

Appeal Decision

Site visit made on 5 April 2017

by Kay Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 15.05.2017

Appeal Ref: APP/N4205/W/16/3162124

Land off Dixon Street, Wingates, Westhoughton, Bolton,

- 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 Joseph Jackson & Sons against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 96689/16, dated 01/06/2016, was refused by notice dated 06/09/2016.
 - The development proposed is residential development for up to 14 detached dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on the character and appearance of the area; the biodiversity of the site; and the mineral reserves associated with the site

Reasons

3. The application was made in outline with all matters apart from access and scale reserved for subsequent approval. I have determined the appeal accordingly. The application was supported by an illustrative layout plan which indicates properties arranged around a central access road.

Effect on character and appearance

4. The appeal site lies outside of the settlement and is designated as part of a wider area of Protected Open Land in the Council's Allocations Plan. Access into the site is via an existing field gateway to the side of a terrace of modern three storey properties. Although the gardens to the properties adjoin part of the southern boundary of the site, the remaining boundaries adjoin open land which separates it from built development to the west and the M61 motorway to the north.
 5. The development would be screened from Dixon Street by the modern dwellings to the south and views from other public vantage points would be broken by intervening trees and hedges. However, the development would be seen from the M61 motorway and in part from public footpath WES105 to the south of the site which the worn path and evidence of footprints suggests is in regular use.
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6. It is acknowledged that the distance and speed of vehicles passing along the motorway would affect the degree to which the development would be seen. Nevertheless, from both the motorway and the public footpath I consider clear views of the development would be possible in which the properties would appear as an inappropriate extension to the settlement.
7. The Landscape Character Appraisal of Bolton has described the area as poor grade farmland where under-investment has led to deterioration and neglect, including the loss of hedgerows and their replacement with post and wire fencing. However, the land continues to make a visual contribution to the openness of the area which would be lost if the development were to go ahead.
8. On balance I consider that the proposed development would be detrimental to the character and appearance of the area, contrary to Policies CG3 and OA3 of Bolton's Core Strategy Development Plan Document which seek to maintain and respect the character of the wider open landscape.

Effect on biodiversity

9. The Council's concerns regarding the effect of the development on biodiversity centre on the lack of information regarding the potential presence of great crested newts on the site. Although it is understood that the Appellant has commissioned a survey, the results are not yet available and are therefore not before me for consideration as part of the appeal.
10. Great crested newts are a European Protected Species¹ and according to Circular 06/2005² the presence of a protected species is a material consideration in considering a proposal that, if carried out, would be likely to result in harm to the species or its habitat. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. Although developers should not be required to undertake ecological surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development, the need to ensure surveys are carried out should only be left to coverage in planning conditions in exceptional circumstances.
11. The Council's evidence indicates that there is a reasonable likelihood of great crested newts being on or in sufficiently close proximity to the site that they would be affected by the development. Furthermore the Council considers that the impact of the scheme and the risk of an offence occurring without the provision of any avoidance, mitigation or compensation are unacceptably high. Although the Appellant contends that two ponds in the area are not relevant, I am not satisfied that there is sufficient evidence to demonstrate conclusively the presence or otherwise of great crested newts on the site or the extent to which they may be affected by the development.
12. In the absence of an ecological survey I therefore conclude that the proposed development has the potential to result in harm to great crested newts and their habitat, contrary to Core Strategy Policy CG1 which seeks to safeguard and enhance biodiversity.

¹ Under the Wildlife and Countryside Act 1981 and the Habitats Regulations 1994

² Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system

Effect on minerals

13. The appeal site forms part of a Mineral Safeguarding Area for sandstone, surface coal, brick and clay which protects mineral resources from sterilisation by other non-mineral development. Although the Council considered that the need for residential development had not been proven to outweigh the need to extract minerals from the site, it is clear from the Greater Manchester Joint Minerals Plan (JMP), April 2013, that in some circumstances the prior extraction of minerals would be inappropriate.
14. Policy 8 of the JMP permits proposals for non-mineral development within Mineral Safeguarding Areas that do not allow for the prior extraction of minerals in certain specified circumstances. Criterion 2 of the policy allows such development where it can be clearly demonstrated that it is not environmentally acceptable or economically viable to extract the mineral prior to non-mineral development taking place.
15. It is accepted practice to employ buffer zones between mineral extraction sites and residential properties and transport corridors. However, the separation distance between the existing settlement and the motorway in the vicinity of the appeal site is approximately 300 metres. It is therefore highly likely that even if the required buffer zones could be provided it would not be economically viable to extract minerals from the land. On this basis I consider that the development would not harm the extraction of mineral, in accord with Policy 8 of the JMP and Core Strategy Policy P4.3, which seeks to safeguard known resources of minerals.

Planning balance

16. The Council has confirmed that it is unable to demonstrate a five year housing land supply. According to paragraph 49 of the Framework, relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. In this situation paragraph 14 of the Framework states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
17. A benefit of the proposal would be the provision of up to fourteen dwellings which would make a modest contribution towards the shortfall in housing land supply. The lack of harm to the extraction of minerals also weighs in favour of the appeal.
18. However, these matters have to be balanced against the identified harm to the character and appearance of an area. There is also the reasonable likelihood of protected species being present and affected by the development. These matters carry significant weight which is not outweighed by the benefits of the scheme.
19. For the reasons given above, and having had regard to all other matters raised, the appeal is dismissed.

Kay Sheffield

INSPECTOR