



Appeal Decision

Site visit made on 13 February 2020

by Paul Jackson B.Arch (Hons) RIBA

an Inspector appointed by the Secretary of State

Decision date: 24th February 2020

Appeal Ref: APP/N4720/W/19/3237128

Land east of Carlton Gate and North of Clay Pit Lane

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Engie against Leeds City Council.
 - The application Ref. 18/07930/FU is dated 18 December 2018.
 - The development proposed is a residential development of 151 dwellings with community use area, café, gym, residents lounge, outdoor amenity area and roof terraces.
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Preliminary matters

1. The description of the development on the application form was for 155 dwellings. The Council considered it on the basis of 151 dwellings and no prejudice arises to any party if I do likewise.
2. Had the Council been able to determine the application, it would have refused planning permission for the following reasons:
 - 1) *The local authority considers that the proposed development and associated earthworks will lead to the complete loss of an extensive mound and landscaped area which will lead to the loss of mature trees and part of the city's green infrastructure, to the detriment of the visual amenity and biodiversity of the area. The proposal is therefore contrary to policy G9 of the adopted Core Strategy and Land 2 of the Natural Resources and Waste Local Plan, Leeds Saved Policies N9, N24 and GP5 as well as to guidance in SPG Neighbourhoods for Living, and the NPPF.*
 - 2) *The proposed development would appear overly dominant and represent a cramped, poor and unsympathetic form of development which is at odds with the general character of the immediate locality of Little London by reason of its siting, excessive height and massing in relation to context. The proposed development is therefore detrimental to the visual amenity of the area and character of the locality. The proposal is considered contrary to Leeds Core Strategy policy P10, Leeds UDPR Saved Policies GP5 and BD2, the NPPF and adopted SPG Neighbourhoods for Living.*
 - 3) *The proposed development would result in the extensive loss of mature trees in a heavily trafficked location and adjacent to a recognised air quality management area. It is considered that the loss of trees, which positively contribute to the sustainability of the area by storing carbon in their biomass, would be harmful to climate change and the health and wellbeing of*

surrounding residents, contrary to adopted Natural Resources and Waste Development Plan Document LAND2 and Core Strategy policy P10 and UDPR Saved Policy GP5 and the NPPF.

4) In the absence of an agreed wind assessment, including wind velocity patterns and convergence patterns, the LPA are concerned that the development will have a detrimental effect on the surrounding microclimate which would be harmful to general public safety and highway safety contrary to Core Strategy Policy T2 and UDPR Saved policy GP5.

5) The proposed affordable housing model, to be delivered as a build to rent scheme, fails to provide the 20% benchmark provision of affordable units in perpetuity, contrary to the policy requirement as set out in H5 of the adopted Core Strategy Selective Review and National Policy Guidance Build to Rent.

Decision

3. The appeal is dismissed, and planning permission refused.

Main Issues

4. Taking into account the reasons for refusal and all other representations, the main issues are as follows:
- The effect of the proposed development on the character and appearance of the area;
 - The effect on green infrastructure and biological diversity;
 - The effect on air quality, health and the ability to combat climate change;
 - Whether the proposed development would unacceptably affect the local microclimate or public safety by reason of wind velocity; and
 - Whether the proposed affordable housing provision would be acceptable.

Reasons

The site and surroundings

5. The site lies in Little London, a short distance to the north of the city centre between the busy Clay Pit Lane dual carriageway and a recently completed 2 and 3 storey residential development at Carlton Gate. The area is characterised mainly by low-rise housing. However, high-rise blocks of up to 17 storeys at Oatland Court, Lovell Park Towers, Carlton Garth, Close and Croft, and the Aspect development on the opposite side of Clay Pit Lane are conspicuous elements in the townscape to the north, east and south as it is appreciated from the site.
6. The site itself consists of a grassy mound, with trees and shrubs of mixed age and quality along its summit and the southern edge facing the dual carriageway. It forms a natural backdrop to views from the front of houses on the opposite side of an open landscaped area called Primrose Circus, and forms a barrier to noise and disturbance from traffic on Clay Pit Lane.

