The Planning Inspectorate

Appeal Decision

Hearing Held on 30 March 2022
Site visit made on 30 March 2022

by Alison Scott BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2022

Appeal Ref: APP/Q4245/W/21/3279610
Former Urmston Social Club, Old Crofts Bank, Davyhulme M41 7AA

- 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 Branley Estates Ltd against the decision of Trafford Council.
- The application Ref 100658/FUL/20, dated 30 April 2020, was refused by notice dated 29 January 2021.
- The development proposed is Erection of apartment block containing 24no. 2 bedroom apartments along with associated external works, car parking and landscaping.

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. At the hearing a Building Cost Information Service (BCIS) spreadsheet of the rate per m2 gross internal floor area for building costs including prelims, was submitted by the appellant. This information provides a high degree of accuracy with forecasting of index value and percentage change over time to predict build costs. I have had regard to it in reaching my decision.

3. An appeal decision[1] was submitted by the Council as evidence to support its case. I have had regard to this in arriving at my decision.

4. Since the time the appeal was submitted, the appellant and Council prepared an updated Statement of Common Ground (SoCG) for consideration, precisely narrowing the viability areas in contention between the Council and the appellant. This takes into account BCIS Q4 2021 figures within the costings.

5. The appellant has been granted planning permission in outline for six dwellings with all matters reserved on 14 July 2021.[2] The appellant confirmed at the hearing that no development has occurred on the land with no subsequent planning applications for reserved matters submitted to the Council.

[1] Appeal decision APP/M5450/W/20/3264968

[2] Council application reference 104192/OUT/21 Outline application with all matters reserved for the erection of 6 no. dwellings with associated works, car parking and landscaping. Approved 14 July 2021.

Main Issues

6. The main issues are:

- Whether or not the proposal can make adequate provision for affordable housing, taking account of the relevant policies of the development plan and the viability of the development; and
- The effect of the proposal on the living conditions of the occupants of Number 7 Broadlea with regards to overlooking and privacy.

Reasons

First Main Issue: Affordable housing

7. Policy L2 of the Trafford Local Plan – Core Strategy (LP) seeks to maximise the delivery of affordable housing in the Borough as there is an identified need for more within the Trafford area to achieve a balanced housing offer in order to create sustainable communities.

8. Trafford LP Policy L8 states that 'contributions will be sought for all new development, redevelopment and changes of use'. It explains that 'The nature and level of contributions will be established on a site by site basis', and will seek to ensure a proposal is acceptable in planning terms by securing contributions in respect of, amongst other things, affordable housing. The policy sets out that 'Contributions will be principally delivered through Section 106 Agreements'.

9. Supplementary Planning Document 1 Planning Obligations 2014 reinforces the position to increase housing in the local area. In the appeal area of Urmston, identified as a 'moderate housing location' with 'good conditions', sites of ten or more dwellings require 25% of the units to be affordable. Any lower provision should be justified by a financial viability assessment (FVA). Both main parties are not in dispute that affordable housing is required to meet the policy expectations.

10. Additionally, the appellant has drawn my attention to the Trafford Housing Strategy 2018-2023. This document emphasises Trafford's drive to accelerate housing growth with an emphasis on creating balanced and mixed communities. Building affordable homes is identified as a shortage within the borough, and is one such measure.

11. The appellant has submitted a FVA in accordance with policy guidance. This concludes that the effective return from the scheme would yield a deficit that would not meet the National Planning Policy Guidance Viability 2019 (PPG) objective of between 15-20% as a suitable return for the appellant. Therefore, based on this deficit, the appellant argues that they have no headroom, and this therefore justifies the nil level of affordable housing proposed.

12. The appellant points out that their circumstances have not changed at any time since the initial planning application was submitted. However, they originally offered the Council a one-off contribution towards off-site affordable housing of £60,000. This offer was, however, declined by the Council and no further negotiation between the parties followed on this point.

13. Since the application was first submitted, on-going discussions between the appellant and the Council have ensued predicated on the more recent planning

decision for six houses at the site. Consequently, I have relied on the updated FVA within the SoCG as the appellant's present day assessment of the viability of the scheme. This continues to conclude that the scheme can afford no viable level of affordable housing.

14. The significant differences between the main parties are due to variations in a limited number of inputs to the FVA. Based on the most up to date FVA, matters of the disputed inputs are limited to the benchmark land value (BLV), estimated value of flats, which informs the gross development value (GDV) of the land, and construction costs. I will deal with each input in turn below.

Benchmark Land Value

15. PPG Viability 2019 sets out that 'to define land value for any viability assessment, a benchmark land value should be established on the basis of the existing use value of the land, plus a premium for the landowner. This is referred to as EUV+.

16. The PPG states that the landowner premium should provide a reasonable incentive for the landowner to sell land for development 'while allowing a sufficient contribution to fully comply with policy requirements. Landowners and site purchasers should consider policy requirements when agreeing land transactions.' The PPG is explicit that 'the premium for the landowner should reflect the minimum return at which it is considered a reasonable landowner would be willing to sell their land.'

17. I note that the site was sold to the appellant for £750,000. However, the PPG is firm in its approach that 'under no circumstances will the price paid for land be a relevant justification for failing to accord with relevant policies in the plan.'

18. Both main parties have referred to the RICS publication 'Assessing viability in planning under the National Planning Policy Framework 2019 for England' (RICS Guidance), which aligns with the principles within the PPG. I have had regard to it in reaching my decision.

19. The Council accept that the site could deliver residential development. Both parties agree that the existing use of the site as a social club would set a low EUV when compared to another use such as residential.

20. The Council's assessment of BLV follows the EUV+ approach. In doing so it is acknowledged that applying the 'accepted range for premiums' of 10% - 30% to the existing use value of £70,000 would establish an 'unrealistically low BLV' for the appeal site. Therefore, the Council has taken account of BLVs arising from other viability assessments agreed between consultants for local sites with similar policy compliant development potential and broadly comparable circumstances to that of the appeal scheme. This has established a BLV of £470,000, reflecting a multiplier of 6.71. Although the precise details of these other schemes are not before me to comment upon, this approach to establishing EUV+ follows the PPG and RICS Guidance and the multiplier does not appear unreasonable for a brownfield site. The Council concludes that, on this basis, the appeal scheme could viably deliver some affordable flats.

21. The appellant has sought to establish the BLV based on the alternative use value (AUV) derived from the extant outline permission for six detached houses. Following a valuation report from Savills, they have adopted £1m as

the benchmark land value and conclude that, on this basis, delivery of affordable housing would not be viable.

22. I note the appeal decisions[3] referred to by the appellant in which an AUV was considered. However, the circumstances of these other cases are not directly comparable to the appeal before me. In one appeal decision there was a greater reliance on comparable land transactions; another concludes the AUV reflects a valuation more akin to hope value; another Inspector was of the view that the AUV was considered to be incorrectly applied. Therefore, I am not persuaded that these decisions support the appellant's case.

23. Development plan policy does not set out in which circumstances alternative uses can be used in establishing benchmark land value. However, I note the alternative use for housing in this case complies with relevant development plan policies, is capable of being implemented, and would generate market demand.

24. Notwithstanding this, I heard at the hearing that, although the residual land value for six houses would be considerably more when compared to the proposed flats, given the uncertain and turbulent economic climate with escalating build costs, the concern of an economic downturn, their age and responsibilities involved in running their business, the appellant is seeking alternative methods as a means to secure a living away from house building. Pursuing the rental market is one of those methods, by retaining control of approximately fifty percent of the flats. As a family business, it was stated that this would provide a rental income in the long term although, overall, they accept there would be a lower return subsequently in the short term. Based on what I heard, it is doubtful whether the alternative scheme would be pursued.

25. The PPG is unequivocal that EUV+ is the primary approach to determine the benchmark land value of a site for planning purposes. Whilst the AUV of the land may be informative in establishing BLV, I am not persuaded that the alternative use is likely to be pursued in this instance. Overall, I am not convinced that the appellant can reliably benchmark the land value as presented deriving from the valuation associated with AUV. Therefore, in this case, I prefer the Council's approach.

