
Appeal Decision

Site visit made on 19 December 2016

by Geoff Underwood BA(Hons) PGDip(Urb Cons) MRTPI IHBC

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

Decision date: 23 January 2017

Appeal Ref: APP/E0915/W/16/3158612

Former KSS Factory Site, Off Constable Street, Denton Holme, Carlisle, Cumbria CA2 6AB

- 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 Citadel Estates Ltd against the decision of Carlisle City Council.
 - The application Ref 16/0025, dated 12 January 2016, was refused by notice dated 18 March 2016.
 - The development proposed is the demolition of redundant factory buildings and replacement with 50 new terraced dwellings including change of use to residential.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal must be determined on the basis of the development plan as it exists at the time of my decision. Since the Council made its decision the Carlisle District Local Plan 2015-2030, 2016 (CDLP) was adopted on 8 November 2016 and this now forms the development plan for the District.
3. When I visited the site the factory buildings had been demolished leaving a largely cleared site except for a pile of rubble in its centre.

Main Issues

4. The main issues raised by this appeal are:
 - i) whether the site is appropriate for housing development having regard to local and national policies relating to development in areas at risk of flooding;
 - ii) whether the proposal would represent good, accessible and inclusive design with particular reference to its effect on existing and future occupiers' living conditions, and;
 - iii) the effect the proposal would have on the habitats and biodiversity of the River Eden.

Reasons

Flood Risk

5. The appeal site is largely surrounded by existing housing and associated open space. The Little Caldew watercourse runs along its west side. The proposal
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- would consist of houses arranged in short terraces, many set at right angles to one another and interspersed with access roads, parking spaces and gardens.
6. The site is located within Flood Zones 2 and 3 although the appellant's updated Flood Risk Assessment (FRA) concludes on the basis of detailed levelling undertaken that the site is effectively in Flood Zone 2. This is one which has a medium probability of river flooding. Dwelling houses are identified in the Planning Practice Guidance (PPG)¹ as being development which is More Vulnerable to flooding.
 7. In considering whether development is acceptable in areas at risk of flooding CDLP Policy CC 4 requires proposals to comply with the National Planning Policy Framework (the Framework) and to have satisfied a Sequential Test demonstrating that no other lower risk alternative site exists. This approach is consistent with that of the Framework which at paragraphs 100 and 101 seeks to steer new development to areas with the lowest probability of flooding and not permitting it if there are reasonably available sites with a lower probability of flooding.
 8. In support of their appeal the appellant has provided a Planning: Sequential Test report which concludes that the catchment area of the Robert Ferguson School would be the appropriate area over which to apply the Sequential Test, within which it has identified no sequentially preferable sites. The accompanying plan illustrates this catchment area as being a discreet sector extending south from the City Centre.
 9. Notwithstanding that there is very little substantive analysis of whether there are sites at lower risk of flooding within this search area to support its conclusions, such an area appears to be a very restricted one within which to conduct the exercise. The Council consider this should have been carried out at a district wide level.
 10. The PPG² advises that the Sequential Test area will be defined by local circumstances. Whilst this guidance gives an illustrative example of the catchment area for a school there is no evidence to suggest that the proposed housing would be required to satisfy a need which only exists within the limited area of that school's catchment nor that there is any particular functional relationship between them. On the contrary, in all likelihood housing would provide accommodation which satisfies a need over a much wider geographical area than that of a school catchment area.
 11. I am therefore not persuaded from the evidence provided that confining a search to the Robert Ferguson School catchment area is an appropriate one over which to conclude that there are no sequentially preferable sites. This is particularly the case in light of the recently adopted development plan which the Council consider provides the framework within which the district's housing needs can be delivered on sites at lower risk of flooding
 12. The FRA concludes that notwithstanding its Flood Zone 2 location the risk of fluvial flooding is low as a result of flood defences along the River Caldew and considers that the Environment Agency model shows that the defences would protect the site in a 1 in 100 year flood event. However, whilst the Environment Agency consider that the site is well protected by existing flood defences it notes

¹ Table 2: Flood Risk Vulnerability Classification, Paragraph: 066, Reference ID: 7-066-20140306

² Paragraph: 033, Reference ID: 7-033-20140306.

that some areas of Denton Holme are low lying and there remains a residual risk of flooding. As a residual risk remains which is reflected in its Flood Zone location I cannot conclude that the site would be at such a low risk of flooding that would indicate that a Sequential Test should not be undertaken.

