



Appeal Decision

Site visit made on 18 February 2025 by J Reed MPlan

Decision by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th May 2025

Appeal Ref: APP/A4710/W/24/3353977

Land To Rear of Spring Gardens, Burnley Road, Luddenden Foot, Sowerby Bridge HX6 2TW

- 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 Martin against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 24/00404/FUL.
 - The development proposed is construction of 2 two bed apartments and associated parking and external works.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. In the interests of accuracy, I have taken the site address from the Council's decision notice.
4. The Council's decision notice consists of three reasons for refusal: living conditions, pollution and flood risk. However, as part of the appeal process the appellant has submitted additional information in order to address the pollution and flood risk matters. This has been reviewed by the Council who in their statement of case are satisfied that these matters are addressed. I have no reason to form a different view. As a result, I will focus on the matter of living conditions as they relate to occupants of nearby properties and those of the proposed development.

Main Issues

5. The main issues are 1) the effect of the proposed development on the living conditions of the occupants of 25 and 27 Blackwall Rise with specific regard to outlook, privacy and loss of natural light, and 2) whether or not the proposed development would provide acceptable living conditions for its future occupants with regard to private amenity space provision.

Reasons for the Recommendation

Living conditions of neighbouring occupants

6. The appeal site is situated in an area predominantly consisting of residential properties with some commercial units. The site is situated to the rear of the residential street Blackwall Rise and behind Burnley Road.
7. The appeal scheme would be set down from the properties on Blackwall Rise due to the sloping topography. However, it would still result in the addition of a two-storey building directly to the rear of No.27 Blackwall Rise. The entirety of the width of the appeal building's roof would be almost directly adjacent to the boundary of No.27. This, coupled with its height and blank, featureless appearance would dominate views from the garden and the rear windows of No.27, due to the proposal's proximity to the rear boundary. The proposed flats would result in the addition of a dominant overbearing structure which would be visually obtrusive and would unacceptably reduce the quality of outlook from the neighbour's windows to the detriment of the living conditions of its occupants.
8. No.25 is partially behind the appeal site and is separated by a close bordered timber fence. However, the fence would be much lower than the ridge height of the proposed flats and thus would not sufficiently mitigate the adverse effect created by the introduction of the appeal building. Users of the rear windows of No.25 would be met with the view of dark dominant roof form of the appeal building which would be harmful to their living conditions.
9. Annex 2 of Policy BT2 of the Calderdale Local Plan (2023) outlines recommended separation distances between dwellings and their various aspects. In the case of the appeal proposal and the neighbouring properties on Blackwall Rise, the distances between the properties would be below the guidance outlined in Annex 2. Whilst there is fencing separating the properties the height of the appeal building would sit above this. This, combined with the blank overbearing view of the appeal sites roof would dominate occupants' outlook at No.25 and No.27 specifically. Although the difference in levels would alleviate the impact, it does not justify such a significant shortfall from the separation distances as set out in the Local Plan.
10. I observed on my site visit that there is a relatively low open boarded fence at the foot of the rear garden of No.25. This would sit in between this property and the proposed development. Due to the inter-visibility provided by the part-open nature of the fence, occupants of the proposed development would be afforded views into the rear garden and habitable rooms of No.25 and vice versa. Considering the proximity at such a short distance, this would have an unacceptable impact on the privacy of the occupants of No.25.
11. The Council also highlight concerns regarding overshadowing in their reason for refusal, however this is not expanded upon in the officer report nor their statement of case. However, due to the intervening gap between the properties, the difference in levels, and relative orientation, when combined with the absence of any substantive evidence to the contrary, there would not be a material loss to occupiers in terms of daylight.
12. In view of the above, the proposed development would cause harm to the living conditions of the occupants of 25 and 27 Blackwall Rise in regard to loss of outlook and privacy. It would be contrary to policies BT1, BT2 and HS1 of the Calderdale Local Plan (2023) which states that development proposals should not result in a significant adverse impact on amenity, including privacy, of adjacent residents.

Living conditions of future occupants

13. In terms of external private amenity space provision, Policy BT2 of the Local Plan refers to the provision of adequate private amenity space for existing and prospective occupants.
14. The shared outdoor amenity space provided for the units would be to the side of the building. Although this could be used for storage, clothes drying and activities such as sitting out, it would not in itself constitute private space for the respective occupants.
15. Whilst the communal space is of a size that would offer some functionality for future residents of the proposed flats, this would not overcome my concerns in relation to the space's location and proximity to the proposed flats. Moreover, the immediacy of the communal space to the habitable room windows of the ground floor flat would result in users being mutually exposed to unacceptable levels of noise and disturbance from activities associated with the space as well as feeling overlooked. Indeed, as the garden would directly abut, overlook and be overlooked by the main windows serving the double bedroom and living/kitchen room of the ground floor flat, the external shared amenity space is considered inappropriate in respect of residential amenity.
16. In view of the above, the proposed development would result in unsatisfactory living conditions for future residential occupiers in terms of a substandard private external amenity space. It would be contrary to policy BT2 of the Calderdale Local Plan (2023) which states that development proposals should not result in a significant adverse impact on the privacy and private amenity space of future occupiers.

Other Matters

17. Concerns have been raised regarding the Council's conduct during the application stage. Nevertheless, this issue does not relate to the planning merits of the appeal, which must be the focus of my recommendation.
18. The Government's objective as set out in the Framework is to support sustainable housing growth. The proposed development would result in a slight increase in the Council's overall housing number and would be in an accessible location. It would also bring a small number of additional residents to the area who would contribute to the local economy. Collectively, I give these matters moderate weight in favour of the proposed development.

Conclusion and Recommendation

19. The harm that would be caused to the living conditions of the occupants of 25 and 27 Blackwall Rise with regard to outlook and privacy, and the failure to provide acceptable living conditions for future occupants of the development, attracts significant weight that outweighs the benefits associated with the proposed development in terms of housing delivery.
20. The proposed development would therefore conflict with the development plan and there are no identified other considerations, including the Framework, that outweigh this conflict.
21. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

J Reed

APPEAL PLANNING OFFICER

Inspector's Decision

22. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

A M Nilsson

INSPECTOR