

REPORT FOR NOTING

Agenda
Item

6

DECISION OF:	PLANNING CONTROL COMMITTEE
DATE:	21 March 2023
SUBJECT:	PLANNING APPEALS
REPORT FROM:	HEAD OF DEVELOPMENT MANAGEMENT
CONTACT OFFICER:	DAVID MARNO
TYPE OF DECISION:	COUNCIL
FREEDOM OF INFORMATION/STATUS:	This paper is within the public domain
SUMMARY:	<p>Planning Appeals:</p> <ul style="list-style-type: none"> - Lodged - Determined <p>Enforcement Appeals</p> <ul style="list-style-type: none"> - Lodged - Determined
OPTIONS & RECOMMENDED OPTION	The Committee is recommended to note the report and appendices
IMPLICATIONS:	
Corporate Aims/Policy Framework:	Do the proposals accord with the Policy Framework? Yes
Statement by the S151 Officer: Financial Implications and Risk Considerations:	Executive Director of Resources to advise regarding risk management
Statement by Executive Director of Resources:	N/A
Equality/Diversity implications:	No
Considered by Monitoring Officer:	N/A

Wards Affected:	All listed
Scrutiny Interest:	N/A

TRACKING/PROCESS

DIRECTOR:

Chief Executive/ Strategic Leadership Team	Executive Member/Chair	Ward Members	Partners
Scrutiny Committee	Committee	Council	

1.0 BACKGROUND

This is a monthly report to the Committee of the Planning Appeals lodged against decisions of the authority and against Enforcement Notices served and those that have been subsequently determined by the Planning Inspectorate.

Attached to the report are the Inspectors Decisions and a verbal report will be presented to the Committee on the implications of the decisions on the Appeals that were upheld.

2.0 CONCLUSION

That the item be noted.

List of Background Papers:-

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**Planning Appeals Lodged
between 13/02/2023 and 12/03/2023**



Application No.: 68881/FUL

Appeal lodged: 23/02/2023

Decision level: DEL

Appeal Type: Written Representations

Recommended Decision: Refuse

Applicant: K-Outlet

Location 6-9 Park Hill, Bury Old Road, Prestwich, Manchester, M25 0FX

Proposal Retention of five shipping containers

Total Number of Appeals Lodged: 1

**Planning Appeals Decided
between 13/02/2023 and 12/03/2023**



Application No.: 65844/FUL

Appeal Decision: Dismissed

Decision level: COM

Date: 14/02/2023

Recommended Decision: Minded to Approve

Appeal type: Written Representations

Applicant: Eccleston Homes Limited

Location: Former Mondi/Holcombe Mill, Bridge Street, Ramsbottom, Bury, BL0 0BS

Proposal: Erection of 73 no. dwellings including the retention and conversion of 2 existing buildings to residential use (5 no. units), the retention of a chimney and the demolition of a derelict building, together with engineering operations to create a development platform and associated parking, landscaping, drainage, the layout of internal estate roads and footways and other associated works



Appeal Decision

Site visit made on 3 January 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Appeal Ref: APP/T4210/W/22/3302543

Former Mondi/Holcombe Mill, Bridge Street, Ramsbottom BL0 0BS

- 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 Eccleston Homes Limited against the decision of Bury Metropolitan Borough Council.
- The application Ref 65844, dated 10 August 2022, was refused by notice dated 7 June 2022.
- The development proposed is the erection of 72 dwellings including the retention and conversion of 2 existing buildings, the retention of a chimney and the demolition of a derelict building, together with engineering operations to create a development platform and associated parking, landscaping, drainage, the layout of internal estate roads and footways and other associated works.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Eccleston Homes Limited against Bury Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The description in the banner heading above was taken from the planning application form. Following revisions to the scheme proposal during the Council's consideration of the planning application, the description was amended to 'Erection of 73 no. dwellings including the retention and conversion of 2 existing buildings to residential use (5 no. units), the retention of a chimney and the demolition of a derelict building, together with engineering operations to create a development platform and associated parking, landscaping, drainage, the layout of internal estate roads and footways and other associated works'. This was the proposal on which the Council made its decision and so shall I.
4. A completed deed as a planning obligation made pursuant to s106 of the Town and Country Planning Act 1990 (as amended) (the Act) has been submitted with the appeal. It includes obligations to come into effect if planning permission is granted. I return to this matter later in my decision.

