
Appeal Decision

Site visit made on 5 November 2019

by Mike Hayden BSc DipTP MRTPI

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

Decision date: 29 November 2019

Appeal Ref: APP/V2004/W/19/3226461

Land at 110 Calvert Lane, Kingston upon Hull HU4 6BH

- 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 R & M Real Estates against the decision of Hull City Council.
 - The application Ref 17/01450/FULL, dated 26 October 2017, was refused by notice dated 11 October 2018.
 - The development proposed is construction of 50 dwellings with associated access road.
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Decision

1. The appeal is dismissed.

Procedural Matter and Main Issues

2. The Council identified errors in the second and fourth reasons for refusal in the decision notice, which were not consistent with the reasons set out in the officer's report to the Planning Committee. Case law has established that the local planning authority has no power to withdraw or alter a decision once issued. However, the Council is entitled to alter the defence of its case at appeal where matters on which the proposal was refused have been resolved.
3. The Council's concerns over the inclusivity of the proposed design, mobility issues, parking provision and the adequacy of surface water drainage have been addressed, as reported to the Planning Committee on 10 October 2018 and therefore do not remain in dispute in this appeal. Whilst the sequential test for flood risk was not cited in the decision notice as part of the Council's reasons for refusal, it is part of national policy relevant to the appeal and whether it has been met formed part of the representations to the appeal submitted by interested parties. Therefore, I am obliged to address it as a material consideration in this case.
4. Accordingly, the main issues in this appeal are:
 - The effect of the proposed development on the provision of open space in Hull, on the integrity of the Green Network and on the value of the appeal site for habitats, protected species and biodiversity;
 - Whether the proposed development would achieve a high quality standard of design, with particular regard to its internal layout, its effect on the local street scene and its consistency with relevant local and national policies;
 - The effect of the proposed development on the living conditions of the occupiers of adjoining properties and of future residents of the site, with particular regard to outlook and privacy; and

- Whether the proposal satisfies the sequential and exceptions tests having regard to its flood zone location and the relevant local and national policies.

Reasons

Open Space, Green Network and Ecology

5. The appeal site is a roughly triangular parcel of former railway land, measuring approximately 4.16 hectares in area, located in the western part of Hull. It comprises former railway embankments along its north and south-west sides, with lower lying land in between. An active freight railway line runs adjacent to its south-east boundary. The site is privately owned, with fencing on all sides and railway bridge abutments along its frontage to Calvert Lane, which restrict public access.
6. The site has naturally regenerated from its former use and contains natural and semi-natural woodland, grassland, dense scrub, tall ruderal vegetation and areas of swamp. It is identified in the Hull Local Plan (HLP)¹, adopted in 2017, as a natural/semi-natural green open space, which also forms part of the citywide Green Network (GN) and is likely to qualify as a Local Wildlife Site (LWS). The HLP states that Hull is a densely built urban area with a limited amount of open space, which it seeks to protect because it is difficult to replace.
7. The glossary to the Framework defines 'open space' as all open space of public value. However, as the HLP notes, even privately owned sites, which are not publicly accessible have value because they benefit wildlife by providing habitat and linkages between sites and help to improve the environment by absorbing surface water, airborne pollutants and noise, and provide visual amenity and urban cooling. It is clear from the evidence submitted by the main parties and my observations on site that, despite the lack of public access, the appeal site serves an important role as open space within Hull for ecology, wildlife and natural greening purposes.
8. Phase 1 habitat surveys commissioned by the Council in 2008 and the appellant in 2017 confirm the importance of the site for its open mosaic habitat on previously developed land, which is a UK Biodiversity Action Plan (UKBAP) priority habitat. The 2017 survey records 1.7 ha of broadleaved woodland and 0.51 ha of unimproved neutral grassland across the appeal site, the main concentration of which is along the northern embankment and land platform. It also contains around 1.64 ha of hawthorn and bramble scrub and small areas of tall ruderal vegetation and swamp, mainly on the southern sector of the site.
9. The 2017 survey estimates that the extent of grassland on site has depleted by around 50% since 2008, due to encroachment from scrub, coarse grasses and ruderals, in the absence of active management of the habitat. Nevertheless, both studies record the presence of grassland habitat plant species which are rare or unrecorded elsewhere in the city, indicating that the site's open mosaic habitat remains ecologically important both locally and nationally. The 2017 survey also records the presence of or high potential of the site to support bats, hedgehog, common lizard, slow worm and invertebrates, all of which are UKBAP priority species, as well as priority species of breeding birds.

