263/16, dated 4 March 2016, was refused by notice dated 3 May 2016.
  - The development proposed is a dwellinghouse.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues are:
  - the effect on the character and appearance of Uppermill Conservation Area including the effect on protected trees, and;
  - the effect on land stability, with particular regard to the proximity to railway infrastructure and public safety.

### Reasons

*Character and appearance, including protected trees*

3. The appeal site lies in Uppermill Conservation Area which covers an extensive area surrounding High Street and extending up the valley side to the west beyond the River Tame and the Huddersfield Narrow Canal until it reaches the Trans-Pennine railway line that forms a boundary. The Conservation Area is characterised by the commercial setting of High Street surrounded by a network of streets containing predominantly stone and slate terraced buildings interspersed with mature trees and open space. The character and layout of buildings within a verdant setting makes a positive contribution to the significance of the Conservation Area's historic landscape and is influenced by the varied topography, together with the respective alignments of the river, canal and railway line.
  4. The appeal site is located at the western extent of the Conservation Area, adjacent to the railway line. The site fronts onto Den Lane where it is elevated above a high stone retaining wall. The presence of a number of trees along the boundary that are subject to Tree Preservation Order (TPO), together with the elevated position and upward sloping topography to the west toward the
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railway line results in the site having a verdant character. The verdant nature of the site contributes positively to the significance of the Conservation Area as part of the setting of lower density development surrounding the Huddersfield Narrow Canal. The site provides an important transition from Moorgate Street as it approaches the higher density of built form of the two storey terraced row to the north (Nos. 1-6 Den Lane) which meet the land levels that rise to that aspect. The verdant character of the site also offers a visual break that separates a larger detached two storey property (Ridgeworth House) of different character that is located further to the south in an elevated position on the opposite side of Dark Lane.

5. There is no dispute between the main parties that the policies of the Oldham Local Development Framework - Development Plan Document - Joint Core Strategy and Development Management Policies (JCS & DMP), adopted November 2011, although prioritising previously developed land, do not specifically preclude development on greenfield land in suitable locations, subject to other material considerations. The policies are broadly consistent with the approach of the National Planning Policy Framework (the Framework). Nevertheless, the Council have expressed concerns with respect to the effect of the proposed dwelling on the character and appearance of the Conservation Area and existing mature trees.
6. The proposed two storey dwelling would be set back behind the front building line of the adjacent terraced row to the north which would lessen the sense of overbearing and dominance arising from its elevated position when viewed from Den Lane. This would be supported by screening provided by the TPO trees along the Den Lane frontage for parts of the year. The dwelling would be constructed of materials which would complement those predominant in the Conservation Area and there would be only marginal differences relative to the ridge and eaves height of the adjacent terraced row. However, due to the difference in land levels relative to No 1, the reduced depth of brick façade of the dwelling and its overall width would appear out of proportion and discordant when viewed against the adjacent terraced row.
7. The incompatible relationship would be particularly visible when approaching the site from Moorgate Street to the east, towards the junction with Den Lane, due to the increasing land levels when approaching the site. The harmful visual effect would be emphasised by the use of contrasting window proportions and styles, and would be accentuated in winter months when the trees are not in leaf. The cumulative effect of the presence of a dwelling in an elevated position and its incompatible relationship with the adjacent terraced row would harm the character and appearance of the site and its surroundings. Consequently, the development would fail to preserve or enhance the character and appearance of the Conservation Area.
8. In reaching the above findings, I have taken into account that No 20 Moorgate Street, opposite to the east and located on much lower land levels, includes examples of a similar style of windows to the proposal before me. There are also examples of comparable windows at other properties in the wider area. However, the difference in land levels when approaching along Moorgate Street, together with the different orientation of No 20, ensures that the proposal's relationship to Nos. 1-6 Den Lane is of greater significance to the character and appearance of the Conservation Area. The presence of Ridgeworth House, which is of a different scale, proportions and materials to

the predominant housing in the Conservation Area, is not justification for the harm identified given its more isolated location and spacious surrounding context.

9. Turning to the issue of protected trees, there are a number of trees of various species and sizes along the eastern and southern boundaries of the appeal site which make an important contribution to the character and appearance of the site and the surrounding area. A Tree Survey and Arboricultural Impact Assessment and accompanying plan (drawing no. 237/1) submitted by the appellant identified a total of 18 individual trees or groups of trees within the site and 2 individual trees off site. The survey designated each tree as either 'A', 'B', 'C' or 'U' category in accordance with BS 5837: 2012. The Council has offered no contrary opinion to the individual tree classifications and based on the evidence before me, together with my observations when visiting the site, I have no reason to take a different view.
10. Amongst the identified trees, the appeal site includes 2 Oak trees and a Sycamore tree (identified as 1, 2 and 3 on the plan) which make a substantial contribution to the verdant character of the Den Lane frontage and are categorised as 'B3', 'B1' and 'A1' respectively. The evidence before me indicates that those trees are subject to TPO and would be largely unaffected by the proposal. Appropriate protection measures on the perimeter of the root protection area would be achievable.
11. The site would be accessed from Dark Lane, an ancient highway and public footpath to the south of the site, from its junction with Den Lane and Moorgate Street. The formation of an access into the site and an associated driveway would require removal of an Oak and a Rowan (identified as 4 and 5) which are located on the Dark Lane frontage. The evidence before me indicates that neither tree is subject to TPO, however, given their location in the Conservation Area they are protected from indiscriminate felling. These trees are categorised as 'C', which are described by the British Standard as unremarkable trees of low quality with very little merit, and 'U', which reflects a condition that it cannot realistically be retained as a living tree for longer than 10 years and consequently would be suitable for removal. Based upon the evidence and my observations, the removal of Trees 4 and 5 and replacement planting in an alternative location on the frontage as indicated on the submitted plan, would not have an adverse effect on the character and appearance of the site and its surroundings.
12. The development would also involve the removal of an additional 'C' category goat willow tree (14) in close proximity to the proposed footprint of the dwelling which would be appropriately replaced by additional planting in close proximity. The loss of two self-sown goat willow trees beyond the site boundary (19 and 20) would be largely imperceptible given the close proximity of trees to be retained, including a mature Oak (10) subject to TPO. Furthermore, there would be additional benefits of removal of Trees 19 and 20 in terms of access to the railway crossing and the structural integrity of the boundary wall.
13. Having regard to all of the above, I have found no harm relating to the proposed removal and replacement of trees identified which are otherwise protected from indiscriminate felling due to their location within a conservation area. However, the absence of concern in this respect or conflict with Saved Policy D1.5 of the Oldham Unitary Development Plan, adopted July 2006, does

not justify the harm otherwise identified relating to the character and appearance of the site and the surrounding area.

14. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Paragraph 131 of the Framework requires that account be taken of the desirability of sustaining and enhancing the significance of heritage assets, and of new development making a positive contribution to local character and distinctiveness. Rather than make the positive contribution desired by paragraph 131 of the Framework, the proposal would harm local character and distinctiveness. Paragraph 132 of the Framework states that when considering the impact of a proposal on the significance of designated heritage assets, great weight should be given to the asset's conservation. The Framework also makes it clear that significance can be harmed or lost through alteration of a heritage asset or development within their setting.
15. The harm caused would be significant in terms of the site and the immediate surroundings of the proposal. However, the harmful effect would be localised and, therefore it would be less than substantial to the significance of Uppermill Conservation Area as a whole.
16. The development offers potential benefits in terms of increasing housing supply and choice in a location where local services are accessible. The proposal would also have economic benefits to the local area through Council tax and support for local services. Furthermore, there would be short term and temporary economic benefits with respect to the necessary construction works associated to the development. There would also be minor benefits in terms of the maintenance and repair of the boundary wall, which would assist the protection of trees along the boundary, and reuse of an overgrown site. However, the extent of these benefits is modest for a development of the scale proposed.
17. Having regard to the above, the public benefits identified taken individually or in cumulative are modest and would not, therefore, be sufficient to outweigh the great weight given to the conservation of Uppermill Conservation Area and the less than substantial harm to its significance which I have identified.
18. I conclude that the development would fail to preserve or enhance the character and appearance of Uppermill Conservation Area. The proposal is, therefore, contrary to Policies 1, 20 and 24 of the JCS & DMP. When considered together the policies seek to ensure new development is of a high standard of design, respects local character and protect, conserve and enhance the significance of heritage assets and designations, including conservation areas. These policy aims are consistent with the Framework, to which the proposal would also conflict.

#### *Land stability*

19. Paragraphs 109 and 120-121 of the Framework, when taken together, require that the site is suitable for its use taking account of ground conditions and land instability. It is evident that at the time of the Council's decision, an objection from National Rail had been received relating to insufficient information to demonstrate that the development would not result in the potential for landslips. It is reasonable that the sloped topography of the land and the likely

level of excavation required as part of the proposed development could have potential implications for land stability which could affect the Trans-Pennine railway line, if appropriate mitigation measures are not put in place. Consequently, it is essential to ensure that the development would not put the safety of the railway line, together with occupiers of the proposed development and adjacent properties, at unacceptable risk due to land instability.

20. A ground investigation report has been submitted by the appellant as part of this appeal, to which a response from Network Rail has also been provided. The response from Network Rail indicates that no objection would be offered subject to a number of matters being addressed. The matters requiring supplementary detail or control include; further assessment of the effect of the actual geometry of the gabion wall proposed and associated excavations required, inspection of initial wall excavations and agreement and implementation of a construction method statement.
21. Having taken account of the evidence within the ground investigation report and based on my observations of the site and its surroundings, including the presence of other dwellings built in close proximity to the railway embankment. I consider that it is unlikely that a technical solution could not be found to resist ground movement through the structural design of the building and associated on-site engineering works, including the gabion wall and the adjoining boundaries of neighbouring properties. Such matters could be appropriately addressed by condition(s) requiring a construction method statement, further site investigations and detailed measures to ensure land stability to be approved by the Council and Network Rail, before development commences if the appeal were to be allowed.
22. I conclude that the proposal would not have a detrimental effect on land stability, the nearby railway infrastructure and public safety. The proposal would not, therefore, conflict with the Framework in that respect.

### **Other Matters**

23. I note that the Council raised no concerns with respect to the living conditions of the occupiers of neighbouring properties in terms of outlook, sunlight, daylight or privacy. Based on the evidence before me, including the submitted plans, I have no reason to take a different view, given the separation distance and different land levels to No 20 Moorgate Street at the front and the limited rear projection beyond No 1 Den Lane, together with an absence of windows in the facing side elevation. However, the absence of concern in this respect is a neutral factor which does not weigh in favour of the proposal.
24. The addition of a single dwelling would not be significant in terms of parking demand or traffic generation in a location where highways are lightly trafficked. Appropriate care would be required by drivers to navigate the narrow width of the Dark Lane and to access the driveway into the site. However, the slow speeds necessary to undertake such manoeuvres would ensure no harmful conflict with the safety of pedestrians using the public right of way or vehicle movements associated with Network Rail access to the railway.
25. The visibility from the Dark Lane access at the junction of Moorgate Street and Den Lane is adequate as it is positioned at the outside of the bend. The limited increase in vehicular use of the access at the junction of Moorgate Street and Den Lane would not, therefore, have a detrimental impact on highway and

pedestrian safety, subject to the provision of a turning area in the site as proposed to allow entry and exit in forward gear. However, the absence of concern in these respects is a neutral factor that does not outweigh the harm identified.

26. The existence of a previous appeal decision relating to the site has been drawn to my attention by the main parties. However, the full details of the appeal, including the decision letter, are not before me. In any case, I have reached my own conclusions based upon the individual merits of the proposal and the evidence provided.

### **Conclusion**

27. I have found no harm with respect to the effect on land stability, railway infrastructure and public safety. Furthermore, I have considered the public benefits of the development. When taken together they would not be sufficient to outweigh the great weight given to the conservation of Uppermill Conservation Area and the less than substantial harm to its significance which I have identified. The development, therefore, conflicts with the development plan and the Framework when taken as a whole.
28. For these reasons and taking all other matters into consideration, I conclude that the appeal should be dismissed.

*Gareth Wildgoose*

INSPECTOR