



Appeal Decision

Site visit made on 2 May 2024

by R Jones BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2024

Appeal Ref: APP/T4210/W/23/3333657

Land adjacent to 1 Park Avenue, Ramsbottom, Bury BL0 0DA

- 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 Park Avenue Ltd against the decision of Bury Council.
 - The application 69884, dated 11 July 2023, was refused by notice dated 3 November 2023.
 - The development proposed is new detached 3 storey house.
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Decision

1. The appeal is allowed and planning permission is granted for new detached 3 storey house at land adjacent to 1 Park Avenue, Ramsbottom, Bury BL0 0DA in accordance with the terms of the application, 69884, dated 11 July 2023, and the plans submitted with it, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Andrew Gaskill against Bury Council. This application is the subject of a separate decision.

Preliminary Matter

3. The Places for Everyone Joint Development Plan (PfE) was adopted in March 2024. It replaces some policies, or sections of policies, of the Bury Unitary Development Plan (1997) (UDP). Those UDP policies referred to in the Council's decision notice, namely Policy H2/1, H2/2, EN1/2 and HT2/4, have not been replaced but the Council advise that Policy H2/1 is now supported by PfE Policy JP-H3. The views of the main parties were sought on this matter.

Main Issues

4. The main issues in this case are the effect of the proposed dwelling on:
 - 1) the character and appearance of the streetscene;
 - 2) the living conditions of the neighbours at No.76 Bury New Road, with regards outlook and privacy;
 - 3) the integrity of the adjacent adopted highway of Bury New Road; and
 - 4) the free flow of traffic and highway safety.

Reasons

Character and appearance

5. The appeal site comprises land formerly within the curtilage of No.1 Park Avenue (No.1), a semi-detached dwelling, situated on the corner of Park Avenue and Bury New Road. No.1 and its attached pair have recently been remodelled which has included converting the original hipped roof to a gable, new fenestration and a render and grey cladding finish. The semi-detached pair is orientated toward the corner of Park Avenue and Bury New Road and their very contemporary finish and detailing is distinctly different to other dwellings facing Park Avenue.
6. The proposed dwelling would be sited to the side of No.1, similarly, facing the corner, but set slightly forward of the front building line of the semi-detached pair. I observed on my site visit that at either end of Park Avenue (on the corners of Bury New Road and Shipperbottom Lane) a semi-detached pair is orientated at an angle, providing a building line or frontage as the corner is returned. I did not, however, find this established layout to create a particularly distinctive sense of place, and the siting of the proposed dwelling would not cause any particular harm to the group of dwellings on the north side of Park Avenue.
7. Because of its corner location, the appeal site is prominent when travelling from the north-west on Bury New Road, including from the Public Right of Way over the motorway bridge. From the north-west, the large steep gable of No.76 Bury New Road is visible behind No.1 and No.3 Park Avenue. The proposed dwelling would be two-storey in height (with a bedroom in the roofspace) and, although offset from its boundaries, it would largely fill the gap between No.1 and the footway along Bury New Road. It would therefore obscure the view of No.76's gable, but the design of the proposed dwelling with a slate appearance pitched roof, simple porch detail and render finish, would complement the adjoining semi-detached pair. It would further have a similar ridge height and massing to its neighbours. Whilst I note that most existing dwellings on Park Avenue and Bury New Road are semi-detached and primarily red-brick with a hipped roof, the proposed dwelling would form part of a small group or composition with No.1 and 3 Park Avenue. Therefore, although prominent, it would not appear intrusive in, or starkly conflict with, the existing streetscene.
8. Consequently, there would be no conflict with saved policies H2/1, H2/2 and EN1/2 of the Bury Unitary Development Plan (1997) (UDP) of PpE Policy JP-H3 because the proposed dwelling is consistent with the principles of good design, has an acceptable standard of layout and makes a positive contribution to the form, quality and distinctiveness of the surrounding area. Further, there would be no conflict with the principles of good design in Section 12 of the National Planning Policy Framework (the Framework) or with paragraph 41 of the National Design Guide (2021) in so far as it advises that well-designed new development should respond positively to the surrounding context beyond the site boundary, including the layout, form, scale, appearance and materials of existing built development.

Living conditions

9. No.76 Bury New Road (No.76) is a semi-detached bungalow facing Bury New Road to the south-east of the appeal site. I observed on my site visit that

because of the difference in ground level, the ground floor of No.76 broadly aligns with the first floor of No.1 Park Avenue and there is a significant retaining wall along the common boundary (which would be retained). There is a door on the gable of No.76 facing the appeal site, but the orientation of the windows are toward the front and rear of the bungalow.

10. The proposed dwelling would be sited forward of No.76 (closer to Bury New Road) and there is a difference in opinion between the parties about how far it would be offset from the shared boundary; the Council contend that the separation distance would be only 4.7m, compared to the appellant's 9.8m. Irrespective of this difference, from my observations on site, I am satisfied that the proposed distance from the boundary, and its siting at a lower level, means that the proposed dwelling would not appear uncomfortably close to No.76. Nor, despite being sited around 4m forward of No.76 (closer to Bury New Road), would it result in an undue sense of enclosure. The principal outlook from No.76 would remain to the front and rear of the bungalow, and whilst part of the first floor and roof of the proposed dwelling would be visible from the front windows of No.76, it would be at an oblique angle.
11. At first floor, the proposed dwelling would have a window to two bedrooms that would face the common boundary with No.76. However, the siting of the proposed dwelling forward of the front building line, and its offset from the boundary means that these windows would overlook only the front driveway of No.76. I do not therefore find that there would be overlooking such that there would be a material loss of privacy for these neighbours.
12. For these reasons, I conclude on the second main issue that there would be no harm to the living conditions of the neighbours at No.76. Consequently, there would be no conflict with UPD policies H2/1 and EN1/2 in so far as they require consideration of the relationship of the proposal to the surrounding area and the position and proximity of neighbouring properties. Nor would there be a conflict with paragraph 135 of the Framework which seeks to ensure developments create places with a high standard of amenity for existing and future users.

Highway Integrity

13. The back of the footway along Bury New Road forms the northern boundary of the appeal site and between this and the site itself is a difference in levels, which increases from around 2m to 4m between the front and rear, and an existing retaining wall. The proposed site plan shows that part of this retaining wall (located broadly centrally within the site) would need to be removed to accommodate the proposed dwelling. The Council's concern is that insufficient information has been provided to demonstrate that this could be achieved without affecting the structural integrity of the footway and adopted highway.
14. The details submitted with the planning application show (in section) the rebuilding of the retaining wall in brick, with a traditional strip footing, and a reprofiled embankment behind (up to the footway). The appellant has further provided in their evidence a letter from a Civil Engineer that explains the detail shown in the section. It is not clear from the consultation response from the Council's Head of Engineering why the submitted information is therefore considered insufficient.

15. The submitted Section Location drawing (dwg no. 21.004-008-A) shows that a limited section of the existing retaining wall would be removed, with the proposed dwelling offset a minimum 2m from the back of the footway and around 4m from the adopted highway. There is sufficient space within the appeal site for the retaining walls to be relocated and rebuilt and the land reprofiled. Subject to a condition controlling the details as submitted, I am not therefore persuaded that the proposals would cause any harm to the integrity of the footway, or highway beyond. Any works to the footway itself would in any event require the approval of the highways authority.
16. Consequently, there would be no conflict with UDP Policy H2/2 which requires new residential development to demonstrate acceptable standards of layout including access for pedestrians and design for safety. UDP Policy HT2/4 relates to car parking and servicing requirements and is not therefore relevant to this main issue.

Car parking

17. The proposed site plan (dwg. No. 21.004-003-A) shows sufficient driveway parking for 3no. cars, accessed from the corner of Park Avenue and Bury New Road (using the original access to No.1 Park Avenue). There is no dispute between the parties that the appeal site can accommodate the required number of car parking spaces, but the Council's concern is that there is insufficient space to leave the site in forward gear. I observed on my site visit that the existing retaining wall (shown as retained) limits the width of the driveway and consequently cars would need to reverse into, or from the site. The footway at the corner of Park Avenue and Bury New Road is relatively wide and the location of the existing dropped kerb means it would be possible to manoeuvre a car to and from Park Avenue (in reverse gear), which is a quiet residential road. There would, therefore, be no need to reverse to or from the busy Bury New Road and consequently no conflict with the free flow of traffic.
18. I note that the consultation response from the Council's Head of Engineering does not raise the parking arrangements for the proposed dwelling as a reason for refusal, rather the loss of parking and adequate access for No.1 Park Avenue. As No.1 does not itself fall within the appeal site, this issue is outside the scope of my consideration.
19. For the reasons given, on the final main issue I conclude that the car parking layout is sufficient to ensure the free flow of traffic and road safety. There would therefore be no conflict with UDP policies H2/2 and HT2/4 which together require new residential development to demonstrate acceptable car parking provision and access.

Other Matters

20. PfE Policy JP-S2 replaces policies EN4, EN4/1, EN4/2 of the UDP which relate to energy conservation. The aim of PfE Policy JP-S2 is to deliver a carbon neutral Greater Manchester no later than 2038, supported through a range of measures including an expectation that new development will, unless it can be demonstrated that it is not practically or financially viable, be net zero carbon, applicable to regulated operational carbon emissions. The Policy outlines that new development proposals should set out how this can be achieved in an Energy Statement; the absence of which the Council now raise as an issue with this appeal. Whilst I recognise that the emphasis on reducing carbon emissions

has increased, the relevant saved UDP policies nonetheless encouraged development which contributed to energy conservation, provision of renewable energy sources and energy efficiency. These UDP policies were not listed, or referred to, in the Council's Delegated Report as being relevant to the application, nor was an Energy Statement requested during determination of the planning application.

21. PfE Policy JP-H4 requires new housing to be delivered at a density appropriate to its location. The Council have referred to the policy seeking a minimum of 50 dwellings per hectare in locations between 400m and 800m of a defined centre, and that the onus is on an applicant to provide the site area for all application sites and how they accord with this policy. The site area (372sqm) for the appeal site was provided in the planning application form and whilst the density would be below the minimum sought, for the reasons given above in respect of the character and appearance, the layout and scale of the proposed development is appropriate to its location.
22. The Council have also alleged a conflict with both PfE Policy JP-G7 (Trees and Woodland) and Policy JP-G8 (A Net Enhancement of Biodiversity and Geodiversity) and refer to clearance of the site, considered 'abundant with shrubs and trees.' Save the Street Scene images provided in the Council's evidence, which show shrubs beyond the boundary hedge (which would be retained) I have very limited information regarding the number of trees on site, or the baseline biodiversity value. The site had been cleared by the time of my site visit and no trees are identified on the Site Survey or referred to in the planning application form. On the evidence before me, it is not therefore possible to determine whether there is a conflict with PfE Policy JP-G7 12) in so far as it requires each tree lost to be replaced by two new trees. Nor is it possible to determine whether there would be any harm to biodiversity and therefore a conflict with PfE Policy JP-G8. The mandatory requirement of providing a 10% minimum net gain to biodiversity is not applicable to this case.
23. For the reasons given above, none of these other matters raised by the Council, lead me to form a different conclusion to the one above.

Conditions

24. A set of suggested conditions was submitted by the Council which the appellant has seen and commented on. I have used these as the basis for those I have imposed, having regard to the advice on the use of conditions in the Framework and Planning Practice Guidance.
25. In addition to the standard implementation condition, I have imposed a condition that specifies the approved drawings in the interests of certainty. As the proposed materials are specified on these approved drawings, I do not find it necessary to require samples and further full details of all materials to be used on external surfaces to the submitted to and approved by the local planning authority. To ensure good design and the appearance of the site, I have, however, imposed a condition requiring the provision, and thereafter, retention of the bin store shown on the approved site plan.
26. In the interests of minimising risks from potentially contaminated land, I have imposed conditions requiring an assessment of the risk posed by any contamination to have been submitted to and approved in writing by the local

planning authority before the commencement of any works; and if contamination is identified that no works should begin until submission and approval in writing of a detailed remediation scheme. In the interest of minimising flood risk, I have imposed a condition that the development must include provision of a potential SuDs option for surface water drainage.

27. For the reasons given in respect of the third main issue, I do not find it necessary to impose a condition requiring an 'Approval in Principle' for the proposed replacement retaining structure on the Bury New Road boundary. The details of these are controlled by the condition specifying the approved drawings. In the interests of highway safety, given the proximity to Bury New Road, I have however imposed a condition requiring the submission and approval of a Construction Management Plan which would also include a photographic dilapidation survey of the footway and carriageways abutting the site in the event remedial work is required.
28. The Council have suggested a condition which would remove Classes A to G of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which includes the enlargement, improvement or other alterations of a dwellinghouse, additions and other alterations to the roof, porches and buildings incidental to the enjoyment of a dwellinghouse. The Council have provided no justification for such as extensive removal of national permitted development rights and consequently, having regard to paragraph 54 of the Framework, the suggested condition has not been imposed.
29. To ensure compliance with PfE Policy JP-H3 the Council have suggested a condition requiring the dwelling to be designed and built in accordance with optional Part M4(2) 'Accessible and adaptable dwellings' of Building Regulations. I agree that such a condition is necessary, but to reflect the requirement of PfE Policy JP-H3 I have amended the Council's suggested wording. The Council have also suggested a condition requiring the provision of 1 Electric Vehicle charge point. However, as Part S of the Building Regulations is now in effect this condition is not necessary.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed.

