



Appeal Decision

Site visit made on 17 October 2022

by M Ollerenshaw BSc (Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2022

Appeal Ref: APP/K0235/W/21/3289408

Land adjacent to 35 Oakley Road, Clapham MK41 6AN

- 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 Technical Details Consent.
 - The appeal is made by Mr Eoin O’Cearbhaill, on behalf of Excelsior Land against Bedford Borough Council.
 - The application Ref 21/02080/FULTDC, is dated 19 July 2021.
 - The development proposed is “Technical Details Consent following grant of Permission in Principle (LPA Ref 19/00838/PIP) for six unit residential development, access, landscaping and other associated works”.
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Decision

1. The appeal is dismissed and Technical Details Consent is refused.

Preliminary Matters

2. The appeal is against the Council’s failure to give notice of its decision within the prescribed period. The Council’s case and its putative reasons for refusal are set out in the officer report.
3. The proposal is for Technical Details Consent following the grant of Permission in Principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The Permission in Principle has established that the location, land use, and amount of development is suitable in principle. The Technical Details Consent, that is the subject of this appeal, can consider the remaining detailed matters but cannot reopen what has been agreed at the Permission in Principle stage.
4. The Clapham Neighbourhood Plan 2030 (the Neighbourhood Plan) was “made” in July 2022 following the submission of the appeal. It now forms part of the development plan for the area and I have given the policies within it full weight in this decision. Both parties had the opportunity to comment on its change in status and I have had regard to any comments received.
5. The appellant submitted a revised site plan with the appeal, which includes changes to the width of the access road, the size of parking spaces and an alternative bin collection point. In addition, a unilateral undertaking under s106 of the Town and Country Planning Act 1990 was submitted which seeks to secure financial contributions towards off-site play areas and outdoor sports space and the provision of affordable housing. As the revised plan and additional documents do not change the substance of the proposed development that was considered by the Council, having regard to the

“Wheatcroft” principles¹ the Council and interested parties would not be prejudiced by my consideration of them.

Main Issues

6. The main issues are:

- the effect of the development proposed on the character and appearance of the area;
- whether the proposal would provide satisfactory living conditions for future occupants with particular regard to noise;
- whether the proposal would make adequate provision for off-site outdoor sports space and play areas; and
- whether the proposal would make adequate provision for vehicle access and parking, and the suitability of the bin storage and collection arrangements.

Reasons

Character and appearance

7. The appeal site is located at the end of Oakley Road to the east of the A6. It is broadly triangular in shape and consists of an area of grassland with hedgerows and trees to the site boundaries.
8. The site is to the west of a ribbon development of detached dwellings on the south side of Oakley Road. Whilst the design of properties on Oakley Road is varied, they are generally set within large plots and are set back from the road behind fences or planting and have large rear gardens. This gives the area a generally open and spacious feel which contributes positively to its character and results in a distinctive pattern of development.
9. The proposed dwellings would occupy the northern part of the site and be accessed via the existing vehicular access from Oakley Road. The development would effectively extend the built form on Oakley Road westwards towards the A6. Although a grassed area would be provided towards the front of the site, the arrangement of the dwellings in a tight cul-de-sac with a lack of space between them and car dominated frontages would not reflect the spacious linear development to the east. Whilst plots 1-4 would be arranged in a linear fashion, these properties would be set back rather than following the established building line of properties to the east. The dwellings would be located on relatively small plots which would result in a cramped appearance at odds with the existing large plots on Oakley Road. Consequently, the proposal would not reflect the local characteristics of the surrounding area or the pattern of development along Oakley Road.
10. I accept that the site does not lie within a conservation area or other protected area. I also acknowledge that the appellant wishes to make the most effective use of the land. Nevertheless, I find that the scheme would fail to integrate with its surroundings and would appear incongruous. It would fail to enhance the character and setting of the settlement in accordance with the requirements of Neighbourhood Plan Policy ED1. I also note that the appellant

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

would be willing to vary the external finish of the proposed dwellings to address the Council's concerns about the proposed materials. However, that would not sufficiently mitigate the adverse effects of the development which would arise principally as a result of its form and layout.

11. The appellant considers that the proposed layout is the only configuration that would ensure that the site can accommodate the 6 dwellings granted permission in principle. However, there is no substantive evidence before me to show that the appeal scheme is the only means of developing the site.
12. For the above reasons, I conclude that the proposed development would be harmful to the character and appearance of the area. Therefore, the proposal would be contrary to Policies 28S (i and ii), 29 (i and ii) and 30 (i and ii) of the Bedford Borough Council Local Plan 2030 (the Local Plan) (adopted 2020) and Policies ED1 and ED3 of the Neighbourhood Plan, which, amongst other things, seek to ensure that development achieves high quality design, integrating well and complementing the character of the surrounding area, responding positively to and reflecting the scale, density and layout of existing development and local distinctiveness.

