
Appeal Decision

Site visit made on 25 March 2019

by Susan Ashworth BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th May 2019

Appeal Ref: APP/G4240/W/18/3216380

Clearance site west of Derby Street, Denton, Manchester, M34 3SD

- 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 Rob Stagg against the decision of Tameside Metropolitan Borough Council.
 - The application Ref 18/00201/FUL, dated 6 March 2018, was refused by notice dated 12 July 2018.
 - The development proposed is construction of 4 No. terraced houses.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have determined the appeal in accordance with the most up to date version of the National Planning Policy Framework (the Framework) July 2018 which supersedes that referred to in the Council's decision notice.

Main Issues

3. The main issues are:
 1. The effect of the loss of the open space on the character, appearance and residential environment of the area.
 2. Whether the location of the site is suitable for residential development in terms of air quality and whether any identified harm could be successfully mitigated.

Reasons

Character and Appearance

4. The appeal site lies in an area which is predominantly industrial and commercial in character, close to the junction of the M60 and M67 motorways. There is a limited number of residential properties in the area, mainly in the form of terraced housing. Such terraced housing faces the site on two sides.
5. The site itself comprises a grassed area of open space with several mature trees around the perimeter. It is currently fenced off. The site is highly prominent from Catherine Street West, Derby Street, Oldham Street and the Sainsbury's petrol station beyond that and is also glimpsed from Manchester Road.

6. The site is designated as an area of Protected Open Space and falls within an Air Quality Management Area.
7. The proposal is for the construction of four terraced houses on the west side of the site leaving the remainder of the site as open space. The houses, which would be constructed in red brick, would face and have vehicular access from Catherine Street West.
8. Planning law¹ requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. Policy OL4 of the Tameside Unitary Development Plan 2004 (UDP), states that built development will not be permitted on protected open space except in specific circumstances. The Policy is clear that exceptions will not apply if all or part of the land involved would continue to, amongst other things, provide a valued sense of openness in the street scene or maintain the character and environmental quality of the area. Whilst the UDP is dated I am satisfied that Policy OL4 is generally consistent with Paragraphs 97, 100 and 127 of the Framework which require, amongst other things, that existing open space should not be built on except in certain circumstances and that development adds to the overall quality of the area. The Policy therefore applies to any development of it.
9. I have taken into consideration the view of the appellant that the site should no longer be treated as Protected Open Space as it is in private ownership. However, Policy OL4 relates to open land that is both publicly and privately owned. I understand from what I have read that the space was used as public open space for recreational purposes by local residents for many years. Now that the area is privately owned and fenced off, such an opportunity is no longer afforded to the local community. However, the protection of the space under Policy OL4 of the UDP is not dependant on the space having a recreational function. Given the designation of the space as an Asset of Community Value, and the number of representations received in connection with the appeal, it is clear that it is a valued space which provides a sense of openness in the street scene and therefore holds a particular local significance.
10. I saw at my site visit that the area surrounding the existing residential development is a built up and, due to the dominant, elevated presence of the M67 and other busy roads including the A57, noisy environment. In that context, the open green space makes a highly positive contribution to the appearance of the area and, moreover, to the quality of the residential environment. Whilst the area was occupied by housing some considerable time ago, and I accept was not therefore a planned open space, it nevertheless is a well-established and significant feature of the local area.
11. The proposal would result in the loss of around half of the open space and several mature trees and an increase in built form. The natural green character of the space and its openness would be diminished by the proposal and the significance of the space as an oasis in an otherwise highly urbanised setting would be reduced.
12. I understand it is not the intention to build on the whole of the land but to offer the remaining space to the community as public open space. However, there is

¹ Section 38 (6) of the Planning and Compulsory Purchase Act 2004 and Section 70 (2) of the Town and Country Planning Act 1990

no mechanism before me to ensure that this would be achieved.

Consequently, there is no guarantee that this element of the proposal would materialise. Moreover, even if there were such a mechanism before me, the remaining open space would be somewhat limited in size and its impact on the character and appearance of the area would be diminished.

13. There has been no assessment to demonstrate that the open space is surplus to requirements in terms of the availability of alternative provision. The fact that the land was sold by the Council does not equate to it being surplus to the requirements of the community or not needed in terms of its visual amenity. I acknowledge that there are some areas of open land, and recreational facilities, in the wider area. However, these spaces do not contribute to the quality of the environment around Catherine Street West.
14. I have noted the appellant's comment that if planning permission is not granted, the land will continue to overgrow so that its amenity value diminishes over time. Be that as it may, this is an argument that could be applied all too often and cannot justify the loss of the open space.
15. For the above reasons the proposal would be harmful to the character and appearance of the area and would have an adverse effect on the quality of the residential environment. The proposal would not meet any of the exceptions for the development of open space set out in Policy OL4 and moreover the development would not maintain a sense of openness in the street scene or maintain the character and environmental quality of the area. Consequently, the proposal would therefore be contrary to Policy OL4 of the UDP and Paragraphs 97, 100 and 127 of the Framework.

Air Quality

16. The site lies within an Air Quality Management Area which is centred on the local road network. Policy 1.12 of the UDP requires that all forms of pollution arising from new developments must not exceed acceptable levels for the surrounding area. Paragraph 170 e of the Framework requires planning decisions to prevent new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of, amongst other things, air or noise pollution. Paragraph 181 requires decisions to sustain or contribute towards compliance with relevant limit values or national objectives for pollutants, taking into account the presence of Air Quality Management Areas.
17. The Council's concern, as set out in the Decision Notice, relates to the originally submitted Air Quality Impact Assessment which, it considered, did not identify suitable mitigation against the impact of poor air quality for future occupiers. However, a revised assessment submitted with the appeal, which focused on the likely concentration of airborne particles and nitrogen dioxide, found that predicted concentrations of these pollutants would be below the relevant objectives, when measured at various receptor locations at the proposed development. Consequently, mitigation is not required. In the absence of any evidence to the contrary, I have no reason to conclude otherwise.
18. In terms of the impact of the proposed development on air quality, proposed mitigation of at least 1 electrical vehicle rapid charge point and a minimum standard for gas boilers as recommended in the assessment could have been required by condition, had I been minded to allow the appeal.

Other Matter

19. I have noted the appellant's criticism of the alleged lack of collaboration in the selling of the land between the Council and its planning service. However, whilst this is a matter for the Council, there is nothing before me to indicate that this land was ever intended to be a building plot given its designation as Protected Open Space. Notwithstanding this, it is in any event my duty to determine the appeal on the basis of its own merits in the light of the statutory duty set out above.
20. For the above reasons, and taking into account all matters raised, the appeal is dismissed.

S Ashworth

INSPECTOR