



# Appeal Decision

Site visit made on 11 June 2024

**by J Moore BA (Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 July 2024**

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**Appeal Ref: APP/T4210/W/23/3330029**

**Land adjacent to Kingston Close, Elton, Bury BL8 2EJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Konrad Wilk against the decision of Bury Metropolitan Borough Council.
  - The application Ref is 69656.
  - The development proposed was originally described as erection of four dwellings and community facilities with associated parking and landscaping.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. In December 2023, the National Planning Policy Framework (the Framework) was revised. The main parties have had the opportunity to comment on any implications of the revised Framework within the appeal timetable.
3. Furthermore, on 21 March 2024, after the appeal was submitted, the Council adopted the Development Plan Document "Places for Everyone" (DPD). The Council's submissions assess the proposal against the policies of the DPD and the appellant has had an opportunity to comment on this matter within the appeal timetable.

## Main Issues

4. The main issues are:
  - the effect of the proposal upon open space provision, highway safety, main water supply, and the character and appearance of the area; and
  - whether the proposed development would provide acceptable living conditions for future occupiers, with regard to relevant standards for internal space, and accessible and adaptable dwellings;
  - whether the proposed development would provide acceptable arrangements for the storage and collection of refuse and recycling;
  - whether the proposed development would provide acceptable arrangements for digital connectivity; and
  - whether the proposed development would be net zero carbon.

## Reasons

### *Open space provision*

5. The Council states that the appeal site is an area of amenity greenspace originally provided as a developer contribution in conjunction with residential development at Kingston Close/Newham Drive. It was assessed as being of good quality in the Council's Green Space Audit and Strategy 2015 and serves as informal recreation space. It is located within the urban area of Bury West, which is identified as an area of quantitative deficit. Representations during determination stage and to the appeal indicate use by the community for informal recreation, open air events, dog walking and other activities.
6. There is no substantive evidence before me to demonstrate that the appeal site is surplus to open space requirements. Regardless of whether the area is grassed without any facilities, the loss of such open space arising from the proposal would not be replaced by an equivalent provision in terms of quantity elsewhere. The presence of any other informal recreation/amenity space within a certain distance from the appeal site does not justify its loss in the context of an established shortfall.
7. The submitted plans detail a proposed recreational area, without further annotation to indicate any equipped play area. The document prepared by Sovereign (the Sovereign document) appears to be a quotation for an equipped play area, with a proposed layout to include various equipment. However, the layout indicates equipment sited within areas annotated on the proposed landscape plan as existing and/or proposed soft landscaping. Consequently, there is conflicting information regarding the layout of the area. Furthermore, there is no proposed mechanism before me to secure the indicated layout, nor its management and maintenance.
8. There is no substantive evidence before me pertaining to the existing supply of equipped play space and whether the proposal would address any shortfall in quantitative or qualitative terms. It has therefore not been demonstrated that the proposal would result in better provision in terms of quantity or quality in a suitable location; nor that it would result in alternative recreational provision, whereby the benefits of which could clearly outweigh the loss of the amenity open space/informal recreational space.
9. I therefore conclude that the proposal would have an unacceptable effect upon open space provision. It conflicts with DPD Policies JP-G6 and JP-P7, and Policies EN1/2 and H2/2 of the Bury Unitary Development Plan 1997 (UDP). Taken together, these policies seek to ensure an appropriate scale, type, quality and distribution of accessible green space; to protect and enhance existing urban green spaces and the network of high quality and accessible recreation spaces; and to ensure that new residential development demonstrates an acceptable standard of layout, including that for open space provision. It also conflicts with paragraph 103 of the Framework, which seeks to protect existing open space.

### *Highway safety*

10. Each dwelling would have its own driveway to accommodate tandem parking spaces, with three spaces for Plot 4 and two for the other three plots. The driveways would be in proximity to the junctions of Kingston Close/Sutton

Close and Kingston Close/Finchley Close, where Kingston Close also bends towards the south. Plots 2 and 3 would share a double footway crossing, while plots 1 and 4 would have single footway crossings. The crossing serving Plot 4 would be very close to the access serving Nos 1 and 3 Finchley Close.

