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## Appeal Decision

Site visit made on 31 January 2017

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

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

**Decision date: 30 March 2017**

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**Appeal Ref: APP/X4725/W/16/3153755**

**16 Mount Avenue, Wrenthorpe, Wakefield WF2 0QQ**

- 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 R Fisher against the decision of City of Wakefield Metropolitan District Council.
  - The application Ref 16/00084/FUL, dated 14 January 2016, was refused by notice dated 18 March 2016.
  - The development proposed is a variation of house type (Plot Nos 1 and 3) previous approval for residential development (3 No dwellings) application 13/01758/FUL.
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### Decision

1. The appeal is dismissed.

### Procedural Matter

2. In determining planning application reference 16/00084 the Council issued a split decision, granting planning permission for the variation of house type for Plot 3 and refusing planning permission for the change of house type on Plot 1. Section 79(1) (b) of the Act allows that, on appeal under Section 78, the Secretary of State may deal with the application as if it had been made to him in the first instance.

### Main Issues

3. The main issues are:
  - i. the effect of the proposal on the character and appearance of the area; and
  - ii. whether there is a risk to the proposed development from land stability associated with past coal mining activity.

### Reasons

#### *Character and appearance*

4. The appeal site is part of the garden associated with No 16 Mount Avenue, which is a detached bungalow which lies at the head of Mount Road, a residential street with a variety of properties including other bungalows, two storey detached and semi-detached dwellings. With the exception of the large detached house immediately to the rear of No 16, the immediate vicinity of the appeal site at the head of the cul de sac is characterised by predominantly modest sized pitch and hip roofed residential bungalows.
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5. There is an extensive planning history for the appeal site, planning permission having been granted most recently for residential development (3 No dwellings) (variation to previous approval) in August 2013<sup>1</sup>. This planning permission has been commenced by the erection of Plot 2 situated immediately to the rear of No 16.
6. The proposal with respect to Plot 3 is consistent with the previously approved scheme which could be implemented under a previously granted planning permission.
7. The current proposal with respect to Plot 1 seeks to replace the approved dormer bungalow with a more traditional two storey pitched roof house. Drawing 2015-12-06 shows that the ridge height of the house would be marginally higher than the originally approved dormer bungalow, but its slab level would be lower than that of No16. The previously approved proposal for the plot allowed accommodation on the first floor by providing gabled dormers which respected the character and appearance of adjacent residential properties in the immediate vicinity.
8. The amended design would only marginally increase the overall height of the property, but would increase the bulk and massing of the property at first floor level. Although there are some two storey properties along Mount Avenue, the land rises upwards towards the plateau at the head of the cul de sac where properties are either single storey or single storey with living accommodation above eaves height only. Consequently, Plot 1 would be out of character with its immediate surroundings and would result in a dwelling in a prominent location that would, as a consequence of its bulk, scale and massing, dominate its surroundings and be at odds with the prevalent style of property in this location.
9. Furthermore, due to its design and massing it would respond poorly to the topography of the street where generally at present the height, scale and massing of properties reduces as the height of the land increases towards No 16. Therefore Plot 1 would be at odds with its surroundings.
10. On this issue I therefore conclude that the proposal with respect to Plot 1 would be harmful to the character and appearance of the area and contrary to the requirements of Policy D9 of the Development Policies (April 2009) (the DP) which seeks to ensure that development makes a positive contribution to the environment and the amenity of its locality by virtue of high quality design, among other objectives. It is also contrary to the provisions of the National Planning Policy Framework which requires good design.

#### *Coal mining risk*

11. The appeal site falls within a defined 'Development High Risk Area'. According to Policy D22 of the DP development will only be permitted where there are adverse ground conditions if it has been adequately demonstrated that these conditions have been properly identified and safely treated. At the time of determining the planning application no Coal Mining Risk Assessment had been submitted and consequently the Coal Authority objected to the proposal.
12. In this case there is clearly a fall-back position where the previously approved residential development on the site could be implemented on the same

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<sup>1</sup> Council Reference 13/01758/FUL

footprint. Furthermore, I have no evidence that the matter of land stability or contamination has not been raised in previous planning applications relating to this site and, indeed, there are no related conditions on planning permissions for the site. However, given the amended design and the lack of information relating to foundation design and the risks to residential development associated with coal mining features and hazards the precautionary approach taken by the Council in this case is reasonable.

13. A Coal Mining Stability Risk Assessment has now been submitted as evidence by the appellant. The report states that any workings associated with the nearby Stanley Coal Seam beneath the site, including backfilled open operations, bell pits or pillar and stall workings, pose a risk to the site's ground stability. The report states that comments from the Coal Authority are clear that there are significant risks of unrecorded mine workings beneath the site. Development on such land should only be permitted where it has been demonstrated that these conditions have been properly demonstrated and safely treated. Therefore, although further rock drilling investigation is recommended to check for the presence of any workings and the report suggests that there are economical engineering solutions available there are no details of how this would be achieved. Consequently, it has not yet been clearly demonstrated that there is no risk to the safety of people and property associated with land stability.
14. Given the level of certainty required by Policy D22 I consider that it would be premature to mitigate the risks associated with land stability by attaching a condition that further investigations are carried out and any possible treatment of mine workings carried out before the commencement of development. This is because these conditions have not yet been adequately identified and treated. Therefore, on this issue I conclude that there is a risk to the proposed development from land stability associated with past coal mining activity and the proposal is contrary to the requirements of Policy D22 of the DP.

### **Other matters**

15. I am aware of the appellant's frustrations at the manner in which the planning application has been dealt with. However, this has no bearing on the determination of the current appeal which is being determined on its own merits.
16. The proposal may generate some limited economic activity and economic development through the provision of housing. I have no evidence that the Council does not have a suitable five year supply of land for housing. In any case, even if this appeal is dismissed there remains an extant planning permission for three dwelling and therefore there would be no net decrease in the number of houses that may be yielded from this particular site.

### **Conclusion**

17. Although there may be some limited benefits from the proposal, Plot 1 would be harmful to the character and appearance of the area in conflict with the environmental dimension of sustainability. Furthermore, I have also found conflict in terms of land stability, which also relates to the environmental dimension of sustainability. Therefore, it would not be sustainable development and it would not meet the requirements of the Framework when read as a whole.

18. I have found that the risk to the development is at risk from land stability relating to past coal mining activity and I have also found harm to the character and appearance of the area in relation to Plot 1. Therefore, having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*Alastair Phillips*

INSPECTOR