



Appeal Decision

Site visit made on 12 December 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal Ref: APP/W4705/W/19/3237264

54 Whitehall Avenue, Wyke, Bradford, BD12 8RS

- 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 Mark Green against the decision of City of Bradford Metropolitan District Council.
 - The application Ref: 18/05222/FUL, dated 11 December 2018, was refused by notice dated 17 April 2019.
 - The development proposed is the change of use of land at rear of the property to a garden and installation of a single storey structure.
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Decision

1. The appeal is dismissed insofar as it relates to the installation of a single storey structure. The appeal is allowed insofar as it relates to the change of use of land at rear of the property to a garden and planning permission is granted for the change of use of land at rear of the property to a garden at 54 Whitehall Avenue, Wyke, Bradford, BD12 8RS in accordance with the terms of the application, Ref: 18/05222/FUL, dated 11 December 2018 and the details shown on drawing numbers WHR1000 and WHR1001 Revision A, so far as they are relevant to that part of the development hereby permitted.

Procedural matter

2. The description used by the Council on the decision notice accurately and more succinctly sets out the development proposed than the one used on the planning application. I note that the appellant has also adopted this description on the appeal form. I have, therefore, also used this for the purposes of the appeal.
3. The development has already been carried out and I was able to see it when I visited the site. Section 73A of the Town and Country Planning Act 1990 (the Act) makes allowance for the submission of a planning application for development which has been carried out before the date of the application. Section 55 of the Act describes development as the carrying out of building operations or the making of material changes of use, rather than the retention of works or the continuation of a use and I have, therefore, omitted the word 'retrospective' from the description of the development. I have considered the appeal on the basis that it is for the change of use of land at rear of the property to a garden and the construction of the single storey building illustrated on the submitted drawings.

Main Issues

4. The main issues in this appeal are:

- The effect of the proposed development on the character and appearance of the area; and
- The effect of the proposed development on the living conditions of the occupiers of the nearby residential properties at 14, 16 and 18 Shirley Avenue.

Reasons

5. The appeal proposal has two distinct elements for which planning permission was sought by way of the application that forms the subject of this appeal. The first is a change of use of an area of land to the rear of the house at 54 Whitehall Avenue to use as a private garden. The second is the construction of an outbuilding within part of this same area.

Character and appearance

6. The appeal site comprises 393m² of land that forms part of a larger area to the rear of properties on Whitehall Road, Whitehall Avenue and Shirley Avenue. It is bounded by two storey, semi-detached, houses and their rear garden areas on three sides and on the fourth is an area of open land in separate ownership. The topography of the area slopes relatively steeply with the houses on Whitehall Road set at a lower level than those on Shirley Avenue. The appeal site follows this slope and is generally at a lower level than the surrounding gardens. The area enclosed by the surrounding houses has an open and spacious character, being bounded by gardens on all sides.
7. The Council has not raised any objections to the change of use of the area to a private garden and it does not form part of either of the reasons for refusal set out in the decision notice. I have not been made aware of any planning policies that the proposed change of use would conflict with. Whilst I have no information regarding the previous use of the land, it is bounded by other garden areas and is not readily visible from the public domain. The appeal proposal would retain this as predominantly open land and, from what I saw on my site visit, use as a garden would have no effect on the character and appearance of the area.
8. In respect of the proposed building, I saw when I visited the site that, due to the change in ground levels, the front elevation of the building sits on top of a concrete block retaining wall that is not illustrated on the submitted drawings. I observed that this retaining wall significantly increases the perceived height of the building when taken in conjunction with the overall length of the elevation. Although I saw that the building is not readily visible from the public roads, it is clearly visible from the rear of houses surrounding the site. From the rear windows of the houses on Whitehall Road it would be particularly prominent as a result of being located at a higher level and the large amount of blockwork in the retaining wall and front elevation.
9. The proposed outbuilding would be visible from the rear of houses on Whitehall Avenue and Shirley Avenue. However, as these are generally set at a higher level than the proposal, the visual presence of the building is reduced, though still noticeable due to its overall length.

10. My attention has been drawn to the presence of other outbuildings within gardens in the vicinity, and I was able to see these during my site visit. Whilst I accept that some of these are quite large and use similar materials to the appeal proposal, none are configured in the same manner or utilise a large retaining structure. Consequently, I do not consider that they are comparable to, or warrant allowing, the appeal proposal which is inconsistent with these other buildings in terms of its design, built form, and appearance.
11. I saw that the building appears as a large and incongruous feature within the space enclosed by the surrounding houses and that the front elevation and retaining wall are a particularly expansive and stark feature. This results in a structure which is visually intrusive and erodes the predominantly open character of the space and is, consequently, harmful to its character and appearance. Although it would be possible to render or paint the exterior of the building, this would not overcome the harm that results from its physical size and positioning.
12. I conclude that the proposed outbuilding would cause harm to the character and appearance of the area. It would conflict with the relevant requirements of Policies DS1, DS3 and SC9 of the Bradford Core Strategy Development Plan Document 2017 (the Core Strategy) which when read together expect, among other matters, that new development is of a high quality of design that has regard to its context. This notwithstanding, I find that the proposed change of use to a private garden would not cause harm to the character and appearance of the area. This aspect of the proposal would comply with the relevant requirements of Core Strategy Policies DS1, DS3 and SC9.

Living Conditions of the neighbouring occupiers

13. The outbuilding is located close to the common boundary of the appeal site with the properties at numbers 14, 16 and 18 Shirley Avenue. During my site visit I was able to view the building from the gardens of numbers 14 and 16. Due to the change in ground level, which results in the houses on Shirley Avenue being set above the level of the appeal site, and the distance of the outbuilding from the houses, I saw that the building does not have an adverse effect in terms of overshadowing of windows in neighbouring houses. For the same reasons, it would not have an overbearing appearance when viewed from within rooms at the rear of these neighbouring properties.
14. The principal concern of the Council and neighbours who have made representations is the effect of the proposal, and in particular the outbuilding, on the garden areas of the neighbouring properties. There is nothing in Core Strategy Policies DS1, DS3 or SC9, which are cited in the reason for refusal, that refers specifically to protecting the living conditions of neighbours or preventing adverse effects on garden areas. However, Paragraph 127 of the National Planning Policy Framework (the Framework) seeks to ensure that new development provides a high standard of amenity for existing and future users.
15. The outbuilding is located to the south of the neighbouring gardens and, as a result of its height, it will cast a shadow over the end part of these gardens at certain times. Whilst this may limit the use of parts of the garden areas for certain activities it would not, in my view, be so restrictive as to fundamentally compromise the outside amenity areas of the adjoining properties. The outbuilding would not harm living conditions within the dwellings themselves and, overall, the proposal would not diminish the enjoyment of the

neighbouring houses and their gardens to an extent where planning permission should be refused for this reason.

16. Regarding the use of the land as a garden area, it is not argued by the Council that this would be harmful to the adjoining occupiers. From my observations when I visited the site, normal domestic use of the appeal site as a garden area would not cause any harm to the neighbouring occupiers.
17. I conclude that the proposed development would not cause harm to the living conditions of the occupiers of the nearby residential properties at 14, 16 and 18 Shirley Avenue. It would not conflict with the requirements of Core Strategy Policies DS1, DS3, and SC9, or the Framework.

Conditions

18. The Council have only suggested one condition, which relates to the proposed outbuilding. They have not suggested that any conditions are necessary in respect of the garden use. From what I have read, and from what I saw when I visited the site, I would agree that no conditions are required regarding the use of the land as a private garden area.

Conclusion

19. The two elements of the proposal are clearly separate and functionally severable. Consequently, it is open to me to allow the appeal in respect of one element of it and dismiss the appeal in respect of the other element.
20. For the reasons set out above, I therefore conclude that the appeal should be dismissed insofar as it relates to the construction of the outbuilding, and that the appeal should be allowed insofar as it relates to the change of use of the land to a private garden.

John Dowsett

INSPECTOR