



Appeal Decision

Site visit made on 25 February 2025

by Ryan Cowley MPlan (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal Ref: APP/A4710/W/24/3354181

Land Adj to 172 Towngate, Clifton, Brighouse HD6 4HH

- 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 Michelle Fleetwood against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 24/00692/FUL.
 - The development proposed is erection of detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The 2023 Housing Delivery Test (HDT) results were published on 12 December 2024, and the revised National Planning Policy Framework (the Framework) also came into force on 12 December 2024. Both main parties have been given an opportunity to provide comments on the revised Framework and most recent HDT results, and the implications for this appeal. I have therefore had regard to the revised Framework and latest HDT results in this decision.

Main Issues

3. The main issues are the effects of the proposal on i) the living conditions of the occupiers of neighbouring properties, with particular regard to outlook and privacy; and ii) the character and appearance of the area.

Reasons

Living conditions

4. The appeal site comprises part of the rear garden of 172 Towngate. The proposal would be located adjacent to the existing flat roofed bungalow. The dwelling would be set across two levels, with living spaces having a mostly south-westerly aspect. At first floor, it would feature 3 tall windows in the south-west facing elevation, in addition to a set of large, glazed patio doors leading from the first-floor bedroom to a balcony. The balcony would be enclosed by a glazed balustrade on two sides.
5. Annex 2 of the Calderdale Local Plan 2018/9 - 2032/33 Adopted March 2023 (the Local Plan) sets out guidance on space about dwellings. It recommends minimum separation distances of 21 metres between main windows / elevations. Where a site is sloped, separation distances should be greater. The guidance indicates that the part of the private garden area primarily used for sitting out in should not be directly overlooked and highlights that balconies can adversely affect the privacy of

neighbours and will generally be unacceptable. Nevertheless, Annex 2 clarifies that this guidance is not rigid in its application, rather it provides an indication of standards which will be applied with a measure of flexibility.

6. The evidence indicates that separation distances of approximately 20 metres or greater would be maintained between the proposed south-west facing first-floor windows and windows in the rear elevations of the neighbouring dwellings at Woodland View and Glynrroen. The 3 tall windows primarily serve a dressing area and an en-suite bathroom. Given the nature of these rooms, where mutual privacy would be expected, it would be reasonable for these windows to be obscurely glazed and non-opening, which could be secured by planning condition.
7. The patio doors serving the bedroom could not be obscurely glazed, as they would be the sole remaining unobscured window serving this bedroom and to do so would be harmful to the living conditions of future occupiers. Nevertheless, they would be positioned at a more oblique angle and have a greater separate distance to these neighbouring dwellings, limiting any direct overlooking between windows.
8. The patio doors would however provide a large opening in this elevation, and access onto the first-floor balcony. From the balcony, unenclosed views to the north, south and west could be achieved across the garden area of the proposed dwelling towards the rear gardens of neighbouring properties, at relatively close distance, and their respective rear elevations.
9. The site sits on a higher ground level than Woodland View and Glynrroen. The rear gardens of both are shallow and rise upwards towards the shared boundary with the appeal site. The terraced garden of Woodland View features an elevated patio and lawn adjacent to the appeal site. A low stone wall runs along the shared boundary, albeit additional screening is provided by planting behind, within the rear garden of 172 Towngate. A low wall also runs along the shared boundary with Glynrroen, while planting within this neighbouring garden also provides screening.
10. Nevertheless, I saw on my site visit that the boundary treatments and vegetation are insufficient to screen views between the site and neighbouring gardens in their entirety, particularly in winter months. Moreover, planting in the rear garden of the proposed dwelling may not survive in perpetuity, and it would not be reasonable to expect the occupants of neighbouring properties to provide and maintain additional planting in their own gardens to offset harm caused by the development.
11. The presence of future occupants on the balcony, and the views they would have towards neighbouring dwellings and gardens, would thus result in a significant degree of actual and perceived overlooking, which would have a deleterious effect on the privacy of the occupants of Woodland View and Glynrroen.
12. I recognise that the balcony and window openings have been amended since refusal of the previous planning application¹. This does not however demonstrate that the appeal proposal before me is acceptable with respect to this main issue.
13. The appellant suggests that planning conditions could be used to restrict the view from the balcony, or to remove it entirely. It is not clear however how screening of the balcony could effectively be achieved without significant loss of outlook for future occupiers. Omission of the balcony would affect the design of the dwelling

¹ Council Ref: 23/00681/FUL

and the nature of openings in the rear elevation and require the submission of amended plans. No such amended plans are before me and, in any event, the appeal process should not be used to evolve a scheme. It is important that what is considered by the Inspector at appeal is essentially the same scheme that was considered by the Council and by interested parties at the application stage.

14. Notwithstanding the identified harm to privacy, the orientation and siting of the dwelling would ensure that there would be limited development in direct rear facing views from rear windows in Woodland View. Combined with the proposed separation distance and relatively modest height of the proposed dwelling, the proposal would not have an unduly harmful effect on outlook from Woodland View.
15. On the other hand, all rear facing windows within the bungalow at Glynrroen would face directly towards the proposed dwelling. The oblique relationship of the dwelling to the shared boundary would result in the separation distance gradually decreasing. Combined with the difference in ground levels, the proximity of the proposed dwelling in this location would appear overbearing and would unduly increase the sense of enclosure, dominating the outlook from Glynrroen.
16. The proposed north-east elevation, facing 180 Towngate, would feature limited openings at first floor, comprised of glazing serving a void above the ground floor hallway and staircase and a light well serving the first-floor storeroom. A tall timber fence runs along the rear boundary of this neighbouring property. A separation distance of approximately 20 metres would be maintained between these windows and those in the rear elevation of No 180. Views from the staircase and landing would be set back within the dwelling and fleeting, as future occupants are unlikely to spend significant time in this part of the dwelling. Moreover, intervisibility would also be curtailed by the proposed roof design.
17. The blank side elevation of the proposed garage would face No 180. Though it would extend higher than the existing boundary fence, it would be set back from the shared boundary. The 2-storey element of the dwelling would be set even further back into the site. Having regard to its relatively modest height and roof form, this would adequately mitigate any harmful sense of enclosure. The proposal would thus not unduly harm outlook or privacy for the occupant of No 180. The impact on other neighbouring dwellings would also not be significant due to greater separation distances, differing plot orientations or limited intervisibility.
18. While the proposal would not result in harm to the living conditions of the occupiers of 180 Towngate or other neighbouring dwellings, it would have a harmful effect on the living conditions of the occupiers of Woodland View and Glynrroen, with particular regard to outlook and privacy. It would thus be contrary to Policy BT2 of the Local Plan. This policy seeks to ensure that development proposals do not result in a significant adverse impact on the privacy, daylighting and private amenity space of adjacent residents or other occupants and should provide adequate privacy, daylighting and private amenity space for existing and prospective residents and other occupants.

Character and appearance

19. The surrounding area is primarily characterised by 2-storey detached and semi-detached dwellings however there are several examples of bungalows and 3-storey dwellings in the immediate vicinity. A collection of traditional dwellings and older buildings can be found along Towngate and around the junction with

Westgate. Many of the dwellings in the vicinity of the appeal site are more contemporary however and vary in their form and appearance. Stone is a commonly used finishing material, albeit render and brick is also used locally, including along Towngate. Pitched roofs are the most common roof form. Newer dwellings are typically set back from the road behind front gardens or driveways, and generously sized private rear gardens are common in this part of Clifton.

20. The contemporary design and brick and render finish of the proposed dwelling would not appear unduly incongruous in the context of the variety of house types described above. Though taller than the large bungalow adjacent and the previously refused scheme, the height of the dwelling would remain modest for a 2-storey house and its roof form would soften its presence further.
21. The upper floor and roof form of the proposed dwelling would be visible from some public vantage points, including through gaps between existing buildings, and in more distant views from the nearby park. Views into the site are otherwise limited. Though it would be a form of “backland” development, the proposed dwelling would not be a prominent feature in the street scene along Towngate or Westgate and its relationship to the street is similar to that of the existing bungalow. It would thus not significantly erode the existing pattern of development.
22. While the proposal would reduce the size of the existing garden, which provides a landscaped backdrop to existing housing in this area, a large proportion of the proposed plot would remain garden space, thus maintaining a degree of spaciousness and retaining significant space for soft landscaping.
23. I recognise that the previous proposal for a modern development at the appeal site was dismissed at appeal² in March 2024, in which the Inspector found unacceptable harm to the character and appearance of the surrounding area. However, that proposal was materially different to the appeal scheme, and my decision is based on the evidence before me and my own observations.
24. The proposal would not have a harmful effect on the character and appearance of the area. It would comply with Policy BT1 of the Local Plan. This policy, among other provisions, encourages contemporary, innovative design that does not harm local distinctiveness, and seeks to ensure proposals are high quality, demonstrate consideration of the aesthetics, function and sustainability of proposals over the lifetime of the development, including by ensuring that the design style respects or enhances the character and appearance of existing buildings and surroundings, taking account of its local context and distinctiveness.

Other Matters

25. The 2023 HDT results indicate there has been a shortfall in the delivery of housing over the previous 3 years, though the supply of deliverable housing sites is currently at 5.22 years. The proposal would provide one dwelling, which would positively contribute to the local housing supply. The development would provide a temporary economic boost during construction, and additional residents may contribute to the local economy and vitality of the community. However, these benefits would be modest given the small scale and context of the development, and insufficient to outweigh the identified harm and development plan conflict.

² Appeal Ref: APP/A4710/W/23/3331691

26. My attention has been drawn to a Grade II listed building (LB) known as Black Horse Hotel, 196, 198 and 200 Towngate, located to the south-east of the appeal site. Sections 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the LB or its setting or any features of special architectural or historic interest which it possesses. In so far as it relates to this appeal, the significance of the LB is derived from its historic fabric, including its timber and stone construction, traditional door and window designs and decorative features.
27. The appeal site is close to the LB, though there are intervening buildings. Views of the proposed dwelling within the same context as the LB would be limited, and it would therefore not feature prominently within the setting of the LB. I have not identified any harm to the character and appearance of the area. The proposal would thus not cause harm to the significance of the LB or its setting.
28. The Planning Practice Guidance and the Framework encourage local planning authorities to take a positive approach and work proactively with applicants. While the appellant's frustrations with the level of engagement offered by the Council during the application process is noted, this does not lead me to a different conclusion on the main issues.

Conclusion

29. While I have not identified harm or development plan conflict with respect to the effect of the proposal on the character and appearance of the area, this does not outweigh the identified harm to the living conditions of the occupiers of neighbouring properties and associated development plan conflict. The appeal proposal therefore conflicts with the development plan, taken as a whole. I have found no material considerations that indicate the appeal should be determined other than in accordance with the development plan. Consequently, I conclude that the appeal is dismissed.

Ryan Cowley

INSPECTOR