Estimated value of flats

26. Turning to the FVA and the GDV that the appellant attaches to the twenty-four units as a total, is based on details of both one bed and two bed flats sold within close range of the appeal site, and an extended sales search over a two-year period. Additional material from Savills valuation dated July 2021 supplements this information for one and two bed units that have recently been offered for sale on the open market. The price per square foot has been used to benchmark the price of each flat.

27. I appreciate the comparable flats as a combination presented relate to different internal sizes, age, retirement and shared ownership types. Some comparable flats are described as dated in appearance. Other flats located above retail units may not attract the same premium as a new build at the appeal site. Its location close to Urmston also attracts a premium as well as larger internal size. Whilst the appellant provides a reasonable range of comparables within a

[3] Appeal reference APP/F5540/W/16/3152603, APP/M5450/W/17/3269285, APP/G1630/W/19/3228967

short distance of the appeal site, none precisely share the same circumstances as the appeal proposal before me.

28. At the hearing, the appellant considered residential flats at Spinning Gate on Barton Road to reflect the best comparison to the appeal proposal. I would agree with the appellant that the appeal site's physical relationship with local services and amenities, within very close range of the public Davyhulme Park, Urmston train station and the local shops within the town, the fact that it would be a contemporary new build development with a larger internal size, would attract a greater premium when compared to Spinning Gate.

29. As a comparison site, the Council also included Spinning Gate, together with recently sold retirement living developments, shared ownership schemes, permitted development residential schemes and older housing stock, all within close range of the appeal site.

30. There was no evidence presented at the hearing to demonstrate that the variables of new build shared ownership are overpriced against the same development for sale in the open market, according to the appellant, or that permitted development conversion developments also carry a premium, according to the Council. However, I also appreciate that specialist retirement living homes is not representative of the scheme before me. Older stock that may be dated, and the secondhand market, may not be as desirable as new build.

31. The relationship of the appeal site to the local services does, in my view, count in its favour when considered against many other comparable developments. To this end, based on the evidence before me and what I heard at the hearing, I agree with Savills valuation to be an accurate valuation of £220,000 per flat when imposed in July 2021.

32. Having said that, the Council has evidenced that the Housing Price Indexation (HPI) demonstrates prices of flats rising from one year to the next and over the Q4 2021 quartile, and this has a corresponding influence on the net sales area price per square foot for residential dwellings. The Council therefore raise the price of each unit accordingly. The appellant's SoCG FVA has had no consideration of HPI which remains as per the Savills valuation from July 2021.

33. No market uplift to the flats is particularly relevant given the appellant has used BCIS Q4 2021 figures within the recent SoCG to inform the most up to date building costs and the scheme's overall viability. There is however no dispute between the parties as to the appropriate use of this data to measure build costs.

34. On the basis of these most up to date build costs presented, and with particular reference to both the National Planning Policy Framework (the Framework) and the PPG's advice on inputs to viability assessments, I see no reason why an up to date valuation based on HPI across the same appropriate quarter, should not be reasonably applied here. I therefore do not accept the appellant's GDV within the FVA to be accurate.

Construction costs

35. Further dispute arises between the two parties with regards to the construction costs associated with the development. The base build cost, external works and

demolition costs are agreed between the parties as per the costs laid out within the most recent SoCG, and reflects BCIS Q4 2021 figures.

36. I share the Council's view that as the demolition has been completed on site, this should not carry any contingency fee and therefore a contingency should not be applied. There may be professional fees associated with these demolition works. However, the fees are calculated based on a combination of factors including contingency. I therefore do not consider the fees total is accurately represented by the appellant. The difference in amounts should therefore be taken into account in the overall assessment as to whether or not the scheme can viably support affordable units.

37. I do not share the Council's approach to overheads and profit pertaining to the appellant running his particular business model. He operates two stand-alone businesses under his control. One is a land estate business and the other is a contractor business. He may contractually instruct one business to undertake work for the other, and vice versa. Each business will be required to generate its own overheads and profits associated with the specific activity. As they are two separate entities, their individual and independent profits and overheads need to be considered as a discrete operation. Whilst the Council state that they are aware of similar circumstances where this does not occur, there is no reason why the appellant should not operate his businesses in this manner.

38. Notwithstanding my findings on overheads and profits, my conclusions in respect of demolition related contingency fees indicate the construction costs should be re-evaluated.

Conclusion on first main issue

39. The Framework permits the weight to be given to viability assessment as a matter for the decision maker, having regard to the circumstances of the case. The FVA has been pivotal in coming to my conclusion on the matter of whether or not the scheme can support affordable homes. I have set out my concerns with regards to the appellant's initial approach to AUV which in turn reflects their BLV figure which has a fundamental influence on the outcome of the FVA.

40. Furthermore, I question the reliability of the inputs within the appellant's FVA relating to build costs and market valuation per unit. Taken together, an adjusted GDV, contingency and professional fees are likely to have a bearing on the overall viability of the scheme and the evidence before me indicates that even if 25% affordable housing could not be achieved, these adjusted figures could significantly improve the profit margins for the appellant.

41. On this basis it would be reasonable to conclude that the inputs into the viability assessment before me is not accurately represented by the appellant. Therefore, it has not been demonstrated that the appeal scheme could not viably support any level of contribution towards affordable housing.

42. Furthermore, the appellant's original offer of £60,000 towards off-site affordable housing also leads to ambiguity as it would suggest that the site can afford some level of affordable housing contribution.

43. There is no dispute between the parties that there is an identified need to create balanced communities to which building more homes within the borough and affordable housing is a contributing factor to address this element through policy compliant development. Therefore, taking into account the evidence

before me, I find that it has not been demonstrated that on-site affordable housing provision is not viable and that the scheme should not make a contribution towards affordable housing.

44. The development would not, therefore, contribute to meeting housing needs and would not support the creation of mixed and balanced communities within the Trafford area. To conclude, it would be contrary to policies L2 and L8 of the Trafford Local Plan Core Strategy 2012, the Framework 2021 in their aims to deliver and secure housing for the needs of groups with specific housing requirements. As it has not been evidenced that the scheme could not make a contribution in this regard, it would also be contrary to the National Planning Practice Guidance 2019 and the Council's SPD1: Planning Obligations 2014.

Second Main Issue: Living conditions

45. Broadlea is a small housing development made up of two storey houses and bungalows arranged in a cul-du-sac layout. It follows part of the boundary with the appeal site with bungalows backing onto it.

46. The Council specifically identify windows of Block B on the first and second floors of the proposed flats to cause the occupants of No 7 Broadlea overlooking and loss of privacy to both habitable room windows and their garden space.

47. There is a difference of opinion between the Council and the appellant as to the application of the Council's Supplementary Planning Guidance, Planning Guidance 1 New Residential Development 2004 (PG1), in this instance.

48. This guidance relates to new build development and even though it may pre-date the existing local plan and includes a now deleted policy, its guidance accords with the Framework and remains relevant. Although the appellant has relied on Supplementary Planning Guidance 4 A Guide for Designing House Extensions & Alterations 2012, it relates to household extensions. They apply its recommended interfacing distances as a determinative factor to justify the separation distances and comment that in terms of considering how one set of guidance compares to the other with regards to three storey development, there are few differences when it comes to general assessment.

49. Nevertheless, I have considered the proposal using the PG1 as the appropriate guidance to determine new residential development against, together with my own planning judgement based on what I viewed on site. I have taken account of its recommended separation distances from the habitable rooms to the boundary and am satisfied that an appropriate standoff to the party boundary can be achieved.

50. The manicured garden of Number 7 skirts around the rear and side of the property and, given what I viewed on site, I would consider it as one garden space of equal standing.

51. Overlooking would occur from the proposed flats to the private garden although given the proposed position, windows would directly overlook a small corner of the larger garden area at a range that would not lead to an adverse effect on the living conditions of the occupants. In addition, not all the windows of Block B identified by the Council would have the opportunity to significantly overlook the garden.