Main Issues

5. The main issues are the effect of the development on:

- flood risk
- highway safety and capacity.

Reasons

Flood risk

6. The appeal site lies adjacent to the River Irwell, a main river. The Environment Agency's (the EA) flood risk mapping shows the majority of the site to lie in Flood Zone 3. More limited areas to the west lie in Flood Zone 2 and then Flood Zone 1.
7. Policy EN5/1 of the Bury Unitary Development Plan [1997] (the UDP), seeks to ensure that new development is not at risk from flooding and does not increase the risk of flooding elsewhere. Although it pre-dates the detailed tests in relation to flood risk as set out in the revised National Planning Policy Framework (the Framework), it remains consistent with its aims. Pursuant to Paragraph 219 of the Framework, I find it is therefore entitled to significant weight in the appeal.
8. Paragraph 167 and Footnote 55 of the Framework require applications in flood risk areas to be accompanied by a site-specific flood risk assessment (FRA). Planning Practice Guidance¹ (PPG) advises that the FRA should demonstrate current and future risks to the development, off-site risks, measures to address any identified risks, and evidence to demonstrate that necessary sequential and exception tests are met. The Framework confirms this is relevant to all sources of flooding.
9. A FRA and associated documentation were provided by the appellant. An extended site search exercise carried out by the appellant indicates that there were no sites available to deliver a similar amount of new housing in the northern part of the borough which were at lower risk of flooding. Accordingly, there is no dispute between the main parties that the sequential test, which seeks to direct development to available locations with the lowest risk of flooding, would be met. Having regard to the revised search area and lack of evidence to demonstrate otherwise, I am satisfied that the requirement of the sequential test is met.
10. The residential development of the site would introduce a More Vulnerable development type as classified in Annex 3 of the Framework. Where existing buildings would be reused, this would elevate the vulnerability classification from a Less Vulnerable former use to a More Vulnerable use.
11. Accordingly, in line with Paragraph 163 of the Framework and Table 2 of the PPG², the exception test applies. This requires demonstration that development proposed in a flood risk area will provide wider sustainability benefits to the community that outweigh flood risk; and, that the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

¹ Paragraph: 020 Reference ID: 7-020-20220825

² Paragraph: 079 Reference ID: 7-079-20220825

Paragraph 165 makes it clear that both elements of the exception test should be satisfied for the development to be permitted.

12. The FRA provides an analysis of existing flood risks and future risks with the development in place. In relation to flood risk from the River Irwell, there is little dispute between the main parties that the proposal to set the new development on a raised platform to ensure sufficient freeboard above modelled flood levels would limit flood risk on the site and elsewhere. This would take account of the anticipated increases in precipitation and river levels due to climate change.
13. Policy EN5/1 seeks to prevent land raising as a method of protecting development from flooding. This could displace flood water storage capacity in those areas identified as being susceptible to inundation. However, a proposed area of open space between the housing and the river channel to the east would be capable of providing compensatory flood water storage capacity for the displacement effects of the platform. A review of the modelled scenarios by the EA suggests that any off-site fluvial flooding effects would be negligible.
14. Although some floor levels are shown to be below the recommended freeboard in the FRA, there is little to suggest that this could not be adequately addressed through planning condition to require it in the new buildings. Any additional displacement capacity could also be secured in this manner.
15. In relation to the northernmost existing building, the modelling suggests that this unit and the site access road could be flooded to a depth of no greater than 0.5m in the design event (1:100 + 35%). This would result in a risk as a consequence of fluvial flooding to those parts of the site and adjacent land.
16. Compared to the existing unmanaged overland flows of surface water on the site, a proposed separate surface water system would provide improvements to the management of site surface water. This would include use of the existing former mill race and a large culvert to provide storage capacity, flow rate control and potential improvement to water quality outputs from the site.
17. Subject to the regular maintenance requirements identified by the appellant being secured, I have little doubt that this would provide a benefit to the site surface water regime. In conjunction with considerably reducing the extent of oversite hard surfacing, the FRA estimates that the development would lead to a 30% reduction in peak surface water discharge to the River Irwell. This would provide some benefits to the discharge profile of water into the river below the site.
18. There is some dispute as to the effects of the proposed unrestricted output of the foul water drainage system into a combined sewer crossing the site. It is evident from the information before me that a concern was raised in relation to the foul flows during the Council's consideration of the planning application. This culminated in its first reason for refusal. This was based on United Utilities (UU) modelling demonstrating that the proposed connection, which cannot be legally refused by UU, could add to flood risk from that source. Although the modelling has not subsequently been provided in evidence, this was estimated as some 14.9m³.
19. There is limited information provided by either main party as to the ability for the combined sewer to accommodate the foul flows during storm events.

