



Appeal Decision

Site visit made on 8 June 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd June 2020

Appeal Ref: APP/Z4718/W/20/3244430

Land Adjacent 88 Oakway, Birkenshaw BD11 2PQ

- 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 Miss Lauren Hellewell against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2019/62/93050/E, dated 19 September 2019, was refused by notice dated 25 November 2019.
 - The development proposed is the erection of 1 dwelling on the land adjacent to the host building, with land to be partitioned off from host building.
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Decision

1. The appeal is allowed. Planning permission is granted for the erection of 1 dwelling on the land adjacent to the host building, with land to be partitioned off from host building at Land Adjacent 88 Oakway, Birkenshaw BD11 2PQ in accordance with the terms of the application Ref 2019/62/93050/E dated 19 September 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, PL-1 Rev C, PL-2 Rev D, PL-3 Rev E, PL-4 Rev C & PL-7 Rev C.
 - 3) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the

approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.

- 4) The building shall not be occupied until the vehicle parking area has been drained and surfaced in accordance with details that shall first have been submitted to and approved in writing by the local planning authority, and that area shall thereafter be kept available at all times for the parking of vehicles.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no walls, fences or other means of enclosure other than those shown on the approved plan PL-1 Rev C shall be erected on the site unless details of their size, materials and location shall have previously been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No structure or erection exceeding 1 metre in height shall be placed within the site within the visibility splay shown on approved plan PL-3 Rev E.
- 7) No shrubs, trees or other vegetation within the site shall be allowed to grow above 1 metre within the site within the visibility splay shown on approved plan PL-3 Rev E.

Procedural Matter

2. The description of the development has been altered on the Council's decision notice. However, I have no evidence to indicate that the change of description has been agreed and the original description adequately describes the proposal. I have therefore determined the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site is an area of garden which is unusually large in relation to the prevailing characteristics of the area associated with 88 Oakway (no. 88) which is a dwelling located within a residential estate, in the main comprised of terraced and semi-detached dwellings. The proposal seeks the provision of a two-bedroom dwelling.
5. The proposed dwelling would be detached and therefore would not be wholly reflective of the predominant type of property in the immediate locality. However, it would follow the alignment of the terrace to the north east and as a result of this and its close proximity to the terrace it would read as a logical continuation of its built form.
6. The building line of the terrace to the north gradually steps back towards the appeal site, while the appeal proposal would sit forward of the front elevation of no 88. However, varied building lines are common in the area and I observed blocks of terraced properties nearby on the street which incorporate

both steps forward and back, and in this context, the slight step forward would not appear out of context with building lines in the immediate area.

7. Whilst the site as it stands does provide some relief from the rows of terraces, it is more commonly provided in the area through the provision of parking courts and associated grass verges which provide a lower density feel to the estate than what might otherwise be the case. The loss of this space would not therefore be substantially harmful within the street scene and a reasonable area of garden would remain to the side of the proposed new dwelling.
8. While the dwelling would incorporate a large blank area on its rear elevation, this arrangement is already evident within the rear elevation of no. 88 and as such the lack of detailing on this elevation would not be out of keeping with the character of the area. Whilst there would be some additional sense of enclosure to the walkway to the south east, as a result of the dwelling and the 2m high fence, this is already a relatively constrained area of public space which is closely bounded in part by robust hedging and fencing of a similar height meaning that any limited additional sense of enclosure would not be significant.
9. The proposal would therefore be appropriate in relation to the character and appearance of the area and would therefore accord with Policy LP24 of the Kirklees Local Plan (2019) (KLP) which amongst other things seeks to promote good design by ensuring the form, scale layout and details of all development respects and enhances the character of the townscape.
10. It would also accord with Policies LP1, LP2, LP21, LP22, LP28 and LP53 of the KLP which seek sustainable development appropriate to an areas character. They also relate to highways and parking requirements, drainage and contaminated land.

Other Matters

11. Whilst concern has been raised in relation to highways issues, the Council have not cited this as a reason for refusal and I have no reason to disagree. As a result of the bend in the road traffic speeds are likely to be low and although it would not be possible to guarantee the full identified sightline to the north as it would pass through some land which is not identified as being in control of the appellant, reasonable sightlines could still be provided given the lightly trafficked environment.
12. No adverse impact on the living conditions of nearby occupiers have been identified, and in relation to this matter I also have no reason to disagree. Both main side elevations of 86 and 88 Oakway which look towards the site of the proposed dwelling are largely blank and properties set across from the site are set at a significant distance across the road. Other applications for residential development have been drawn to my attention including a scheme which the evidence suggests was dismissed at appeal. However, the circumstances in relation to that scheme appear different and this proposal would not extend almost to the footway as is suggested was the case in relation to that scheme.

Conditions

13. The Council have suggested a number of conditions that I have considered against the advice in the Planning Practice Guidance, some of which I have amended in the interests of clarity and brevity.
14. In addition to the standard three-year time limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interests of certainty. Given that the evidence indicates that the site is potentially contaminated, a contaminated land condition is necessary. Condition 4 is necessary to limit run off from the site and therefore limit the impact of the development on flooding and the pollution of watercourses. Conditions 5, 6 and 7 are necessary to allow an appropriate level of highways visibility and in the interests of the character and appearance of the area.
15. I have not deemed necessary suggested conditions which would require the provision of facing and roofing materials as these are specified within the application and would be of similar appearance to those already in use in the locality. A condition requiring an electric vehicle charging point to be installed does not appear to be necessary as no details of any supporting policy or clear justification have been provided. A condition relating to the removal of permitted development rights other than in relation to walls, fences and other means of enclosure does not appear to be necessary as no clear justification has been provided.

Conclusion

16. For the reasons above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the conditions.

T J Burnham

INSPECTOR