



Appeal Decision

Site visit made on 17 July 2023

by K Winnard LL.B Hons Solicitor

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/Z4718/D/23/3321435

Hirst Clough, 4 Kaffir Road, Edgerton, Huddersfield HD2 2AN

- 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 Naeem Sarwar against the decision of Kirklees Council.
 - The application Ref 2022/70/91350/W, dated 18 April 2022, was refused by notice dated 21 December 2022.
 - The application sought planning permission for the erection of extensions and alterations (within a conservation area) without complying with a condition attached to planning permission Ref 2020/91143¹, dated 12 November 2020.
 - The condition in dispute is No 2 which states that: The development hereby permitted shall be carried out in complete accordance with the plans and specifications listed in this decision notice, except as may be specified in the conditions attached to this permission which shall in all cases take precedence.
 - The reason given for the condition is: For the avoidance of doubt as to what is being permitted and so as to ensure the satisfactory appearance of the development on completion, and to accord with Policies LP1, LP2, LP21, LP22, LP24, LP33 and LP35 of the Kirklees Local Plan and advice within the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of extensions and alterations (within a conservation area) at Hirst Clough, 4 Kaffir Road, Edgerton, Huddersfield HD2 2AN in accordance with the application Ref 2022/70/91350/W dated 18 April 2022, without compliance with condition number 2 previously imposed on planning permission Ref 20/62/91143/W dated 12 November 2020 and subject to the conditions as set out in the attached annex.

Background and Main Issue

2. Planning permission was granted under reference 2020/62/91143/W on 12 November 2020 for the erection of extensions and alterations (within a conservation area) at Hirst Clough, 4 Kaffir Road. Condition 2 of permission 2020/62/91143/W required the development to be implemented in accordance with the submitted drawings (the plans condition).

¹ The decision notice which I have been provided refers to the application reference number as 2020/62/91143/W, which is the number I have henceforth used in this decision.

3. The extensions and alterations, the subject of the 2020 consent (the consented scheme) appear to have been largely completed. Parts of these works have not been undertaken in accordance with the approved plans condition. The appellant seeks to vary the approved plan ref.2645 – (100) 02 Rev E. which shows a gable wall on the side elevation of the dwelling but which is not shown on the corresponding front and rear elevations. It is accepted by both parties that this is a drawing oversight, and the extension has been completed as per the front and rear elevations shown on the plan.
4. Further, the Council indicate that the plan now submitted is not a true reflection of what has been built on site in relation to other design features. In addition to the side elevation, its specific concern relates to the front north western elevation fenestration details. The application seeks variations to the roof design by the installation of roof lights on the north eastern side and front north western elevation. Those on the side elevation have already been installed. The revised plan also proposes changes to the fenestration which are shown with mullions, which are not present within the windows as installed. Whilst some of the works have already been carried out, for the avoidance of any doubt, my decision is based upon the submitted plan only.
5. The Council refused the variation of the approved plans on the basis that the variations would cause less than substantial harm to the significance of the adjacent listed building and its associated lodge house and the character and appearance of the Edgerton Conservation area and that the development was considered to materially diminish the quality of the previous approval.
6. In the light of the above, the main issue is the effect of varying the approved plan and thus the affected condition on the significance of the adjacent listed building and associated lodge house, and the area having regard to its conservation area status.

Reasons

7. Hirst Clough, the appeal property is located within the Edgerton Conservation area (ECA), which is a designated heritage asset. There is therefore a requirement for special attention to be given to the desirability of preserving or enhancing the character or appearance of the conservation area. No conservation area analysis is before me but from my site observations the ECA is characterised by an arrangement of often substantial Victorian villas in generous grounds, behind high stone walls and built within a verdant and sylvan setting. In parts this has been infilled by modern housing, which includes Hirst Clough and Nos 10 and 10A Kaffir Road. The significance of the ECA therefore arises from the historic layout of development and the architectural character and quality of the historic buildings.
8. Hirst Clough is set back from the driveway, which slopes downwards to the two listed buildings, Lunnclough Hall and its associated lodge house at 6A Kaffir Road. I am advised that Hirst Clough was built in the 1980s/90s but it is difficult to discern any of the original form of the property in what is now a substantially extended modern large detached dwelling with feature glass windows. Adjacent mature hedges and trees screen much of the front views of the property from the driveway and adjacent buildings.
9. The Council do not express any concerns as to the impact of the proposed variations in relation to the character and appearance of Hirst Clough. Having

regard to the large size, modern design and footprint of Hirst Clough itself and within the context of the consented scheme, I would agree with this assessment. Nor, given this, does the lack of a gable wall on the side elevation, significantly impact on the size and scale of Hirst Clough. Further, given that the Council approved plans for the front and rear elevations without a gable feature, such a feature in itself cannot be necessary for the alterations as a whole to be considered acceptable.

10. The Council's principal concerns are the loss of the mullions to the windows within the front elevation and the insertion of roof lights within the altered north east side elevation and the overall cumulative impact of the variations now proposed. However, the drawing now submitted identifies mullions, as per the previously approved plan, and as such it would appear that the Council's concerns in this respect may have been mistaken. I have assessed the scheme on the basis of the window fenestration now shown which indicates, in addition to identifying the mullions previously approved, changes as to the positioning and size of some windows. In my view, the fenestration details as shown would be acceptable given their nature and the overall modern appearance of the dwelling as extended.
11. As regards the roof lights, they would be relatively small in relation to the overall size of the roof and would not significantly protrude beyond the plane of the roof slope. They would also be reflective of the contemporary style and design of Hirst Clough. Further I note that other rooflights particularly on roof slopes of the dwellings to the north of the listed buildings are readily visible from the driveway. As such, the roof lights would not be an uncommon feature, and their size and location have a neutral effect and would not unacceptably harm the character and appearance of the area.
12. The listed buildings, Lunnclough Hall and 6A Kaffir Road are sited at a lower level and to the north east of Hirst Clough. The setting of a heritage asset is concerned with the way the heritage asset is experienced. Owing to the positioning of the listed buildings and Hirst Clough as described above, the visual relationship between it and the listed buildings is limited. Whilst the roof lights in the side elevation can be partially seen, these are primarily in longer or oblique views from the gardens of the listed buildings, whereas Lunnclough Hall and the adjacent lodge house are primarily seen and experienced from the driveway which slopes down to the buildings when facing north east. The positioning of Hirst Clough set back from the driveway behind mature vegetation and on the higher south eastern side of the driveway means that Lunnclough Hall is the foremost feature in such views and would still stand dominant within the sylvan setting. The historic and visual connection with its associated lodge house would be preserved. The variations sought would not therefore in my view affect the character of Lunnclough Hall and the associated lodge house significantly nor be prominent in views of the two listed buildings. As such the appeal proposal would preserve the setting of the listed buildings and their significance, and not have an unduly harmful effect on the area more generally.
13. The proposal would not therefore conflict with Policies LP24 and LP35 of the Kirklees Local Plan which together and amongst other matters seek that development respects the character of the landscape and to respect, preserve, or enhance the character of heritage assets including proposals within conservation areas. It would also not conflict with the design objectives and to

enhance the historic environmental objectives of the National Planning Policy Framework.

Other Matters

14. I note that the Council has raised no concerns in relation to the amenity of the occupiers of the adjacent buildings as a result of the amendments to the scheme. Having regard to the distances involved I see no reason to disagree with this view.
15. Numerous concerns have been raised by third parties including concerns as to the retrospective nature of the application, building of a retaining wall and the loss/damage to trees and whether the variations are necessary. However these relate to matters which fall outside of the scope of the main issue and thus the scope of the appeal.
16. Whilst the Council has alluded to the proposed plan not reflecting all what has been built on site, it has only raised concerns as to the side elevation, installation of roof lights and the changes to the fenestration details. Indeed I note it has recommended a condition, in the event that the appeal is allowed, specifying the revised plan. As set out above, I have considered the appeal on the basis of the plan now submitted. Concerns raised about works taking place that are inconsistent with this plan are outside the scope of the appeal.

Conditions

17. The guidance in the Planning Practice Guidance (PPG) makes clear that decisions notices for the grant of planning permission under section 73 of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Other than the position relating to trees, I have no information before me as to the status of the conditions imposed on the original planning permission and I have therefore considered all that were applied. I shall use the decision notice as the basis for the conditions within this decision and impose all those that I consider relevant. For the avoidance of doubt, other than specified below, I have not made any substantial alterations to the remaining conditions within the 2020 permission other than some minor editing.
18. The approved plans are listed as a schedule on the 2020 decision notice. The PPG advised that informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes. Accordingly and to ensure condition No 2 is precise and enforceable, I have included the approved plans list within the main body of the wording. I consider that no party would be prejudiced by my doing so.
19. As the development has already commenced, there is no need for the standard implementation condition. In addition to specifying the revised plan, other plans are specified in the amended condition, in the interests of certainty. A number of conditions relate to the construction of the works and materials to be used in the proposed development. Whilst the majority of the extensions and alterations has largely been constructed and although the Council has not recommended reattaching these conditions, as the dwelling remains to be fully completed, I consider that conditions are necessary in the interests of a satisfactory appearance, traffic safety and amenity issues. Hence I have

repeated Conditions 3 (materials), 8 (vehicle parking) and 9 (construction management plan). Conditions 4 and 5 refer to the removal of permitted development rights which are necessary in the interests of the amenity of the area. Condition 6 is necessary in relation to the privacy of adjoining occupiers. Condition 7 relates to the protection of trees which is necessary given their contribution to the appearance of the area, and provision of screening.

Conclusion

20. For the reasons set out above the amended proposal would not affect the significance of the listed buildings and would enhance or preserve the character and appearance of the area. Consequently, I shall amend Condition 2 and replace it with a plans condition reflecting the amended plan.
21. The appeal is allowed.

K Winnard

INSPECTOR

*****Annex*****

1. The development hereby permitted shall be carried out in complete accordance with the plans specified below:

Location Plan ref 2645- (100)04

Existing Elevations and floor plan

Existing Elevations and floor plan 2645-(100)01

Proposed site plan 2645 – (100) 03 Rev D

Proposed elevations and floor plans 2645- (100) 02 Rev J

Tree survey James Royston Arboricultural Consultant Ref 200403

Arboricultural Impact Assessment James Royston Arboricultural Consultant Ref 200403 AIA

Arboricultural Method Statement James Royston Arboricultural Consultant Ref 200403 MS

Planning Heritage Assessment Ref 2645

Construction Management Statement 2645 -JF

2. The external walls and roofing materials of the extension hereby approved shall in all respects match those used in the construction of the existing building.
3. Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or enacting that Act or Order with or without modification) as amended no new door or

window openings other than those expressly authorised by this permission shall be constructed in the external walls of the extensions at any time without the prior written approval of the local planning authority.

4. Notwithstanding the provisions of section 55(2)(a)(ii) of the Town and Country Planning Act 1990 and the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any order revoking or enacting that Act or Order with or without modification) no works within Classes A-H inclusive shall be erected in the area shown red on the approved plan without the prior written approval of the local planning authority.
5. The development shall not be occupied until the first floor windows in the side elevations of the extensions hereby approved have been obscured glazed to a minimum Grade 4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any order revoking or enacting that Act or Order) the obscure glazing shall thereafter be retained.
6. The development shall be carried out in accordance with the details submitted within the Arboricultural Method Statement carried out by James Royston Arboricultural Consultants under reference number 200403MS dated 10th April 2020.
7. The development shall not be brought into use until all areas indicated to be used for vehicle parking and turning on the submitted/listed plan have, and laid out with a hardened and drained surface in accordance with the Communities and Local Government and Environment Agencies 'Guidance on the permeable surfacing of front gardens (parking areas) published 13th May 2009 (ISBN 9781409804864) as amended or any successor guidance. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 as amended (or any order revoking or enacting that Act or Order) these areas shall be so retained, free of obstructions and available for the use specified on the submitted/listed plan for the lifetime of the development.
8. The development shall be carried out in complete accordance with the Construction Management Statement submitted under reference number 2645-JF received on 9th November 2020.

*****END OF CONDITIONS*****