
Appeal Decision

Site visit made on 13 August 2019

by John Dowsett MA DipURP DipUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th October 2019

Appeal Ref: APP/N4205/W/19/3230201

Former railway cutting to the north of Springfield Road, Kearsley BL4 8HY

- 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 G Maher of W Maher and Sons Limited against the decision of Bolton Metropolitan Borough Council.
 - The application Ref: 03880/18, dated 18 June 2018, was refused by notice dated 12 February 2019.
 - The development proposed is the erection of 42 dwellings, including importation of material to level land for development.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 42 dwellings, including importation of material to level land for development at Former railway cutting to the north of Springfield Road, Kearsley BL4 8HY in accordance with the terms of the application, Ref: 03880/18, dated 18 June 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr G Maher of W Maher and Sons Limited against Bolton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural matter

3. The appeal proposal was submitted in outline with all matters reserved for future approval. Although drawings were submitted showing finished site levels, a potential layout and access points, as approval was not sought for these matters at this stage, I have treated them as indicative only.
4. The planning application form described the proposed development as 'Outline planning application (all matters reserved) for the importation of material to create a development platform and the erection of up to 42 dwellings'. It appears that during the consideration of the application the description was altered by agreement to the description that is used on the decision notice issued by the Council namely 'Outline application for the erection of 42 dwellings. Including importation of material to level land for development'. I have therefore also used this for the purposes of the appeal and have determined the appeal on the above basis.

Main Issues

5. The main issues in this appeal are:

- The effect of the proposed development on the living conditions of the occupiers of nearby residential properties with particular regard to noise and disturbance during the construction period;
- Whether the appeal site is a suitable location for residential development with particular regard to land contamination and gas migration from the adjoining land; and
- Whether the proposed development would provide suitable living conditions for the future occupiers of the site with regard to air quality.

Reasons

6. The appeal site is a former railway cutting, with the tracks removed and which has been subject to natural regeneration of vegetation over time. At the southern end of the site the cutting has been infilled up to the level of the surrounding land and the adjacent highway, Springfield Road. At its northern end the site terminates at a bridge carrying the A666, Bolton Road, over the cutting. Whilst an informal track runs along the former track bed, a high fence prevents access under the road bridge.

Living conditions of the neighbouring occupiers

7. The appeal site is located adjacent to an existing established residential area. Part of the proposal involves the infilling of the former railway cutting to create a level development platform for the proposed new dwellings. The reason for refusal refers specifically to this part of the proposed development. It is estimated that this work would take approximately 12 months. Whilst the Council state that this would involve approximately 48 two way lorry movements per day, the appellants supporting documents and evidence states 36 two way movements (18 in and 18 out). The appellant's figure is based on the amount of fill material required and an assumption of 20 tonne payloads. There is no indication on how the Council's figure has been arrived at and, consequently, I consider that the appellant's figure is the more reliable of the two, although I realise that this may vary if vehicles of a different load capacity were to be used. This equates to approximately 3 deliveries per hour, or six vehicle movements, which, whilst a greater number of heavy vehicle movements than at present, is not excessively high particularly as Pilkington Road is a bus route and also likely to be used by vehicles accessing the industrial area located to the south of the appeal site. Heavy plant and machinery would also be required to operate on the site during the infilling process and consolidation of the development platform. Following the infilling works, there would be construction activity associated with the new housing, however, the Council have raised no concerns in respect of the subsequent operations in the reason for refusal.
8. The appellant submitted a noise and vibration assessment with the planning application and further evidence on this as part of the appeal. A number of measures are proposed by the appellant to mitigate construction noise and vibration. The evidence shows in terms of construction noise that the erection of acoustic fencing would result in noise levels at the closest receptors that are below the guidance level in the relevant British Standard and concludes that, with a suitable mitigation strategy, the construction work noise levels would not

be unreasonable or significant when considering the type of works. It also concludes that, by following best practice, vibration levels can be kept generally below the guidance limits in the British Standard.

9. The Council have submitted no substantive evidence that would contradict the findings of the appellants evidence and has not challenged the technical findings of the reports. I have had regard to the Council's point that a large number of objections were received from local residents with respect to potential noise and disturbance from the infilling operations. Whilst I accept that the perception of noise and vibration is subjective and is experienced by receptors in different ways and it is inevitable that construction activities will result in a degree of noise and disturbance for the duration of the works, in the absence of any evidence to the contrary, I am satisfied that the appellant's assessment is robust and that with the application of the proposed mitigation noise and disturbance resulting from the construction activities would be suitably controlled.
10. I therefore conclude that the proposed development would not cause harm to the living conditions of the of the occupiers of nearby residential properties with particular regard to noise and disturbance during the construction period. It would comply with the relevant requirements of Policy CG4.1 and CG4.2 of the Bolton Core Strategy 2011 (the Core Strategy) which seeks to ensure that new development protects the amenity of surrounding occupiers and does not generate unacceptable noise. It would also comply with the requirements of the National Planning Policy Framework (the Framework) which requires that development mitigate and reduce to a minimum the potential adverse impacts resulting from noise from new development.

