



Appeal Decision

Site visit made on 24 October 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th November 2023

Appeal Ref: APP/G4240/W/23/3317200

Land to the South of 24 Stablefold, Mossley, Ashton OL5 0DJ

- 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 Patrick Hand of P H Architecture against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 20/00268/FUL, dated 27 March 2020, was refused by notice dated 16 November 2022.
 - The development proposed is residential development- 2 bungalows.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposed development would result in the loss of protected green space and its effect on the character and appearance of the surrounding area;
 - The effect of the proposal on the living conditions of the occupiers of 73-85 (odd numbers) Andrew Street, with particular regard to outlook, privacy and light;
 - Whether the appeal site is suitable for a dwelling with specific regard to land stability; and
 - Whether the proposed development makes adequate arrangements for the disposal of surface water from the site.

Reasons

Protected open space

3. The appeal site is an undeveloped parcel of land that adjoins the designated Green Belt. It is situated at the end of a residential street, Stablefold, within Mossley. The site contains several trees, which, as a group, have considerable amenity value. Its natural and open appearance provides visual relief from the built-up frontage of Stablefold that significantly enhances the street scene and the character of the wider area. Whilst I observed on my visit that the site was overgrown directly to the rear of the garden areas of properties on Andrew Street, I found that such overgrowth was not unacceptable in appearance and was not readily apparent in views along Stablefold.

4. Policy OL4 of the Tameside Unitary Development Plan 2004 (UDP) indicates that the Council will not permit built development on any land shown as Protected Green Space (PGS) on the proposals map. The policy also applies to areas of land in similar use, but which are too small to be shown on the proposals map. UDP Policy OL4 is generally consistent with paragraphs 99, 102 and 130 of the National Planning Policy Framework (the Framework) as it seeks to protect open space from development and ensure that development adds to the overall quality of the area.
5. The supporting text to Policy UDP OL4 indicates that it only applies to land that is not within the Green Belt. Accordingly, whilst the site adjoins, and is a continuation of, a much larger area of open Green Belt land, it can still be PGS for the purposes of UDP Policy OL4. Furthermore, the protection afforded under Policy OL4 is not dependent on the space being publicly accessible and having a recreational use. It is, however, reasonable to consider that any unidentified site that has some value as green space falls to be considered against this policy.
6. The appeal site has no identified ecological value and the Council's Principal Ecologist and the Arboricultural and Countryside Estates Officer have not objected to the proposal. Nonetheless, the appeal site provides a sense of openness in the street scene and links to the wider countryside beyond and, thereby, has value, visually, as a green space. Considering this, and in the absence of any compelling evidence that suggests otherwise, I find that even though the site is not designated, it is PGS for the purposes of UDP Policy OL4. As the proposal does not fall within any of the identified exceptions, the loss of open space associated with the proposed development conflicts with this policy. Furthermore, the proposal does not gain support from UDP Policy H2, as the explanatory text indicates that even in circumstances where the Council does not have a five-year supply of deliverable housing sites, proposals would still need to conform with other relevant policies in the plan, particularly UDP Policy OL4.
7. The proposal would not be prominent in views along Stablefold as the dwellings would be sited broadly in line with existing bungalows. However, to address the steeply sloping nature of the site, substantial engineering works are proposed which would necessitate the loss of trees with group amenity value. The proposed driveway and associated retaining wall would intrude into the views along the street towards the open countryside beyond. The natural green character of the space and its openness would be significantly eroded to the detriment of the street scene.
8. I acknowledge that the appellant could remove trees from the site and erect a fence across it, nonetheless, its green and natural appearance would not be diminished to the point where its value as open space would be lost. Furthermore, additional tree planting could be carried out as part of the development, however, I am not satisfied that this would sufficiently soften its appearance to the extent that the harm that I have identified would be suitably addressed.
9. Accordingly, I conclude that the proposal would result in the loss of PGS and would thereby harm the character and appearance of the surrounding area. It would therefore conflict with UDP Policies OL4, N4 and N5, which seek to protect green space and trees with amenity value. I apply substantial weight to

this conflict. It is also contrary to the guidance set out in paragraph 174 of the Framework.

