



Appeal Decision

Site visit made on 8 November 2023

by N Bromley BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/J3015/W/23/3322618

Car Park, Kelham Way, Eastwood, Nottinghamshire, Easting: 446408, Northing: 346974

- 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 M Lidder, of PKL Investments Ltd, against the decision of Broxtowe Borough Council.
 - The application Ref 22/00100/FUL, dated 7 February 2022, was refused by notice dated 14 March 2023.
 - The development proposed is Construction of serviced apartments comprising of 16 units and associated infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of serviced apartments comprising of 16 units and associated infrastructure at Car Park, Kelham Way, Eastwood, Nottinghamshire, Easting: 446408, Northing: 346974 in accordance with the terms of the application, Ref 22/00100/FUL, dated 7 February 2022, subject to the conditions set out in the attached schedule to this decision.

Preliminary Matters

2. The site address details on the planning application form do not include Nottinghamshire, whereas the Council's decision notice and the appeal form do, so I have included it in the above banner heading.

Main Issue

3. The main issue raised by this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site is located on Kelham Way which forms part of a one-way traffic system at the junction of the A608 Derby Road and the B6010 Nottingham Road and occupies a prominent position on a gateway into Eastwood Town Centre. The site is adjacent to but outside of the Eastwood Conservation Area (the CA) and opposite the locally listed Sun Inn Public House building.
5. The area is characteristic of its location on the edge of the town centre, with a mix of residential and commercial buildings that have a varied size, age, and architectural appearance. In particular, there is a large supermarket, Young People's Centre (YPC) and public house adjacent to the site with small commercial premises and two storey residential properties opposite.

6. The topography of the area rises steeply to the northeast, with land to the north and west dropping significantly at certain points. The buildings that front Derby Road are stepped in height to follow the steep incline up towards the town centre.
7. The site is currently vacant and fenced off to prevent access and the proposal would redevelop the site and introduce a flat roof building, primarily 3-storeys in height, but with a stepped height that reduces to 2-storeys close to the shared boundary with the YPC beyond the rear.
8. The proposed building would have a modern appearance and would complement the appearance of the neighbouring YPC building, which also has a contemporary appearance. The staggered footprint and stepped height would reduce the massing and bulk of the proposed building. The lower land level of the site, compared to buildings within the CA, would also reduce the effect of the development within the street scene.
9. Additionally, while I acknowledge that the proposed building would be a contrast in appearance to the older buildings in the locality, the form, position, scale and appearance of the proposed building would ensure that it fits comfortably within the site and assimilate well with the neighbouring YPC.
10. The proposal would unavoidably screen the YPC building from certain viewpoints, but this would be the case for any development on the site due to the juxtaposition of the site to the YPC. However, the proposed building would not be overly dominant within the site or in the context of neighbouring buildings, including the Sun Inn PH opposite which occupies a much higher ground level. The use of varied materials, including contrasting, coloured bricks, as well as the decorative brick detailing and the grey curtain wall features, would achieve a high-quality design of building. Overall, it would integrate sympathetically into the street scene.
11. Furthermore, the Council's planning committee report (PCR) concludes that the proposal would not be harmful to the character or appearance of the CA and its setting, or the special character of the Sun Inn, which includes its primacy within the street scene. Therefore, for similar reasons to those set out above, I see no reason to disagree in consideration of the development and the context of the site. Consequently, I conclude that the character and appearance of the CA would be preserved and that there would be no loss of significance to the Sun Inn, as a non-designated heritage asset.
12. Whilst there is a lack of soft landscaping opportunity to the front of the building, this is not an existing feature within the area and landscaping would add minimal visual benefits to the scheme or street scene in this location. Nonetheless the rear car parking area provides an opportunity for landscaping which would soften the appearance of this area of the proposed development.
13. For the reasons outlined above, the proposed development would not be harmful to the character and appearance of the area. Therefore, the proposal would accord with Policy 10 of the Broxtowe Aligned Core Strategy (2014) and Policy 17 of the Broxtowe Part 2 Local Plan (2019), which together and amongst other things, requires development to be of a high quality design that integrates into its surroundings.

Other Matters

14. I acknowledge that there were a number of representations, including those by Eastwood Town Council and Nottinghamshire County Council, in respect of the proposal, which in addition to the main issue included concerns relating to the need for C1 use or short let guest apartments, loss of the public seating area, harm to the YPC and its viability, noise impacts, loss of a right of way, and the impact on neighbouring residential amenity. These factors are not in dispute between the main parties and were addressed in the Councils PCR, with the Council concluding that there would be no material harm in these regards. No substantiated evidence has been submitted that leads me to any different view. Given my findings above, and the suggested conditions by the Council, I have found no justification to dismiss the appeal.
15. Highway and pedestrian safety and parking issues has been cited as a concern, but the Council and the relevant highway authority have raised no objection, subject to appropriate conditions which are included in the schedule. I have no reason to form a different view.
16. Comments have been made that the proposal would result in the loss of a view: the Courts have held that the loss of a view is not a material planning consideration. Likewise, land ownership is a private matter and outside the scope of this appeal.

