



Appeal Decision

Hearing (Virtual) Held on 17 March 2021

Site Visit made on 18 March 2021

by A Caines BSc(Hons) MSc TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 April 2021

Appeal Ref: APP/C4235/W/20/3256972

Land adjacent to Hillbrook Grange Care Home, Ack Lane East, Bramhall, Stockport SK7 2BY

- 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 McCarthy & Stone Retirement Lifestyles Ltd against the decision of Stockport Metropolitan Borough Council.
 - The application Ref DC/071147, dated 28 September 2018, was refused by notice dated 30 April 2020.
 - The development proposed is erection of 40 apartments (14 x 1-bed and 26 x 2-bed) of retirement living accommodation (Category II type) with associated communal facilities, landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 40 apartments (14 x 1-bed and 26 x 2-bed) of retirement living accommodation (Category II type) with associated communal facilities, landscaping and car parking at land adjacent to Hillbrook Grange Care Home, Ack Lane East, Bramhall, Stockport SK7 2BY, in accordance with the terms of the application Ref DC/071147, dated 28 September 2018, and subject to the conditions set out in the schedule to this Decision.

Procedural Matters

2. It was agreed at the Hearing that the description of development from the Statement of Common Ground (SoCG) should be used in preference to that shown on the planning application form.
3. The scheme was amended during the course of the Council's consideration of the planning application, including widening the existing vehicular access onto Ack Lane East and associated felling of a beech tree protected by a Tree Preservation Order (TPO). Interested parties were able to make representations on these changes and the amended plans are contained within the agreed plans list as provided in the SoCG. I have therefore assessed the appeal proposal in its revised form.
4. The effect of the loss of the protected beech tree did not feature in the Council's refusal reasons. Nevertheless, owing to the level of representations, I deemed it appropriate to discuss the matter as a main issue at the Hearing.
5. A draft planning obligation¹ in the form of a unilateral undertaking (UU) to provide for affordable housing and recreation/amenity open space contributions

¹ Under Section 106 of the Town and Country Planning Act 1990 (as amended)

was discussed at the Hearing. With my agreement, the final executed version of this document, dated 18 March 2021, was submitted after the close of the Hearing.

6. The Council confirmed that the recreation/amenity open space contribution included in the UU addresses the second reason for refusal. Whilst I will return to the provisions of the UU later in this Decision, I am satisfied that this matter is no longer a main issue in this case.
7. At the Hearing I was invited to view the site from the neighbouring garden of 10A Hillbrook Road, which I was able to do as part of my site visit.
8. After the close of the Hearing, both the Council and the appellant formally withdrew their previously made applications for costs against each other. Consequently, there are no applications for costs before me.

Main Issues

9. With the above in mind, the main issues in this appeal are:
 - Whether or not the development would make adequate provision for affordable housing; and
 - Whether the loss of a protected tree is justified, having regard to relevant development plan policy.

Reasons

Affordable housing

10. Policy H-3 of Stockport's Core Strategy DPD 2011 (the CS) states that the Council will negotiate, subject to viability, to achieve 40% affordable housing on sites in areas with the highest property prices, such as Bramhall. The tenure split sought in such areas is 50% intermediate and 50% social rented. The policy predates the National Planning Policy Framework (the Framework). Nevertheless, it remains broadly consistent with the Framework in terms of delivering housing for different groups, specifying the type of affordable housing required, forming mixed and balanced inclusive communities, and taking viability into account.
11. The appeal scheme on the basis of CS Policy H-3 should seek to achieve 16 affordable units, all of which the Council agreed could be intermediate in this case. However, owing to the specialist nature of the accommodation proposed, the Council has accepted that such provision on the site would be impractical and that a commuted sum is the most appropriate method of securing the affordable housing provision in this instance. On the evidence that is before me I have no reason to form a different view. Moreover, such flexibility in approach reflects the Planning Practice Guidance (PPG) advice to take a positive approach to schemes where there is an identified unmet need for specialist housing².
12. Despite initially being some distance apart on the amount of commuted sum that the scheme could support, in the lead up to the Hearing the main parties reached agreement on all viability assessment inputs. Based on viability, the UU now includes a contribution of either £1,551,035 if ground rents can

² 016 Reference ID:63-016-20190626

continue to be charged, or, £1,282,025 if legislation banning ground rents is enacted. The crystallisation date for determining which sum applies would be on first occupation. This trigger would be appropriate given that the sales revenue to fund the payment would likely only be fully realised on completion of the development. The Council's concern that the development may be stalled to avoid paying the higher sum has no substantive basis.