13. I therefore conclude that in failing the Sequential Test and consequently failing to demonstrate that there are not reasonably available housing sites at lower risk of flooding elsewhere, the proposal would be contrary to CDLP Policy CC 4 and the approach in the Framework as supported by the PPG. Whilst the Council have not identified any conflict with its housing policies, including the approach to windfall housing in CDLP Policy HO 2, this does not mean that the proposal would be otherwise acceptable in light of avoiding flood risk.
14. Interested parties writing in support of the proposal have pointed out that the site did not flood in recent flood events including the Storm Desmond event in 2015. However, it cannot be concluded that the avoidance of flooding in a particular event would necessarily remove the risk of flooding from the site. I note that the Environment Agency have indicated that the River Eden was the main cause of flooding during the Storm Desmond event and that the catchment of the River Caldwel was not affected by that event in the same way.

Design

15. The proposal would be a dense, compact design with terraces of houses closely situated to one another. Whilst the overall design and layout picks up the terraced form of development of the majority of the site's surroundings, the juxtaposition of the proposed short terraces at right angles to one another would create a considerably more contained arrangement than that of adjoining streets. The development would be largely enclosed within a 1.8m high wall, including along its boundary with streets to the east.
16. The plans indicate that the gable of the central terrace of seven houses would be less than 7m away from the rear elevation of the nearest existing houses in Freer Court. Given this short distance, that part of the development would give rise to an outlook from the rear windows of those properties in Freer Court within which the proposed development would appear unacceptably oppressive. The relative orientation of the proposed building would also be likely to harmfully limit day, and at certain times sun, light to the rear aspects of those adjoining houses. A similar effect on future occupiers would arise where the rear elevations of proposed properties in the south east corner of the site would be situated very close to the end elevation of the nearest existing house on Ashman Close.
17. These separation distances would be considerably shorter than the 12m minimum the Achieving Well Designed Housing Supplementary Planning Document, 2011 (AWDH) seeks between gables and elevations with primary windows. I am conscious that the factory buildings which were formally on the site may have given rise to similar effects to properties on Freer Court. However, this would not justify the repetition of such effects when opportunities for redevelopment arise.
18. The first floor rear windows of the proposed terrace of four houses in the north east corner of the site would overlook those on both floors in the adjoining houses in Freer Court, leading to a loss of privacy. The plans indicate that these properties would be separated by a distance of 17.27m which is below the 21m minimum usually sought by the AWDH to avoid such effects. The proposed block

in question would broadly follow the building line of the adjoining terrace on Blunt Street, circumstances the AWDH advises that the minimum distances need not strictly apply in the case of infill schemes. However, not only does the proposed development only partially reflect this aspect of the adjoining street pattern, the size and configuration of the site is such that it cannot be reasonably considered as an infill site where size and external constraints are such that would justify a relaxation of minimum separation distances.

19. Within the proposed development distances between gables and elevations of houses arranged perpendicular to one another would in all but one situation be very close, being less than 7m which is significantly below AWDH 12m minimum. This would result in two storey gables being very close to windows to habitable rooms in adjoining properties which would create an overbearing effect on the outlook from those rooms. It would also harmfully limit day and sun light in the case of properties in the terrace adjacent to the block in the south west corner of the site.
20. These instances are not so isolated that the harm would be limited and in a number of instances the distances would be restricted on both sides of proposed houses. Overall the proposed dwellings would be laid out in a constrained arrangement which would lead to material harm to the living conditions of both existing neighbours and future occupiers of the proposed houses.
21. The proposed footways would be set higher than the adjoining parking areas and carriageways. They would vary in width but the plans show them as being particularly narrow in front of many properties and narrower than those which serve many surrounding streets. In many locations they would run immediately behind perpendicular car parking spaces where parked vehicles could further narrow the width by overhanging the spaces.
22. The plans indicate that door thresholds would be set above the level of the adjoining footway and the FRA suggest an additional increase in finished floor levels. This could make it difficult for occupiers and their visitors to navigate the streets or access properties, particularly those pushing prams, requiring mobility aids or in wheelchairs. This failure to create an accessible and inclusive environment would be harmful to the living conditions of future occupiers.
23. In reaching this conclusion regarding accessibility and its effect on inclusivity I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010, in particular the need to minimise disadvantages suffered by persons who share a relevant protected characteristic including those of age, disability, pregnancy and maternity. The equality implications add weight to my findings on this issue.
24. Whilst in principle a compact design and layout with a close relationship between buildings could help to generate pleasant and characterful living environments, in this case the adverse effects arising from the layout would result in an overdeveloped and in parts oppressive scheme even though the overall density might reflect that of surrounding streets.
25. The combined effect of the proposed layout would fail to create an accessible and inclusive development which would be well integrated into its surroundings nor avoid adverse effects on the living conditions of existing and future occupiers, contrary to CDLP Policy SP 6. In doing so it would also conflict with the Framework's core planning principle of always seeking to secure high quality

design and a good standard of amenity for all existing and future occupants of land and buildings.

26. The cumulative harmful effects arising from the layout of the development would result in poor design that fails to take the opportunities for improving the character and quality of the area and the way it functions, circumstances in which the Framework indicates that permission should be refused.
27. Furthermore, although the scale, massing and form of the proposed buildings would generally reflect that of their surroundings aspects of the proposal would not accord with the principles in the Denton Holme and Longsowerby Design Statement Supplementary Planning Document, 2007 (DHLDS). Some terraces would turn their back on others and the public realm within the scheme. The scheme does not take the opportunities the DHLDS promotes to resolve the abrupt termination of streets which frustrate legibility when sites come forward for redevelopment by reconnecting them to adjacent street networks, for instance Blunt Street, but rather would perpetuate it.
28. Although the appellant's final comments refer to pedestrian access being provided to the east, this is not indicated on the plans and their suggestion that the proposed boundary wall could be lowered would do little to improve legibility and accessibility between the site and the network of streets to the east. Whilst my decision does not turn on this matter it adds some weight to my conclusion that the design and layout of the proposal would not demonstrate high quality design or levels of accessibility.
29. The close proximity of some proposed houses along the southern boundary of the site is such that occupiers would be likely to experience disturbance from the adjoining play area. However, I noted whilst visiting the site that some equipment had been removed and the appellant has provided evidence that it is the Council's intention to remove the equipment and surfacing from this area in early 2017. Although part of the area was in situ I have not been presented with any reason to suggest that this action will not take place. Consequently this would avoid such harm to future occupiers' living conditions.
30. The appellant has also provided evidence which illustrates that the largest refuse collection vehicle used by the Council could serve the development with limited overhang of the footways. Bearing in mind the advice in *Manual for Streets*³ that it is neither necessary nor desirable to design new streets to accommodate larger refuse vehicles than can be used within existing streets in the area the proposed layout would avoid conflict with criterion 11. of CDLP Policy SP 6 in this respect. However, the avoidance of harm in relation to these last two points does not alter my findings on design issues above.

Effect on designated sites

31. In support of their appeal the appellants have submitted an assessment⁴ in order to address the Council's refusal reason relating to a lack of evidence that harm could be avoided to designated sites, in particular the River Eden Special Area of Conservation and the River Eden and Tributaries Site of Special Scientific Interest, to which the Little Caldey is connected. I have been presented with no reason to question its conclusions that there would be no significant effects on

³ Paragraph 6.8.6.

⁴ Appeal Statement: Ecological Desk Study and HRA Screening Assessment.

these sites, subject to mitigation measures during construction and in the design of the surface water drainage scheme.

32. Such mitigation measures could reasonably be required by way of planning conditions. As such the proposal would comply with the biodiversity and designated site protection aims of CDLP Policy GI 3. In reaching this conclusion I note that the Council advise that they no longer wish to pursue an objection on the basis of their third refusal reason in light of this evidence. However, avoidance of harm in this respect does not amount to a positive consideration.

Other Matters

33. The appellant has drawn my attention to a development at McIlmoyle Way where they indicate minimum separation distances have not been achieved. However I do not have full details of that scheme nor the circumstances that led to it being considered acceptable and I cannot be certain that the situation is the same as that which has arisen in this case. In any event I have considered the appeal proposal on its own merits.
34. An interested party writing in support of the proposal has referred to an oversupply of employment land in the District and the Framework's aim to avoid the protection of employment sites unlikely to be used as such. However, I note that the Council have not raised an objection in this respect and accordingly is less pertinent in this case.
35. The appellant considers that the intended private rented tenure of the houses would help address a local need for such accommodation which would be low cost. Although this could not be considered as affordable housing in the Framework's definition of such accommodation, the Framework supports the delivery of a wide choice of homes to which the development would contribute.
36. The proposal would result in the redevelopment of previously developed land in an accessible location and would deliver a considerable number of new houses. This is supported in principle by policies in the CDLP and by the Framework's core planning principle of encouraging the effective use of land and its aim to boost significantly the supply of housing. These are matters which carry considerable weight in favour of the proposal.
37. However, important though these benefits would be, they would be significantly outweighed by the harm of locating housing within an area at risk of flooding unsupported by a Sequential Test and which would not display the high quality of design and layout required by development plan and national policies. This harm would mean that the environmental role the Framework requires sustainable development to demonstrate would not be satisfied.

Conclusion

38. For the reasons set out above, and having had regard to all other matters raised, the proposal would be contrary to the development plan, supplementary guidance and the Framework. The appeal is therefore dismissed.

Geoff Underwood

INSPECTOR