



Appeal Decision

Site visit made on 17 May 2024

by **David Cross BA(Hons) PgDip(Dist) TechIOA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10th June 2024

Appeal Ref: APP/A4710/W/23/3331299

Land Adjacent to Bryan Road, Elland, Calderdale, HX5 0QZ

- 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 Jerry Malik of RYMH Ltd against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 22/01083/FUL.
 - The development proposed is 10 executive new build dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) and the 2022 Housing Delivery Test (HDT) results have been published by the Government since the appeal was lodged. The HDT results indicate that the presumption in favour of sustainable development contained within paragraph 11(d) of the Framework will apply. Both main parties were given the opportunity to comment on any relevant implications for the appeal. I have had regard to the comments made in reaching my decision.
3. Amended plans for House Type 5 and a Site Plan were submitted with the appeal to clarify the hipped roof design of that house type, and interested parties have had the opportunity to comment on these plans as part of the appeal. I also requested further details in respect of the boundary treatment of Plots 2 and 8, which the appellant has provided. These relate to minor matters of clarification and I have considered the details provided accordingly.
4. The appellant has provided a Unilateral Undertaking (UU), although this has only been submitted in draft. Nevertheless, I have had regard to the contents of the UU including the proposed contributions to public open space, education and biodiversity.
5. It was requested that I view the appeal site from a number of nearby properties, and I was able to view the site from 15, 17 and 19 Bryan Road as well as 20 Hullenedge Road.

Main Issues

6. The main issues are the effect of the proposal on the:
 - Character and appearance of the area;
 - Living conditions of residents of Nos 15 & 17 in respect of outlook and light;

- Living conditions of residents of No 19 in respect of privacy and future residents of the development in respect of amenity space and light;
- Overgate Hospice in respect of noise, disturbance, privacy, and character and appearance; and
- Other considerations relevant to the planning balance.

Reasons

Character and Appearance

7. The appeal site is an area of open grassed land adjacent to and accessed from Bryan Road. The site is also bounded by dwellings on Hullenedge Road as well as parking, gardens and outbuildings associated with the Overgate Hospice.
8. The dwellings on Bryan Road and Hullenedge Road include a mixture of designs and scales, varying from substantial detached and semi-detached houses to bungalows. The dwellings on the same side of Bryan Road adjacent to the appeal site are of substantial and attractive stone-built designs.
9. A number of comments refer to a number of the proposed dwellings being set over 3-floors, where it is suggested that this would conflict with nearby 2-storey dwellings and the bungalows opposite the site. However, the scale and massing of the proposed larger dwellings would reflect the adjacent dwellings on Bryan Road. Although the proposed larger dwellings would include rooms in the roof, and have been described as 2.5 storey, I consider that their design and scale is sympathetic to the substantial traditional dwellings that adjoin the site. On that basis, the buildings on the frontage of Bryan Road, as well as those within the site, would complement the area, even allowing for the bungalows on the opposite side of Bryan Road.
10. However, the proposed dwellings facing onto Bryan Road include parking spaces to the front of each plot. Although this matter has not been raised by the Council, it has been identified in comments raised by third parties.
11. Existing dwellings adjacent to Bryan Road include on-site car parking which is primarily arranged to the side and rear. This provides for areas of front and side gardens which add significantly to the attractive streetscape. This is apparent even allowing for screening provided by boundary walls and planting.
12. In contrast, the appeal proposal would lead to a car dominated frontage along Bryan Road, which would jar uncomfortably with the streetscape. The proposal would include boundary treatments adjacent to the highway and potential for planting, but given the extent of the parking and manoeuvring areas proposed I am not persuaded that this would be sufficient to mitigate for the obtrusive extent of parking along the frontage. Due to the extent of hard surfacing to the front of these dwellings, the potential for soft landscaping would be very limited.
13. Furthermore, it has not been demonstrated that all of the proposed parking spaces can be easily accessed by cars. There is a significant possibility that this would lead to an increase in the width of the private vehicular accesses from Bryan Road to enable vehicles to manoeuvre into all of the spaces, which would increase the visibility of the parking and manoeuvring areas and which would exacerbate the harm arising from the car dominated frontage.

