
Appeal Decision

Site visit made on 8 December 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 January 2023

Appeal Ref: APP/U4610/W/22/3304866

Former Methodist Church, Macdonald Road, Coventry CV2 5FE

- 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 Esprit Homes Construction Ltd against the decision of Coventry City Council.
 - The application Ref FUL/2021/3560, dated 2 December 2021, was refused by notice dated 14 April 2022.
 - The development proposed is demolition of former Macdonald Road Methodist Church and the development of 14 no. apartments with parking, amenity space, cycle storage and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appellant submitted a Section 106 Unilateral Undertaking (the UU) pursuant to addressing the Council's fifth reason for refusal in relation to offsite improvements to play and open space. It has been accepted as a potentially legally binding document and the Council has confirmed that planning obligations within the UU suitably address their concerns¹. Consequently, the matter has not been treated as a main issue under the appeal and is dealt with in other matters.
3. The appellant has submitted amended plans in relation to apartment mix, parking layout and bin layup area. It is contended that these are minor and do not substantially change the proposal. However, guidance² is clear that even apparently minor changes could materially alter the nature of an application and potentially prejudice interested parties.
4. In this context, I am mindful of the fact that there has been significant interest from other parties about matters relating to parking and highway safety. This is clear from the neighbour notification responses submitted with the Council's appeal questionnaire.

¹ Insofar as the planning obligations relate to the original plans determined by the Council

² Annexe M of Procedural Guide: Planning appeals – England 2022

5. Whilst there may not have been significant interest in relation to the apartment mix specifically, it is interrelated with the number of parking spaces and these amendments have been considered together in the context of highway safety, in conjunction with amendments to the bin layup area which is relevant to visibility at the site's access. These are clearly elements of design that affect the layout of the proposal, despite the appellant's contentions.
6. Consequently, the amended plans would clearly deprive those who should have been consulted of an opportunity for comment on matters fundamental to the proposal and this would result in procedural prejudice. As such, whilst I acknowledge the appellant is trying to be pragmatic, the amended plans would conflict with Wheatcroft Principles and cannot be accepted.
7. Whilst I note the Council's reference to materiality tests pursuant to Section 96A of the Town and Country Planning Act 1990 (as amended), Annexe M of Procedural Guide: Planning appeals – England 2022 and having regard to the Wheatcroft principles has proved sufficient to inform my decision about accepting the amended plans.
8. The Council contends that the aerial layer on the original site plan determined by them as part of the application is inaccurate, something acknowledged by the appellant. However, it is clear from the appellant's submissions that the location plan ordinance survey base layer and red line are accurate and respect adjoining land uses.
9. The proposal is contained within this red line. Therefore, in conjunction with what I saw during my site visit, I am satisfied that the original site plan determined by the Council as part of the application is not misleading, and the proposal would not encroach or conflict with adjoining land uses. Consequently, despite forming a reason for refusal on the Council's decision notice, I have not found it necessary to treat this matter as a main issue under the appeal.
10. The Council reference other amendments to the proposal³. For clarity, I note these other amendments came forward during the course of the application and were before the Council when making its decision.
11. The Council reference the submitted and refused site plan⁴. However, it would appear this was an earlier revision dated October 2021 and was subsequently amended during the course of the application. The decision notice and email correspondence between the appellant and the Council is clear that the site plan submitted and refused as part of the application is a later revision dated April 2022.
12. The Council reference an amendment to the description of development⁵, but it is clear from the application forms and the appeal forms, including all other evidence, that the description of development has not changed.
13. The appellant submitted new evidence under the appeal in relation to design matters, including further assessment of the local context; highway safety matters, including accident data; and flood risk matters, including a detailed drainage strategy.

³ Paragraph 3.1 of their appeal statement

⁴ Paragraph 9.1 and Appendix 10 of their appeal statement

⁵ Paragraph 3.3 of their appeal statement

14. This new evidence has been accepted because it does not fundamentally change the proposal and other parties will have had an opportunity to comment during the course of the appeal.
15. I acknowledge some of the Council's contentions about the extent they were able to fully assess the new evidence. However, the new evidence does not fundamentally change the proposal and there is a modest amount of additional information.
16. Consequently, I am satisfied that the Council, and indeed other interested parties, have had a fair opportunity to comment during the course of the appeal. The new evidence has been accepted on this basis.
17. For the avoidance of doubt, whilst the new evidence has been accepted in general terms, any fundamental reliance on the amended plans, such as swept path analysis in relation to highway safety matters among other things, cannot be considered for reasons already given in relation to procedural prejudice.

Main Issues

18. The main issues are the effect of the proposal on:
 - (a) the character and appearance of the area;
 - (b) highway safety; and
 - (c) flood risk.

Reasons

Character and Appearance

19. The site is located at the Former Methodist Church on Macdonald Road, which is an area predominantly residential in nature comprising two storey dwellings. These are typically arranged in terraced rows with an appreciable set back from the street and consistent building lines. This arrangement creates a degree of openness at the street frontage and generally speaking the plot to building ratios in the area are spacious and of modest density.
20. The existing buildings at the site are also set back from the street, but to a more significant extent compared to adjacent dwellings. The main building is around the same height in comparison to adjacent dwellings, albeit an increase in levels makes it appear prominent in the street scene. The extent of the main building's set back creates a high degree of openness at the street frontage. Moreover, the site is also consistent with the prevailing pattern of development in that the existing plot to building ratio is spacious and of modest density.
21. The proposal would demolish the existing buildings at the site and deliver 14 no. apartments with parking, amenity space, cycle storage and associated works. The quantum of development proposed would result in an appreciable increase in the density of built form, which would erode the openness of the site and depart from the prevailing context of spacious and lower density plot to building ratios.

22. Other adverse effects can be readily identified through an assessment of the site plan. For example, the layout fails to demonstrate sufficient circulation for vehicles, which has implications for highway safety⁶. In addition, there is also a sub optimal arrangement of refuse collection areas with excessive and impractical distances between the bin store and the layup area.
23. Furthermore, there are clear pinch points between the perimeter of the buildings proposed and the site's boundary. These pinch points would erode the amenity space and openness around the buildings, creating a cramped appearance within the site itself, as well as in the context of relationships with neighbouring development.
24. For example, there is an awkward relationship between the two unit block to the north of the site and neighbouring dwelling, where I agree with the Council's assessment that it appears a contrived addition to the layout. These pinch points would also generate uncertainty about whether landscaping could be delivered in an effective manner, to soften the appearance of development and break up the expanse of car parking to achieve a well-balanced relationship between hard and soft areas within the site.
25. I acknowledge the consultation response from the Council's urban design officer, and the appellant's contentions about the general thrust of those comments in relation to height and roof forms among other things relating to the massing of the proposal. I also acknowledge comments about how the proposal positively evolved through the application process.
26. Whilst the appellant contends they did not receive these comments as part of the application I am nonetheless mindful that they have had a fair opportunity to respond as part of their final comments submission.
27. In this context, despite the Council's view, I agree with the appellant's arguments in relation the proposal's height and massing. In conjunction with changes in levels, the proposal would be consistent with the height of dwellings nearby and in conjunction with sensitive stepping and roof forms would not be altogether harmful in this particular aspect. This assessment would appear consistent with and reinforced by that of the urban design officer.
28. However, the urban design officer still held some residual concerns about the proposal's layout in relation to its building line, something the Council also maintains. In my view, the local context has broadly consistent building lines, and breaching the building line of neighbouring development⁷ would result in an incongruous relationship with the existing street scene.
29. The appellant contends the proposal follows the building line of the neighbouring dwellings in principle, however based on the evidence in front of me I cannot come to the same conclusion, because the southern extent of the main building would clearly extend beyond it.

⁶ Dealt with later in my decision.

⁷ Whilst accepting that separation distances in relation to living conditions of dwellings adjacent are not disputed by the Council.

30. Consequently, this aspect of the proposal further demonstrates that it would have an adverse effect on the street scene and would not be compatible with the character and appearance of the locality. Altogether, it has not been possible to achieve a layout that sits comfortably on the site and conforms with the prevailing context.
31. The area shows some variation in the character and appearance of dwellings, and this is generally in relation to the finer details of design, such as the use of traditional versus contemporary materials and architectural features. However, any compliance in this regard has not been determinative to the generality of the matters identified above.
32. Whilst the Council's statement may not provide detailed commentary on the appellant's statement, in particular the new evidence submitted as part of the appeal, I found the planning officer report provided sufficient detailed analysis of this main issue.
33. Overall, the proposal would harm the character and appearance of the area and conflict with Policies H3 and DE1 of the Coventry City Council Local Plan 2017 (the LP) and Paragraph 130 of the National Planning Policy Framework (the Framework). Among other things, these policies set out that new residential development must provide a high quality residential environment and are visually attractive as a result of good architecture, layout, and appropriate and effective landscaping.
34. Due to its statutory nature, and the cumulative adverse effects on the character and appearance of the area, harm derived from conflict with the development plan on this issue should carry significant weight. There are no material considerations indicating that this level of harm should be tempered in the planning balance.

Highway Safety

35. The site is located on Macdonald Road, and the immediate area has a history of accidents resulting in injury and fatality. I acknowledge that there is no identifiable trend to these accidents, but it is clear, at least in a general sense, that the immediate area is at increased risk.
36. The proposal would deliver 14 units of accommodation. The lack of swept path analysis pursuant to the original site plan determined as part of the application and subject to this appeal means it is not possible to determine that all of the parking spaces can be used safely. Or that refuse vehicles⁸ can safely access the bin store within the site.
37. For example, lack of manoeuvrability within the site could potentially result in vehicles being unable to enter or exit in a forward gear. This would be to the detriment of highway safety.
38. In addition to the above, I note that there is a bin layup area proposed at the site's frontage. It is not clear that this can be delivered without infringing upon the visibility splays associated with the access. Consequently, it is not clear that this would allow vehicles to safely enter and exit the site and would also be to the detriment of highway safety.

⁸ Including smaller private service vehicles.

39. I acknowledge that the proposal would not generate significant amounts of traffic. However, the prevailing context including the increased risk of accidents, in conjunction with multiple concerns over how vehicles can access and manoeuvre within the site, would create cumulative conditions that amount to an unacceptable impact on highway safety.
40. The Council refer to the use of study rooms as bedrooms, and potential implications for parking and highway safety. In the interests of clarity, I note from the evidence that this issue was overcome during the course of the application through a series of amendments⁹, moreover detailed floor plans were before the Council when making its decision.
41. Whilst I acknowledge that the bell mouth access appears disproportionate to the site, it is not clear what harm is derived from this arrangement in terms of highway safety, or that it should count against the proposal.
42. The highways department comment on the extent of footway provision at the site's frontage and there may be potential implications for pedestrian safety. However, this is not disputed by the Council in their statement, and it has not been necessary to engage with it in detail.
43. The Council cites Policy AC4 of the LP within its reason for refusal. Among other things, this policy relates to cycle provision. However, this matter appears to have been addressed as a result of amendments during the application, where the cycle storage area was moved to a more convenient location.
44. Overall, the proposal would harm highway safety and conflict with Policy AC2 of the LP and Paragraph 111 of the Framework. Among other things, these policies seek to manage unacceptable impacts on highway safety.
45. Due to its statutory nature, and the cumulative effects in relation to highway safety, harm derived from conflict with the development plan on this issue should carry significant weight. There are no material considerations indicating that this level of harm should be tempered in the planning balance.

Flood Risk

46. Neither the Council nor the Lead Local Flood Authority took the opportunity to comment on the new evidence addressing flood risk. Consequently, for all intents and purposes the new evidence is not contested under the appeal. My assessment has been structured accordingly.
47. The site is in Flood Zone 1, which is land having a less than 0.1% annual probability of river flooding. However, due to existing land levels, developing the site could increase the risk of surface water flooding. In this context, the site needs to deal appropriately with foul and surface water flows.
48. The new evidence clearly demonstrates that foul flows would be directed to a foul sewer within the highway. Enquiries with the sewerage provider for the area demonstrates that there is capacity within the existing system.

⁹ As explained in my extensive set of procedural matters

49. The new evidence also clearly demonstrates that surface water flows would drain through permeable paving and be attenuated before being directed to a surface water sewer within the highway.
50. The appellant sets out that it would be sufficient to deal with the critical 1 in 100 year (+40% climate change allowance) storm event without flooding and would discharge at the appropriate rate.
51. Altogether, the new evidence demonstrates that foul and surface water flows would be adequately dealt with, and implementation of the details could be secured by planning condition.
52. Therefore, whilst the Council and the Lead Local Flood Authority have concerns about flood risk due to the lack of information submitted with the application, in the absence of any counter analysis, it would appear the appellant has now suitably addressed these concerns as part of the appeal.
53. Overall, the proposal would not have a harmful effect on flood risk and would not conflict with Policies EM4 and EM5 of the LP or Paragraphs 163 and 167 of the Framework. Among other things, these policies require proposals to demonstrate that they would not increase flood risk elsewhere.
54. Compliance with the development plan on this main issue would result in a neutral effect in the planning balance and therefore is not determinative in deciding the appeal.

Other Matters

55. It is not necessary to make a finding on the UU because it is not in dispute and seeks to secure mitigation, in respect of play provision and open space. This is a neutral matter, as it mitigates an effect of the development and does not add a positive contribution that would make any difference to the consideration of the main issues, planning balance or outcome of the appeal.

Planning Balance

56. Whilst the proposal would comply with the development plan in relation to flood risk, it would conflict with the development plan in relation to character and appearance and highway safety. Therefore, the proposal would conflict with the development plan as a whole. The cumulative weight of adding the harm derived from these conflicts would be very significant.
57. I acknowledge the appellant's contentions surrounding the use of previously developed land and the principle of development¹⁰ pursuant to Paragraph 120(c) of the Framework, which sets out that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs.
58. However, I am also mindful that the proposal is for a modest amount of development that would make correspondingly modest use of the land and the socio-economic benefits, such as a contribution to housing land supply and construction jobs among other things, would not be significant.

¹⁰ Which is not disputed between the main parties

59. Therefore, the multiple instances and cumulative weight of the identified harm, which would be very significant, would outweigh the potential benefits of the proposal. As such, these material considerations would not justify deciding the appeal otherwise than in accordance with the development plan.

Conclusion

60. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR