



Appeal Decisions

Site visit made on 18 December 2019

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal A - APP/A4710/C/19/3231666

Land at rear of Hillside, Copley Lane, Halifax

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr John Butterworth against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 12 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of one pair of semi-detached dwellings on the land.
 - The requirements of the notice are: (i) Permanently remove the pair of semi-detached dwellings from the land. (ii) Remove from the land all building material and rubble arising from compliance with (i) above, and reinstate the land to its original condition before the breach took place. OR (iii) construct the pair of semi-detached dwelling in accordance with planning permission 18/00986/FUL.
 - The period for compliance with the requirements is: For (i) and (ii) 6 months from the date the notice takes effect. OR For (iii) 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B - Appeal Ref: APP/A4710/C/19/3231667

Land at rear of Hillside, Copley Lane, Halifax

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mrs Amanda Butterworth against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 12 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of one pair of semi-detached dwellings on the land.
 - The requirements of the notice are: (i) Permanently remove the pair of semi-detached dwellings from the land. (ii) Remove from the land all building material and rubble arising from compliance with (i) above, and reinstate the land to its original condition before the breach took place. OR (iii) construct the pair of semi-detached dwelling in accordance with planning permission 18/00986/FUL.
 - The period for compliance with the requirements is: For (i) and (ii) 6 months from the date the notice takes effect. OR For (iii) 9 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C - Appeal Ref: APP/A4710/W/19/3231671

Land at rear of Hillside, Copley Lane, Halifax

- 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 John Butterworth against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 19/00101/FUL, dated 25 January 2019, was refused by notice dated 24 April 2019.
 - The development proposed is one pair of semi-detached dwellings (revised scheme to planning approval number 18/00986/FUL).
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Appeal D - Appeal Ref: APP/A4710/W/19/3235743

Land at rear of Hillside, Copley Lane, Halifax

- 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 Messrs J and C Butterworth and Quinn against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 19/00644/FUL, dated 24 May 2019, was refused by notice dated 2 August 2019.
 - The development proposed is residential development of three dwellings (part retrospective).
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Decisions

1. Appeals A, B, C and D are dismissed, and the enforcement notice is upheld.

Appeal A, the deemed planning application, and Appeal C – section 78

Preliminary Matters

2. The appeal site comprises a plot of land to the south of the property at Hillside, which is accessed from Copley Lane. In 2018, planning permission (Ref 18/00986/FUL) was sought and secured for the construction of two semi-detached dwellings on the appeal site. However, the scheme as built varies from the approved plans insofar as the dwellings are located closer to Copley Lane. The proposed double garages on the ground floors have also been omitted.
3. A planning application (Ref 19/00101/FUL) was submitted to regularise and retain the semi-detached dwellings as constructed. This application was refused, and forms the subject of Appeal C. For clarity, and in the interests of conciseness, I have assessed Appeal C and ground (a) of Appeal A together, as they concern the same scheme, and give rise to the same considerations. As the access and parking areas were not complete at the time of my site visit, I have relied on the submitted proposed plans.

Main issue

4. The main issue is the effect of the development on highway and public safety in the area.

Reasons

5. The permitted 2018 scheme provided two car parking spaces per house within each of the proposed garages, and an additional space per house on the forecourt. With the garages omitted as part of the appeal scheme, there would

- only be room for two parking spaces per dwelling. These would be located in a single block to one side of the access point, and arranged in tandem in two adjacent rows.
6. Copley Lane is described by the Council as steep, heavily trafficked, and with poor pedestrian facilities. It has a speed limit of 20mph and is also on a bus route, with a bus shelter located close to the proposed site access. The Council's Highways Section objected to the proposal on the grounds that there would be insufficient manoeuvring area for a vehicle to turn around within the new driveway. They were concerned that the layout would thus be likely to result in drivers reversing onto Copley Lane. Even if drivers were to reverse into the site, they would be likely to use of the full width of the road for this manoeuvre, which they considered unacceptable.
 7. The appellant contends that vehicles would be able to enter and exit the site in forward gear as a result of the way in which the parking spaces would be located. He states that vehicles would be able to turn into the spaces in forward gear after entering the site and could reverse into the area in front of House 02 in order to exit the site in forward gear. However, I have not been provided with any technical evidence, for example, a swept path analysis, to demonstrate conclusively that this would be the case.
 8. A number of further concerns arise. Firstly, the proposed tandem layout would pose difficulties for cars trying to manoeuvre within the limited space on the forecourt. For example, if all four spaces were occupied, the two vehicles to the west would be blocked in by vehicles in the east spaces. A car parked in an east space would have to move if somebody wished to move a vehicle from a west space. The east space car would likely have to exit the site as there would be no room in front of House 02 for it to wait whilst the blocked-in vehicle also manoeuvred off the site. In addition to the hazard that this would cause, it seems to me that this arrangement would be highly impractical on a day-to-day basis.
 9. Delivery and service vehicles, which are usually vans or larger vehicles, would not be able to turn on the drive and leave in a forward gear if all the parking spaces were occupied. Furthermore, there would be no provision for visitor car parking spaces within the site, which would exacerbate these problems. Another issue could potentially arise in terms of refuse bins getting in the way of those entering and leaving the site, as it is unclear where these would be left on collection days.
 10. Taking these considerations into account, it seems to me likely that drivers would be obliged to reverse out of the appeal site on a fairly regular basis. On my site visit, I saw that there was a steady flow of traffic on the road, including buses. Due no doubt to the narrow width of the lane, I saw that there is no footpath on the opposite side of the road to the appeal site, and so pedestrians would be obliged to walk directly past the new entrance way. These factors would all add to the possibility of conflict with pedestrians and other road users in the event of vehicles reversing from the appeal site onto Copley Lane.
 11. In the absence of compelling evidence to the contrary, I conclude that the proposed access and parking arrangements would pose an undue hazard to highway and public safety. The development would thus conflict with Policy BE5 of the Replacement Calderdale Unitary Development Plan (DP), which

requires that the design and layout of highways and accesses should, amongst other things, ensure the safe and free flow of traffic (including provision for cyclists) in the interest of highway safety. It would also conflict with DP Policy 18, which relates to maximum parking allowances, and requires that the accessibility of the site should be taken into account, and DP Policy H2, insofar as it seeks to avoid unacceptable traffic problems.

12. It would further fail to accord with paragraph 109 of the National Planning Policy Framework (NPPF), which directs that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety. I acknowledge that the residual cumulative impact of the development on the road network would not be severe, but this has not led me to a different conclusion on the main issue.
13. My attention has been drawn to other dwellings in the area, including Treetops, Woodlands and Acorns, which do not have turning facilities, meaning that drivers need to reverse out onto Copley Lane. Furthermore, Woodlands and Acorns have garages that open directly onto the road. Whilst I take these existing conditions into account, this does not negate the need to assess new proposals against the current development plan policies, or justify a development that would pose a highway hazard. I accept that the proposal would contribute, however marginally, to the housing supply in an otherwise sustainable location, but this benefit would not outweigh the harm I have identified.
14. I have been referred to an appeal decision (Ref: APP/A4710/W/18/3214566) at Sowerby Bridge, where planning permission was granted for a single dwelling. However, as the full details are not before me, I cannot be certain that the circumstances of that case are directly comparable to this appeal. In any event, I have reached my own conclusions on the proposal before me on the basis of the available evidence.

Conclusion

15. For the reasons above, I conclude that the proposed development would have an unacceptable impact on highway and public safety, and so Appeal A on ground (a) and Appeal C are dismissed, and the deemed planning application is refused.

Appeal A and B only – ground (f)

16. The appeals on ground (f) are that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control.
17. As the appellant states, Councils will often seek to deal with breaches of planning control by agreeing an alternative proposal that would address the prevailing concerns. In this case, an alternative scheme was put forward which is the subject of Appeal D below.
18. The scheme that is the subject of Appeals A and B is to be considered on its own merits. I have found that the unauthorised development, once complete, would be unacceptably hazardous to highway and public safety. The purpose of the notice is to remedy the breach. Two options are given in the notice, which are to build in accordance with the permitted 2018 scheme, or to remove the unauthorised structures from the land. I am satisfied that these

requirements would remedy the breach, and that no lesser steps would be sufficient to achieve the purpose of the notice. Any alternative schemes are to be assessed independently.

19. The appeals on ground (f) therefore fail.

Appeal A and B only – ground (g)

20. The appeals on ground (g) are that the time given to comply with the notice is too short.

21. Following the commencement of work on site, the appellants and the Council sought to agree a scheme that would address the Council's concerns. These discussions resulted in the submission of a new planning application which was refused, and is now the subject of Appeal D. As this scheme is before me for consideration, no extra time is warranted in this regard.

22. For requirement (iii), which is the option of reverting to the permitted 2018 scheme, a period of nine months is given. I note that the appellants raise no objection to the time period in relation to requirement (iii). However, a shorter period of six months is given in the notice for the structures to be demolished, the associated material removed from the land, and the land reinstated to its original condition.

23. The appellants argue that six months is an unrealistically short period for requirements (i) and (ii). Although they cite the practicalities of organising and carrying out the demolition, they have provided little detailed information or evidence as to why more than six months should be needed for this process.

24. They also refer to the financial issues associated with the requirements, in particular, the costs of a demolition contractor and how these costs would be funded. However, the appellants have effectively incurred these costs themselves by carrying out the development without planning permission, and so this factor in itself does not justify an extension of the stated time period.

25. In the absence of any compelling justification to extend the six-month time period, I consider it to be a reasonable length of time for requirements (i) and (ii) to be carried out.

26. The appeals on ground (g) thus fail.

Appeal D – section 78

Background

27. Following the refusal of the revised two-dwelling scheme discussed above, a further proposal for three dwellings was submitted. This proposal comprises two semi-detached dwellings and a third detached dwelling located on adjacent land at Daleside Cottage.

28. I note that planning permission has separately been granted for a detached dwelling on the Daleside site (Ref: 18.00232/FUL). Although works have commenced, for clarity, I have based my consideration on the submitted proposed plans.

Main issue

29. The main issue is the effect of the proposed development on highway and public safety in the area.

Reasons

30. Essentially, the Appeal D scheme seeks to overcome the Council's concerns by providing a single access to both the Hillside and Daleside sites, giving more space for parking and manoeuvring.
31. The Council's Highways Section were consulted on the proposed plans, which included vehicle tracking analysis. They voiced concern that the analysis did not appear to have been generated using software that accurately replicates vehicle swept paths, and that the indicated vehicles were 4m long, whereas many family cars are now around 4.8m long. Revised analysis was submitted addressing these specific issues, but the Highways Section maintained their objection in respect of Houses 01 and 02.
32. Two car parking spaces are shown adjacent to the corner of House 01. The analysis for House 01 Parking Space 1 appears to show a car reversing out of the space to the area in front of House 01, and leaving the site travelling west. However, if a driver wished to leave the site and travel east, the turn onto Copley Lane would be very tight, and it is likely that many drivers would reverse into the road instead of carrying out this manoeuvre. The same situation might well arise for Parking Space 2.
33. Additionally, these spaces would be tightly enclosed by walls on three sides. Therefore, the manoeuvres shown would be likely to be at the limit of vehicle and driver performance, particularly for less confident drivers, given the confined nature of the space.
34. The proposals for House 02 show a tandem parking arrangement. With this particular layout, a vehicle occupying the west space would have to reverse as far as the turning area in order to give a blocked-in car enough space to manoeuvre back and leave in a forward gear. I agree with the Council's position that successful manoeuvres would be reliant on an area being available for shared turning being kept clear, which would be difficult to control by condition.
35. With visitor cars and service vehicles also being present at various times, the site could become overly congested, and it seems to me likely that drivers would be obliged to reverse out of the appeal site, causing an undue hazard to highway and public safety. The proposed development would thus conflict with DP Policies BE5, 18 and H2, and the aims of the NPPF.
36. Whilst the new dwellings would be in a sustainable location, and would make a small contribution to the housing land supply in the area, these matters would not outweigh the harm I have identified.

Conclusion

37. For the reasons above, I conclude that the proposed development would have an unacceptable impact on highway and public safety, and so Appeal D is dismissed.

Overall conclusion

38. For the reasons above, Appeals A, B, C and D are dismissed, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR