
Appeal Decision

Site visit made on 3 October 2016

by Mike Hayden BSc DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 October 2016

Appeal Ref: APP/W3005/W/16/3153990

Quantum Clothing Group, North Street, Huthwaite, Sutton-in-Ashfield, Nottinghamshire NG17 2PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Quantum Clothing Group against the decision of Ashfield District Council.
 - The application Ref V/2015/0264, dated 1 May 2015, was refused by notice dated 22 January 2016.
 - The development proposed is an outline application for residential development (up to 90 dwellings) with all matters reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for residential development (up to 90 dwellings) with all matters reserved at Quantum Clothing Group, North Street, Huthwaite, Sutton-in-Ashfield, Nottinghamshire NG17 2PE in accordance with the terms of the application, Ref V/2015/0264, dated 1 May 2015, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application was submitted in outline, with all matters relating to layout, scale, appearance, access and landscaping reserved for subsequent approval. An indicative masterplan, entitled 'Proposed Site Masterplan' (Ref. N0213 (08) 001 Rev H) was submitted with the appeal, substituting the indicative masterplan submitted with the planning application. The appellant confirmed that this was for illustrative purposes rather than as a formal part of the proposal. I have dealt with the appeal accordingly.
3. A completed legal undertaking under S106 of the 1990 Act was submitted by the appellant during the appeal process. This would ensure that no less than 10% of the dwellings to be constructed on site would be affordable as defined in the National Planning Policy Framework (the Framework). It is certified and signed by the land owner. I am satisfied that the undertaking meets the necessary legal and policy tests set out in paragraph 204 of the Framework and in regulation 122 of the Community Infrastructure Levy Regulations (2010) as amended. Therefore, I have taken it into account in reaching my decision.

Main Issues

4. The main issue in this appeal is the effect of the proposal on the character and appearance of the surrounding area, having regard to the heritage significance of the existing buildings and whether or not they could be viably retained in full or in part as part of the proposed development.

Reasons

Character and Appearance

5. The appeal site is a former textile factory complex, which has been disused since the appellant vacated the buildings in 2014. It was built in 1906 for the Co-operative Wholesale Society to house its hosiery manufacturing business. The complex comprised a large and imposing, L-shaped red-brick building, extending along the south and east frontages of the site on High Street and North Street, with a series of other warehouse, office and ancillary buildings to the rear. At time of my visit the demolition of the site was underway, with some of the rear buildings cleared, although the façades and the main structure of the frontage buildings remained intact.
6. The site is located within a residential area on the north side of Huthwaite, adjacent to Brierley Forest Park to the north. On its west, south and east sides are streets of predominantly 2-storey terraced and semi-detached houses. Although the frontage buildings on the site are of a much larger scale and massing, their architecture and materials, particularly at the entrance on the corner of High Street and North Street, make a valuable contribution to the local street scene and to the character and appearance of the area as a whole. The factory is also historically important because of its relationship with the textile and mining industries in Huthwaite. Although not listed or within a conservation area, the building's local significance as a non-designated heritage asset is recognised by its inclusion in the Council's local list of heritage assets.
7. Paragraph 135 National Planning Policy Framework (the Framework) requires that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. However, paragraph 131 of Framework also requires that in determining planning applications, account should be taken of both the desirability of sustaining heritage assets and putting them to viable uses consistent with their conservation.
8. In previous appeal on this site (APP/W3005/W/15/3035794) the Inspector found that the reuse or conversion of buildings for employment uses would be unviable and that conversion of the frontage buildings to residential would be challenging. But despite this he found that the loss of the buildings as a heritage asset was not justified due to an absence of evidence that at least a part of buildings could not be viably retained, such as the façades or corner entrance feature to High Street and North Street.
9. Since that appeal decision, the appellant has assessed the potential for the retention of the existing buildings as part of the proposals. The appellant's statement of case records that the additional cost to the scheme of retaining just the façade at the corner of North Street and High Street would be £140,000. When this is factored into the appellant's revised viability assessment, the evidence indicates that a residential development retaining part of the existing building would be financially unviable. I have seen no evidence from the Council to indicate otherwise.
10. Saved Policy ST1(b) of the Ashfield Local Plan Review (2002) (the Local Plan) requires that development should not adversely affect the character, quality and amenity of the environment. Paragraph 131 of the Framework also expects account to be taken of the desirability of new development making a

positive contribution to local character and distinctiveness. As all matters would be reserved, subject to suitably worded conditions, the Council would have full control over the design of the proposed replacement residential development. It should therefore be able to ensure a scheme which would respect the character and appearance of the surrounding area and the contribution of the heritage asset. The illustrative masterplan submitted with the appeal indicates the potential for a layout comprising street frontages along High Street and North Street to reflect those opposite the site and an opportunity for a block on the corner of High Street and North Street responding to the character of the existing buildings at this point on the site.

11. Therefore, whilst I recognise the local significance of the existing frontage buildings on the site as a non-designated heritage asset, I am satisfied their reuse and retention would not be viable. I also find that any harm caused by the loss of the buildings to the character and appearance of the surrounding area would be compensated for by the positive contribution which could be made by a sensitively designed replacement residential development.
12. On this basis I conclude that the appeal proposal would not cause unacceptable harm to the character and appearance of the surrounding area. Accordingly, it would comply with the terms of saved Policy ST1 of the Local Plan and be consistent with paragraphs 131 and 135 of the Framework.

Other Matters

13. The appellant has exercised permitted development rights to demolish the buildings on site and suggested this removes any harm arising from the appeal proposal as the starting point would be a cleared site. I have had regard to this as a fallback position, but attach little weight to it as a justification for the proposed development. To do otherwise would run counter to the provisions of paragraphs 131 and 135 of the Framework, which require account to be taken of the desirability and viability of sustaining heritage assets and the harm resulting from their loss.
14. Whether or not the Council is able to demonstrate a 5 year supply of deliverable housing sites is disputed between the main parties. However, the principle of the use of the appeal site for residential development is not at issue in this appeal. In the light of this and my conclusion on the main issue, it is not necessary in this case for me to reach a conclusion on the matter of housing land supply.
15. The proposal would, however, contribute to meeting affordable housing needs in the district. The appellant has submitted a unilateral undertaking under S106 of the Act, which would secure the provision of no less than 10% of the dwellings on the site as affordable housing. Given the need for affordable housing in Ashfield District, this would be an important social benefit arising from the proposal to which I attach significant weight in the planning balance. I note the Council's comments on the undertaking. However, I am satisfied that the obligations as currently worded would secure the provision of the affordable housing on site through a Registered Provider or an equivalent financial contribution to enable off-site provision within the local area, in line with the requirements of saved Policy HG4 of the Local Plan and the guidance contained in the Council's Affordable Housing Supplementary Planning Document (2009) (SPD).

16. The proposal would have some environmental benefits in making use of a disused and previously developed site. Potential soil and water contamination issues identified in the Phase 1 survey of the site, which may need further investigation and remediation, could be dealt with by condition. The site is also in an accessible location close to local facilities at Brierley Forest Park and on Sutton Road, which would reduce the need for future occupants to travel by car.
17. With regard to traffic and highway safety, access to the site would be a reserved matter and therefore could be controlled by condition. I note that in its representations on the planning application, the highway authority sought a S106 obligation to secure a financial contribution to improving crossing facilities and a condition to upgrade two bus stops on Sutton Road. However, I have seen little evidence to demonstrate that these are necessary to make the proposed development acceptable in planning terms. Therefore, they fail to satisfy all of the tests set out in paragraphs 204 and 206 of the Framework. However, I note the highway authority's request for a travel plan to encourage future occupants of the site to travel by sustainable transport modes, which would be consistent with paragraphs 32 and 36 of the Framework and could be secured by condition.
18. I note from that the ecological and protected species report submitted with the appeal and the representations from the Nottinghamshire Wildlife Trust that the appeal proposal could affect protected species including roosting bats, badgers and nesting birds, within or adjacent to the site. Article 12(1) of the European Habitats Directive prohibits disturbance of protected species or damage to or destruction of their breeding sites or resting places. The Conservation of Habitats Regulations 2010 places a duty on decision makers to have regard to the requirements of the Habitats Directive, which sets out three tests to be considered if a proposal could cause harm to protected species. These are that there should be an overriding public interest for the proposal, that there is no satisfactory alternative and that the proposals, including mitigation measures, would not be detrimental to the conservation of species.
19. The ecological report recommends a number of mitigation measures, including methods to protect bats discovered during demolition, bat roosting boxes in the new development to enhance biodiversity, avoiding clearance of any bird nesting habitat on site during the nesting season and redesigning the area of the development nearest the suspected badger burrows. Although demolition is already underway on site, these measures would provide appropriate mitigation and could be required by condition. Subject to this and given my conclusion on the main issue and the social and environmental benefits of the scheme, I am satisfied that the Habitats Directive tests would be met and that the proposed development would comply with paragraph 118 of the Framework which seeks to conserve and enhance biodiversity.
20. The site is also adjacent to Brierley Forest Local Nature Reserve and Grassland Local Wildlife Site. The Wildlife Trust has also raised concerns about the potential effect of surface water run-off and domestic predators and recreational disturbance on these sites. However, suitably worded conditions for drainage, landscaping and boundary treatment would provide the means to control the effects of the development on the biodiversity of these areas, in line with the Framework.

21. I have considered the other matters raised in representations on the planning application and the appeal, including the effects of the proposal on flood risk, drainage, sewerage and the privacy of the occupiers of nearby properties. The site lies within Flood Zone 1 at lowest risk of flooding. On site measures to deal with the sustainable drainage and disposal of surface water and foul sewage could be controlled by condition. Likewise, the layout and design of dwellings on the site to avoid overlooking of neighbouring properties could be controlled by condition as part of the reserved matters.

Conditions and S106 planning obligation

22. I have considered which planning conditions are required having regard to the tests contained in the Planning Practice Guidance and the conditions suggested by the Council. I have attached conditions limiting the life of the permission in accordance with the requirements of the Act and specifying the approved plan for the avoidance of doubt. Conditions specifying the details of the reserved matters to be submitted for approval are necessary to ensure the development makes a positive contribution to the character and appearance of the area and in the interests of highway safety, biodiversity and the living conditions of surrounding residents. A construction method statement is also necessary and reasonable to safeguard the amenities of the occupiers of surrounding properties and ensure highway safety.
23. A condition to ensure appropriate drainage is needed to manage the effects of surface water and sewage disposal on the surrounding area and on biodiversity. An ecological mitigation scheme is required to safeguard protected species and conserve and enhance biodiversity. Due to the potential for soil and water contamination, a condition requiring a remediation scheme is necessary, subject to the results of a Phase 2 survey. Finally, a Travel Plan is both necessary and reasonable to encourage the use of sustainable modes of travel and reduce the need to travel by car.
24. The permission is also subject to the legal undertaking under S106 of the Act, dated 14 September 2016 and referred to in paragraphs 3 and 15 above, to ensure the provision of affordable housing in accordance with the Local Plan and the Affordable Housing SPD.

Conclusion

25. For the reasons given above and taking all other matters into account, I conclude that the appeal should be allowed, subject to the conditions specified and the S106 legal undertaking.

M Hayden

INSPECTOR

Schedule of Conditions

- 1) Details of the access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") of the development hereby permitted shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plan: Location Plan N0213 (08)002.
- 5) Details required to be submitted in compliance with condition 1 shall include details of the access roads and their junctions with the highway, access widths, gradients, visibility splays, street lighting, parking and turning facilities, cycle and bin storage facilities, construction specifications and any proposed structural works. The details approved shall be constructed prior to the first occupation of the dwellings and retained thereafter.
- 6) The details required to be submitted in compliance with condition 1 shall include:
 - i) Drawings showing the finished floor levels of the dwellings in relation to the existing and proposed levels of the site and surrounding area.
 - ii) Provision of boundary screening to the site, including positions, height, design and materials of boundary treatment.
 - iii) A scheme of hard and soft landscaping, including earthworks showing existing and proposed finished levels or contours, measures for the protection of existing trees and hedgerows to be retained throughout the course of development, hard surfacing materials and an implementation programme.

The development shall be implemented in accordance with the details approved and the boundary treatment and landscaping scheme shall be provided prior to the first occupation of the dwellings and retained thereafter.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) lorry routeing for construction traffic;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) arrangements for turning vehicles;
 - iv) loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development;
 - vi) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vii) wheel washing facilities;
 - viii) measures to control the emission of dust and dirt during construction;
 - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - x) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No development shall commence until drainage plans for the disposal of surface water and foul sewage have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

- 9) No development shall take place until a scheme of ecological mitigation in accordance with the measures set out in the Ecology and Protected Species Survey of the site, dated July 2014, has been submitted to and approved in writing by the local planning authority. The scheme shall include a timetable for implementing the measures. The development shall be carried out in accordance with the approved scheme.
- 10) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is occupied and upon completion of the remediation scheme a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority.
- 11) No part of the development hereby permitted shall be occupied until a Travel Plan has been submitted to and approved in writing by the local planning authority. The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanisms) to promote travel by sustainable modes and shall include arrangements for monitoring of progress on the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.