



Appeal Decision

Site visit made on 6 September 2022

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 21 December 2022

Appeal Ref: APP/N4205/W/22/3297262

Land off Cox Green Road, Egerton, Bolton BL7 9HA

- 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 & Mrs Gregory against Bolton Metropolitan Borough Council.
 - The application Ref 13010/22, is dated 19 January 2022.
 - The development proposed is the erection of four dwellings.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Applications for costs

2. An application for costs was made by Mr & Mrs Gregory against Bolton Metropolitan Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal follows the Council's failure to determine the application within the prescribed period. However, the Council has indicated in its grounds of appeal, that had it been in a position to determine the application, it would have refused planning permission for reasons relating to location and character and appearance.
4. The appellants have suggested that the proposal could be amended to remove the woodland clearance and heathland creation from the proposed scheme. However, I consider that to do so would be a significant alteration from the originally submitted application and the details considered by the Council. They have also not been subject to public consultation. The appeal process should not be used as a means to progress alternatives to a scheme, and in the interests of fairness and natural justice, I consider that interested parties would be prejudiced by the consideration of the amended proposal. I have therefore determined the appeal on the basis of the original plans and information submitted with the application.

Main Issues

5. From the evidence before me, I consider the main issues to be whether the proposal would provide a suitable location for housing and its effect on the character and appearance of the area.

Reasons

Location

6. The appeal relates to an irregular shaped piece of land, that sits in between a tall quarry rock wall and a large area of dense woodland, to the eastern side of Cox Green Road. The site is located on the edge of Egerton and is allocated as 'Other Protected Land' (OPOL) in Bolton's Allocations Local Plan 2014. It is also situated adjacent to a large area of woodland which lies in the Cox Green Quarry Site of Biological Importance (SBI).
7. The main parties do not dispute that the proposal would conflict with Policies CG6AP and OA5 of the Bolton Core Strategy Development Plan Document 2011 (Core Strategy). These seek, amongst other things, to concentrate new housing within the existing urban area and to ensure that development respects the large open space and open aspects of North Bolton. Policy CG6AP also only permits development on OPOL, where it satisfies specific criteria. The site is outside of the urban area and does not fall within any of the specified categories. I therefore agree that conflict would arise with Core Strategy Policies OA5 and CG6AP in this regard.

Character and Appearance

8. It is clear from reading the previous appeal decision letters for this site (APP/N4205/W/19/3235249 & APP/N4205/W/18/3197086) that trees, shrubs and other vegetation on this land previously provided a verdant setting to the quarry, consistent with the woodland character of the surroundings. In its evidence the Council also describes the site as forming an area of regenerated woodland scrub and rough grass. However, at the time of my visit it was apparent that the majority of the site had been cleared of vegetation and it was largely bare open land. As noted by the Council's landscape officer, the condition of the site has therefore changed since the previous appeals were determined.
9. However, notwithstanding the cleared appearance of the site, its private ownership and lack of public access, the introduction of a line of 4 two storey dwellings into this open land would undeniably increase the built form and density of development across the site. I appreciate that the design of the proposal is landscape led, including the incorporation of angled sedum roofs and the use of local stone. Nonetheless, the intensification of built development and resultant loss of openness would significantly erode the sense of spaciousness that the site possesses. This would have a much greater effect, including through the introduction of a long hard surfaced private access road and an increased amount of domestic paraphernalia, such as garden furniture and play equipment, than what could be developed under the extant and implemented permission for 1 dwelling (APP/N4205/W/18/3197086).
10. I am aware that the previous Inspector accepted that the approved dwelling had been designed to respond to the specific circumstances of the site, respecting its orientation, topography and views into and out of it. However, the appellants' evidence shows this dwelling to be predominantly single storey in height and I am mindful that the Inspector for that appeal considered it necessary to remove permitted development rights for extensions and outbuildings, as the effect could have more wide-ranging impacts.

11. I have no doubt that more detail has been provided for the proposal when compared to that of the previously dismissed permission in principle appeal for 5 houses (APP/N4205/W/19/3235249). However, I consider the amount of housing proposed would still change the character of the site to a small residential estate.
12. The surrounding woodland, along with the quarry wall encloses the site and provides some screening. I have had regard to the viewpoints provided within the submitted Landscape and Visual Appraisal (LVA) and am mindful that it concludes that the overall effect on the wider landscape and the visual effects would be negligible. The amount of vegetation in the vicinity along with the topography of the area would ensure that views from the nearby public footpaths would be filtered and restricted. It is undeniable however, that were the development to go ahead, the size and scale of the proposed housing would still be visible from close quarters, including from the nearby residential properties at Rock Terrace and Quarry Lodge. Conditions relating to the design of the boundary fences and further landscaping beyond these means of enclosure would not overcome this harm.
13. Furthermore, the proposal would lead to the loss of a large number of trees within approximately 0.4 hectares of the adjacent woodland. Although the appellants' Nature Conservation & Management Plan (NC&MP) refers to this area as poor-quality secondary woodland, the Arboricultural Impact Assessment (AIA) concedes that only the edge of this area was surveyed and estimates there to be around 1000 young to middle age, self-seeded birch, oak and willow woodland trees of good health and condition in this area. It also states that they are a prominent landscape feature from the west and have amenity value as open access woodland with inherent wildlife and habitat value. In addition, section 4.2 of the AIA finds that there would be an adverse effect on the deciduous woodland and that this would have a negative residual effect. I have no substantive reason to question these findings.
14. Whilst the trees proposed to be felled would be replaced with lowland heath, I therefore consider that their loss would severely reduce the landscape characteristics of this part of the woodland. I consider their value to lie in their combined visual impact, which would be significantly disrupted by the removal of such a large amount of the woodland. The discordant effect of this element of the proposal would be readily apparent from a number of vantage points along Cox Green Road.
15. All of these factors would thereby combine to result in the proposal causing unacceptable harm to the character and appearance of the area. It would thereby conflict with Core Strategy Policies CG3 and OA5 in this respect. These seek, amongst other matters, to conserve and enhance local distinctiveness and the wider open landscape setting of an area.