14. I therefore conclude that, due to the extent of hard surfacing and car dominated frontage for the dwellings facing Bryan Road, the proposal would lead to significant harm to the character and appearance of the area. The proposal would therefore be contrary to the design and aesthetic requirements of Policy BT1 of the Calderdale Local Plan 2023 (the Local Plan). The proposal would also be contrary to the Framework in respect of achieving well-designed and beautiful places.

Living Conditions - Nos 15 & 17

15. A side wall of the proposed dwelling on Plot 10 would be located in very close proximity to the rear garden and elevation of No 17, and which would project along most of the boundary. Due to the proximity, extent and massing of the proposed dwelling, the side elevation would be a stark and overbearing feature in views from the rear garden of No 17 and the rooms facing to the rear.
16. Due to the scale and layout of the dwelling on Plot 10, I also consider that the proposal would lead to a significant loss of daylight and sunlight to the rear of No 17. This would particularly affect the rear garden where residents could expect to receive appropriate levels of natural light.
17. The appellant has proposed a hipped roof design which would reduce the extent of the flank wall, and I saw that there are outbuildings within the rear area of Nos 17. However, these factors would not be sufficient to mitigate for the overdominant relationship between the proposed dwelling and No 17.
18. The appellant refers to separation distances set out in Table A2.1 of Annex 2 of the Local Plan, which are based on the nature of the relevant elevations of dwellings. In the case of No 17, the recommended separation distance in Table A2.1 would be 12m, and the appellant specifies that the separation distance between the elevations of No 17 and Plot 10 exceeds this at 13.9m. However, the separation distances referred to in Table A2.1 are minimum distances and it is also set out that they should not be interpreted rigidly. Reference is also made to the '25 degree test', but even allowing for the inclusion of a hipped roof to comply with this test, I consider that this is an over-simplistic assessment and does not reflect the circumstances of the appeal proposal or No 17.
19. Given the nature of the relationship between No 17 and Plot 10, I do not consider that compliance with the separation distance indicates that the impact on No 17 is acceptable. This includes in respect of the scale and extent of the proposed side elevation, and proximity to the boundary. The distances given in Table A2.1 do not lead me to a different conclusion in respect of the harm arising to the outlook from rooms within No 17. Furthermore, the separation distances do not address the harmful effect on the rear garden.
20. The dwelling on Plot 10 would also be prominent in views from the rear of No 15. However, the proposed dwelling is offset from the rear boundary and elevation of No 15, and due to this arrangement and separation distance I do not consider that the proposal would lead to unacceptable harm to the outlook or levels of light to the rear of No 15.
21. However, the dwelling on Plot 1 of the appeal proposal would be located close to the side boundary and elevation of No 15. The side elevation of No 15 includes the main entrance door and a covered seating area, as well as

windows serving a lounge and bedroom. The appellant accepts that the proposal would not meet the separation distance of 'secondary to side' elevations as set out in Table A2.1. Due to its proximity and arrangement, the proposal would affect the levels of light reaching windows to the side and a corner of No 15, even allowing for intervening trees on the boundary. Although some of those windows may serve habitable rooms which have windows on other elevations, it has not been demonstrated that the effect on the levels of light and outlook of those rooms or the external amenity area would be acceptable.

22. The elevations of proposed dwellings facing directly onto Nos 15 and 17 would not contain windows. However, while that may address concerns in respect of privacy, it would not address the harm arising to outlook and light.
23. Based on the evidence before me and my own observations, I conclude that the proposal would lead to significant harm to the living conditions of residents of Nos 15 & 17 in respect of loss of daylight, sunlight and outlook. This is due to the scale, proximity and arrangement of the proposed dwellings. The proposal would therefore be contrary to the daylighting and amenity space requirements of Policy BT2 of the Local Plan. The proposal would also be contrary to the Framework which seeks to achieve a high standard of amenity for users of land and property.

