



## Appeal Decision

Site visit made on 7 May 2019

**by Kate Mansell BA (Hons) MPhil MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 4 June 2019**

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**Appeal Ref: APP/G4240/W/19/3222156**

**Land between 255 and 281 Whiteacre Road, Ashton under Lyne**

- 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 18/00488/FUL, dated 29 May 2018, was refused by notice dated 10 August 2018.
  - The development proposed is 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.

### Procedural Matter

2. On 19 February 2019, the Government published an updated revised version of the National Planning Policy Framework (the Framework). In relation to the main issue in this appeal, Government policy has not materially changed. Accordingly, no parties have been prejudiced by my having regard to it.

### Main Issue

3. The main issue in this appeal is the effect of the proposal on the living conditions of existing occupiers at Hurst Hill Crescent, with particular regard to privacy and overshadowing.

### Reasons

4. Whiteacre Road is a long, mainly residential street, characterised principally by rows of Victorian era red brick terraced properties of similar appearance. The appeal site is mostly grassed, sitting between Nos 255 and 281 Whiteacre Road. It also incorporates a small car park serving the apartments at Nos 281-287. The rear boundary of the site is delineated by a concrete fence, beyond which is a row of tall leylandii within the back gardens of Nos 25-29 Hurst Hill Crescent. These existing houses form part of a later twentieth century estate, with ground levels that are approximately 1.55m below the appeal site.
5. The appeal proposal would introduce a terrace of four two-bedroom two-storey dwellings fronting Whiteacre Road. The dwellings would have a back garden and parking would be provided within the existing car park, shared with the adjacent apartments.

6. A previous scheme for 4 dwellings on this site was refused by the Council and subsequently dismissed at appeal in September 2018<sup>1</sup>. In that case, the difference in land level between the appeal site and Hurst Hill Crescent was uncertain and the dwellings were shown to be set back 0.75m from the back of the footpath on Whiteacre Road. As part of this appeal scheme, the dwellings would be positioned along the back edge of the pavement, and subsequently 0.75m further from the houses to the rear.
7. Saved Policy H10 of the Tameside Unitary Development Plan (Tameside UDP) (2004) requires new housing development to be of a high quality and requires, at criterion (d), that there should be no unacceptable impact on the amenity of neighbouring properties through noise, loss of privacy, overshadowing or traffic. This is further illustrated and explained within the Council's Tameside Residential Design Supplementary Planning Document (Design SPD) (March 2010), which is a material consideration.
8. Within the SPD, Policy RD22 relates specifically to infill sites, recognising that if appropriately designed, they can make efficient use of underutilised land, albeit having particular regard to matters such as ensuring that privacy distances are achieved. Policy RD5 of the SPD sets out a minimum privacy distance between new and existing developments of 21m between main facing habitable room windows. It recommends 1m extra for every 1m in height difference between facing buildings. Additionally, conservatories are specifically identified as a habitable room.
9. The decision notice cites only the relationship between the proposal and the houses on Hurst Hill Crescent, raising no issue in relation to the dwellings across the street on Whiteacre Road. Furthermore, the Council identify Nos 27 and 29 Hurst Hill Crescent to be most affected by the proposal. These properties would be directly to the rear of the proposed dwellings whilst No 25 would be at a more oblique angle. Nevertheless, all of these properties have conservatories.
10. The distance between the rear of the proposed dwellings and the main rear facing windows of properties on Hurst Hill Crescent, and Nos 27 and 29 in particular, would be between 21.5m and 22m. The distance to their conservatories would be less, between approximately 17.5m and 18m. For a development of two storeys, taking account of the level change, application of the SPD would require a minimum separation distance of 22m. Consequently, in relation to the conservatories at least, the distance would be appreciably below the SPD standard.
11. Reflecting guidance at Paragraph 126 of the Framework, in tailoring the details and degree of prescription within supplementary planning documents to the circumstances of each place, Saved Policy H10 of the Tameside UDP references the importance of the relationship between buildings and their setting. The Design SPD also acknowledges at RD5(e) that variation may be acceptable on infill sites where existing spacing should be considered. I further accept that in relation to daylight and sunlight, a flexible approach is encouraged by the Framework to make efficient use of the site, but only if the resulting scheme would secure acceptable living standards.

