



Appeal Decision

Site visit made on 8 February 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 6 October 2023

Appeal Ref: APP/A4710/W/22/3309060

Land Adjacent Mount Zion Graveyard, Day Hole, Burnley Road, Todmorden OL14 7FE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Martin Tomlinson of Michael Barry Developments Ltd against Calderdale Metropolitan Borough Council.
 - The application Ref 22/00320/FUL, is dated 9 March 2022.
 - The development proposed is described as 'five 4 bed terraced houses with associated parking and landscaping'.
-

Decision

1. The appeal is dismissed and planning permission for four terraced houses with associated parking and landscaping is refused.

Preliminary Matters

2. The description on the application form refers to five houses, although both parties' evidence explains that the scheme was amended and republicized by the Council to one for 4 dwellings. I have therefore dealt with the appeal on the basis of a terrace of 4 houses.
3. Since the appeal was submitted, the Calderdale Local Plan (CLP) was adopted on 22 March 2023. The parties have been given the opportunity to comment on this change in circumstance and I have determined the appeal in accordance with current policy.

Main Issues

4. The appeal is against the failure of the Council to determine the planning application. The Council have produced four putative reasons for refusal. From these I consider that the main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposal would affect highway safety with particular regard to the parking and manoeuvring space within the site;
 - Whether the proposal would provide acceptable living conditions for future occupants with regard to the provision of private garden space; and
 - Whether it would be a suitable location in relation to policy on designated open space.

Reasons

Character and appearance

5. The appeal site is a rectangular area of land between Burnley Road, the A646, and Mount Zion graveyard. It sits within an area of terraced housing. It is also within a wider setting of steeply rising land with mature trees, with, on the slope above the graveyard, some detached, modern housing. The site, which slopes from the rear towards the road, consists of disturbed ground, with some piles of rubble and stone.
6. The extensive 19th century graveyard located to the side and rear of the site, which has a number of small trees within it, is a key feature of the area. It is surrounded by well coursed stone walls with capping stones, which also form the rear and eastern boundary of the appeal site. The housing immediately around the site consists of two-storey, stone-built terraces.
7. The proposal would be a linked terrace of 4, three storey houses, roughly in the centre of the site. The creation of second floor accommodation within the roof pitch is considered by the appellant to be similar to many of the traditional houses in the Portsmouth and Cornholme area. Whilst the site originally had three storey terraced housing on it, this is reputed to have been removed many decades ago, as well as the Mount Zion chapel and housing shown in the archive photograph within the appellant's statement. The area has, however, changed considerably since the time the photograph was taken and, in any case, it has not been shown that the proposal is closely representative of the housing that had previously been on the site.
8. Although the proposal would use traditional stone and slate, matching that found on the terraced housing within the vicinity, the form and height of the building, would make it more akin to an apartment block. This, combined with the large numbers of windows, particularly on the rear elevation, would not reflect the prevailing character and scale of surrounding housing. Whilst the building would exceed the minimum standards for thermal performance, it would have both pitched and extensive area of flat roofs which would not match the traditional roof forms of the adjoining area. The inclusion of internal garages, disrupt, and appear awkward within the centre of the proposal, creating a suburban appearance. This is not reflective of the surrounding terraces where accommodating a car does not dominate.
9. The building would be set back from Burnley Road to ensure key views are preserved. However, set against a semi-rural backdrop of countryside and trees, the proposal would be an incongruous form of development in this location. The extensive area of paving to the front, required for parking and manoeuvring, would be detrimental to the visual harmony of the area. The proposal would, therefore, cause significant harm to the character and appearance of the area.
10. The proposal would, as a result, not accord with CLP Policy BT1, which requires high quality inclusive design which should respect or enhance the character and appearance of existing buildings and surroundings, taking account of its local context and distinctiveness.

Highway safety

11. Two of the houses would have integrated garages. A further six parking spaces and a manoeuvring area would be located at the front of the site. Annex 1 of the CLP requires 2 parking spaces per dwelling, which would be provided, and a condition could ensure that the parking is allocated equally throughout the site.
12. The site includes an adequate turning area and based on the low frequency of vehicles that would be entering and leaving the site, there would be appropriate room for vehicles to manoeuvre.
13. The site is adjacent to the A646, where there is the regular movement of traffic. On the approach to the site from the east, two traffic warning signs identify that firstly, there is a double bend ahead, and secondly, that there is a junction on the bend ahead. This is the junction into Roy Street on the opposite side of the road, but close to the site. Approaching the site from the south-west there is a warning sign that for 420 yards, there is a slippery road. The warning signs testify to the bend adjacent to the site, and other highway issues. The site is, however, within a 30mph zone and the appellant has shown that there is a 43m visibility splay which would enable drivers to enter and leave the site safely.
14. Whilst cycle racks are shown on the submitted plan, Annex 1 to the CLP requires secure storage. There is capacity, however, either within the garages for the middle two properties, or elsewhere on the site for the other two houses, for storage to be provided. The appellant has stated that each dwelling would have direct access to electric vehicle charging points as required by CLP Policy IM4, and whilst not shown on the plan, this could be overcome by a condition.
15. The proposal would provide an appropriate amount of parking and suitable manoeuvring space within the site which would not have an unacceptable effect on highway safety. It would therefore accord with CLP Policies BT1 and BT4 which requires ease of movement within and through the development, and the layout of accesses to ensure the safe and free flow of traffic in the interest of highway safety.

Living conditions

16. Garden space for the properties is shown to the rear, although it is unclear whether the landscaping to the sides of the proposal, which also includes bin stores, would be communal or would be within the ownership of properties 1 and 4. Properties 2 and 3 would access their garden space from the 1st floor of their houses, whilst properties 1 and 4 would have steps to their gardens which slope upwards to the rear.
17. As the proposal is designed for family housing, the garden space for properties 2 and 3 is very limited in size for 3-bedroom houses, whilst the garden area for properties 1 and 4, although larger, would not be generous for a 4-bedroom house. Moreover, as the garden slopes, it is not clear how the levels on the site would be dealt with and how these shortcomings would be addressed by appropriate landscaping. Therefore, there is no evidence provided that the proposal would provide future occupants with acceptable living conditions in terms of private garden space.

18. The proposal would therefore not accord with CLP Policy BT1 that requires high quality inclusive design, and Policy BT2 which requires adequate private amenity space for existing and prospective residents and other occupants.

Open Space

19. The Council have confirmed that the site has been retained, as well as the adjoining cemetery site, as open space, as outlined in CLP Policy GN6. The site is, however, not designated as Local Green Space.
20. The previous permission¹ for the construction of one house on this site, was designed to retain open space, with the house set back into the site with significant landscaping at the front. Whilst the parties disagree over whether the appeal proposal would occupy less land than the previous scheme, it would be located within the middle of the site, with most of the front of the site consisting of block paving for access, parking and manoeuvring.
21. Whilst the appellant has identified that there are other designated open spaces within the area, there is no evidence to suggest that the open space in this site is surplus to requirements, and that it would be replaced by equivalent or better provision in terms of quantity or quality in a suitable location. Therefore, the proposal would fail to accord with the criteria within CLP Policy GN6.
22. Despite the disturbance of the ground, the site, combined with the adjoining cemetery and mature trees surrounding it, provides an important open space on a key edge of settlement location. This provides a contrast with the adjoining terraced housing. Whilst the proposal would provide some landscaping to the sides and rear of the site, the overall scale of the building which would be three-storey in height, would fail to safeguard the site and maintain the local character and amenity of the settlement and the community. Therefore, it would not accord with CLP Policy GN6 which seeks the protection and provision of open space.

Other Matters

23. Tree planting, which would be set back by 4.5 m from the rear of the footpath so that it would not affect drainage and visibility along the road, is proposed. The variety of trees chosen by the appellant is considered to encourage local wildlife, with an embankment at the rear to provide a natural habitat to encourage biodiversity. I give this some limited positive weight.
24. The appellant refers to planning approval being granted for a terrace of five houses on land opposite the site². The plans show a two-storey proposal with parking to the front. This is, however, much smaller in scale with a more traditional appearance. It is also on a level site, between existing buildings, and is therefore less prominent. Furthermore, it is not designated as open space. This is not directly comparable to the appeal site and so does not weigh in favour of the scheme.
25. Since the submission of the planning application, and the lodging of the appeal, the Council has adopted the CLP. Therefore, it has an up-to-date development plan, with Policy SD2 of the CLP setting out the housing requirement over the plan period. The Council's claim that it can now demonstrate a five-year

¹ 19/00767/OUT and 20/01282/RES

² 20/00286/FUL

housing land supply has not been disputed. The site is not an allocated housing site as listed under Policy SD6, whilst Policy HS1 supports development on non-allocated sites that is subject to it creating no unacceptable amenity, traffic, safety, or other problems and complying with other relevant Local Plan policies.

26. The proposal would provide four family houses, which the appellant considers are more economically viable in the area, than the previous planning permission on the site. The site is also on a bus route between Todmorden and Burnley and is within walking distance of a local school. However, because of the scale of the development, I give this limited weight.
27. Notwithstanding the benefits that have been identified, the scale of the proposal and its effect on the area, as well as the effect on living conditions in relation to the provision of garden space, do not outweigh the harms that I have identified and its conflict with the development plan.

Conclusion

28. The proposal would conflict with the development plan when taken as a whole and there are no other considerations, including the provisions of the Framework, that outweigh the identified harm and associated development plan conflict.
29. Therefore, for the reasons given above, I conclude that the appeal is dismissed.

M J Francis

INSPECTOR