Living conditions

13. The appeal site is bound to the west by the A6, which at this point of its route is a busy dual carriageway that bypasses Clapham. A timber fence and trees form the boundary between the A6 and the site. The A6 is elevated relative to the site and road traffic noise was a very noticeable feature of the site at the time of my visit. I therefore agree with the conclusion of the appellant's noise assessment which found that the site is a medium-high risk in relation to daytime noise levels and a high risk in relation to night-time noise levels.
14. The noise assessment indicates that acceptable internal noise levels will be achieved within the properties, subject to specification of suitable glazing and ventilation systems. The appellant has put forward a number of measures to address noise, including the use of triple glazing and mechanical ventilation with heat recovery to circulate fresh air and avoid the need to open windows. I consider that the installation of the proposed noise attenuation measures would be capable of creating an acceptable internal noise environment for the occupiers of the development, provided that the windows and doors are kept closed. However, the need to keep doors and windows closed in order to avoid exposure to unacceptable levels of noise would create an oppressive internal environment for the occupiers of the houses, which would be harmful to their living conditions.
15. In relation to external areas, BS8233² states it is desirable that the noise level does not exceed 50 dB LAeq,T, with an upper guideline value of 55 dB LAeq,T which would be acceptable in noisier environments. The noise assessment found that noise levels within the gardens of the proposed dwellings would exceed the upper noise level of 55 dB LAeq, T by around 5-10 dB. The gardens of plots 4, 5 and 6 would be particularly exposed to road traffic noise as these would be directly adjacent to the A6. Exposure to traffic noise would reduce the useability of the gardens for the occupiers of the proposed dwellings.

² BS8233:2014 "Guidance on sound insulation and noise reduction for buildings"

16. The appellant proposes an acoustic fence and substantial hawthorn hedgerow to the boundary with the A6. However, there is already a substantial timber barrier and vegetation on that boundary. Despite these features the noise levels within the proposed gardens would still be unacceptably high. The noise assessment anticipates that any additional significant noise barrier on the edge of the site would have minimal impact on noise levels at ground level. Accordingly, it has not been demonstrated that the development would achieve acceptable noise levels within the external amenity areas. Whilst achieving recommended noise levels will not always be possible in urban areas adjoining main roads, paragraph 185 of the Framework indicates that planning decisions should avoid noise giving rise to significant adverse impacts on health and quality of life.
17. Noise levels in the gardens of existing properties to the east may currently be higher than those recommended in BS8233. However, the development would be notably closer to the A6 than the existing properties on Oakley Road and as a result would be likely to be exposed to higher noise levels.
18. I conclude that the proposal would not provide satisfactory living conditions for future occupiers, having particular regard to noise. Accordingly, the proposal would conflict with Policies 32 (iii) and 47S (ii and v) of the Local Plan which, amongst other things, seek to ensure that development is appropriately located in relation to existing noise and require that noise does not give rise to significant adverse impacts on health and quality of life or, where appropriate, mitigate and reduce its impact. The Council's reason for refusal also refers to a conflict with Local Plan Policy 32 (v), however that relates to arrangements for dealing with waste and is of no relevance to this main issue.

Off-site outdoor sports space and play areas

19. Policy AD28 of the Allocations and Designations Local Plan (July 2013) (the ADLP) states that, where new housing development is of a type likely to create demand, the provision of open space and built facilities shall be required. The Council's Open Space Supplementary Planning Document (September 2013) (the Open Space SPD) provides guidance on the application of Policy AD28. This clearly sets out that, where five or more dwellings are proposed, financial contributions in lieu of on-site provision shall be required towards outdoor sports space and equipped/natural play areas.
20. The appellant has submitted a unilateral undertaking which agrees to make financial contributions towards outdoor sports space (£11,836) and equipped areas of play (£9,094) within the locality in accordance with the requirements of the Open Space SPD. The need for the contributions is not a matter of dispute between the parties. I consider that such contributions are necessary to make the development acceptable in planning terms, are directly related to the development and would be fairly and reasonably related in scale and kind.
21. However, the unilateral undertaking appears to be incomplete. It does not include an enforceable trigger for when the payment of the contributions should be made or comprehensive set of definitions of the affordable housing provision. There are no registered title details or plan identifying the land to which the planning obligation relates. Consequently, I cannot be satisfied that the unilateral undertaking would be legally binding and secure the contributions towards outdoor sports space and play areas or the provision of affordable housing. As such I am unable to attach any weight to it.

