

Appeal Decision

Inquiry held on 5 - 7 July 2017

Site visit made on 6 July 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 21 August 2017

Appeal Ref: APP/N4205/W/17/3167848

Bowlands Hey, Land off Collingwood Way and Old Lane, Westhoughton, Bolton

- 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 Bellway Homes Limited (Manchester Division) against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 97377/16, dated 5 September 2016, was refused by notice dated 16 January 2017.
 - The development proposed is the erection of 129 dwellings, the laying out of roads and footways; hard and soft landscaping, walls and fences and drainage; together with the laying out of public open space including ecological mitigation; and other associated works.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of 129 dwellings, the laying out of roads and footways; hard and soft landscaping, walls and fences and drainage; together with the laying out of public open space including ecological mitigation; and other associated works at Bowlands Hey, land off Collingwood Way and Old Lane, Westhoughton, Bolton in accordance with the terms of the application, Ref 97377/16, dated 5 September 2016, subject to the conditions set out in the Schedule to this decision.

Procedural Matters

2. At the Inquiry, the Council submitted enlarged versions of the vehicle swept path analyses forming Appendix B of the Highways Proof of Evidence. The details on these drawings are identical to those previously submitted and I am satisfied that no party's case is prejudiced by my taking them into account.
3. At the Inquiry, the appellant submitted an executed Section 106 Agreement that includes a number of obligations to come into effect in the event that planning permission is granted. These obligations would secure on-site affordable housing along with financial contributions towards primary and secondary education facilities, off-site public open space and highway works. I will return to this matter later in my decision.

Main Issues

4. In light of all the submissions before me, the main issues in this appeal are:
 1. Whether the proposal would be an acceptable form of development having regard to the development plan strategy for the location of housing and any relevant material considerations; and
 2. The effects of the proposal on the efficient and safe operation of the local highway network.

Reasons

Background

5. The site is located to the west of Collingwood Way on the edge of Westhoughton and covers an area of 4.26 hectares. It is a greenfield site identified as Protected Open Land (POL) within the development plan, which comprises Bolton's Core Strategy (2011) (the CS) and Bolton's Allocations Plan (2014) (the AP).
6. The site is bounded by mature hedgerows and pockets of woodland. Old Lane runs along part of the site's southern edge and the railway corridor provides its northern boundary. There is a mature hedgerow running across the site from north to south although it has a substantial gap within it. Although the site's character is generally reflective of the surrounding countryside, some of the large buildings forming the nearby industrial estate are visually prominent. Thus, there is a distinct sense that the site is next to the urban area.
7. CS policy OA3 sets out, amongst other things, that new housing in the area should be concentrated within Westhoughton town centre and on other sites within the existing urban area. It also seeks to ensure POL remains undeveloped. The main parties agree that the proposal runs counter to this policy and also to AP policy CG6AP that only permits development on areas of POL where it would fall within one or more specified categories. The appeal proposal would not fall within any of the specified categories and the site is outside the urban area boundary. I therefore have no reason to disagree with the main parties that the proposal is at odds with these policies.
8. There is also agreement between the parties that the Council cannot currently demonstrate a 5 year supply of deliverable housing land (housing land supply (HLS)); the accepted and agreed figure being 3.1 years. It is therefore common ground between the main parties that policies OA3 and CG6AP cannot be considered up-to-date and that paragraph 14 of the National Planning Policy Framework is engaged as a consequence.

Location of housing

9. The Council accepted at the Inquiry that, given its HLS position and because CS policy OA3 and AP policy CG6AP are out-of-date, these policies attract limited weight. However, the Council drew my attention to Strategic Objective 15 of the CS (SO15), which also seeks to focus new housing in the existing urban area, especially in Bolton town centre, council-owned housing areas and in mixed-use developments on existing older industrial sites. I accept that this is generally in accordance with the core planning principles of the Framework.

10. Notwithstanding this, as the judgement of the Supreme Court¹ on 10 May 2017 made clear, the important issue is whether the result of the development plan policies is the existence of a 5 year HLS in accordance with the objectives of Framework paragraph 47. The absence of a 5 year HLS engages Framework paragraph 14. Whilst I acknowledge that development plan policies may be apportioned weight according to their consistency with the Framework, from all that was put to me, I have no reason to take an opposing view as to the limited weight to be given to policies OA3 and CG6AP. These policies flow from SO15, which operates together with them to significantly affect the distribution of housing. I therefore also give limited weight to SO15.
11. The Framework says that planning should encourage the effective use of land by reusing land that has been previously developed, provided that it is not of high environmental value. As I have already mentioned, the appeal site is greenfield land. Thus, it does not fall within the category of being previously developed. However, the degree of the HLS shortfall indicates to me that the Council's development plan policies are not functioning to achieve the Framework objective to boost significantly the supply of housing.
12. The Council accepts that development on POL will be necessary to address the HLS shortfall but nevertheless put to me that the release of POL for housing should be dealt with as part of a local plan review or through the Greater Manchester Spatial Framework (GMSF). However, whilst I recognise the general desirability of such an approach as part of the plan-led system, the shortfall in the Council's HLS is an important material consideration. In my view the extent of the shortfall indicates that action is needed now to address it. There is nothing before me to indicate that a review of the local plan will take place in the short to medium term. Furthermore, given its very early preparation stage, the GMSF cannot in my view, carry any meaningful weight.
13. It is also important to note that the Framework says that where there has been a record of persistent under-delivery of housing, local planning authorities should increase (from 5%) a 20% buffer to the HLS to provide a realistic prospect of achieving the planned supply and to ensure choice and competition in the market for land. The Council confirmed that it is a 20% buffer authority. Therefore, taking the extent of the HLS shortfall into account, the proposal would make an important contribution to the availability of housing in a Borough where there is an accumulation of unmet housing need.
14. Furthermore, the proposal includes the provision of 45 affordable dwellings. Thus it would also make a very useful contribution to this type of housing, the pressing need for which was confirmed by the Council at the Inquiry.
15. I heard evidence on the issue of whether POL should be considered as 'safeguarded land' for the purposes of Framework paragraph 85. The Framework makes clear that when defining Green Belt boundaries, local planning authorities should, amongst other things, where necessary, identify in their plans areas of safeguarded land between the urban area and the Green Belt in order to meet longer term development needs stretching well beyond the plan period; and make clear that the safeguarded land is not allocated for development at the present time. Planning permission for the permanent

¹ Suffolk Coastal District Council v Hopkins Homes Ltd and SSCLG; Richborough Estates Partnership LLP and SSCLG v Cheshire East Borough Council

development of safeguarded land should only be granted following a local plan review which proposes development.

16. From this, is it clear to me that the identification of safeguarded land is aimed at protecting the long term integrity of the Green Belt. At the Inquiry, the Council confirmed that POL is nearly all land outside the urban area boundary that is not Green Belt. The Framework clearly envisages that safeguarded land is land that will be likely to be developed at some point in the future, as the 3rd and 4th bullet points of paragraph 85 make clear.
17. Furthermore, the reliance placed by the Council on the planned release of POL must be balanced against the Framework paragraph 47 requirement and the importance placed by the government on having up-to-date local plans in place and which should meet the full, objectively assessed needs for market and affordable housing.
18. The Council raised the matter of the site forming part of an allocation within the 1995 Unitary Development Plan (UDP) and despite this, proposals for development have been rejected on appeal in 1993 and 1997. Whilst this is noted, the Council expressly conceded that POL will be required to meet the HLS shortfall. This was not the case in 1995 and this appeal is being determined in the context of different local and national planning policy circumstances. The weight I give to this argument is therefore limited.
19. In addition to all of this, is the site's location next to the sizeable settlement of Westhoughton and its reasonable access to shops and services either on foot or by bicycle. There are also bus stops within reasonable walking distance giving regular access to Bolton and Wigan. Westhoughton rail station is also within reasonable walking distance of the site. I therefore find that the proposal would accord with CS policy P5 that seeks to ensure developments take into account accessibility by transport other than the car and enable accessibility to public transport.
20. Furthermore, the proposal would accord with paragraph 17 of the Framework that says planning should actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are or can be made sustainable. My conclusion on this main issue is that the proposed development would be sustainably located and would accord with the development plan strategy for the location of housing.

Efficient and safe operation of the local highway network

21. Vehicular access to the appeal site would be from Collingwood Way, a residential street that connects to Church Street which is the local distributor road (B5236) via Peel Street and/or Grundy Street.
22. Apart from the Peel Street and Grundy Street junctions, there are a number of other junctions on and leading to Church Street. Based on all that has been put to me, those of greatest significance are the traffic light controlled junctions referred to in the evidence as junctions 1 (A6 Chorley Road); 4 (School Street/Market Street) and; 5 (The Fairways/A58 Cricketers Way).
23. The effect of potential additional vehicles arising from the development has been modelled using both the LinSig and TRANSYT methods. It was agreed at

- the Inquiry that there is little difference in the outcomes between the two models in terms of the effects on junctions 1, 4 and 5.
24. However, the Council contends that given the current levels of traffic congestion, any increase would have an adverse effect, particularly in terms of 'blocking back' between junctions 4 and 5. I have not been presented with any compelling evidence to show that blocking back currently interrupts the flow of traffic along Church Street and, particularly between junctions 4 and 5. Nevertheless, I accept that there may be some additional waiting time for drivers during the AM and PM peak periods.
 25. Transport for Greater Manchester (TfGM) state that a degree of saturation of over 90% means the respective junctions have no available capacity for additional traffic. The modelling shows that there will be an exceedance of 90%. Nevertheless, the Council accepted at the Inquiry, that such a situation is not unusual during peak traffic periods within urban areas.
 26. I also heard evidence in relation to the 120/240 second pedestrian cycle time referred to in the modelling. The Council have not produced any empirical evidence to demonstrate that 240 second cycle time is unrealistic. Moreover, TfGM accepted the data based on the LinSig modelling. Furthermore, the traffic lights at junctions 4 and 5 operate using the SCOOT system to control traffic flows. I am satisfied from the evidence put to me that the figures in the modelling can reasonably be taken as conservative and when taking the SCOOT system into account, there would be no significant effects on blocking back between junctions 4 and 5.
 27. Accordingly, in the absence of any compelling evidence to the contrary, I consider that the proposal's effects on traffic flow and congestion would not be out of the ordinary for an area such as Westhoughton during peak periods. Even if I were to accept that there would be some net increase, I am not persuaded on the basis of the evidence, that it would be anything more than modest. Therefore, this particular aspect of the proposal would not in my view, result in a severe residual cumulative impact on traffic flows or congestion. Indeed no such concerns were raised by TfGM or the Council's highways officers.
 28. Having said all of that, the Council also raised concerns that the parking of vehicles within the streets surrounding the appeal site would adversely affect access by refuse vehicles and the emergency services to the proposed development. It is this matter to which I now turn.
 29. The appellant has provided swept path analyses for the junctions of Peel Street and Grundy Street with Church Street. At my site visit, I observed a car parked close to Peel Street's junction with Church Street which gives credence to the photographs in the Council's Proof of Evidence. However, the space between the end of Peel Street and Church Street is substantial because of the service road immediately to the south that runs parallel to Church Street. This allows for greater visibility into Peel Street than would otherwise be the case and sufficient room for a large vehicle to be able to turn in.
 30. The Council's swept path analysis suggests that refuse vehicles will turn into Peel Street from the service road. However, from what I observed, this is very narrow and given the presence of parked cars at the time, it is clear that the

available space would prohibit access by large vehicles. I have nothing before me to suggest that this is an unusual situation.

31. Peel Street is relatively narrow, which appears to be the reason that vehicles utilise part of the pavements for parking. It was evident to me that without pavement parking, the available road width could restrict the passage of large vehicles such as those collecting refuse or operated by the emergency services.
32. However, whilst I observed a pinch point along Peel Street and that vehicles park close to the junctions of Peel Street and Grundy Street with Church Street, I note the absence of any reported problems in relation to access by refuse vehicles or the emergency services. Notably, there have been no objections to the appeal proposal from the Council's highways officers or the Fire Service. Furthermore, the Council has powers to increase yellow line parking restrictions to prevent parking close to the junctions.
33. The appellant has carried out a parking survey² that has recorded the number and location of parked vehicles in Peel Street, Grundy Street and nearby Wesley Street which also provides access from Church Street onto Collingwood Way via the western part of Peel Street (Peel Terrace). Notwithstanding this, it seems unlikely to me that drivers would use the more circuitous route around Wesley Street to access the development given the much more straightforward access routes via Peel Street and Grundy Street.
34. The parking survey examined parking during various dates throughout March 2017 and shows that of the three recording times (0900; 2100; and 2345) and across each period, there is only minimal double parking of vehicles in Peel Street to the east of its junction with Collingwood Way. Consequently, I am satisfied that on-street parking in Peel Street is not so restrictive that it would result in significant problems for drivers or that the likelihood of vehicle collisions would materially increase. In the event that it was necessary for a vehicle to reverse to allow an oncoming vehicle to pass, the availability of passing places would prevent the need for lengthy reversing manoeuvres.
35. Turning to Grundy Street, instances of parking on both sides of the street are greater than in Peel Street. However, given the greater width of Grundy Street, this still allows vehicles to pass using the passing places created between parked vehicles. Again, I am satisfied that this is an acceptable situation in the context of the proposed development.
36. The majority of parking in Collingwood Way takes place on property driveways and thus, on-street parking here is minimal. Furthermore, the existing levels of parking within the streets surrounding the site would not be increased by the proposed development. The Council accepted at the Inquiry that the proposal would not result in harm to the safety of pedestrians or cyclists using the surrounding streets.
37. Correspondence between the Council and the Fire Service indicates that the latter considered that an alternative emergency access from Old Lane was sought. However, this was not followed through with a firm requirement for such an access. Accordingly, I am not persuaded that the Fire Service request related to anything more than a desirable as opposed to an essential requirement. I am satisfied that the Fire Service has been fully engaged in

² Mr Khan's Proof Appendix C Doc C3

discussions about the appeal proposal and would have registered a formal objection if fire tender access was a critical issue in this case.

38. Notwithstanding all of this, I accept that access and traffic flow should not be reliant on pavement parking. However, such a situation exists now and would be likely to continue with or without the proposed development. I have already found that any likely increase in vehicular traffic would be spread across the Peel Street and Grundy Street routes to access Church Street and that this could be accommodated without adverse highway effects. Furthermore, the appellant has provided a planning obligation that includes a contribution towards additional lining works to the junctions of Peel Street and Grundy Street with Church Street including increasing the parking restrictions in Grundy Street. I address matters relating to obligations below but were I to find it to meet the relevant tests, I am satisfied that the parking and access situations at these junctions would be acceptable.
39. Collingwood Way is also a winding street which therefore reduces forward visibility. Manual for Streets (MfS) says that such visibility constraints assist in reducing vehicle speeds. Furthermore, I apply the same considerations to the restricted forward visibility where Grundy Street turns into Bligh Road.
40. I have also noted the Council's assertions in relation to MfS and in particular, the potential effects on cyclists and pedestrians. However, MfS is concerned with new street layouts and in my view the existing parking situation in Peel Street and Grundy Street is not a matter within the scope of MfS in the context of the appeal proposal. Furthermore, cyclist and pedestrian effects did not form part of the Council's reason for refusal or its Highways Proof of Evidence and these matters were not substantiated in cross examination at the Inquiry.
41. In addition to all of this the Church Street junctions with Peel Street and Grundy Street are a considerable distance apart. Thus, it would be reasonable to conclude that those leaving the development by car would opt for access to Church Street either by Peel Street or Grundy Street depending on the intended direction of travel along Church Street. Therefore, it would be unlikely in my view, for all future occupiers to use one particular route and any increase in traffic would be spread across the two routes.
42. Moreover, although the appeal proposal has the potential to increase the amount of vehicle trips along the surrounding streets, in reality, these are unlikely to all take place at the same time. Given the nearby availability of public transport, I am not convinced that the number of likely trips by car would have a material effect on traffic flow in the surrounding streets.
43. I note the submissions from interested parties in relation to this main issue. In particular, it has been put to me that parking within Peel Street and Grundy Street resulted in access difficulties for the emergency services due to cars being double parked. These matters were raised at a public meeting held in connection with the planning application that included a video relating to refuse vehicle access. Although I take this seriously, in the absence of substantive confirmatory evidence, including from the emergency services themselves, this does not alter my overall conclusions on this main issue.
44. Taking all of the above into account, I am satisfied that there would be no severe effects on traffic flow or driver safety along Peel Street or Grundy Street. I am equally satisfied that there would be no significant issues with

regard to either refuse vehicles or those used by the emergency services gaining access to the proposed development.

45. I therefore find that the proposal would not conflict with CS policy P5 which seeks to ensure developments take servicing arrangements into account. Further, the proposal would accord with CS policy SC1 that amongst other things, seeks to promote road safety in the design of new development. I also find that there would be no conflict with the transport objectives of the Framework.

Other Matters

46. The appellant is the residential developer for the first phase of development on the Horwich Loco Works site which will be the key to unlocking the site's wider development for 1700 new dwellings. This is a major strategic housing scheme and the Council is concerned that the development of the appeal site will distract the appellant from delivering on the Loco Works site.
47. However, I heard evidence that the appellant has now signed a contract in relation to the Loco Works site and will be submitting a planning application in the near future. Having regard to this and in the absence of any substantive evidence to the contrary, I am not persuaded that a generalised concern over deliverability of the Loco Works scheme is sufficient to weigh against the appeal proposal in any meaningful way.
48. I have taken into account the objections from interested parties in respect of historic heritage. I have been presented with a substantial amount of information in relation to this matter. At the Inquiry, the appellant provided a specialist witness who was able to specifically address the interested party concerns raised. Moreover, there is nothing before me to indicate that any of the relevant statutory or specialist historic heritage consultees have raised any objections to the proposed development.
49. I have no reason to doubt that the site may host archaeological remains. However, I have no clear evidence to suggest that they are of such importance that they must be preserved in-situ. In granting planning permission, I have the option of imposing a suitably worded condition to ensure archaeological remains are recorded. I am satisfied on the balance of evidence that the proposed development would not have unacceptable heritage effects.
50. I also received interested party submissions in respect of ecology and again, these were addressed by a specialist witness on behalf of the appellant. I am satisfied on the basis of what I heard that there is nothing to indicate material harm would be caused to protected species of flora or fauna as a result of the proposed development, subject to the imposition of conditions which I will return to later in my decision.
51. Accordingly, I am satisfied that neither heritage nor ecology concerns would be appropriate reasons to withhold permission in this particular case.

Planning Obligations

52. At the Inquiry, the appellant submitted an executed Section 106 Agreement that includes a number of obligations to come into effect in the event that planning permission is granted. I have considered these in light of the

Framework, Planning Practice Guidance (PPG) and the Community Infrastructure Levy Regulations (the CIL Regulations).

53. The obligation in respect of the on-site provision of affordable housing is supported by CS policies SC1 and IPC1 along with the Council's Supplementary Planning Document *Affordable Housing* (SPD). I am satisfied that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development and is fairly and reasonably related to it in scale and kind. It therefore meets the statutory tests set out in paragraph 204 of the Framework.
54. The education contribution is supported by CS policies A1.4 and IPC1 and the Council's SPD *Infrastructure and Planning Contributions* (IPC SPD). The contribution would be used towards ensuring the facilities at St Georges C of E Primary School and Westhoughton High School are sufficient to cope with the additional demand for school places resulting from the development.
55. The public open space contribution would be used towards improvements at Westhoughton Central Park in order to provide the appropriate level of play facilities generated by the development that could not all be met on site. The contribution is supported by CS policy IPC1 and the IPC SPD.
56. Finally, a contribution would be used towards the costs relating to a Traffic Regulation Order covering works to Peel Street/Grundy Street/Church Street. This is supported by CS policies P5, S1.2 and IPC1.
57. The Council has provided a CIL Compliance Statement which sets out that none of the contributions sought would be prohibited by the pooling restrictions in CIL Regulation 123. I am satisfied on the basis of the evidence that this is the case and that the contributions provided by these obligations meet the Framework paragraph 204 tests and accord with CIL Regulation 122. Accordingly, I have taken them into account in reaching my decision.

Planning Balance

58. I have found that the proposal would not result in harm to the efficient and safe operation of the local highway network. Neither have I found that there would be unacceptable effects on heritage or ecology interests on the site. Nevertheless, the proposal would run counter to the relevant development plan policies for the location of housing. However, taking into account the Borough's significant HLS shortfall, these policies cannot be considered up-to-date in the context of paragraphs 14 and 49 of the Framework. As such they attract only limited weight.
59. The contribution that the appeal scheme would make to the availability of housing including affordable, represents significant social benefits of the scheme that attract substantial weight. The proposal would accord with paragraph 50 of the Framework; the objective of which is to deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities. It would also accord with the Framework requirement to boost significantly the supply of housing and this also attracts very substantial weight.
60. In addition, the scheme would provide a number of economic benefits during and after its construction by providing employment and support for local businesses. It would also have environmental benefits by way of its sustainable

location and the potential for occupants of the development to access work, shops and services by means other than the car. I give significant weight to these aspects of the scheme.

61. Whilst I recognise that the development plan forms the starting point for my decision, having considered all relevant matters, I find that the various environmental, economic and social benefits of the proposal comprise material considerations that are sufficient to outweigh the development plan in this case. The proposal would comprise sustainable development when assessed against the policies in the Framework taken as a whole.

Conditions

62. A number of conditions suggested by the Council were discussed at the Inquiry. I have considered these in light of the Framework and PPG. Where necessary, I have amended some of the suggested wordings for clarity, to ensure compliance with national policy and guidance and in light of the discussions between the main parties at the Inquiry.
63. I have imposed a condition specifying the relevant drawings as this provides certainty. Included for completeness and with regard to condition 14, I have included the two plans detailing soft landscaping.
64. To ensure the appearance of the development is satisfactory, I have imposed respective conditions relating to materials and soft landscaping. A condition is imposed requiring the protection of existing trees and shrubs as they make a valuable contribution to the character and appearance of the area and biodiversity. Also in the interests of biodiversity, conditions are necessary relating to the protection of reptiles and amphibians given that the site provides potential foraging habitats for these species. Also in the interests of biodiversity, conditions are imposed relating to external lighting and a Landscape and Ecological Management and Maintenance Plan.
65. I have considered the suggested condition relating to updated bat and badger surveys in the event that the development has not begun by March 2018. I agree that a condition in some form is necessary given that the situation on the site could change in the intervening period. I have therefore imposed a condition requiring adherence to an approved scheme to protect bats and badgers. Also in the interests of safeguarding bats, I have imposed a condition requiring bat boxes to be provided in accordance with the submitted Bat Appendix. This will compensate for the fragmentation of the hedgerow running north-south across the site.
66. In order to ensure the development is adequately drained, I have imposed conditions relating to sustainable drainage and surface and foul water drainage. In order to minimise flood risk, I have imposed a condition requiring ground levels to be in accordance with the submitted Flood Risk Assessment.
67. A condition is necessary in relation to contamination and I have imposed it accordingly. A suite of conditions is imposed in relation to archaeology matters including the provision of a Written Scheme of Investigation.
68. Conditions are imposed relating to access by and parking of motor vehicles in the interests of ensuring the efficient and safe operation of the highway network within the development. However, the main parties agreed, that certain permitted development rights should be removed in order to prevent

the accretion of anything that would inhibit the parking areas being used for their originally intended purpose. Accordingly, I have worded the condition to exclude the grant of planning permission by the operation of statutory provision under the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The High Court and then the Court of Appeal have held that this prevents the operation of the GPDO³.

69. The size of the development triggers a requirement to provide public art in accordance with CS policy IPC1. I am Satisfied that this condition would meet the statutory tests set out in national policy and guidance and have imposed it accordingly. Finally, a condition is imposed requiring the submission and approval of a Construction Method Statement in order to ensure the development does not have adverse effects on the living conditions of nearby residents or the efficient and safe operation of the local highway network.

Conclusion

70. For the above reasons and having had regard to all other matters raised, including those by interested parties, the appeal succeeds.

Hayden Baugh-Jones

Inspector

³ Dunnett Investments Ltd v SSCLG & East Dorset DC [2016] EWHC 534 (Admin); [2017] EWCA Civ 192

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Vincent Fraser, of Queens Counsel

Kings Chambers
Instructed by Nicola Raby,
Solicitor, Bolton Council

He called:

Mr Roland Craig
BSc, FCIHT, CMILT

AECOM Limited

Ms Helen Williams
BA(Hons), MA, MRTPI

Principal Development
Officer, Bolton Council

FOR THE APPELLANT:

Mr David Manley, of Queens Counsel

Kings Chambers
Instructed by Mike Stone,
Bellway Homes

He called:

Mr Amjid Khan
BSc(Hons), MICE,
MIGHT

WYG Transport

Mr Simon Pemberton
MA(Hons), MRTPI,
AIEMA

Lichfields

INTERESTED PERSONS:

Ms Denise Roscoe
Mr David Fearnley
Mr Stuart Snape
Ms Alison Patterson
Councillor David Chadwick

Local resident
Local resident
Local resident
Local resident
Cabinet Member and
Member for
Westhoughton South Ward,
Bolton Council

DOCUMENTS SUBMITTED AT THE INQUIRY

Documents submitted by the appellant

- AP1 Comparison of LinSig and TRANSYT Results for Junctions 4 and 5
- AP2 Response to Third Party Comments by TEP
- AP3 Appellant's closing submissions

Documents submitted by the local planning authority

- LPA1a Refuse Vehicle Swept Path Analysis Access Via Peel Street
- LPA1b Refuse Vehicle Swept Path Analysis Access Via Grundy Street
- LPA2 Plan showing location of Horwich Loco Works
- LPA3 Fee Proposal [redacted] by AECOM to Bolton Council and associated emails
- LPA4 Local authority's closing submissions

Documents submitted by interested parties

- IP1 Statement of Opposition from Councillor Zoe Kirk-Robinson
- IP2 Witness Statement from Denise Roscoe, local resident
- IP3 Email from Alison Patterson (local resident) to Bolton Council Solicitor regarding emergency vehicle access
- IP4 Appeal Statement by Councillor David Chadwick

Other documents (submitted jointly by the main parties)

- ID1 Agreed list of planning conditions
- ID2 Additional planning condition relating to a Construction Management Plan
- ID3 Signed, dated Planning Obligation

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Topographical Survey Drawing No 16H027/002; Fencing Layout Drawing No FL01 Rev. P2; Hard Surfacing Layout Drawing No HS01 Rev. P2; Collingwood Way, Westhoughton – House Types Drawing No BHM005/HT; Proposed Planning Layout Drawing No BHM005/PL01 Rev. P14; Proposed Street Scenes Drawing No BHM005/SS; Planting Plan 1 of 2 Drawing No LDS384-01; Planting Plan 2 of 2 Drawing No LDS384-02.
- 3) No development above finished floor level of the dwellings hereby permitted shall commence until details / samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 4) No development shall take place until details of the implementation, adoption, maintenance and management of the sustainable drainage system shall have been submitted to and approved in writing by the local planning authority. Those details shall include:
 - i) a timetable for its implementation; and,
 - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the effective operation of the sustainable drainage system throughout its lifetime.

The sustainable drainage system shall be implemented and thereafter managed and maintained in accordance with the approved details.