13. The remaining area of dispute between the main parties focuses on whether there is a shortfall against a full policy target commuted sum and the need for a review/clawback mechanism to be included in the UU. This clause would provide an opportunity for the Council to review actual build costs and sale prices, and potentially secure a share of any uplift in profit.
14. The Council contends that the full policy target commuted sum (ground rent included) should be £1,875,068, based on 16 units with a 50/50 intermediate and social rented split, as set out in CS Policy H-3. Clearly, there would be a shortfall against this figure. However, the appellant submits that the full policy target commuted sum in this case should be based on what the Council agreed would have been required to be provided on the site, i.e. intermediate only. This equates to a commuted sum of £1,539,958, which means there would be no shortfall.
15. The above notwithstanding, at the Hearing the Council accepted that where a robust viability case has been presented to justify the level of affordable housing contribution, the proposal should not be considered in conflict with CS Policy H-3. This is because the amount of affordable housing required by the policy is subject to negotiation and could vary depending on the financial viability of the development.
16. Furthermore, in straightforward policy terms a requirement for a review/clawback mechanism is not part of the development plan. The requirement for such a clause arises from the Council's recently produced Explanatory Note³. This document does not have the status of development plan policy. Nor is there any indication that it has been subject to consultation and formally adopted as supplementary planning guidance. Accordingly, it attracts very limited weight.
17. My attention was drawn to the PPG's support for review of viability over the lifetime of a project⁴. However, the relevant paragraph starts by saying this requirement should be set out in Plans. Moreover, as the development would almost certainly be completed in a single phase with an estimated build time of 12-18 months, it is not the sort of large multi-phased scheme where stronger arguments for a review/clawback mechanism may otherwise exist.
18. Drawing these matters together, the proposal would make an important contribution towards an undisputed affordable housing need in the Borough. The commuted sum is not the full equivalent of the tenure split sought by CS Policy H-3. Nevertheless, it is significant that the commuted sum is the full equivalent of what the Council has agreed could be provided on the site, and is supported by robust viability appraisal which has been the subject of detailed negotiations and agreement between professionals for both parties. I attach substantial weight to the viability assessments and the agreed position.

³ Affordable Housing Requirements in Stockport Explanatory Note, January 2021

⁴ 009 Reference ID:10-009-20190509

There is no specific development plan policy or adopted guidance to support the Council's position on a requirement for a review/clawback mechanism in this case. These factors lead me to conclude that the development would make adequate provision for affordable housing. As such, the proposal complies with CS Policy H-3, which enables negotiation and consideration to be given to the viability of affordable housing contribution on individual sites.

Loss of a protected tree

19. Some of the trees within the site are protected by the Benja Fold, Bramhall, No.1, 1979 TPO. Tree 22 in the TPO (T22) is a purple beech. It is classified in the tree survey⁵ as category A, of high quality. As a healthy, early mature specimen, it is assessed as having a potential retained life expectancy in excess of 40 years.
20. At my site visit I was able to confirm that T22 is a prominent feature at the site entrance with a canopy overhanging the road, such that even when it is not in leaf, it makes a positive contribution to the street scene and the verdant character of the area generally.
21. CS Policy SIE-3 requires that development proposals affecting trees which make a positive contribution to amenity should make provision for their retention unless there is justification for felling to enable the development to take place. Even where there is a strong justification, the design should maximise the potential for retaining some mature planting, and replacement planting should be provided within the site or nearby.
22. It is common ground between the main parties that the removal of T22 is necessary to facilitate safe vehicular access to the development. It was also agreed at the Hearing that there are no other options to achieve a suitable vehicular access.
23. Although there is no detailed landscape scheme at this stage, the drawings indicate the introduction of extensive new landscaping within the grounds of the development. I was informed that this would include 39 new trees, albeit 15 low quality unprotected trees would also be removed. There was some discussion over the potential location of a replacement tree to compensate specifically for the loss of T22. This included 'somewhere on the highway nearby', but it was not clear precisely where this would be and whether it was a realistic proposition. Another option discussed was further along the access. However, as there is already a good density of mature tree coverage in that location, the benefit would be limited. I also have concerns that its growth could be suppressed.
24. The options for replacement planting in the immediate vicinity of T22 therefore appear to be limited. However, having regard to the extensive roadside tree coverage in this part of the street, this is not critical. I am content that there is sufficient opportunity for replacement planting within the core of the site as part of a comprehensive landscaping scheme which overall, is likely to lead to an improvement in the level and quality of tree coverage within the site. The details, including appropriate replacement of T22, could be suitably dealt with by a planning condition. This is a view shared by the Council.

⁵ 9900-KC-XX-YTREE-TreeSurveyRev0 by Keen Consultants

25. Where other trees within the site are to be retained, they could be suitably protected during construction and a method statement would be required to ensure an appropriate 'no dig' system is used where hard surfaces would be close to the Root Protection Areas of the trees. This could also be controlled by conditions.
26. Taking a balanced view, I conclude that the loss of T22 is justified to enable the development to take place and that the effect of its loss can be adequately compensated for as part of the landscaping of the development, such that it would not amount to harm in overall terms. In this regard, the proposal complies with CS Policy SIE-3.

Other Matters

27. Some interested parties have questioned the need for further retirement housing in the area. However, the main parties agree that the development would contribute towards meeting an existing and growing need for such accommodation, both in Bramhall and Stockport generally. On the evidence that is before me, including the Council's recent Housing Needs Assessment (2019), I have no reason to disagree.
28. Although the site is not previously developed land, it lies within the grounds of an existing care home, within an established residential neighbourhood, and close to the local district centre which contains a good range of shops and services, including health care and community facilities. It is also accessible by public transport. I therefore concur with the Council that the site is an appropriate location for the development.
29. The density of the development would be higher than that of the surrounding area, which is inevitable given the type of accommodation proposed. Nonetheless, it is not the calculated density that is telling, but the details of the scheme that is achieved. Having regard to the scale, design, materials, and layout of the development within secluded landscaped grounds, I am satisfied that it would effectively blend into the village-like environment and would not be visually intrusive. For the same reasons and having regard to the intervening care home building and mature vegetation to the east of the site, I would concur with the Council that the setting of the nearby Bramhall Lane South Conservation Area would not be harmed.
30. The Council has confirmed that its concerns over the safety of the vehicular access have now been addressed by the amendments to widen the access and make provision for passing places. The level of parking provision has been robustly justified by evidence of similar developments and accords with the Council's parking standards. That there is no objection from the local highway authority is a matter I give substantial weight. Thus, whilst I acknowledge the concerns of interested parties, the evidence before me does not lead me to conclude that the development would unacceptably impact on the safe operation of the local highway network, or exacerbate any existing parking problems in the area.
31. There is no doubt that the development would change the rear outlook for some neighbouring residents in Hillbrook Road. However, the Council advises that the development would clearly exceed all of the relevant separation distances set out in its Design of Residential Development Supplementary Planning Document. Moreover, there is no substantive evidence before me that

would lend support to residents' concerns over loss of light and overshadowing. Thus, I am unable to conclude that the development would unacceptably harm the living conditions of nearby occupiers with regard to privacy, outlook and light. Though there may be some disruption during construction, this would be temporary and could be managed by a construction management plan to be submitted and agreed with the Council.