Living conditions

10. The proposal would be viewed at a slightly oblique angle from the rear facing windows of 73-85 Andrew Street. Nonetheless, the elevated position of the proposed bungalows and the retaining structure close to the rear site boundary, would have a substantial enclosing and dominating effect when viewed from such windows. The visual intrusion would be significantly more imposing than the treed sloping nature of the existing site. Consequently, the enjoyment of the rear gardens of these properties and the outlook from the rear windows of the Andrew Street properties would be unacceptably affected by the proposal.
11. The minimum privacy distances as set out in the Residential Design Supplementary Planning Guidance are exceeded by the proposed layout. Nevertheless, due to the elevated position and the large expanse of glazing at the first floor of the proposed dwellings, there would be a perception of overlooking for the occupiers of the Andrew Street properties. As a result, and notwithstanding that the interface between the windows would be at a slight oblique angle, I consider that the level of overlooking and loss of privacy that would arise would be unacceptable. Furthermore, the height of any boundary treatment that would address the issue of overlooking from the proposed first floor windows would exacerbate the unacceptable enclosing and dominating effect I have identified.
12. The level of daylight and sunlight reaching the rooms served by rear windows of 73-85 Andrew Street, and their gardens, is already affected by the ground levels and trees within the appeal site. Nonetheless, the introduction of two bungalows sited very close together above a tall green retaining wall as proposed would have a greater limiting effect on daylight and sunlight. The appellant refers to the proposal according with the Building Research Establishment guide 'Site layout Planning for Daylight and Sunlight - a guide to good practice' (2022). However, no assessment against such guidance has been provided with the appeal documents. In the absence of any substantive evidence that demonstrates otherwise, I find that the levels of daylight received to the rear windows and gardens of Andrew Street properties would be adversely affected by the proposed development.
13. Accordingly, I conclude that the proposed development would cause significant harm to the living conditions of the occupiers of 73-85 (odd numbers) Andrew Street regarding outlook, privacy and light. As such, it would conflict with UDP Policies 1.3 and H10 which seek to protect residential amenity. I apply substantial weight to the conflict with such policies, which are consistent with the residential amenity aims of paragraph 130 of the Framework.

Land stability

14. The appeal site forms part of a hillside and slopes steeply down to the rear of properties on Andrew Street. The sectional plans show that significant earthworks are proposed that would include excavation of part of the site and the building up of levels at the rear of the proposed properties. Given the proximity of such works to existing properties on Andrew Street and Stablefold it is important to ensure that the risk and effects of any potential land

instability and property are minimised. However, there is little before me regarding the local ground conditions and the effects of the proposed development on such conditions.

15. I am, therefore, unable to conclude on the available evidence that the site is and will remain stable or could be made so as part of the development. Furthermore, it would be inappropriate to impose a condition to secure a land stability risk assessment and agree any retaining structures, or other mitigation measures, since the acceptability of the development is partly dependent on the outcome. The failure of the Council to request a land stability report does not override my concern in this regard.
16. Accordingly, I find that the site is not suitable for the proposed development regarding land stability. It would therefore be contrary to paragraphs 174 and 183 of the Framework which seek to ensure that new and existing development are not put at unacceptable risk from, or, adversely affected by, land instability and that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability.

Surface water run-off

17. The appeal site is undeveloped and has a permeable surface. The proposal would involve significant engineering works to form a development plateau and would introduce retaining structures and hard surfaces where there currently are none. Consequently, the proposed development poses a flood risk to the properties on Andrew Street which, according to interested parties, already experience surface water flooding.
18. In the absence of a drainage scheme or surface water management strategy there is nothing before me that demonstrates that the surface water arising from the proposed development could be controlled without an increase in the risk of flooding on neighbouring land. Furthermore, without this information, it is unclear whether an appropriate drainage system could be accommodated within the site without affecting the proposed layout. Accordingly, it would be inappropriate to impose a condition to secure the required drainage details. Again, the failure of the Council to request such details does not override my concern in this regard.
19. As such, the proposal does not make adequate arrangements for the disposal of surface water from the site and, therefore, it would not accord with the requirements of Framework, at paragraph 167, to ensure that flood risk is not increased elsewhere.

Planning Balance

20. The Council confirms that it cannot demonstrate a five-year supply of deliverable housing sites, although no details of the extent of the shortfall have been provided. Therefore, in accordance with footnote 8, paragraph 11d) of the Framework should be applied as the policies which are most important for determining the appeal are to be considered out of date.
21. The proposal would provide two dwellings in an accessible location which would make a very modest contribution to addressing the shortfall and the Government's broad objective of significantly boosting the supply of homes. Accordingly, I attribute modest weight to this benefit.

22. The appellant refers to biodiversity net gains, arising from the proposed green wall. However, there is nothing before me that demonstrates the extent of such net gains. Therefore, such a benefit carries limited weight in favour of the proposal.
23. As set out above, I have found that the proposal would result in the unacceptable loss of PGS which would harm the character and appearance of the area, and that the living conditions of neighbours would also be unacceptably harmed. I have attributed considerable weight to the consequent conflict with UDP Policies OL4, N4, N5, 1.3 and H10.
24. Furthermore, I have found harm that the site is not suitable for the proposed development with regard to land stability and that the development does not make adequate arrangements for the disposal of surface water from the site. This weighs against the proposed development.
25. Overall, I find that the harm I have identified would significantly and demonstrably outweigh the benefits. Therefore, the Framework is not a material consideration that indicates a decision other than one that is in accordance with the development plan.

Other Matters

26. I have noted the concerns raised by interested parties about the effect of the proposal on ecology, the adequacy of local infrastructure, the lack of need or demand for further housing, the effect of the proposal on highway safety and that affordable housing is not proposed. However, as I have found the proposal to be unacceptable for other reasons, set out above and below, it is unnecessary for me to explore this matter further.
27. The appellant has raised concerns with the Council's handling of the planning application, however that is not relevant to my findings on the planning merits of the scheme.

Conclusion

28. The proposed development conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
29. I therefore conclude that the appeal should be dismissed.

Elaine Moulton

INSPECTOR