¹ Site ID 42 in Table 12.4 of the HLP

10. The proposed development would result in the loss of 1.6 ha (around 41%) of the existing habitat on site, including 51% of the grassland and 30% of the woodland habitats. It would preserve the remainder of the site as a wildlife sanctuary and seek to enhance its biodiversity through a habitat management plan, including the removal of invasive weeds, which would be secured by planning obligation in the submitted S106 unilateral undertaking. However, this would not prevent a significant loss of priority habitat and thereby significant harm to the site's biodiversity and ecological value.
11. Policy 44 of the HLP states that development resulting in harm to a LWS will only be permitted if it can clearly be demonstrated that there is a strong need for the development and there are no other appropriate locations for the development. Although the appeal site is not a designated LWS, Policy 44 confirms that until formally reviewed, an open space site will be given the same level of protection as a LWS if it meets the LWS selection criteria. The appeal site meets the Council's LWS selection criteria due to its open mosaic habitat and the extent of grassland and woodland.
12. In terms of the need for the proposed development, the Inspector's report on the HLP confirmed that the plan identifies an adequate supply of housing land to meet the city's housing requirements up to 2032. The latest monitoring figures show the Council has 7.74 years of housing land supply, well in excess of the 5 year supply required by national policy. Although this relies on around 50 dwellings a year from small windfall sites of less than 5 dwellings, it does not depend on the appeal site or windfalls at this scale. I acknowledge the ecological evidence suggests that without active management, over the next 10 years vegetation succession could result in the site's open mosaic habitats being lost. However, the submitted evidence does not demonstrate that the proposed development is the only viable means of securing the conservation and enhancement of the site's priority habitats and biodiversity. Therefore, it has not been clearly demonstrated that there is a strong need for the proposed development or that there are no other appropriate locations for it. Accordingly, the proposal is contrary to Policy 44.
13. Paragraph 175 of the National Planning Policy Framework (the Framework) establishes the principle that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated or compensated, then planning permission should be refused. Given that there is no strong need for the development it follows that the harm can be avoided. But even if this were not the case, the mitigation proposed, including any biodiversity benefits arising from the off-site provision of open space and tree planting proposed in the S106 undertaking, would not adequately compensate for or justify the loss of such a substantial area of priority habitat and the harm that would cause to protected and priority species. Consequently, the proposal would also conflict with paragraph 175 of the Framework.
14. Policy 42 of the HLP also states that identified open spaces, such as the appeal site, should not be built on unless an assessment has been undertaken to show it is surplus to requirements or the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality. This is consistent with the approach to the protection of existing open space in paragraph 97 of the Framework.

15. It is not part of the appellant's case that the site is surplus to requirements as a natural/semi-natural green open space. The Council's evidence also confirms that there is a deficit of natural/semi-natural open space within the local area. Although the proposal would seek to improve the ecological and wildlife quality of the remaining part of the site, it would not replace the lost open space and habitat in quantitative terms. As such, it would be contrary to Policy 42 of the HLP and paragraph 97 of the Framework.
16. Policy 43 of the HLP does not permit development which would adversely affect the continuity and value of the Green Network (GN) in Hull and requires development within the GN to protect and/or enhance the functionality and connectivity of the corridor. The appeal site due to its former railway embankments is part of a chain of sites linking green space within and outside of the city. In this case it links to green space on the former railway land to the west of Calvert Lane.
17. The proposed development would retain 5-6 metre wide strips of woodland along the north and south-west embankments of the appeal site. However, the Phase 1 habitat survey submitted by the appellant points out that the proposed layout in the north-west corner of the site would impede connectivity by introducing new housing around the former railway bridge crossing over Calvert Lane. The proposals would also involve reprofiling the embankments to create the development platform. This would result in the removal of much of the naturally seeded trees and shrubs along the existing embankments, which together with their reduced width would significantly impair their potential to act as future wildlife corridors to connect to the wider GN. As such, the proposal would adversely affect the continuity of the GN, contrary to Policy 43 of the HLP.
18. Therefore, overall on this main issue, I conclude that the proposed development would cause significant and unacceptable harm to the provision of open space in Hull, to the integrity of the Green Network and to the habitat and ecological value of the appeal site as a candidate LWS. The proposal would be contrary to Policies 42, 43 and 44 of the HLP. It would also conflict with the aims of national policy for the protection of open space and the conservation and enhancement of the natural environment in paragraphs 97 and 175 of the Framework.

Design

19. Paragraph 124 of the Framework establishes that good design is a key aspect of sustainable development, creating better places in which to live and helping to make development acceptable to communities. To achieve this, paragraph 127 of the Framework expects developments to be designed to function well and add to the overall quality of the area for the lifetime of the development, be visually attractive as a result of good architecture and layout, sympathetic to local character, establish a strong sense of place and create places that are safe.
20. These design principles are reflected in Policy 14 of the HLP. They are also incorporated into the Building for Life (BfL) framework, which paragraph 129 of the Framework encourages local authorities to use assess the design of housing development. Policy 21 of the HLP expects housing to be designed according to BfL principles.
21. The proposed development would regrade the site, remove the railway buttresses and fencing along Calvert Street and create a new street frontage of dwellings fronted by a verge, low boundary wall and railings. This would add to

- the overall quality of the area and relate well to the existing street scene and building line along Calvert Street to the north and south.
22. Within the site, in general terms properties have been designed to face the street, with strong building lines formed by the dwellings proposed on plots 3-9, 18-21 and 34-41. However, the street frontages on the north and south facing sides of the central perimeter block would fail to achieve the same continuity, enclosure or quality of architecture. They comprise the gable ends of plots 16 and 17, the play space, the opening to the parking court and blank walls to the perimeter of the court or the rear elevation of garages, alongside the frontage of plots 22 and 23. The view from the street on the north side of the central block would be of the interior of the parking court. Such a design would provide a weak sense of enclosure and poor quality frontages lacking interest and articulation, along what would be significant lengths of street at the core of the development. In addition, the play space would be inadequately overlooked by only two dwellings on plots 5 and 6 and unsuitably located adjacent to the access to the parking court. Overall, the central part of the estate represents a poor layout which would fail to create the strong sense of place or safe environment expected by paragraph 127 of the Framework.
23. These elements of poor design are also reflected in the Council's assessment of proposed scheme against the Building for Life (BfL) principles. Policy 21 of the HLP requires housing development to achieve at least 9 green scores out of 12 against the standard, and to minimise amber scores and avoid red scores. The appellant has not submitted a BfL assessment of the proposal, but the Council's assessment scores the scheme at 6 greens, 5 ambers and 1 red, explained in the urban design officer's comments on the application in August 2018.
24. I recognise that the scoring system for the BfL standard requires a degree of judgement and that the amber score for external storage and amenity could be improved by requiring the details of bin and cycle storage to be addressed by condition. However, I am satisfied that the significant loss of natural/semi-natural green space that would result from the proposed development, the weakness of the street frontage around the central perimeter block and the poor location of the play space, in particular, lead to the scheme failing to achieve the BfL standard required by Policy 21.
25. I note these design concerns did not feature in the initial response of the Council's urban design officer to the layout in March 2018. However, they are clearly expressed in the officer's more detailed comments in August 2018, well in advance of the application being determined. Paragraph 130 of Framework states that permission should be refused for development of poor design.
26. On this basis, I conclude that, whilst the proposed development would improve the street scene along Calvert Street, it would fail to achieve a high quality of design with regard to its internal layout and the Building for Life standard. As such, it would be contrary to Policies 14 and 21 of the HLP and conflict with paragraphs 124 and 127 of the Framework.

Living Conditions

27. The appeal site is adjacent to a number of existing residential properties along its northern boundary, including 12, 14, 15 and 17 Hastings Grove, 5 Church Way and 110 Calvert Lane. The existing view for the occupiers of these properties to the south is of a wooded embankment within the appeal site, which offers a high degree of privacy and a mature landscaped outlook.

28. The proposed development would reduce the height of the embankment to around the finished floor level of the first floor of the existing properties in Hastings Grove. The proposed dwellings on top of the reprofiled embankment on plots 6-9 are proposed with relatively short back gardens of around 7m deep. They would have rear facing habitable room windows at first floor level between 17 metres and 27 metres (m) from the rear of the dwellings in Hastings Grove.
29. A back to back separation of around 21m is normally required between properties to avoid overlooking and to preserve privacy. Much of the landscaping on this boundary would be removed in the re-profiling of the embankment and replacement landscaping would take many years to establish and provide any screening effect. It is clear therefore that, in places, in particular for no. 14 where the separation distance is only 17m, there would be an unacceptable loss of privacy as a result. The elevated height of the proposed dwellings and their proximity to the edge of the embankment would also increase their visual dominance to the rear of the existing houses, creating a perception of overlooking even where separation distances are more than 21m, such as for no. 17.
30. The relationship between the rear of plot 1 and 110 Calvert Lane would not result in an unacceptable degree of overlooking or dominance, given a separation distance of around 23m and the fact that plot 1 would not be directly behind no. 110. Likewise although the proposed dwelling on plot 10 would be less than 21m from the rear of 5 Church Way, no windows are proposed in the side elevation of house type L which would sit on plot 10, avoiding any overlooking.
31. With regard to the relationships between dwellings within the proposed scheme, most would achieve acceptable separation distances. However, the back to side distances between plots 43 and 44 and 47 and 45 would be significantly less than the minimum 12m, creating an oppressive outlook to the rear for future occupiers of plots 43 and 47. Also plots 48 and 49 would be orientated at 90 degrees to plots 45 and 44, with rear habitable room windows within 15m of each other and the first floor windows of plots 48 and 49 looking directly across and down onto the private rear garden areas of plots 44 and 45. Such a relationship would create an unacceptable level of overlooking and lack of privacy for the future occupiers of plots 44, 45, 48 and 49.
32. I have considered the outlook from the rear of plots 10-15 onto the embankment and higher ground to the east shown on the proposed layout. However, the distances, levels and outlook would be similar to that currently experienced by the occupiers of the existing properties at the end of Hastings Grove against the northern embankment. I consider this outlook and relationship to be acceptable.
33. However, due to the actual and perceived overlooking which would be experienced by the occupiers of 14 and 17 Hastings Grove, the oppressive outlook for plots 43 and 47 and the lack of privacy for plots 44, 45, 48 and 49, I conclude that the proposed development would result in unacceptable living conditions for the occupiers of these adjoining properties and for future residents in part of the site. This would be contrary to Policy 14 of the HLP which seeks to ensure development has regard to surrounding uses and it would conflict with paragraph 127 of the Framework, which expects a high standard of amenity for existing and future occupiers.

