
Appeal Decision

Site visit made on 24 February 2021

by Martin Seaton BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/V2004/W/20/3262285

Land adjacent Purple House, Preston Road, Kingston upon Hull, HU9 5UY

- 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 Mrs Ann Clarkson on behalf of Winner Trading Ltd against the decision of Kingston-upon-Hull City Council.
 - The application Ref 19/01471/FULL, dated 5 December 2019, was refused by notice dated 4 May 2020.
 - The development proposed is the erection of 24 dwellings (8 x 3 bed town houses; 8 x 1 bed flats; and 8 x 2 bed flats) and meeting/activity/training rooms including associated parking and landscaping, following demolition of existing single storey structure.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 24 dwellings (8 x 3 bed town houses; 8 x 1 bed flats; and 8 x 2 bed flats) and meeting/activity/training rooms including associated parking and landscaping, following demolition of existing single storey structure on Land adjacent Purple House, Preston Road, Kingston upon Hull, HU9 5UY in accordance with the terms of the application Ref. 19/01471/FULL, dated 5 December 2019, and subject to the conditions as set out within the annex.

Procedural Matters

2. I note that whilst the applicant for the planning application was identified as Ms Lisa Hilder on behalf of Winner Trading Ltd, the individual identified within the Grounds of Appeal differed, as set out in the heading above. However, in both instances the application and appeal were made on behalf of Winner Trading Ltd and I am satisfied there is no impact on the validity of the appeal.
3. The Government published on 20 July 2021 a revised version of the National Planning Policy Framework (the Framework). Accordingly, and in light of the reference made to the previous iteration of the Framework within the submitted evidence, the parties have been provided with a further opportunity to make submissions in respect of the publication. In this respect, I am mindful that neither the appellant nor the Council have made any further submissions regarding the revised Framework. However, in light of this re-consultation, I am satisfied that any references made to the revised Framework within this decision would not be unreasonable to the parties.

Application for costs

4. An application for costs was made by Winner Trading Ltd against Hull City Council. This application is the subject of a separate Decision.

Background and Main Issue

5. The appeal site is situated approximately 4km to the east of the city centre of Hull and occupies a parcel of land on the north side of Preston Road. The site is adjoined by terraced residential properties further to the north on Mappleton Grove whilst to the west is the Purple House Women's Centre. To the east I observed there to be a hot food takeaway, whilst an existing single storey building to the west which formerly accommodated the Preston Road Family Community Centre was proposed to be demolished.
6. The planning application was determined at the Council's Planning Committee on 29 April 2020, with a single reason for refusal highlighted on the Notice of Decision related to the failure to make provision for an appropriate level of parking in connection with the proposed development. In addressing all other issues, the Committee Report identifies that all other matters arising from the proposed development were either acceptable or where further detail was required, were capable of being secured in a satisfactory manner by condition or planning obligation.
7. In this latter regard, the appellant has submitted a planning obligation with the appeal which addresses matters related to the provision of open space/play space contribution, the planting of trees, and the provision of the housing on the site as affordable housing, in perpetuity. I address the matters raised by the planning obligation separately in the decision.
8. As a consequence, the main issue is whether the quantum of off-street car parking provision as proposed would result in an adverse impact on the character and amenity of the area, and compromise highway safety.

Reasons

9. Both the Hull Local Plan 2016 to 2032 (the Local Plan) and the Framework advocate flexibility in determining an appropriate level of car parking within individual developments, a stance which the Council recognises. Nevertheless, in this instance, it has been assessed that the proposed provision of 8no. off-street parking spaces represents too significant a shortfall from the contended requirement of 46no. off-street parking spaces to be provided as part of the development.
10. In determining the planning application, the appellant contends that the Council failed to grapple with the specialist nature of the proposed accommodation. However, it is evident to me that the Committee Report sets out in some detail, with reference to the accompanying Design and Access Statement, an understanding on the Council's part as to how the proposed accommodation would be occupied.
11. I accept that the appellant's description of the development did not make any specific reference to the specialist nature of the accommodation. However, a fair reading of the application and all supporting documentation makes the intended future occupation transparent. It is also quite clear that the Council understood the significantly low levels of car ownership which manifested

themselves in similar units of accommodation operated by the appellant in making its decision.

12. Allowing for the Council's understanding of these matters, I find the stance leading to the decision to disregard the proposed future occupation of the proposed development in reaching its conclusions on parking need, instead preferring to rely upon a generic affordable housing offer to define demand, to be unjustified. Although the Council indicated concerns over how the accommodation would be secured in the manner which had been proposed, it is quite conceivable that this is a matter which could have been appropriately and quite satisfactorily addressed by condition, a conclusion alluded to in the report to the Council's Committee by the suggestion of a condition addressing the details of a scheme of affordable housing.
13. In terms of the quantum of proposed parking provision, I have carefully considered the appellant's analysis of the demands for off-street parking from development occupied in a similar manner. I have also had regard to the absence of any dispute from the Council on the ratio of parking demand for such specialist accommodation. On the basis of the submissions, I see no reason to disagree with the reduced demand for parking for the specialist accommodation as highlighted, and the occupation of the proposed development in this manner would not warrant the level of parking as has been required by the Council. I find that the accessibility of local services and facilities as well as to frequent public transport services provides further substantial support and flexibility to allow the level of provision proposed in this instance.
14. In reaching my conclusions I have had regard to the Council's assessment of harm related to any additional parking demand unable to be accommodated on the appeal site. However, the Council's evidence indicates that additional on-street parking would both result in an adverse impact on the character and amenity of the immediate area to the detriment of a high-quality environment, and that additional on-street parking demand could not easily be absorbed given implied high levels of existing on-street parking with almost all households not in possession of an off-street parking option.
15. This portrays a somewhat confused picture regarding the precise nature of the contended harm. There is an absence of any detailed analysis as to precisely the nature of the harm to character and amenity, and no established baseline has been presented in respect of the substantiation of existing levels of on-street parking demand through any technical evidence or analysis. On the basis of the submitted evidence and my own observations, I am not persuaded that either argument has been made with any authority. However, as a consequence of my conclusions with regards the parking need of the development, this has not ultimately been the central determinant upon which my decision-making has been premised.
16. For these reasons, I am therefore satisfied that the quantum of off-street parking provision as proposed would not result in an adverse impact on the character and amenity of the area or compromise highway safety. I do not therefore find there to be conflict with Policies 14 and 32 of the Local Plan which require development to have regard to the design relationship between the development and the surrounding built form in terms of use and surrounding uses, and the flexible provision and implementation of parking

standards taking into account the accessibility and type of development, as well as the availability of public transport.

Planning Obligations and Conditions

17. The Council indicated within the Committee Report that a Section 106 Legal Agreement would be required in order to secure financial contributions towards the enhancement of existing or provision of new open space and play provision in the vicinity, with the provision of the development as affordable housing to be secured by condition.
18. The appellant has submitted a completed Unilateral Undertaking (UU) with the appeal which sets out the provision of a financial contribution of £13,220 towards the provision and/or improvement of open space/play space, and a confirmation that the housing to be provided at the site will be affordable housing as defined by the Framework (and retained) in perpetuity.
19. I have had regard to the need for the financial contribution as justified by Policy 42 of the Local Plan and the identification of the area as possessing an identified deficiency of urban greenspace and play provision in the vicinity and conclude that the obligation in this respect satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010.
20. Turning to the question of the affordable housing, Clause 9 of the Second Schedule of the UU seeks to secure the development in perpetuity within the wider description of affordable housing as set out the Framework. However, whilst I recognise that the appellant is a Registered Provider and I have no concerns that the proposed development would be secured within the definition of affordable housing, the occupation of the proposed development in the specific manner proposed is not explicitly referenced. The importance of this is borne out by the clear differentiation of impacts, as accepted within the reasoning and conclusions to the main issue of this appeal, between the specialist nature of the proposed accommodation and more generic affordable housing provision.
21. Although consideration of the use of a condition to secure affordable housing provision should more commonly be limited to instances where a planning obligation is absent, in this instance I regard the inclusion of a condition securing the affordable housing as proposed to be reasonable and necessary. In recognition of the need for confirmation of the nature of the occupation in accordance with the proposal, the wording of the suggested condition has been amended to include the need for the specific provision of clarity of the affordable housing type and occupancy in accordance with the appellant's submissions. The omission of a trigger for the submission of a scheme of affordable housing has also been rectified.
22. I am satisfied that the legal agreement itself appears to be in order and I consider the obligations to be acceptable in light of Regulation 122 of the Community Infrastructure Levy Regulations 2010.
23. Turning to the remainder of the conditions, the Council has suggested a detailed suite of conditions which are broadly consistent with those which formed part of the officer recommendation to the Planning Committee.
24. In addition to conditions addressing the timing of development and ensuring accordance with approved plans and documents, a condition addressing the

- need for the approval of all materials for external and hard surfaces, as well as details of the means of enclosure would be required in the interests of the character and appearance of the area. Securing the provision of the means of enclosure prior to occupation would be in the interests of the living conditions of future occupiers, as would ensuring provision is made for the secure storage of refuse.
25. Conditions addressing the potential for any ground contamination present on the site, including the need for remediation and addressing previously unidentified contamination, as well as ensuring that any soil imported on to the appeal site is of an appropriate quality, would be required to ensure that the development can be undertaken safely without unacceptable risks to workers, future occupiers, or other receptors.
26. The submission of a construction management plan addressing construction and demolition methods, as well as hours of audible works, would be necessary in the interests of the living conditions of future occupiers, whilst securing the units to be built in accordance with Building Regulations Part M4(2) would be in the interests of ensuring the units would be both adaptable and accessible.
27. Conditions requiring the provision of details of the means of disposal of foul and surface water from the site would be necessary in the interests of the environmental quality and management of the site. Securing the cycle parking provision, means of vehicular access, parking for individual dwellings, and the means of access for pedestrians and cyclists, would be necessary to ensure that adequate provision is made for access for a variety of means of transport.
28. I have had regard to the suggested flood risk conditions addressing finished floor levels, the incorporation of flood resilience/flood proofing measures, and the creation of a safe refuge. However, I am satisfied that these conditions could be amalgamated into a single condition requiring adherence to the appellant's Flood Risk Assessment, which addresses all of the above issues, and sets out clear recommendations and mitigation for the proposed development. This condition would be reasonable and in the interests of managing flood risk on the appeal site.
29. The requirement for an Ecological Enhancement and Management Plan as well as the protection of existing trees and hedgerows would be in the interest of the biodiversity of the site and the maintenance and improvement of habitats, as well as in the latter regard character and appearance.
30. The Council has suggested a condition removing permitted development rights for extensions or outbuildings for the proposed dwellings. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. In this instance, no justification for the removal of permitted development rights has been provided and in the absence of such I am not persuaded that the removal would be justified. I have therefore omitted this condition.
31. I agree with the appellant's contention regarding the suggested condition seeking to provide control over emissions would be more appropriate in a commercial rather than residential setting. Although I acknowledge that the development incorporates a training/meeting room with a substantial kitchen area indicated, I am not persuaded that this would be sufficient justification for the suggested condition.

32. I have also amended the suggested condition addressing the need for the development to be secured as an energy efficient design in accordance with the appellant's version, which removes the unnecessary duplication related to flood mitigation measures, and I accept provides a better focus on the objective of the condition.

Conclusion

33. For the reasons given above, and subject to the conditions listed, the appeal is allowed.

M Seaton

INSPECTOR

Annex

Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. Unless as otherwise required by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Numbers 2453.E000 Rev A, 2453.P001 Rev B, 2453.P002 Rev B, 2453.P003 Rev B, 2453.P004 Rev B, 2453.P005 Rev A, 2453.P006 Rev A, 2453.P007 & bin store/collection plan.
3. Development above slab level/foundation shall not commence until details of all external materials; surface materials of all roads, footpaths and hard landscaped areas to be used in the development; and the height, location, design, materials and finish of all screening, retaining and boundary treatments, have been submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details, with the means of enclosure provided before the occupation of the dwelling for which the means of enclosure is proposed.

4. Part 1. Site Characterisation

No development shall commence until an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

- (i) a survey of the extent, scale and nature of contamination;
- (ii) an assessment of the potential risks to:
 - o human health,
 - o property (existing or proposed) including buildings, crops, livestock,
 - o pets, woodland and service lines and pipes,
 - o adjoining land,
 - o groundwaters and surface waters,
 - o ecological systems,
 - o archaeological sites and ancient monuments;
- (iii) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

The initial report will be a Phase I Desk Top Study Report and should further intrusive investigation work be recommended from the Phase I report, a Phase II Intrusive site investigation shall be conducted.

Part 2. Submission of Remediation Scheme

If required through the recommendation of the Phase II intrusive site investigation, a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the Local Planning Authority.

The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 3. Implementation of Approved Remediation Scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the Local Planning Authority.

5. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken, and where remediation is necessary a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority.

Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

6. Should any soil be imported on to site for gardens or landscaped areas, documentation/test certificates for the imported material shall be submitted to and approved in writing by the local planning authority before the soil is imported. The documentation/test certificates shall include:

- i) the source of the soil;

- ii) the ratio of samples taken per volume of soil in cubic metres;
- iii) the analytical suite of contaminants tested for; and
- iv) the assessment criteria against which the analytical results have been compared to, to assess suitability for use.

For imported soils from a 'greenfield' source, the number of samples to be taken shall be a minimum of 3 or 1 per 250m³, whichever is the greater. These shall be tested for standard metals/metalloids; speciated PAHs; TPH (CWG banded); asbestos; and any other contaminants deemed necessary, based on the history of the source site.

For imported soils from a 'brownfield' source, the number of samples to be taken shall be a minimum of 6 or 1 per 100m³, whichever is the greater. These shall be tested for standard metals/metalloids; speciated PAHs; and asbestos.

The assessment criteria against which the test results are compared, shall be compliant with government policy (eg soil guideline values, or other authoritatively produced generic or site specific assessment criteria).

7. No development (including associated demolition if applicable) shall commence until details of construction/demolition methods (including the methods of piling), and measures to minimise the emission of noise and dust from the site have been submitted to and approved in writing by the Local Planning Authority and shall be carried out in accordance with those approved details. A Construction/Demolition works that are audible at the boundary of the site shall not take place outside 07.30 to 19.30 hours on Monday to Fridays, 08.00 to 12.30 hours on Saturdays nor at any time on Sundays or Bank and National Holidays. No open burning of any waste material shall be permitted within the site, except for the burning solely for the control of dry rot, for which prior permission from the Environmental Regulation department is required.
8. The ground floor dwellings hereby approved shall meet Building Regulation M4(2) standard, unless otherwise agreed in writing beforehand with the Local Planning Authority.
9. No development shall commence until details of the proposed means of disposal of foul water from the site have been submitted to and approved in writing by the Local Planning Authority. No buildings shall be brought into use prior to completion of the approved works.
10. No development shall commence until details of the proposed means of disposal of surface water from the site have been submitted to and approved in writing by the Local Planning Authority. There shall be no piped discharge of surface water from the site until the approved works (including any off-site works) have been completed.
11. The buildings hereby approved shall not be occupied until secure undercover cycle parking facilities have been provided in accordance with the approved plans. The cycle parking shall subsequently be retained in its entirety for such use.

12. The buildings hereby approved shall not be occupied until a means of vehicular access to serve them have been constructed in accordance with the approved plans.
13. No dwelling shall be occupied until the access to it and the parking facilities associated with it have been constructed in accordance with the approved plans. The access and parking facilities shall thereafter be retained in their entirety for such use.
14. The buildings shall not be occupied until a means of access for pedestrians and cyclists has been constructed in accordance with the approved plans. The access shall thereafter be retained.
15. The development hereby approved shall be undertaken in accordance with the proposed flood management measures and mitigation as outlined in Flood Risk Assessment, Roy Lobley Consulting, February 2020. The approved flood management measures and mitigation shall be implemented before the first occupation of the development hereby permitted and shall thereafter be retained.
16. Prior to development commencing, an Ecological Enhancement and Management Plan (EEMP) must be submitted to and approved by the Local Planning Authority. The content of the EEMP shall include the following:
 - a) Plans and details for the layout and design of biodiversity enhancement measures which should incorporate:
 - b) Internal and external boundary treatments permitting the movement of hedgehogs and small animals through the site;
 - c) Details of four integral nest or roosting boxes for bats or birds to be built into within the new development. Boxes should be installed as per the manufacturer's recommendations and
 - d) Landscape features for biodiversity.
 - e) A detailed drawing showing the precise location of enhancement measures and biodiversity features within the site should be supplied. The approved plan will be implemented in accordance with the approved details and maintained in perpetuity unless agreed otherwise in writing with the Local Planning Authority.
17. A scheme for the protection during the period of construction of all those trees and hedgerows which are to be retained shall be submitted to and approved by the Local Planning Authority before any materials, machinery or buildings are brought onto the site, or any building or engineering operations commence on the site. The scheme shall include:
 - (a) a plan showing the location of and allocating a reference number to each existing tree on the site which has a stem with a diameter exceeding 75mm measured over the bark at a point 1.5 metres above ground level, showing which trees are to be retained and the crown spread of each retained tree;

(b) details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;

(c) details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;

(d) details of any proposed alterations in existing ground levels, and of the position of any proposed excavation within the crown spread of any retained tree or of any tree on land adjacent to the site;

(e) details of the specification and position of fencing and of any other measures to be taken for the protection of any retained tree from damage before or during the course of development.

No retained tree shall be cut down, uprooted, destroyed, topped or lopped unless approved in advance by the Local Planning Authority. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the Local Planning Authority.

The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development. The fencing shall be retained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

18. Prior to the commencement of the use, provision shall be made for the secure storage of refuse, in accordance with the submitted details and a scheme to be submitted to and approved by the Local Planning Authority for the collection. The provision shall be retained in accordance with the scheme.

19. Prior to development commencing a scheme detailing proposals for energy generation and sustainable construction and efficient use of resources, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for energy and water conservation, and the use of sustainable construction methods and materials. The scheme shall identify the overall reduction in carbon emissions per annum which it is estimated will be achieved by the proposed measures. The approved scheme shall be implemented prior to the development hereby approved being brought into use and thereafter retained and maintained for the lifetime of the development.

20. All the dwellings shall be occupied as affordable housing. The affordable housing shall be provided in accordance with an approved scheme to be submitted to and approved in writing by the Council prior to first occupation and shall meet the definition of affordable housing in Annex 2 of the National

Planning Policy Framework or any future guidance that replaces it. The scheme shall include:

- a. Confirmation of the dwellings to be provided as affordable housing, including the type and tenure; and
- b. The arrangements for the management of the affordable housing to ensure it is affordable for both first and subsequent occupiers of the affordable housing.