
Appeal Decision

Site visit made on 24 October 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 27 October 2017

Appeal Ref: APP/P4225/W/17/3181337

Unit 1-6, Land adjacent to 144 Hollin Lane, Middleton, Greater Manchester M24 5LD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Trevor Taylor against the decision of Rochdale Metropolitan Borough Council.
 - The application Ref 17/00162/VRCON, dated 13 February 2017, was refused by notice dated 10 April 2017.
 - The application sought planning permission for residential development comprising of one 4 bedroom detached dormer bungalow, one detached 2 bedroom bungalow and two pairs of 2 bedroom semi-detached bungalows - resubmission of 16/00058/FUL without complying with conditions attached to planning permission Ref 16/00774/FUL, dated 2 September 2016.
 - The conditions in dispute are Nos 12 and 13 which state that:
 - *Condition 12: Prior to the occupation of any dwelling hereby permitted, details of the construction and design of refuse recycling/bin store(s) shall be submitted to and approved in writing by the Local Planning Authority. The duly approved facility shall be provided and made available for use before the first occupation of any dwelling relevant to that facility and the approved facility retained thereafter.*
 - *Condition 13: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any equivalent Order following the revocation and re-enactment thereof, the dwellings hereby approved shall not be altered or extended, and no buildings, structure, gates, fences or walls shall be erected within their curtilage under Schedule 2, Part 1, Classes A, B, C, D, E and F or Schedule 2, Part 2, Class A of the above Order except with the prior written approval of the Local Planning Authority.*
 - The reasons given for the conditions are:
 - *Condition 12: To ensure the provision of satisfactory facilities for the storage of refuse and in the interests of visual amenity in accordance with Policy BE/2 of the Council's Unitary Development Plan.*
 - *Condition 13: To prevent overdevelopment of the site in accordance with Policy BE/2 of the adopted Rochdale Unitary Development Plan and the National Planning Policy Framework.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. After the Council approved planning permission for the development, but before they considered and refused the application that is subject of this appeal, the Rochdale Adopted Core Strategy (Core Strategy) largely

superseded policies in the Rochdale Unitary Development Plan (UDP). This included UDP Policy BE/2 that formed the reason for each disputed condition. While a number of UDP policies have been saved, the Council now seek to rely on Core Strategy Policies P3 and DM1. These policies carry full weight, as they form part of the current development plan.

3. I saw on my site visit that development had commenced on site. However, given the trigger points for the disputed conditions, this does not change my approach to this appeal.

Main Issues

4. I consider the main issues to be: (i) the effect that removing condition No 12 would have on the satisfactory provision of refuse storage facilities, and the character and appearance of the area; (ii) the effect that removing condition No 13 would have on the living conditions of occupiers of 160 Hollins Lane and 41 to 49 Kirkstall Road, with regards to privacy; and (iii) the effect that removing condition No 13 would have on the living conditions of future occupiers of the approved dwellings, with regards to amenity space provision.

Reasons

Condition 12

5. The Council's Guidelines and Standards for Residential Development Supplementary Planning Document (SPD) explains that *residential properties should include space for bins to be stored out of public view to avoid them dominating residential streets. Bins should be stored to the rear of a property away from the street scene and/or in a designated area that is well-designed, appropriately sited and screened.* Appendix 1 of the SPD sets out that *each individual dwelling with a garden requires the following: a paper, card and cartons bin; a glass, cans and bottles bin; a garden and food waste bin and also a residual domestic waste bin. The storage area required to store all four of these bins is: minimum height 1700mm, minimum floor space 2320mm x 3220mm.*
6. Locally, I saw neighbouring dwellings each had a number of refuse and recycling bins, with some dwellings having four different types. Many of these were stored to the side or front of neighbouring dwellings. As a result, they can, cumulatively detract from the character and appearance of the area.
7. The dwellings would, once built out, form a tight-knit development that does not offer large areas capable of accommodating the refuse and recycling bins set out in Appendix 1 of the SPD. While each property would have a driveway, this has been designed for car parking. The approved plans show that each dwelling would have their own garden, which could, as set out in the SPD, provide an area to store the refuse and recycling bins. However, the approved plans do not show the scale or location of such an area in accordance with the SPD. Thus, there is currently nothing to bind or encourage future occupiers to store them in a particular location. This could lead to unsatisfactory storage of refuse and recycling bins in highly visible parts of the site or the provision of sub-standard facilities. Hence, the condition satisfies the six tests set out paragraph 206 of the National Planning Policy Framework (the Framework).
8. The appellant informs me that the Council chose not to revoke permitted development rights at the Peach Bank scheme (Council Ref: 16/00114/FUL). Any development within the rear yard of this single two storey dwelling

property would be restricted by the thresholds in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), and any roof extension would not change the relationship between properties on Peach Bank and Tetlow Street. While refuse and recycling storage would occupy most of the rear yard, they would be obscured from view as sought by the SPD.