Planning Obligation

17. Community Infrastructure Levy (CIL) regulation 122 makes clear that it is unlawful for a planning obligation to be taken into account in a planning decision on a development that does not meet all of the following tests. These are that the obligation is necessary to make the development acceptable in planning terms, is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
18. The appellant has provided a Unilateral Undertaking (UU) for the payment of £13,609.76 towards the maintenance of public open space at Mansfield Recreation Ground, which is the nearest park to the appeal site. A payment of £9,425 for improvements to a bus stop, denoted as BR0377 Derby Road, including bus shelter refurbishments and real time information, is also secured.
19. The Council have not provided comments on the completed UU, but the PCR acknowledges the need for the secured contributions to make the development acceptable. The PCR also notes that a health contribution, is not required because the number of units falls below the thresholds necessary.
20. The contributions would provide benefits to the future occupiers of the building, as well as mitigating the impact of a development of this scale. The UU would therefore comply with paragraph 57 of the National Planning Policy Framework (the Framework), and regulation 122 and I can take it into account in my decision.

Conditions

21. The Council has suggested several conditions, some of which I have amended for the sake of clarity and precision. I have also had regard to the Framework and national Planning Practice Guidance (PPG). In addition to the standard time limit condition, it is necessary to impose a condition that requires the

- development to be carried out in accordance with the approved plans for certainty. To ensure that the appearance of the development is satisfactory, a condition is imposed to require samples of the external materials to be approved. Likewise, conditions to secure a landscaping scheme, as well as a landscape and ecological management plan, are justified to protect the character and appearance of the area and biodiversity.
22. Ground contamination and past coal mining legacy investigations, along with any associated remedial works conditions are necessary to prevent risk to the environment and to protect the living conditions of future occupants of the development. A surface water drainage scheme and drainage plans for the disposal of surface water and foul sewage conditions are necessary to prevent an increase in flood risk following the development and to ensure the appropriate management of water and foul sewage disposal is implemented.
23. Conditions to secure details of a construction management plan, any piling or other penetrative foundation design and any necessary mitigation measures, as well as a restriction on construction hours, are necessary to protect the living conditions of neighbouring occupants. Noise mitigation measures to be incorporated into the building would protect the living conditions of future occupiers. A waste management condition is necessary to secure appropriate storage and collection arrangements for the building and its future occupiers to ensure that satisfactory arrangements are in place to avoid waste and pollution issues in the future.
24. To ensure that suitable access and parking provision is provided, I have included a condition that secures these details prior to the occupation of the building to avoid unnecessary highway safety and parking issues arising. Likewise, a condition which ensures that the pedestrian access to the YPC is permanently made available is necessary for the users of the YPC.
25. I have not imposed a condition requiring electric vehicle charging provision because this is covered by other legislation and will secure the necessary provision.
26. Conditions 3-9 relate to pre-commencement activities. In each case I am satisfied that the conditions are necessary to make the development acceptable in planning terms and that it would have otherwise been necessary to refuse planning permission. The appellant has provided written agreement to the terms of these conditions.

Conclusion

27. The proposed development would accord with the development plan, and there are no material considerations to lead me to determine the appeal other than in accordance with it. Therefore, for the reasons given above, I conclude that the appeal is allowed.

N Bromley

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, numbered: 20232-00-001; 20232-20-003_P6; 20232-00-002_P2; 20232-20-004_P15; 20232-20-005_P9; 20232-20-006_P9; 20232-21-001_P6; 20232-21-002_P4; and 20232-21-003_P4.
- 3) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall have regard for any potential ground and water contamination, the potential for gas emissions and any associated risk to the public, buildings and/or the environment. The assessment shall also include details of any necessary remedial measures to be taken to address any contamination or other identified problems. The development shall thereafter be implemented in accordance with the approved details.
- 4) Prior to the commencement of the development hereby approved, details of any necessary piling or other penetrative foundation design shall be submitted to and approved in writing by the Local Planning Authority, including details of any mitigation measures to minimise the effects of noise and vibration on surrounding occupiers. The development shall thereafter be implemented in accordance with the approved details.
- 5) Prior to the commencement of the development hereby approved, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the Local Planning Authority. The statement shall include:
 - a) The means of access for construction traffic;
 - b) Parking provision for site operatives and visitors;
 - c) The loading and unloading of plant and materials;
 - d) The storage of plant and materials used in construction works;
 - e) A scheme for recycling/disposal of waste resulting from construction works;
 - f) Details of dust and noise suppression to be used during the construction phase; and
 - g) A report identifying any asbestos and documenting its safe removal.

The approved CMS shall be implemented as approved before development begins and be maintained throughout the duration of the construction works period.

- 6) Prior to the commencement of the development hereby approved, a detailed Landscape and Ecological Management Plan (LEMP) shall be submitted to and

approved in writing by the Local Planning Authority. The LEMP shall include enhancement measures and details of precautionary working measures to prevent impacting species that may access the site from adjacent habitats. The development shall thereafter be implemented in accordance with the approved LEMP.

7) No development shall commence until;

- a) A scheme of intrusive investigations has been carried out on site to establish the risks posed to the development by past shallow coal mining activity; and
- b) Any remediation works and/or mitigation measures to address land instability arising from coal mining legacy, as may be necessary, have been implemented on site in full in order to ensure that the site is made safe and stable for the development proposal.

The intrusive site investigations and remedial works shall be carried out in accordance with authoritative UK guidance.

8) Prior to the commencement of the development hereby approved, a detailed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme to be submitted shall:

- Limit the discharge rate generated by all rainfall events up to the 100 year plus 40% (for climate change) critical rain storm 5 l/s rates for the developable area.
- Provision of surface water run-off attenuation storage in accordance with 'Science Report SC030219 Rainfall Management for Developments' and the approved Flood Risk Assessment.
- Provide detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods.
- For all exceedance to be contained within the site boundary without flooding new properties in a 100year+40% storm.
- Details of Severn Trent Water approval for connections to existing network and any adoption of site drainage infrastructure.
- Evidence of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure long term.

The approved scheme shall be implemented in accordance with the approved details prior to completion of the development.

9) Prior to the commencement of the development hereby approved, drainage plans for the disposal of surface water and foul sewage shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved drainage plans.

10) No development above slab level shall commence until samples of all proposed external facing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details.

11) No development above slab level shall commence until a landscaping scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- a) Numbers, types, sizes and positions of proposed trees and shrubs;
- b) Proposed boundary treatments;
- c) Proposed hard surfacing treatments;
- d) Proposed lighting details;
- e) Planting, seeding/turfing of other soft landscape areas; and
- f) Proposed retaining walls or similar structures.

The approved landscaping scheme shall be carried out not later than the first planting season following the substantial completion of the development or occupation of the building, whichever is the sooner. Any trees or plants which, within a period of 5 years, die, are removed or have become seriously damaged or diseased shall be replaced in the next planting season with ones of similar size and species to the satisfaction of the Local Planning Authority, unless written consent has been obtained from the Local Planning Authority for any variation.

12) No development above slab level shall commence until a waste management plan has been submitted to and approved in writing by the Local Planning Authority. The approved waste management plan shall be implemented in full accordance with the agreed details and retained as such at all times in the future.

13) No part of the development hereby approved shall be occupied until the parking and turning areas are surfaced in a bound material with the parking bays clearly delineated in accordance with drawing number 20232-20-003 P6. The parking and turning areas shall be maintained in the bound material for the life of the development and shall not be used for any purpose other than for the parking and turning of vehicles.

14) The development hereby approved shall not be occupied until;

- (a) All necessary remedial measures have been completed in accordance with details approved in writing by the Local Planning Authority; and
- (b) It has been certified by the Local Planning Authority that necessary remedial measures have been implemented in full and that they have rendered the site free from risk to human health from the contaminants identified.

15) Prior to the occupation of the development hereby approved, or it being taken into beneficial use, a signed statement or declaration prepared by a suitably competent person confirming that the site is, or has been made, safe and stable for the approved development shall be submitted to and approved in writing by the Local Planning Authority. This document shall confirm the methods and findings of the intrusive site investigations and the completion of any remedial works and/or mitigation necessary to address the risks posed by past coal mining activity.

16) No construction or site preparation work in association with this permission shall be undertaken outside of the hours of 08:00-18:00 Monday to Friday, 08:00-13:00 Saturdays and at no time on Sundays or Bank Holidays.

17) The pedestrian access serving the Eastwood Young People's Centre, Kelham Way, Eastwood, within the north-east corner of the site shall be permanently kept open for use and maintained for the lifetime of the development.

18) The development hereby approved shall be carried out in accordance with the identified noise mitigation measures contained within Section 8 and 10 of the noise report by Acute Acoustics Ltd, ref 2668 Eastwood Land off Kelham Way (Rev A), dated 22nd March 2022. The development shall thereafter be carried out in full accordance with these details prior to first occupation and shall be retained as such at all times in the future.