Character and appearance

7. The development would involve removal of most of the mound and the construction of a stepped block of apartments rising to 17/18 storeys. The bulk of the scheme would be mitigated by a 5/7 storey angled element facing the circus which would have 2 largely glazed upper 5th and 6th floors: and by the 13/14 storey element facing the main road, which would also have 2 upper glazed floors. The tower would be relatively slender in comparison with nearby towers of similar height and the top 3 floors would be mostly glazed. Because of its design and massing, the building would not appear unduly monolithic and would have visual interest. It would relate well to the scale of the adjacent Clay Pit Lane dual carriageway and Lovell Park Road, which crosses the dual carriageway on a concrete bridge at right angles. It would sit comfortably at a point where these roads intersect at different levels. The building would appropriately address the scale of Primrose Circus, filling a gap at its perimeter that was intended to be developed in 2008 but never proceeded due to financial constraints. As the Council has confirmed, the site was laid out as landscaping at that time until market conditions changed.
8. In longer views, the development would appear to be part of a cluster of tall buildings in the immediate area but would still be subservient to the Arena redevelopment on higher ground between it and the centre of the city, which contains very significantly taller towers. I conclude that in townscape terms, the building would not appear out of place and would not detract from the quality and character of the area.
9. The contrast in scale with nearby low-rise dwellings in Fieldhead Terrace, Amber Close and other nearby streets would be very noticeable to local residents but would be little different to that experienced by occupiers of houses in Oatland Gardens, Lovell Park View, Carlton Rise and other nearby places where low-rise development lies adjacent to tall blocks of flats. There would be a greater degree of separation between this scheme and houses on the opposite side of Primrose Circus compared to those situations. It is appreciated that there would be a significant change in outlook for local occupiers, but despite its size, the development would not take up an unacceptable proportion of the view from anyone's dwelling or garden.
10. The removal of the grassed mound and the mature trees that surmount it would undoubtedly change the view for many local occupiers, but the new scheme would incorporate new landscaping and planting that ultimately would mature and contribute to visual amenity. An existing mature lime tree on the site would be retained. Many objectors draw attention to the increased urbanisation that the development represents, but a significant area of existing mature trees and grass would remain unaffected to the east of Primrose Circus. Primrose Circus itself is a landscaped open area of grass and walkways. Moreover the site is allocated in the Leeds Site Allocations Plan (SAP)¹, as main urban infill on brownfield land where the principle of development is accepted. The SAP sets out sites for housing, employment, retail and greenspace to ensure that enough land is available in appropriate locations to meet the growth targets set out in the 2014 Core Strategy (CS). It is pointed out by objectors that the allocation of 113 dwellings for Carlton Gate has already been surpassed by new development. Whilst this is so, the application needs to be

¹ Adopted in July 2019. Site ref HG1-239 including the wider area of Carlton Gate

considered on its own merits. The Government's objective is to significantly boost the supply of new homes and the site lies in an unusually sustainable location close to transport links and the city centre.

11. The removal of older tower blocks in Little London to create a more suburban character with open landscaped areas does not preclude the development of sensitively located new higher density accommodation if it is well designed. The new development would be sufficiently separated from low-rise dwellings on the opposite side of the Circus. It would not appear cramped in the context of the roads and open spaces around it. Comments have been made on the proportions of the proposed fenestration and materials, but the scheme was the subject of extensive consultation between the architects and the Council's officers and this was reflected in the wording of the officers' position statement of 1 August 2019. There is no evidence to indicate that the scheme would not demonstrate a high quality of design and finishes.
12. On this issue it is concluded that the proposed development would respond appropriately to the character of the local urban fabric. The proposed planting and new raised grassed area would retain characteristics of a buffer between the dual carriageway and the more suburban area of Little London. There would be a loss of a semi-natural asset and general amenity in the form of the grassy mound and trees, but new landscaping would be provided around the building and there are other green areas nearby including a play area and a much larger park a few streets away at Lovell Park. The scheme would not conflict with the aims of development plan policies that aim for a high quality of character and appearance in new built development. It would not conflict with the aims of Leeds Core Strategy (CS) policy P10, Leeds Unitary Development Plan Review (UDPR) Saved Policies GP5 and BD2, the National Planning Policy Framework (NPPF) or the adopted Supplementary Planning Guidance (SPG) Neighbourhoods for Living.

