

Appeal Decision

Site visit made on 11 April 2017

by J C Clarke BSc(Hons) BTP MRTPI

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

Decision date: 23rd May 2017

Appeal Ref: APP/A4710/W/16/3167169

Land adjacent 100 Willowfield Road, Halifax HX2 7NF

- 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 B Mahmood against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 16/00517/FUL, dated 1 April 2016, was refused by notice dated 13 January 2017.
 - The development proposed is described as Detached Dwelling (amended plans to approval number 14/01167/FUL).
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Decision

1. The appeal is allowed and planning permission is granted for a Detached Dwelling (amended plans to approval number 14/01167/FUL) at Land adjacent 100 Willowfield Road, Halifax HX2 7NF in accordance with the terms of the application, Ref 16/00517/FUL, dated 1 April 2016, subject to the conditions listed in annex 1.

Application for costs

2. An application for costs was made by Mr B Mahmood against Calderdale Metropolitan Borough Council. This application is the subject of a separate Decision.

Background and main issue

3. The main issue is the effect of the proposed development on the privacy of occupiers of nearby dwellings, particularly those at numbers 14 to 18 (inclusive) Willow Close.

Reasons

4. The relevant development plan for the area, with which my decision must accord unless material considerations indicate otherwise, comprises the saved policies of the Replacement Calderdale Unitary Development Plan (RCUDP) 2006.
 5. The appeal site forms a narrow plot of land in an established residential area. Adjacent to the site on one side and on a higher ground level there are houses at 14 to 18 (inclusive) Willow Close, the rear elevations and gardens of which look out across the appeal site. On the other side of the site and at a lower
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- level there is a detached bungalow, garage and fairly extensive private garden at 100 Willowfield Road.
6. Planning permission 14/01167/FUL was granted in 2015 for the erection of a large 4 bedroomed detached dwelling within the site. This existing permission forms a substantial material consideration as it can, according to the evidence before me, be lawfully implemented irrespective of my decision concerning the appeal.
 7. The new dwelling now proposed would have the same footprint, height and shape as that subject to permission 14/01167/FUL. Its internal layout would also be the same as that within the approved scheme except that the area originally to be used as a double garage would now be used as a study and toilet. At the time of my site visit, development had already started.
 8. The study which is now proposed would contain a large window, to be in the same location as the previously proposed garage door approved under permission 14/01167/FUL. The study window would be about 17 metres¹ from the rear elevation of the nearest dwelling at 18 Willow Close i.e. slightly closer than the minimum of 18 metres between windows in 'main' and 'secondary' aspects referred to in Annex A to the RCUDP. However, paragraph 8.9 of the RCUDP makes it clear that Annex A only provides 'guidance'. Furthermore, the study would be at a much lower ground level than 18 Willow Close. As a result, the proposed study would not cause material harm to the privacy of occupiers of number 18 or its neighbouring dwellings.
 9. The current proposal would, when compared to the scheme subject to permission 14/01167/FUL, increase the size of the proposed roof lights and increase the number of these from 8 to 11. However, the height of the roof lights within the rooms which they would serve would, except when they are being opened and closed, discourage direct views from them towards neighbouring property. Whilst I note the fears which have been expressed that the loft space of the building could be converted to living accommodation, with potential effects on the privacy of neighbouring occupiers, this does not form part of the appeal proposal which I must assess on its own merits. I am also aware of no local restrictions on national legislation² under which the changes now proposed concerning the roof lights could, irrespective of my decision, be implemented without the need for a specific planning permission.
 10. The current proposal would also increase the width of proposed ground floor lounge and hall windows which would face towards and be only about 12 metres from the rear elevations of the houses at 16 and 17 Willow Close³. However, this change would be accompanied by reductions in the height and number of these windows. Given these points and the difference in ground levels referred to earlier the changes to these proposed windows would not have any substantial effect on the privacy of occupiers of nearby dwellings.
 11. Whilst the current proposal would, compared to the scheme subject to permission 14/01167/FUL, contain an additional window facing 100 Willowfield Road this would be to a toilet and would not adversely affect the privacy of occupiers of that dwelling.

¹ The distances referred to here are sourced from the Council's officer report on the application

² Classes A and B of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 – as amended

³ See footnote 1

12. The proposed dwelling would be of substantial size and set within a plot of restricted width. However, it would not be any bulkier than that which has already been approved. Its approval would not cause any substantial loss of sunlight or daylight, or other material harm to the living conditions of occupiers of nearby dwellings.
13. I acknowledge the concerns that the study, which would have a separate access door and toilet, could be used for commercial purposes. However, this does not form part of the proposal before me. Furthermore, any future material change in the use of the property in this regard would require a further planning application which would need to be assessed by the Council on its own merits.
14. I have also noted the concerns which have been raised concerning the planning history of the site and the Council's decision to grant permission 14/01167/FUL. However, as this permission was granted and nothing has been drawn to my attention which would prevent it from being lawfully implemented this point does not materially reduce the weight that I must attribute to it in my decision.
15. Having regard to all these points I conclude that allowing the appeal would not cause material harm to the living conditions of occupiers of nearby dwellings, or conflict with the provisions of Policy BE2 of the RCUDP or the National Planning Policy Framework (the 'Framework') related to this matter.

Other Considerations

16. I note the concerns which have been raised relating to the adequacy of the proposed vehicular parking space. However, this would be of sufficient size and layout to allow 2 cars to be independently parked and turned off the highway. The Council has identified no breach of its car parking standards and there is nothing before me to justify coming to a different view.
17. Whilst concerns have been raised about the effects of the proposal on the character and appearance of the area, the proposal would be little different in this regard to the scheme which is subject to permission 14/01167/FUL.
18. Although I have carefully considered all the other points which have been raised in objection to the proposal by interested parties, none of these weigh materially against allowing the appeal.

Conditions

19. The Council has submitted a list of suggested conditions for me to consider imposing if the appeal is allowed. My list of conditions in annex 1 to this decision is based on the Council's list albeit with some revisions mainly for clarity and to ensure that the conditions comply with the tests in paragraph 206 of the Framework. I have also taken into account the conditions imposed on permission 14/01167/FUL.
20. As development has already started, conditions requiring actions to be undertaken before this stage is reached would not be enforceable. As a result, some of my conditions require actions to be undertaken within 3 months of the date of the permission unless otherwise agreed. I have also omitted the Council's suggested condition 9, requiring high speed broad band provision as

this was not included in permission 14/01167/FUL and it is not clear whether and how circumstances have changed to justify its inclusion.

21. My condition 1 identifying the approved plan is required in the interests of certainty. My conditions 2 and 3 concerning external facing materials are required to protect the visual character of the area. My condition 4 is required to ensure that the site is served by adequate surface and foul drainage provision. My condition 5 requiring the provision of a vehicle charging point is required in the interests of sustainable transport provision. My condition 6, concerning the ground levels and details of drives and retaining walls is required to protect the visual character of the area and the privacy of nearby residents. My condition 7, covering car parking, is required in the interests of highway safety.
22. My conditions 8 and 9, concerning the level of the first floor in relation to window and roof light levels and the preservation of the walls on the western and southern boundaries of the site, are required to protect the privacy of occupiers of the nearby and proposed dwellings and, in the case of condition 9, to protect the character and appearance of the area.

Conclusion

23. I have found that the revised development now proposed would not cause material harm to the living conditions of occupiers of nearby dwellings. There are no other matters which weigh substantively against allowing the appeal and the proposal would accord with the development plan. Its approval would therefore be consistent with the presumption in favour of sustainable development set out in the Framework.
24. For the reasons given above I conclude that the appeal should be allowed.

Jonathan Clarke

INSPECTOR

ANNEX 1 – LIST OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the 'revised sketch scheme planning drawing' referenced R893/05.
- 2) Unless otherwise agreed in writing by the local planning authority, within 3 months of the date of this permission full details of the proposed external facing material to be used on the walls of the dwelling, which shall constitute natural stone, shall be submitted to the local planning authority for its approval. The walls shall be completed and thereafter retained in accordance with the approved details.
- 3) The development shall be roofed in natural blue slate or artificial blue slate in accordance with details to be submitted to and approved in writing by the local planning authority before the start of the roofing works.
- 4) Unless otherwise agreed in writing by the local planning authority, within 3 months of the date of this permission full details of the proposed means of foul and/or surface water disposal (taking into account flood risk on and off site and including details of any balancing works, off-site works, existing systems to be re-used, works on or near watercourses and diversions) shall be submitted for approval to the local planning authority. The development shall not be brought into use unless such details have been implemented in accordance with details which have been approved in writing by the local planning authority.
- 5) The dwelling shall not be occupied unless a facility to permit the recharge of an electrical battery-powered vehicle has been provided in accordance with details which have been submitted to and approved in writing beforehand by the local planning authority. The facility shall be so retained thereafter.
- 6) Unless otherwise agreed in writing by the local planning authority within 3 months of the date of this permission full details of the levels of any paths, drives, and parking areas and the height and finish of any retaining walls within the site shall be submitted for approval to the local planning authority. The development shall be completed and thereafter retained in accordance with the approved details.
- 7) The proposed dwelling shall not be occupied until the off street parking and turning area shown on the approved plan has been surfaced using permeable paved surfacing materials on which any surface water shall be directed to sustainable drainage outlets or porous surfaces within the curtilage of the development. This area shall thereafter be retained for this purpose for use by occupiers of and visitors to the development.
- 8) Notwithstanding the approved plan and unless otherwise agreed in writing by the local planning authority, within 3 months of the date of this permission a section through the first floor showing the levels of the windows and roof lights to the bedrooms shall be submitted for approval to the local planning authority. The development shall be completed in accordance with the approved details and retained as such thereafter.
- 9) The existing stone wall along the western and southern boundaries of the site shall not be altered or lowered except in accordance with details that

have previously been submitted to and approved in writing by the local planning authority. If any such works are undertaken the wall shall be made good using matching materials and construction before the dwelling is first occupied.