



Appeal Decision

Site visit made on 5 April 2022

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 April 2022

Appeal Ref: APP/A4710/W/21/3277417

Land East of Library, Hollins Mill Lane, Sowerby Bridge HX6 2QG

- 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 Mr Farid Eatessami, Queens Court Developments against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref: 20/00787/FUL, dated 10 November 2020, was refused by notice dated 29 April 2021.
 - The development proposed is an office & one 2 bedroom flat to ground floor, one 1 bedroom flat & one 2 bedroom flat to first and second floors.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The revised National Planning Policy Framework (Framework) was published after the Council made its decision. Both main parties have made reference to the Framework in their submissions. I have considered it in my decision.
3. The appellant submitted a number of documents during the course of the appeal that did not relate to the appeal timetable. I have effectively treated these documents as the appellant's comments on the Council's case and so I have taken them into account. Ultimately, they do not alter my decision and so they do not prejudice the interests of other parties.

Main Issues

4. The main issues are (i) whether the proposal would preserve or enhance the character or appearance of the Sowerby Bridge Conservation Area; (ii) whether it would preserve the settings of nearby listed buildings; (iii) the effect on the living conditions of the occupiers of the nearest residential properties by way of privacy; (iv) the effect on flood risk; and (v) the effect on biodiversity interests.

Reasons

Conservation Area

5. The appeal site comprises vacant land that contains a hardstanding area of road planings or similar, together with some vegetation to the rear. At the time of my visit, there was car parking taking place on the site and signs of external storage. The site frontage is open and to the rear is the bank of the River Calder. On either side of the site there are existing buildings, namely the

Library and the Central Buildings. The site lies in the Sowerby Bridge Conservation Area.

6. The Conservation Area is focused on the town centre and consists of its main shopping streets and side roads, including where the site is found. The buildings are constructed predominantly of natural local stone and slate roofs. There are a number of buildings of note, including the nearby former Town Hall building which has an imposing presence in this part of the conservation area. Windows are for the most part vertical in form and constructed of timber. Stone detailing is also a pleasing feature on many buildings, as are stone sills and lintels. The river is also an important feature.
7. It is also evident that a number of the buildings in the vicinity of the site are under restoration and the Council has pointed to the Heritage Action Zone project, a heritage led regeneration programme in the area. Restoring the special interest of the conservation area is therefore of importance.
8. The significance of the appeal site is derived from its important location as it lies close to the heart of the conservation area on nearby Town Hall Street. As the site also benefits from a river frontage, this underlines the standing of its location. Its proximity to other buildings which are often attractive and detailed in their appearance, including the neighbouring buildings, underlines the location's contribution to the significance.
9. The scale of the proposal would be notably greater than the Library building in relation to its height and it would not effectively step down between its neighbours. This would result in a rendered blockwork gable end that would be exposed and loom over the roof of the Library building. This would further add to the incongruity of the proposal. Whilst there are examples of rendered gable ends, including on the Central Buildings, the adverse effect would be marked due to its proximity to the smaller Library building.
10. With regard to the Central Buildings, the proposal would be of a similar height. It would effectively appear as a large uncompromising extension, as viewed from both the street and riversides. Its scale would thus also cause harm in this respect.
11. Moving onto its design, the horizontal form of the windows on the streetside elevation would not be in keeping. They would be in contrast to the more vertical forms of the windows found on the buildings on either side and more broadly in the conservation area. The same applies with regard to the proposed use of UPVC. The street facing elevation would also lack any particular features and this would differ considerably from the often ornate stone detailing that is found on the buildings on either side and in the conservation area.
12. When the harm that would arise by way of the proposal's scale and design is considered with the importance of the location, it would be obtrusive and so detract from the significance of the conservation area. This would not be overcome by the use of stone on the street and riverside elevations, nor by adhering to the building line because this would underline that its scale and design would be marked and draw attention to that it would not be in keeping in these surroundings. It would also detract from the aims of the Heritage Action Zone project.

13. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) is of considerable weight and importance. Having regard to the above, I conclude that the proposal would not preserve or enhance the character or appearance of the conservation area. This weighs significantly against the proposal.
14. For similar reasons, the proposal would not comply with Saved Policies BE1 and BE18 of the Council's Replacement Calderdale Unitary Development Plan (2006) (RCUDP) which concern high quality design, that the character or appearance of conservation areas will be preserved or enhanced and, amongst other matters, that new development in a conservation area will only be permitted where the form, design, scale and methods of construction and materials respect the characteristics of the buildings in the area and townscape.
15. For the purposes of paragraph 202 of the Framework, 'less than substantial harm' would arise to the significance of a designated heritage asset. This harm is to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. The proposal would make use of vacant previously developed land (PDL), create a mixed use development with housing and employment benefits and it would remove dumped materials, if that is what is currently on the site. It would also be well located in relation to a range of local services and public transport options.
16. I am however mindful that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The significance of the conservation area would be diminished in relation to the design, scale and location of the proposal. Overall, the public benefits would not outweigh the 'less than substantial harm'. The proposal would thus not comply with the policies in the Framework in this regard.