22. The Planning Practice Guidance states that no payment of money or other consideration can be positively required when granting planning permission and that planning permission should not be granted subject to a positively worded condition that requires the applicant to enter into a planning obligation. Accordingly, I do not consider that it would be appropriate to deal with this matter by way of a planning condition.
23. I conclude that the proposal would fail to make adequate provision for off-site outdoor sports space and play areas. It would conflict with the requirements of Policy AD28 of the ADLP, Policy 86S of the Local Plan and the Open Space SPD in so far as these set out that new development will be required to provide, or contribute towards the provision of, measures to directly mitigate its impact on existing infrastructure.

Access, parking and bin storage and collection

24. The Council contends that it is unclear whether the access road would be private or be offered up for adoption by the Council and that as the access would serve more than one dwelling it needs to be at least 4.8 metres wide. However, the revised site plan submitted with the appeal shows that an access road of 4.8 metres wide could be provided within the site and it is the appellant's intention for the road to be constructed up to adoptable standards. This could be secured by a suitably worded condition. The plans indicate that vehicles would be able to comfortably access the proposed dwellings.
25. The number and size (2.7m x 5.0m) of car parking spaces serving the dwellings would meet the requirements of the Council's Parking Standards for Sustainable Communities Supplementary Planning Document (2014). Whilst the development would not provide any allocated visitor car parking spaces within the site, during my visit I observed that there was ample on-street parking availability along Oakley Road. Visitor parking on Oakley Road arising from a development of this scale would be unlikely to lead to any significant additional pressure for parking spaces in the area or an adverse effect on highway safety.
26. The Council's Technical Guidance: Waste and Recycling in New Developments (2021) (the Guidance) sets out that Council collection vehicles and crews will not under any circumstances enter a private road or driveway that is not adopted by Bedford Borough Council. As noted, the access road would be constructed up to adoptable standards. Moreover, a bin collection area is shown close to the site entrance from which bins could be readily taken to service vehicles. The plans indicate that bin drag distances would be acceptable for both occupants and refuse collection operatives.
27. For the above reasons, I conclude that the proposal would make adequate provision for vehicle access and parking. The proposed design and layout of the scheme would also ensure suitable arrangements for bin storage and collection. The scheme would thus comply with Policies 29 (viii), 31 (i and iv) and 32 (v) of the Local Plan, Policy IT2 of the Neighbourhood Plan and the Guidance in so far as these state that all new development should integrate functional needs such as refuse / recycling storage and collection points, and that particular attention should be given to the suitability of access arrangements to and within the development for service and emergency vehicles.

Other Matters

28. Interested parties raise a number of other concerns, including the effect of the proposal on the living conditions of neighbouring occupiers, increased traffic and impact on wildlife. However, the Council have not raised objections to the proposal on these grounds and I have no reason to disagree with that assessment based on the evidence before me and my observations on site. The absence of harm in relation to these matters is neutral rather than weighing positively in favour of the proposal.
29. I acknowledge that it is the appellant's aim to address a local need for affordable housing, support mixed communities and allow access to key workers who would otherwise not be able to access this area due to house size and value. However, given my findings in relation to the submitted planning obligation, I cannot be satisfied that it would secure the provision of affordable housing in perpetuity. This matter therefore carries only limited weight in favour of the proposal. The development would offer social and economic benefits in terms of providing 6 new dwellings to the Council's housing stock in a sustainable location, which is in general accordance with the general aims of the Local Plan and Policy HG1 of the Neighbourhood Plan. This weighs positively in favour of the proposal and aligns with the objective of significantly boosting the supply of homes, as set out in the Framework. It would also facilitate employment opportunities during the construction phase of the development and future residents would support the local economy by spending in the area. Given the modest scale of the development, the weight attributable to these matters is limited.

Conclusion

30. Whilst I have found that the appeal scheme would make adequate provision for access, parking and bin storage and collection arrangements, this would be a lack of harm and thus a neutral factor. I have identified that the proposal would cause harm to the character and appearance of the area, would fail to provide satisfactory living conditions for future occupants and fail to make adequate provision for off-site outdoor sports space and play areas. These harms would be wide ranging and long lasting and are worthy of significant weight. I conclude that the benefits of the scheme would not outweigh the harm resulting from the development.
31. For the above reasons, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be dismissed.

M Ollerenshaw

INSPECTOR