



Appeal Decision

Site Visit made on 8 June 2021

by R Hitchcock BSc DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2021

Appeal Ref: APP/B2355/W/21/3270240

M S M Homes, Hollin Way, Rawtenstall, Rossendale BB4 8ED

- 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 MSM Ltd against the decision of Rossendale Borough Council.
 - The application Ref 2020/0470, dated 1 October 2020, was refused by notice dated 25 February 2021.
 - The development proposed is 9 dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

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

Preliminary Matters

3. The address in the banner heading above is taken from the planning application form. The Council's Decision Notice identifies the land as 'Land off Hollingreave Drive, Reeds Holme, Rawtenstall'; this provides a more specific identification of the location of the proposed development.
4. The site lies in close proximity to a Grade II listed building at 2 and 4 Higher Constable Lee. There is no dispute between the main parties that the proposed development would not have an adverse effect on the setting of the listed building. Having considered the proposal and visited the site I concur with that view. Accordingly, it is my view that the development proposed would preserve the setting of the designated heritage asset and I shall make no further reference to this matter.
5. Following public consultation, the Council submitted the emerging Local Plan for Rossendale (2019 to 2034) (ELP) for independent examination in March 2019. Some policies within the ELP are referred to in the Council's reasons for refusal. I have had regard to the relevant emerging policies in relation to the stage of preparation of the emerging plan, the extent to which there are unresolved objections to the relevant policies and their degree of consistency with policies in the National Planning Policy Framework (the Framework).

Main Issues

The main issues are:

- Whether or not the proposed development would provide a suitable density of housing development and mix of house types
- whether or not the proposed development would make adequate provision for affordable housing and open space.

Reasons

Housing density and types

6. The site lies adjacent to an incomplete housing estate within the settlement area of Rawtenstall. Aside from an existing turning head, the land is undeveloped and consists of disturbed ground and areas covered by pioneer plant species. The land undulates and slopes from north to south and east to west.
7. The development includes 9 detached dwellings in regular plots set about the existing road infrastructure and some proposed new lengths of roadway and pavements. This would include four plots on the western side of a continuation of Hollingreave Drive, three plots fronting on to the northern side of a new roadway shown to be an extension of Oakeneaves Avenue, and two units accessed from a cul-de-sac length of Hollingreave Drive which lies outside of the appeal site and remains to be constructed. The development also includes an additional length of road extending westwards from the proposed point where Hollingreave Drive and Oakeneaves Avenue would meet.
8. The dwellings are four-bedroomed two-storey units set behind front gardens and parking areas. Private amenity spaces are proposed to the rear. The proposed buildings are identical to some existing house types within the developed areas of the estate. These demonstrate consistent design features, external materials and standard type landscaping.
9. There is no dispute between the main parties that the site is suitable for housing development. Policy 2 of the Rossendale Borough Council Core Strategy Development Plan Document [2011] (CS) sets out the strategy for meeting Rossendale's housing requirements. This includes a minimum housing density requirement of 30 dwellings per hectare (dph) and encourages higher densities of 50+dph in sustainable locations such as Rawtenstall.
10. Although the application form identifies the land as being 0.2ha in area, the appellant agrees with the Council's estimate of 0.5ha. This would deliver housing, including (most of) the necessary roads to access it, at a density of about 18 dph. According to the appellant, the new lengths of roadways proposed could facilitate additional housing whereupon the overall density figure might increase if used in conjunction with a similar or higher density of development adjacent to the development site. Although this might be a reasonable prospect, this is not the basis on which the application has been submitted and there is little evidence to indicate the nature of other development which may utilise infrastructure elements within the site. I therefore find that the proposal would deliver housing at a density significantly below the minimum specified in the Council's policy.