Listed Buildings

17. The former Town Hall is a grade II listed building. It is a grandiose and ornate stone building that contains a rounded corner bay that rises to a tower. This projects noticeably higher from the roof and contains a clock face. It is an important local building that has landmark attributes.
18. The site is located no more than a few metres from this building. It falls within its setting and the tower is found on the side of the building nearest the site. This heritage asset does contain a plainer side elevation on the side of Hollins Mill Lane, but the tower and the more detailed street facing elevation is a strong presence. The buildings in this part of the town centre form part of the significance of its setting as they are commanded by its size and appearance.
19. The jarring nature of the scale of the proposal and the incongruity of the design in this location would detract from the significance of the setting. The proposal would not be a building that would respect the setting, but would rather appear as a discordant element within it. In particular, as the street facing elevation would not be an attractive feature, it would harm the relationship between the setting and the former Town Hall.
20. I have also been referred to a row of shops that are found on the opposite side of the former Town Hall, which are also grade II listed. They are more modest

buildings and whilst the design of the proposal would bear little semblance to them, with the separation involved, I am not persuaded that the site falls within their setting. With regard to the setting of the grade II listed County Bridge, the proposal would be separated from it by the complex of the Central Buildings. Much of the significance of the bridge is also derived from the river itself as a historical means of crossing it and connecting the land on either side. The proposal would not cause harm to the significance of its setting.

21. However, none of this addresses the harm to the significance of the setting of the former Town Hall itself. The statutory duty under Section 66(1) of the Act concerning the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses is also of considerable weight and importance. I conclude that the proposal would fail to preserve the setting of a listed building, namely the former Town Hall. This must also weigh significantly against the proposal.
22. The proposal would also not comply with Saved Policy BE15 of the RCUDP which states that development will not be permitted, where through its siting, scale, design or nature, it would harm the setting of a Listed Building. Under paragraph 202 of the Framework, 'less than substantial harm' would arise. This would not be outweighed by the public benefits that I have already set out, when the weight which is to be given to the asset's conservation is also considered. As a result, the proposal would also not comply with the policies in the Framework in this regard.

Living Conditions

23. The Central Buildings are set out in a courtyard arrangement. Some of the individual properties that it contains are in residential use. They have windows that face across the courtyard area towards the boundary with the site. Some of the windows also face one another across the courtyard. There are also residential properties across the street from the site in a building known as the Town Hall Apartments. These contain numerous windows which face towards the site.
24. The Council apply standards of privacy that are set out in Annex A to Saved Policy BE2 of the RCUDP and has referred to separation distances of 21 and 18 metres. These relate, respectively, to main to main and main to secondary aspects of buildings. Annex A also makes it clear that its distances are not hard and fast rules, but rather an indication of standards. A town centre location is such a case in point because it may not be possible to fully meet these distances because of the close proximity of buildings. The neighbouring courtyard arrangement ably demonstrates this point.
25. However, unlike on the Central Buildings, there would be a number of proposed windows directly adjacent to the common boundary. These would allow direct overlooking from a number of habitable rooms over the boundary at very close proximity. The number of such windows would also not be insignificant with the residential accommodation over 3 floors.
26. Such overt overlooking would go well beyond the flexibility that can be applied under Annex A and due to the town centre location. With the direct orientation of these windows over the boundary, their occupiers at times would clearly be looking over towards the Central Buildings. Whilst the appellant has offered to obscurely glaze these windows, they provide the outlook for these habitable

rooms and so this would result in an unacceptable effect on the living conditions of the future occupiers.

27. The situation with the Town Hall Apartments would be somewhat different because there is already public space in between by way of the road and the footways. Annex A points to where flexibility can be applied on the public or street side of a development. This would not though address the overlooking into the Central Buildings. The same applies in relation to air and light issues which are in any event not in dispute.
28. I conclude that the proposal would have an unacceptable effect on the living conditions of the occupiers of the nearest residential properties in the Central Buildings by way of privacy. Therefore, it would not comply with Saved Policy BE2 of the RCUDP where it states that proposals should not affect the privacy of adjacent residents or other occupants, amidst other considerations.

