



Appeal Decision

Site visit made on 18 February 2025

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2025

Appeal Ref: APP/R1038/W/24/3349383

Land north of 14 and between 10 and 18 Birkinstyle Lane, Shirland

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr R Hartshorn against the decision of North East Derbyshire District Council.
 - The application Ref is 23/00918/FL.
 - The development proposed is proposed two-story detached dwelling and garage with creation of new access.
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Decision

1. The appeal is allowed and planning permission is granted for proposed two-storey detached dwelling and garage with creation of new access at Land north of 14 and in between 10 and 18 Birkinstyle Lane, Shirland in accordance with the terms of the application, Ref 23/00918/FL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. In my banner heading above I have used the address and description of development as set out in the Council's Decision Notice as this more accurately describes the proposal. In doing so, I have omitted reference to amended plans as this is not an act of development.
3. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 12 December 2024 and updated on 7 February 2025. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. As a result, I consider that there is no requirement for me to seek further submissions in respect of these matters, and I am satisfied that no party's interests would be prejudiced by my taking this approach.

Main Issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site comprises an irregular shaped plot located on a residential road. High wooden fences form the boundaries to the east, south and west of the appeal site. Whilst dwellings are predominantly large, two-storey and detached there is an eclectic mix of properties in terms of their appearance and their position within the

street. Both hipped and gable roof forms are present along with dormer windows of varying designs and proportions.

6. The proposed dwelling would be set back within the site. Nevertheless, this would not appear out of character with the pattern of development in the locality given the presence of existing properties that surround the appeal site.
7. Although a sizeable property, having regard to the context of the appeal site, wherein there are dwellings are of similar scale and mass, the proposal would not be uncharacteristic. Furthermore, being set back within the plot, and surrounded by existing built form, much of the bulk of the proposed building would have limited visibility from the street.
8. The front elevation of the proposed dwelling includes fenestration in the form of ground floor windows and a hipped roof dormer in the roof slope. The proposal would therefore not be a featureless, or incongruous, addition to the street scene. Furthermore, the forward garage projection would be largely obscured when viewed from the street by the existing built form, including No. 10.
9. Overall, I conclude that the proposed dwelling would not be harmful to the character and appearance of the area and would accord with policies SS7 and SDC12 of the North East Derbyshire Local Plan 2014-2034 and the Guide to Sustainable Housing Layout and Design Supplementary Planning Document 2013. These seek, amongst other things, for all new developments to be of high-quality design and to make a positive contribution to the quality of the local environment. It would also accord with policies 1, 2, 7 and 9a of the Shirland and Higham Parish Neighbourhood Plan 2022-2034 (NP). Amongst other things these require development proposals to be of a scale, layout and design compatible with the local character, appearance and amenity of that part of the Parish in which it is located. It would also accord with the Framework which requires developments to be sympathetic to local character while not preventing or discouraging innovation or change.

Other Matters

10. Whilst not explicit in the Council's reason for refusal their Statement of Case sets out concerns regarding the design and siting of the proposal upon the living conditions of existing occupiers. In particular they cite, referring to blank walls, and those with limited features, having an overbearing impact upon No 18.
11. Non habitable room windows would be positioned to the eastern elevation of the proposed dwelling and the hipped roof would fall away from the shared boundary. Whilst proximate to the site's boundary I am satisfied that the design and orientation of the proposed dwelling, relative to No. 18, is such that it would not have a materially harmful impact upon the living conditions of the neighbouring occupiers.
12. I have also considered the effect of the proposal on other neighbouring properties. However, for similar reasons to those stated above, I do not concur with the view that the proposed development would have an over-bearing or dominant impact upon the occupiers of other adjacent properties.
13. Furthermore, the first-floor habitable room windows of the proposed dwelling would be positioned sufficiently far away so as to not result in any material loss of privacy,

by way of overlooking, to the occupiers of adjacent dwellings. The proposal would also not materially reduce sunlight, daylight or outlook for the occupiers of the neighbouring properties due to the intervening space between the buildings. I therefore do not find that there would be an incongruous relationship between the proposed development and neighbouring properties to justify dismissal of the proposal on such grounds.

14. The plans indicate a 4-bed/study property which would contribute to the mix of housing types and sizes in the District. Whilst having regard to Policy 9a of the NP there is no substantive evidence before me that the proposal would result in an unacceptable diversity of housing in the District.
15. Interested parties have expressed a wide range of concerns including, but not limited to the following: impact on existing trees, biodiversity, lack of outlook for future occupiers, insufficient amenity space, parking, lack of infrastructure locally and the planning history of the site. However, I note that these matters were considered by the Council at the application stage and did not form part of the reason for refusal, which I have dealt with in the assessment above. Whilst I can understand the concerns of local residents, I have had regard to consultee responses and there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters. I have considered this appeal proposal on its own merits and concluded that it would not cause harm for the reasons set out above.

Conditions

16. The Framework states that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development, enforceable, precise, and reasonable in all other respects.
17. I have considered the conditions put forward by the Council against the Framework and Planning Practice Guide (PPG). I have included those which meet the six tests set out in the Framework and reworded, where necessary, for clarity. The appellant has agreed to the pre-commencement conditions set out in the conditions schedule below and also to their wording. The circumstances and nature of this proposal mean that these are appropriate and are necessary to make the development acceptable in planning terms.
18. In addition to the statutory commencement condition, a condition is necessary to ensure that the development complies with the submitted plans in the interests of clarity.
19. A pre-commencement condition for site investigations, and any subsequent remediation, is necessary given the potential for risks associated with coal mining legacy.
20. A condition regarding contaminated land is necessary in order to minimise risks to human health and the environment. For preciseness, and conciseness, I have merged the suggested conditions by the Council.
21. A condition regarding existing and proposed site levels is necessary in the interests of character and appearance and protecting the living conditions of neighbouring occupiers.

22. Conditions to manage foul and surface water and drainage are necessary to ensure no environmental harm arises.
23. I note the comments of the appellant in respect of the proposed condition for the provision of visibility splays. However, the local highway authority's lack of objection is on the basis that 2m x 43m splays can be achieved. The highway comments suggest they are content with the relaxed splay dimensions based on local highway conditions. Having visited the site, and based on the evidence before me, I have no reason to come to a different view in this respect. It is therefore necessary, in the interests of highway safety, to impose a planning condition for the provision of visibility splays. Conditions to secure a pedestrian visibility splay, parking and turning are also necessary in the interests of pedestrian and highway safety.
24. The Council has suggested a condition for the bathroom, en-suite, dressing room and stairwell windows to be obscure glazed, along with restricting their opening. Given the positioning of the windows relative to existing development I consider this is reasonable and necessary in the interests of protecting the living conditions of neighbouring occupiers.
25. The Council has recommended a condition for the removal of rights to extend or alter the property under the Town and Country Planning (General Permitted Development) (England) Order 2015. The Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this circumstance I do not consider conditions further limiting these rights to be necessary or relevant to the development permitted. Accordingly, I do not consider that this request meets the tests set out in the PPG.
26. Given the limited scale of the proposed development, any disturbance during construction would be for a temporary period only. It is therefore not reasonable or necessary to restrict the hours of construction works by way of planning condition.
27. The Council has also set out several informative notes. However, such notes would have no legal effect, and I have not, therefore, included them in the decision. Nonetheless, the appellant has had sight of them and should, therefore, be aware of their contents.

Conclusion

28. For the reasons given above, and having regard to all other matters, I conclude that the development would comply with the development plan as a whole. The appeal is therefore allowed.

R Gee

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - P.01 Proposed Floor Plan
 - P.02 Proposed Elevations
 - P.03 Proposed indicative Section
 - S.02 rev A Proposed Site Plan
 - S.03 rev A Proposed Block Plan
3. No development shall commence until a phase 1 contaminated land assessment (desk study), to assess the risks posed by any contamination, has been submitted to and approved in writing by the local planning authority.

Where the site investigation identifies unacceptable levels of risk from ground gas, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment shall be submitted to and approved in writing by the local planning authority prior to the commencement of development

The site shall be remediated in accordance with the approved measures and agreed 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 28 days of the report being completed for approval in writing by the local planning authority.

4. No development shall take place until;
 - a) a scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity; and
 - b) any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposed.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

5. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the

Local Planning Authority. The development shall be carried out in accordance with the approved levels.

6. No development shall take place until details for the foul and surface water drainage for the site have been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented in full prior to first occupation of the hereby approved development and maintained as such in perpetuity.
7. The development hereby approved shall not be occupied until the access, parking and turning facilities have been provided as shown on drawing S.02 Rev A.
8. The development hereby approved shall not be occupied until visibility splays are provided from a point 0.6m above carriageway level at the centre of the access to the application site and 2.0 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction measured along the nearside edge of the adjoining carriageway and offset a distance of 0.6 metres from the edge of the carriageway. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above carriageway level.
9. The development hereby approved shall not be occupied until pedestrian visibility splays of 2m x 2m measured perpendicularly back from the back of footway shall be provided on both sides of the access. These splays shall thereafter be permanently kept free of all obstructions to visibility over 0.6m in height above the adjoining ground level.
10. Before first occupation of the dwelling hereby approved, the above ground floor windows on the rear (south) and left (east) elevations shall be fitted with obscure glazing along with the window to the bathroom in the west elevation. The obscure glazing shall be of an obscurity equivalent to at least Level 3 or 4 of the Pilkington obscure glazing range. The windows shall be of a non-opening design or alternatively any opening parts must be more than 1.7m above the floor level of the room in which the window is installed. The windows and glazing shall then be retained as such thereafter at all times.

*****End of Schedule*****