
Appeal Decision

Site visit made on 27 February 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 10th March 2017

Appeal Ref: APP/N4720/W/16/3163414

59 Tyersal Road, Bradford, West Yorkshire, BD4 8ES

- 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 Joe Rawlins against the decision of Leeds City Council.
 - The application Ref: 16/05099/FU dated 12 August 2016, was refused by notice dated 2 November 2016.
 - The development proposed is a detached dwelling on vacant land (to the rear of No 59 Tyersal Road).
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Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling on vacant land to the rear of No 59 Tyersal Road, Bradford, West Yorkshire, BD4 8ES in accordance with the terms of the application, Ref: 16/05099/FU dated 12 August 2016, subject to the conditions set out in the Schedule attached to this decision.

Procedural Matters

2. I have based the description of the proposed development on the Council's decision notice. Although it differs from that stated on the application form, I consider it more concisely describes the proposal.
 3. The plans originally submitted showed a 6-bedroom two-storey dwelling with accommodation on three levels with rooms in the roof area lit by dormer windows. It measured 16.0m x 10.0m in plan and was set 2.3m from the side boundaries and 3.0m from the rear boundary. However, the scheme was amended during application process to show a 6-bedroom two-storey dwelling (without rooms in the roof space or dormers) measuring 14.0m x 10.0m in plan, sited 3.5m from the site boundaries and 7.5m from the rear boundary (Revision 'A'). These were the plans that were determined by the Council.
 4. Before the application was determined a third set of plans was submitted showing a 6-bedroom dormer bungalow of plan dimensions 16.5m x 9.1m (Revision 'B' -Draft Design). However, although examined by the Council these plans were not formally substituted, and in any event the Council has stated that they did not address their concerns. The appellant has invited me to use these Revision B plans in determining this appeal. However, I consider these further revised plans change the nature of the proposal to such an extent that the interests of neighbours/third parties who have not had an opportunity to comment might be prejudiced. I have therefore determined the appeal on the basis of the Revision 'A' plans.
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Main Issues

5. I consider there are three main issues in this case. Firstly, the effect of the proposal on the character and appearance of the area; secondly, the effect of the proposal on the living conditions of neighbouring occupiers having regard to outlook and privacy; and thirdly, whether there would be adequate outdoor amenity space for future occupiers of the proposed dwelling.

Reasons

6. The appeal concerns an area of land to the rear of No 59 Tyersal Road which originally formed part of the rear garden of that property but was sub-divided following the granting of planning permission for a dwelling on the site. Access is via a driveway that already exists between No 59 and No 57. The proposed dwelling would be positioned centrally on the plot with a gap of 3.5m to both side boundaries, and 7.5m from the rear boundary which abuts the rear garden of No 19 Tyersal Green. The side and rear boundaries feature tall conifer hedges which it is proposed to retain. The proposed dwelling would measure 14.0m x 10.0m in plan, and would have two full storeys with an eaves height of 5.0m and a ridge height of 7.5m.

Character and appearance

7. The Council has no objections to the principle of a dwelling on this backland site having granted planning permission for a 4-bedroom two-storey dwelling in 2012. An identical application was approved in 2015¹, and the dwelling approved under that permission could be built.
8. The immediate surroundings contain a wide mix of house types and styles, with no uniformity, prevailing character, or particularly local distinctiveness. Although the closest property is a dormer style bungalow, most of the development in this part of Tyersal Road and Tyersal Green comprises two-storey, detached and semi-detached houses. There is also a wide variety of architectural styles and materials including traditional post-war houses constructed either in stone brick and pebble dash, as well as more recent dwellings including No 59.
9. Policy P10 of the *Leeds Core Strategy 2010* (CS) requires new development to reflect local distinctiveness and the wider setting of the place, and encourages high quality inclusive design. It adds that the size, scale, design and layout of development should be appropriate to its context and respect the character and quality of surrounding buildings. Amongst other matters Saved Policy GP5 of the *Leeds Unitary Development Plan Review 2006* (UDP) says development proposals should resolve detailed planning considerations.
10. The Council considers the proposed dwelling would be appear cramped and incongruous in this backland position and would fail to take the opportunity to improve the character and quality of the area.
11. Whilst the dwelling would be larger than that previously approved and others nearby, I do not consider this is necessarily a particular cause for concern. The plot is a generous one and in my view the revised scheme ('Rev A') allows sufficient space around the dwelling such that it would not appear cramped or unduly out of character with the surroundings. Indeed, the net density arising

¹ Ref: 15/03467/FU

of 13 dwellings/hectare is well below the minimum of 40 dwellings/ hectare recommended in CS Policy H3, and the plot size (with the exception of the long rear gardens remaining at No 55 and No 57) is much larger than what is typical for the area.