Other Matters

16. Calculations within the NC&MP, which were obtained from the Defra Biodiversity Metric 2.0 tool, indicate that the site would achieve a 16.59% Biodiversity Net Gain (BNG). Net gain in planning describes an approach to development that leaves the natural environment in a measurably better state than it was beforehand.

17. National and local policy expect development to provide a net gain but do not specify a quantum. It is anticipated that the Environment Act 2021 will introduce a requirement for a 10% BNG on all developments but this level of requirement has not yet come into effect.
18. Nonetheless, the ecological surveys referred to in the Ecological Impact Assessment and the NC&MP appear to have taken place after the majority of the site was cleared of trees and vegetation. The baseline figure, which allows the level of change to be quantified, is therefore likely to be considerably lower than if the site had not been cleared. Given this starting point, the level of loss to the biodiversity value of the site that has already taken place is unclear and may have been undervalued. As a result, I am unable to be certain of the level of genuine on-site BNG, or whether the proposed landscaping would provide a net gain in tree cover.
19. I also share the Greater Manchester Ecology Unit's (GMEU) concerns in respect of the appellants' approach to providing off-site ecological and biodiversity mitigation and enhancements. This is because it is proposed to introduce 1 important habitat - the lowland heathland, at the expense of another - approximately 0.4 hectares of the adjacent woodland. Improvements and future management of the SBI through conditions securing a Woodland Management Plan and the NC&MP are also proposed.
20. It is common ground that the SBI has been designated due to it supporting a mosaic of habitats, including woodland, ponds, heathland, grassland and scrub. It is also uncontested that the southern part of the SBI (the part which the development would most affect) is primarily designated because it supports broadleaved woodland, although small stands of heather are present.
21. I appreciate that the importance of lowland heathland is recognised in the Greater Manchester Biodiversity & Geodiversity Action Plan. However, the woodland is a valuable habitat itself, for which the area was originally designated as locally important. Furthermore, given that the full extent of the area of trees proposed to be lost was not surveyed in the AIA, I am unable to conclude, with any degree of certainty, that its replacement with restored heathland would provide a significant ecological enhancement.
22. Moreover, the future management of the off-site heathland and remaining woodland is proposed to take place over a 20 year period. A planning condition, as an alternative to the submitted unsigned unilateral undertaking, is not a suitable mechanism to secure the implementation of this long-term off-site commitment. In light of the above, I am therefore unable to afford the proposed biodiversity enhancements any more than very limited weight in my determination of the appeal.
23. My attention has also been drawn to other appeal decisions in the Borough (APP/N4205/W/20/3247035 and APP/N4205/W/18/3193664) which relate to 'landscape led' residential development and the Council's deliverable housing land supply position respectively. However, neither of these cases involves the loss of a significant area of woodland. Whilst I have had regard to the appellants' points on these cases, they have therefore not been decisive in my assessment of this appeal as I have determined it based on its own merits.

Planning Balance

24. Although the main parties dispute the extent of the shortfall, the Council accepts that it is unable to demonstrate a 5 year deliverable supply of housing land. The relevant policies of the development plan are therefore deemed to be out of date and, in light of Paragraph 11 d) ii) of the National Planning Policy Framework (the Framework), planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. I have identified conflict with Core Strategy Policies OA5 and CG6AP in respect of the location of the proposed housing. However, in light of the shortfall in housing land supply, and to be consistent with the approach in the previous appeal decisions on the site, these policies cannot be considered up to date. As a result, I apportion limited weight to the proposal's conflict with them.
26. I have also found that the proposed development would be harmful to the character and appearance of the area. This harm would be wide ranging and long lasting and would be contrary to the objectives of the Framework. With these factors in mind, I ascribe this matter substantial weight.
27. I am mindful that paragraph 69 of the Framework advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. It has also been put forward that the proposed development would be an efficient use of land, and I note the location of the appeal site relative to public transport and access to local facilities and services. The proposed family houses have been designed to provide internal space for home working and there would be environmental benefits through the use of sedum, local materials and energy saving construction methods. In addition, the proposal would generate some economic activity during the construction of the housing and would provide homes to occupiers who would spend and contribute to the local economy. Some social benefits would also arise in respect of natural surveillance and the occupation of land. Nonetheless, given that the proposal is for only 4 dwellings, and a net increase of 3 houses from what has previously been approved on the site, any benefits in these respects, including housing land supply, would be contextually somewhat limited.
28. Furthermore, I have attached very limited positive weight to the proposed biodiversity benefits.
29. It has also been put to me that the proposal would provide acceptable living conditions for future and existing residents. There are no heritage assets on the site and the Council has found the effects on highway safety and drainage to be acceptable. However, the lack of harm in these respects, would be neutral factors which accordingly cannot, by definition, be used to weigh against harm.
30. As a result of all of these factors, I attach moderate weight to the appeal scheme's benefits. As such, even if I were to conclude that there is a shortfall in the 5 year housing land supply on the scale suggested by the appellants, I find that the adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The appeal

scheme would not therefore be sustainable development for which the presumption in favour applies.

Conclusion

31. For the reasons given above, having taken account of the development plan as a whole, along with all other relevant material considerations including the provisions of the Framework, the appeal is dismissed and planning permission is refused.

Mark Caine

INSPECTOR