
Appeal Decision

Site visit made on 21 February 2017

by Thomas Hatfield BA (Hons) MA MRTPI

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

Decision date: 28th March 2017

Appeal Ref: APP/W4223/W/16/3162611

1 Fern Hill, Oldham, OL4 5NW

- 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 Mr Ian Dewhurst against the decision of Oldham Metropolitan Borough Council.
 - The application Ref PA/336700/15, dated 16 March 2015, was refused by notice dated 25 October 2016.
 - The development proposed is described as "outline application for the construction of 3 detached dwellings on land at the rear of numbers 1 and 2 Fern Hill, Oldham".
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The application is in outline with all matters reserved for future consideration except for the means of access, layout, and scale.

Main Issues

3. The main issues are:
 - (a) The effect of the development on the character and appearance of the landscape;
 - (b) Whether the development would result in a loss of open space; and
 - (c) Whether the development would utilise a sequentially less preferable greenfield site.

Reasons

Character and appearance of the landscape

4. The appeal site is located in the valley of the River Medlock, which has a semi-rural character, and contains paths and areas of woodland set within an open landscape. The appeal site is separated from publically accessible land to the west by the river, and a line of mature trees.
 5. Existing housing is generally positioned above, rather than within the valley which maintains its sense of openness. Nos 1-2 Fern Hill are an exception to this, although they are well screened by existing trees and vegetation. In contrast, the trees along the boundary of the appeal site provide only limited screening, particularly at lower levels. The new properties would therefore be
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prominent from the public footpath that runs close to the western boundary of the site. They would also be prominent in views from the surfaced path to the north west. The effect of the development would therefore be to urbanise this part of the valley and harm its semi-rural character.

6. Whilst landscaping is a reserved matter, I note that the proposed layout does not identify land within the site to accommodate additional boundary planting or screening. In this regard, the proposed access would extend almost to the site boundary. Whilst there is a strip of land between the site and the river, which the appellant states is owned by the Council, there is no evidence before me that the owner would permit a landscaping scheme to be undertaken on this land. It is also unclear whether a suitable scheme could be achieved given the Environment Agency's requirements, as set out in their suggested condition. On the balance of evidence before me, I cannot therefore be sure that sufficient mitigation would, or indeed could, be provided at reserved matters stage.
7. My site visit took place in February when the trees are not in full leaf. However, the fact that the development would be poorly screened for at least part of the year remains a significant concern.
8. For the above reasons, I conclude that the development would unacceptably harm the character and appearance of the landscape. It would therefore be contrary to Policies 6, 9, 21, and 22 of the Oldham Joint Core Strategy and Development Management Policies (2011). These policies seek, amongst other things, to preserve the character and distinctiveness of the landscape.

Open Space

9. The appeal site is not publically accessible and does not contain a public right of way. It comprises entirely of private land that was previously used as gardens for the adjacent properties.
10. The appeal site is designated as Open Space under Policy 23 of the Oldham Joint Core Strategy and Development Management Policies (2011). This policy seeks to protect, promote, and enhance existing open spaces within the borough. It also sets out a number of exceptions that would justify development within an Open Space. However, the appeal proposal would not meet any of these exceptions.
11. Policy 23 was adopted in 2011 prior to the publication of the National Planning Policy Framework ("the Framework"). Paragraph 215 of the Framework states that due weight should be given to relevant policies in earlier plans according to their degree of consistency with the Framework. In this regard, paragraph 74 of the Framework supports the protection of existing open spaces and sports and recreational buildings and land. However, the context and phrasing of this paragraph suggests that its use of the term "open space" can most reasonably be interpreted as referring to open space to which the public has access for recreation. I am confirmed in that view by the terms of the preceding paragraph, which refers to "access to high quality open space and opportunities for sport and recreation ..." (my emphasis). Accordingly, as the appeal site is not publically accessible land, its designation as Open Space is inconsistent with the Framework.

12. I conclude that the development would be contrary to Policy 23 of the Oldham Joint Core Strategy and Development Management Policies (2011). However, the designation of the appeal site under this policy is not consistent with the Framework, and I therefore attach only limited weight to it. I return to this matter in my conclusion, below.

Greenfield site

13. Policy 1 of the Oldham Joint Core Strategy and Development Management Policies (2011) states that the Council will promote "*development on previously developed land ... prior to the use of greenfield sites*". In addition, Policy 3 states that "*the use of previously developed land and vacant or underused buildings is the Council's first preference for residential development and the availability of such land, both in the locality and boroughwide, as assessed by the Council's monitoring arrangements, will be the first consideration when regarding applications on 'greenfield' sites*". Policy 11 also quotes this section of Policy 3.
14. The appellant confirms that the most recent use of the site was for an extended garden area to Nos 1-2 Fern Hill. Annex 2 of the Framework specifically excludes private residential gardens in the built up area from the definition of previously developed land. Whilst the remains of a number of outbuildings are still partially visible, they are now heavily overgrown and have largely blended into the landscape. In any event, it is not uncommon for outbuildings to be located within residential gardens. Accordingly, I consider the appeal site to comprise 'greenfield' land.
15. However, Policies 1, 3, and 11 were adopted in 2011, prior to the publication of the Framework. In these circumstances, paragraph 215 of the Framework states that due weight should be given to relevant policies in earlier plans according to their degree of consistency with the Framework. Whilst the Framework encourages the reuse of land that has been previously developed, it does not support a sequential approach to restrict the development of greenfield sites. Policies 1, 3, and 11 are therefore not consistent with the Framework as they are significantly more restrictive.
16. I conclude that the development would be contrary to Policies 1, 3, and 11 of the Oldham Joint Core Strategy and Development Management Policies (2011). However, insofar as they seek to apply a sequential approach to the development of greenfield sites, these policies are not consistent with the Framework and I attach only limited weight to them. I return to this matter in my conclusion, below.

Other Matters

17. Whilst the appeal site is in close proximity to the River Medlock, it is not within a Flood Zone. In this regard, I note that the Environment Agency has not objected to the development.
18. Whilst no objections were received to the development from either neighbours or consultees, this represents an absence of harm in relation to these matters, rather than a positive benefit.
19. Concerns regarding delays that took place during the processing of the planning application fall outside of the remit of this decision.

Conclusion

20. As set out above, Policies 1, 3, 11, and 23 of the Oldham Joint Core Strategy and Development Management Policies (2011) are not consistent with the Framework, and I attached only limited weight to them in this case. However, I have also concluded that the proposal would unacceptably harm the character and appearance of the landscape, contrary to Policies 6, 9, 21, and 22. These policies are consistent with the Framework, which seeks to protect valued landscapes. In these circumstances, the proposal would be contrary to the development plan and this conflict would not be outweighed by other material considerations.

21. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR