
Appeal Decision

Site visit made on 20 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 14 March 2017

Appeal Ref: APP/M2372/W/16/3164633

Land off Cocker Street, Darwen, Lancashire

- 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 G Mayoh against the decision of Blackburn with Darwen Borough Council.
 - The application Ref 10/16/0822, dated 25 July 2016, was refused by notice dated 16 September 2016.
 - The development proposed is a new dwelling on derelict land off Cocker Street.
-

Decision

1. The appeal is dismissed.

Procedural Matter

2. The site address provided by the application form has been updated by subsequent documents. I adopt the additional details of the site address provided by the appeal form accordingly as it provides greater certainty of the site's location.

Main Issues

3. The main issues are:
 - the effect on the character and appearance of the area;
 - the effect on the living conditions of occupiers of neighbouring properties and future occupiers of the development, with particular regard to outlook and privacy, and;
 - the effect on highway and pedestrian safety, with particular regard to access and parking arrangements.

Reasons

Character and appearance

4. The appeal site is located on the southern side of Cocker Street within the Urban Boundary of Darwen as identified by the Policies Map of the Blackburn with Darwen Local Plan Part 2 Site Allocations and Development Management Policies (LP-Part 2), adopted December 2015. The principle of residential development in urban areas is supported by Policies CS1 and CS5 of the Blackburn with Darwen Core Strategy (CS), adopted January 2011, and Policy 1 of the LP-Part 2.
-

5. The site is vacant and overgrown with a steep upward slope towards the rear gardens of properties to the south that are in an elevated position. The opposite side of Cocker Street has a variety of property types. This includes a terrace with a rendered façade comprising properties of two storey height which are subdivided into flats. The properties also include basement accommodation due to a difference in land levels where the terrace also faces onto Watery Lane to the north. Further along the terrace is a Sunday school, church and a mixed use building of a lesser height as land levels reduce towards the junction of Cocker Street and Spring Vale Garden Village.
6. To the west of the site and south of the junction of Cocker Street and Spring Vale Garden Village is a modern two storey terrace consisting of three houses. These properties have brick facades and tile roofs with each individual property increasing in height as land levels rise. Immediately to the south, in elevated positions are two storey semi-detached properties which consist of predominantly brick facades and tile roofs. A mix of bungalows and dormer bungalows lie to the opposite side of Spring Vale Garden Village. The traditional housing stock surrounding Watery Lane to the north are two storey properties predominantly built from stone and slate.
7. The appeal proposal consists of a dwelling with a split level design which would have the appearance of a bungalow with rooflights and an off centre porch when viewed from Cocker Street. However, it would have an increased eaves height at the rear resulting in a two storey appearance of the rear elevation. The resultant side profile of the dwelling would be asymmetrical, which is not a common feature of the area. Nevertheless, the difference in surrounding land levels and position of adjacent properties would limit the visual prominence of the side elevation of the dwelling. Consequently, when also taking account of the varied character of the neighbouring properties, the design, scale, bulk and massing of the proposal would not be incompatible with its surroundings. Nos. 70-72 Spring Vale Garden Village to the west form part of the background to the site when viewed from Cocker Street. Accordingly, the use of similar brick and tile materials would not appear out of place, despite the contrast with the rendered facades on the opposite side of Cocker Street in the immediate street scene.
8. Notwithstanding the above, the siting of the dwelling consists of a front building line that does not run parallel to the southern side of Cocker Street, where the road straightens from a bend closer to the junction with Spring Vale Garden Village. The dwelling would have a different orientation to the terrace on the opposite side of Cocker Street, the main front elevation of which is set back. At its closest point, the dwelling would almost adjoin the highway, where there is no pedestrian footway present. As a consequence, the proposed dwelling would be viewed as a dominant, unconnected and incongruous form of development, due to its close proximity to and the resultant sense of enclosure upon the narrow highway on its southern side. The development, therefore, would have a harmful effect on the character and appearance of Cocker Street.
9. In reaching the above findings, I have taken into account that there are examples of some properties with little or no set back from footway edges in the surrounding area. Nevertheless, building lines are generally parallel to the road or the building lines of properties opposite. The front building line of the dwelling is similar to the side wall of No 70 Spring Vale Garden Village. However, the relationship of properties in the surrounding area is different to

the proposal before me and Cocker Street has a different alignment at the side of No 70.

10. The provision of a dwelling within the site could have benefits in terms of improving its existing appearance which is overgrown and at the time of my visit had been subject to fly tipping. Nonetheless, there is no substantive evidence before me that such benefits could not be achieved in a manner which would not result in the harm identified in terms of the proposal before me. In such circumstances, the benefits of redevelopment and reuse of a vacant site do not outweigh the harm that would result from the siting and alignment of the dwelling.
11. The appeal site is not designated within a Conservation Area or located within the setting of a listed building. However, the absence of such a designation or proximity to heritage assets does not justify harmful development. The National Planning Policy Framework (the Framework) attaches great importance to the design of the built environment, whilst seeking high quality and inclusive design for all development.
12. I conclude that the development would harm the character and appearance of the area. The proposal conflicts with Policy 11 of the LP-Part 2, which requires all new development to present a good standard of design, demonstrate an understanding of the wider context and make a positive contribution to the local area, including in terms of layout, building orientation and relationship of buildings to the street. The policy is consistent with the Framework.

