
Appeal Decision

Site visit made on 28 February 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 16th March 2017

Appeal Ref: APP/Z4718/W/16/3164940

42A Station Road, Fenay Bridge, Huddersfield, HD8 0AD

- 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 Gary Oldroyd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2016/60/91893/W, dated 7 June 2016, was refused by notice dated 8 November 2016.
 - The development proposed is a detached house.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application was submitted in outline with matters other than access and layout reserved for future consideration and I have dealt with the appeal on this basis. Nevertheless, indicative section plans have been provided showing two alternative schemes, one for a two storey house, and the other for a dormer bungalow, to which I have had regard.

Main Issues

3. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the surrounding area; and
 - The effect of the proposal on the living conditions of the occupiers of 42 Station Road, with particular reference to outlook; and
 - Whether the proposal represents an acceptable form of development having regard to its location within the Coal Authority's Development High Risk Area.

Reasons

Character and appearance

4. The appeal site is an area of hardstanding used for car parking adjacent to No 42A which is a split level detached house accessed via a driveway from Station Road. The hardstanding is elevated in relation to the terraced garden area to the rear and side of No 42A. The properties beyond the appeal site to the north and west are at a significantly lower level than it.
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5. In the immediate vicinity of the appeal site properties are set back from Station Road and Fenay Bankside at various distances and are spaced out at differing intervals. There is no particularly uniform pattern of development or layout to the buildings which are arranged on a more ad hoc basis largely in response to the topography. Notably Nos 42A, 44 and 46 are set well back from Station Road. There is also a mix of house types, sizes, designs and use of materials in the area.
6. The Council refers to generous separation distances between the properties on Station Road and those on Fenay Drive. It estimates that Nos 38, 40 and 42 Station Road are at least 15 metres from the adjoining rear boundaries of the properties in Fenay Drive with good size gardens separating them. In contrast, the Council estimates that the rear wall of the proposed dwelling would be 7 metres from the boundary with 21 Fenay Drive (a semi-detached bungalow to the west) and 20 metres from its rear wall.
7. I accept that the proposed house would be closer to the properties in Fenay Drive than Nos 38 to 42 and would not have such a deep rear garden. On the other hand, it would be no further rearwards into the site than No 42A which has a short rear garden and backs on Fenay Drive. Whilst I note that it is adjacent to a garage in Fenay Drive, No 42A nevertheless has a close relationship with the properties in the road below. The proposed house would be no closer to them than this existing property.
8. Although the appeal site provides a degree of openness and separation between the existing properties, such large gaps are not generally characteristic of the area, where the buildings are for the most part located closer together. In any event, No 42A is set back in its plot which widens to the rear and has only a narrow site frontage comprising its driveway. This being so, the open gap currently afforded by the appeal site is not immediately appreciated in the street scene. Additionally, the proposed house would be set off the boundary with No 42 by 1.5 metres and separated from No 42A such that some space would be maintained around both buildings.
9. In this context, even though the proposal would diminish the openness of the site, I am not persuaded that it would appear as a particularly constrained form of development that would be unduly at odds with the pattern of development nearby or unsympathetic to the character of the surrounding area.
10. I therefore conclude on this issue that the proposal would cause no harm to the character and appearance of the surrounding area. Thus, I see no conflict with Policy D2 of the Kirklees Unitary Development Plan (UDP) which is permissive of proposals provided that they do not prejudice the avoidance of over-development (ii), visual amenity (vi) and the character of the surroundings (vii). The proposal would align with UDP Policy BE1 which requires development to be of good quality design such that it contributes to a built environment which creates or retains a sense of local identity (i), and is visually attractive (ii). It would not undermine UDP Policy BE2 which indicates that new development should be designed so that it is in keeping with any surrounding development in respect of design, materials, scale, density, layout, building heights or mass (i). Nor would it be at odds with the core planning principle of the National Planning Policy Framework (the Framework) to seek to secure high quality design.

Living conditions No 42

11. The proposed dwelling would be set at the level of the existing garden area, about 1.4 metres below that of the parking area. The Council is satisfied that with appropriate screening and positioning of windows a single storey dwelling on the site would meet its guidance in terms of separation distances and would not have a harmful effect on the living conditions of nearby occupiers in either Fenay Drive or Station Road in relation to privacy.
12. Despite the concerns of local residents the Council is also content that the proposal would cause no harm to the living conditions of the occupiers of Nos 44 and 46 Station Road which are immediately adjacent to the appeal site's driveway and proposed visitor parking. I am mindful that the driveway is already used by the occupiers of No 42A. Whilst there would be more activity in terms of both pedestrian and vehicle movements to and from the site, given the modest size of the scheme any such increase would not be so great as to have an unduly adverse effect on the occupiers of Nos 44 and 46 in terms of noise and disturbance.
13. However, although it would meet UDP Policy BE12 in providing a separation distance of 1.5 metres from the boundary with No 42 (if a blank gable wall is assumed), I share the Council's concern about the effect of the proposal on the occupiers of No 42. Despite being set off the boundary, and even assuming a single storey structure, given the significant difference in levels between the appeal site and No 42, the proposal's flank wall would be in an elevated position close to the boundary. As such it would appear as an unduly imposing and overbearing feature from No 42's rear garden.
14. I therefore conclude on this issue that the proposal would be harmful to the living conditions of the occupiers of 42 Station Road, with particular reference to outlook. This would be contrary to UDP Policy D2 which is permissive of proposals provided that they do not prejudice (amongst other things) residential amenity (v). It would also be at odds with the core planning principle of the Framework to ensure a good standard of amenity for all existing and future occupants of land and buildings.

The Coal Authority's Development High Risk Area

15. The site falls within the defined Development High Risk Area. Within the site and surrounding area there are coal mining features and hazards which need to be considered, specifically the likely historic unrecorded underground coal mine workings at shallow depth. The information submitted with the planning application provides basic coal mining information in relation to the site, but does not include an assessment of the risks to any proposed new development. This being so, the Coal Authority considers that it does not adequately address the impact of coal mining legacy on the proposal and therefore objects to the scheme. It suggests that a Coal Mining Risk Assessment Report is submitted.
16. Paragraph 120 of the Framework advises that to prevent unacceptable risks from pollution and land instability, planning decisions should ensure that new development is appropriate for its location. Paragraph 121 further requires decision to ensure that the site is suitable for its new use taking account of ground conditions and land instability, including from former activities such as mining. National Planning Practice Guidance (the Guidance) advises that proposals in the defined Development High Risk Area must be accompanied by a Coal Mining Risk Assessment.

17. The Council indicates that the appellant is aware of the need to provide a risk assessment, but did not wish to go to that expense to support the planning application in the face of the Council's other reasons for refusal. However, despite the officer's report referring to the opportunity for a risk assessment to be provided to support any subsequent appeal, one has not been provided. The appellant's grounds of appeal are silent on this matter.
18. As described above, the appeal site is set well above the existing properties to the west and north. Additionally the proposed house would be dug into the site and considerable excavation works would be required in an area where local residents raise concerns of land stability and movement. Overall, in the absence a risk assessment, I cannot be satisfied that the proposed development is appropriate for its location, or suitable for its proposed use. Nor can I be content that past mining activity in the area poses no unacceptable risks to the future occupiers of the proposed house, or to the occupiers of neighbouring properties.
19. I therefore conclude on this issue that the proposal would not represent an acceptable form of development having regard to its location within the Coal Authority's Development High Risk Area. It would be contrary to UDP Policy G6 which advises that development proposals will be considered having regard to available information on the contamination or instability of the land concerned. It would also conflict with the advice in the Framework and the Guidance.

The planning balance

20. The Council acknowledges that it is unable to demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework advises that housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
21. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development and indicates that, where the development plan is out-of-date, this means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
22. In this case, the appeal site is within the the existing urban area, accessible by public transport and close to services and facilities. As a windfall site the proposal would add to the supply and choice of new housing in the area and the resultant dwelling would be occupied by the appellant's elderly parents in law, who wish to downsize and to live close to their family. These are benefits of the scheme which accord with the social role of sustainable development. However, given its limited scale for a single dwelling, the scheme's contribution to the supply of housing would not be great. Although not cited by the appellant there would also be some limited economic benefits in terms of construction jobs and spending along with the ongoing support to local shops and services that would arise from the future occupants of the proposed house.
23. Although I have found that there would be no harm to the character and appearance of the area, that factor counts neither for, nor against the proposal. Moreover, I have concluded that the proposal would be harmful to the living conditions of the occupiers of No 42 (with particular reference to outlook) and would not represent an acceptable form of development having regard to its

location within the Coal Authority's Development High Risk Area. As such, it would not be in accordance with the development plan as a whole, and in my view the adverse impacts of granting permission in this case, would significantly and demonstrably outweigh the benefits. Accordingly, I do not regard the proposal to constitute sustainable development.

Conclusion

24. For the reasons set out above, I conclude that the appeal should be dismissed.

Elaine Worthington

INSPECTOR