12. The *National Planning Policy Framework* (the Framework) requires local planning authorities to encourage high quality design. However, it also says policies and decisions should not attempt to impose architectural styles or particular tastes, should avoid unnecessary prescription of detail, and should concentrate on guiding the development in relation to neighbouring buildings and the area generally. Overall, although I have some reservations concerning the detailed design of the dwelling, on balance I consider would respect the character and quality of surrounding buildings and is appropriate in its context.
13. Therefore, given the wide variety in the size, design and materials of other dwellings in the vicinity, and the absence of any especially local distinctiveness, I conclude on this issue that the proposed dwelling would not materially harm the character and appearance of the surrounding area. As such, I find no conflict with CS Policies P10 and saved UDP Policy GP5.

Living conditions of neighbours

14. The Council's second reason for refusal states that the proposed dwelling would fail to meet the required separation distances from main and secondary windows resulting in a loss of privacy to the occupiers of No 19 Tyersal Green and vacant land to the east.
15. In relation to No 19 the Council accepts that all first floor windows and the ground floor kitchen (secondary aspect window) accord with the minimum separation distances recommended in the Council's *Neighbourhoods for Living Supplementary Planning Guidance* (SPG). However, it is concerned that the ground floor dining room French windows (which the SPG classes a main aspect window) would be 7.5m to the rear boundary, falling short of the SPG standard of 10.5m. However I am not entirely clear why the Council has applied different standards to two windows serving the same room. It appears illogical to suggest that the one of the windows is 'secondary aspect' whereas the other is 'main aspect'. Nonetheless the SPG makes it clear that these distances are a guide with no account taken of local characteristics. In my view SPG should not be applied prescriptively but should respond to local circumstances. In this instance I intend to take a pragmatic approach, particularly given the very inflexible guidance in this section of the SPG. Whilst I accept that there would be some impact on privacy levels in relation to No 19, I am not persuaded that any harm would be to a materially unacceptable level.
16. Windows in the west elevation serving a bathroom and dressing room also fall below the standard separation distance recommended in the SPG. However, given their uses, overlooking issues could be resolved by the use of obscure glazing. The east elevation would contain two windows (serving a bedroom and living room) 3.5m from the site boundary (whereas the SPG requires 9.0m and 10.5m). The Council considers this would lead to a harmful impact on the adjacent site in terms of overlooking. However, that site currently appears to be used for the storage of building materials and vehicles and I am not convinced that there would be any privacy or overlooking problems issues arising. In any event the screen of conifers (which it is proposed to retain) would ensure that any potential overlooking is kept to a minimum.

17. Overall, I am satisfied that there would be no harmful effect on the living condition of neighbours with regard to outlook and privacy. I find no conflict with saved UDP Policy GD5.

Outdoor amenity space

18. Although the Council accepts that the outdoor space conforms to the 'two-thirds' rule specified in the SPG, it says this space should be useable and not overshadowed by trees. Although the tall conifer hedge would have some impact on the rear garden, I am not convinced this would make it entirely unusable or fit for purpose. In any event, an area of front garden is also shown which would not be overlooked, is less overshadowed by conifers, and would provide another option for private outdoor space. I therefore conclude on this issue that the proposal would provide acceptable living conditions for future occupiers in terms of private amenity space.

Conditions

19. I have considered the suggested conditions in the light of the advice in the Government's *Planning Practice Guidance*. A condition is needed to secure compliance with the approved (revised) plans for the avoidance of doubt and in the interests of proper planning. Conditions requiring details of materials are needed in the interests of the appearance of the area. The conditions requiring a site investigation to be undertaken for the possible presence of ground and other contamination are justified, although I favour a modified wording.
20. Conditions to ensure the protection of retained trees, and requiring the submission, implementation and maintenance of a landscaping scheme, are necessary in the interests of the appearance of the area. Foul and surface water drainage details are required in order to prevent pollution and the increased risk of flooding. A condition requiring the fitting and retention of obscure glazing to the west elevation windows is needed to protect the privacy of neighbouring residents. However, I consider this condition should be extended to control the insertion of other windows in the east and west elevations. A condition requiring details for the provision of bin stores is justified to protect the environment and provide suitable storage for waste.
21. A condition is suggested to remove normal permitted development rights for the enlargement, improvement or other alteration to the dwelling house (GPDO Class A), and the enlargement or other alterations to the roof (Class B). This is necessary to ensure that the site is not overdeveloped and to protect the privacy of neighbouring residents.

Conclusion

22. I have concluded that the proposal would not harm the character and appearance of the area; that the living conditions of neighbours would not be significantly harmed; and that adequate private amenity space would be available. Furthermore, the proposal would represent a sustainable form of development making efficient use of land as advocated in the Framework.
23. Therefore, for the reasons given above and taking into account all other matters raised, I conclude that the appeal should be allowed.

***Nigel Harrison* INSPECTOR**

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1049 Block Plan; 1049-01-Existing Site Plan; 1049-02 Existing Site Location Plan; 1049-03: Rev A Proposed House Plans and Roof Plan; 1049-04: Rev A Proposed House Elevations; and 1049-05: Rev A Proposed Site Plan.
- 3) No development shall take place until details and samples of all external walling and roofing materials have been submitted to and approved by the local planning authority in writing. Samples shall be made available on the site or prior to the commencement of building works for inspection by the Local Planning Authority. The development shall be carried out in accordance with the approved materials.
- 4) (i) No development shall take place until a site investigation of the nature and extent of any contamination of land or pollution of controlled waters has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigations shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

(ii) If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the additional measures.
- 5) No tree/hedge/bush that is shown for retention on the approved plan 1049-05: Rev A shall be cut down, uprooted, destroyed, pruned, cut or damaged in any manner without the prior written approval of the local planning authority. If any retained tree/hedge/bush is removed, uprooted, destroyed or dies the Local Planning Authority shall be notified forthwith in writing. Another tree/hedge/bush of an agreed size and species shall be planted at the same place and at such time as may be specified in writing by the Local Planning Authority.
- 6) The dwelling hereby permitted shall not be occupied until areas have been laid out within the site for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear. These areas shall be surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.

- 7) No development shall take place until a scheme for the disposal of foul and surface water has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to the first occupation of the dwelling, or as set out in the approved phasing details.
- 8) Before the first occupation of the dwelling hereby permitted the first floor window on the west side elevation (closest to No 57 Tyersal Road) shall be fitted with obscure glass to a minimum privacy standard of Level 4 Obscurity, to be retained thereafter for the lifetime of the development.
- 9) Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) Order 1995* (or any Order revoking and re-enacting that Order with or without modification), no windows or dormer windows, other than those expressly authorised by this permission, shall be constructed on the east and west elevations.
- 10) Notwithstanding the provisions of the *Town and Country Planning (General Permitted Development) Order 1995* (or any Order revoking and re-enacting that Order with or without modification), enlargement, improvement or other alteration to the dwelling house (Class A) and no enlargement or other alterations to the roof including the addition of roof lights (Class B) shall be erected or undertaken without the prior written approval of the Local Planning Authority (other than those expressly authorised by this permission).
- 11) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) Proposed finished levels and/or contours;
 - ii) Boundary details and means of enclosure;
 - iii) vehicle parking layouts;
 - iv) Schedules of plants noting species, planting sizes and proposed numbers/densities.

The landscaping works shall be carried out in accordance with the approved details and British Standard BS 4428 1989: Code of Practice for General Landscape Operations. The developer shall complete the approved landscaping works and confirm this in writing to the Local Planning Authority prior to the date agreed in the implementation programme.

- 12) No development shall take place until details for the provision of bin storage have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full before the first occupation of the dwelling hereby approved and retained thereafter for the life of the development.

(End of Conditions)