



Appeal Decision

Site visit made on 20 July 2022

by Helen Hockenhull BA (Hons) B.PI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2022

Appeal Ref: APP/M3455/W/21/3285786

Land to the North of Forrister Street, Longton, Stoke-on-Trent, ST3 1DQ

- 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 John Wylson, Irresistible Property Limited against the decision of Stoke-on-Trent City Council.
 - The application Ref 64656, dated 18 October 2019, was refused by notice dated 19 October 2021.
 - The development proposed is the construction of up to 9 dwellings.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 3 August 2022.

Decision

1. The appeal is allowed, and outline planning permission is granted for the construction of up to 9 dwellings at land to the North of Forrister Street, Stoke-on-Trent, ST3 1DQ in accordance with the terms of the application, Ref 64656, dated 18 October 2019, and subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr John Wylson of Irresistible Property Ltd against Stoke-on-Trent City Council. This application is the subject of separate Decision.

Preliminary Matters

3. The application has been submitted in outline with all matters reserved. The proposed site layout plan is for indicative purposes only and I have viewed it as such in my determination of this appeal.
4. The description of development I have used above is taken from the original planning application form. The Council changed the description to Residential development (outline). I am uncertain whether this took place with the agreement of the appellant. In any case, I have retained the original description as this is more detailed.
5. The appellant has submitted a signed and dated Unilateral Undertaking providing a financial contribution to public open space improvements in the vicinity of the appeal site. I have taken account of this in my decision and will discuss its content later.

Main Issue

6. The main issue in this case is whether the loss of public open space would have a detrimental impact on the local community and access to local amenity space.

Reasons

7. The appeal site forms an irregular shaped piece of land to the north of Forrister Drive in Meir Hay, Longton. The site forms a mown grass area which rises to the north away from the road. A public right of way crosses the site leading from Forrister Street to Linnburn Road to the north. The site is in private ownership and is part of a wider area of public open space with the largest portion owned by the Council to the north of the site. It is notable that it is not specifically designated as open space in the development plan.
8. The parties agree that there is a surplus of amenity greenspace in the southern part of the City. This position is confirmed in the Council's Green Space Strategy 2018. The Council argues that the site has not been formally declared surplus and therefore despite the evidence base, the site should not be disposed of for development purposes. As the site is privately owned, I am unsure how it can be declared surplus. This would normally be an exercise for a public authority in respect to their property portfolio. The Council's Legal Officer has confirmed that the site is not Public Open Space for the purposes of procedural disposal requirements set out in the Local Government Act 1972.
9. In policy terms, the site could be viewed as surplus in respect to the open space requirements of the City and brought forward as an allocation. However, the local plan has not reached Regulation 18 stage and its adoption is some way off.
10. I am advised by the appellant that the loss of the appeal site would reduce the supply of amenity open space in the south of the City by 0.4%, a minimal amount. The Council's Planning Policy Team in their response to the application commented that for amenity open space, there is a projected surplus of either 36% or 54% depending on the emerging housing requirement. In either case, the loss of the appeal site, 0.4% of the existing amenity greenspace provision, would be insignificant and cause no harm to the overall provision.
11. Paragraph 99 of the National Planning Policy Framework (the Framework) states that existing open space should not be built on unless one of three stated criteria is met. The first of these, and the most relevant to this case, is that an assessment has been undertaken which has clearly shown the open space to be surplus to requirements. In my view, the Council's Green Space Strategy does this. I do not agree with the Council that as the land has not been clearly identified as surplus, this criterion cannot be met.
12. Policy CSP5 of the Core Spatial Strategy 2006-2026, adopted in 2009, seeks to enhance, maintain and protect open spaces. This Policy pre-dates the Framework and is not entirely consistent with it in terms of recognising that the reuse of existing open space can be acceptable in certain circumstances. Accordingly, I give greater weight to the Framework in this regard.
13. I am cognisant of the significant local opposition to the development of the appeal site and the Council's concern that the loss of the site would have a detrimental impact on the local community. However, the development of the

site would result in the loss of only around a quarter of the public open space in this location and at reserved matters stage it can be ensured that a footpath route through to the wider area of open space would be maintained. I am also aware that there is a choice of other open spaces within a short distance from the appeal site which residents could access. The appeal scheme would therefore have little impact on the local community's access to local green space.

14. The appellant has prepared an indicative landscaping scheme for the remaining part of the amenity space in the Council's ownership. This builds on an assessment of the quality of the site based on the methodology in the Green Space Strategy and proposes improvements to the site's deficiencies. This includes new paths, tree planting, bolstering boundaries, enhancing biodiversity and providing benches. The scheme has been costed and reviewed by the Council's Landscape, Greenspace and Ecology Teams. The appellant has provided a Unilateral Undertaking to secure the monies required to implement the scheme. This improvement in quality of the remaining open space would be of benefit to the wider community.
15. Given the above, I am not persuaded that the loss of public open space resulting from the appeal scheme, would have a detrimental impact on the local community and access to local amenity space. Accordingly, the proposal would comply with Policy CSP5 of the Core Strategy and paragraph 99 of the Framework.

Other Matters

16. The appeal scheme is in outline with all matters reserved. The site is in a sustainable location and the details of the site access can be dealt with through the reserved matters submission. Concerns about parking and traffic problems raised by residents can also be addressed at this time through the submission of an appropriate layout, access and mitigation measures including amendments to existing traffic calming measures. I am satisfied that an appropriate scheme, causing no highway safety issues, can be designed.
17. The appellant submitted an Ecological Appraisal and Biodiversity Metric Calculation to support the original planning application. This identifies that the site has a low ecological habitat score. Housing development could therefore be brought forward resulting in no net loss. It is notable that the proposed improvement to the neighbouring open space, would have the potential to create biodiversity net gain.

Planning Balance

18. I have found that the loss of public open space resulting from the appeal scheme would not have a detrimental impact on the local community and access to local amenity space. The proposal would comply with the development plan taken as a whole and there are no other material considerations that indicate the scheme should be determined otherwise than in accordance with it. Planning permission should therefore be granted.

Planning Obligation

19. The submitted Unilateral Undertaking makes a contribution of just under £39,000 to the provision, improvement and enhancement of public open space in the vicinity of the site. As I have already explained, it is intended these

monies be used to improve the quality of provision on the remaining section of the open space in the ownership of the Council.

20. I am satisfied that the above obligation is necessary, directly related to the development and fairly related in scale and kind. It complies with Regulation 122 of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

Conditions

21. I have had regard to the conditions suggested by the Council in their Committee Report in light of the Framework and Planning Practice Guidance.
22. Conditions are attached limiting the life of the planning permission and setting out the requirements for the submission of reserved matters in accordance with the Act.
23. To ensure that risks from land instability and mining related hazards to future users are minimised, I impose conditions requiring site investigations and any necessary remedial works. In order to prevent pollution or risks to health, conditions are necessary to require site investigations before development commences and the submission of a remediation scheme to be implemented before development begins.
24. Conditions are also required to ensure the site is appropriately drained. Finally, I impose a condition to require a construction management plan in the interests of highway safety and amenity.
25. The Council suggested a condition limiting the number of dwellings that could be built on the site to 14 as a greater number would require a contribution towards affordable housing. As the description of development is for up to 9 dwellings, I do not consider this to be necessary.

Conclusion

26. For the reasons given above, and having had regard to all other matters raised, I allow this appeal.

Helen Hockenhull

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan – Drawing No: IGL-003 (PL) 002 Rev C, Site Plan – Drawing No: IGL-003(PL) 003 Rev C and Indicative Site Layout Drawing No: IGL-003(PL)001 Rev C.
- 4) No development shall commence until intrusive site investigations have been carried out on site to establish the exact situation in respect of coal mining legacy features. The findings of the intrusive site investigations shall be submitted to the local planning authority for consideration and approval in writing. The intrusive site investigations shall be carried out in accordance with authoritative UK guidance.
- 5) Where the findings of the intrusive site investigations (required by condition 4 above) identify that coal mining legacy on the site poses a risk to surface stability, no development shall commence until a detailed remediation scheme to protect the development from the effects of such land instability has been submitted to the local planning authority for consideration and approval in writing. Following approval, the remedial works shall be implemented on site in complete accordance with the approved details.
- 6) Following implementation and completion of the approved remediation scheme (required by condition 5 above) and prior to the first occupation of the development, a verification report shall be submitted to and approved in writing by the local planning authority to confirm completion of the remediation scheme in accordance with approved details.
- 7) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 8) No development, excluding demolition, shall begin on site until such time as full details of the way in which surface water is to be disposed of from the site have been submitted to and approved in writing by the local planning authority. The scheme shall make provision for the use of sustainable drainage techniques and surface water limitation where practicable. The development shall take place in accordance with the approved details only.
- 9) No dwelling or building shall be occupied or used until such drainage works as are needed for that dwelling or building have been fully completed, in accordance with the details approved under condition 8 above.
- 10) Prior to the commencement of any construction, a Construction Environmental Management Plan (CEMP) shall be submitted to, and approved in writing by, the local planning authority. The approved management plan shall include details relating to:
 - construction access,
 - hours of construction,
 - delivery acceptance hours and arrangements,
 - location of contractor's compounds, cabins, material storage areas, and contractors parking,
 - surface water management during construction, and
 - a scheme for the management and suppression of dust from construction activities including the provision of a vehicle wheel wash.

All site operations shall then be undertaken strictly in accordance with the approved CEMP for the duration of the construction programme.