Flood Risk

29. The site is located in Flood Zones 2 and 3 where there are, respectively, medium and high probability risks of flooding. The appellant submitted a Flood Risk Assessment (FRA) with the application, and which was subsequently amended. This also points to historical flooding and so there is some evidence of flooding in the area.
30. Residential development is classified as a more vulnerable use under the Planning Practice Guidance: *Flood Risk and Coastal Change* (PPG) with regard to the Flood Risk Vulnerability Classification. Offices are a less vulnerable use. The PPG also sets out requirements for site specific flood risk assessments. The management of flood risk under the FRA is based on the predicted flood level being lower than the proposed floor level, future occupiers signing up for the Environment Agency's (EA) Flood Warning Service as part of a flood plan, and an evacuation route to nearby Corporation Street.
31. There are however a number of shortcomings with how the FRA has assessed the flood risk. The EA's planning application consultation responses set out that it does not include the correct climate change allowances. Also with regard to the range of flooding events, the FRA does not seek to explain the implications of the historical flooding that it reports. Whether the assessment of the predicted flood level on the finished floor level is correct is therefore uncertain.
32. On this basis, it is unclear if the mitigation measures that would constitute the management of flood risk would be effective in relation to resistance and resilience, and safe access and egress routes. As a consequence, the FRA fails to properly demonstrate both how people will be kept safe from identified flood hazards and that the proposal would not increase risk to others elsewhere.
33. The appellant has submitted further evidence on the river levels. Whilst this would be true at the time such evidence was compiled, it does not account for measuring the predicted flood level having regard to climate change allowances and the historical flooding. In relation to the river gradient and its speed preventing a backlog, this does not alter the probability of flooding as is calculated by the EA Flood Map through the modelling work that is undertaken.
34. I conclude that the proposal would have an unacceptable effect on flood risk. As a result, it would not comply with paragraphs 30 to 32 of the PPG where

they are concerned with how an FRA should demonstrate to the decision-maker how flood risk will be managed now and over the development's lifetime, taking climate change into account and with regard to the vulnerability of its users, the level of detail that is needed in an FRA and taking account of the further advice that is available.

Biodiversity

35. The Council has commented that the site lies in a bat alert area and a wildlife corridor. The site is however devoid of buildings, previously developed and contains limited amounts of vegetation. It has not been explained why the characteristics of the site would mean it may hold such ecological value. I am mindful of the protection in particular that is afforded to protected species, but this still requires some explanation of why this may be applicable in relation to the particular site characteristics.
36. The appellant has stated that there was no request to provide an ecological report with the planning application, and this has not been disputed. In relation to the information that I have, there is not a compelling reason why this needs to be provided for this particular site. If such a persuasive explanation was before me, I may take a different view, but this is not the case when considering the Council's concerns over the lack of an Ecological Impact Assessment, impacts on protected species and mitigation.
37. I conclude that the proposal would not have an unacceptable effect on biodiversity interests. Accordingly, it would comply with Saved Policies NE15, NE16, NE17 and EP15 of the RCUDP where they concern development in wildlife corridors, protected species, biodiversity interests and the ecological value of the waterway, as well as with section 15 of the Framework where it involves biodiversity interests.

Other Matters

38. The site has previously received planning permission for an office and residential development¹. This represents a fallback position. Based on the information that I have on this approved scheme, it was set back and so would not have had the same prominence in relation to the incongruity of the proposal as regards the conservation area and the setting of the listed building. There was also less residential accommodation proposed and so this has a bearing in relation to the living conditions and flood risk issues where I have concerns. The fallback position does not adequately justify the proposal.
39. There is no dispute that in principle the site would be suitable for development, given its town centre location. Clearly, a planning permission has already been granted. This does not though lead to an automatic grant of a further permission because other relevant planning considerations also need to be properly addressed in the new scheme. This does not favour the proposal because of the harm that I have identified.
40. The appellant considers that the RCUDP and Framework offer a broad spectrum of requirements and so do not specifically relate to this proposal. However, the planning system works on the basis of considering a proposal against development plan policies and other relevant considerations, including national planning policy. Matters on which no objections have been raised or are not in

¹ Council ref: 18/01102/FUL

dispute attract neutral weight. Issues concerning a neighbouring restaurant do not form part of the proposal before me and so only have a limited bearing on my decision.

41. There are recognisable benefits that arise from the proposal with regard to making use of vacant PDL, a mixed use housing and employment development and the site's accessibility to services. The benefit of improving the state of the site is though tempered by the harm that would be caused by the appearance of the proposal to both the conservation area and the setting of the listed building. The harm also extends to living conditions and flood risk. In the balance, the harm that would arise would outweigh the benefits.

Conclusion

42. The proposal would not preserve or enhance the character or appearance of the conservation area; not preserve the setting of a nearby listed building, the former Town Hall; have an unacceptable effect on the living conditions of the occupiers of the Central Buildings by way of privacy; and have an unacceptable effect on flood risk. These matters are decisive. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR