



Appeal Decision

Site visit made on 14 September 2023

by R Morgan BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 October 2023

Appeal Ref: APP/N4205/W/23/3314031

Land to the Rear of Roka Restaurant, 122 Bradshaw Brow, Bolton BL2 3DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Amjad Khan of Avantgarde against the decision of Bolton Metropolitan Borough Council.
 - The application Ref 08141/20, dated 23 March 2020, was refused by notice dated 18 November 2022.
 - The development proposed is residential development consisting of 17 apartments with associated car parking.
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Decision

1. The appeal is allowed and planning permission is granted for erection of 17no. two bed apartments together with other associated works including landscaping and 22no. car parking spaces at Land at Rear of Roka Restaurant, 122 Bradshaw Brow, Bolton BL2 3DD in accordance with the terms of the application, Ref 08141/20, dated 23 March 2020, subject to the conditions on the attached schedule.

Applications for costs

2. An application for costs was made by Mr Amjad Khan of Avantgarde against Bolton Metropolitan Borough Council. That application is the subject of a separate Decision.

Preliminary Matters

3. In the decision above, I have taken the description of development which appears on the decision notice and appeal form, which describe the proposal more fully than that used in the original application form.

Main Issue

4. The main issue is whether the proposal satisfies policy requirements for provision of, or contributions towards, the cost of the physical, social and green infrastructure.

Reasons

5. Policy IPC1 of Bolton's Core Strategy Development Plan Document 2011 (Core Strategy) seeks to ensure that new development provides for the additional requirements for infrastructure, services and facilities that arise from it. This includes, amongst other things, provision for affordable housing, open space and education.

6. The proposed two/three storey apartment block would be constructed on the site of what was once a bowling green associated with the Royal Oak public house. The former pub is now operating as the Roka Restaurant, and the bowling green, which is located to the rear, has been unused for more than a decade.
7. The appeal apartment building and associated parking would occupy the majority of the site, and scheme makes no provision for on-site open space. No affordable units are proposed either. The Council has indicated that to meet policy requirements for a residential development of this size, financial contributions would be required in lieu of affordable housing and open space/play, as well as a contribution towards primary and secondary education. In addition, a contribution is sought towards the cost of adjusting the timing of traffic light signals at the adjacent road junction. I deal with the highways contribution later.
8. The appellant has not disputed the need for these contributions, but asserts that the financial sums sought would render the scheme unviable.
9. A Viability Assessment Statement (VAS) was provided by the appellants in September 2020. The Council commissioned Dixon Searle Partnership (DSP) to independently review the document on its behalf. DSP concluded that the scheme could support a reduced level of contributions, plus the highways contribution, whilst providing an allowance for 15.7% profit. This level of return, which the appellant had indicated was acceptable, is within the 15-20% range which is suggested as being a suitable within the Planning Practice Guidance¹ (PPG).
10. In February 2021, the Council's Planning Committee resolved to grant planning permission for the scheme subject to a signed planning obligation (section 106 agreement) to secure the required contributions, at the reduced level which DSP found that the development could support. However, the agreement was never signed, and further information on costs was submitted by the appellant. In August 2022, an updated appraisal was provided which was again reviewed by DSP.
11. The reviewers found that, when an appropriate benchmark land value was taken into account, a profit level of around 5.7% of Gross Development Value would be achieved, without any of the contributions sought. This level of profit would be well below the range indicated as being suitable within the PPG, and would be further eroded if any additional contributions were sought.
12. On the basis of the 2022 appraisal, DSP agreed with the appellant that the scheme would fail to generate sufficient surplus to support affordable housing and other contributions. Having reviewed both of DSP's reports and considered their findings, I have no reason to take a different view. The Council has not sought to question DSP's conclusions, and there is no suggestion the findings are flawed. The change in circumstances between early 2021, when it was found that the scheme could support contributions of around £150,000, and the position in autumn 2022, appears to be primarily due to recent increases in build costs. The recent significant rise in the cost of materials is widely recognised, and I note DSP's comment that the base build cost included in the 2022 appraisal is lower than the rates suggested by the Building Costs

¹ Paragraph 018 Reference ID: 10-018-20190509

Information Service. If anything, therefore, the costs could be higher than suggested.

13. According to the DSP's analysis, the expected profit level is very low, and the appellant may well seek to increase the level of return through cost saving measures. As highlighted in DSP's conclusions, a different scheme may be more or less viable, but there is nothing in Policy IPC1 which requires the appellant to come up with a revised scheme which is capable of supporting a particular level of contributions. Rather, the policy wording indicates that the requirements for infrastructure contributions will not apply if it can be demonstrated that the scheme would not be viable if such contributions were sought. In this case, the advice provided to the Council has clearly concluded that this would be the case. The exception set out in Policy IPC1 is therefore met, and nothing further is required.
14. In coming to this view, I have had regard to the approach to the viability of development proposals set out in the National Planning Policy Framework (the Framework) and Planning Practice Guidance (PPG), which make clear that the role for viability assessment is primarily at the plan making stage. In this case, the development plan policies, and any viability assessment which may have underpinned them, are now some years old, but Policy IPC1 does allow for assessment of viability at the application stage. Given this, I have given significant weight to the viability assessment, and DSP's conclusions on it, in this appeal.
15. The Council has suggested that, if the proposal were otherwise acceptable, viability should be reassessed at 75% occupancy. I acknowledge that the viability of the scheme would be affected by a range of wider economic factors and would inevitably change over time. However, there is no policy requirement to re-test viability, and I find that such a clawback clause would not be necessary to make the development acceptable in planning terms. In coming to this view, I have taken account of the modest scale of the scheme and the findings of DSP that even without the requested contributions, the scheme would not be considered proceedable by typical measures.
16. I conclude that, in light of the evidence on viability and the conclusions of DSP, policy requirements for contributions towards the cost of the physical, social and green infrastructure should not be applied in this case. The proposal is consistent with Core Strategy Policy IPC1, which indicates that contributions for infrastructure provision will not be required where it has been demonstrated that the contributions would render the scheme unviable.
17. The Council has also referred to Core Strategy Policy A1.4, which requires that new developments make appropriate contributions to meet the educational and training needs they generate, and Policy SC1.3 regarding affordable housing provision. The Core Strategy should be read as a whole, so given that the proposal satisfies the approach to developer contributions set out in Policy IPC1 and the associated SPD, it follows that the requirements of Policies A1.4 and SC1.3 do not apply either. I have identified no conflict with the detailed guidance provided in the Infrastructure and Planning Contributions Supplementary Development Document 2016 (SPD), or the Affordable Housing SPD 2013.

Other Matters

Other Issues

18. The proposed 17 two bedroomed apartments would make a positive contribution towards meeting local housing needs, in an area with an acknowledged shortfall of housing land. This is a benefit of the scheme to which I give significant weight.
19. Although it does not fall under the Framework definition of previously developed land, the site is within an existing urban area and would not involve any incursion into the countryside. Whilst there may well be many brownfield sites which could be developed for housing in the area, that in itself does not preclude development on suitable greenfield sites, and I note that the principle of residential development on this site has previously been established².
20. The location is reasonably accessible to a range of local services and facilities, by a range of transport modes including walking. Whilst there would be no on-site provision of open space, the site is immediately adjacent to Longsight Park with direct access through a gap in the existing wall, so future residents would have access to open space and recreation facilities.
21. The rear gardens of residential properties at 37-43 Timberbottom back onto the site. The proposal would result in a new building at the back of these properties where currently there is none, but the distance between the proposed building and the existing dwellings would be sufficient so as to avoid any harmful loss of privacy. Existing trees along the boundary which are to be retained would continue to provide screening, and would be augmented by the proposed additional planting.
22. There is no reason to suppose that future occupiers of the apartments would be particularly noisy. There could be some noise and disturbance during the construction phase, but this would be for a temporary period and could be minimised through adherence to a Construction Management Plan.
23. Overall, I am satisfied that the proposed building could be satisfactorily accommodated on the site without causing harm to the living conditions of neighbouring occupiers.

Highways contribution

24. Access to the proposed apartments would be through the existing restaurant car park, which is located within the signalised junction of Bradshaw Brow, Jethro Street and Turton Road. The junction is busy, and, due to the alignment of the various roads, somewhat awkward. To enable vehicles to leave the restaurant car park safely, a dedicated traffic signal has been installed. Transport for Greater Manchester (TfGM) has commented that the timing of the car park traffic signal, which goes green at the same time as the Jethro Street light, is somewhat confusing and a road safety risk.
25. It is quite unusual to have a traffic light for a such a small site, and drivers exiting the site when the light is green may not anticipate the need to give way. Similarly, drivers turning left out of Jethro Street may not expect to encounter traffic leaving the appeal site. Although the additional traffic which

² Planning application ref 01824/17

the proposal would generate would be low in number, given the somewhat complex nature of this busy junction, I agree that the suggested modification to the staging of the lights is necessary to avoid risks to road safety.

26. The change to the traffic signal staging is necessary to make the development acceptable in planning terms, but I have found that the proposal could not support additional financial contributions. However, the requested contribution of £3,500 plus VAT is a very modest amount in the context of the scheme as a whole, and the appellant has indicated that if it is necessary, it could be secured through a s278 agreement. I have therefore proceeded on this basis.

Access and parking

27. The proposal would create additional vehicle movements, but the number would be small. The highways officer has commented that the traffic volumes over and above that previously approved would be negligible, and that it would pose limited road safety implications. I am satisfied that the additional traffic could be safely accommodated on the existing network.
28. A number of residents have commented that it is difficult for pedestrians to cross at the junction. I appreciate that this situation is far from ideal, but the problem appears to be associated with the existing volume of traffic passing through the junction. The additional vehicle numbers that would be associated with the scheme would be low, and would make very little difference to the overall volume of traffic. It would be unreasonable to require the scheme to remedy an existing problem.
29. The submitted plan shows that 22 parking spaces would be provided for the development, which would be less than the 2 spaces per unit suggested in the Council's parking standard. I note concerns that insufficient parking on both the site and at the restaurant could lead to problems at the junction and inappropriate parking nearby. However, the site is accessible to nearby services and shops, so a level of parking below the maximum standard would be acceptable here. Furthermore, given the nature of the development, which would comprise of modest sized two bedroomed flats, it is unlikely that all of the occupiers would have two cars.
30. The Council has indicated that the level of parking proposed for the restaurant has previously been accepted, and there is no indication that the loss of parking would be detrimental to the business. The appellant has provided information to show that a refuse vehicle could access the site and exit in a forward gear. Overall, I find the proposed parking and access arrangements acceptable.

Trees and ecology

31. The submitted Arboricultural Impact Assessment indicates that 12 trees and a group of mixed trees on the site would be removed to make way for the proposed development. Most, although not all, of the trees to be removed have been assessed in the tree survey as being in poor condition. Eight trees would be retained, four of which would be pruned. Measures to protect the remaining trees, and avoid damage to the trees around the boundary, are set out in the Arboricultural Method Statement. The Council's Tree Officer has identified some areas where further details of protection measures would be required, which I agree are necessary. These details can be secured by a condition.

32. Replacement trees would be planted to mitigate for the losses that would result from the development. The Council's Tree Officer has not objected to the loss of trees, and I am satisfied that, with appropriate planting to augment the retained trees, the wooded character of the site would be preserved. Further detail on the number, location and type of replacement planting would be required, but this could be secured through an appropriate condition.
33. The appeal site has become overgrown since its use as a bowling green ceased, and I note comments that it is used by a variety of birds and animals. A Phase I Habitat Survey of the site was carried out in June 2020, and the findings included in the submitted Preliminary Ecological Appraisal (PEA). This survey is now somewhat dated, but the findings of the 2020 PEA were similar to those of an earlier ecology survey undertaken in 2017, indicating that the situation had not significantly changed in that period. Subject to adherence to the recommendations set out in the PEA in relation to bats, reptiles, birds and Himalayan Balsam, I am satisfied that the development would not cause harm to protected species.
34. I acknowledge that development of the site would result in a loss of a small area which has become naturalised. However, any harm to biodiversity would be small, and would be outweighed by the benefits of the scheme in terms of its contribution to meeting housing needs in this area.

Conditions

35. In addition to the standard implementation and plans conditions, a condition requiring the implementation of tree protection measures detailed in the Arboricultural Impact Assessment and Method Statement is needed to protect biodiversity and the character of the area. The Council's tree officer has identified the need for the submission of additional details of geosystems to protect the trees identified as T6 and T10. I agree that these measures are required before development begins, and have imposed a pre-commencement condition to that effect.
36. A condition requiring details of surface water drainage works to be submitted and subsequently implemented is required to protect water quality and avoid flooding. To improve clarity, I have removed the unspecific reference to the Framework and instead made reference to Defra's non-statutory technical standards for sustainable drainage systems.
37. A condition requiring a further assessment of any risks associated with contamination is necessary to protect health and environmental quality. I have made minor wording changes in the interests of clarity and precision, and added a clause detailing the steps to be taken in the event that contamination be found during the course of development that had not previously been identified. For similar reasons, a further condition requiring the testing of any soil or soil forming materials brought onto the site is necessary.
38. I have imposed a pre-commencement condition requiring the submission of, and adherence to, a Construction Management Plan, which is necessary in the interests of highway safety and to protect the living conditions of nearby residents.
39. The submitted PEA notes that the presence of reptiles on the site was unlikely, given their rarity in Greater Manchester, but as there are historic records of

these animals in the vicinity, and potentially suitable habitat for them on the site, could not be discounted. As an absolute precaution, the authors recommended a presence/absence survey be undertaken prior to the commencement of development.

40. The presence or absence of protected species should normally be established prior to determination, in accordance with Circular 06/2005. However, given the circumstances of the case, in which the presence of reptiles is unlikely, I consider the approach proposed to be proportionate and acceptable in this instance. In coming to this view I note that the Council's Greenspace team advised that no further survey information was required prior to determination.
41. The presence of Himalayan Balsam is noted in the submitted PEA, which notes that eradication of this highly invasive non-native species from the site would be virtually impossible. The PEA therefore sets out recommendations for its control and management. I am satisfied that the measures set out in the PEA would be adequate and the suggested pre-commencement condition unnecessary. Instead, to safeguard the natural environment and protect biodiversity, I have imposed a condition which requires adherence to the recommendations of the PEA, which also include measures to avoid disturbance to nesting birds. A condition requiring adherence to the recommendations of the approved Dusk Survey Results in Relation to Bats is necessary to ensure that the development would not cause harm to protected species.
42. Conditions requiring approval of external materials, and the specification of doors and windows, are necessary to ensure the development is of a satisfactory appearance which respects the character of the area. In order to provide a satisfactory standard of accommodation for future occupiers, a condition requiring acoustic glazing is reasonable.
43. A condition requiring the submission and implementation of a landscaping scheme which provides for replacement tree planting is required to preserve the wooded character of the area and safeguard biodiversity.
44. Conditions requiring construction of the access road and marking out of car parking spaces, as set out on the approved drawings, are necessary in the interests of highway safety. For a similar reason, I have imposed a condition requiring an agreement to have been entered into for the modification to the staging of the traffic signals, and the work completed prior to first occupation.
45. The Council has suggested a further condition requiring the approval of details of highway works at Bradshaw Brow, including junction markings and linings. However, the submitted plans do not show any such works to the existing junction, and it is unclear why the suggested condition is necessary. I have therefore not imposed it.
46. The Council has suggested the imposition of a Grampian style condition requiring that before the proposed apartments are occupied, the developer undertakes improvements to the stone steps leading from Bradshaw Brow to Longsight Park, just outside the boundary of the appeal site. I agree that the steps would benefit from improvement, and note that the appellant has previously agreed to undertake this work. Such an undertaking would no doubt be welcome, but the requirement to improve land outside of the site and appellant's ownership, which is not necessary for the development to go ahead,

would not meet the requirements for conditions set out in Framework paragraph 56. I have therefore not imposed the suggested condition.

Conclusion

47. Despite the lack of contributions for affordable housing, open space and education, I have found that the proposal would accord with the development plan and national planning policy. The appeal is therefore allowed subject to the conditions set out below.

R. Morgan

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan submitted with the application
 - PL K882/01 Rev B - Proposed Site Plan
 - PL K882/02 - Proposed Ground and First Floor Plan
 - PL K882/03 - Proposed Second Floor & Roof Plan
 - PL K882/04 - Proposed Elevations A & B
 - PL K882/05 - Proposed Elevations C & D
 - PL K882/08 - Proposed Site Sections
 - Arboricultural Impact Assessment and Method Statement (RLTC ref AIAAMSROKO140620) and associated Tree Protection Plan
 - Preliminary Ecological Appraisal – Pennine Ecological June 2020
 - Dusk Survey Results in Relation to Bats – Pennine Ecological July 2020
- 3) No demolition, development or stripping of soil shall be started until all the trees identified in the Arboricultural Method Statement and Tree Protection Plan as "to be retained", and the trees whose canopies overhang the site, have been surrounded by fences of a type shown at Appendix A of the approved Arboricultural Impact Assessment and Method Statement and in the location as shown on the approved Tree Protection Plan. The approved fencing shall remain in the agreed location (in accordance with BS 5837:2012) until the development is completed or unless otherwise agreed in writing with the Local Planning Authority. There shall be no work, including the storage of materials, or placing of site cabins, within the fenced areas.
- 4) Prior to the commencement of development, an Arboricultural Method Statement shall be submitted to the local planning authority setting out measures for the protection of the following trees:
 - T6 Lime – geosystem required for the road,
 - T10 Red Oak – geosystem required for parking bays and paths.No development or site clearance shall take place until the local planning authority has agreed the method statement in writing. The development shall be carried out in accordance with the approved details.

- 5) Prior to the commencement of any groundworks, full details of surface water drainage works shall be submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out to investigate the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority.

Where a sustainable drainage system is to be provided, the submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters.
- ii) include a timetable for its implementation, and
- iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime

The approved works shall be implemented in full in accordance with the agreed timetable and thereafter managed and maintained in accordance with the agreed management and maintenance plan.

- 6) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority.

If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.

- 7) Prior to the commencement of development, including groundworks or vegetation clearance, a Construction Management Plan (CMP) shall be submitted to and approved in writing by the local planning authority. The CMP shall include the following details:
- i) delivery and construction working hours,

- ii) details of precautions to guard against the deposit of mud and substances on the public highway, including vehicle washing facilities,
- iii) dust and noise suppression measures,
- iv) compound locations together with details of the storage facilities for any plant and materials including off-site consolidation if appropriate; the siting of any site huts and other temporary structures, including site hoardings and details of the proposed security arrangements for the site,
- v) parking of vehicles associated with construction, deliveries, site personnel, operatives and visitors,
- vi) sheeting over of construction vehicles.

The approved CMP shall be adhered to throughout the construction period for the development.

- 8) Prior to the commencement of development, a reptile survey shall be undertaken by an agreed expert to determine the presence or absence of protected species. Should reptiles be found, details of appropriate mitigation measures and contingency plans shall be submitted to the local planning authority for written approval, and the measures and plans shall be fully implemented as approved.
- 9) The development hereby approved shall be carried out in accordance with the recommendations contained in Part 3 of the approved Preliminary Ecological Appraisal in respect of minimising impacts on breeding birds, and the control and management of Indian Balsam, and the recommendations contained in section 8.0 of the Dusk Survey Results in Relation to Bats (Pennine Ecological July 2020).
- 10) Notwithstanding any description of materials in the application, no above ground construction works shall take place until samples or full details of materials to be used externally on the building have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details/samples.
- 11) Prior to any doors or windows being installed, a detailed specification for all doors and windows shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full before the development is first occupied and retained thereafter.
- 12) Before the first occupation of the apartments hereby approved, all windows in habitable rooms shall be acoustically double glazed and ventilated in accordance with the 'good' standard laid down in BS8233:1999 of LAeq/T living rooms 30dB and bedrooms 30 dB.
- 13) Prior to the development being occupied, a landscape scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall provide details of trees and shrubs to be planted on the site, and shall include an implementation programme. The landscaping works shall be carried out in accordance with the approved scheme and implementation programme.

Any trees and/or shrubs that die or are removed within five years of planting shall be replaced in the next available planting season with others of similar size and species.

- 14) No dwelling shall be occupied until the access road leading thereto has been constructed and completed in accordance with approved drawing PL K882/01 Rev B.
- 15) Before the approved development is first brought into use, no less than 22 car parking spaces for the apartments and 7 car parking spaces within the car park to the side of the restaurant shall be marked out, as shown on approved drawing K882/01 Rev B. The spaces shall be made available for the parking of cars at all times.
- 16) Prior to first occupation, an agreement shall have been entered into for the modification of the staging of the traffic lights at the junction of Bradshaw Brow/Turton Road and the appeal site, and the work shall have been completed.
- 17) No soil or soil forming materials shall be brought onto the site until a testing methodology including testing schedules, sampling frequencies, allowable contaminant concentrations (as determined by an appropriate risk assessment) and source material information has been submitted to and approved in writing by the local planning authority. The approved testing methodology shall be implemented in full during the importation of any soil or soil forming material.

Prior to the development being first occupied, a verification report including soil descriptions, laboratory certificates and photographs shall be submitted to and approved in writing by the local planning authority.