

Appeal Decision

Site visit made on 9 December 2020

by C Dillon BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/P4225/W/20/3249726

Site of the former New Ladyhouse Mill, land off Stone Street, Milnrow, Rochdale OL16 4JD

- 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 Drum Developments (North West) Limited against Rochdale Metropolitan Borough Council.
 - The application Ref 17/00070 is dated 25 January 2017.
 - The development proposed is the erection of 40 new dwellings and conversion of the mill building into 6 apartments together with the formation of a new access and bridge from Stone Street, landscaping improvements to the bank of the River Beal and other associated works and infrastructure.
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Decision

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

Application for costs

2. An application for costs was made by each of the main parties against one another. These applications are the subject of separate Decisions.

Procedural Matters

3. The planning application was amended subsequent to its submission. Therefore, the description of development contained within the above banner heading is that which is cited on the appeal form as that accurately describes the appeal proposal and aligns with that cited in the submitted officer report.
4. This appeal relates to the non-determination of an application for planning permission by the Council as local planning authority. The Council subsequently raised objections to the application proposal in terms of flood risk, educational capacity, the effect on the character and appearance of the area and living conditions of prospective residents.
5. Further submissions were made by the Council in relation to alleged harm to biodiversity and ecology as well as a list of suggested planning conditions to be imposed should the appeal succeed. The appellant took up the further opportunity provided to comment upon these. Consequently, the appeal can proceed on that basis.

Main Issues

6. The main issues are:

- whether or not the location of the appeal proposal would be sequentially preferable, with particular regard to flood risk;
- the effect of the appeal proposal on the capacity of existing educational facilities;
- the effect of the appeal proposal on the character and appearance of the area, including the setting of the Butterworth Hall Conservation Area, with particular regard to the size, scale and design of the proposed apartment block and positioning and height of the proposed acoustic fence;
- the effect of the appeal proposal on the living conditions of occupiers of the proposed development, with particular regard to the effectiveness of the proposed noise mitigation measures; and
- the effect of the appeal proposal on biodiversity and ecology.

Reasons

Flood risk

7. The appeal site is not allocated in the development plan. Furthermore, the submitted evidence confirms that prior to any mitigation the appeal site could be at risk of both fluvial and surface water flooding. The type of development proposed falls within the scope of inappropriate development for the purposes of flood risk.
8. Policy G8 of the Rochdale Core Strategy (2016) (the Core Strategy) reflects the more recent National Planning Policy Framework (the Framework) as both indicate that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk. A sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.
9. The development plan does not set out the geographical extent of the required Sequential Test and neither does the Framework. Although the latter states that the Council's Strategic Flood Risk Assessment (the SFRA) will provide the basis for applying such a test, that has not been submitted to this appeal.
10. However, the Planning Practice Guidance (the PPG) on this matter is very clear that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of development proposed. It also states that the developer should justify with evidence to the local planning authority what area of search has been used when making the application.
11. In this regard, the appellant has advanced that there are different spatial priorities and challenges for the particular Township within which the appeal site is located. However, they have not adequately substantiated why this would justify the narrower area of search advanced.

12. Furthermore, the decisions referred to by both main parties do not adequately justify the party's respective stances. This is because these decisions extend to different geographic areas and it is not sufficiently clear as to whether or not their respective local circumstances sufficiently align.
13. Moreover, it is clear that for the purposes of strategic planning for this borough area, the latest Strategic Housing Market Assessment (SHMA) confirms that the it operates as a single housing market area. The housing requirement in the Core Strategy is set out as a borough-wide target. Consequently, as the strategic planning for the type of development proposed is based upon that housing market area geography, then it is the most relevant scope that has been presented to me.
14. The submitted evidence alleges that there has been an inconsistent approach in the geography used to assess development proposals for other sites. However, it is not the purpose of the planning appeal process to make judgement as to whether those decisions were themselves justified.
15. From the evidence before me, I find that the appropriate geographical extent of the required Sequential Test in this instance is borough-wide.
16. The onus is on the appellant to demonstrate that the Sequential Test is met. My attention has been drawn to an earlier borough-wide search undertaken by the appellant which concluded that there were no reasonably available sites that were sequentially preferable. However, the Council has disputed those findings. The appellant's more recent updated assessment which is before me has also concluded that there were no reasonably available sites that were sequentially preferable. The Council has not disagreed with that assessment. Although this signifies at least some agreement in methodology, this latest assessment is incomplete because of the more limited geography used.
17. The Framework is very clear 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. The references taken from past decisions and legal opinions submitted by both parties provide interpretations of what may constitute 'reasonably available'. However, this is not a determinative factor here given the fundamental shortcoming of the geographical scope of the appellant's most recent sequential search that is before me.
18. For these reasons, the required Sequential Test has not been met and the appeal proposal would conflict with the Framework. I afford significant weight to this material consideration.
19. Main parties do not dispute the results of the submitted Exception Test and it is evident that some betterment relating to fluvial flood risk and the water course and its banks may be secured. The Framework states that if it is not possible for development to be located in zones with lower risk of flooding the Exception Test may have to be applied. However, this prerequisite has not been demonstrated in the first instance. Those benefits would not override this and would attract only moderate weight.
20. Based upon the submitted evidence, the appellant has not demonstrated that the location of the appeal proposal would be sequentially preferable, with particular regard to flood risk.

21. Policy G8 of the Core Strategy requires compliance with a sequential approach, directing development away from areas of high risk, in accordance with the Framework. Policy EM/7 of the Rochdale Unitary Development Plan (June 2006) (the UDP) sets out criteria to avoid flood risk. Given my findings, although there is scope for the appeal proposal to meet those criteria through the proposed mitigation, in the first instance it would conflict with Policy G8. This conflict would weigh significantly against the appeal proposal.

Educational capacity

22. The appellant has evidenced that any form of financial contribution would make the scheme unviable and the Council accepted that evidence at the point it was assessed in early 2018. In doing so, it is clear that the Council had been minded to forego contributions towards affordable housing and public open space in the interests of securing housing delivery.
23. Through this appeal the Council has advanced that primary school capacity in the area is currently under severe pressure, despite recent measures to increase capacity. They have also advanced that an ongoing deficit in secondary school places is set to continue.
24. Paragraph 94 of the Framework places importance on a sufficient choice of school places being available to meet the needs of existing and new communities. Great weight should be given to the need to create, expand or alter schools.
25. The appeal proposal would involve the provision of housing capable of accommodating families. There is no substantive evidence before me that would indicate that it would not further exacerbate the current deficiencies to an unacceptable degree.
26. The Council has not adequately substantiated that the viability assessment is in fact out of date. However, in the absence of the required mitigation, the appeal proposal would have a harmful impact on the capacity of existing educational facilities.
27. Policies DM2 and C7 of the Core Strategy seek, amongst other things, for new developments to be supported by and contribute to necessary infrastructure. The appeal proposal would conflict with these policies and this would weigh against the appeal proposal.

Character and appearance

28. The existing former mill building has retained some of the important commercial character and appearance associated with its original use. The Council's assessment of the effect of the appeal proposal on this is vague.
29. The scheme would be of a size and scale relative to the existing building in terms of footprint. The resulting roof forms would not be discordant with the commercial character and varied form and appearance of the existing building. The overall height of the resulting apartment block would not be inconsistent with that of the existing commercial scale building or be obtrusive within its wider mixed use context.
30. The appeal scheme would secure the replacement of a large, incongruous metal sheet extension with a more conventional elevation. The proposed

treatment of parts of the building labelled elevations 1 and 2 would represent a contemporary design solution. The scale, simplicity of the proposed design and the transparency and contrast that would be achieved through the glazed walling mean that the resulting changes would not unduly dominate the existing building nor undermine its important character.

31. The proposed scheme would maintain the vertical proportions of the existing building. The height of proposed window openings and their placement would be consistent throughout the ground floor level. The differential in their height to the window openings at the upper levels and their uniform placement would not be unsympathetic to character of the existing building and the wider area.
32. For these reasons, the resulting size, scale and design of the proposed apartment building would be neither visually dominant nor a conspicuous form of development.
33. The submitted evidence confirms the proposed acoustic fence would need to be higher than a standard rear garden fence to be effective in attenuating noise that could arise from neighbouring land uses. However, the proposed layout would not translate to the degree of openness advanced by the Council. The proposed fence would be located within parts of the site which are least prominent from internal viewpoints given the orientation and placement of proposed dwellings.
34. Views into the site are limited due to changes in ground level and intervening existing buildings. Where the proposed acoustic fence would be visible from vantage points beyond the site, it would not be incongruous as it would be read against the backdrop of the proposed dwellings, rising land and vegetation, or from higher ground.
35. Furthermore, the appearance of this fence could be softened over time by landscaping both within and outside the dwellings curtilages as part of the required landscaping scheme. The precise positioning, height and appearance of the proposed acoustic fence could be reasonably managed through the imposition of a planning condition. This would be necessary to safeguard the character and appearance of the area.
36. For these reasons, the incorporation of an acoustic fence into the proposed scheme would not unduly undermine the open character and appearance of the proposed scheme.
37. The appeal site is located in proximity of the Butterworth Hall Conservation Area. The significance of this Conservation Area is both historical and architectural from the series of civic buildings on Newhey Road which creates an attractive focal point for the area.
38. The intervening distance and built context are such that appeal proposal would not be read directly with that designated heritage asset or interrupt any views of significance associated with it. I concur with the Council's assessment that the appeal proposal would not cause harm to the character and appearance of the Butterworth Hall Conservation Area and its setting.
39. Consequently, the appeal proposal would not be harmful to the character and appearance of the area, including the setting of the Butterworth Hall Conservation Area, with particular regard to the size, scale and design of the

- proposed apartment block and positioning and height of the proposed acoustic fence.
40. This is a vacant, semi cleared vacant previously developed site. The absence of harm to the character and appearance and the visual improvements that would arise from its redevelopment would weigh in favour of the appeal proposal.
41. Policy P2 of the Core Strategy requires new development to integrate with key natural features, enhance townscape character and conserve key heritage assets and their settings. Policy BE/17 of the UDP permits new development that preserves or enhances the character or appearance of a Conservation Area. Policy DM1 of the Core Strategy requires high quality design and enhancement of the area. Policy P3 of the Core Strategy sets out design principles for scale, height, materials, proportions and contribution to townscape. In the absence of harm, the appeal proposal would not conflict with these policies.
42. The appeal proposal would incur no harm to the setting of the Conservation Area and as such would preserve the character and appearance of this designated heritage asset. However, as the status quo would be maintained this would weigh neutrally in the planning balance.

Living conditions

43. The Council's noise expert has confirmed no objection to the mitigation proposed in the submitted noise impact assessment. There is no substantive evidence that would lead me to a different opinion. The precise details to ensure its effectiveness would be necessary and reasonably managed through the imposition of a planning condition.
44. Consequently, the appeal proposal would not be harmful to the living conditions of occupiers of the proposed development, with particular regard to the effectiveness of proposed noise mitigation measures.
45. Policy DM1 of the Core Strategy states that all development proposals will be expected to demonstrate that they are compatible with surrounding land uses, including in terms of the amenities of future residents. They should mitigate against any impacts due to noise. In the absence of harm, there would be no policy conflict in this regard. However, as this matter would not constitute a benefit, it would weigh neutrally in the planning balance.

Biodiversity and ecology

46. The Council has advanced objection that the submitted landscaping scheme would provide insufficient compensation for the loss of existing trees within the site. However, no evidence has been submitted that would indicate that this could not be addressed through the imposition of a planning condition to secure an appropriate landscaping scheme and its implementation thereafter. This would be both necessary and reasonable and meet the tests for imposing a planning condition.
47. The submitted ecology evidence makes recommendations in relation to the river and brook corridors, foraging and nesting bats and nesting of birds. As per the Council's opinion, these would be necessary mitigation, not biodiversity net gain. The Council's objection is vague in this regard and their evidence indicates that the nature conservation interests of the site could be protected

through the imposition of planning conditions. In view of these environmental interests, such conditions would be both necessary and reasonable and would meet the prescribed tests for the imposition of planning conditions.

48. Consequently, from the evidence before me and subject to the necessary conditions, the appeal proposal would not be harmful to biodiversity and ecology.
49. Policy G7 of the Core Strategy states that the Council will ensure that sites and features of biodiversity and geodiversity importance are given full and appropriate recognition and protection, and that no development should result in a net loss of biodiversity or geodiversity interest. Saved Policy NE/2 of the UPD states that proposals affecting sites and areas of ecological importance will not be permitted. There would be no policy conflict in this regard. However, in the absence of the required revised landscaping scheme, I cannot conclude that this would give rise to biodiversity net gain that would constitute a benefit. For this reason, the absence of policy conflict in this regard would weigh neutrally in the planning balance.

Other Matters

50. The site's accessibility to services, facilities and public transport and previously developed land credentials are indicators of sustainability which would weigh in favour of the proposal. As would its contribution to local employment opportunities through the course of construction and support to local services and facilities thereafter.
51. A shortfall in the 5-year housing land supply has not been advanced. The degree to which the appeal proposal would contribute to any required diversification of the housing stock in the housing market area has not been adequately substantiated. Therefore, whilst weighing in favour of the appeal proposal, the contribution of the appeal proposal to these matters would attract limited weight.

Conclusion

52. I have found that the appellant has not demonstrated that the appeal site is sequentially preferable in terms of flood risk. This would weigh significantly against the appeal proposal. I have also found that the appeal proposal would place additional pressure upon school capacity which, because of viability constraints, would not be mitigated. This would also weigh against the appeal proposal, albeit to a lesser degree.
53. I have found no harm in respect to the character and appearance of the area, including the setting of the nearby Conservation Area. Indeed, the regeneration of this accessible, vacant previously developed site would be beneficial to the character and appearance of the area. Furthermore, there could be some betterment to fluvial flood risk and the water course and its banks. There would be some benefits to the local economy and the local housing stock. These would all weigh in favour of the appeal proposal.
54. I have also found that subject to the imposition of planning conditions there would be no harm to the living conditions of prospective residents or the biodiversity and ecological interests of the site. Consequently, whilst there would be no conflicts with the development plan in those regards, these could only weigh neutrally in the planning balance.

55. However, those matters weighing in favour of the appeal proposal do not out-weigh the degree and nature of the harm that I have found. I have found no other material considerations within the submitted evidence to out-weigh that harm. The appeal proposal conflicts with the development plan as a whole. For these reasons the appeal should be dismissed, and planning permission refused.

C Dillon

INSPECTOR