32. In terms of the effect on local wildlife and the site's role in the Green Chain designation, I have had regard to the ecological appraisal that accompanied the application. This concludes that, subject to the implementation of recommended mitigation measures, including requirements to carry out further pre-development surveys for bats and badgers, the development would not have an adverse effect on local wildlife, including protected species, or habitats. This was also the conclusion reached by the Council and there is no substantive evidence to lead me to reach a different conclusion.
33. While I have noted that the site has been used occasionally for community events, it is in private grounds and is not designated open space. In addition, the Council advises that the retained garden areas for the care home exceeds the provision required for the recreation purposes of its residents. The maintenance and safety of existing paths within the care home grounds is a matter for the owner.

Unilateral Undertaking

34. The completed, signed and dated UU makes provision for contributions towards affordable housing and to offset the impact of the development on public recreation/amenity open space in the area.
35. Based on my findings on the first main issue, the aforementioned affordable housing contribution is necessary in lieu of on-site provision and is supported by the requirements of CS Policy H-3.
36. The public recreation/amenity open space contribution of £72,080 has been calculated on the basis of the specific development proposed and is supported by the requirements of CS Policy SIE-2 and the Council's Open Space Provision and Commuted Payments Supplementary Planning Document (2019).
37. I am therefore satisfied that each of the contributions would comply with the relevant tests for planning obligations as set out in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 56 of the Framework in that they would be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to it in scale and kind. Accordingly, I have taken the obligations into account in support of the appeal proposal.

Conditions

38. An agreed list of conditions was discussed at the Hearing. Where necessary I have amended the wording in some conditions in the interests of precision and clarity, and in order to comply with the tests in paragraph 55 of the Framework. Any pre-commencement conditions have been agreed by the appellant.
39. Condition 2 defining the approved plans is necessary in the interests of certainty. Condition 3 concerning external materials is necessary to ensure a

- satisfactory appearance of the development. Conditions 4 and 5 relating to landscaping are necessary to protect the character and appearance of the area and to compensate for the felling of a protected tree. The protection of existing trees during construction is ensured by Conditions 6 and 7.
40. Conditions 8, 10 and 11 are necessary in order to safeguard the habitat of protected species. Condition 9 is manifestly necessary to ensure the safe removal of Japanese knotweed from the site.
 41. Conditions 12 and 13 are necessary to ensure effective drainage for the site and development.
 42. Condition 14 is necessary to reduce the carbon emissions of the development, and Conditions 18 and 19 are necessary to promote sustainable travel choices.
 43. Condition 15 is necessary in the interests of managing the effects of construction on the highway, neighbouring residents, and the surrounding area. Conditions 16 and 17 are necessary in the interests of highway safety and to ensure sufficient parking provision.
 44. Condition 20 relating to noise and vibration mitigation measures is necessary to protect the living conditions of the occupiers of the development due to the proximity to a railway line. Condition 21 concerning physical security details to be implemented is necessary to reduce the risk of crime.
 45. Condition 22 which restricts the age of the occupiers of the proposed residential accommodation is necessary to ensure the development meets the needs of an ageing population, and also as the affordable housing and open space contributions, as well as parking provision, specifically reflects the nature of the development proposed.
 46. I have not imposed the proposed condition relating to external plant as it may potentially result in changes to the scheme which ordinarily would require planning permission and which interested parties may not have been aware of.

Conclusion

47. It is common ground between the main parties that the Council has 2.6 years supply of housing land, which is substantially below the requirement for a 5 year supply. Nonetheless, I have found that the proposal would accord with the relevant development plan policies identified above. It is therefore not necessary for me to consider the implications of the Council's housing supply position any further.
48. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be allowed.

