



Appeal Decision

Site visit made on 17 May 2023

by **S Brook BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 July 2023

Appeal Ref: APP/Z2315/W/22/3313134

Land off Calder Vale Road, Calder Vale Road, Burnley BB11 1BS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr S Choudrey of Hubie Street Plumbing Warehouse against the decision of Burnley Borough Council.
 - The application Ref VAR/2022/0659, dated 7 November 2022, was refused by notice dated 6 December 2022.
 - The application sought planning permission for 'Proposed three storey building with valeting on ground floor and two bedroom apartment above and car sales (amended scheme to planning permission FUL/2019/0283 for two storey building) (partly retrospective application)' without complying with a condition attached to planning permission Ref FUL/2021/0126, dated 2 August 2022.
 - The condition in dispute is No 10 which states that: *"No later than six months following the date of this decision or prior to the first occupation of any part of the approved building (whichever is the sooner), the external walls of the approved building shall be cement rendered (in grey colour) and the roof replaced by natural slate and the elevational changes to fenestration by removal of various openings be carried out, in accordance with the approved plans. Details and/or representative samples of the natural slate to be used on the roof shall be submitted to and approved in writing by the Local Planning Authority prior to the removal of the existing roof tiles"*.
 - The reason given for the condition is: *"To ensure the improvements that have been identified on the amended plans submitted with this application are satisfactorily carried out in order to ensure a satisfactory appearance to the development and to minimise the visual impact of the development on the setting of adjacent listed buildings, in accordance with Policies SP5 and HE2 of Burnley's Local Plan (July 2018)"*.
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Decision

1. The appeal is allowed and planning permission is granted for proposed three storey building with valeting on ground floor and two bedroom apartment above and car sales (amended scheme to planning permission FUL/2019/0283 for two storey building) (partly retrospective application), at Land off Calder Vale Road, Calder Vale Road, Burnley BB11 1BS, in accordance with application Ref VAR/2022/0659 without compliance with condition number 10 previously imposed on planning permission Ref FUL/2021/0126, dated 2 August 2022, but subject to the conditions in the attached schedule.

Main Issue

2. The main issue is the effect removing condition 10 would have upon the character and appearance of the area, including the setting of listed buildings.

Reasons

3. The appeal scheme lies within a built up, mixed commercial and industrial area. Surrounding buildings vary considerably in age, design and materials, and are interspersed with surface car parking. Older buildings and structures are made of sandstone, brick or a combination of both, such as the Grade II listed railway viaduct which lies to the north of the site, and the Mill Chimney and attached Engine House west of Junction with Calder Vale Road, also Grade II listed. More recently constructed buildings include different types of cladding or sheeting, buff brick, and re-constituted stone.
4. The listed railway viaduct is an imposing feature within this urban landscape, with a significant height and span. Its significance derives from both the architectural and structural quality of its construction and the information it provides on the history of the railway and industrial development in the 19th century. Its setting is extensive, providing an appreciation of its size and span. Due to its height, the mill chimney is also a significant feature in the landscape. The significance of the mill chimney and engine house also derives from the architectural and structural quality of their construction, relaying a similar message of industrial development in the 19th century. I have paid special attention to the desirability of preserving the setting of these buildings, as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
5. Condition 10 secures implementation of the materials and fenestration on the approved plans, within a specified timescale. These materials are cement render to the walls and natural slate to the roof. As built, the roof is tiled, and the external walls are finished in re-constituted stone. The condition would secure the removal of various openings also that do not accord with the approved plans, double doors at first floor to the south elevation and three windows at ground and first floor to the west elevation.
6. Given the wide variety of materials present in this locality, I do not consider that those already used in the development are particularly harmful to the character and appearance of the area, including to the setting of the listed buildings. Re-constituted stone has been used at The Range, a retail unit opposite the site, the external walls of which extend very close to the mill chimney and the viaduct and form an established part of their setting. I also observed that a building adjacent to the listed engine house has a tiled roof. I accept that when viewed from the south, with the backdrop of the viaduct, that the newness and cleanliness of the reconstituted stone contrasts somewhat with the older sandstone, however, this contrast will reduce over time as the material weathers.
7. With regards to the additional fenestration to the west and south facing elevations, whilst greater in number, the additional openings are not inconsistent in style with those openings already approved as part of the development and would not be detrimental to the appearance of the building overall.
8. For these reasons, I do not consider that removing the condition would have a harmful impact on the character and appearance of the area or on the significance of the heritage assets derived from their setting. As such, its removal would not conflict with Policies SP5 and HE2 of the Burnley Local Plan (July 2018), which collectively and amongst other matters, seek to ensure a

high standard of design and construction, including the use of materials that are appropriate to the local context, and development that maintains any aspect of the setting of a heritage asset that adds to its significance.

Conditions

9. In allowing the appeal and granting a new planning permission, I have re-imposed all the undisputed conditions from planning permission Ref FUL/2021/0126 as there is no information before me to suggest it is necessary to deviate from them. However, I note that without condition 10, the development as constructed will not accord with the approved plans, as required by condition 2. The appeal has been made in respect of condition 10 only and whilst section 73 of the Act does provide the power to modify other conditions attached to the original permission, the appeal scheme did not include revised plans. As such, this will be a matter for the main parties to resolve separately.

Conclusion

10. For the reasons given above, I conclude that the appeal should be allowed and planning permission is granted without the disputed condition but retaining those non-disputed conditions from the previous permission that appear still to be relevant.

S Brook

INSPECTOR

Schedule of Conditions

- 1) The development to which this permission relates must be begun not later than the expiration of three years from the 2 August 2022.
- 2) The development permitted shall be constructed in complete accordance with the specifications in the application and the following approved plans: CHOUD/07Dwg00 Location Plan, CHOUD/07Dwg04 Proposed Site Plan and CHOUD/07Dwg03B Proposed plans and elevations.
- 3) No part of the approved building or site shall be first brought into use or occupied until a scheme for the disposal of foul and surface water has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter only proceed in accordance with the approved scheme and be completed prior to the first occupation of the building and/or first use of the site (whichever is the sooner).
- 4) The development shall be carried out, constructed and monitored in accordance with the recommendations of the submitted Geoenvironmental Site Investigation report (prepared by Harrison Group Environmental Limited, reference GN23837_SI, dated November 2020). A Verification report to demonstrate compliance with the recommendations of the report shall be submitted to and approved in writing by the Local Planning Authority prior to the first occupation of the approved flat.

- 5) Prior to the first occupation of the approved building, the following shall be carried out, submitted to and approved in writing by the Local Planning Authority:-
 - i) a scheme of intrusive site investigations, designed by a competent person and adequate to properly assess the ground conditions on the site and establish the risks posed to the development by past coal mining activity;
 - ii) a report of findings arising from the intrusive site investigations and any remedial works and/or mitigation measures considered necessary.The development shall thereafter only be implemented and completed in accordance the remedial works and/or mitigation measures contained within the approved report(s).
- 6) Any gates and their associated mechanisms at the site shall be wholly within the application site and shall not encroach on the adjacent highway. Prior to any part of the site being first brought into use, any gates shall be fitted with restraints to prevent gates from opening outwardly over the adjacent highway.
- 7) Prior to any part of the site being first brought into use, the car parking spaces and manoeuvring areas shall be marked out and appropriately signed in accordance with the approved drawing number CHOUD/07Dwg04 which shall be maintained and operated at all times in the future in accordance with this approved layout.
- 8) There shall not at any time be more than 19no. vehicles for sale on the site.
- 9) The approved residential flat shall be occupied only by a person and the dependents of such a person who is a manager, employee or associate of the business associated with the main use of the site for car sales and associated car valeting.