52. Turning to the matter of window to window and overlooking potential from the proposed scheme, the separation distance from flat windows to bungalow windows may not precisely meet the PG1 standards. This specifically advises an interfacing distance of 27m habitable room window to habitable room window (across private gardens with an additional 3m for storeys above two storey). However, taking into account the oblique angle of the development to these windows, it would not create direct overlooking. I consider that any loss of privacy that may ensue to No. 7 would not be so significant as to render the proposal harmful to their living conditions.

53. I am also mindful of the recently approved planning permission for six, three storey houses in outline that would also have an outlook towards Broadlea. The Council formed a view that this would not adversely harm the occupant's living conditions. This is a material consideration.

Conclusion on second main issue

54. To conclude, taking into account the relationship of the proposal with the neighbouring dwelling including orientation and separation distance, the proposed scheme would not lead to detrimental overlooking and a loss of privacy to the occupants of No. 7 Broadlea, harmful to their living conditions. It would therefore comply with the objectives of Policy L7 of the Trafford Local Plan Core Strategy 2012, the Framework and PG1 New Residential Development 2004 in their combined aims to protect amenity of the existing occupants.

Other Matters

55. The Council confirm that the education contributions sought during the appeal process to mitigate the effects of the proposed development arise because, should the appeal be allowed, the opportunity to secure a contribution towards education would otherwise be lost. LP Policy L8 is clear in its request through a planning obligation, for relevant developments to contribute towards educational facilities. No draft Section 106 legal agreement has been prepared by the appellant.

56. In normal circumstances the Council explain that education infrastructure can derive from the use of CIL contributions although since the CIL Regulations have been amended in 2019, the pooling restrictions are no longer imposed, and infrastructure projects can receive funding from both CIL and S106 contributions. The Council confirm that CIL contributions have been absorbed into specific infrastructure development, and they therefore seek S106 contributions from other compliant developments to fund education infrastructure. The 'Department for Education Securing developer contributions for education 2019' confirms that housing developments can be responsible for contributing towards education infrastructure.

57. In addition, it is known that other funding streams are available for the Council to apply to having successfully acquired government funding for expansion needs at a local school close to the appeal site.

58. The Council turns to the Department for Education School Place Scorecard 2019 as a tool to determine costings, and uses a formular of three pupils per year group per one hundred homes of two bedrooms and above. Consequently,

a yield of five children would arise with a contribution request of £78,685 to safeguard an acceptable level of infrastructure.

59. The Council demonstrate that the local primary schools within a two mile walking distance of the site, overall presents a surplus capacity of 3.6% although their preference is a buffer of 5% surplus capacity to allow for anomalies such as children unexpectantly arriving into the area. Coupled with the well performing local schools, parental /guardian influence from outside the catchment area of being attracted to schools within the Trafford education system, leads to further demands being placed on overall local schools' capacity.

60. Although the Council can as accurately as possible predict the numbers of children expected to enrol in education in any one school year, taken from a combination of sources including the use of census data and statistics on real life births and information relating to forthcoming housing developments, I accept that there is an expectation that examples of small housing sites as this, would also generate a yield that could place demands on the local education service. There is a realistic prospect of the surplus school capacity reducing in the short term as a consequence of various factors.

61. However, considering the combination of expansion prospects at a local school and without substantive evidence of population projections, housing delivery in the borough, and evidence of the forecasting for a growing need for school places, there is no compelling evidence to indicate that there would be a deficit of primary school places in the local area by the time the development before me would come on board.

62. Therefore, it follows that the requested education contribution calibrated by the population yield of the proposal is not necessary or directly related to the specific impact on nearby primary school demand that would be likely to arise from the scheme. It is therefore not fairly and reasonably related in scale and kind to the development proposed. To conclude, if I were to find in favour of the proposal, there is no justification to support the education contribution as it would not accord with the provisions of Framework paragraph 57.

Overall Conclusion and Planning Balance

63. I have found that the proposal conflicts with the development plan in so far as it fails to support any level of affordable housing as required through the objectives of Policy L2 and the corresponding Policy L8 as a mechanism to secure the contribution. With regards to the other main issue of living conditions, it would comply with Policy L7 of the LP. It would cause no adverse effects on character and appearance of the local area and highway safety, and protect biodiversity. It would therefore comply with other relevant LP policies.

64. Overall, despite its compliance with certain policies, in the round, I find the proposal conflicts with the development plan when taken as a whole. This is a matter of very substantial weight.

65. I will now consider whether there are material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.

66. Taking into account the benefits associated with the proposal, I appreciate the contribution the scheme could make in boosting the supply of housing in

Trafford given the shortfall in Trafford's housing delivery agreed at the hearing to be 4.24 years, and the recognised need for more homes. However, the contribution made by this scheme would not be so sufficiently great an impact as to make a meaningful difference to address this shortfall.

67. Although the appellant's fallback prospect of six houses would contribute less towards the Council's housing shortage than the proposed twenty-four units, I question the realistic prospect of this being delivered by the appellant.

68. The appellant points to the lack of modern new build accommodation that would allow people in larger dwellings to downsize thus recycling larger properties. Although this could be perceived to be a possible benefit to the proposal, there is no guarantee it would occur. It could cater for the elderly market although the lack of internal lift, communal internal space and grounds would be unlikely, in my view, to appeal to the older generation of customer. These arguments as a benefit carries only moderate weight.

69. The benefits offered by the proposal in terms of its location close to local facilities, services and amenities, set in pleasant, landscaped grounds on previously developed land, weighs in its favour. Energy efficiencies associated with running modern homes is also recognised economic and environmental benefits, as well as the general low maintenance associated with flats coupled with the demand for this type of property within the local area. However, as a combination of factors, they would bring relatively modest benefits and as such, in my judgement, attract only moderate weight.

70. Overall, despite these benefits, the proposal would not provide any affordable housing. I attach very substantial weight to the appeal scheme's conflict with the development plan when taken as a whole.

71. Footnote 8 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date in respect of a 5 year housing land supply, Paragraph 11 of the Framework indicates that in such circumstances the presumption in favour of sustainable development is engaged. This means granting permission for the proposal unless:

    i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or

    ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

72. Whilst there are identified benefits associated with the proposal and these are material considerations, the most significant of this would be the addition of twenty-four units that would add a limited contribution to the supply of local housing. This addition would however come at the expense of providing no affordable housing.

73. It would therefore not outweigh the substantial and adverse impact of harm arising from the development's lack of contribution to provide any affordable housing. This would be made more severe by the fact that the borough recognises a lack of housing supply with a strong need to redress the

affordable shortage which in turn leads to the overarching Council-wide emphasis for balanced housing to create sustainable communities.

74. Consequentially, the adverse impact of the scheme in providing no affordable units would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework when taken as a whole. Under Framework paragraph 11(d), the appeal proposal would not benefit from a presumption in favour of sustainable development.

Conclusion

75. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. There are no other material considerations that suggest the decision should be taken otherwise than in accordance with the development plan. For the reasons given above, and taking account of all other matters raised, I conclude that the appeal should be dismissed.

Alison Scott

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr Russell Crocker	Senior Planning Officer
Mrs Helen Milner	Area Planning Manager
Mr Chris Gardner	Continuum
Mrs Sarah Butters	Head of Early Years School Places & Access

FOR THE APPELLANT

Mr Gareth Salthouse	Emery Planning
Mr Robin Furby	S106 Management
Mr Daniel Hayes	Branley Estates
Miss Kayley Hayes	Branley Estates
Mr Matthew Gray	Greys Architecture
Mr Alex Maxwell	Savills

INTERESTED PERSONS

Mr Paul Hughes	7 Broadlea
Mr Keith Boardman	2 Broadlea
Mr Alan Cowell	4 Broadlea
Mr Ross Garner	14 Broadlea
Mr Patrick Breslin	91 Croftsbank Road
Mr Tony Wilson	6 Moorside Road

ADDITIONAL DOCUMENTS RECEIVED AT THE HEARING

BCIS spreadsheet of the rate per m2 gross internal floor area for building costs including prelims.

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