A Caines

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paul Tucker	Queens Counsel
Chris Butt	The Planning Bureau
Frances Cachia	The Planning Bureau
Carla Fulgoni	The Planning Bureau
James Mackay	Alder King
Neil Appleton	Transport Planning (York) Ltd
Jago Keen	Keen Consultants

FOR THE LOCAL PLANNING AUTHORITY:

Jane Chase	Stockport Metropolitan Borough Council
Steve Johnson	Stockport Metropolitan Borough Council
Andy Kippax	Stockport Metropolitan Borough Council
Malcom Orrell	Stockport Metropolitan Borough Council
Suzanne Broomhead	Stockport Metropolitan Borough Council
Cecilia Reed	Principal Surveyor, District Valuer Services

INTERESTED PARTIES:

David Pechey
Michael Lacey

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Unilateral Undertaking dated 18 March 2021
2. Council's email dated 29 March 2021 withdrawing its application for costs against the appellant.
3. Appellant's email dated 29 March 2021 withdrawing the application for costs against the Council.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 211117JC-01 Site Survey;
 - NW-2532-3-2-AC-01 Location and Context Plan_Rev E;
 - NW-2532-3-2-AC-04 Proposed Site Plan_Rev D;
 - NW-2532-3-2-AC-04-2 Proposed Access and Car Parking Layout;
 - NW-2532-3-2-AC-05-1 Proposed Elevations - Sheet 1 of 2_Rev A;
 - NW-2532-3-2-AC-05-2 Proposed Elevations - Sheet 2 of 2_Rev A;
 - NW-2532-3-2-AC-06-1 Context Elevations_Rev A;
 - NW-2532-3-2-AC-06-2 Context Sections_Rev A;
 - NW-2532-3-2-AC-07-1 Floor Plans_Rev C;
 - NW-2532-3-2-AC-07-2 Roof Plan_Rev A;
 - NW-2532-3-2-AC-10 Boundary Treatment Plan_Rev A;
 - 9900-KC-XX-YTREE-TPPO1Rev0 Tree Protection Plan;
 - 2951 101 Rev F Sketch Landscape Layout;
 - McC&St-BF-B-002 Rev C Proposed External Works Layout;
 - McC&St-BF-B-003 Rev E Proposed Drainage Layout.
- 3) Notwithstanding any description of materials in the application documents, no above ground construction works shall take place until a schedule of all the materials of external construction has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved schedule and materials.
- 4) Notwithstanding the details shown on the approved plans, no above ground construction works shall take place until a landscaping scheme has been submitted to and approved in writing by the local planning authority. The landscaping scheme shall include details of: all existing trees, hedges and other planting to be retained; a planting specification to include numbers, size, species, and spacing of all new planting including replacement tree planting to compensate for that proposed for removal; the areas to be grassed; and the materials to be used on the hard surfaced areas.
- 5) The approved landscaping scheme shall be carried out within 6 months of the date of first occupation of the development, or substantial completion of the development, whichever is the sooner. Any trees, plants or grassed areas identified within the landscaping scheme which within a period of 5 years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar

- size, species and quality unless the local planning authority gives written approval to any variation.
- 6) No development shall take place until all existing trees on the site except those shown to be removed on the approved plans, have been protected from construction with fencing in accordance with BS 5837:2012 "Trees in relation to construction - Recommendations". The protective fencing shall be retained during the period of construction and no work, excavation, tipping or stacking of materials shall take place inside the protective fencing during the construction period.
 - 7) No construction works within the root protection zones of trees identified on drawing 9900-KC-XX-YTREE-TPPO1Rev0 (Tree Protection Plan) shall be carried out until a Method Statement detailing the 'No Dig' measures to be used has been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved Method Statement.
 - 8) No development including ground clearance and vegetation removal shall be carried out until a repeat badger survey of the site (including land within 30m of the site boundaries where possible) to establish that there are no new badger setts beyond those identified in the Preliminary Ecological Appraisal, Biocensus, December 2017, has been carried out, submitted to, and approved in writing by the local planning authority. In the event that new setts have become established then the survey shall identify any mitigation measures needed and the development shall be carried out in accordance with the approved survey. If no badger setts are found to be present then the development shall be carried out in accordance with the methods as stated at para 5.1.3 of the Preliminary Ecological Appraisal, Biocensus, December 2017.
 - 9) The development shall be carried out in accordance with para 5.1.2 of the Preliminary Ecological Appraisal, Biocensus, December 2017. The disposal of Japanese knotweed shall also include the contractors applying suitable biosecurity measures such as fencing, signage and cleaning protocols for construction plant which have first been submitted to and approved in writing by the local planning authority. In the event that Japanese knotweed encroaches onto areas where earthmoving is required, that contaminated material shall be disposed of off-site at a licensed tip.
 - 10) No tree shown for removal on the approved plans shall be felled until a repeat bat survey to ascertain the presence or otherwise of roosting bats has been carried out, submitted to, and approved in writing by the local planning authority. In the event that roosting bats are found to be present then the survey report shall identify any mitigation measures needed. All works shall be carried out in accordance with the approved survey.
 - 11) Prior to occupation of the development hereby permitted four bat and four bird boxes shall be positioned on or within the fabric of the building in accordance with details which have first been submitted to and approved in writing by the local planning authority. The bat and bird boxes shall be retained thereafter.
 - 12) Prior to the digging of any foundations a detailed surface water drainage scheme based upon Proposed Drainage Layout drawing no. McC&St-BF-B-003 Rev E shall be submitted to and approved by the local planning authority. The scheme shall: (a) incorporate SuDS and be based on the hierarchy of drainage