9. While the appellant feels the Council's decision to attach this condition has resulted in discrimination, there is no evidence to support this. The aim of condition No 12 is to allow the approved development to start whilst the finer points of the scheme are agreed between the parties at a later date. The appellant still has the option to agree a suitable scheme with the Council in accordance condition No 12 which is precise and enforceable. This would not affect my view that the condition satisfies the six tests in the Framework.
10. For these reasons, I conclude that removing condition No 12 would lead to a significant harm on the satisfactory provision of refuse storage facilities, and the character and appearance of the area. This would conflict with Core Strategy Policies P3 and DM1 and the SPD; which together, among other things, expect development to be of a high quality design that includes space for bins to be stored out of public view to avoid them dominating residential streets, and development that helps adapt to the impacts of climate change.

Condition 13

Neighbouring occupiers

11. I recognise that the parties tried to find a solution so that a development on the appeal site could be approved. While, the appellant does not agree with the case officer's approach, I note the Council felt that their decision was finely balanced. The approved scheme is laid out in what is a constrained site, due to the position and proximity of neighbouring residential occupiers.
12. Conditions that restrict the use of permitted development rights rarely pass the test of necessity and should only be used in exceptional circumstances. Such conditions should be precisely drafted and the blanket removal of freedoms is unlikely to meet the tests of reasonableness and necessity. By imposing condition No 13, future occupiers would not be able to make use of Classes A to F of the GPDO. Hence, future occupiers will not, without obtaining planning permission be able to extend or alter their property unless it is a chimney, flue or microwave antenna.
13. The SPD explains that extensions and alterations should be carefully designed to protect the amenity of the occupants of adjoining properties. Due to the position of neighbouring dwellings, any extension or outbuilding erected under Classes A or E of the GPDO to plots two and three would shorten the interface distance to No 160. This would be considerably below the standards in the SPD. In the case of plot one, the use of Classes A or E of the GPDO would elongate the built form. Similarly the interface distance to Nos 41 to 49 from plots four, five and six would be below the standards in the SPD in respect of Class A of the GPDO only.
14. The use of GPDO Classes B and C could result in a first floor being added to plots two to six, and potentially add rear facing first floor windows to plot one. Although no specific schemes are before me, the addition of windows to the roof planes of these plots is likely, as a result of the sub-standard interface distances, to cause an undue loss of privacy for neighbouring occupiers of Nos

160 and 41 to 49.

15. On this issue, I conclude that the removal of condition No 13 would lead to significant harm to the living conditions of occupiers of Nos 160 and 41 to 49, with regards to privacy. This would conflict with Core Strategy Policies P3 and DM1 and the SPD; which together, among other things, expect new development to avoid causing a significant loss of privacy for occupiers of new neighbouring dwellings and existing dwellings.

Future occupiers

16. Due to the approved layout, plots one and four have slightly more amenity space than the semi-detached pairings of 2, 3, 5 and 6. However, each of the six plots would still only have a limited amount of amenity space. Each plot also has off-street car parking provision which further limits any space for additions to the dwellings once they are built and occupied.
17. If Classes A, D, E or F of the GPDO were re-instated, extensions, outbuildings or additional hard surfaces to each dwelling would individually and cumulatively erode the small amount of amenity space serving each dwelling. The SPD states that *it is important that sufficient garden space is retained for purposes of sitting out, drying clothes and for children to play. An amount of garden area should be retained to meet the reasonable needs of existing and future occupiers. An extension that does not leave sufficient private garden space is unlikely to be acceptable.* Thus, the removal of condition No 13, in terms of classes A, D, E and F of the GPDO would lead to substantial harm to the living conditions of future occupiers and negate the benefit of landscaping in each amenity space. Condition No 13, as imposed, is precisely drafted and I consider the appeal site qualifies as an exceptional circumstance. Thus, the condition satisfies the six tests set out in Framework paragraph 206. While the appellant refers to the scheme at Old Davids Inn¹, I do not have the full details of this application to assess how it compares to the appeal site.
18. Despite the time, effort and financial outlay of the appellant, for the reasons set out above, on this issue, I conclude that the removal of condition No 13 would lead to significant harm to the living conditions of future occupiers of the approved dwellings, with regards to amenity space provision. This would conflict with Core Strategy Policies P3 and DM1 and the SPD; which jointly, among other things, expect development to provide sufficient garden space to meet the living conditions and needs of future occupiers.

Other matter

19. The Council has provided a list of suggested planning conditions. This is normal procedure, in the event that I was minded to allow the appeal. While they may differ to those attached to the approved scheme, given my findings, they have not been decisive in the outcome of the appeal.

Conclusion

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

Andrew McGlone

INSPECTOR

¹ Council Application Ref: 14/00462/FUL