Although the appellant's specialist advisor casts some doubt on the accuracy of the modelling and therefore the degree to which the foul drainage could exacerbate flood risk from this source, there is little conclusive evidence to demonstrate that additional flooding would not arise from the combined sewer.

20. The appellant contests that the designed capacity within the proposed foul drainage would accommodate more than the anticipated volume of surcharge arising from the development's foul drainage system. However, as much of this would be set at levels higher than some sewer cover levels in the locality and in the downstream section of the sewer, it is unclear as to the extent of any attenuation effect, or its impact on surcharging of the sewer.
21. The appellant asserts that a modelled flow from the former mill anticipates that foul flows would have been greater than that anticipated from the proposed development. However, that use has long since ceased and the site was substantially cleared some time ago. Although there is evidence of former connections, there is little to suggest any managed foul flows are currently directed to the sewer. In the circumstances, I consider that 'fallback' of little merit.
22. Having regard to the inconclusive representations of both parties on this matter, I find there is insufficient evidence to demonstrate that there would be no residual potential risk from the combined sewer as a possible source of flooding in the locality of the site. The imposition on UU to accept foul drainage does not, in itself, eliminate foul flooding concerns.
23. The FRA confirms that the site has been modelled to be at moderate to significant risk of groundwater flooding. The report asserts that this modelled estimate is overstated due to the extent of the existing hard cover currently on the site and a measurement of existing groundwater levels. However, as much of the site cover would be removed, there is little to qualify any subsequent risk in relation to that source of flooding.
24. Parts of the site are modelled by the EA to be at high risk from surface water flooding. This includes the northernmost building for conversion (identified as Building A in the submitted plans), areas about Building B and parts of the mill race. In addition to the design event for fluvial sources of flooding, the EAs mapping also identifies parts of Bridge Street to be at high risk from surface water flooding. This includes the location of the main access.
25. Some surface water could be directed away from buildings by lowering ground levels at the north-western corner of the site. This would potentially provide some localised benefit by directing some flows to the mill race. However, during inundation events it is anticipated that exceedance flows would be directed along internal roadways. At the northern part of the site this is shown to flow towards the buildings for conversion, which would be below the level of the adjacent carriageway. It is therefore anticipated that some risk to those buildings would arise from those sources of flooding.
26. Paragraph 167 of the revised Framework requires that, amongst other things, safe access and escape routes are included where appropriate, as part of an agreed emergency plan. The FRA identifies that there is some risk associated with access/egress from the site during a design event or more extreme events. The extent of flooding on Bridge Street is assessed as being between

low to moderate in the design event. A flood hazard assessment³ carried out by the appellant suggests that access via Bridge Street would be a low hazard in times of flood. The appellant contests that this would provide safe access and egress for emergency service vehicles who could attend to those taking safe refuge in the houses.

27. A Flood Plan submitted by the appellant relies, in part, on residents and visitors taking safe refuge in the new houses or at first floor level within the refurbished residential dwellings. However, the buildings for conversion in block A, would be converted into 3 units. This would include 2 single level units at the ground floor. Accordingly, an upper floor refuge would not be a secured option for those residents.
28. During such events, some residents – particularly the elderly or those with more limited mobility, would potentially have significant difficulty evacuating a site where pedestrian and vehicle routes could be inundated. Although the depth of water might be limited, the Flood Plan highlights that walking through moving water should be avoided. There is little evidence provided as to what measures might be capable of securing a more suitable evacuation route or, therefore, whether it could be achieved without undue risk to residents or those who might consequently be responsible for their evacuation. In that absence, this could result in an additional burden for emergency services who would be required to assist.
29. Although the Council have considered the Flood Plan, it reports that it only supports the principle of its content. The EA's advice referred the parties to the guide Flood Risk Emergency Plans for New Development [Sept. 2019]. Contrary to the Council's proposed approach, this makes it clear that is not appropriate to defer consideration of emergency planning matters using pre-commencement planning conditions.
30. As off-site requirements to deliver escape solutions may be necessary, and could only be secured by way of properly assessed Grampian condition/s or an obligation under s106 of the Act, a pre-commencement condition could nullify the benefit of any planning permission it was attached to. It would not therefore pass the test of reasonableness, as set out in Paragraph 55 of the Framework. Moreover, it could not guarantee that the development would be safe for its lifetime having regard to the vulnerability of its users to make the development acceptable in planning terms.
31. As proposed, the Flood Plan would render vulnerable users to be heavily reliant on third parties or emergency services. The EAs guidance highlights that additional burdens on the emergency services can increase the risk to existing communities that are already reliant on emergency services provision. Where additional load would be imposed, this should be mitigated by covering associated costs. This would require an undertaking on the part of the site developer.
32. The Flood Plan envisages a site management company as the Flood Plan Coordinator. It would provide information and advice to representatives of individual households, review details contained in the Flood Plan on a quarterly basis and seek its independent review annually. However, there is little detail

³ Dwg. 4714_034_Q100_CC25_ZUK0 Rev A

of how that arrangement would effectively operate, or the mechanism to secure it over the lifetime of the development.

33. There is no dispute between the main parties that the proposal would provide wider public benefits. This would comprise the benefits of housing delivery, including affordable units, and the effective use of a derelict brownfield site located close to services and facilities. It would respond to local land-use demand, provide management of the site surface water regime to limit peak flows to the River Irwell and provide public access to open space alongside it. Economic benefits would also arise from its construction and occupation phases.
34. Taking all of the above together, I find that the totality of the level of flood risks associated with groundwater, foul drainage, fluvial and surface water sources to be insufficiently clear. It is not therefore possible to determine that the benefits of the scheme would outweigh the flood risks in the particular circumstances of the case. On the balance of the evidence provided, I am not persuaded that the requirements in Paragraphs 164 a) and b) relating to the exceptions test, or that in Paragraph 167 e) of the Framework would be met.
35. For those reasons, I cannot be certain that the proposed development would not cause an elevated risk of flooding elsewhere or that the development could be made safe for the intended 'more vulnerable' occupants of the site over its lifetime. In the absence of demonstrated compliance with the exceptions test, I find the development would thereby conflict with saved Policy EN5/1 of the UDP and the Framework which require that the development should be safe for its lifetime without increasing flood risk elsewhere.

Highway safety and capacity

36. The site lies within the area of Ramsbottom town centre. The scheme would utilise an existing access road serving the site and sports clubs located between the East Lancashire railway and the river corridor. The existing access road would be widened and realigned to provide improved pedestrian and vehicular access on to Bridge Street, a main route through the town centre.
37. Additional pedestrian access points would be installed further east on the site's northern frontage. One former vehicular access close to the point Bridge Street meets Peel Brow would be blocked up to vehicular traffic, another would be restricted to emergency access only. This would prevent their general use and reduce the number of access points on this length of Bridge Street. The Bridge Street pavement would be reinstated to provide a continuous footway along its southern side.
38. Saved Policy H2/2 of the UDP seeks layouts of development that, amongst other things, provide adequate parking provision, access for vehicles and pedestrians, access to public transport and traffic calming where necessary. For new development Policy HT4 supports sustainable development that will assist in the implementation of a balanced transport strategy and minimise the environmental impact of traffic. Development is encouraged where use can be made of public transport or spare capacity in the existing highway network.
39. The scheme layout includes a legible hierarchy of roads, pavements, shared surfaces and driveways. Alongside vehicle turning heads, raised speed tables at key junctions and junction geometry to provide good intervisibility between

different users, facilities would exist for the limiting of road traffic speeds and allow for permeability for all users, including larger service vehicles. Alongside the proposals to incorporate measures to address identified safety concerns in a Road Safety Audit of the site and accesses, I find there is little evidence to demonstrate that the proposed layout and design of access infrastructure would lead to an unacceptable impact on highway safety.

