



Appeal Decision

Site visit made on 8 January 2024

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2024

Appeal Ref: APP/A4710/W/23/3326864

Whyte Gates, New Hey Road, Ainley Top, Elland, Calderdale HD2 2EA

- 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 R Mohammed against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 23/00217/FUL, dated 1 March 2023, was refused by notice dated 15 June 2023.
 - The development proposed is detached dwelling with a garage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council issuing its decision the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The amendments to the Framework do not affect the matters that are in dispute in the determination of this appeal. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.
3. Additionally, since the Council issued its decision the 2022 Housing Delivery Test (HDT) results were published on 19 December 2023. Both parties were invited to provide additional comments on the HDT results and the comments received have been taken into consideration in the determination of this appeal.
4. An amended site plan showing the visibility splay when measured 2.4m from the kerb has been submitted with the appeal. Whilst this plan was submitted to the Council after the planning application had been determined, the Council has made reference to this amended plan within its submissions and consequently has had an opportunity to review this plan. I do not consider that the Council, or other parties, would be prejudiced by my acceptance of this amended plan as part of the consideration of this appeal. I have therefore proceeded on this basis.

Main Issues

5. The main issues are the effect of the proposal on:
 - the character and appearance of the area; and
 - highway safety, with particular regard to visibility splays.

Reasons

Character and appearance

6. Whyte Gates is a large two-storey detached dwelling on New Hey Road, situated within a substantial plot which provides sizeable front and side garden areas. New Hey Road, immediately adjacent to the appeal property, is predominantly characterised by a mixture of detached and semi-detached residential dwellings situated within relatively spacious plots and set back from the highway.
7. To the west of the appeal property is the Nags Head Inn Public House, and directly to the rear of this Public House is the Fortune Hotel. The access and car parking areas serving these neighbouring commercial uses are situated between these buildings and the appeal property, providing a visual separation between these built forms.
8. Directly to the east of the appeal property is the single-storey detached dwelling known as Stoney Croft, which has a wide frontage onto New Hey Road. As a result of the side garden at the appeal site, there is a substantial distance between the side elevation of the appeal property and the side elevation of this neighbouring property. Due to the natural topography of the area Stoney Croft is also situated at a higher land level than the appeal site.
9. The proposed dwelling would be sited within the existing gap between Whyte Gates and Stoney Croft and would result in a detached property that would inevitably be restricted in width compared to other detached dwellings within the immediate locality. Whilst acknowledging the set back from the road, the proposed development would result in a dwelling that is visually at odds with the width of surrounding built form, and in particular the properties either side of the proposed dwelling.
10. In addition, the proposed dwelling would close the existing gap between Whyte Gate and Stoney Croft consolidating the built form along this section of New Hey Road and would fail to respect the spacious pattern of development which prevails on this side of the highway. As a result, the proposal would appear as a cramped and incongruous addition to this section of the street scene, to the detriment of the character and appearance of the area.
11. In coming to this view, I acknowledge that the gap between the proposed dwelling and Whyte Gates would not be dissimilar to the existing gap between Stoney Croft and its neighbouring property on the opposite side at Ridge Lea. However, these relationships are not directly comparable as both Whyte Gates and the proposed dwelling would involve two-storey gable elevations, at the same land level, situated in close proximity to each other. Whereas Stoney Croft and Ridge Lea are both single storey, albeit Ridge Lea does have dormers in the roof space, have hipped roof designs and are set at different land levels.
12. Furthermore, Stoney Croft has a flat roof single-storey side garage closest to Ridge Lea, and therefore the gap between the main roofs on these neighbouring dwellings is significantly greater than the proposed gap between Whyte Gates and the proposed dwelling. As such, when viewed from the street Stoney Croft and Ridge Lea retain the spacious character of the area.
13. For the reasons I have set out, the introduction of an additional dwelling would result in a plot that would be limited in width compared to its neighbours, and

the contrast between the plots sizes and the loss of the openness would be such that the proposed dwelling would appear harmfully out of place.

14. I acknowledge that the National Design Guide defines street scenes as the appearance of all elements of the street, including buildings on both sides of the street. Therefore, the street scene consists of a mixture of house designs and there are varying gaps between dwellings in the wider area. However, these are not viewed within the same context as the appeal site and its immediate surrounding properties, and therefore do not influence my assessment of the appeal proposal.
15. The appellant comments that the appeal proposal would not conflict with the Council's 'Guidance on Space about Dwellings' at Annex 2 of the Calderdale Local Plan 2018/19 – 2032/33 (LP). However, this guidance relates to matters of privacy, daylighting and amenity space, and is therefore not directly relevant to the issue of character and appearance.
16. I recognise that the removal of a section of the front boundary wall and hedge, to provide access and an open driveway, could be undertaken without the need for planning permission. Nevertheless, the removal of this front boundary treatment would result in an open aspect to the front of the proposed dwelling that would be notably different to the enclosed character of adjacent sites. This would only draw attention to the development and adds to the visual harm arising from the appeal proposal, as the cramped nature of the proposed dwelling would be more prominently viewed from the street.
17. The appellant has made reference to a previous approval for a similar sized detached dwelling on the appeal site from 2003¹, commenting that there has been no material changes to policy since this approval and referencing case law² in respect of the importance of consistent decisions.
18. Whilst consistency of decision making is important to the parties and to ensure public confidence, the previous approval from 2003 was determined under a different development plan and prior to the publication of the Framework. The Framework has placed a new emphasis on high quality design and there has therefore been a material change in policy since the previous approval in 2003.
19. Nevertheless, having been provided with the plans for the previously approved dwelling, the two schemes are different in design and are therefore distinguishable in a relevant respect. Furthermore, whilst this previous approval is a material consideration, I am not bound by a previous decision of the Council and have exercised my own judgement on the appeal proposal.
20. In terms of the height, given the change in land levels the proposed dwelling would respect the ridge heights of the surrounding properties. Furthermore, the specific design features of the dwelling would not appear out of keeping with the varying house styles in the area. These specific elements of the proposal would therefore not be harmful to the character and appearance of the area.
21. In view of all the above, the appeal proposal would appear as a cramped and out of keeping form of development which would have a harmful impact upon the character and appearance of the area. The proposal is therefore contrary to the objectives of Policy BT1 of the LP, which seeks, amongst other things, that

¹ Council Ref: 03/00488/FUL

² North Wiltshire DC v SSE & Clover [1992] JPL 955, (1993) 65 P&CR 137

new developments ensure high quality design; and respect or enhance the character and appearance of existing buildings and surroundings, taking account of local context and distinctiveness.

22. The proposal would also be contrary to the Framework where it seeks to ensure that development is sympathetic to local character, including the surrounding built environment and maintains a strong sense of place, using spaces to create attractive places.

Highway Safety

23. The proposed dwelling would be served by a new access point to be created off New Hey Road, and this is similar to how the adjacent properties are currently accessed.
24. As mentioned in the "Preliminary Matters" section of this decision letter, an amended site plan has been submitted since the application was refused. This amended plan shows a 43m visibility splay in both directions, when measured 2.4m from the kerb. Whilst acknowledging that the existing telegraph poles either side of the access would need to be relocated to achieve this splay, had I been minded to allow the appeal a condition could have been attached to ensure the visibility splay was provided, and kept clear of any obstruction thereafter, prior to the proposed access being brought into use.
25. The Council has raised concerns in respect of whether the amended plan showing the visibility splays is from a surveyed site, and thus whether acceptable visibility splays can be provided or not. From my observations on site, I however, have no reason to conclude that the submitted plans are not accurate.
26. In view of the above, based on my observations on site and the detail shown on the amended plan, and subject to the inclusion of a condition had I been minded to allow the appeal, the proposal would achieve the required visibility splay to access and egress the development and accordingly the proposal would not have a detrimental effect on highway safety.
27. For the reasons mentioned I conclude that the proposed development would be acceptable with regard to highway safety by providing adequate visibility for the access to the development. Therefore, the proposal is in accordance with Policy BT4 of the LP which requires developments to ensure the safe and free flow of traffic in the interest of highway safety.
28. I also find no conflict with paragraph 115 of the Framework where it states that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety.

Planning Balance and Conclusion

29. The most recently published HDT results indicate that the Council's delivery of housing was below 75% of the housing requirement over the previous three years, and consequently paragraph 11(d) of the Framework applies.
30. Paragraph 11(d) of the Framework indicates that where the requisite housing land supply does not exist, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

31. The delivery of one additional dwelling in a sustainable location is a social benefit arising from this proposal, as well as positively contributing to the Council's housing land supply, albeit the benefits of a single dwelling would be very modest. Limited economic benefits would also likely arise from employment during the construction works, and occupation of the proposed dwelling through additional expenditure in the area.
32. However, for the reasons given above the proposal would give rise to significant harm to the character and appearance of the area and this harm would significantly and demonstrably outweigh the benefits of the scheme. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.
33. The proposal conflicts with the development plan when taken as a whole and the material considerations are not of sufficient weight which indicate that the proposal should be determined otherwise than in accordance with the development plan. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Major

INSPECTOR