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<sup>1</sup> Council Ref: 18/00063/FUL and Appeal Ref: APP/G4240/W/18/3203685

12. Having regard to Policy H10, I am not persuaded that the proposed dwellings would offer a particularly innovative design solution. They would, instead, reflect the traditional form of properties within the area. I accept that the layout of houses on Hurst Hill Crescent could be described as being of a looser grain than the dense terraces that characterise Whiteacre Road and the adjoining roads, including Alexandra and Princess Street. However, I concur with the findings of the previous Inspector that the majority of dwellings within the vicinity with sub-standard separation distances typically date from the Victorian period.
13. Moreover, the appeal site lies between these and later 20<sup>th</sup> Century housing. Indeed, the houses on Hurst Hill Crescent were themselves designed to respond to the alignment of the road and to ensure no adverse effect on the living conditions of occupants of properties on Whiteacre Road, taking into account the level differences. Being at the interface, such a reduced separation distance between habitable room windows on the appeal site and the dwellings on Hurst Hill Crescent would not be justified by local context and the proposal would fail to meet the minimum separation distance required to protect the privacy of existing occupiers on Hurst Hill Crescent, and those at Nos 27 and 29 in particular.
14. I further agree with the previous Inspector that the leylandii, being outside the site, would be outside of the appellant company's control so that whilst they presently offer screening, their existing height and long-term retention could not be guaranteed. Equally, being outside the site, their retention by condition would not satisfy the tests set out in paragraph 55 of the Framework.
15. In respect of overshadowing, the previous appeal decision concluded that as a consequence of the siting of the proposed dwellings, the occupiers of the neighbouring properties on Hurst Hill Crescent would be no worse off, regardless of whether or not the leylandii was altered, maintained or removed. In comparison to this previous scheme, the proposed dwellings would be further away from the rear elevation of the existing dwellings and I therefore concur with these previous findings. In respect of privacy, however, the leylandii would not provide appropriate mitigation to prevent overlooking between the existing properties and the proposed dwellings. Similarly, the concrete fence would not prevent overlooking between the upper floor windows in particular.
16. For these reasons, I conclude that the proposal would not achieve minimum privacy distances and consequently, it would result in significant harm to the living conditions of the occupiers of Hurst Hill Crescent to the rear and the occupiers of Nos 27 and 29 in particular, with regards to their privacy. It would therefore conflict with Saved Policy H10(d) of the Tameside UDP, which requires development to have no unacceptable impact on the amenity of neighbouring properties through, amongst other matters, loss of privacy. This is broadly consistent with the objectives set out at Paragraph 127 of the Framework, to create a high standard of amenity for existing and future users and consequently, Policy H10(d) can be afforded considerable weight. The proposal would further conflict with guidance at Policy RD5 and RD22 of the Design SPD, which seek to ensure that there is no unacceptable impacts on the amenity of neighbouring properties through loss of privacy.

## **Other Matters**

17. I appreciate that the Council identify the site to be unallocated and it has not raised specific concerns about the effects of the scheme on a number of issues, including scale, design, appearance, materials, car parking and access arrangements, landscaping or open space. I also note that the site is not within a Conservation Area or other special policy control area. However, in order to demonstrate compliance with the development plan, these are requirements that would have to be met for any scheme to be acceptable in any event. They are not matters that diminish the harm I have identified in respect of the main issue above.

## **Planning Balance and Conclusion**

18. Both parties agree that the Council is unable to demonstrate a 5-year supply of deliverable housing sites in accordance with the Framework and, accordingly, the presumption in favour of sustainable development applies.
19. In this regard, I recognise that the site is within an accessible location for housing, close to services and facilities and with good access to public transport, where residential development would be acceptable in principle. The proposal would also contribute to the demand for open market houses and in particular, for two-bedroom dwellings within this part of the Borough. Having regard to the Framework's objective to boost significantly the supply of housing, four dwellings would make a modest contribution towards it and I attach moderate weight to its provision.
20. Furthermore, I acknowledge that the proposal would make better use of the land and I recognise that, having regard to paragraph 68 of the Framework, small sites are often built out relatively quickly, which also weighs in the scheme's favour. There would also be likely to be a degree of spend by future residents in the local area, as well as some benefits arising from the construction process in terms of jobs and spending within the construction supply chain, albeit these would be short-term.
21. Whilst I have fully considered these benefits, the adverse impacts of granting planning permission, having regard to the harm that would be caused to the living conditions of existing occupiers of Hurst Hill Crescent in respect of their privacy, would, in my view, significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Accordingly, in applying paragraph 11(d), planning permission should not be granted, and the proposal would not represent sustainable development.
22. For these reasons, I conclude that the appeal should be dismissed.

*Kate Mansell*

INSPECTOR