Living conditions

13. Policy 8 of the LP-Part 2 states that development will be permitted where it can be demonstrated that, amongst other things, it would secure a satisfactory level of amenity and safety for surrounding uses and for occupants or users of the development itself, with reference to noise, vibration, odour, light, dust, other pollution or nuisance, privacy / overlooking, and the relationship between buildings. With respect to the interpretation of Policy 8, the Council have drawn my attention to the guidance within the Blackburn with Darwen Residential Design Guide Supplementary Planning Document (SPD), which requires 21m separation distance between facing windows of habitable rooms. The unadopted status of the SPD limits the weight that I can offer to the guidance. Nevertheless, the recommended separation distance would appear a reasonable starting point when assessing the scheme based upon its relationship to the particular circumstances of its surroundings.
14. The proposed dwelling would be located approximately 11m from the main facing elevation of the flats on the opposite side of Cocker Street, with lesser distances to side facing windows of basement flats and front porches at street level. The separation distance is significantly below those recommended by the emerging SPD for facing windows serving habitable rooms, which the layout of the dwelling includes at ground floor level and at first floor level served by rooflights. The close proximity of the dwelling to the main elevation of the flats within the opposite terrace, together with its resultant scale, massing and bulk necessary to achieve first floor accommodation would have a considerable overbearing effect and introduce a sense of enclosure to the occupiers of the nearest flats. The proposal would result in significant harm to the outlook of the neighbouring properties and therefore, the living conditions of occupiers.

15. The Council have not expressed specific concerns in terms of the suitability of living conditions for future occupiers of the development relating to outlook. However, it reasonably follows that the inadequate separation distance to the terraced row on the opposite side of Cocker Street would also have a harmful overbearing effect on the proposed dwelling, particularly in terms of the ground floor lounge window which has a direct outlook towards the taller section of the terrace. Consequently, the inadequate outlook from the dwelling would result in unsatisfactory living conditions for future residents.
16. The dwelling would be located to the south of the facing elevation of terraced properties opposite, whereby an inadequate separation distance between the buildings could also have an overshadowing effect and loss of light. However, I observed that the significant upward slope of the land within the site, presence of existing trees and the elevated rear boundaries of properties to the south, reduces the direct sunlight received by properties opposite to the site. The dwelling would be of a much lower scale than the sloped land to the south and consequently, would not obstruct the provision of sunlight or significantly reduce daylight levels to habitable rooms. However, the absence of concern in this respect is a neutral factor.
17. Turning to matters of privacy, the submitted plans before me do not include details of the internal floor levels within the dwelling. Consequently, based on the evidence before me, I am unable to conclude that the rooflights at first floor level would be located above the eye level of occupants. In such circumstances, it has not been satisfactorily demonstrated that the position of the rooflights would not result in direct overlooking and a loss of privacy to first floor windows of the flats opposite. The associated potential for first floor rooflights of the dwelling being directly overlooked by the upper floor windows of flats in the terrace opposite adds to my concerns. Due to the inadequate separation distance between the dwelling and terraced properties opposite, the development would result in harmful overlooking and a loss of privacy. Consequently, the proposal would not provide an appropriate relationship and satisfactory levels of privacy to preserve the living conditions of neighbouring residents or provide suitable living conditions for future residents.
18. I am satisfied that the separation distance between the ground floor windows of the dwelling and the habitable windows of the flats in the terrace opposite would not result in harmful levels of overlooking or loss of privacy. In reaching that view, I have taken into account that the pedestrian footway along the northern side of Cocker Street would have a closer relationship to the respective windows. Furthermore, the respective separation distances and differences in land levels to properties to the west and south which face Spring Vale Garden Village (Nos. 70-79) would provide a satisfactory relationship to prevent any detrimental impact on living conditions in terms of outlook and privacy. In addition, the layout of the property would provide adequate internal space for future occupiers and the external amenity space, although shallow in depth, would provide an appropriate functional area and living environment for future residents. However, the absence of concern in those respects is a neutral factor.
19. The appellant has drawn my attention to examples of existing dwellings in the surrounding area that have separation distances between main elevations that are significantly less than recommended by the emerging SPD. The examples include nearby properties in Spring Vale Garden Village, Bentley Street and

Thompson Street. However, the examples identified reflect separation distances which are greater than the proposal before me. In any case, the presence of existing examples of deficient relationships between dwellings is not reason that would justify the proposal where harm has been identified.

20. I conclude that the development would have a harmful effect upon the living conditions of occupiers of neighbouring properties and future occupiers of the development, with particular regard to outlook and privacy. The proposal, therefore, conflicts with Policy 8 of the LP-Part 2, which is consistent with the core planning principle of the Framework that seeks a good standard of amenity for all existing and future occupants of land and buildings.

Highway and pedestrian safety

21. Policy 10 of the LP-Part 2 seeks that, amongst other things, the development will be permitted provided it has been demonstrated that road safety and the safe, efficient and convenient movement of all highway users (including bus passengers, refuse collection vehicles, the emergency services, cyclists and pedestrians) is not prejudiced. The policy also requires demonstration that appropriate provision is made for vehicular access, off-street servicing and parking in accordance with the Council's adopted standards.
22. The dwelling consists of 3 bedrooms which would require 2 car parking spaces and 2 secure cycle spaces to accord with the Blackburn with Darwen Borough Council Parking Standards. The proposal identifies 2 off street car parking spaces within the site and a turning head at the end of the Cocker Street cul-de-sac. Although the Council has expressed concern relating to the dimensions of the spaces indicated on the submitted plans, I am satisfied that the required dimensions in the parking standards of 2.4m x 5.5m could be achieved.
23. Notwithstanding the above, the road is single width with only a footway on the northern side of the carriageway and has no parking restrictions. The terraced properties opposite are well established and are not served by off street parking provision. Consequently, there is some reliance upon on-street parking along Cocker Street to serve the existing properties. When cars would be parked opposite to the site, there would not be sufficient space on Cocker Street for access and egress manoeuvres, including reversing, when using the proposed car parking spaces. Consequently, the car parking spaces would not be served by appropriate provision for vehicular access as required by Policy 10 of the LP-Part 2 and would not provide safe and suitable access to the site, convenient for all highway users, as required by the Framework.
24. The inaccessibility of car parking spaces within the site would increase the number of vehicles parked on-street. The lightly trafficked nature of Cocker Street and absence of a through route beyond the cul-de-sac would reduce the risk of vehicle conflict along the frontage of the site. However, cars parked on-street appear to use the site as an informal turning area within Cocker Street. Consequently, if the site were to be developed, Cocker Street would have inadequate space to enable a vehicle to conveniently turn around and would, therefore, encourage vehicles to reverse out of the junction of Cocker Street and Spring Vale Garden Village. Such manoeuvres would cause considerable harm to highway and pedestrian safety along Spring Vale Garden Village which serves a larger number of dwellings and where the attention of drivers would be on the nearby junction with Watery Lane. There would also be harm in

those respects along Cocker Street where the highway gently bends, land levels reduce and the pedestrian footway is narrow.

25. The submitted plans indicate a turning head at the north eastern extent of the site toward the end of Cocker Street. However, based on the evidence before me and my observations, the position of the turning head and its dimensions would not provide a suitable reversing area to conveniently turn a vehicle. In such circumstances, I am not satisfied that the turning head indicated would discourage the harmful reversing manoeuvres and consequent, harm to highway and pedestrian safety identified.
26. The appellant has expressed a willingness to fund a traffic regulation order to restrict on-street parking along Cocker Street to enable the car parking spaces within the site to be accessible at all times. However, I do not consider such an approach to be reasonable to overcome the harm identified given that other properties on Cocker Street are reliant upon on-street parking. The appellant has suggested that the Framework indicates that development should only be prevented where the residual cumulative impacts of development are severe. However, such considerations in the Framework relate to matters of highway capacity and congestion. Recent case law¹ has clarified that it is the intention of the Framework at paragraph 32 that highway and pedestrian safety, including safe and suitable access to the site, are a separate consideration.
27. I conclude that the development would have a harmful effect on highway and pedestrian safety, with particular regard to inadequate and unsuitable access and parking arrangements. The proposal, therefore, conflicts with Policy 10 of the LP-Part 2 and the Framework in that respect.

Other Matters

28. The development would make a positive contribution to housing supply and choice in an accessible location, including re-use of a vacant site and would make a positive contribution to the local economy during the construction phase and as part of support for local services and facilities, which are matters that weigh in favour of the development. However, the scale of the development limits the weight I can give to such matters and they do not outweigh the harm identified relating to the three main issues. Consequently, given the associated conflict with the development plan and the Framework, the proposal does not constitute sustainable development.
29. I am satisfied that there would be no harm in terms of ecology, that existing trees could be retained and that issues of contamination and noise and disturbance during construction could be suitably overcome by condition if the appeal were to be allowed. However, the absence of concern in those respects is a neutral factor which does not weigh in favour of the development.

Conclusion

30. For the above reasons and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Gareth Wildgoose

INSPECTOR

¹ Mayowa-Emmanuel v Royal Borough of Greenwich [2015] EWHC 4076