



Appeal Decision

Site visit made on 16 November 2022

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal Ref: APP/Z2315/W/22/3302561

1 Magnesium Way, Hapton, Lancashire, BB12 7BF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of an outline planning permission.
 - The appeal is made by Mr Alex Kenwright of Monte Blackburn Ltd against the decision of Burnley Borough Council.
 - The application Ref REM/2021/0735, dated 3 December 2021, sought approval of all details pursuant to approval Ref VAR/2020/0159, granted on 27 August 2020.
 - The application was refused by notice dated 13 June 2022.
 - The development proposed is approval of all reserved matters under outline planning permission VAR/2020/0159 for three industrial/warehouse units (B2/B8).
 - The details for which approval is sought are appearance, layout, scale, landscaping and finer details of the access for three industrial/warehouse buildings in B2 and B8 use.
-

Decision

1. The appeal is dismissed, and the reserved matters are refused, namely in respect of appearance, layout, scale, landscaping and finer details of the access of planning permission Ref VAR/2020/0159 for three industrial/warehouse units (B2/B8).

Preliminary Matters

2. Reference is made by the appellant to an objection that was lodged to Policy EMP1/2 and the height restriction of 7 metres during the examination of the Burnley Local Plan (LP). Whatever discussions may have taken place at this time, it is an adopted policy in the LP which was used in the determination of the application subject to this appeal.

Background and Main Issue

3. Outline planning permission was approved Ref APP/2016/0401 for the redevelopment of the northern section of Burnley Bridge Business Park including details of access only. The development was to include industrial (B1c/B2/B8) and possible mixed use (A1) (convenience store), A3/A5 (hot/cold food sales eaten on/off premises) development with ancillary offices. A variation of condition 14 (Travel Masterplan), Ref VAR/2020/0159 for this site has also been approved.
4. The proposal seeks approval for the 'appearance, layout, scale, landscaping and finer details of the access for three industrial/warehouse buildings in B2 and B8 use'.
5. Based on the reasons for refusal the main issue is the effect of the proposal on the living conditions of the occupiers of dwellings that adjoin the site.

Reasons

6. The site, part of the Burnley Bridge Business Park, is accessed from a junction off the M65 motorway. The main route through the park, Magnesium Way, provides access to the existing metal clad units which are located on the southern part of the site.
7. Magnesium Way slopes downwards to the appeal site, which is the last part of the park to be developed. It is a roughly triangular area of land in the far corner of the site, which is bounded by residential housing on two sides, one of which is separated by Padiham Greenway, a wide footpath and cycleway.
8. The site has large areas of existing hardstanding, interspersed with small bushes and trees that have colonised the site. Adjacent to Padiham Greenway and to the rear of housing along King's Drive, are substantial earthen bunds which are grassed over with small trees and undergrowth.
9. The appeal site is listed, Ref EMP 1/2, as one of a number of employment allocations in the Burnley Local Plan (LP), July 2018. It is described as a brownfield site with outline permission and acceptable uses being B1 (b & c), B2 & B8. Policy EMP 1/2 lists four additional and site specific policy requirements and design principles. These include at item 1) that 'the scale and massing of any development on the northern section of the site should be single-storey units with a maximum ridge height of 7 metres in order to limit the impact of development on the surrounding residential properties', and; item 3) 'A landscaping scheme should be submitted which retains the existing bund on the northern boundary of the site and includes screen planting on the eastern boundary to restrict/reduce the impact of any development on the surrounding residential properties and wider landscape. New planting should accord with Policy NE3'. The other two requirements relate to the vehicular access and the need for a new or updated ecological survey with any planning application.
10. Of the three units proposed, the Council's officer report says that Policy EMP1/2 excludes units B and C as they are not in the northern part of the site, although no details or policy basis has been provided to support this opinion. Despite this, the decision notice refers to both Units A and B exceeding 7 metres in height, and that their siting would result in a visually dominant and overbearing form of development.
11. Although it has been agreed that the proposal would not accord with Policy EMP1/2, it has been termed a 'technical breach', resulting in a minimal conflict with policy which would be outweighed by the scheme's benefits. In this regard the appellants have argued that the combination of the siting of the buildings, the existing bund features and mature planting, and the proposed landscaping, would ensure that the development would be well integrated and not visually dominate.
12. The buildings proposed, listed as having a maximum ridge height of 12.81 metres for Unit A, 10.38 metres for Unit B and 6.96 metres for Unit C would result in three units within a relatively small area of the site, located close to large areas of residential development. Neither Units A or B are single storey, with Unit A appearing to have three rows of windows and Unit B two rows, with roof space above. Whilst the site has existing landscape bunds which are to be

- retained and enhanced with further tree planting and landscaping, the buildings would have a brooding presence over the adjoining housing.
13. Whilst the Council did not put a height limit on the outline permission in 2016, nor when VAR/202/0159 was permitted in 2020 when the LP was adopted, the site is allocated within the LP with specific requirements. It seems that the height limit was included in the policy because there were concerns about the impact of high units on this site so close to residential properties.
 14. It has been noted by all parties that the 7-metre height restriction does not take into account a range of other material considerations that could affect the living conditions of neighbouring residents including the topography of the site, the scale and design of the buildings, and the existing bunds and landscaping. However, Unit A would be closest to Kings Drive which is lower than the site. Despite the existing bund that is in place, finished floor levels being provided, and extra planting, the adjoining building would tower over the adjoining housing.
 15. Notwithstanding the planting proposed, Units A and B would be a visible presence, which would dominate the views of those living nearby to the buildings and would appear overbearing. Whilst it is generally the rear of properties that would be closest to these buildings, this is where private space in rear gardens should be enjoyed by the occupiers of these houses. Instead, the presence of such large buildings would feel oppressive. Whilst there are already existing buildings on the site, these are much further away from adjoining residential properties. The overall mass of the buildings, as a result of their height and scale, would appear dominant close to residential properties. This would seriously harm the living conditions of the residents of neighbouring dwellings.
 16. Not only is the 7-metre height limit exceeded for Units A and B, but this is by a considerable amount, and neither building is single storey. This would appear to be more than a technical breach. The policy and the height limit clearly state that it is 'to limit the impact of development on the surrounding residential properties.' This development fails to do that.
 17. Therefore, I consider that the proposal would cause substantial harm to the living conditions of the occupiers of dwellings that adjoin the site. The proposal would therefore not accord with LP Policy EMP 1/2. Furthermore, the proposal would fail to accord with LP Policy SP5 in so far as it seeks to ensure that the living conditions of neighbouring residents are acceptable.

Other Matters

18. The Council considered that the design and appearance, access and parking, landscaping, flood risk and drainage, air quality and ecology were acceptable subject to recommended conditions. However, as I am dismissing the appeal, there is no reason to consider these matters further.
19. Although the appellant has tried to site buildings so that they would shield the proposed yards from residential areas and provide landscape buffers to mitigate noise, create a visual barrier between the site and housing and provide wildlife corridors, this does not alter my concerns in relation to the overall harm that I have identified.

20. Whilst there are clear economic benefits of developing the site to achieve employment growth, and that there have been expressions of interest in the units, this does not alter my concerns in relation to the overall effect of the proposal on the living conditions of the occupiers of neighbouring dwellings.

Conclusion

21. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm and associated development plan conflict.

22. For the reasons given above I conclude that the appeal is dismissed.

M J Francis

INSPECTOR