- 5) No works shall take place including soil stripping and vegetation clearance until a written scheme detailing Reasonable Avoidance Measures to be taken to protect reptiles and amphibians has been submitted to and approved in writing by the local planning authority. The approved scheme shall include but not be limited to, provision for the supervision of all works on the site by a suitably qualified ecologist. Development shall be carried out in accordance with the approved scheme.
- 6) If development has not commenced by March 2018 surveys of the trees within the site for potential bat roosts and a 30m buffer for badger setts shall be undertaken prior to the commencement of development. Should evidence of either protected species be found, a suitable avoidance or licensed mitigation plan shall be submitted to and approved in writing by the local planning authority. The approved plan shall be implemented in accordance with a timetable that shall first have been submitted to and approved in writing by the local planning authority.
- 7) The development shall not be occupied until bat boxes have been provided on site in accordance with the recommendations in the Bat Appendix by TEP dated November 2016 Document Ref 5128.02.001. The bat boxes shall thereafter be retained.

- 8) No development shall take place including any site clearance, earth moving or soil stripping until a biodiversity enhancement plan including a Landscape and Ecological Management and Maintenance Plan for the lifetime of the development has been submitted to and approved in writing by the local planning authority. The plan shall include:
- i. the creation of the attenuation basin in accordance with the details shown on approved drawing no. BHM005/PL01 Rev. P14 which shall be designed to hold water under average rainfall conditions;
 - ii. the creation of a hibernaculum for amphibians in a suitable location within the Public Open Space shown on approved drawing no. BHM005/PL01 Rev. P14;
 - iii. control of Himalayan Balsam along the section of Pennington Brook within the site;
 - iv. details of improvements to the section of Pennington Brook within the site including the planting of locally native wetland species;
 - v. the arrangements for adoption of the attenuation basin by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme to fulfil its attenuation purposes throughout its lifetime.
- 9) Prior to occupation of the dwellings hereby permitted details of an external lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme should ensure that there is no direct lighting of the site boundaries, retained trees and the section of the Pennington Brook within the site. The lighting scheme shall be implemented in accordance with the approved details and in accordance with a timetable that shall have first been submitted to and approved in writing by the local planning authority. The lighting scheme shall be retained thereafter.
- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved and before any site clearance, preparatory work or development the local planning authority shall be given a minimum of 14 days written notice confirming that the scheme for the protection of retained trees has been implemented.
- In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.
- 11) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the

- local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 12) The development hereby permitted shall be carried out in accordance with the ground levels detailed in the Flood Risk Assessment by Ironside Farrar Limited dated August 2016 Document Reference 30219/SRG.
 - 13) No demolition/development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
 - 14) No demolition/development shall take place other than in accordance with the Written Scheme of Investigation approved under condition 13.
 - 15) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within 3 working days of their being revealed. Works shall be immediately halted in the area/part of the building affected until provision shall have been made for the retention and/or recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
 - 16) A scheme of soft landscaping works shall be implemented in accordance with the details shown on approved drawings nos. LDS384-01 and LDS384-02. The landscaping works shall be carried out in accordance with an implementation programme that shall have first been submitted to and approved in writing by the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
 - 17) None of the dwellings hereby permitted shall be occupied until a scheme for the parking and/or garaging of motor vehicles has been implemented in accordance with drawing no. BHM005/PL01 Rev. P14 for cars to be parked and that space shall thereafter be kept available at all times for the parking of vehicles and for no other purpose whatsoever without express planning consent from the local planning authority first being obtained.
 - 18) Notwithstanding the details shown on the approved plans, none of the dwellings hereby permitted shall be occupied until a means of access for vehicles shall have been constructed in accordance with details that shall

have first been submitted to and approved in writing by the local planning authority. The access shall be retained thereafter.

- 19) No development shall take place until details of sewage disposal and surface water drainage works have been submitted to and approved in writing by the local planning authority. The sewage disposal and surface water drainage works shall be completed in accordance with the approved details.
- 20) None of the dwellings hereby permitted shall be occupied until details of public art to be provided within the development have been submitted to and approved by the local planning authority. The public art shall be installed in accordance with the approved details, in a timeframe agreed with the local planning authority and shall be retained thereafter.
- 21) 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) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - viii) delivery, demolition and construction working hours.
 - ix) construction vehicle routing and access

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