

APPLICATION REPORT – VAR/350474/23
Planning Committee 7 June 2023

Registration Date: 07/02/2023
Ward: Waterhead

Application Reference: VAR/350474/23
Type of Application: Full / Removal of condition

Proposal: Removal of condition 6 attached to planning permission granted under PA/032610/94 which restricted further development under permitted development rights

Location: Former Clarksfield House – Clarksfield Street and Glenfield Close

Case Officer: Abiola Labisi
Applicant: Mr Amanat Ali
Agent: Simon Plowman

1. INTRODUCTION

- 1.1 The application has been referred to Planning Committee for determination because the proposal relates to a Major application which was determined by the Planning Committee.

2. RECOMMENDATION

- 2.1 It is recommended that the application be approved subject to the conditions set out in this report and that the Head of Planning shall be authorised to issue the decision.

3. SITE DESCRIPTION

- 3.1 The overall site comprises of a residential development of twelve dwellings which is accessed off Glenfield Close and forms the first phase of a larger residential scheme. The scheme was approved under planning ref. PA/032610/94 and the dwellings have now been completed and fully occupied.
- 3.2 The development comprises two storey detached dwelling within an area of undulating topography and it is noted that there are many trees within the area, particularly to the rear of the dwellings. Some of the trees are covered by Tree Preservation Orders.

4. THE PROPOSAL

- 4.1 The application proposes the removal of Condition 6 attached to planning ref. PA/032610/94. The condition removes permitted development rights relating to enlargement of the dwellings.

4.2 Specifically, the condition states:

“Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order, 1988 (or any Order amending or replacing that Order), no extensions, dormers, garages, outbuildings, sheds, greenhouses or porches shall be erected within the curtilage of (any of) the approved dwellinghouse(s), other than those expressly authorised by this permission, if any, without further approval of the Local Planning Authority.”

4.3 The reason for the above condition states:

“The Local Planning Authority considers it expedient, having regard to the density, type and appearance of the development, to regulate any future alterations/extensions to ensure that the amenity of the occupiers of neighbouring dwellings and the character and appearance of the area are not detrimentally affected.”

4.4 Apart from the removal of the above condition, the application does not seek any physical alteration to the development.

5. PLANNING HISTORY

5.1 The main planning history relates to planning ref. PA/032610/94 under which permission was granted on 20/04/1995 for the erection of twelve detached dwellings on the site.

6. RELEVANT PLANNING POLICIES

6.1 The adopted Development Plan is the Joint Development Plan Document (Local Plan) which forms part of the Local Development Framework for Oldham. The site is unallocated in the Proposals Map associated with this document. As such, the following policies are considered relevant to the determination of this application:

- Policy 1 - Climate Change and Sustainable Development;
- Policy 3 – Address of Choice,
- Policy 5 - Promoting Accessibility and Sustainable Transport;
- Policy 9 - Local Environment;
- Policy 10 – Affordable Housing,
- Policy 11 - Housing;
- Policy 20 – Design, and,
- Saved Policy D15 – Protection of Trees on Site.

7. CONSULTATIONS

| CONSULTEE | FORMAL RESPONSE |
|--------------|---|
| Tree Officer | Formal response received. Tree Officer raised objections on grounds that the proposal could trigger development that may impact on protected trees. |

8. PUBLICITY AND THIRD-PARTY REPRESENTATIONS

- 8.1 In accordance with the requirements of the Town and Country Planning (Development Management Procedure) (England) Order 2015, and the Council's adopted Statement of Community Involvement, the application has been advertised as a major development by neighbour notification letters, display of a site notice, and publication of a press notice.
- 8.2 In response, two representations have been received, both objecting to the proposal and raising the following (summarised) issues:
- Proposal likely to lead to development that would be detrimental to amenity (addressed under paras 13.1 and 13.2)
 - Proposal likely to lead to development that would be detrimental to the character of the area (addressed under paras. 13.1 and 13.2)
 - Proposal is to facilitate a particular development (Not a material consideration).

ASSESSMENT OF THE PROPOSAL

9. RELEVANT PROVISIONS RELATING TO PLANNING CONDITIONS

- 9.1 In assessing this proposal, it is considered pertinent to set out relevant legislations relating to planning conditions. Para 55 of the NPPF addresses planning conditions and obligations and provides that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations.
- 9.2 Para 56 of the NPPF however stipulates that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
- 9.3 Further on the use of planning conditions, the National Planning Practice Guidance (NPPG) provides that the objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls (Paragraph: 001 Reference ID: 21a-001-20140306).
- 9.4 In addition, the NPPG lists instances where planning conditions should not be used and these include instances where such conditions require compliance with other regulatory requirements (e.g., Building Regulations, Environmental Protection Act): and in this regard, the NPPG states that "Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. Use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate" (Paragraph: 005 Reference ID: 21a-005-20190723).
- 9.5 Significantly, the NPPG also provides that permitted development rights do not override the requirement to comply with other permission, regulation or consent regimes. (Paragraph: 022 Reference ID: 13-022-20140306).