11. There is no substantive evidence before me to demonstrate how vehicles could safely enter and egress each plot with tandem parking in such proximity to multiple junctions. In the absence of any evidence to demonstrate that adequate visibility splays and forward visibility envelopes could be provided, I cannot be certain that the proposal would not unacceptably impede the free flow of traffic, nor result in an unacceptable risk of conflict between various highway users, including other vehicles, cyclists and pedestrians, particularly children visiting the proposed equipped play area.
12. The appellant draws my attention to other nearby properties with direct access from driveways across the footway. However, many of the examples do not have tandem parking arrangements, and those that do are not in such proximity to multiple junctions.
13. At present, the appeal site is largely bounded by a simple post and rail fence of a low height near to the back of the footway and the adjacent car park serving Bolton Road Methodist Church. The indicative layout for the proposed play area within the Sovereign document indicates that the existing pedestrian access to the recreational area would be retained, which is close to the proposed driveway to serve Plot 1.
14. The proposed landscaping plan does not indicate any new fencing to the proposed recreational area, save for a 2m high fence running along most of the side boundary to Plot 1. The appellant suggests that the layout plan within the Sovereign document clearly states a fence was to be provided to the boundary, However, this shows a hashed line annotated as "fence" and it is not clear that it would replace that existing, nor is any proposed fence specified in terms of height or form, and no new fencing is detailed within the quotation.
15. In any event, the fact of the matter is that the proposal would result in the creation of an equipped play area likely to be of increased attraction to children compared to the existing situation. In this context, it is likely that children would be at risk in travelling to the site or exiting from it, potentially into the path of approaching vehicles. It has not been demonstrated that measures to prevent or mitigate such risks are not required.
16. The landscaping plan details permeable block paving to each driveway. In the absence of a specification and in order to prevent surface water discharge onto the highway, the Council considers that further measures may be necessary. However, such matters could be controlled by a suitable condition.
17. Overall, the proposal fails to demonstrate that it would not result in unacceptable risks to highway safety in terms of potential conflicts between road users and pedestrians, including children. Furthermore, the proposal fails to demonstrate that such risks could be minimised or effectively mitigated.
18. I therefore conclude that the proposal fails to demonstrate that it would not result in unacceptable harm to highway safety. It conflicts with UDP Policies H2/2, HT2/4 and HT6/2. Taken together, these policies seek to ensure a satisfactory layout for new residential development, with regard to pedestrian

and highway safety, car parking provision, access for vehicles and pedestrians, and open spaces including children's play areas.

#### *Main water supply*

19. A water main runs across the site with an easement. Due to the absence of an appropriate survey and/or site-specific investigations, the accurate location, line and depth of this main is unknown. The rear elevations of the proposed dwellings would be sited at the edge of the easement, with surface water drainage and patio areas extending into the area of easement.
20. Although the appellant has liaised with United Utilities (UU) on this matter, UU object to the proposal. If the Council had been minded to grant permission, I note that UU sought a pre-commencement condition to control this matter, along with the removal of permitted development rights for any extensions or buildings to the rear of the proposed dwellings, in order to ensure the safety of the water supply and in the interests of public health.
21. The results of a detailed survey could result in a substantial change to the proposal, for example in terms of the scale, siting and footprint of built form and the overall layout. Consequently, I cannot be certain that the proposal would be fundamentally the same as that before me, and therefore I am not content to leave this matter to a condition. Furthermore, I am not content to impose a condition to restrict permitted development rights in the absence of a clear and convincing justification.
22. I therefore conclude that the proposal fails to demonstrate that it would not unacceptably harm main water supply. It conflicts with UDP Policies H2/2 and EN1/2, which seek to ensure that new residential development demonstrates acceptable standards of layout, including the relationship of development to the surrounding area. It also conflicts with the objectives of the Framework to achieve well-designed places.

#### *Character and appearance*

23. The surrounding residential area is comprised of two storey properties, predominantly detached with hipped roofs, some with gabled front projections and roof canopies above entrance doors and integral garages. There are semi-detached forms along Finchley Close which have an asymmetrical appearance due to the use of front gables, which harmonise with the surrounding detached forms in the area. Further harmony is achieved through the use of consistent materials including brickwork, brick detailing, and window proportions.
24. The proposed dwellings would be 2.5 storeys, with wide box dormers set within the front roof plane of a shared pitched roof, to provide accommodation within the roof space. While the ridge height would be commensurate with nearby properties, the proposed roof pitch is such that it would be much steeper than the shallower pitch of roof forms within the wider area.
25. These factors would combine to result in a top-heavy and disproportionate appearance in comparison to properties within the surrounding area. Consequently, the proposed dwellings would appear incongruous and discordant to the wider character and appearance of the area, despite the use of similar materials.

26. The appellant suggests that existing properties in the surrounding area would be able to construct dormers under permitted development rights. However, there is no substantive evidence before me to demonstrate that such properties would meet the requirements of the GPDO<sup>1</sup>. Although the GPDO permits alterations/additions to the roof of a dwellinghouse, such rights do not apply where works would extend beyond the plane of an existing roof slope to a principal elevation that fronts a highway.
27. I therefore conclude that the proposed development would harm the character and appearance of the area. It conflicts with UDP Policies H2/1 and EN1/2. Taken together, these policies seek to ensure that new residential development makes a positive contribution to the character of the surrounding environment, including through its design and roof type; and does not adversely harm the character and townscape of the borough.

#### *Refuse and recycling facilities*

28. The proposed plans do not indicate an area for the storage of bins for refuse and recycling. The appellant suggests that bin storage could be accommodated within the rear amenity area of the proposed dwellings. Given the relationship between the footprint of the proposed built form and the size of the plot, I am satisfied that bin storage could be accommodated within the curtilage of each dwelling, and therefore this matter could be controlled by a suitable condition.
29. My own observations indicate that nearby properties store bins within their frontage/rear amenity space. While the placement of bins along the footway outside of collection days could cause an obstruction on the footway, this would be no different to the prevailing situation in the surrounding area.
30. I therefore conclude that, subject to a suitable condition, the proposed development would provide acceptable arrangements for the storage and collection of refuse and recycling. It would accord with UDP Policies H2/2, HT2/4 and HT6/2 insofar as these policies relate to satisfactory arrangements for the servicing of new residential development.

#### *Living Conditions*

31. DPD Policy JP-H3 seeks to ensure that new dwellings comply with *Technical housing standards – nationally described space standard* (THS) and are built to 'accessible' and adaptable standard in Part 4(2) of Building Regulations. The appellant states that the proposed dwellings would comply with the THS, and there is no substantive evidence before me to indicate otherwise. In any event, these matters could be controlled by suitable conditions.
32. I therefore conclude that subject to suitable conditions, the proposed development would provide acceptable living conditions for future occupiers, with particular regard to relevant standards. It accords with DPD Policy JP-H3.

#### *Digital connectivity*

33. DPD Policy JP-C2 seeks to ensure that new development is equipped with electronic communication services and requires all new development to have full fibre to premises connections. The policy expects that internet connections will be operational and immediately accessible to network providers when

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<sup>1</sup> The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

occupiers move into new properties. There is no substantive evidence before me to demonstrate that the proposal would comply with this policy.

34. However, as the policy allows an exception if it can be demonstrated that such connectivity is not practicable or financially viable, and the appeal site is within an established residential area in an urban location, I see no reason why the proposal could not comply with this policy. Therefore, this matter could be controlled by a suitable condition.
35. I therefore conclude that subject to a suitable condition, the proposed development would provide acceptable arrangements for digital connectivity. It accords with DPD Policy JP-C2.

### *Net Zero Carbon*

36. DPD Policy JP-S2 expects all new development to be net zero carbon. The expectation from the adoption of the DPD is that net zero carbon should be achieved for regulated carbon emissions; from 2028 for all emissions in construction; and from 2025, development should also calculate and minimise carbon emissions from unregulated emissions. An energy statement should set out how this will be achieved, in accordance with an energy hierarchy. There is no energy statement before me, nor any substantive evidence to detail how the proposal would comply with this policy.
37. However, the policy allows an exception if it can be demonstrated that net zero carbon is not practicable or financially viable. I therefore see no reason why the proposal could not comply with this policy, and this matter could therefore be controlled by a suitable condition.
38. I therefore conclude that subject to a condition, the proposed development would accord with DPD Policy JP-S2, whose objectives I have set out above.

### **Other Matters**

39. The fact that the proposal would provide acceptable separation distances to nearby properties is a neutral matter, attracting no weight either for or against the proposal.
40. The Council accepts that the proposal would result in the loss of a low ecological value habitat, and I find no reason to consider otherwise. The appellant suggests that the proposed tree/shrub planting would deliver a biodiversity net gain. However, this has not been robustly demonstrated, and the proposed landscape plan conflicts with the indicative layout for the equipped play area. This matter therefore attracts no weight in favour of the proposal.
41. A range of other matters of concern have been raised by interested parties. However, as I am dismissing the appeal on the main issues, and consideration of these matters will not alter my decision, it is not necessary for me to address them directly.
42. The appellant suggests that the majority of the Council's concerns could have been clarified and overcome during the determination phase. For the avoidance of doubt, the handling of a planning application by a local planning authority does not affect my consideration of the planning merits of the proposal.

## **Planning Balance and Conclusion**

43. At the time of determination, the Council was unable to demonstrate a five-year supply of deliverable housing sites. Following the adoption of the DPD in March 2024, the Council states that it is now able to demonstrate a five-year supply of deliverable housing sites with a 20% buffer. Nonetheless, by virtue of the latest Housing Delivery Test, the Council accepts that paragraph 11 d ii) of the Framework is engaged. The appellant does not dispute this position.
44. There are no areas or assets of particular importance that provide a clear reason to refuse the proposed development. In these circumstances, the Framework sets out 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 of the Framework taken as a whole.
45. The policies with which the proposal conflicts are largely consistent with the objectives of the Framework to achieve well designed and beautiful places, to protect existing open spaces, to provide safe and suitable access for all users of proposed development, and to minimise the scope for conflicts between pedestrians and vehicles. As such, I apportion significant weight to these identified policy conflicts.
46. The proposal would provide four dwellings and therefore it would contribute to the supply of housing and support the government's objective to significantly boost the supply of homes. As a small site, it could be built out relatively quickly. However, these benefits would be limited by the scale of the development proposed. I therefore attach limited weight to these matters.
47. Further economic benefits would arise during the construction process, but these would be temporary. The proposal would deliver additional household expenditure into the economy, but this would be of a limited scale. Such benefits would attract limited weight.
48. I have found that the proposal would unacceptably harm the provision of open space and would also harm the character and appearance of the area. It also fails to demonstrate that it would not unacceptably harm highway safety and the main water supply.
49. Drawing all of the above together, it is clear that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits of the proposal, when assessed against the policies in the Framework taken as a whole.
50. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal is dismissed.

*J Moore*

INSPECTOR