Living Conditions - No 19 and Future Residents

24. The Council submits that adequate outdoor amenity space has not been provided relative to the scale of the proposed dwellings. However, even allowing for the number of bedrooms in each of the dwellings, when viewed on plan each plot would provide suitable external amenity space for future residents. It has not been demonstrated that the proposal would not comply with appropriate standards.
25. However, when viewed on site there is an issue relating to the retention of screen planting between Plots 9, 10 and No 19.
26. The dwellings on Plots 9 and 10 would enable elevated views of the amenity area of No 19, although I am mindful that No 19 has an extensive garden area and much of this would not be affected by intrusive overlooking. However, the proposal would also enable elevated views of rooms and a conservatory to the rear of No 19, which I consider would be intrusive even allowing for the oblique nature of the views. The appellant accepts that the 18m separation distance between the nearest dwelling and No 19 would fall below the recommended minimum separation distance of 21m, even if that only relates to a small extent of the affected dwelling.
27. The appellant refers to the retention of planting along the boundary between the properties to restrict views from the development, which could be ensured by condition. However, I saw that the extent and position of the existing planting does not reflect that shown on the submitted plans. Based on observations on my visit, this planting would occupy a significant extent of the rear gardens of Plots 9 and 10, and would be located in very close proximity to windows on the rear elevation of the proposed dwellings. This would significantly restrict the use of the external amenity area of those plots, and would lead to a gloomy and oppressive environment within rooms facing to the rear.

28. It may be possible to provide replacement screen planting, but it has not been demonstrated how this would be possible within the constraints of the rear gardens of Plots 9 and 10. In any event, this planting would take some time to become established and effective.
29. Based on what I have seen and read, it has not been demonstrated that the proposal would provide suitable living conditions in respect of amenity space and light for future residents of Plots 9 and 10 while protecting the privacy of residents of no 19. The proposal would therefore be contrary to the privacy, daylighting and amenity space requirements of Policy BT2 of the Local Plan. The proposal would also be contrary to the Framework which seeks to achieve a high standard of amenity for existing and future users of land and property.

Overgate Hospice

30. I am mindful of the sensitive relationship between the appeal site and the neighbouring Hospice, both in the extant form of the Hospice and in respect of the planning permission for development of a new patient unit.
31. However, the proposed dwellings adjacent to the Hospice have been designed and arranged to mitigate issues of intervisibility and privacy between the sites.
32. Although patients and other users of the Hospice may be aware of activity associated with the proposed dwellings, including within external amenity areas, I do not consider that this would be unduly intrusive or of a form that would warrant the refusal of planning permission. That would be the case even given the type of family housing proposed.
33. The proposed dwellings would be visible from within the bounds of the Hospice and within the context of the Hospice's site. However, the proposal would be subservient to the extant Hospice as well as the approved development, and the dwellings would be of a design suitable to the context of that sensitive site. I do not therefore consider that the proposal would harm the character and appearance of the Hospice or its setting.
34. I also note that the operators of the Hospice have raised no objections to the proposal.
35. I therefore conclude that the proposal would not harm Overgate Hospice in respect of noise, disturbance, privacy, and character and appearance. The proposal would therefore not be contrary to Policies BT1 and BT2 of the Local Plan in respect of high quality, inclusive design as well as privacy and amenity space.

Other Considerations

36. I am mindful of the benefits of the proposal. The Framework seeks to support the Government's objective of significantly boosting the supply of homes. The development would add to the supply and mix of housing in the area in a location with good access to services and facilities. However, it may be possible to provide residential development on the site without the harm that I have identified in respect of the appeal proposal, and I note that planning permission has previously been granted for housing on the site, albeit of a smaller scale. On that basis, the benefits arising from the proposal on the matter of the supply of housing and the efficient use of land carry no more than moderate weight. That is the case even given the Council's performance in the delivery of

housing as indicated in the HDT and the potential that the site may be previously developed land.

37. The UU includes contributions to public open space, education and biodiversity. However, these would primarily address the impacts of the development itself, and are therefore neutral considerations in the overall planning balance.

Planning Balance and Conclusion

38. Notwithstanding my conclusions in respect of Overgate Hospice, the proposal would lead to significant harm to the character and appearance of the area as well as the living conditions of existing and future residents. The proposal would therefore conflict with the development plan when read as a whole in respect of high quality design, aesthetics, privacy, daylighting and amenity space.
39. As referred to previously with regard to the HDT, the 'tilted balance' of paragraph 11(d) of the Framework is engaged. This sets out that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. I have identified significant harm arising from the proposal to the character and appearance of the area as well as living conditions. Even considered cumulatively, the benefits arising from the proposal would carry no more than moderate weight. The adverse impacts of granting planning permission for the proposal would therefore significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework as a whole, including delivering a sufficient supply of homes as well as achieving well-designed and beautiful places.
40. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above the appeal should be dismissed.

David Cross

INSPECTOR