Green infrastructure and biological diversity

13. In terms of green infrastructure, the trees on the site and to a lesser extent the grassy mound, form a green link along Clay Pit Lane where it descends to pass under Lovell Park Road. This is most appreciated seen from Lovell Park Road and from the top of Amber Close. Much of it is out of sight from nearby homes and it suffers from neglect, litter being thrown from vehicles and from the bridge. Much of the site consists of a steep slope facing the busy Clay Pit Lane dual carriageway with unkempt scrub under the trees. This area may be visually attractive especially in summer but is of little use for play or general recreation. The part of the site facing Primrose Circus is much more useful and is popular with local residents. At the site visit, it was noted that there are other green open areas in the locality such as Lovell Park and other play areas such as that near Oatland Towers.
14. The Arboricultural Survey indicates that 23 trees of the 53 identified have a useful life expectancy, the others being of low quality. Four are classified as unsuitable for retention for health and safety reasons and I saw at the site visit that some have lost limbs and many have poor patterns of growth. The new planting plan for the area around the development indicates approximately 100 new native trees of varying sizes and a dense area of groundcover, bulbs and shrubs behind an acoustic barrier running along Clay Pit Lane. There would be new extra heavy standard and advanced nursery stock trees including an area

of Scots Pine on a new lawned and terraced mound, which would be attractive to local occupiers. It is recognised that the new planting will take time to mature, but it will provide a greatly improved mix of flora, beneficial to biodiversity and wildlife, which would also be much more attractive to passers-by on the main roads. In time the green infrastructure link would be restored with a much-improved variety and density of planting. Moreover, the new development provides the means by which new planting can be properly maintained², in contrast to the existing situation.

15. The building itself would have a planted area at 7th floor level, providing a secure outdoor area for residents as well as being beneficial for birds and insects. I conclude that the benefits of the scheme in terms of green infrastructure and biological diversity outweigh the disadvantages of the loss of the existing grassy mound and vegetation. The proposed development would not conflict with the associated objectives of CS policy P10, UDPR Saved Policies GP5 and BD2, the NPPF or adopted SPG Neighbourhoods for Living.

Air quality, health and carbon sequestration

16. The appeal site is a considerable distance (more than 350 metres) from a designated Air Quality Management Area, but the adjacent traffic on the dual carriageway has the potential to adversely affect air quality. The scheme includes replacement planting which will, in time, compensate for all of the ability of the existing flora to absorb CO², especially the dense ground cover and shrub planting and a 124 metre hedge of native species along the road. The Council's Environmental Health Officer raised no objection to the air quality implications of the scheme.
17. With regard to general health, the replacement of a green area of grass and trees with built development has led to concerns that the natural environment would suffer with implications for the health of local people. Against that must be weighed the benefits of providing much needed housing in a highly appropriate location in an area where future residents may well not need to own a car. In addition, the scheme is likely to provide at least the same benefits in terms of attenuating traffic noise from the dual carriageway as the existing earth mound.
18. On this issue, there is no evidence that once the development has been completed and landscaping and planting reaches maturity, the proposed scheme would fail to accord with policies aimed at combating climate change. Over the life of the development, there would be a net gain in carbon sequestration. It has not been demonstrated that the air quality of the area or the health of local people would be negatively affected. There would be no conflict with the Council's Natural Resources and Waste Development Plan Document LAND2, CS policy P10, UDPR Saved Policy GP5 or the NPPF.

