Planning Inspectorate

Appeal Decision

Site visit made on 11 December 2024

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2024

Appeal Ref: APP/Z2315/W/24/3347540
Former Allotments, Liverpool Road, Burnley, Lancashire, BB12 6JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
- The appeal is made by Mr Trevor Taylor against the decision of Burnley Borough Council.
- The application Ref is OUT/2022/0595.
- The development proposed is the development of 18 Houses and 10 Duplex Apartments (All Matters Reserved).

Decision

1. The appeal is dismissed.

Preliminary Matters

2. When originally submitted to the Council the application included access as a matter for approval, but this was removed during the course of the consideration of the application. The decision was therefore taken on the basis of the proposal being in outline with all matters reserved and my decision proceeds on the same basis.

3. Illustrative plans were submitted, and I have treated these as such, but for their description of the access point to the site from the highway.

Main Issues

4. The main issues are whether or not the proposal is appropriate for the site and its surroundings, and whether or not it would make appropriate contributions towards affordable housing, highways mitigation, open space and secondary school capacity.

Reasons

Whether appropriate for the site and its surroundings

5. The appeal application was made in outline, essentially setting a limit on the amount of development to be accommodated on the site and seeking to establish the general principles of how the site can be developed. Indicative plans were submitted, and despite the outline nature of the proposal, it appears that detailed negotiations and discussions took place around scale, height, appearance, layout and landscaping of the proposal particularly in relation to those indicative plans.

6. As a site within the settlement boundary, but not otherwise previously developed, brownfield, or subject to any other designation, residential development of the site has been confirmed by the Council as acceptable in

principle, subject to the satisfaction of other relevant development plan policies.

7. The Council is plainly concerned over how a detailed proposal for the development of the site would relate to its surroundings in terms of scale, appearance, height and density, and the site itself, including the protected trees and semi-natural habitats which now lie within it. This is a legitimate concern, and I share the concerns of the Council over the relationship of the indicative plans to the constraints of the site, particularly the protected trees. However, such details, and therefore the ability or otherwise of detailed proposals for the site to satisfy other development plan policies, are not before me for consideration.

8. During my site visit I was able to see the very mixed and varied context to the site, with buildings in various uses with various scales, materials, appearances, relationships to the road and neighbouring properties. Residential development of the site would not therefore conflict with those surrounding uses.

9. Although the Council has concerns over how development of the scale proposed could be accommodated within the site in a way which properly accommodates the site constraints and opportunities, there is nothing before me which convincingly demonstrates that at this time, a suitable proposal could not be conceived.

10. There is nothing in the wording of the application which would prevent lower numbers of homes coming forwards in any future reserved matters applications, to meet the overarching requirement to comply with other policies in the development plan. The fine-grain detail, of appearance, landscaping, layout and scale, are matters reserved for future approvals. There is nothing in the evidence before me that suggests that these future approval processes cannot properly reconcile the various requirements of other policies in the development plan. What has been applied for does not therefore conflict with the development plan in respect of the appropriateness of the proposal for the site and its surroundings.

11. I therefore find that the proposal, being residential development, could be appropriate for the site and its surroundings. The proposal as it is before me would not therefore conflict with Policies SP5, HS3, HS4 or NE1 of Burnley's Local Plan, July 2018 (the Local Plan).

Contributions

12. I note that the appellant takes issue in their submission with the Council raising in their appeal submissions the lack of an obligation under section 106. This is required to secure affordable housing, highways contributions, open space contributions and contributions towards secondary school capacity.

13. The suggestion that this matter not being a reason for refusal indicates that it cannot be a main issue in this appeal, or indeed, a matter for me, is not the case. It was plain from the Officer Report produced by the Council, including its development plan references and apparently from pre-decision discussions, that contributions towards affordable housing at least, and probably infrastructure would be required.

14. The need for an obligation of some sort was also clear from consultation responses, the Council's appeal statement and indeed, the appeal submissions of the appellant. The Procedural Guide: Planning appeals – England is clear that an appeal following the written representations procedure must be accompanied by an executed and certified copy of the planning obligation, if required, at the time of making the appeal.

15. The obligation sought by the Council, which would secure the delivery of a policy compliant amount of affordable housing on the site, as well as contributions towards necessary highway works, open space and secondary school capacity are all evidence- and policy-based. I am satisfied that such contributions would be necessary to make the development acceptable in planning terms, directly relate to the development and are fairly related in scale and kind to the development.

16. As the outline planning permission is the planning permission for the development, and as these matters are fundamental to the acceptability of the proposal, I do not consider it appropriate to attempt to secure the contributions, or indeed, a planning obligation either by condition, or at reserved matters stage as suggested by the appellant. As such, having carefully considered whether or not the proposal could be made acceptable through the use of conditions, despite the suggestion of the appellant, I do not find that it can be made so.

17. As a result, the proposal would not make appropriate contributions towards affordable housing, highways mitigation, open space and secondary school capacity. It would therefore conflict with Policies HS2 and IC4 of the Local Plan.

Conclusion

18. Taking all of the above together, whilst I have found that the proposal could be appropriate for the site and its surroundings, the development plan conflict and harm which would arise as a result of the failure to make appropriate contributions is significant and there are no material considerations which outweigh that conflict or harm, or which indicate that a decision be taken other than in accordance with the development plan.

19. The appeal should therefore be dismissed.

S Dean

INSPECTOR