options in the National Planning Practice Guidance with evidence of an assessment of the site conditions; (b) include an assessment and calculation for 1 in 1yr, 30yr and 100yr + 40% climate change figure critical storm events showing flood exceedance routes; (c) be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards; and (d) shall include details of ongoing maintenance and management. The development shall be carried out and maintained in accordance with the approved details.

- 13) Foul and surface water shall be drained on separate systems.
- 14) The development hereby permitted shall be carried out and retained in accordance with the measures outlined in the Seven Architecture Energy Statement Project Reference: NW-2532-3-2.
- 15) No development shall take place until a construction method statement detailing how construction work will be undertaken has been submitted to and approved in writing by the local planning authority. The method statement shall include details on: working hours; construction access arrangements, turning and manoeuvring facilities; delivery arrangements; traffic management; contractor parking; arrangements for materials unloading and storage; site compounds; signage and hoardings; and measures to prevent and if necessary clean mud deposited on the highway. Development of the site shall not proceed except in accordance with the approved construction method statement.
- 16) No development shall commence on the improvements to the means of access from Ack Lane East, including the provision of a passing place on the driveway and pedestrian walkway facilities, until details of the construction, drainage, surfacing, marking and signage of these areas have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the means of access for vehicular and pedestrian traffic have been provided in accordance with the approved details and shall be retained thereafter.
- 17) No development shall commence on the construction of the car parking facilities to be provided for the approved development and the two replacement spaces for the adjacent care home, until details of the construction, drainage, surfacing, marking of spaces and any illumination have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved car parking facilities have been provided in accordance with the approved details and shall be retained thereafter.
- 18) Prior to occupation of the development hereby permitted facilities for the charging of a minimum of two electric vehicles within the car parking areas shall be provided in accordance with details which have first been submitted to and approved in writing by the local planning authority. The details shall include a specification for the charging equipment, how the spaces will be signed and marked out and how the use of the facilities will be managed and operated. The equipment shall be retained thereafter.
- 19) Prior to occupation of the development hereby permitted the internal space for the storage of cycles and mobility scooters and external stands for a minimum of two cycles shall be provided in accordance with the approved drawings, and shall be retained thereafter.

- 20) The development hereby permitted shall be carried out and retained in accordance with the measures detailed within the Noise and Vibration Assessment dated 27th April, 2018 prepared by SRL Technical Services Ltd.
- 21) Prior to occupation of the development hereby permitted a scheme of physical crime reduction measures in accordance with the recommendations set out at section 4 of the GMP Crime Impact Statement Version A 16/07/208 Reference 2018/0307/CIS/01 shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved measures and retained thereafter.
- 22) The development shall not be occupied by any person under 60 years of age other than in the event that a couple occupy an apartment together in which case one of the occupiers shall be age 60 years or older and the other age 55 years or older.

-----End of Schedule-----