
Appeal Decision

Hearing Held on 19 January 2021

Site visit made on 19 January 2021

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2021

Appeal Ref: APP/H1033/W/20/3244957

Land off Bingswood Road, Whaley Bridge, Derbyshire SK23 7NB

- 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 Alliance Living Limited against the decision of High Peak Borough Council.
 - The application Ref HPK/2017/0254, dated 12 May 2017.
 - The development proposed is for the demolition of existing buildings and erection of 14 dwellings.
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Decision

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

Procedural Matters

2. The appeal has been submitted on the basis that the Council has failed to give notice of a decision on the application within the prescribed period. Whilst there are no reasons for refusal in contention the Council have indicated in correspondence that permission should be refused for several reasons. I have determined the appeal on that basis.
3. The address in the banner includes the full address provided on the appeal form and other appeal documents which is not in dispute.
4. Since the notification of the appeal a direction has been given that the matter before is not Environmental Impact Assessment development.
5. Various amendments to the appeal drawings were received in October with the appellant's rebuttal. It is disputed by parties whether the plan amendments should form part of the appeal plans under consideration. I have considered the scheme changes and they are of a substantial nature requiring further local consultation inclusive of input from statutory consultees. This includes regard to Conservation Area designation. As a result, I have assessed the scheme in the context of the appeal drawings pre the October submission.

Main Issues

6. The main issues are:
 - i. Whether Ancient Woodland adjacent to the site would be protected.

- ii. Whether house types meet local need including for the elderly and those who require specialist care having regard to the Nationally Described Space Standards.
- iii. Whether the development would adequately address local flood risk/management considerations.
- iv. Whether the loss of employment land is justified.

Reasons

Ancient woodland

- 7. There is a thick belt of elevated woodland wrapping around boundary on one side of the appeal site. Parties acknowledge that a 15-metre buffer between the woodland and the development is recommended to safeguard existing trees from harm.
- 8. The tree impact advice submitted by parties provides conflicting conclusions. I note the appellant's point that the scheme would result in less overall intrusion into the buffer than the existing building footprint and associated hardstanding. Nonetheless, the appeal scheme would introduce different protrusions into the buffer zone where there are presently none. I also have no details of the existing foundation construction. As a result, I am not persuaded that the level of intrusion into the buffer would not lead to harm to the roots of existing trees during construction of the development.
- 9. Existing trees would tower over the proposed gardens closest to the woodland. Because of the small size of the gardens and their proximity to the woodland they would be significantly overshadowed, susceptible to increased moss growth and damp conditions as well as substantial leaf debris. For those reasons there is likely to be future pressure for further tree reduction should residential use be established on the site. This would be in addition to the trees already identified to be removed.
- 10. Accordingly, I find that the development would lead to harm and a reduction to trees forming ancient woodland. This would conflict with Policy EQ.9 of the High Peak Local Plan 2016 (HPLP) which seeks resisting development that would directly or indirectly damage existing ancient woodland and trees.

Need

- 11. Policy H3 of the HPLP sets out various criteria that the Council will require all new residential development to address to meet the housing needs of local people. The criteria involve providing a range of market and affordable housing types and sizes that can reasonably meet the requirements and future needs of different households. Housing for the elderly and people with specialist care needs are also highlighted as a local requirement based on evidence from the Strategic Housing Market Assessment (SHMA).
- 12. I acknowledge the appellant's point that the SHMA was undertaken in 2014 and there is no successor document to refer to. I accept that it is possible that housing requirements may have altered since 2014. The SHMA does also indicate that its requirements should not be rigidly applied. But there is no firm evidence before me to support a housing mix which excludes 2-bedroom units in line with an identified need.

13. The appellant's Schedule of Accommodation is provided on the proposed site plan (drawing ref. 01 Rev D). It shows that house types A and C meet and exceed the Nationally Described Space Standards (NDSS) Optional Requirement M4(2) of Part M of the Building Regulations, and house types B are 6sqm short. Although the shortfall is modest it is relevant as the scheme would not be policy compliant without amendment.
14. Policy H3 also sets out affordable housing provision requirements. I accept that a completed planning obligation could deal with that issue. Nevertheless, I am not persuaded that the scheme would provide an appropriate housing mix evidenced by the SHMA or comply with space standards.
15. I therefore find that the development would be contrary to the requirements of Policy H3 criteria (b), (c) and (e) of the HPLP which seek: a mix of housing that contributes positively to the promotion of a sustainable and inclusive community dwellings; and that homes achieve adequate internal space for the intended number of occupants in accordance with the NDSS.

Flood risk/management

16. The site lies within Flood Zone 2. Parties acknowledge that the Combs Canal feeder runs through the site and that the site is also close to the Peak Forest Canal. Details regarding water courses on site and proposed methods of drainage have been subject to some local engagement with the Council. I also appreciate that the appellant has been in separate active dialogue with the Lead Local Flood Authority (LLFA) and United Utilities. However, the suggested changes to the schemes drainage provision trigger further formal local consultation requirements involving the input of the Canal and River Trust (CRT). I have no evidence that has occurred in relation to the changes to the scheme submitted in October.
17. At the hearing the Canal and River Trust indicated that some of their infrastructure is in the order of 200 years old. They have expressed concerns over the feasibility of surface water discharge into the feeder. I note that it is disputed by the appellant that the feeder is in use, and they have explored alternative solutions in relation to surface water drainage provision which bypass it. Nevertheless, I do not discount that it may be needed to serve the locality at a future point. Therefore, future maintenance and use of the feeder is an important consideration even if the feeder has become blocked over the passage of time.
18. Whilst there is no substantive evidence of local flooding, I am conscious that the maintenance of the feeder channel and barriers to its future use would result in long term drainage problems. This could lead to increased flood risk in the immediate locality, or elsewhere. I have considered the scope for attaching planning conditions to overcome this matter. However, this could involve material adjustments to the scheme layout and as a result I do not find such an approach would be appropriate.
19. Therefore, I find that the development would lead to unnecessary flood risk/management issues which have not been demonstrated as being resolved. This would conflict with Policy EQ11 of the HPLP which aims to reduce flood risk as well as Paragraph 163 of the National Planning Policy Framework (the Framework) which seeks to ensure that flood risk is not increased.

Loss of employment land

20. Policy E4 of the HPLP states that development proposals involving the redevelopment or change of use of existing business or industrial land or premises (falling within Use Classes B1, B2 or B8) for non-employment uses will only be permitted in specific circumstances. The circumstance include that: the continuation of the land or premises in industrial or business use is constrained to the extent that it is no longer suitable or commercially viable for industrial or business use as demonstrated by marketing evidence commensurate with the size and scale of development; and the proposed use is compatible with neighbouring uses.
21. The building has been vacant since the appellant acquired the site in 2016. The appellant has submitted evidence showing that the site has been marketed for sale for light industrial use since November 2016. The information highlights that the appeal site has been marketed for both leasehold and freehold purposes.
22. I note that although there is evidence of interest in the unit offers have not transpired. The Council contend that this is because the price at which the site had been marketed for lease is too high, in relation to comparable sized rental units elsewhere within the district. With respect to this issue, the advertised rental figures quoted in submissions are higher comparative to the local market. However, I accept that the appellant is not bound to a fixed rate. I also acknowledge that the building may require investment to improve its condition. Moreover, the site and building may need to be altered to meet individual business needs also impacts on the marketing strategy employed.
23. The position of the appeal building relative to the road network is also cited as a constraint in securing future business tenants. This is because access is restricted by the narrowness of local roads and a bridge. I accept that these issues would make it problematic for some businesses reliant on larger transport vehicles to use the premises for their needs. Furthermore, there is no substantive evidence business growth in the district would be harmed through a lack of available units should the site be used for an alternative use.
24. Bringing all relevant points together, there is sufficient evidence for me to conclude that the appeal site is no longer suitable or commercially viable for industrial or business use. This is demonstrated by marketing evidence commensurate to the size and scale of development. Additionally, there is nothing to suggest that the broad principle of residential use is incompatible with neighbouring uses, these being largely residential in the immediate vicinity.
25. Therefore, I find no conflict with the terms of Policy E4 of the HPLP.

Other considerations

26. There are a range of benefits attributed to the scheme put forward by the appellant which include: the effective and efficient re-use of previously developed land; family housing to meet the district's needs; the demolition of an unsympathetic building within the Conservation Area (CA); that the site is close to local services and facilities inclusive of public transport; that the development would be more in keeping with adjacent dwellings; enhancements to the living conditions of nearby residents would result; economic benefits

from additional housing and the boost to the vitality and viability of local services. I give significant weight to those benefits referred to by the appellant.

27. I note that retention of ecological features and their enhancement is also mentioned but there is nothing conclusive to suggest that would be the case. Therefore, I attribute little weight to that suggested benefit.
28. Parties acknowledge that the site is within the Whaley Bridge CA. The CA is recognised for featuring lines of terraced dwellings and cottages constructed from stone close to the river Goyt and areas of woodland. I am conscious of my legal duty under Section 72(1) of the Town and Country Planning Listed Building and Conservation Area Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
29. The Council have not raised any specific concerns in relation to harm to the CA. I accept that the dwellings of the appeal scheme would not be out of keeping with the character of the area and that the demolition of an unsympathetic building on the site would be an improvement. There is also scope for the application of planning conditions to further enhance aspects of the scheme to complement the heritage asset. Nevertheless, I have already concluded there would be harm to ancient woodland and pressure for additional tree removal. The ancient woodland falls within the boundary of the CA and tree reduction would have wider consequences to preserving the character and appearance of the CA. The woodland being one of its most attractive qualities.
30. The harm evident from tree reduction would impact on a localised part of the CA when considered as a whole. Thus, I consider the harm would be less than substantial within the meaning of Paragraph 196 of the Framework.

Planning Balance and Conclusion

31. In accordance with the Framework this subsequently leads me to weigh up the public benefits of the proposal. Whilst I accept that there are benefits linked to the scheme, they do not amount to public benefits which would outweigh the harm identified to the CA. This results in demonstrable conflict with Paragraph 193 of the Framework because potential harm to the heritage asset does not have a clear and convincing justification. The Framework requires great weight to be given to the conservation of designated heritage assets.
32. Overall, I have found there would be conflict with the Council's development plan in relation to the protection of woodland and safeguarding flood risk which would both lead to substantial harm. I have also found that there would be less than substantial harm to the setting of the CA arising from likely tree loss from the woodland. I do not find that the benefits arising from the development would outweigh the harm I have identified.
33. There are no other material considerations which lead me to the conclusion that the Council's development plan should not be followed when applying the content of the Framework as a whole.
34. A planning obligation (in the form of a unilateral undertaking) has been submitted dealing with affordable housing and public open space provision. Because I have found the appeal proposal to be deficient, I need not examine its content further.

35. For the reasons given above the appeal is dismissed and planning permission should be refused.

Matthew Shrigley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Piers Riley-Smith	Barrister
Mr Chris Jones	Planning Director
Mr Glyn Thomas	Expert witness, arboriculture
Mr Anthony Howcroft	Expert witness, marketing
Mr David Savage	Property Alliance Group Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Faye Plant	Planning Officer
Mr Ben Haywood	Head of Development
Mrs Helen Pakpahan	Senior Regeneration Officer
Ms Monica Gillespie	Arboricultural Officer

INTERESTED PARTIES:

Ian Dickinson	Canal and River Trust
Mrs Hazel Smith	Canal and River Trust
Miss Ellen Creegan	Local resident
Charlotte Atkins	Local resident

LIST OF DOCUMENTS SUBMITTED FOLLOWING THE HEARING:

Unilateral Undertaking
Title Documents