10. CONDITION 6 AND COMPLIANCE WITH RELEVANT TESTS

- 10.1 As set out under para 56 of the NPPF, conditions are required to meet certain tests and these include being necessary, relevant to planning and the proposed development, enforceable, precise and reasonable in all other respects. In assessing whether the condition meets these tests, the reason for the condition needs to be examined. The main reason for attaching Condition 6 to the permission was in the interest of protecting the amenity of the occupiers of neighbouring properties and the character and appearance of the area.
- 10.2 It has not been demonstrated that an enlargement of every single dwelling within the residential development would lead to a detrimental impact on the amenity of the occupiers of other dwellings in the area. As such, a blanket condition removing permitted development rights relating to the enlargement of all the dwellings is considered unnecessary. One of the tests to be met is that the condition must be precise. In this instance, it is considered that the condition is not precise as it does not focus on a specific problem but rather serving as a broad, blanket control on development within the entire site. The NPPG states that such conditions are unnecessary.
- 10.3 Similarly, with regard to impact of any enlargement of any of the dwellings on the character and appearance of the area, it is considered that a broad control on development as dictated by this condition fails to meet the requirements under the 'necessary' and 'precise' tests. Given the layout of the site, as well as the plots not being of the same size, it is difficult to demonstrate that an enlargement of one dwelling would have the same impact on the character and appearance of the area as an enlargement of any other dwelling.
- 10.4 It is also important to point out that since the permission for the development of the site, removal of permitted development rights has become more and more difficult as there is a requirement that such rights should only be removed in very exceptional circumstances.

11. PLANNING HISTORY / PATTERN OF DEVELOPMENT

- 11.1 Notwithstanding the relatively small size of the estate, a review of planning history in the area shows that no less than twenty approvals have been granted for extensions and outbuildings within Glenfield Close. A significant number of the dwellings have thus been extended over the years.
- 11.2 Having regard to the number of planning permissions that have been given for enlargements in the area, and many of which have actually been implemented, it is not unreasonable to conclude that there is no demonstrable general harm to either amenity or the character and appearance of the area as to warrant a blanket condition removing permitted development rights relating to extensions and outbuildings.

12. RESPONSE TO TREE OFFICER'S COMMENTS

- 12.1 The Council's Tree Officer recommended that the application be refused as the proposal is likely to lead to uncontrolled pattern of development that could cause harm to trees which are subject of Tree Preservation Orders.

- 12.2 Whilst the concerns of the Tree Officer are considered to be genuine, it should however be noted that permitted development rights do not override any other legislative requirements such as the requirement to ensure that development does not cause harm to a tree with a preservation order. As such, notwithstanding any permitted development rights, a developer is still required to carry out their development in a way that they do not cause unacceptable harm to protected trees. Such acts constitute an offence that is addressed under other relevant legislations. Removal of permitted development rights is therefore not necessary in order to ensure that no damage is caused to the protected trees in the area and as such, the condition is not necessary.

13. RESPONSE TO ISSUES RAISED IN LETTERS OF OBJECTION

- 13.1 The main issues raised in the two objections are that the condition was imposed in order to protect the amenity of neighbours and the character of the area and therefore, the condition should not be removed. Notwithstanding the purpose of the condition, it has been demonstrated in the assessment above that the condition does not meet the tests and requirements set out within the NPPF and as such, should not have been attached to the permission in the first instance.
- 13.2 Furthermore, the resulting pattern of development in the area, with a significant number of properties having been extended, is an indication that such condition is not necessary.

14. CONCLUSION

- 14.1 Condition 6 attached to planning ref. PA/032610/94 would not be in compliance with all relevant tests that planning conditions are required to meet as set out in the NPPF. In addition, the general pattern of development in the area, whereby a significant amount of extension works have been undertaken on many of the properties in the area, detracts from any justification for such a blanket restriction on development.
- 14.2 Accordingly, it is recommended that the condition be removed.

15. RECOMMENDED CONDITIONS

1. The development shall be implemented in accordance with relevant terms and conditions attached to the original planning permission (Planning ref. PA/032610/94) except as modified by this permission for the removal of Condition 6 of PA/032610/94.

SITE LOCATION PLAN (NOT TO SCALE):

