



Appeal Decision

Hearing held on 30 May 2023

Site visit made on 30 May 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st August 2023

Appeal Ref: APP/W4223/W/22/3311822

Land adjacent to Maltby Court, Lees, Oldham OL4 5EB

- 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 Mr Mark Sexton (Wiggett Construction Ltd) against the decision of Oldham Metropolitan Borough Council.
 - The application Ref FUL/347294/21, dated 14 July 2021, was refused by notice dated 12 July 2022.
 - The development proposed is the construction of 40 residential properties with associated access, landscaping and ancillary works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development was revised during consideration of the appeal application. This provides a more precise description of the appeal proposal and I have therefore utilised this revised description in this decision.
3. It was confirmed at the hearing that a number of plans which were not listed on the Council's decision notice were considered by the Council and did form part of the determination. This included drawing nos: 1268-P-104 Rev C and 1268-P-105 Rev A. I have considered the appeal on the basis of the submitted plans considered by the Council.

Main Issues

4. Based on the evidence before me and discussions at the Hearing, I consider the main issues are:
 - whether the development accords with local policy and national guidance with regard to its effects on the locally designated 'Other Protected Open Land', with particular regard to the character and appearance of the area; and,
 - the effect of the proposed development on open space provision.

Reasons

Character and Appearance

5. The appeal site is a broadly rectangular shaped parcel of land accessed off the cul-de-sac, Maltby Court. The site comprises of a naturally vegetated area of grassland that has a generally flat topography. Beyond the site to the north, west and south, the land falls away steeply, which provide for wide-ranging

views of green, undeveloped areas of land that contain trees and mature vegetation. Within this wider semi-rural landscape, the proximity of the site to the urban area of Lees, forms a key part of the sites character in this urban fringe location.

6. The appeal site forms part of the 'Other Protected Open Land' designation (OPOL) which are locally protected areas on which Policy 22 of the Joint Core Strategy and Development Management Policies Development Plan Document (Joint DPD) states development will be permitted where it is appropriate, small-scale or ancillary development located close to existing buildings within the OPOL. This is provided development does not affect the openness, local distinctiveness or visual amenity of the OPOL.
7. The proposed development would replace an area of open space with 40 dwellings. It would not be small-scale or ancillary development located close to existing buildings within the OPOL and it would inevitably lead to a reduction in the openness of the site, particularly in certain views such as from residential properties on Maltby Close.
8. I acknowledge that in terms of topography, the site has a close relationship with the built-up area to the east. The development would however create a hard edge on a plateau that is currently an open grassland area. The Landscape and Visual Impact Briefing Notes (LVIBN)¹ submitted by the appellant acknowledges that there will be a low – medium adverse impact, even with mitigation such as the proposed landscaping that would soften site boundaries.
9. I note the respective views of both main parties of the OPOL that the appeal site forms part of, when assessed against the Local Green Space (LGS) criteria, including the National Planning Policy Framework (Framework) stating that it should not be applied to extensive tracts of land. Notwithstanding this, it is evident that the proposal would result in a spatial and visual intrusion onto this OPOL area. Despite the appeal site forming a small part of the OPOL 11 designation, the development of 40 dwellings and associated infrastructure would cause a harmful visual intrusion to the green, undeveloped character of the appeal site.
10. I therefore conclude that the appeal development would not accord with local policy and national guidance with regards to its effect on the OPOL designation and it would be significantly harmful to the character and appearance of the area. As such, it would be contrary to Policy 22 of the Joint DPD, which seeks, amongst other matters, to preserve the distinctiveness of an area. Although not referenced in the decision notice, the appeal development would also be contrary to Policy 20 of the Joint DPD, which seeks high quality design that reflects the character and distinctiveness of local areas, and Paragraph's 120, 130 and 174 of the Framework, which state that decisions should recognise that some undeveloped land can perform many functions, be sympathetic to local character and recognise the intrinsic character and beauty of the countryside.

¹ Trevor Bridge Associates Ltd, October 2021

Open Space

11. Policy 23 of the Joint DPD seeks to protect, promote and enhance existing open space in the borough. The appeal site forms part of an area that is identified as natural and semi natural open space. Policy 23 only permits development on open space in certain circumstances. This includes where it can be demonstrated that the development would bring substantial benefits to the community that would outweigh the harm resulting from the loss of open space, and it would satisfy one or more other criteria.
12. The appellant has set out improvements that would be made to an area around the appeal site, including new footpaths amongst other measures that would result in accessibility benefits and a biodiversity net gain. A completed section 106 agreement has been provided and whilst this would undoubtedly bring improvements to an existing area of open space, the appeal development is not a proposal for a new outdoor or indoor sport or recreation facility, and it would not therefore be compliant with part e. of Policy 23 of the Joint DPD.
13. Part's g, h and i. of the Joint DPD Policy 23 allow for an equivalent replacement facility and/or an agreed contribution for the improvement of existing open space or outdoor sport and recreation facilities. Whilst the section 106 agreement would require a Landscape Management Plan to be submitted to the Council for approval, which could also address how changes in levels around the appeal site would be addressed, the Council have raised concerns in relation to deliverability. Based on the submitted details, some of the measures, such as the new footpath link to the north and south are on land outside the appellant's ownership. Furthermore, the appeal site is located in an area where there are deficiencies for parks and gardens, provision for children and young people and amenity greenspace and it is also not clear from the submitted information how the proposal would address these deficiencies.
14. The development has demonstrated that it is unable to contribute, for viability reasons, to the provision of new or enhanced open space that is required by Policy 23 of the Joint DPD for all residential developments. However, the landscaping proposals and the opening up of private land for recreational use and landscaping would also not bring about improved public access to the wider area as has been put forward by the appellant. The development would not therefore bring substantial benefits to the community as required by Policy 23 of the Joint DPD.
15. I therefore conclude that the proposed development would have a harmful effect on open space provision. As such, it would conflict with Policy 23 of the Joint DPD, which seeks, amongst other matters, the protection, promotion and enhancement of existing open space in the Borough.

Other Considerations

16. It is common ground that the Council is unable to demonstrate a 5 year housing land supply, with the main parties referencing a 4.4 year supply of deliverable housing land against the standard methodology requirements. Footnote 8 paragraph 11 d. ii of the Framework is therefore engaged.
17. The Council has made reference to the emerging Places for Everyone plan that will form part of the development plan upon adoption. Although the preparation of this plan has progressed, and the Framework at paragraph 48 sets out that

weight may be given to relevant policies in emerging plans, paragraph 74 of the Framework clarifies that this 5 year housing land supply should be calculated against the housing requirement set out in the adopted strategic policies or against the local housing need where the strategic policies are more than five years old.

18. The provision of 40 dwellings, including a contribution to affordable housing would gain support from the Framework that seeks to significantly boost the supply of homes to meet the needs of different groups. The development would be undertaken by the appellant company that has a consistent track record of delivery. Although the Council has stated that housing delivery is increasing in the Borough, the Housing Delivery Test performance at 91% requires an action plan to be prepared to assess the cause of under delivery and identify actions to increase delivery in future years. I therefore consider that these matters should attract significant weight in the proposal's favour.
19. The proposal would provide a new wildlife habitat and an overall biodiversity net gain above the level required by national and local policy. This includes improving the grassland, planting trees and removal of invasive species. Given that biodiversity improvements could be implemented without the housing proposed, I attribute this moderate weight in the scheme's favour.
20. The proposed development would provide landscaping, footpaths, and a bridge that would improve accessibility to what is currently private land and make it available for recreation use. However, as explained above, the full benefits of this scheme are dependent on a wider access network, and it is not clear how these would be delivered on land outside the appellant's control. Nevertheless, the proposal would provide public access to land for recreational use and I therefore attribute moderate weight to this benefit.
21. The proposal would deliver economic benefits with an estimated investment of £8.5 million in construction, with the majority of expenditure on subcontractors and suppliers in the local area, as well as a New Homes Bonus payment. I consider these benefits carry moderate weight in the scheme's favour. The scheme would also generate Council Tax revenue, but this would cover the needs of the development's residents and I do not consider that economic benefits would arise from it.
22. The social benefits of providing apprentices and students placement opportunities also weigh in favour of the development. As these benefits could arise from any similar housing development, they carry moderate weight in the scheme's favour.

Other Matters

23. The appellant has made reference to another site that forms part of the OPOL designation that was granted approval for the construction of 42 no. dwellings and has stated the Council is not applying a consistent approach to decision-making. Although there are clearly similarities with this appeal development, there are also a number of differences, as set out by the appellant. Whilst consistency in decision-making is important, it is also necessary for each appeal to be considered on its own merits, which I can confirm that I have done in this case.

24. The development would be acceptable in relation to highway safety and there would be no harmful impacts arising from flood risk or ground conditions. The density, layout and the materials of the development would be acceptable, as would the effect on living conditions. A lack of harm in these areas, and the lack of objections from a number of consultees are neutral matters and do not weigh in favour of the proposal.

Planning Obligation

25. A completed Section 106 agreement was submitted before the Hearing which would provide an affordable housing contribution and public open space. However, as I have found harm in relation to the main issues, it is not necessary for me to consider this further.

Planning Balance and Conclusion

26. The appellant has set out that Policy 22 of the Joint DPD does not accord with the Framework and should be considered out-of-date. I accept that the Framework does not make reference to the OPOL designation, which is distinct from the LGS designation which the Framework states should be designated through local and neighbourhood plans. This is accepted by the Council in the Other Protected Open Land Interim Planning Paper.
27. The Framework sets out at Paragraphs 130 and 174 the need for development to be sympathetic to local character and to contribute to the enhancement of the natural and local environment by recognising the intrinsic character and beauty of the countryside. It also states at Paragraph 120 that undeveloped land can perform many functions, and, in this respect, I consider that this can include the OPOL's aims of preserving the distinctiveness of an area. I therefore consider Policy 22 of the Joint DPD is consistent with the Framework and should carry full weight.
28. The proposal would deliver 40 dwellings and make a financial contribution to affordable housing. Given the current shortfall and under delivery, significant weight should be afforded to these benefits. The landscaping and access to open space areas as well as the biodiversity improvements would moderately weigh in favour of the proposal. The economic benefits should also be afforded moderate weight for the reasons set out, as should the social benefits relating to apprentice and student placements.
29. Set against the benefits outlined above would be the significant harm to the character and appearance of the area, including in relation to the OPOL designation. The proposal would also have a harmful effect on open space provision. This harm would be long lasting and is a matter I attribute substantial weight to. These adverse impacts would significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies in the Framework taken as a whole.
30. 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 should be dismissed.

F Rafiq

INSPECTOR