40. Visibility at the access on to Bridge Street has been demonstrated to be sufficient to allow safe egress from the access road. In conjunction with carriageway widening to 5.5m, 6m radii and in-highway 'Keep Clear' markings on the nearside carriageway of Bridge Street, this would allow for a suitable standard of vehicular access to serve the development proposed. Additionally, pedestrian routes within and from the site, across the improved junction and along the northern edge of the site would be included and/or enhanced to provide safe routes for non-vehicular traffic within and about the site. These would facilitate safe and easy access to the nearby town centre shops, services and facilities, including local bus stops.
41. Using industry standard assessment methodologies, the appellant's Traffic Assessment indicates that the development of 72 new residential units would generate some 37 vehicle movements in the morning peak and 38 in the evening peak hour at the proposed access. As this does not apply any reduction for the fact that about a quarter of the units would be apartments – known to generally generate less than dwellinghouses, these figures would not be materially different taking account of the additional unit arising from the scheme amendments during the Council's consideration of the planning application.
42. Those peak flows have been applied to modelled trip distribution in the local road network, including allowances for likely traffic increases to 2025. These illustrate that the traffic associated with the development would have little material impact on capacities in the local network, including a number of key junctions in the locality. Only in relation to peak flows through a junction at Manchester Road (A56) and Bury New Road, some distance to the east of the site, were some concerns expressed by Transport for Greater Manchester (TfGM) due to existing capacity concerns.
43. In relation to the assessment of the A56 junction, the pre-development situation shows that this operates at over a 90% capacity threshold in the evening peak hour and therefore has a variable level of operation. The proposal is calculated to increase queuing by some 2.2 vehicles on the south link of the A56 during the evening peak as the most significant effect. In the context of daily variations this is a limited effect. This is not disputed by the Council or its highway advisors.
44. Notwithstanding the above, TfGM have requested that the costs of installing a microprocessor optimised vehicle actuation system (MOVA) at the junction are met by the developer and secured by way of an obligation under s.106 of the Act. This could deliver junction efficiencies far exceeding the identified effects upon it. This is a matter I return to below. However, at this point it is important to acknowledge that the effect of traffic on the A56/Bury New Road would be limited. It would remain at the variable operating level and below the 100% Degree of Saturation (overloaded conditions). It would not then exceed the

- threshold defined in Paragraph 111 of the Framework as the residual cumulative effect of the proposals would not be severe.
45. The modelled traffic generation at the proposed site access on Bridge Street shows that the access could operate without significant queuing or delays. Again, this is not contested by the Council.
46. In support of its decision the Council directs me to the findings in the Ramsbottom Town Centre Plan [March 2022] (the TCP). Although the document does not form part of the development plan it provides an up-to-date commentary of local strengths and weaknesses in relation to the longer-term aspirations and vision for the town centre area.
47. The TCP acknowledges that Bridge Street is part of an important east-west link between significant classified A-roads in the area. It highlights a concern that the locality is often subject to high volumes of traffic sometimes resulting in congestion and thereby frustrating pedestrian movement in the town centre, particularly during busy visitor times. In conjunction with the fine grain of historic development close to the centre, it notes that the traffic tends to dominate at some cost to pedestrians.
48. There is no dispute that the proposal would introduce additional traffic into an area already suffering from periods of traffic congestion. This would be most notable at peak period times. However, there is little evidence presented by the Council of either existing assessed highway safety concerns or those that might arise from the design arrangement or additional traffic associated with the proposal.
49. There is also no dispute that, as a site located adjacent to the existing town centre facilities, it is well located in terms of limiting travel demands, particularly by private motorised vehicles. In a highly accessible location with access to sustainable means of transport, trips by private motor vehicle can be expected to be less in comparison to more distant housing locations. Additionally, subject to imposing targets, monitoring and management requirements, vehicle trip generation could be further reduced by the implementation of a Travel Plan for residents of the site.
50. I recognise the TCP and expressed local concerns in relation to the levels of town centre parking. However, the scheme would comply with the maximum standards described in the Development Control Policy Guidance Note 11 – Parking Standards in Bury. As a cul-de-sac development with adequate parking for a scheme close to the town centre, there is little to suggest this would exacerbate those concerns or result in out-spill to the detriment of highway safety or traffic movement.
51. The East Lancashire Railway runs adjacent to the western side of the site. This is currently operated by rail enthusiasts as a local visitor attraction. The operation of the heritage railway involves the use of a gated crossing on Bridge Street. According to representations of some third parties, during times when the line is in use the effect of the crossing on traffic flows along Bridge Street can result in significant queuing, both along Bridge Street and local tributary roads. Whilst I have little doubt that the traffic associated with the development would add to existing levels of congestion caused by the operation of the crossing at those times, there is little before me to demonstrate that those effects could be described as severe.

52. I note that the realisation of the City Valley Rail Link Scheme could result in greater use of the crossing. This could further impede the free flow of vehicular traffic on Bridge Street whilst offering alternative commuter transport options to residents. However, as a project yet to be implemented, it is not a matter of material weight in my determination of the appeal.
53. For the above reasons, having regard to the thresholds set out at Paragraph 111 of the Framework, I find that there is little to demonstrate that the proposed scheme would cause an unacceptable impact on highway safety or result in a severe impact on the road network. It would align with the requirements in saved Policies H2/2 and HT4 of the UDP as they seek good standards of residential layout and accessibility, including access to public transport, and where the existing highway network can accommodate the traffic generated by the development. For similar reasons it would be consistent with the requirements in the Framework.

Other Matters

54. Policy H4/1 of the UDP seeks the provision of affordable housing on major housing development sites. There is no dispute between the main parties that, subsequent to the findings of a viability appraisal, the scheme would be financially capable of delivering up to 10 affordable units.
55. In support of the proposals the appellant has provided a signed and sealed agreement with the Council as a planning obligation under s106 of the Act. In addition to securing the parameters relevant to affordable housing delivery on the site, the provision and management of public open space, the obligation includes a transport contribution, defined as £110,000 for transport infrastructure improvements.
56. The improvements would be the installation of MOVA at the A56/Bury New Road junction. For the reasons given above, I find that requirement to be excessive and would not be necessary to make the development acceptable in planning terms. It would thereby conflict with Regulation 122 of the Community Infrastructure Levy Regulations 2010. However, the obligation incorporates a 'blue pencil' clause which requires my determination to be taken into account. Accordingly, the requirement to pay the contribution would fall away without recourse to variation of the obligation. It would remain lawful having regard to the 3 tests set out in the Regulation.
57. A noise assessment undertaken by the appellant is limited to road, railway and sportsground sources only. I note the concerns of an existing large distribution centre located in close proximity to the site and the potential for prospective occupiers to be disturbed by their established activities. These may extend to unsociable hours. Given the findings of the acoustic report in relation to other noise sources and identified requirements for acoustic barriers, it is surprising that the potential effects and any attendant requirement for noise shielding in a prominent location have not been considered as part of that exercise. However, pursuant to my findings on the matter of flood risk, my decision does not turn on this issue.
58. The existing buildings on the site lie within the Ramsbottom Conservation Area (the CA), an amalgamation of 3 previously designated Conservation Areas. There is no dispute between the main parties that the proposed development would not have an adverse effect on the character or appearance of the CA or

its setting. Pursuant to the duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, having considered the proposal and visited the site, I concur with that view subject to agreement of suitable materials for the proposed buildings, the means of enclosure (including acoustic barriers), and the detailing of conversion works.

59. This is because those traditional buildings on the site which stem from a chapter in the town's successful development from the late 1700's onwards were formerly dominated by large scale industrial buildings and currently suffer various degrees of dilapidation in a poor setting. The redevelopment of the site would improve the appearance of this part of the CA without harm to its wider character. Accordingly, it is my view that the development proposed would enhance those buildings capable of retention and re-use, and would preserve the character and appearance of the remainder of the designated area.
60. The claims that there are insufficient capacities in local services, including health and educational facilities are noted. However, these are matters beyond the requirements in the development plan or the control of the appellant. They are therefore matters of limited weight in the appeal.
61. An assessment of the site has identified the potential of the development to have an adverse effect on protected species (bats) due to roosting opportunities. Regulation 9 of the Conservation of Habitats and Species Regulations 2017 imposes a duty on me to have regard to the likelihood of European Protected Species being present and affected by the proposed development. It would normally be incumbent on me to determine whether the necessary licence would likely be granted to avoid a conflict with the Habitats Regulations. However, as I am dismissing this appeal for another reason, this has not been necessary. Aside from protected species and nesting bird concerns identified by the appellant, claims of wildlife use of the site are not supported by substantive evidence. I am therefore unable to attribute significant weight to this argument.
62. I note that some aspirations contained within the Town Centre Plan could be met by other uses of the site. However, the acceptability, or otherwise, of an alternative potential development is not a matter for this appeal.

Planning Balance and Conclusion

63. In support of the proposal the appellant refers me to the fact that the Council is unable to demonstrate a 5-year housing land supply and has a poor record of housing delivery in recent years. A recent assessment indicates a significant shortfall, with only 1.7 years supply of housing land. Although dated, this is not contested by the Council. Consequently footnote 8 of the Framework applies which engages para 11 d). However, pursuant to my finding in relation to the matter of flood risk, the policies in the Framework that protect areas or assets of particular importance (including areas at risk of flooding) provide a clear reason for refusing the development as set out in para 11d) i). Accordingly, the presumption in favour of sustainable development does not therefore apply.
64. Notwithstanding my finding in favour of the appellant in regard to highway safety and capacity, on the fundamental matter of risks to residents and those who may be required to attend to them in emergency situations, I do not find that the potential adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits. Accordingly, I find the

proposal would conflict with the development plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not be allowed.

R Hitchcock

INSPECTOR



Costs Decision

Site visit made on 3 January 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 February 2023

Costs application in relation to Appeal Ref: APP/T4210/W/22/3302543

Former Mondi / Holcombe Mill, Bridge Street, Ramsbottom BL0 0BS

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Eccleston Homes Ltd for a full award of costs against Bury Metropolitan Borough Council.
- The appeal was against the refusal of planning permission for the 'Erection of 73 no. dwellings including the retention and conversion of 2 existing buildings to residential use (5 no. units), the retention of a chimney and the demolition of a derelict building, together with engineering operations to create a development platform and associated parking, landscaping, drainage, the layout of internal estate roads and footways and other associated works'.

Decision

1. The application for a full award of costs is granted in the terms set out below.

Reasons

2. Paragraph 30 of the Government's Planning Practice Guidance (PPG)¹ advises that, irrespective of the outcome of an appeal, costs may be awarded where a party has behaved unreasonably, and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. This can be on procedural or substantive grounds, or both.
3. In this case the Council's officer had recommended the application for approval. Whilst the Council is not duty bound to follow the advice of its professional officers, if a different decision is reached the Council must reasonably defend the appeal by clearly demonstrating why a proposal is unacceptable on planning grounds and provide clear evidence to substantiate that reasoning.
4. The applicant's claim suggests that the Council have relied on vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
5. It is the Council's position that, as part of the democratic process of planning decision making, the Council's Planning Control Committee applied local knowledge and concerns in relation to local flooding and highway conditions. These were issues upon which the Council took the advice of statutory and non-statutory consultees. They were the main issues in the appeal.
6. In relation to highway matters, the Council's concerns related to local highway capacity and road safety. In addition to highway concerns raised by third

¹ Paragraph: 030 Reference ID: 16-030-20140306

parties, these are issues identified as of local concern in the Ramsbottom Town Centre Plan [2022] (the TCP). Although not part of the development plan, the document provides a useful recent commentary on local perceptions and aspirations in relation to matters including traffic management.

7. The applicant's Traffic Assessment (TA) provided a comprehensive assessment of the likely effects of the development in terms of potential traffic generation and local highway capacity. Alongside proposed layout plans, the TA also demonstrated that parking would be self-contained and non-vehicle road users would be safely provided for within the site.
8. The TCP identifies pre-existing concerns in relation to town centre traffic congestion and the fact that road vehicle traffic dominates. However, little detail was provided to identify exactly what the Council considered the highway safety issues to be, or where they might arise because of the proposed development. The Council's statement is largely silent on the matter.
9. In relation to the 'free-flow' of traffic, it is clear that the site, being close to the town centre and on one of few river crossing points linking main busy north-south routes, is in a key location. There is no dispute that the area is subject to congestion at peak times and when the railway crossing is operative. In addition to Bridge Street, some congestion also occurs at key local junctions.
10. Although there was no dispute that additional traffic would arise, including during peak periods, the TA assessed the effects as limited. Even accounting for the operational limit of the main junction of the A56 and Bury New Road, additional queuing was identified to be at a relatively low level. In advising the Council, Transport for Greater Manchester (TfGM) considered it would exacerbate an existing poor situation at a signal-controlled junction. However, there was little to qualify that any aspect of the proposal would result in a severe network effect.
11. As a material consideration that post-dates the saved policies in the development plan, the National Planning Policy Framework is clear that development should only be prevented on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
12. TfGM provided a monetised valuation of the queueing effects of the development at the A56 junction. However, there is little within their assessment, or the Council's case, to suggest this would be a severe effect. In dismissing the offer of improvements to that junction to offset any adverse impacts, the Council have subsequently offered limited evidence as to any other adverse highway outcomes arising from the development.
13. Furthermore, the Council's assessment seemed to disregard the fact that the site is allocated for employment uses. Those uses could generate considerable amounts of traffic in a similar manner to the former use of the site, including heavy goods vehicles. Traffic associated with alternative uses would also be subject to the effects of the railway line, as highlighted by third parties.
14. I acknowledge that as a specialist matter, highway effects could be difficult to assess in the light of the various representations before the Committee. However, given the advice of the Council's highway advisors, if a different conclusion was to be reached, then detailed justification should have been

provided to support those views at appeal. Aside from reference to the general findings of the TCP, there is little specific detail of assessment of the effects of additional traffic or clarification as to what highway safety concerns and where they might present themselves. As described above, this should be clearly articulated for the purposes of defending an appeal. Having regard to the Council's submitted case, I find the detail provided was limited at best.

15. As much of the site lies in Flood Zone 3 and identified as being at high risk from other sources of flooding, the Council's degree of concern in relation to flood risk on the site and elsewhere was not unwarranted.
16. The Council's reason for refusal subsequently referred to a flooding event in 2015. Although I have little doubt that the extreme event gave rise to some flooding in the locality, its extent within the Flood Zone 3 area or the nature of its effects on or about the site were not qualified. It was therefore unclear as to any degree of relevance that that, or other local flooding events, held in relation to surface water or the combined sewer network.
17. The Council identified that the proposed foul input from the development could exacerbate concerns in relation to surface water and the combined sewer into which it was intended to flow. However, aside from the Environment Agency's (EA) flood risk mapping, provided by the applicant, the evidence to demonstrate it is limited.
18. The Council referred to the findings of modelling carried out by United Utilities (UU). Although this was not adamantly contested by the applicant, the Council failed to provide that, or any associated commentary from either UU or the Lead Local Flood Authority, to support its case in relation to either surface water or sewer flooding.
19. I acknowledge that in a location where surface water flooding is a high risk, where drainage is combined and some flows might be influenced by river levels, any assessment of development effects will be complex. However, if there were latent concerns held by the Council's officers, UU or the Lead Local Flood Authority prior to the Council's decision, then these were not made clear in the Council's report. Moreover, they have not been clearly demonstrated in evidence for the purposes of the appeal. Only the EA input expressed a residual concern.
20. Whilst it is for the applicant to demonstrate the extent to which modelled risks would be mitigated, if those risks are considered to be greater than claimed by the applicant, the Council should clearly explain why it has come to that conclusion. The Council's case in this regard appears to conflate proposed capacities in the foul and surface water systems to serve the development.
21. Notwithstanding my own finding in relation to this matter, I find the Council failed to sufficiently evidence and support its own case. Once more, I recognise that, as a decision-making committee, Members might not be expert in the technical application of the various aspects of drainage and rely on experiences of local flooding events. However, if a decision is made contrary to consultee views, then the reasons for coming to that view must be clearly demonstrated. Again, I find the Council's degree of evidence on the matter was limited.
22. I acknowledge the Council's contention that the balancing of the benefits of a scheme against identified harm is a matter for the decision-maker. However,

for the purposes of an appeal, it is incumbent on the Council to clearly articulate the nature and degree of the harm.

23. For the above reasons, I find that the Council failed to substantiate each reason for refusal and relied on generalised assertions about the proposal's impacts which were unsupported by objective analysis. Therefore, I conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has occurred. For this reason, and having regard to all other matters raised, an award for costs is therefore justified.

Costs Order

24. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Bury Metropolitan Borough Council shall pay to Eccleston Homes Ltd the costs of the appeal proceedings described in the heading of this decision.
25. The applicant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Hitchcock

INSPECTOR