R Jones

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing no. 003 Rev. A: Proposed Site Plan; Drawing no. 001 Rev. A: Proposed Plan and Location Plan; Drawing no. 002 Rev. A: Proposed Elevations; Drawing no. 005 Rev. A: Existing and Proposed Block Plan; Drawing no. 004 Rev. A: Proposed Street Scene – LPA NOTE: PARTIAL Street Scene Drawing no. 006 Rev. A: Existing and Proposed Street Scene (Black and White); Drawing no. 006 Rev. A: Existing and Proposed Street Scene (Coloured); Drawing no. 008 Rev. A: Existing and Proposed Section Location; Drawing no. 009 Rev. A: Existing and Proposed Site Section C-C; and, Drawing no. 011 Rev. A: Existing Topographical Survey.
- 3) The bin store facilities shown on the approved site plan (Drawing no. 003 Rev. A) shall be implemented and made available for use prior to the first occupation of the development hereby approved and thereafter maintained.
- 4) The dwelling hereby approved shall be designed and built in accordance with the accessible and adaptable standard in Part M4(2) (Accessible and adaptable dwellings) of the Building Regulations, unless it can be demonstrated to the satisfaction of the Local Planning Authority that specific site conditions make this impractical.
- 5) No development shall commence unless and until:-
 - i. A contaminated land Preliminary Risk Assessment report to assess the actual/potential contamination and/or ground gas/landfill gas risks at the site shall be submitted to, and approved in writing by, the Local Planning Authority;
 - ii. Where actual/potential contamination and/or ground gas/landfill gas risks have been identified, detailed site investigation and suitable risk assessment shall be submitted to, and approved in writing by the Local Planning Authority;
 - iii. Where remediation/protection measures is/are required, a detailed Remediation Strategy shall be submitted to, and approved in writing by, the Local Planning Authority. These works shall be undertaken in accordance with any approved details.
- 6) Following the provisions of Condition 3) of this planning permission, where remediation is required, the approved Remediation Strategy must be carried out to the satisfaction of the Local Planning Authority within agreed timescales; and a Site Verification Report detailing the actions taken and conclusions at each stage of the remediation works, including substantiating evidence, shall be submitted to and approved in writing by the Local Planning Authority prior to the development being brought into use.
- 7) The development hereby approved shall be carried out in accordance with a surface water drainage scheme which shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and be designed in accordance with the Non-Statutory Technical Standards for

Sustainable Drainage Systems (March 2015). This must include provision of potential SuDS options for surface water drainage. The drainage scheme shall be implemented prior to first occupation and thereafter maintained.

- 8) No development shall commence until a 'Construction Traffic Management Plan' (CTMP), has been submitted to and agreed in writing with the Local Planning Authority and shall include the following:
- i. Photographic dilapidation survey of the footways and carriageways abutting the site in the event that subsequent remedial works are required following construction of the development and as a result of any statutory undertakers connections to the new dwelling;
 - ii. Access point for construction traffic from the adopted highway;
 - iii. Site hoardings (if proposed) clear of the adopted highway and the visibility splay;
 - iv. Parking on site (or on land under the applicant's control) of operatives' and construction vehicles together with storage on site of construction materials, including any requisite phasing of the development to accommodate this;
 - v. Measures to ensure that all mud and other loose materials are not spread onto the adjacent adopted highways as a result of the groundworks operations or carried on the wheels and chassis of any vehicles leaving the site and measures to minimise dust nuisance caused by the operations.

The approved plan shall be adhered to throughout the construction period and the measures shall be retained and facilities used for the intended purpose for the duration of the construction period. The areas identified shall not be used for any other purposes other than the parking of vehicles and storage of demolition/construction materials. All highway remedial works identified as a result of the dilapidation survey shall be implemented to the written satisfaction of the Local Planning Authority prior to the development hereby approved being occupied.