11. The Council is currently unable to demonstrate a 5-year housing land supply (5YHLS). This means that the 'tilted balance' set out in paragraph 11 d) of the Framework is engaged as the policies in the CS which are most important for determining the application are out-of-date. This does not mean that Policy 2 of the CS carries no weight. The tilted balance does not negate the spatial strategy of the development plan per se. Rather, it requires application of the tests in Paragraph 11 d) i) and ii). I assess the planning balance below.
12. However, the proposed density is significantly below the formerly adopted *minimum* density of 30dph, a density which has been used in the Council's Strategic Housing Land Availability Assessment 2018 (SHLAA) to assess the potential yield of sites to be allocated in the ELP. The undeveloped southern end of the site is one such proposed allocation.
13. Section 11 of the Framework seeks the effective use of land. Paragraph 123 states that where there is an existing shortage of land for meeting housing needs, decisions should avoid homes being built at low densities and ensure that developments make optimal use of the potential of each site. Paragraph 123 c) advocates that local planning authorities should refuse applications they consider fail to make efficient use of land taking into account the policies in the Framework.
14. In the context of expected housing delivery at a minimum density of 30dph and in an area identified for developments of up to 50+dph, even at a density slightly greater than the calculated ratio, the level at which the site is proposed to be developed is low.
15. In support of the proposal, the appellant states that deviation from the established character of the adjacent developed areas of the estate would adversely affect the character and appearance of the wider development and that this would be in conflict with Paragraph 122 of the Framework. It is also suggested that it would depart from the expectation of existing residents on the estate.
16. However, at my site visit I observed that the sense of place arising from the completed areas of the estate primarily arose from the consistency in design elements, building detailing and external materials. In contrast, the layout of existing development shows variation through building orientation, spacing, alignment, elevation and scale.
17. There is little evidence to suggest that the consistent elements of the estate could not be transferred to diversify the limited number of building types, or, that similarly scaled buildings could not be subdivided to deliver the density of development sought in Policy 2 of the CS without harm to the overall character and appearance of the area. Whilst Paragraph 122 of the Framework suggests efficient use of land should take account of the desirability of maintaining an areas prevailing character, Paragraph 127 qualifies that in meeting such requirements it should not prevent or discourage 'appropriate innovation or change (such as increased densities)'.
18. I acknowledge that there may be some expectation by existing residents that the remaining open areas of the estate would be developed in a consistent manner to the existing estate. However, there is little reflection of this in third party representations, nor any expressed concern of harm if it were to be developed otherwise. Accordingly, I find this is a matter of negligible weight.

19. In regard to house types, the proposal would utilise three house types within the development of 9 units. This would provide some visual variation within the site and be consistent with the approach in the wider development on the estate. As market housing they would all provide 4-bedroom family houses and contribute to an element of the area's housing need as identified within the Council's Strategic Housing Market Assessment Update (2019) (SHMA), a document that forms part of the evidence base for the ELP and the most up-to-date housing assessment provided in evidence.
20. Although Policy 2 of the CS seeks to address the housing requirement over the relevant plan period, there is no requirement, explicit or implied, within its terms to include a greater number, or all, elements of identified housing need on individual sites. Furthermore, the Council's SHMA, which is referred to in the Council's reason for refusal, does not constitute a policy for the delivery of the housing requirement identified within it. Although there may be a greater need for other types of housing, it has not been demonstrated that these could not be met elsewhere.
21. For the reasons above, whilst I find that the proposal would contribute to the supply of an identified housing need it would fail to make effective use of the land. It would thereby conflict with Policy 2 of the CS and Section 11 of the Framework as they seek to achieve appropriate densities of development in sustainable locations and, in regard to the Framework, avoid low density development where there is an existing shortage of housing land.

Affordable housing and open space

22. Policy 4 of the CS seeks the delivery of affordable housing on sites of over 8 dwellings. However, this policy predates a Written Ministerial Statement in November 2014 whereupon it was determined that provision of affordable housing on sites of less than 10 units should not be sought. It was considered that on smaller sites this may place a disproportionate burden on developers. The provisions of the statement have since been incorporated into the Framework. Accordingly, the threshold in Policy 4 attracts negligible weight due to its conflict with the Framework.
23. Emerging Policy HS6 seeks the provision of affordable housing, for which there is a significant need identified in the SHMA. This would be delivered on sites of 10 houses or more. Paragraph 63 of the Framework states that provision of affordable housing should not be sought for residential developments that are not major development. 'Major' development is defined in Annex 2 of the Framework as 10 houses or more, or on a site with an area of 0.5ha or more.
24. Although the site area is an estimate it is one agreed by the main parties. At 0.5Ha there is a minimum requirement of at least 10% of the homes to be available for affordable home ownership.
25. Notwithstanding the above, I am mindful that the site area calculation has been provided by the Council and despite the appellant's agreement, may not have been precisely appraised by either party. However, even if it were the case that the area was below the threshold specified in the Framework, it is clear that the site forms part of a wider area of development carried out by the appellant. According to the planning history of the wider estate area, this has been approached on an incremental basis often of 9 units or fewer. The reasons for that approach are unspecified. It is also notable that the appellant

- retains ownership of the remaining undeveloped areas contiguous with the appeal site.
26. The combined appearance of the site and the open land beyond currently appear as a single planning unit. The undeveloped land outside of the application site lies within the wider area benefitting from a planning permission for the construction of 175 houses. This was formerly an allocated site within the superseded Rossendale District Local Plan. The appellant states that the development of the remaining land cannot be presumed as to when or if it will come forward for further development.
27. Although some areas of the development of the estate have departed from the original permission, the high degree of consistency across it, the consecutive plot numbering and intended replication of the house types proposed, indicate that the proposal is, for all intents and purposes, an additional phase of the larger development. This finding is supported by the appellant's confirmation that the scheme would also rely on previously resolved drainage details serving other dwellings nearby.
28. Furthermore, the submitted plans indicate that the appeal site substantially envelops two plots, numbered as 134 and 135, which are not identified as benefitting from planning permission, as others are. These plots are shown for development in a consistent manner with the proposal, utilising the same house types and integrated with the layout of the appeal units and previously approved development. Moreover, the scheme also includes a length of new roadway which would serve little demonstrated purpose for the appeal houses, however, as previously suggested by the appellant, could facilitate additional development to the south of the appeal site.
29. Drawing all of these matters together, and in the absence of any specified justification for limiting the site extent within an undeveloped area benefitting from planning permission, I find that the proposed scheme should be considered in the context of the wider site development and with regard to the remaining undeveloped areas. This is consistent with the Council's stated aim of preventing artificial reduction of development sites, their subdivision or low-density development to avoid proportional delivery of affordable housing within development sites as stated in Policy HS6 of the ELP.
30. Emerging Policies HS10 and HS11 relating to open space and playing pitch obligations in new development respectively, also contain the requirement to consider larger sites as a whole. According to the Council, Policies HS6, HS10 and HS11 of the ELP have been independently assessed and are subject to modification, however, it clarifies that there are no required or proposed amendments, or outstanding objections to the approach of whole-site consideration in delivering the community benefits which are required in association with new development in order to find consistency with the Framework. Accordingly, given the stage of preparation and degree of consultation that has taken place, I find the requirements in the emerging policies carry considerable weight.
31. However, from the evidence before me there is little to substantiate that there is an identified local need for playing pitch improvement, or, deficiencies in the quantity, accessibility or quality and/or value of open space and recreational facilities such that the proposal would attract any such obligation. In the

absence of such justification, I find that the necessity for contributions in those respects have not been demonstrated.

32. For the above reasons, whilst I find that a need for obligations in relation to open space and playing fields has not been demonstrated, the proposal would fail to deliver any affordable housing provision. It would thereby conflict with Policy HS6 of the ELP and the Framework as they require major development to contribute to the delivery of affordable housing to meet an established need.

Other Matters

33. In support of the proposal the appellant has referred me to a High Court judgement in relation to consistency in decision making. This follows the Council's approval of a number of other similarly framed developments on the wider estate. However, there is little evidence before me to indicate the circumstances of those decisions, particularly in regard to site size, the stage of preparation of the emerging plan, the extent to which there were unresolved objections to relevant policies, or their degree of consistency with policies in the Framework. Additionally, it is unclear from the evidence provided whether those decisions were made in the context of a 5YHLS deficit, or otherwise. I am therefore unable to draw direct comparisons to the circumstances of this case, a case I have considered on its own merits.
34. Concerns have been raised by third parties in respect of the use of the site by badgers, however, there is no substantive evidence to support those claims. I am therefore unable to attribute significant weight to this argument.
35. I acknowledge the concerns of third parties in relation to the potential for rat-running if a loop road is formed between Hollingreave Drive and Oakeneaves Avenue. Whilst this is illustrated on the submitted plans it does not form part of the proposals before me and is therefore a matter beyond the scope of this appeal.

Planning Balance

36. There is no dispute that the Council is unable to demonstrate a 5YHLS. Consequently footnote 7 of the Framework applies which engages Paragraph 11 d). There are no policies in the Framework that protect areas or assets of particular importance on the site and which provide a clear reason for refusing the development as set out in para 11d) i). Therefore, consideration must be had as to whether 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 (Paragraph 11 d) ii of the Framework).
37. As set out above, I have found harm through failure to provide a contribution to affordable housing need in the borough and failure to make effective use of the land. The CS dates from 2011 but the weight to be attached does not hinge on its age. Rather, paragraph 213 of the Framework makes it clear that due weight should be given to existing policies according to their degree of consistency with the Framework. The requirements in the CS for affordable housing delivery and to make effective use of land, including through avoidance of low density development, are consistent with the principles set out in the Framework.

38. Given that the development of the greenfield site would have a high degree of permanence and substantially restrict delivery of additional housing upon it to meet those requirements, I afford this harm significant weight.
39. I turn now to the benefits of the proposal. These include providing 9 residential units. This would make a contribution to helping to address the overall housing supply shortfall, however, it would be limited in the context of the identified housing need. I therefore afford this benefit limited weight.
40. The proposals would deliver a form of development that would preserve the character and appearance of the area in an accessible location; it would accommodate parking and preserve highway safety; the units would also provide suitable living conditions for residents and neighbours with low risk from contamination. Furthermore, the development could be suitably drained without risk of flooding on the site or elsewhere. However, these are benefits that are not dependent solely on the scheme before me, and, as requirements of other planning policies, are matters of neutral weight.
41. Taking the above points together, I find that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. The presumption in favour of sustainable development does not therefore apply.

Conclusion

42. For the above reasons, I conclude that the proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given, the appeal should not succeed.

R Hitchcock

INSPECTOR