
Appeal Decision

Site visit made on 11 September 2018

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2018

Appeal Ref: APP/G4240/W/18/3203685

Land between 255 and 281 Whiteacre Road, Ashton under Lyne OL6 9QB

- 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 Sachdev Properties Ltd against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 18/00063/FUL, dated 22 January 2018, was refused by notice dated 5 April 2018.
 - The development proposed is the construction of 4 No. two bedroom two storey dwellings with associated landscaping and car parking provision.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have, for completeness, used the postcode from the appeal form for the appeal site's address above.
3. In refusing planning permission the Council considered that insufficient information was before them about historic coal mining activity and whether the site could be safely developed in the manner proposed. Since the Council's decision, the appellant company has, as part of another planning application, submitted a Coal Mining Risk Assessment Report (CMRAR). While the Council refused¹ this planning application, they accept the findings of the CMRAR which recommends the use of a planning condition to secure an intrusive site investigation and inform any required remedial measures to ensure the safety and stability of the proposed development. The Council have suggested this planning condition in the event that I am minded to allow the appeal. As a result, the appeal scheme would accord with paragraph 170 e) of the National Planning Policy Framework (the Framework) as new development would not contribute to, or be put at unacceptable risk from land instability.
4. Based on the evidence before me, I sought clarification from the Council about the extent of the shortfall below the five years of deliverable housing sites that Framework paragraph 74 requires. In response, the Council explained that they could now demonstrate a five year supply of deliverable housing sites. As a result, I sought the appellant's comments. I shall turn to this matter later in my decision, but I have had regard to submissions of both parties.
5. I understand that the appeal site is deemed as public open space, but an Open

¹ Council Application Ref: 18/00488/FUL

Space Assessment was submitted with the planning application to demonstrate that the proposal accords with saved UDP Policy OL4 and Framework paragraph 96. Having regard to this, and the Council's view, I consider that the development of the site is acceptable provided that it accords with the development plan, unless material considerations indicate otherwise.

Main Issue

6. As a result, the main issue is the effect of the proposal on the living conditions of the occupants of 25, 27 and 29 Hurst Hill Crescent, with regards to privacy and overshadowing.

Reasons

7. The appeal site is largely an undeveloped piece of land. To the south-west is a two storey terrace. Whiteacre Road, Alexandra Street and Princess Street consist of similar rows of terraced properties. An existing car parking area serving the one bedroom apartments at 281 to 287 Whiteacre Road forms the north-west part of the site. The site's ground levels rise from the south-west to the north-east. There are further ground level changes between the site and the two storey detached dwellings on Hurst Hill Crescent. A concrete fence lines the site's north-west boundary. Tall leylandii sit within the rear gardens of Nos 25, 27 and 29, which have rear facing windows at ground and first floor. All of these properties have conservatories.
8. Saved Policy H10 of The Tameside Unitary Development Plan Written Statement (UDP) explains that proposals will be required to be of high quality and to meet a series of more detailed criteria. Criterion (d) states that there should be no unacceptable impact on the amenity of neighbouring properties through noise, loss of privacy, overshadowing, or traffic.
9. Estimates provided by the appellant company suggest that, at best, the ground levels change about 0.5 metres between the site and properties on Hurst Hill Crescent, with the worst case scenario being around 1.5 metres. The actual difference is not shown in the evidence before me, and the roof line of the conservatories is roughly at eye line when stood on the footpaths on Whiteacre Road. Hence, the ground levels on and next to the site are likely to be, at the least, the greater of the appellant company's estimates. The difference is, however, likely to be higher. Insufficient evidence is before me in this regard to say for certain.
10. The Tameside Residential Design Supplementary Planning Document (SPD) confirms that conservatories are treated as habitable rooms. SPD Policy RD5 sets out minimum privacy distances which are to be applied to conventional layouts and between new and existing developments. For the relationship between the proposed dwellings and the dwellings on Hurst Hill Crescent a distance of 21 metres is sought between habitable rooms, and an extra metre is sought for every metre in height difference between facing buildings.
11. No issue is raised about the interface distance to properties on Whiteacre Road. Furthermore the Council accept that the proposal accords with the SPD insofar as the rear elevations of the proposed dwellings and the original rear elevations of the dwellings on Hurst Hill Crescent. Despite this, the interface distance reduces to roughly 17.5 metres to 18 metres between the rear elevations of the proposed dwellings and the conservatories of Nos 25, 27 and 29. Despite the ground level change, this is below the SPD standard. Even so, some

- variation may be acceptable on infill sites such as this. The existing space should be taken into account in determining whether this should be the case.
12. Before considering this, I am mindful that the concrete fence would screen views from the rear facing ground floor windows of the proposed dwellings. The leylandii, however, is outside of the site, and thus the appellant company's control. While it may offer a good screen throughout the year, its presence or height cannot be guaranteed. Nor can it be subject of a planning condition that would satisfy the tests set out in Framework paragraph 55. Hence, it would not provide suitable mitigation that would prevent overlooking and thereby preserve neighbouring occupants' privacy. It follows that the concrete fence alone would not prevent elevated views from the rear facing first floor windows of the conservatories. Neighbouring occupants in properties on Hurst Hill Crescent would not, however, be any worse off in terms of overshadowing as a result of the proposal regardless of whether the leylandii is altered, maintained or removed. This is due to the siting of the proposed dwellings.
 13. In addition to considering the existing space as advocated by the SPD, saved UDP Policy H10 explains that *the council will encourage and permit new and innovative design solutions wherever this can be achieved without adverse effects on existing character*.
 14. Spacing between properties in the surrounding area varies. This is influenced by the age of development and the layout of roads. The site lies between a dense urban grain and a looser urban grain which characterises the development on Hurst Hill Crescent. The provision of rear gardens and the siting of each dwelling close to the road reflects the pattern of development on Whiteacre Road. While there are plots in the area which have sub-standard interface distances, these appear to date from Victorian era. Thus, they do not justify a closer spacing between the proposed dwellings and dwellings on Hurst Hill Crescent which have responded to the alignment of the road. Coupled with the addition of conservatories to the rear of a number of properties, this has led to a varied interface distance to properties on Whiteacre Road. Irrespective, it would seem that the properties on Hurst Hill Crescent were designed so that they would not adversely affect the character of the area or the living conditions of occupants in properties on Whiteacre Road.
 15. The proposal would make efficient use of the site. However, the development would not achieve the minimum privacy distances, while the scheme would not be new and innovative design solution. Moreover, given the relationship between properties on Hurst Hill Crescent and Whiteacre Road, the minimum privacy distances on this occasion should not be varied to the extent that the appellant company proposes, especially given the insufficient clarity about the ground level changes between the site and surrounding land. As such, I am unable to accept the appellant company's view that the scheme accords with all the criteria listed in SPD Policy RD2 or that no harm would be caused to the living conditions of the occupants of Nos 25, 27 and 29.
 16. I conclude that the proposal would result in significant harm on the living conditions of the occupants of Nos 25, 27 and 29, with regards to privacy. While the proposal would accord with the other criterion of saved UDP Policy H10, and saved UDP Policy C1, this does not outweigh the conflict that would arise with saved UDP Policy H10 (d) or SPD Policies RD2, RD5 and RD22; which jointly seek, among other things, to ensure that there are no unacceptable impacts on the amenity of neighbouring properties through loss of privacy.

Planning Balance

17. I agree with the Council, having regard to Framework paragraph 213, that saved UDP Policy H10 (d) is broadly consistent with Framework paragraph 127. However, despite the Council including a buffer within their figures, they have not been established through a recently adopted plan. Nor does the Council's statement suggest that it has been produced through engagement with developers and others who have an impact on delivery or considered by the Secretary of State. Thus, they are not able to demonstrate a five-year supply of deliverable housing sites in accordance with Framework paragraph 74.
18. For decision-taking this means: where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date², granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
19. Four new homes would contribute to the supply of homes in the area, and the proposal would make an important contribution to meeting the Borough's housing supply. Even if I were to accept the Council's figures at face value, this is not a ceiling on the provision of housing, and the proposal would help satisfy the demand for two bedroom dwellings in Ashton. I therefore give the housing provision moderate positive weight due to the Framework's objective of significantly boosting the supply of homes where it is needed.
20. There would also be limited benefits that would contribute to the economic, social and environmental objectives through the provision of jobs and spending during the construction phase; spending in the local economy by future occupants; the site's accessibility to a range of services and open spaces; the efficient use of land; the provision of car parking, amenity space and landscaping; and the design of the homes themselves, notwithstanding my findings in respect of neighbouring occupants living conditions. The scheme's ability to be safely developed without affecting land stability carries a neutral weight in the planning balance.

Conclusion

21. I have concluded in my main issue that the proposal would be contrary to saved UDP Policy H10 (d) and SPD Policies RD2, RD5 and RD22 as significant harm would be caused to the living conditions of the occupants of properties on Hurst Hill Crescent, with regards to privacy. Balanced against this is the scheme's contribution to the supply of housing, to which I have given moderate weight, and the other considerations which carry limited or neutral weight.
22. I therefore consider that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Thus, in applying Framework paragraph 11(d), planning permission should not be granted and the proposal would not represent sustainable development.
23. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

² This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites