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# Appeal Decision

Site visit made on 7 September 2022

**by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 October 2022**

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**Appeal Ref: APP/N4205/W/22/3296397**

**Land at Crompton Street, Bolton, Greater Manchester**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
  - The appeal is made by Mr Nasser Rosta (Quality Homes Construction Ltd) against Bolton Metropolitan Borough Council.
  - The application Ref 12765/21, is dated 3 December 2021.
  - The development proposed is erection of a single storey commercial building (Class E(G)(ii & iii)) with on-site parking, new access and boundary treatments.
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## Decision

1. The appeal is dismissed.

## Procedural Matters

2. The appeal is against the Council's failure to determine the planning application within the relevant statutory timeframe. However, I have had regard to the Council's statement which provides clarity in terms of the reasons the Council would have refused planning permission for the proposed development, had they been able to do so.
3. A unilateral undertaking (UU) was submitted after the commencement of the appeal along with a Biodiversity Net Gain (BNG) report. Whilst the UU was accepted as part of the appeal submission, the BNG report amounted to new information, the consideration of which would have been prejudicial to interested parties. It was therefore turned away. For clarity, I have dealt with the appeal on the basis of the original plans and supporting information and the UU.
4. I have used the address from the appeal form and the Council's questionnaire as it more accurately describes the location of the appeal site.

## Main Issues

5. The Council has raised no objection to the principle of commercial development in this location, nor the design and scale of the proposed commercial building or impact on living conditions of neighbouring occupiers. Based on all that I have seen and read, I see no reason to disagree with this point of view. The main issues of this appeal are therefore the effect of the proposed development upon i) the character and appearance of the area with specific regard to trees, and ii) biodiversity.

## Reasons

### *Character and Appearance*

6. The appeal site relates to a parcel of land wholly comprised of tree and shrub planting, forming part of a larger green corridor that extends westwards along

Crompton Street and into Charles Street. While the trees are not protected by a tree preservation order (TPO), the verdant quality of the appeal site contributes positively to the character and appearance of the street scene. It serves as a softly landscaped buffer between commercial development to the south and residential development to the north.

7. The proposal would result in the removal of 34 trees, the majority of which are taller upper canopy trees. 7 new trees are proposed along with some additional shrub planting and a native hedgerow to the external boundary. However, the proposed trees would be predominantly low-mid canopy varieties and would take some time to reach maturity. The removed trees would not therefore be replaced on-site to the same level or type. There would be a notable and detrimental change to this section of Crompton Street with the green character of the street scene significantly eroded, rather than retained as existing. Whilst Crompton Street is not a highly trafficked or main thoroughfare, the appeal site is prominent due to its green form in an otherwise highly urban context. The loss of tall trees would also be discernible from neighbouring streets including Phoenix Street and Folds Road (A676), from where views of the appeal site are obtained between the existing commercial buildings.
8. The siting of a commercial unit and associated tree removal would significantly reduce the verdant quality of the street scene in this location, resulting in an adverse impact on the character and appearance of the area. The proposed development therefore conflicts with Policies RA1 and CG3 of the Bolton Council Local Development Framework: Bolton's Core Strategy, Development Plan Document 2011 (Core Strategy) which amongst other things, seek to ensure that new development conserves and enhances the character of its environment.

### *Biodiversity*

9. The ecology report identifies that the appeal site consists of mixed plantation woodland. Although the woodland is not a priority habitat, the Greater Manchester Ecology Unit advises that it nevertheless, has a biodiversity value at a local level.
10. Paragraph 174 of the National Planning Policy Framework (the Framework) states that planning decisions should contribute to and enhance, the natural and local environment by minimising impacts on and providing net gains for biodiversity. Paragraph 180 of the Framework advises that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or as a last resort compensated for, then planning permission should be refused.
11. As discussed above, only a small number of removed trees would be replaced. Further meaningful on-site compensatory planting is unlikely to be achieved given the space that would be taken up by the proposed commercial unit and associated hardstanding for access and car parking. Additional on-site tree planting could not therefore be adequately provided by condition in this instance. A net-loss of biodiversity would subsequently occur.
12. A UU has been provided for a financial contribution of £2420 towards ecology related projects within the Council's administrative area. If I were to accept the appellant's position that the amount were sufficient to provide suitable BNG, I note that no particular project has been specified, so this is somewhat

uncertain. In any event, the UU has not been signed nor dated and so would be ineffective in securing the stated mitigation.

13. In the absence of a properly executed planning obligation, the proposed loss of trees would result in significant harm to biodiversity. The proposal would therefore be contrary to Policy CG1 of the Core Strategy which aims amongst other things, to safeguard and enhance sites of urban biodiversity. It would also fail to comply with paragraph 174 of the Framework which seeks in part, to minimise impacts on, and provide net gains for biodiversity.

### **Other Matters**

14. A temporary 6 month TPO was placed on the woodland forming the appeal site on 21 January 2022. The Council has verified that the TPO was not confirmed and is no longer in force. I have determined the appeal on the basis that the trees are not protected, but this does not affect my overall findings in respect of the main issues.
15. The proposed scheme is the resubmission of a previously refused application (reference 10546/21). Although the proposed development has evolved with a view to finding a solution to the reasons for refusal, this scheme would also result in harm for the reasons I have identified. Concerns have been raised in respect of the Council's handling of the case and the lack of communication regarding the off-site contribution towards biodiversity net gain. This is a matter between the parties and is not relevant to my decision.
16. The appellant considers the proposal to be sustainable development in accordance with the Framework. However, paragraph 12 of the Framework indicates that development that conflicts with an adopted development plan should usually be refused. Moreover, the Framework shares similar aims to the development plan in terms of protecting an area's character and appearance and providing for BNG. Accordingly, I find the policies of the Framework, taken as a whole, not to weigh in favour of allowing the appeal.
17. The employment benefits from 1 small unit including 2 full-time and 1 part-time jobs would inevitably be modest and would not outweigh the harm identified above.

### **Conclusion**

18. There are no considerations present in this instance that lead me to find otherwise than in accordance with the development plan. Therefore, for the reasons set out above, the appeal is dismissed.

*M Clowes*

INSPECTOR