Land contamination

11. It is common ground that an area of land to the west of the appeal site has historically been used as a landfill site and that this was closed in 1979. The appellant submitted a preliminary site investigation with the planning application and an updated site investigation with the appeal. These conclude that there is no significant contamination on the appeal site itself and that, due to the distance and nature of the soils between the closed landfill and the appeal site, there is a low risk of migration of contaminants or landfill gas from the closed landfill to the appeal site. It is also concluded that due to the length of time since the closure of the landfill site that any gas production from putrescible waste will be now be at low levels. I have noted that the Council's Environmental Health Officer concurs with these findings. The appeal site is in an area that has been affected by historic coal mining activity, although I note that the Coal Authority have not raised any objections to the proposal subject to an intrusive ground investigation and gas monitoring being carried out prior to any development taking place.
12. The Council have not submitted any substantive evidence that would indicate that the appeal site would be affected by contamination and landfill or mine gas. Whilst I have noted the comments of the local councillor included in the appeal statement, these comments appear to relate to development of the former landfill site and not to the appeal site.
13. The Council also state that there are two capped mine shafts adjacent to the north end of the appeal site that are vented due to gas produced in historic mine workings. When I visited the site, due to its overgrown nature, I was unable to identify the positions of the capped and vented mine shafts referred to. This

notwithstanding, I am aware that the Coal Authority have no objection to the proposal subject to gas monitoring prior to the commencement of development with remedial measures if any gas emissions are identified. This could be secured by an appropriate planning condition. There is no substantive evidence that the appeal site is not, or could not, be made suitable for development.

14. Based on the evidence before me I conclude that the appeal site is a suitable location for residential development with particular regard to land contamination and gas migration from the adjoining land. It would comply with the relevant requirements of Core Strategy Policy CG4.3 which requires an assessment of potential contamination to be made and states that development will only be permitted where the land is, or is made, suitable for the proposed use. It would also be consistent with the requirements of the Framework that seeks to ensure that the new development is appropriate for its location.

The living conditions of future occupiers

15. Core Strategy policy CG4 expects at CG4.2 that new development should not cause detrimental impacts on air quality, whilst the Framework seeks to ensure that new development is appropriate for its location taking into account the likely effects of pollution on health and living conditions.
16. Whilst the appeal site is in the vicinity of the M61 motorway and the A666, Bolton Road, which are both heavily trafficked roads, the Council have submitted no evidence with regard to air quality to support its reason for refusal. The Council's Environmental Health Officer did not raise any concerns in respect of air quality.
17. The Greater Manchester Combined Authority have declared an Air Quality Management Area (AQMA) that covers parts of its administrative area and the extreme north end of the site intersects with the AQMA where it extends down part of Bolton Road. The appellant has provided the predicted background annual mean concentrations for the principal pollutants affecting air quality, namely NO₂ (Nitrogen Dioxide) and PM₁₀ particulates which have been obtained from Department of Environment Food and Rural Affairs (Defra). These predicted annual average background NO₂ and PM₁₀ concentrations for the locality are substantially below the UK long-term objectives established for the protection of human health of 40µg/m³ for each of these. Reference is also made to Defra's Pollution Climate Model Data which also predicts that NO₂ and PM₁₀ concentrations would be well below the UK long-term objective levels.
18. Roads are the principle source of NO₂ and PM₁₀ emissions and the concentrations drop away further from the source, in this case the M61 and A666. The appeal site is located approximately 240 metres from the M61 and although part of it is adjacent to the A666, it is proposed to provide open space in the northern part of the site and for housing to be located approximately 120 metres from this road. Whilst the site layout is indicative at this stage, given the linear nature of the site and the location of the proposed access point at the southern end, there are limited ways that the site could be developed, and new dwellings could realistically be set away from the A666. The appellant's evidence also concludes that traffic generated by the proposed development would not have any adverse effect on air quality in the area.
19. This approach is not challenged by the Council and I have no reason to question the information provided.

20. The infilling operations to the former railway cutting may give rise to dust emissions, however, these could be controlled through the implementation of dust suppression measures, wheel washing facilities and ensuring loaded vehicles transporting materials to the site are covered. These are commonplace, well established and understood practices and could be achieved through the use of planning conditions. Consequently, I see no conflict with Core Strategy Policy CG4.2.
21. I therefore conclude that the proposed development would provide suitable living conditions for the future occupiers of the site with regard to air quality. It would comply with the relevant requirements of Core Strategy Policy CG4.1 and CG4.2 and the Framework which seek to ensure that new development is appropriate to its location and takes into account the likely effects of pollution on health and living conditions.

Other matters

22. It is common ground that the Council cannot currently demonstrate a deliverable 5 year supply of housing land. The Framework seeks to increase the supply of housing and it is not in dispute that the proposed development would contribute to increasing the provision of housing within the Council's administrative area.
23. The appellant has submitted a Unilateral Undertaking (UU) that covers financial contributions toward the provision of additional primary and secondary school places; affordable housing and the provision of public open space. The provisions of UU are not contested by the Council. I am satisfied that the obligations set out in the UU are required in order to satisfy the requirements of Core Strategy Policy IPC1 which seeks to ensure that developers make reasonable provision or contribution towards the cost of appropriate physical, social and green infrastructure. I am also satisfied that the UU meets the requirements of Section 106 of the Act, Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, and Paragraph 56 of the Framework.
24. I have noted the comments made by third parties in respect of both the original planning application and the appeal and a number of these matters have been addressed above. I am mindful that the Highways Authority have not raised any objections to the proposal in terms of the proposed access, traffic generation, or vehicle movements both during construction and after the development is brought into use. Additionally, there is no substantive evidence that the proposed development would adversely affect any ecological interests, or that appropriate arrangements for drainage cannot be put in place. The proposed new dwellings would be adjacent to an area of existing housing. As the appeal proposal is in outline, there are no detailed designs at this stage. Nonetheless, I am satisfied that at the reserved matters stage a detailed design could be arrived at that would not adversely affect the living conditions of existing residents in terms of privacy or overlooking. None of the points raised, either singly or collectively, would lead me to a different overall conclusion on the appeal.

Conditions

25. I have had regard to the list of conditions suggested by the Council and the appellant. Due to the historic land uses in the vicinity of the site and the findings of the preliminary site assessment it is necessary to impose conditions requiring ground investigations in respect of land contamination and historic coal

mining activity to ensure that the appeal site is made suitable for the development proposed. I have slightly amended the wording of these conditions in order to make them clearer. In addition, as surveys have identified that invasive plant species are present on the site, in order to ensure that the site is suitable for the approved development it is necessary to require that a scheme for the removal and disposal of these is submitted and approved. Whilst the ecological survey did not identify the presence of badgers on the site, it does offer potentially suitable habitat and as badgers have legislative protection it is both prudent and necessary to require confirmation that there are no badgers or setts present on the site before the development is commenced.

26. The application was submitted in outline and did not include full details of either the drainage arrangements or measures to incorporate renewable energy or reduce CO₂ emissions from the new dwellings. It is therefore necessary to require that these details be submitted. Due to the location of the site and proximity of both existing dwellings and a school it is necessary to regulate the development of the site through a construction method statement to minimise disturbance during the development and ensure that the site is operated in a safe and convenient manner.
27. The noise assessment submitted with the planning application identified that there was potential for dwellings on the appeal site to be affected by noise from the nearby school and from roads near the site. It is therefore necessary to attach conditions regarding the provision of acoustic fences and glazing in order to ensure that suitable living conditions are provided for the future occupiers. Policy IPC1 expects developments providing in excess of 2500m² floorspace to include public art. As this is not included in the proposal it is necessary to impose a condition to secure this.
28. Although neither party has suggested a condition in respect of noise and vibration mitigation during the construction phase, the appellant's evidence indicates that appropriate measures would be put in place. In order to ensure that the development of the site does not adversely affect nearby residents or the neighbouring school it is necessary to attach a condition requiring details of these mitigation measures to be submitted and implemented.
29. In addition to this, as the proposal was made in outline with all matters reserved, notwithstanding the description of the proposal, it is necessary to define the scope of any planning permission through the conditions and I have therefore attached a condition limiting the permission to no more than 42 dwellings. Although these latter two conditions were not suggested by either party, I do not consider these matters to be contentious.
30. The Council have suggested a condition in respect of approved drawings, however, as there are no details shown on any drawings for the proposal to comply with, it is not necessary to attach a condition to this effect.

Conclusion

31. For the above reasons, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") 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) Development shall not commence until the following information has been submitted in writing and written permission at each stage has been granted by the Local Planning Authority.
 - i) The requirements as part of this condition shall have regard to the preliminary risk assessment that has been submitted to and approved by the Local Planning Authority, namely the requirement to Phase 1 Site Investigation Report dated June 2018 (ref3582/R01 Issue 2) by TerraConsult;.
 - ii) Prior to any physical site investigation, a methodology shall be submitted for the written approval of the Local Planning Authority. This shall include an assessment to determine the nature and extent of any contamination affecting the site and the potential for off-site migration. Thereafter, a comprehensive site investigation and risk assessment examining identified potential pollutant linkages in the Preliminary Risk Assessment shall be submitted to, and approved in writing by, the Local Planning Authority.
 - iii) Where necessary, a scheme of remediation to remove any unacceptable risk to human health, buildings and the environment shall be approved in writing by the Local Planning Authority prior to implementation.
 - iv) Any additional or unforeseen contamination encountered during development shall be notified to the Local Planning Authority as soon as practicably possible and a remedial scheme to deal with this approved by the Local Planning Authority.
 - v) Upon completion of any approved remediation schemes, and prior to occupation, a completion report demonstrating that the scheme has been appropriately implemented and the site is suitable for its intended end use shall be approved in writing by the Local Planning Authority.
- 5) No development shall take place until details of the implementation, maintenance and management of the sustainable drainage scheme have been submitted to, and approved in writing by, the Local Planning Authority. The approved scheme shall be implemented in full and thereafter retained, managed and maintained in accordance with the approved details. 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 arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

- 6) Prior to the commencement of any built development above ground level, an energy assessment of the approved development shall be submitted to the Local Planning Authority. The submission shall include a scheme which details how either (i) renewable energy technology or (ii) an alternative scheme e.g. enhanced insulation shall reduce CO2 emissions of predicted energy use of the development by at least 10%. The approved scheme shall be installed, retained and maintained in perpetuity thereafter unless agreed by the Local Planning Authority.
- 7) Development shall not commence until a scheme for the eradication of Japanese Knotweed, Himalayan Balsam and Rhododendron has been submitted to, and approved in writing by, the Local Planning Authority. This shall include a timetable for implementation. Should there be a delay of more than one year between the approval of the scheme and its implementation or the commencement of development then a new site survey and, if necessary, further remedial measures shall be submitted for the further approval of the Local Planning Authority. The scheme shall be carried out as approved and retained thereafter.
- 8) Prior to the commencement of development, including groundworks, a preconstruction check for badger setts should be completed by a suitably qualified ecologist immediately prior to commencement of works. If badgers are found on the site a scheme for their protection and containing appropriate mitigation measures shall be submitted to and approved by the local planning authority. The approved mitigation measures should be implemented in full and retained thereafter.
- 9) No development shall take place, including any site stripping/vegetation clearance, 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.
- 10) No development shall take place until details of a scheme of intrusive investigation works, including ground gas monitoring, to establish the existing ground conditions in respect of historic coal mining activity has been submitted to, and approved in writing by, the local planning authority. The site investigation and gas monitoring shall then be undertaken as approved, and a

report of its findings and a scheme of any required remedial works/mitigation arising from it shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the required remedial works/mitigation shall be implemented in accordance with the approved scheme as part of the development.

- 11) No development shall commence until a scheme for mitigating the effects of noise and vibration on existing dwellings and Kearsley Academy during the infilling of the former railway cutting and subsequent construction of the dwellings hereby approved has been submitted to, and approved in writing by, the local planning authority. Thereafter the mitigation measures shall be put in place as approved before the infilling operation is commenced and retained in place for the duration of the construction works.
- 12) The development hereby approved shall not be brought into use unless and until a 2.1 metre high, close boarded acoustic fence has been erected along the boundary as detailed in the noise report Noise Impact Assessment, dated 6th June 2018, Ref R18.0611/DRK by NVC, thereafter the boundary fence shall be retained in the approved position.
- 13) Before the first occupation of the dwelling(s) hereby approved, the windows shall be acoustically double glazed and ventilated in accordance with the `good standard laid down in BS8233:2014 of LAeq/T living rooms 35dB, dining rooms 40dB and bedrooms 30dB (night time). This can be achieved by meeting the specification specified in section 8.4 of the Noise Assessment report as above.
- 14) The dwellings hereby approved shall not be occupied/brought into use until details of public art to be provided within the development site 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.
- 15) The development hereby approved shall be for no more than 42 dwellings.
- 16) The reserved matters application shall include details of biodiversity enhancement measures.