



Appeal Decision

Site visit made on 26 March 2024

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/W4223/W/23/3322110

Westwood Medical Centre, Winterbottom Street, Oldham OL9 6TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Westwood Apartments Ltd against Oldham Metropolitan Borough Council.
 - The application Ref is OUT/350032/22.
 - The development proposed is Outline application for 16 storey apartment building for 120 flats with associated on-site parking and private gated site access, following demolition of existing building. Approval of Access, Layout, and Scale are sought. All other matters reserved.
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Decision

1. The appeal is dismissed and outline planning permission for a 16 storey apartment building for 120 flats with associated on-site parking and private gated site access, following demolition of existing building, approval of access, layout, and scale are sought, all other matters reserved, is refused.

Preliminary Matters

2. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and therefore I have referred to that revised document in my determination of this appeal. I am satisfied that the parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration.
3. At final comments stage the appellant submitted amended plans showing a different layout, namely the chamfering of a corner of the proposed building at ground and first floor level and a change to the layout of the cycle store. This is with the aim of demonstrating that service and emergency vehicles would be able to manoeuvre within the site so to be able to leave in a forward gear.
4. These plans have not had the benefit of consultation with the statutory consultees, notably the Highway Authority (HA), or with interested parties. The amendment proposed seeks to address a technical matter but without the comments of the HA I cannot be sure whether this specific issue has been addressed. Nonetheless, I have made reference to the amended plans in my consideration of the appeal.

Main Issues

5. The appeal is against a failure to determine the planning application, however the Council has provided a copy of a Committee Report which advises that the

application would have been refused on the basis of the impact upon trees and the highway and because no provision for public open space and affordable housing has been made.

6. These therefore form the main issues relating to this appeal which are:

- (i) the effect of the proposed development on trees
- (ii) the effect of the proposed development on highway safety
- (iii) whether the proposed development would provide for open space and affordable housing

Reasons

Trees

7. The existing medical centre sits surrounded by an area of established mature trees. Such trees are characteristic of the surroundings, with dense tree coverage also being found elsewhere in the immediate vicinity, especially in the areas running alongside Middleton Road. Collectively these trees contribute positively to the character and appearance of the area, considerably softening what is otherwise a typical urban area close to the town centre. Due to the surrounding topography, the trees to the south and most of the west side of the medical centre are situated on a higher ground level than the ground floor level of the existing building on the site.
8. The Arboricultural Impact Assessment dated 7 February 2023 (AIA) identifies four category B trees and eighteen category C trees plus one category C group that would be likely to be affected by the proposed development. Of these, it is intended that only one category C tree would be removed. The AIA acknowledges that there would be likely to be disturbance to the root protection areas of many of those trees during demolition of the existing building and the construction of the proposed building. Whilst the AIA considers options to minimise any impact, it is written without the benefit of knowing what the foundation specification for a sixteen-storey tower might be or where the spread and extent of the rooting systems of the trees extends to.
9. It would appear probable that a building of such height would require substantial earth works and foundations, and that there may also be restrictions in terms of the type of foundations that could be used. Without these details and in the absence of knowing whether the roots of the trees actually extend into areas that mean they would be significantly affected by the proposed development, it cannot be ruled out that there would not be harm to the health of the trees to an extent that they would be lost from the site. This could be to allow the proposed works to take place or in future years if their long-term health was compromised by the works that took place.
10. Furthermore, many of the trees in question are of a substantial height and are elevated in relation to the proposed development because of the surrounding topography. It would appear that some, in particular those forming G27 would have their canopies close to the windows of several of the proposed apartments on the lower floors. The AIA identifies that they would need regular pruning due to this proximity. There is therefore the strong possibility that there would be a tension between the desire to retain the trees and the impact that they

would cause on the outlook from the windows and on the light reaching the rooms of those apartments.

11. My attention has been drawn to a previous residential scheme that was approved on the appeal site¹, which the appellant considers would have had a similar relationship to the trees. However, that was a building of a substantially lesser scale and may have had more flexibility about its foundation design with the trees in mind. It could indeed have been the case that some of the dwellings that were approved in that instance would have been affected by the proximity of the retained trees, but that does not serve to overcome my concern as to the relationship that would arise in this instance.
12. On the basis of the information that is before me, it has not been demonstrated to what extent the existing trees could be retained on the site, both in the short and longer term, if the proposed development was built. Furthermore, even if the trees were retained, it would appear that their proximity to some of the proposed apartments would impact upon the living conditions of the occupiers of those dwellings. The loss of these mature trees would have a negative impact on the character and appearance of the surrounding area and result in a loss of biodiversity, and as such would fail to accord with Policy 21 of the Oldham Joint Core Strategy and Development Management Policies Development Plan Document 2011 (DPD) where it seeks to protect natural environmental assets and Saved Policy D1.5 of the Unitary Development Plan 2006 (UDP) where it seeks to protect trees on development sites.

Highway safety

13. The concern set out by the Council with respect to highway safety relates to the proposed arrangements for vehicle parking, manoeuvring and servicing. This relates primarily to the presence of a barrier which the plans submitted appear to show would not be at the junction with Winterbottom Street but set further within the site. Such a location would allow smaller vehicles to stand clear of the highway and to turn within the site so to leave in a forward gear. The barrier would potentially cause issues with larger vehicles, and although the aforementioned amended plans have been provided purporting to show that service and emergency vehicles could turn in the site, I have no technical consultee input as to whether that would be the case.
14. Nonetheless, the resolution of these matters does not appear to be insurmountable. Likewise, the Council's concerns about refuse arrangements and the management of the 5 parking spaces for school drop off/pick up are ones that could potentially be overcome by planning conditions. Whilst the information before me does not demonstrate that the required standards for larger vehicles could be met, I am satisfied that this issue could be resolved in a straightforward manner, thus ensuring that there would be no conflict with the aims of Policies 5 and 9 of the DPD where they require that new development does not cause harm to the safety of road users.

Open space and affordable housing

15. Policy 23 of the DPD states that all residential developments should contribute towards the provision of new or enhanced open space, unless it can be demonstrated by the developer that it is not financially viable for the

¹ PA/339279/16

development proposal or that this is neither practicable nor desirable. It is further stated that the Council will have regard to the proposed development and the open space surpluses and deficiencies in the area to determine whether on-site or off-site new provision, enhanced existing provision or a financial contribution will be required.

16. The Council refers to its Open Space Study which it states sets out that the area is deficient in terms of the quantity and quality of a number of types of open space. There would also be the loss of an area of open space to provide car parking for the proposed development. It is not explained as to how the Council has calculated the figure of £262,371.60 that they refer to as being the required developer contribution, but nonetheless the appellant does not dispute that some form of contribution or alternative open space provision would be required to satisfy Policy 23 of the DPD. The appellant considers that this matter could be addressed by way of a planning condition. However, as this may require a financial payment and there is nothing before me to rule that possibility out, such an approach would still in all likelihood necessitate a planning obligation subsequently being needed to be entered into.
17. Policy 10 of the DPD sets out that all residential developments of 15 dwellings or above will be required to provide an appropriate level of affordable housing provision. The current target is for 7.5% of the total development sales value to go towards the delivery of affordable housing, unless it can be clearly demonstrated to the Council's satisfaction that this is not viable. No viability assessment accompanied the planning application submission, although the appellant seems to allude to this being a matter which they may wish to pick up at a later stage. But nonetheless, they appear in their final comments to give agreement to meeting the requirements of Policy 10 of the DPD. This too they suggest could be secured by way of a planning condition. However, again, even if a condition were to be used, a legal agreement would subsequently be required in order to ensure that the housing would be retained as affordable. There is the further possibility within Policy 10 that a financial contribution in lieu of on-site provision could be deemed appropriate, which would also necessitate a planning obligation.
18. No planning obligation has been provided with the appeal. Therefore, I have given consideration as to whether the necessary obligations could instead be secured by way of a planning condition. In that regard, the Planning Practice Guidance² states that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes). However, no evidence has been provided to demonstrate that the delivery of the development would be at serious risk if planning conditions were not used and, furthermore, I do not consider on the information that is before me that this is a particularly complex development scheme. Therefore, there are no exceptional circumstances and the use of planning conditions to secure the obligations would not be appropriate in this instance.
19. My attention has been drawn to two appeal decisions³ where the appellant is of the view that the appointed Inspectors endorsed the use of a planning

² Paragraph: 010 Reference ID: 21a-010-20190723

³ APP/U2370/W/19/3241233 & APP/C4235/W/20/3259867

condition to secure public open space and affordable housing. However, both appeals relate to applications made under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary or delete conditions that had been imposed by the local planning authority (LPA). It was for the respective LPA to have decided that the use of the condition was appropriate, which they had already done by the time of the appeals. I have no details of how the LPA came to that conclusion in the Poulton-le-Fylde case, but the only matter before the Inspector was a requested change in the wording of the condition to allow a lower affordable housing provision. Their decision could have had no effect on the original condition as a new standalone permission is granted if a S73 application is approved.

20. In the Stockport case the Inspector observed that the condition had been imposed by the Council in order to allow the appellant to meet contractual obligations to secure the development site by a certain date. This they noted meant there were circumstances that appeared to have justified the LPA addressing the matter by condition rather than delaying the decision until a planning obligation had been entered into. I have not been made aware that any comparable circumstances exist in this case. As a whole, I am not persuaded that the Poulton-le-Fylde Inspector's consideration of the quantitative matter that was before them explicitly means that they endorsed the use of the condition, or even needed to consider that matter, and in the Stockport case specific circumstances had been identified. Those appeal decisions do not therefore offer support to the use of conditions to address the matters of open space and affordable housing in this instance.
21. In conclusion, in the absence of a planning obligation to secure the necessary obligations relating to open space and affordable housing, the proposed development would fail to accord with Policies 10 and 23 of the DPD, where they refer to the provision of affordable housing and open space in new developments.

Other Considerations

22. The proposed development would provide a great number of new dwellings and thus align with the aims of the Framework to significantly boost the supply of new homes. It would do so on an unsightly and derelict previously developed urban site which has access to excellent transport links and is close to Oldham town centre and to numerous services and facilities. There would be time limited economic benefits during construction and longer-term benefits from future residents spending in the local economy. There would also be some benefit from providing the five off-street parking spaces for school pick up and drop off. These considerations collectively carry significant weight in favour of the proposed development.

Paragraph 11d)

23. The Council sets out in its Committee Report that it cannot demonstrate a 5 year housing land supply. Consequently, paragraph 11d)ii) of the Framework is triggered. This states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The benefits I have outlined carry significant weight and align to many of the objectives of the Framework including boosting the supply of new homes and making effective use of land.

24. However, the Framework seeks both to conserve and enhance the natural environment and to retain and develop open space provision, and it requires the provision of affordable housing as part of major developments. For the reasons I have set out it cannot be ensured that the proposal would achieve any of those aims and this means that the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. As such the presumption in favour of sustainable development set out in paragraph 11d) of the Framework does not apply.

Planning Balance and Conclusion

25. I have found it to be entirely probable that the highway matters raised in the suggested reason for refusal could be overcome. However, on the basis of the information that is before me it is not known to what extent, if at all, the trees on the site could be retained. I have found that the planning obligations relating to open space and affordable housing cannot be addressed by way of planning conditions and therefore these policy requirements would not be met if the appeal was allowed. For these reasons the proposal fails to accord with policies 10, 21 and 23 of the DPD and Saved Policy D1.5 of the UDP, and with the development plan taken as a whole.

26. Balanced against this, the proposal would provide the benefits I have outlined, and which collectively offer significant weight in its favour. However, even if the matter relating to the potential loss of the trees could be resolved or mitigated, such benefits would not overcome the failure to provide open space and affordable housing and the consequent failure to accord with the development plan. I therefore find that the other considerations in this case do not indicate that a determination should be made otherwise than in accordance with the development plan. Accordingly, the appeal should be dismissed.

Graham Wraight

INSPECTOR