



Appeal Decision

Site visit made on 27 July 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 August 2022

Appeal Ref: APP/G3110/W/21/3284729

5-7 Jack Straw's Lane, Oxford OX3 0DL

- 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 Cantay Estates Ltd against the decision of Oxford City Council.
 - The application Ref 21/00216/FUL, dated 15 January 2021, was refused by notice dated 16 April 2021.
 - The development proposed is demolition of existing light industrial buildings; zero-emission housing comprising the erection of 4 pairs of semi-detached dwellings, providing 4no 3-bed and 4no 4-bed dwellings along with private gardens. Upgrade to existing vehicular access onto Jack Straw's Lane.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing light industrial buildings; zero-emission housing comprising the erection of 4 pairs of semi-detached dwellings, providing 4no 3-bed and 4no 4-bed dwellings along with private gardens. Upgrade to existing vehicular access onto Jack Straw's Lane at 5-7 Jack Straw's Lane, Oxford OX3 0DL in accordance with the terms of the application, Ref 21/00216/FUL, dated 15 January 2021, subject to the attached schedule of conditions.

Procedural Matter

2. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). The main parties have had opportunity to consider the relevance of its revised content and I have had regard to any comments in my decision.

Main Issues

3. The main issues are whether the proposal complies with the development plan in respect of parking provision and making efficient use of land, whilst considering the potential to deliver affordable housing.

Reasons

Parking Provision

4. The appeal concerns a roughly L-shaped parcel of land occupied by a number of empty and ramshackle buildings that were last in use by joinery and glazing businesses. It is accessed by a narrow driveway between a detached house and a pair of semi-detached houses to its south. There are also semi-detached houses to the east, terraced housing to the west, and a garage court serving other terraces of houses to the north.

5. The Council has suggested that the proposed development should be car-free. The Car and Bicycle Parking Technical Advice Note (TAN) was published following the determination of the planning application. While it provides advice on how Policy M3 of the Oxford Local Plan 2036 (Adopted 8 June 2020) (LP) should be interpreted, it is not policy and does not replace the obligations outlined in Policy M3. Moreover, this refers to the redevelopment of sites that already have some on-site parking provision and seeks a reduction where there is good accessibility to a range of facilities.
6. The site is partly overgrown with no sign of any defined parking spaces, but the evidence before me demonstrates that it is more than likely that the site would have contained an equivalent or greater amount of parking than what could be accommodated through the appeal scheme. I am also mindful that there are frequent bus services available in Marston Road, to the City Centre, Headington and Abingdon, and there is excellent provision for cycling in the locality.
7. The proposal would therefore be likely to lead to a reduction in vehicular traffic from the site and thereby emissions and effects on air quality associated with such travel. While there would be no means to ensure future occupants would be obliged to utilise them, the proposal would also include electric vehicle recharging points which, along with cycling, the Framework deems to be a sustainable mode of transport.
8. In light of the above, the parking provision for the proposed development would not discourage prioritisation of sustainable modes of transport, so it would accord with the aims to minimise the need to travel, as set out in LP Policies M1 and M3 and its parking standards in Appendix 7.3, and paragraph 112 of the Framework.

Efficient Use of Land

9. The dimensions and configuration of the site, and its access from Jack Straw's Lane, are all fixed. Furthermore, given my finding in first main issue, it is not necessary for the development to be car-free, so the proposed layout also needs to accommodate some parking, as well as manoeuvring for long service vehicles. These arrangements are practical. The remaining space with the street scene would be essential for the proposed planting, which would help to soften the appearance of the development and ensure it assimilates within its surroundings. The house at 44 Lynn Close also has a first-floor window, which faces west into the site. These are all factors that constrain the developable area of the site and its resultant layout.
10. Nevertheless, although the proposal would be arranged to reflect the suburban grain of development found in nearby streets, the gardens would be typically smaller than others nearby, particularly the rear gardens in Jack Straw's Lane, Marston Road, and Crotch Crescent which are generally deeper. The proposal would therefore reflect some of these existing characteristics with a more efficient use of land.
11. The Council suggest that a greater number of smaller units could be accommodated within the site due to its backland position and has included alternative indicative layout options in its Statement of Case. I do not subscribe to the notion that development would not need to adhere to basic urban design principles simply because of its location behind other houses. This could result in immeasurable harm to character and appearance through inherently poor

layouts. Moreover, all of the Council's indicative options would be hard landscape dominated, with limited space for planting to make a meaningful impact. It is therefore questionable how these would achieve the ecology benefits that the Council accepts would be realised by the appeal scheme.

12. The Council has also referred to modern infill developments at Hadow Close, Lynn Close and Doris Field Close, as they depart from the looser-knit grain of semi-detached housing nearby. The layout of Lynn Close maximises the effect of mature tree planting in neighbouring gardens but all three schemes are so densely configured that they include very little planting. For reasons outlined above, I do not see these as positive examples of how higher density development could be achieved that would respect the character and appearance of the site and its surroundings. The older arrangement of terraced houses to the northern side of Lynn Close could also not be repeated within the site given its configuration and the requirement for access to service vehicles.
13. I am also mindful that the housing densities referred to in the Council's Housing and Economic Land Availability Assessment (March 2019) (HELAA) are not guides for development in Oxford but an analytical tool used to estimate housing capacity. As LP Policy RE2 suggests, built form and site layout are key considerations as to the capacity of a site, along with the broader consideration of the needs of Oxford. I take the latter to include housing needs, specifically the number of bedrooms. Moreover, the 2014 Oxfordshire Strategic Housing Market Assessment informed the LP and identified that over the period 2011 to 2031 there would be a need for 38.9 percent dwellings to have three bedrooms and 25.5 percent to have four or more bedrooms. The scheme would provide a mixture of both of these.
14. Whilst the lower density of development achieved would mean that no affordable housing would be provided by the proposal, this would not result from an inefficient use of the available land.
15. For the above reasons, I conclude that the layout of the proposed development would result in an efficient use of land, so there would not be loss of potential for on-site affordable housing provision. Hence, the proposal would not conflict with the relevant aims of LP Policies H2 and RE2 and paragraphs 119, 124 and 125 of the Framework.

Conditions

16. I have assessed the list of conditions supplied to me by the Council against the tests set out in the Framework and made amendments to their wording, where necessary, in the interests of clarity and precision. This includes enabling demolition and site clearance to take place before some details are provided to assist in demonstrating the suitability of required details. I have also omitted the tail pieces from all conditions requiring alternatives to be approved by the Council, as this would circumvent the statutory route to vary the condition, depriving third parties of the opportunity to comment.
17. In addition to the standard time limit for the appeal, in the interests of clarity I have specified the approved plans. A condition for the materials of construction is necessary in the interests of the character and appearance of the site and its surroundings.

18. Pre-commencement conditions are necessary to secure a demolition and construction traffic management plan and a drainage scheme (together with details of its future maintenance). The former is required to minimise the impacts on the surrounding road network and neighbouring residents, which would be a reasonable approach given that demolition and construction would be for a temporary period only. The latter would be required to prevent surface water flooding neighbouring land and buildings.
19. The access to the site is taken from Jack Straw's Lane, which is situated within the Marston South Controlled Parking Zone (CPZ), which generally restricts parking on-street to residents issued with a permit. A condition is necessary to prevent occupation of the proposed dwellings until such time as an Order in respect of parking in the CPZ is varied to remove the eligibility of future occupiers, and visitors, to parking permits that allow parking within the CPZ. This would reduce demand for existing permit-controlled spaces and discourage use of the private car in the area, in accordance with LP Policies M1 and M3. Similarly, in order to ensure that provision is made for low emission vehicles within the site, details of the infrastructure for the recharge of electric vehicles would be required before occupation of the dwellings.
20. The Council also indicates that there could be potential contamination risks to human health associated with the historic use of the site. I have therefore taken a precautionary approach to these matters and included conditions to provide an assessment of the risks associated with the site and to remediate any contamination identified. I have removed reference to the requirement for a desk study and site walk over, as this was submitted with the planning application and approved by its officers.
21. The windows at first and second floor in the elevations of Plots 1 and 8 should be obscure glazed in order to protect the privacy of neighbouring occupiers, but details of the type of obscure glazing are required and shall be installed prior to the occupation of the dwellings.
22. For clarity, I have merged the landscaping scheme and management plan conditions and elements of the ecological condition requested by the Council which refer to landscaping. A further condition is required prior to commencement for other ecological enhancements to ensure that they would be integrated into the construction of the development.
23. Further conditions are also required to ensure that sustainability measures are incorporated into the construction of the development and works are carried out to avoid harm to nesting birds. The latter being an additional condition, which reflects a recommendation in the appellants' ecology report.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed.

Paul Thompson

INSPECTOR

Schedule of Conditions [over page]

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: MDL-1348-PL01, MDL-1348-PL02, MDL-1348-PL03, MDL-1348-PL04, MDL-1348-PL05, MDL-1348-PL06, MDL-1348-PL10, MDL-1348-PL-15, MDL-1348-PL-16, Refuse Vehicle (Proposed Plan) Revision B, 0803.1.1 and 8200544/4101 Revision B.
- 3) No development shall take place, until a Demolition and Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The Plan shall provide for:
 - the routing of demolition and construction vehicles;
 - access and parking arrangements for demolition and construction vehicles; and
 - the timings for demolition, delivery, and construction traffic vehicles, which must be outside network peak and school peak hours (to minimise the impact on the surrounding highway network).

The demolition and construction phases of development shall be carried out in accordance with the agreed Plan.

- 4) Prior to the commencement of development (other than demolition and site clearance), plans, calculations, and drainage details to show how surface water will be dealt with on-site through the use of sustainable drainage methods (SuDS) shall be submitted to and approved in writing by the local planning authority (LPA). The plans, calculations and drainage details shall be completed by a suitably qualified and experienced person in the field of hydrology and hydraulics and shall demonstrate that:
 - there will be no reduction in the quantity or quality of groundwater recharge, or an increase in surface water run-off;
 - the drainage system is to be designed to control surface water runoff for all rainfall up to a 1 in 100 year storm event with a 40% allowance for climate change;
 - the rate at which surface water is discharged from the site may vary with the severity of the storm event but must not exceed the greenfield runoff rate for a given storm event;
 - excess surface water runoff must be stored on site and released to receiving system at greenfield runoff rates; and
 - where sites have been previously developed, betterment in runoff rates will be expected, with discharge at, or as close as possible to, greenfield runoff rates. Any proposal which relies on Infiltration will need to be based on on-site infiltration testing in accordance with BRE365 or alternative suitable methodology, details of which are to be submitted to and approved by the LPA. Consultation and agreement should also be sought with the sewerage undertaker where required.

The development shall be carried out in accordance with the approved details.

- 5) Prior to the commencement of development (other than demolition and site clearance), a SuDS maintenance plan shall be submitted to and approved in

writing by the local planning authority. The SuDS Maintenance Plan shall be completed by a suitably qualified and experienced person in the field of hydrology and hydraulics and shall provide details of the frequency and types of maintenance for each individual sustainable drainage structure proposed and ensure the sustainable drainage system will continue to function safely and effectively in perpetuity. The development shall only be maintained in accordance with the approved details thereafter.

- 6) Prior to the commencement of development (other than demolition and site clearance), a phased risk assessment shall be carried out by a competent person in accordance with relevant British Standards and the Environment Agency's Land Contamination Risk Management procedures for managing land contamination. Each phase shall be submitted in writing and approved by the local planning authority:
 - Phase 2 shall include a comprehensive intrusive investigation in order to characterise the type, nature and extent of contamination present, the risks to receptors and to inform the remediation strategy proposals; and
 - Phase 3 requires that a remediation strategy, validation plan, and/or monitoring plan be submitted to and approved by the local planning authority to ensure the site will be suitable for its proposed use.
- 7) None of the dwellings hereby permitted shall be occupied until any approved remedial works, identified in Condition No 6, have been carried out and a full validation report has been submitted to and approved in writing by the local planning authority.
- 8) Further to the details shown on drawing reference 803.1.1, none of the dwellings hereby permitted shall be occupied until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - the details of treatment of paved areas;
 - areas to be grassed or finished in a similar manner;
 - existing retained trees;
 - proposed new tree, shrub and hedge planting (including a plan and schedule detailing plant numbers, sizes and nursery stock types) of known benefit to wildlife, avoiding floral species known or assessed as potentially being invasive (as recommended in paragraph 4.2.3 of the Preliminary Ecological Appraisal and Bat Survey - E2039r1); and
 - a management plan for all landscape areas (excluding front and rear domestic gardens), which shall include the long-term design objectives, management responsibilities and maintenance schedules and timings.The landscaping scheme shall only be implemented and managed in accordance with the details approved by the local planning authority and shall be carried out no later than the first planting season after first occupation of any of the permitted dwellings.
- 9) Any retained trees, or new trees, shrubs, or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting

season with others of similar size, species and number as originally approved.

- 10) Prior to the commencement of development (other than demolition), a scheme of ecological enhancements shall be submitted to and approved in writing by the local planning authority to ensure a net gain in biodiversity will be achieved. In addition to the new landscape planting of known benefit to wildlife requested in Condition No 8, the enhancements shall include details for the provision of artificial roost features, including specifications and locations of bird and bat boxes and shall be based on the details outlined in paragraph 4.2.3 of the Preliminary Ecological Appraisal and Bat Survey - E2039r1. The approved details shall be installed prior to first occupation of any of the dwellings hereby permitted and shall be retained thereafter.
- 11) No above ground construction shall take place on site until details of the external materials to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall only be carried out in accordance with the approved details.
- 12) None of the dwellings hereby permitted shall be occupied until the Order governing parking in the Marston South Controlled Parking zone has been varied by Oxfordshire County Council, as highway authority, to exclude the site, the subject of this permission, from eligibility for resident's parking permits and residents' visitors' parking permits.
- 13) None of the dwellings hereby permitted shall be occupied until details of the electric vehicle charging infrastructure to serve all of the parking bays have been submitted to and approved in writing by the local planning authority. The approved infrastructure shall be provided prior to first occupation and shall remain in place thereafter.
- 14) Prior to the first occupation of the dwellings in Plots 1 and 8, the side-facing windows at first and second floor level shall be fitted with obscured glazing, details of the type of which shall first be submitted to and approved in writing by the local planning authority. The obscure glazing shall be installed prior to the first occupation of the dwellings and shall be retained thereafter.
- 15) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on that part of the site affected shall be suspended and a risk assessment carried out by a competent person and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.
- 16) The development shall only be carried out in accordance with the recommendations outlined in paragraph 4.2.2 of the Preliminary Ecological

Appraisal and Bat Survey, reference E2039r1 with respect to nesting birds, particularly regarding the timing for the clearance of vegetation or buildings.

- 17) The development shall be carried out in accordance with the recommendations outlined within the Energy and Sustainability Statement (prepared by ERS Consultants Ltd, reference PR8160). The approved measures shall be implemented prior to the first occupation of any of the dwellings hereby permitted.

End of Schedule