
Appeal Decision

Site visit made on 3 February 2021

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th March 2021

Appeal Ref: APP/W4705/W/20/3258879

Land to the south of Rooley Crescent, Bradford

- 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 Caddick Land Limited against the decision of City of Bradford Metropolitan District Council.
 - The application Ref: 19/02602/MAF, dated 24 May 2019, was refused by notice dated 6 March 2020.
 - The development proposed is described as a 'full planning application for demolition of an existing dwelling followed by the construction of a residential scheme with associated engineering, landscaping and access works, at land to the south of Rooley Crescent.'
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Decision

1. The appeal is dismissed.

Applications for Costs

2. Late applications for costs were made by both main parties against one another. These applications will be the subject of separate Decisions.

Procedural Matters

3. The description of development in the banner heading above is taken from the planning application form. The Council's decision notice contains a different description which refers to 150 dwellings and this is also repeated on the submitted appeal form. The proposal was however amended during the course of the planning application so that 146 dwellings were proposed. Accordingly, I have considered the appeal on this basis.
4. The appeal submission included a revised planning layout drawing. This involves internal alterations to the layout to facilitate access for emergency vehicles and with regard to cul-de-sac length. The revisions are of a minor nature. As the Council and interested parties have had the opportunity to comment on this drawing during the course of the appeal, there is no prejudice and I have considered it in my decision.
5. The proposal with the revised planning layout drawing has also been considered by the Secretary of State in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017). A screening direction has been issued which states that the proposal is not Environmental Impact Assessment development.

6. During the course of the appeal, the appellant informed that it no longer intended that the transfer of land associated with access strips on each side of the site in association with a link road to a proposed Park and Ride on adjacent land would form a planning obligation. The appellant subsequently submitted a signed Planning Obligation by Unilateral Undertaking (UU). The Council was given the opportunity to comment on the appellant's stance as regards the access strips and the UU. The appellant was also given the subsequent opportunity to respond, including to my own questions on the approach that the UU takes.
7. The main parties also made me aware of the allocation of the site for housing under the Draft Bradford District Local Plan - Preferred Options (2021) and that the appellant has submitted a further planning application¹ on the site for housing.
8. I have considered all of these matters in my decision. They also have a bearing on the main issues by way of whether the proposal would make adequate provision for both the need for affordable housing and drainage infrastructure with regard to minimising flood risk, as well as the development of the adjoining land for the Park and Ride. These are in addition to the main issues that relate to the Council's reasons for refusal.

Main Issues

9. Based on the above, the main issues are:
 - (i) whether the proposal would make adequate provision for the need for affordable housing;
 - (ii) whether it would make adequate provision for drainage infrastructure with regard to minimising flood risk;
 - (iii) the effect on the development of the adjoining land as a Park and Ride facility;
 - (iv) the effect on highway safety and the free flow of traffic by way of the proposed access arrangements;
 - (v) whether it would be in a suitable location as regards the accessibility to services; and
 - (vi) the effect on the public health of the future occupiers in relation to land contamination.

Reasons

Affordable Housing

10. Policy HO11 of the Local Plan for the Bradford District Core Strategy Development Plan Document (2017) (Core Strategy) states that, subject to viability, the Council will negotiate for up to 20% of affordable housing on residential developments in the part of the Council area where the site is found. The supporting text to the policy sets out the need for affordable housing. It cites lower average incomes, a low proportion of social housing and an identified need through the Bradford District Strategic Housing Market Assessment.

¹ Council ref: 21/01137/MAF

11. Affordable housing provision would take the form of approximately 5% of the dwellings in the form of discounted rented units. This would be below the amount envisaged by Policy HO11. The level of provision takes account of the additional costs associated with the provision of part of the proposed link road for the Park and Ride. It is not in dispute between the main parties that the reduction in the level of affordable housing is justified on this basis.
12. The proposed mechanism of delivery is, though, by way of a planning obligation contained in the UU which the Council are not signatories to. As a result, the Council are not bound by this obligation. Conversely, the UU includes roles for the Council in relation to dealing with an affordable housing scheme submitted under the provisions of the obligation, as well as potentially an amended scheme, evidence of compliance and a commuted sum, and whether the affordable housing units are being occupied as such.
13. A planning obligation is required so that the appropriate provision for affordable housing is made. However, if the UU is not placing an obligation on the Council and the Council are not obliged to engage with it, then it is unclear how it can be assured that the affordable housing would be provided in an acceptable way. Therefore, it would be doubtful that it would achieve its intended purpose and so it would be unlikely to be effective in delivering the affordable housing in accordance with Policy HO11.
14. The Planning Practice Guidance: Use of planning conditions (PPG) cautions against dealing with this issue through the imposition of a planning condition. It states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. The exceptional circumstances that are set out in the PPG where a view may be taken to the contrary do not apply in this case, based on the evidence before me.
15. I am aware that the appellant and the Council have not been able to reach an agreement in relation to entering a joint Section 106 Agreement that would have bound the Council to the obligations contained within it. This does not, though, address that the UU is defective by way of the delivery of affordable housing.
16. I find that the need for the planning obligation satisfies the tests that are set out in the National Planning Policy Framework (Framework) and the Community Infrastructure Levy Regulations (as amended, 2019) (CIL) of being necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. However, as the planning obligation is defective it would not give the assurance that the affordable housing would be delivered, as a matter of planning judgement. Consequently, it carries limited weight in my decision.
17. As a result, I conclude that the proposal would not make adequate provision for the need for affordable housing and so it would not comply with Policy HO11 in relation to ensuring that there is a sufficient supply of this type of housing.

Drainage and Flood Risk

18. The proposed means of surface water drainage would involve utilising an existing watercourse. The discharge to the watercourse would be restricted to

the existing greenfield run-off rate through the storage and attenuation of the surface water that would be generated by the proposal. This would also involve off-site improvements to the watercourse to allow the surface water from the proposal to be satisfactorily disposed of. The UU includes an obligation related to a financial contribution of £50,000 towards these works.

19. That a contribution needs to be made to provide for the satisfactory drainage of the site is not in dispute. Clearly, the proposal would generate surface water that would need to be dealt with in order to minimise flood risk. There is still the need to ensure that flood risk is not increased elsewhere, even though the site lies in flood zone 1 (low risk). Thus, the need for the contribution meets the Framework and the CIL tests.
20. The same concern arises as with the affordable housing, though, over delivery. As I have set out above, the Council are not legally required to accept the planning obligation and so, based on the evidence before me, it would not be effective. The Council would not be obliged to use the contribution to improve the drainage infrastructure in this way. Hence, it also carries limited weight in this respect. Without the certainty that the watercourse improvements would be made, the proposal would not provide adequate surface water drainage infrastructure and, in these circumstances, it would have the potential to cause flood risk.
21. I conclude that the proposal would not make adequate provision for drainage infrastructure with regard to minimising flood risk. As such, it would not comply with Policy EN7 of the Core Strategy where it states that the Council will manage flood risk pro-actively.

Development of the Park and Ride Facility

22. Saved Policy TM7 of the Replacement Unitary Development Plan for the Bradford District (2005) (RUDP) states that the Council will pursue opportunities to provide Park and Ride facilities when these arise. The proposed Park and Ride on the land to the west of the site would be such a facility (RUDP ref: BS/TM7.2 Odsal). It forms part of the South Bradford Integrated Transport Improvements.
23. Saved Policy TM20 of the RUDP states that the Council will safeguard land required for transport and highway improvement schemes as shown on the Proposals Map. The new link road from Staithgate Lane to the proposed Park and Ride, which is shown on the Proposals Map, is such an improvement (ref: BS/TM20.2 M606/Rooley Lane, Staygate Roundabout). It also forms part of the South Bradford Integrated Transport Improvements. The main internal access road through the proposal would form part of the new link road in order to serve the proposed Park and Ride.
24. The proposed Park and Ride is seen by the Council to be an important element of improving air quality, as well as contributing to the increase in use of sustainable transport modes. It is also understood that funding is now being considered. There is a reasonable likelihood that the proposed park and ride will come forward, and so I have considered it on this basis.
25. The proposal would not prejudice the ability to bring the proposed Park and Ride forward because it would provide part of the link road and no development is proposed in the strips of land at either end up to the site boundaries. There

would not be a land use consideration that would prevent the link road being provided across the entirety of the site.

26. The issue of whether a nominal or a commercial sum would be paid for the access strips is not a matter for my consideration. The policy framework that I have been referred to does not refer to matters related to the transfer. Whilst I have been referred to the CIL tests for obligations, it would be a matter that seemingly could be dealt with by way of a planning condition, if I was minded to allow the appeal, as the required works up to the boundaries would take place within the site. This would be in order to ensure that the proposal is developed in a way that would not restrict the delivery of the proposed Park and Ride, in accordance with the RUDP and the provision of the link road across the entirety of the site.
27. Accordingly, I conclude that the proposal would not have an unacceptable effect on the development of the adjoining land as a Park and Ride facility. It would comply with Saved Policies TM7 and TM20 as it would not prejudice the ability to bring forward the Park and Ride facility and the proposed link road.

Highway Safety and the Free Flow of Traffic

28. The site boundary with Rooley Crescent contains a dwelling that would be demolished to make way for a priority junction access into the site. Rooley Crescent passes through the neighbouring residential area before joining the A6036. It also leads to Dean Beck Avenue which joins onto Staithgate Lane at a short distance from the M606 roundabout. Whilst both Rooley Crescent and Dean Beck Avenue allow for 2 way traffic and contain footways, Dean Beck Avenue is of a narrower construction.
29. Guidance is provided in the Council's Homes and Neighbourhoods: A Guide to Designing in Bradford Supplementary Planning Document (2020) (SPD) in relation to the width of the carriageways as it is related to the function of the road. The width of Rooley Crescent is that of a 'connector street'. Such a street is said to be a main street that provides structure in a residential area. Rooley Crescent provides such a function. Whilst it does not contain a separate cycle lane, this is of less relevance when assessing whether its width and geometrical layout would accommodate in particular the car traffic that would be generated by the proposal. The part of Rooley Crescent nearest to the proposed site access permits the free flow of traffic, even when cars are parked along the carriageway.
30. Dean Beck Avenue, with its lesser width, constitutes a 'residential street' under the SPD. This is said to be a general street in a residential area that carries a wide range of movement types. Dean Beck Avenue ably demonstrates these characteristics.
31. Rooley Crescent and Dean Beck Avenue both serve the residential area in between the A6036 and Staithgate Lane. This is reflected in the traffic volumes during the peak times that are set out in the appellant's Transport Assessment (TA), based on traffic surveys that have been carried out and with the data updated for 2020. With regard to the levels of traffic at the junctions with Staithgate Lane and the A6036, and whilst queuing may occur for short periods, they are demonstrated by the TA to be within operational capacity.

32. In respect of the trip generation that would result from the proposal, this is forecast to generate circa 101 two-way vehicular trips during the AM peak hour and 92 during the PM peak hour, according to the TA². With the addition of these vehicle trips, capacity would still exist within the local road network nearest the site and at the key junctions, with the queueing still likely to be for only short periods. There is not empirical evidence before me to the contrary in relation to either the existing traffic levels or the predicted traffic generation.
33. With the width of Rooley Crescent, it would be able to accommodate the traffic movements without unduly inhibiting the free flow of traffic. The geometry of the road would also not seem to raise a particular concern. The junction with Radfield Drive close to the site access is of a minor residential nature, and a bend towards the A6036 is easily accommodated by driving to the usual standards.
34. I am mindful that Dean Beck Avenue is more obstructed by on-street parking due to its narrower width and that it provides more ready access to the M606 roundabout than Rooley Crescent. However, with the predicted increase in the volume of traffic, I am not persuaded this would render the proposal unacceptable and the same applies as regards Dean Beck Avenue's geometric layout. It is also intended that construction traffic would not be permitted to use Dean Beck Avenue under the submitted Construction Plan.
35. The proposed site access would be closed in the event that the Park and Ride goes ahead. This would clearly be necessary, apart from for cyclists and pedestrians, or else the Park and Ride traffic could use Rooley Crescent and Dean Beck Avenue. The UU contains an obligation that concerns the closure of the proposed site access. This relates to the opening of the Park and Ride access route onto Staithgate Lane so that traffic from the proposal would solely use this access. The UU places obligations on the Council in respect of dealing with the information that the Council would receive, as well as responding and notifying the appellant.
36. As I have already set out, the Council are not bound by the UU. However, as the closure of the proposed site access relates to the site itself, I see no reason why this could not be dealt with by way of a planning condition, through the submission of a scheme to be submitted to and approved in writing by the Council, including an implementation schedule.
37. The same applies as regards the Rooley Crescent dilapidation survey. This relates to the construction phase and so it could form part of a condition that deals with construction traffic management or similar, along with the routing of such traffic. This is not an uncommon condition for a sizeable housing site.
38. I am less persuaded that a condition is appropriate in relation to the Traffic Regulation Order because this would involve a financial contribution been paid to the Council. This would raise concerns for the reasons that I have already explained about making such contributions via the UU. Nevertheless, this would not make the proposal, on its own, unacceptable with regard to traffic speeds and safety due to the layout of the roads and the predicted traffic volumes. I have to consider such effects in the round in highway safety terms.

² This is on the basis of up to 150 dwellings

39. Hence, Rooley Crescent and Dean Beck Avenue would be able to absorb the additional traffic likely to be generated. The intensification of the use of these roads would not be unacceptable. In coming to this view, I have had regard to the road safety incidents that I have been referred to.
40. I conclude that the proposal would not have an unacceptable effect on highway safety and the free flow of traffic by way of the proposed access arrangements. As such, it would comply with Policies DS1 and DS4 where they concern matters of highway design and traffic movement, amongst other considerations.
41. It would also comply with paragraphs 102, 109 and 110 of the Framework where they are concerned with the potential impacts of development on transport networks; that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe; and minimising the scope for conflicts between pedestrians, cyclists and vehicles.

Accessibility to Services

42. The nearest bus stops to the site lie on either side of the A6036. They are accessed from the site via lit footways which run alongside Rooley Crescent or Radfield Drive. There are also alternative routes via Dean Beck Avenue and Staithgate Lane. To access the bus stop on the eastbound carriageway, the A6036 has to be crossed via a signalised pedestrian crossing. Both stops comprise bus shelters and, based on the evidence before me, are served by reasonably regular services on each day of the week. Services also extend into the evening time. This does not amount to infrequent public transport.
43. Policy TR3 of the Core Strategy concerns accessibility for modes of transport other than the car. It refers to the accessibility standards that denote a distance of 400 metres (m) from a bus stop that sites should be within. Notwithstanding whether the standards are applicable only to further development plan preparation or also apply to planning decisions, the proposed dwellings nearest Rooley Crescent would only be a slightly greater distance away than 400m and not significantly further than the existing dwellings. The remainder of the proposed dwellings would clearly be more distant but this is often the case with larger housing developments because of the size of the site and, as a consequence, the variation in accessibility.
44. The undulations in the topography between the site and the bus stops would not provide an undue deterrent. It would seem to me that the continuous nature of the footways and that they are lit is of more importance with regard to encouraging their use. Whilst I have also been referred to other accessibility standards, these seem to apply similar principles and so do not alter my view. The potential bus services that would arise from the proposed Park and Ride also have a limited bearing because the proposal would not be tied to the provision of these potential future services, albeit they would be to the likely benefit of the future occupiers at some point.
45. Policy TR3 goes on to set out that the layout of new development is to encourage walking and cycling by taking opportunities to connect to the existing street and path network, local facilities and public transport in obvious and direct ways. The accessibility standards also state that where a site does

- not conform to the standards at the time of submission, it is expected that mitigating measures should be included within the development proposals.
46. In this regard, a combined footway and cycleway would run parallel to the proposed access road into the site and connect to the footway along Rooley Crescent. Within the site there would also be a dedicated off-road route to connect the more distant parts of the development more directly with the Rooley Crescent access. This would assist with pedestrian access to and from the site. Further related measures are also set out in the appellant's Travel Plan.
 47. Similar considerations apply concerning the proposal's location and local services, as far as the development layout and the linkages to pedestrian routes. The accessibility standards also apply, as an alternative, a 20 minute walk time (1600m). This would include education services by way of at least primary school provision, based on the evidence on the distances from the site that I have before me. Medical health provision is further away, but the accessibility standards to bus stops also apply as regards these facilities. I have not found this to be unacceptable, for the reasons that I have set out above.
 48. With regard to a broader range of local services, I observed a number in the vicinity of the roundabouts at either end of the A6036 nearest the site and along Mayo Avenue, as well as the employment uses along Staithgate Lane. The site lies on the edge of a large urban area and access is afforded to a sufficient range of services by means of travel other than the car.
 49. I conclude that the proposal would be in a suitable location as regards the accessibility to services. Therefore, it would comply with Policy TR3 in respect of the measures that it sets out with regard to planning and development decisions, as well as transport policies that will safeguard and improve public transport, walking and cycling infrastructure.
 50. The proposal would also accord with paragraphs 102, 109 and 110 of the Framework where they concern opportunities to promote walking, cycling and public transport use; related highway safety measures; and, giving priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second so far as possible to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use.

Land Contamination

51. To the west of the appeal site comprises open land, which is a former landfill site, commonly known as the Odsal Tip. It is understood that it was used for the disposal of industrial, commercial and household waste, and that clay capping has been used to cover much of that site. It now has the appearance of rough grassland. A small watercourse that flows south through the appeal site crosses into the landfill and enters via a culvert. It is understood that a regime of gas monitoring is in place.
52. The capping and vegetation would lessen the likelihood of soil from the landfill blowing over onto the appeal site. Notwithstanding this, the contamination sampling that has been carried out on behalf of the appellant, as set out in the

Stage 1 and 2 Geo-environmental Report, acknowledges that there are areas of unsuitable topsoil and subsoil on the site, including localised landfill material overspill. It is proposed these would either be relocated to more suitable areas of the site, including with clean cover, or would be removed. Pathways in terms of water and the associated leachate would also be limited as the watercourse flows into, rather than from, the landfill site. Water testing results indicate that the watercourse on the site is clean.

53. There is potential for ground gas emanating from the landfill to migrate to the appeal site. As a consequence, the appellant has proposed a gas protection system for the dwellings. This would be likely to require a gas resistant membrane and a ventilated subfloor void, as is set out in the submitted Contamination Remediation Statement.
54. The substantive evidence on this issue has been provided by the appellant and I see no reason to deviate from it. When these considerations are taken together, the appellant has ably demonstrated that in the long term the proposal would not be unacceptably exposed to future contamination emanating from the adjacent site. The measures that are set out in the Contamination Remediation Statement would sufficiently address potential contamination issues.
55. The development of the landfill site itself would be a matter for the consideration of a planning application for that development, including the associated remediation, rather than for the proposal that is for my consideration. I have also been made aware of issues on a different housing site nearby, but the proposal is to be dealt with on its own merits.
56. I conclude that the proposal would not have an unacceptable effect on the public health of the future occupiers in relation to land contamination. Hence, it would comply with Policy EN8 of the Core Strategy which concerns proposals which are likely to cause pollution or are likely to result in exposure to sources of pollution or risks to safety. Policy EN8 also states that such proposals will only be permitted if measures can be implemented to minimise pollution and risk to a level that provides a high standard of protection for health, environmental quality and amenity. This includes proposals for development of land which may be contaminated.
57. The proposal would also accord with paragraphs 178 and 179 of the Framework where they are concerned with planning decisions ensuring that a site is suitable for its proposed use taking account of ground conditions and state that any risks arising from land instability and contamination, proposals for mitigation, adequate site investigation information, and the responsibility for securing a safe development rests with the developer and/or landowner, amidst other matters.

Other Matters

58. The appellant has stated that the Council cannot demonstrate a 5 year supply of deliverable housing sites in accordance with the Framework as it has 2.06 years supply. This has not been contested by the Council. The shortfall is significant and the proposal would make an important contribution to alleviating the deficit and improving delivery. It would accord with the Government's objective of significantly boosting the supply of homes. It would also contribute to a housing mix because it would provide accommodation for

different groups, as a rented scheme. It would be aimed at those who cannot, or do not wish to, purchase a property. It would widen housing choice and enable a sense of community to be created.

59. There would also be economic benefits during construction and with the related employment. Such benefits would also arise with the spend of the future occupiers and the receipts that the Council would receive. Biodiversity enhancements are proposed on site, as are new trees and landscaping. There would not be a conflict with Saved Policy OS1 of the RUDP and the Urban Greenspace designation, with the open and green character of the site that would remain, in also considering the design of the proposal. It would also provide part of the proposed link road to the Park and Ride, and so it would contribute towards this facility being provided.
60. Whilst the provision of affordable housing would have carried significant weight in my decision, with the deficiencies in the UU, the opposite situation arises. As well as it not being policy compliant, the proposal would not contribute to addressing the identified need and nor would it give those the opportunity to obtain a home who are unable to gain access to general market housing, including to rent. This counts considerably against the proposal. The same applies as regards drainage infrastructure and the resultant potential flood risk. The Framework also provides for the consideration of affordable housing, and drainage and flood risk. In this case, these are matters of legitimate planning concern.
61. The draft allocation of the site for housing in the Council's emerging Local Plan attracts limited weight in my decision. The plan is at a fairly early stage of preparation and it has not been the subject of Examination. Similarly, my decision is not fettered by the subsequent submission of a further application for housing on the site.
62. Interested parties have raised a number of other concerns. However, as I am dismissing the appeal on other grounds, such matters do not alter my overall conclusion and have therefore not had a significant bearing on my decision.

Planning Balance and Conclusion

63. Due to a lack of a 5 year supply of deliverable housing sites, paragraph 11 d) of the Framework is engaged. The development plan policies which are most important for determining the application are out-of-date. As a consequence, the balance under paragraph 11 d) ii. applies. This means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
64. In relation to the adverse impacts, the proposal would not make adequate provision for both the need for affordable housing and drainage infrastructure with regard to minimising flood risk. I find the harm, when taken together, to be very significant. Set against this would be the addition of 146 dwellings to the supply of housing, including the contribution to addressing the shortfall against the 5 year supply of deliverable housing sites. When this is considered with the other benefits, they attract significant weight in my decision. All other issues raised attract neutral weight.

65. Taking these matters together, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a result, the application of paragraph 11 does not indicate that permission should be granted. The proposal does not benefit from the presumption in favour of sustainable development.
66. In coming to my conclusion, I have considered all relevant matters that have been raised. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR