



Appeal Decision

Site visit made on 1 June 2021

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/B2355/W/21/3269528

Former car park, Park Road, Helmshore, BB4 4NW

- 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 Denley Properties Ltd against the decision of Rossendale Borough Council.
 - The application Ref 2020/0160, dated 29 March 2020, was refused by notice dated 11 December 2020.
 - The development proposed is Full application for residential development.
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Decision

1. The appeal is allowed and planning permission is granted for Full application for residential development at Former car park, Park Road, Helmshore, BB4 4NW in accordance with the terms of the application, Ref 2020/0160, dated 29 March 2020, subject to the conditions in the Schedule attached to this Decision.

Applications for costs

2. An application for costs was made by Denley Properties Ltd against Rossendale Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. Following the decision of the Council, the appellant has submitted an additional drawing which extends the sections drawn through the development to include parts of the surrounding area. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the Wheatcroft Principles, the degree of engagement of all parties with the issues in the appeal and the interests of fairness. As the drawing does not change the proposal, but seeks to add clarity to it and its relationship with the surrounding area, I have taken this drawing into account in my Decision and do not consider that the interests of any parties have been prejudiced as a result.

Main Issues

4. The main issues are the effect of the proposal on the character and appearance of the area with regard to i) height and scale, ii) density, and iii) the urban-rural interface.

Reasons

Height and scale

5. The proposed dwellings are two-storey in height, with rooms in the roof-space, served by dormer windows to the rear, and rooflights to the front. Although proposed as a terrace, in order to accommodate the changing levels along the site there are a number of steps in the floor and ridge levels. This height, and approach to the changing levels is consistent with surrounding residential development, including Barlows Terrace and other dwellings on Park Road, as well as with the cottages and relatively modern residential development near to Musbury Road. I note that Sunnybank Mill is single storey, but this is a converted mill, rather than a purpose-built dwelling. Similarly, there is a new single-storey dwelling adjacent to Sunnybank Mill, but it appears to sit on an elevated site.
6. Although the proposal would be taller than Sunnybank Mill and the new dwelling adjacent to it, I find that the proposal would not appear incongruous, over-dominant or excessively tall. Owing to the fall in levels across the site, the overall effect would be of a gradual reduction in height and scale from Barlows Terrace on Park Road, across the site and then onwards to Sunnybank Mill. Whilst the proposal does have more glazing to the rear than some older dwellings in the area, I find this is appropriate for a modern design, so do not consider it to be disproportionate.
7. This also reflects and respects the urban-rural interface which the site provides, with a lessening of height and scale from the built-area towards the public right of way and the countryside beyond.
8. The proposal is therefore consistent with surrounding properties both in terms of height and its approach to the changing levels. I therefore find that the proposal is in keeping with, and would have an acceptable effect on, its surroundings with respect to its height and scale.
9. The proposal would therefore comply with Policies 1, 18, 23 and 24 of the Adopted Core Strategy DPD. These policies seek, amongst other things, to ensure that development complements and enhances the surrounding area, in terms of design, appearance, materials and landscape character, and responds to the local context, contributing positively to local identity and promoting high quality design. The proposal would also achieve a well-designed place, consistent with the requirements of the National Planning Policy Framework (the Framework). I also consider that the height and scale of the proposal has been influenced by the built form of its surroundings, in line with the requirements of the National Design Guide.

Density

10. As noted above, the site is adjacent to an existing terrace of houses and other residential development, and the overall appearance of the proposal is consistent with its surroundings. Whilst the site itself is relatively large, the level of development within it is relatively limited, in light of the gardens, parking and manoeuvring areas, service strips, bin stores, access, landscaping and space reserved for maintenance and protection of the brook.
11. As such, I do not find that the proposed terrace of eight dwellings is either excessive or that it would be an over-intensive form of development on the

site. In reaching this conclusion, I note that the proposed dwellings exceed the relevant space standards, and that there are no related technical objections to the proposal. Given the character of the context to the site, I am satisfied that terraced housing is an appropriate design response in terms of density.

12. The proposal does therefore comply with Policies 1, 18, 23 and 24 of the Adopted Core Strategy DPD, which seek, amongst other things, to ensure that development makes efficient and best use of land, complements the surrounding area, promotes high quality design and makes a positive contribution to the local townscape with particular regard to density and layout. The proposal would also comply with the requirements of the Framework to achieve well-designed places.

Urban-rural interface

13. As noted above, the site is surrounded by existing housing, of various ages, types and scales, at the edge of the settlement, adjacent to public rights of way leading up to Tor Hill, Musbury Heights and Musden Head Moor. As such, the site is clearly on the edge of the settlement and is a part of the urban-rural interface. The Council, third-parties, and indeed, Policy 23 of the Adopted Core Strategy DPD highlight the importance of this, noting in particular that proposals should maintain the relationship between urban areas and the countryside, and that this is particularly important in interface locations such as this, where the “contrast between the natural and built environment is most prominent”.
14. Although the proposal would result in the development of the site, and it would change from an open car-park to a terrace of housing, I do not consider that this would harm the urban-rural interface, or otherwise lead to an expansion of the urban area into the rural area. From my observations on site and the submissions before me, there is already a clear demarcation between urban and rural in this area, which runs effectively behind The Loom, Carr Lane Cottage, Sunnybank Mill and the new dwelling adjacent to it. The site, despite its relative openness does, as a result of its paved, enclosed, (previously) lit appearance and former use, already appear as part of the urban area, and does not, in my view, make a particularly positive contribution to the character and appearance of the area. Taking all of that together, I do not find that the proposal expands the urban area, or that it would otherwise be at odds with the existing urban-rural interface.
15. Taken together with my conclusions on the height and scale, and density of the proposal, I therefore consider that the proposal is acceptable with regard to its effect on the urban-rural interface and that it therefore complies with Policy 23 of the Adopted Core Strategy DPD.

Other Matters

16. I note comments from third parties which suggest that the proposal would cause harm to an Area of Outstanding Natural Beauty (AONB). However, there is no evidence that the site lies within a designated AONB. In addition, the effect of the proposal on the character and appearance of the area, including the urban-rural interface has been assessed above and found acceptable.
17. I also note concerns around the potential for overlooking and loss of privacy. Given the location of the proposal and its relationship to surrounding

properties, I do not consider that such harm would be likely to arise. I note that Council Officers reached the same conclusion in their Report to Committee.

18. Third party concerns around parking, flood risk, drainage, biodiversity and pollution have all been addressed in the Report to Committee, been found acceptable by technical consultees, and conditions to ensure appropriate ways of working and mitigation are capable of being imposed. There is no evidence before me to suggest that these conclusions are incorrect, and as such, I agree with them.

Conditions

19. The Council has suggested a number of conditions to be attached, should planning permission be granted. I have also had regard to the requirements of the National Planning Policy Framework and the Planning Practice Guidance. I have imposed standard conditions concerning commencement (1) and compliance with the submitted plans (2), as well as conditions requiring approval of materials (3) and implementation of landscaping (4 and 17) in order to ensure the satisfactory appearance of the completed development. In condition 2, I have updated the drawing references to take account of the new drawing submitted during the appeal process, as this provides greater clarity on the relationship between the proposal and its surroundings.
20. Conditions 5, 7, 15 and 22 are necessary to ensure that the development can be carried out without detriment to amenity, water quality or highway safety. Conditions 6 and 8 are necessary to protect nesting birds and the ecological potential of the brook. Conditions 9, 10 and 16 are necessary and reasonable to ensure that any hazards relating to known or unknown ground contamination are appropriately understood and controlled during the implementation of the development.
21. The appellant has questioned the need for condition 11. However, given the clear sensitivity around drainage, groundwater and flooding on this site and in this area, I consider it to be reasonable and necessary in the specific context of this site. Conditions 12 and 13 are also reasonable and necessary for the same reasons. The proposed removal of national permitted development rights by condition 14 requires clear justification in order to pass the tests of reasonableness and necessity. In light of my conclusions on conditions 11, 12 and 13, as well as the comments from the Environment Agency on the need to control and protect overland flood flow routes, I consider that this condition is both reasonable and necessary, and clearly justified.
22. I note the comments of the appellant around conditions 18, 19 and 20 but consider it reasonable and necessary for the detailed design and implementation of the site access to be approved prior to the commencement of the development and for the legal status of the access to be properly resolved. Similarly, condition 21 is reasonable and necessary to ensure that the public right of way is not unduly affected by the development, and that the details are acceptable.
23. The Council requested a condition (originally numbered 23) requiring parking spaces for residents of Park Road to be provided prior to the commencement of development. Notwithstanding private matters around their allocation and use,

the permitted plans, with which compliance is conditioned (1) do require their provision. As such, this condition is not necessary.

24. The appellant has also questioned whether condition 23 (originally numbered 24) is necessary as they intend to assign all of these areas of land and facilities to individual householders. Whilst that may be the case, given the importance of these areas of land and facilities to the proposal, I consider it reasonable and necessary for the Council to have details of future management and maintenance, even if it is to be the responsibility of individual householders. I have however removed reference to a "private management and maintenance company" to ensure that the condition remains reasonable, precise and enforceable in light of the comments from the appellant. Conditions 24 and 25 are reasonable and necessary to ensure that appropriate parking areas are provided and maintained to an appropriate standard, and to ensure that provision is made for more sustainable modes of transport.
25. The appellant has confirmed that they have no objection to the terms of the pre-commencement conditions proposed by the Council. It is necessary and reasonable that the information required by these conditions be provided prior to the commencement of development, as these are matters which cannot properly or reasonably be addressed following the commencement of the development. I am therefore satisfied that the conditions imposed meet the tests in, and requirements of both the Framework and the PPG.

Planning Balance

26. Both parties agree that as a result of the housing land supply position in the Borough and the Housing Delivery Test results, policies which are most important for determining the application are out-of-date and the presumption in favour of sustainable development, and the test at paragraph 11d)ii of the Framework applies.
27. I have found above that the proposal would not harm the character and appearance of the area with regard to its height, scale, density and the urban-rural interface, nor would it cause a significantly detrimental visual impact. I have also found that there are appropriate conditions to deal with matters of detail concerning the main issues. As such, I do not consider that there are any adverse impacts which would significantly and demonstrably outweigh the benefits, being the addition of eight dwellings to the housing supply in the area, of granting planning permission in this instance.

Conclusion

28. For the reasons given above I conclude that the proposal accords with the development plan, there are no material considerations which indicate that a decision be taken other than in accordance with it and the presumption in favour of sustainable development in the Framework also supports this position.
29. The appeal should therefore be allowed, and planning permission granted.

S Dean

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development shall be carried out in accordance with the following:
 - Submitted application form.
 - Location Plan (19-05-01-A)
 - Proposed Block Plan with Roof Plan (19-05-30-Q)
 - Proposed Building Plans (19-05-35-D)
 - Proposed Building Elevations and Section (19-05-36-E)
 - Entrance Gates and Bin Store Details (19-05-40-E)
 - Proposed Landscape Plan (19-05-39-H)
 - Hydropave Tegula Block Paving Details
 - Refuse Truck Swept Path (19-05-50-A)
3. No development shall take place until full details (including physical samples consisting of 1m x 1m panels displayed on the site) of the following have been submitted to and approved in writing by the Local Planning Authority:
 - Natural coursed stone to be used on the elevations (the elevations shall also incorporate natural stone quoins)
 - Natural blue slates to be used on the roofs
 - Porous block paving

The development shall thereafter be implemented in strict accordance with the approved details.

4. The approved scheme of landscaping and boundary treatment shall be implemented in full for each plot prior to the first occupation of the dwelling on that plot.
5. Construction works shall not be permitted outside the following hours:
 - Monday to Friday: 08:00 to 18:00
 - Saturday: 08:00 to 13:00
 - No construction works shall take place on Sundays or Bank Holidays.

Access and egress for delivery vehicles shall also be restricted to the working hours indicated above.

6. No works to trees or shrubs shall occur between the 1st March and 31st August in any year unless a detailed bird nest survey by a suitably experienced ecologist has been carried out immediately prior to clearance and written confirmation provided that no active bird nests are present, which has been submitted to and agreed in writing by the Local Planning Authority.
7. No development, site clearance or earth moving shall take place or material or machinery brought on site until a method statement to protect the Musbury Brook from accidental spillages, dust and debris has been submitted to and agreed in writing by the Local Planning Authority.

All approved measures will be implemented and maintained for the duration of the construction period in accordance with the approved details.

8. No development shall take place until it has been demonstrated that there will be no negative impacts on the ecological potential of the Musbury Brook resulting from the disposal of foul water and surface water post-development, through the submission of an appropriate report and its subsequent agreement in writing by the Local Planning Authority.

The details, as approved, shall be implemented in full in accordance with a timetable which has first been agreed in writing by the Local Planning Authority.

9. Notwithstanding any information submitted with the application, no development shall take place until an investigation and risk assessment has been submitted to and approved in writing by the Local Planning Authority.

The submitted report shall include:

- i) A Preliminary Risk Assessment report (phase 1), including a conceptual model of the site indicating sources, pathways and receptors, and a site walk over survey;
 - ii) Where potential risks are identified by the Preliminary Risk Assessment, a Phase 2 Site Investigation report shall also be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The investigation shall address the nature, degree and distribution of land contamination on site and shall include an identification and assessment of the risk to receptors focusing primarily on risks to human health, groundwater, surface water and the wider environment; and
 - iii) Should unacceptable risks be identified the applicant shall also submit and agree with the Local Planning Authority in writing a contaminated land remediation strategy prior to commencement of development. The development shall thereafter be carried out in full accordance with the duly approved remediation strategy or such varied remediation strategy as may be agreed in writing with the Local Planning Authority.
10. Pursuant to condition 9 and prior to first occupation of any of the dwellings a verification report, which validates that all remedial works undertaken on site were completed in accordance with those agreed with the Local Planning Authority, shall be submitted to and approved in writing by the Local Planning Authority

11. No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The drainage scheme must include:

- (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
- (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations); and
- (iii) A timetable for its implementation.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

The development hereby permitted shall be carried out only in accordance with the approved drainage scheme.

12. Foul and surface water shall be drained on separate systems.

13. No development shall take place until following have been submitted to and approved in writing by the local planning authority:
- 1. A scheme for the proposed footpath along the top of the bank of Musbery Brook
 - 2. A scheme to demonstrate that the proposed ground levels of the garden areas are no higher than existing levels
 - 3. Details of the design of the proposed boundary fencing around the garden areas to allow overland flow from Musbery Brook

The development shall subsequently proceed in accordance with the approved details.

14. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking and re-enacting that order with or without modification, no structure or replacement fence shall be erected within or around the rear gardens identified in drawing number 19-05-30-Q.
15. Piling or any deep foundation solution using penetrative methods shall not be carried out other than with the written consent of the local planning authority. The development shall be carried out in accordance with the approved detail.
16. If during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the local planning authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the local planning authority. The remediation strategy shall be implemented as approved.

17. The scheme of landscaping and planting as shown on drawing 19-05-39-H shall be implemented in full prior to the occupation of any of the dwellings hereby approved. Any trees or trees failing, dying, becoming diseased or being removed within five years of being planted shall be replaced in the next available planting season with specimens of the same species.
18. No development of the approved scheme shall commence until such time as the area of existing adopted highway to form the amended site access off Park Road has been stopped up under the appropriate legal process (Section 247 of the Town & Country Planning Act) in consultation with the local planning authority and highway authority.
19. No part of the development hereby approved shall commence until a scheme for the construction of the amended site access has been submitted to, and approved by, the Local Planning Authority in consultation with the Highway Authority.
20. The land referred to in Condition 19 shall be the subject of a dedication agreement with the Highway Authority under the provision of Section 38 of the Highways Act.
21. No part of the development hereby approved shall commence until a scheme for the retaining structure adjacent to the unnamed track carrying Public Footpath 298 (Haslingden) has been submitted to, and approved by, the Local Planning Authority in consultation with the Highway Authority.
22. No development shall take place, including any works of clearance, until a construction method statement and plan have been submitted to and approved in writing by the Local Planning Authority. The approved statement/plan shall be adhered to throughout the construction period. They shall provide for:
 - i) The parking of vehicles of site operatives and visitors
 - ii) The loading and unloading of plant and materials
 - iii) The storage of plant and materials used in constructing the development
 - iv) Wheel washing facilities within the site
 - v) Measures to deal with dirt, debris, mud or loose material deposited on the adopted highway network as a result of clearance and construction works
 - vi) The maximum size (loaded weight) of construction vehicles servicing the development
 - vii) Measures to control the emission of dust and dirt during construction
 - viii) A scheme for recycling/disposing of waste resulting from clearance and construction works
 - ix) Details of working hours
 - x) Timing of deliveries
 - xi) Measures to ensure that construction and delivery vehicles do not impede access to neighbouring properties.
23. No development shall be commenced until details of the proposed arrangements for the future management and maintenance of the proposed road and associated infrastructure including retaining walls, the vehicle restraint barrier along the boundary with Musbury Brook and surface water drainage within the development, have been submitted to and approved by the local planning authority. The road and infrastructure shall thereafter be maintained in accordance with the approved management and maintenance details.

24. Prior to the occupation of any dwelling the parking area shown on the approved plans shall be constructed, laid out and surfaced in bound porous materials. The parking areas shall thereafter always remain available for the parking of domestic vehicles associated with the dwelling
25. Prior to the occupation of any approved dwelling electric vehicle charging points shall be installed for each dwelling.

End of Schedule of Conditions