Flood Risk

34. Paragraphs 158 to 161 of the Framework set out the national policy approach for considering development in areas at risk of flooding. The overall aim is to steer new development to areas with the lowest probability of flooding by applying the sequential test. This states that development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. If it is not possible for the development to be located in zones with a lower risk of flooding, the exception test must be applied. For the exception test to be passed it should be demonstrated that the wider sustainability benefits of the development outweigh the flood risk and, via a site-specific flood risk assessment (FRA), that the development will be safe from flooding for its lifetime without increasing flood risk elsewhere. Policy 40 of the HLP reinforces that the proposed development of sites not allocated on the Policies Map must be supported by sequential and exception tests.
35. The Council's Strategic Flood Risk Assessment (SFRA) confirms that the majority of the city of Hull is located within Flood Zone (FZ) 3a on the Environment Agency's (EA) flood risk maps, where the risk of flooding is highest in the event that the city's flood defences were breached. The appeal site lies within a mixture of FZs, parts within FZ 3a, but the majority within FZ 1, where there is a low probability of flooding. Nevertheless, due to presence of FZ 3 areas and the vulnerability classification of the proposed development, the sequential test must be applied.
36. The FRA submitted with the appeal concludes that because 90%+ of Hull has been sequentially tested as falling within FZ 3a and most of the appeal site is within FZ 1, there are no other relevant or comparable sites of this size in a lower flood risk area that could accommodate the development. Whilst I understand this reasoning, the evidence is inconclusive on whether or not there are alternative sites within the city entirely free of FZ 2 or 3 classifications that could accommodate the proposal, since no analysis of alternative sites which have been considered and discounted has been made available to me. I am unable to conclude therefore that the proposal satisfies the sequential test.
37. Turning to the exceptions test for completeness, it is common ground that evidence on finished floor levels, drainage and overland flows demonstrates that the proposal would be safe from flooding without increasing flooding elsewhere. However, in terms of the first part of the exceptions test in paragraph 160a) of the Framework, although the proposal would provide 50 dwellings in a sustainable location, given my conclusions on the loss of habitat and open space, design and living conditions above, I am unable to find that the scheme would offer such wider sustainability benefits as to outweigh the flood risk. Accordingly, the proposal does not pass the exceptions test.
38. Therefore, I conclude that the proposal would be an unacceptable form of development in terms of its flood zone location. In failing to satisfy the sequential and exceptions tests, the appeal proposal would not comply with Policy 40 of the HLP and paragraphs 158 to 161 of the Framework.

Other Matters

39. The development of 50 houses on Calvert Lane would generate additional vehicle trips on what I recognise is a busy road network in the vicinity of the

site. However, the Transport Assessment submitted with the appeal proposal shows that this would amount to a relatively small proportionate increase in traffic flows, which, in line with conclusion of the highway authority, I am satisfied would not have a material impact on the highway network. The proposed new junction into the site and carriageway widening to Calvert Lane would allow vehicles to turn safely into and out of the site. In addition, the S106 undertaking includes a financial contribution to improve Calvert Lane and the Derringham roundabout and mitigate the impacts of the additional traffic. Accordingly, this matter does not add to the weight against the proposal.

40. The proposed development would deliver an additional 50 dwellings, 10% of which would be affordable units, bringing social and economic benefits to the city. I also recognise that a 50-dwelling scheme would provide an opportunity for a small to medium sized housebuilder, which may help to diversify the housing market. However, overall, I find that the totality of the harm which the proposed development would cause outweighs the benefits that it would bring.

Conclusion

41. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

M Hayden

INSPECTOR