

Appeal Decision

Site visit made on 23 May 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 June 2022

Appeal Ref: APP/N4205/W/21/3288498

60 Eckersley Road, Bolton BL1 8EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Frank Hamer against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 09751/20, dated 3 November 2020, was refused by notice dated 15 October 2021.
 - The development proposed is outline application for the erection of 7 no. dwellings (all matters reserved).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the description of development from the appeal form which is the same as that used on the Council's decision notice since it is more precise than that given on the application form.
3. The appellant's name in the banner heading above is taken from the appeal form as one was not given on the planning application form.
4. The application was submitted in outline only with all matters reserved for later consideration. I have therefore considered the appeal on this basis and have taken the layout of the dwellings shown on the submitted plans as indicative only.

Main Issues

5. The main issues are the effect of the proposal on biodiversity, and on land stability and public safety, having particular regard to historic coal mining activities.

Reasons

Biodiversity

6. The appeal site consists of numerous outbuildings, stables, storage containers and associated agricultural equipment, together with large areas of hardstanding. Other than the existing dwelling, the existing buildings within the site would be removed. The northern boundary of the appeal site is located adjacent to Astley Brook. There are mature trees along the embankment to this side of Astley Brook and also in the western part of the site.

7. Policy CG1.2 of Bolton Council's Core Strategy Development Plan Document (2011) (Core Strategy) states that the Council will safeguard and enhance biodiversity in the borough by protecting sites of urban biodiversity including trees, woodland and hedgerows from adverse development, and improving the quality and interconnectivity of wildlife corridors and habitats.
8. The Council indicates that the site is adjacent to lowland mixed broadleaf woodland, a UK Biodiversity Action Plan priority habitat. Given the location of the site adjacent to Astley Brook and an area of woodland to the north, there is the potential for protected species to be present on the site. Parts of the site and the adjacent mature trees would appear capable of providing suitable habitat for protected species, including bats. However, the proposal has not been supported by any ecological evidence to confirm this. In the absence of an ecological survey, it is not possible for me to determine with any certainty that the proposal would not adversely affect biodiversity interests.
9. The plans indicate that the existing green embankment would be maintained. The indicative plans also show that several of the proposed dwellings and the new access road would be sited along the northern site boundary within close proximity of the existing trees. Due to the size of the nearby trees they are likely to have extensive root systems. Damage to the tree roots as a result of the development cannot be ruled out. However, a tree survey has not been submitted and there are no details before me of the root protection areas of the trees. Without a survey of the trees it has not been demonstrated that the proposals would not adversely affect the long term health of the trees, including their roots, or whether mitigation measures would be appropriate. The deterioration or loss of the existing mature trees would be likely to detract from the ecological interest of the site.
10. Given the degree of uncertainty around the effects of the proposal on biodiversity, the use of conditions would not be reasonable in this case.
11. On this basis, I cannot rule out potentially significant harm to biodiversity. The proposal would fail to comply with Policy CG1.2 of the Core Strategy which seeks, amongst other things, to safeguard and enhance biodiversity, including trees. It would also conflict with the aims of paragraph 180 of the National Planning Policy Framework (Framework), where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for then planning permission should be refused.

Land stability

12. The site is located within a Development High Risk Area for coal mining. The Coal Authority objected to the proposal on the basis that a Coal Mining Risk Assessment had not been submitted to support the planning application. The Coal Authority's records indicate that the site lies in an area of likely historic coal workings at shallow depth.
13. Paragraph 183 of the Framework requires decisions to ensure that a site is suitable for its proposed use taking account of any ground conditions and any risk arising from land instability. This includes risk arising from former activities such as mining.

14. A Coal Mining Risk Assessment has been submitted with the appeal, which identifies no historic mining activity below the site. It concludes that unrecorded shallow mine workings beneath the site are unlikely given the line of the nearby coal seam under the water course, combined with the lack of evidence on historical mapping. The Council has not responded in any detail to the appellant's Coal Mining Risk Assessment. I see no reason to disagree with the conclusion of the Coal Mining Risk Assessment that the mining risk posed to the development would be low.
15. For the above reasons, I conclude that the proposal would be acceptable in relation to land stability and public safety, having particular regard to historic coal mining activities. It would not conflict with Policy CG4 of the Core Strategy which, amongst other things, requires development proposals on land that is or suspected to be affected by ground instability to include an assessment of any possible risks and will only be permitted where the land is, or can be made, suitable for the proposed use. The proposal would also not conflict with paragraph 183 of the Framework, as outlined above.

Other Matters

16. I note the appellant's concerns with the way the Council has handled the application. However, that is a procedural matter which does not impact on my assessment of the planning merits of the case.

Planning Balance and Conclusion

17. The development proposed would offer potential benefits in terms of providing new dwellings to the Council's housing stock. It would also have economic benefits through employment opportunities created during the construction phase of the development and spending in the local area by future occupants. I have attached some weight to these considerations. However, given the modest scale of the development, the weight attributable to these matters is limited.
18. Although I have found that the proposal would not be unacceptable in relation to land stability and public safety, this would be a lack of harm and thus neutral in any balance. There would be harm to biodiversity interests. This is worthy of significant weight. The adverse impacts of granting planning permission would significantly outweigh the benefits.
19. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

M Ollerenshaw

INSPECTOR