



Appeal Decision

Site visit made on 14 November 2023

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 December 2023

Appeal Ref: APP/T4210/W/23/3323153

The Gatehouse, Woodhill Road, Bury BL8 1BN

- 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 Shabana Begum against the decision of Bury Metropolitan Borough Council.
 - The application Ref 68799, dated 18 August 2022, was refused by notice dated 5 December 2022.
 - The development proposed is the partial demolition and replacement of existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. With this appeal the appellant submitted a range of additional plans. In considering whether to accept them, I have had regard to the tests in the Holburn Studios Ltd¹ judgment, which is more recent than that of Wheatcroft².
3. The plans referred to as 'amended' propose various amendments to the appeal scheme such that, collectively, they result in a substantial difference to the development proposed and the lack of consultation in respect of these plans would result in procedural unfairness to those who were entitled to be consulted.
4. With regards to the additional plans referred to as 'corrected', I note that they address various minor omissions and inaccuracies from the originally submitted plans and which the Council raised concern with. They do not seek to evolve the appeal scheme to such an extent that to consider them would prejudice other parties. I have proceeded with my appeal decision accordingly.
5. I shall address the additional information submitted by the appellant in respect of coal mining below.

Main Issues

6. The main issues are:
 - (i) the effect of the proposal on the character and appearance of the area;
 - (ii) the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to outlook and privacy;

¹ Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

- (iii) whether satisfactory living conditions would be provided for future occupiers, with particular regard to external space; and
- (iv) the risk posed by past coal mining activity.

Reasons

Character and appearance

7. The appeal property is a large, two storey detached dwelling. It does not share design or layout characteristics of surrounding properties, which are predominantly modest semi-detached and terraced dwellings set within smaller plots. I acknowledge that the existing dwelling is not of any particular architectural merit and could respectively be described as tired. It is nevertheless not harmful to the street scene and, whilst large, is visually commensurate with its plot.
8. Whilst the proposal would seek to utilise and continue the unique arrangement of the existing built form at the appeal site, it would, however, result in a dwelling of substantial bulk and massing. It would cover a very considerable portion of the plot such that it would appear cramped within it, despite the very generous size of the site. The proposal would significantly limit the extent of views into and through the site, such that the existing sense of space would be noticeably eroded when viewed from public vantage points.
9. Further, a simple approach to fenestration detailing has been adopted. It would not be so striking or innovative so as to render the proposal a successful contemporary design, but rather the resultant dwelling would be bland and uninspiring, which lacks identity. The facades lack movement which, together with the limited variety and interest in the arrangement of windows and doors, results in poor articulation, interest and distinctiveness. The proposed balcony, by virtue of its excessive size and forward positioning, would be a prominent and unattractive feature which does not make a positive contribution to the design.
10. All of these features together result in a bold, obtrusive and visually unattractive dwelling which lacks enduring attractiveness and beauty. I do not agree that the proposed alterations would be discreetly located to the rear of the site. The sheer dominance and poor design of the dwelling would be readily apparent and thus it would not be a delight to passers-by.
11. I note the appellant would be willing to accept a landscaping condition. Be that as it may, I am not convinced that the introduction of trees and/or shrubbery would be sufficient to screen the proposed development. Moreover, landscaping would fail to overcome the poor quality of design of the proposed dwelling itself and is not an acceptable justification for it.
12. Taking all the above into consideration, the proposal would harm the character and appearance of the area. It would therefore conflict with Policies EN1/2, H2/1 and H2/2 of the Bury Unitary Development Plan (August 1997) (the UDP) which collectively aims for developments of good quality which respect and make a positive contribution to the character, quality and townscape of the area.

Living conditions of neighbouring occupiers

13. As noted above, the plans which were submitted with this appeal, and which I have taken into consideration, made very slight amendments to the sill heights of the high-level windows to the side. As a result, the proposed development would not result in overlooking to 113 and 115 Canterbury Drive. Additionally, the corrected plans indicate that the rooflights would not provide opportunities for overlooking.
14. Further, the remaining rear and side facing habitable rooms, whilst close to the boundary, reflect the existing arrangement and relationship with adjoining land. There are also no residential properties to the rear and northern side of the appeal site. Taking these factors together, I consider that the proposal would not result in a loss of privacy.
15. The proposed development would however come within very close proximity to the south west boundary of the appeal site. I acknowledge that the separation distance between the proposed side elevation, the boundary and elevations of Nos 113 and 115 and 89 Woodhill Road may adhere to the guidance set out in the Alterations and Extensions to Residential Properties, Supplementary Planning Document 6 (March 2004). Nevertheless, this is guidance and other factors can influence the effect on neighbours including the specific context of the site and the proposed development.
16. The side elevation of the proposed dwelling would be two storeys in height with additional massing from the pitched roof. It would be within very close proximity to the side boundary and would run a very significant stretch of it. As such, neighbouring occupiers would have very little visual relief from the proposed development, and it would be unduly dominant when seen from their habitable rooms and gardens.
17. Consequently, the proposed development would harm the living conditions of neighbouring occupiers by virtue of its overbearing effect on outlook on Nos 113, 115 and 89. Therefore, it fails to comply with Policies H2/1 and H2/2 of the UDP which, in respect of this main issue, seek to ensure developments make a positive contribution to the area and provide a good quality residential environment, taking into consideration the impact on residential amenity.
18. Policy EN1/2 is referenced within the Council's decision notice in respect of this main issue however it does not appear to be of direct relevance.

Living conditions of future occupiers

19. I note the Council's concerns regarding the reduction of external garden space as a result of the proposed development. However, the appeal site is of a very generous size. Notwithstanding the substantial size of the proposed dwelling and the resultant harmful visual effects this would create, and even taking into consideration the likely high number of future occupiers, there remains a good amount of space to the front for everyday requirements.
20. Whilst in many instances the space to the front of a dwelling is not private, this would not occur in this case due to the size of the site and the ability to attach conditions in the event that planning permission were to be granted, which could ensure that privacy would be maintained.

21. Therefore, the proposed development would provide satisfactory living conditions for future occupiers with regard to external space. It therefore accords with the collective aims of Policies H2/1 and H2/2 of the UDP of ensuring that developments demonstrate acceptable standards of layout. Again, Policy EN1/2 does not appear to be relevant to this main issue.

Coal mining

22. The appeal site falls within the defined Development High Risk Area thus consideration is to be given to the coal mining features and hazards within and around the appeal site. The necessary information was not provided at the time of the planning application.
23. With this appeal however, the appellant submitted evidence in the form of a Desk Based Coal Mining Risk Assessment and Shallow Mining Site Investigation Works report. Whilst I note the Council's concerns with the submission of these documents, they do not seek to evolve the appeal scheme but rather respond to the reason for refusal. Through the appeal timetable the Council would have had ample opportunity to comment on the contents of the documents thus it would not be prejudiced by me taking them into account.
24. Additionally, the evidence before me indicates that a further planning application concerning the appeal site has subsequently been refused by the Council following the submission of this appeal. It seems that that application reflects the appeal development and the aforementioned reports submitted with this appeal also supported that application. I note that the Council did not attach a reason for refusal in respect of this main issue for that most recent planning application on the appeal site.
25. I have been provided with the Coal Authority's recent response to that further planning application. It concurs with the recommendations of the assessment, namely that coal mining legacy potentially poses a risk to the proposed development and that remediation works should be undertaken prior to development in order to ensure the safety and stability of the site. Subject to the imposition of recommended conditions, the Coal Authority confirms that it has no objection.
26. Taking all of the above together, I consider that the risk of past coal mining activity has been fully considered and that, subject to conditions in the event that the appeal were to be allowed, the risk could be mitigated against. For this reason, the proposal complies with Policy EN7 of the UDP.

Other Matters

27. I acknowledge the previous planning application³ in which permission was sought for a very similar proposal to this appeal, however the Council did not raise any concerns with regard to its effect on character and appearance. Indeed, I note the Council's comments within the officer report in this respect. Be that as it may, this is not a matter for me to address within the context of this appeal, which I have determined on its own merits.
28. The proposed development seeks to provide a large dwelling capable of accommodating three generations of the appellants family, which it is suggested is typical of their traditional, cultural values. With this in mind, I

³ Council ref: 67701

have had due regard to the three aims of the Public Sector Equality Duty (the PSED) set out in s149 of the Equality Act 2010.

29. These are: the need to eliminate discrimination, harassment and victimisation; advance equality of opportunity between persons who share a relevant protected characteristic and those who do not share it; and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. Protected characteristics include a person's race and religion or belief.
30. I fully appreciate the appellant's family living circumstances and their religious observance and the contribution which the appeal proposal could make. Nevertheless, I am not convinced that the appeal development is the only option available to the appellant to meet these personal circumstances and needs. As noted, the appeal site is of a very generous size such that alternative configurations and design of the dwelling is likely to be possible which achieves similar necessary requirements for the appellant without resulting in the harm I have identified above.
31. As such, there is little specific evidence that refusal of planning permission would conflict with the aims of the PSED. Therefore, while I have had appropriate regard to the family situation, it carries only modest weight and thus the dismissal of the appeal is a proportionate means of achieving the legitimate aim of protecting the character and appearance of the area and the living conditions of neighbouring occupiers.

Conclusion

32. The proposal conflicts with the development plan as a whole and there are no other considerations of sufficient weight which indicate a decision should be made other than in accordance with it. Therefore, the appeal should not succeed.

H Ellison
INSPECTOR