Wind

19. At the time the Council considered the application, after taking into account the appellant's initial Wind Comfort Report of 2018, further information was awaited on the effect of the proposal on the local microclimate and the impact on public safety including funnelling on Clay Pit Lane. A subsequent report identified exceedances in certain areas and recommended mitigation in the

² By means of a management plan ensured by condition or a S106 undertaking

form of side screens and dense evergreen soft landscaping on the rooftop terraces, and additional planting at the corners and around the outdoor seating area at the west elevation. These measures could be assured by imposing appropriate conditions. There is no evidence to suggest that with the identified measures in place, there would be any unacceptable impact due to wind on future residents or local users of the landscaped areas around the building. Accordingly, the relevant aims of CS Policy T2 and UDPR Saved policy GP5 would be met.

Affordable housing

20. The appellant advises that the flexible rental model proposed, to be operated by the Home Group, a registered social housing provider, requires a bespoke Agreement between the developer and the Council. The benefits of such an arrangement are that a minimum of 20% of the units would be 'affordable' in the first instance (at 80% market rent) in accordance with the Council's policies, to be let to essential workers. As market conditions change, the percentage of discounted units would alter up to a maximum of 50% and a minimum of 12.5%. The Council accepts that such a reduced affordable housing provision is acceptable on viability grounds if market conditions deteriorate.
21. Though on this basis the scheme would meet and could exceed the requirements of development plan policies, specifically H5 of the adopted CS Selective Review, the means to achieve it are not in place. The submitted draft Unilateral Undertaking (UU) is incomplete, undated and unsigned. It does not constitute an Agreement, yet places obligations on the Council. Amongst other things, the percentages of affordable dwelling types are missing and no plans are attached defining the development site. It would be not be reasonable to require the completion of a suitable Agreement by condition.
22. For these reasons, the UU attracts very little weight. There can be no confidence that the proposed affordable housing would be provided in the desired form.

Other matters

23. The objections by pupils and staff of the Little London Primary School are understood, but the existing grassy mound is of limited recreational value. The desire to preserve green space and trees in principle is laudable and is an objective of the development plan. However, every application has to be considered on its own merits and in this case, substantial weight attaches to the provision of 151 new homes in a sustainable location. Moreover the development includes significant and important new planting and landscaping which would be retained and maintained for the long term.
24. I have taken account of all the other matters raised including construction traffic which is likely to be disruptive for a period, but the contractor's activities would be governed by a construction management plan which if the appeal was to be allowed, would be the subject of a planning condition. There is no evidence that the proposed development would lead to an unacceptable level of traffic congestion or parking pressure in this central location.
25. The provision of a 'village hall' community space with a café, gym and residents lounge within the scheme are important benefits, but whilst the development

might be built with these facilities, there is no means of assuring ongoing management and future maintenance. This element is not covered by the draft UU.

Conclusion

26. It has not been demonstrated that the proposed development would lead to any spatial or aesthetic harm to the area. Nor would any harm result to green infrastructure, biodiversity, air quality, the local wind environment or the health of surrounding occupiers over the lifetime of the development. The replacement of the existing grassy mound and trees of indifferent quality with purpose designed landscaping and planting, including a much larger number of trees, is likely to be more beneficial in the longer term in terms of carbon sequestration, next to the busy Clay Pit Lane. The provision of a substantial number of new homes is an important benefit which, whilst additional to the number of dwellings allocated for the site in the SAP, weighs heavily in favour of the scheme. The Council indicates that it can demonstrate a 5-year supply of housing land but there is no cap on the provision of new homes.
27. Against these advantages, the UU falls far short of providing any assurance that the desired affordable housing would materialise and for this reason, the appeal must fail.

Paul Jackson

INSPECTOR