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## Appeal Decisions

Site visit made on 24 November 2015

**by R Schofield BA(Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 December 2015**

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### **Appeal A Ref: APP/W4223/W/15/3130698**

#### **Land off Haven Lane, Oldham OL4 2QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Heyford Developments Limited against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/336309/14, dated 1 December 2014, was refused by notice dated 12 February 2015.  
The development proposed is erection of 30 family dwelling houses, access from Haven Lane, estate road, garages, parking spaces and landscaping.
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### **Appeal B Ref: APP/W4223/W/15/3134326**

#### **Land off Haven Lane, Moorside, Oldham OL4 2QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Heyford Developments Ltd against the decision of Oldham Metropolitan Borough Council.
  - The application Ref PA/336723/15, dated 23 March 2015, was refused by notice dated 13 July 2015.
  - The development proposed is erection of 29 family dwelling houses, access from Haven Lane, estate road, garaging, car parking, landscaping and public open space.
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### **Decision**

1. Appeal A is dismissed. Appeal B is dismissed.

### **Application for costs**

2. An application for costs was made by Heyford Developments Ltd against Oldham Metropolitan Borough Council. This application is the subject of a separate Decision.

### **Preliminary Matters**

3. The Council confirmed that the submission by the appellant of a Unilateral Undertaking addressed its first reason for refusal, with regard to affordable housing and public open space, in relation to Appeal A.
  4. The application subject to Appeal A was made in outline with all matters reserved other than access and layout. That subject to Appeal B was made in outline with all matters reserved other than access. I have considered the appeals on this basis.
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## Main Issues

5. The main issues common to both appeals are the effect of the proposed developments:

- on the character and appearance of the area;
- on highway safety;
- on the living conditions of the occupiers of neighbouring dwellings, with particular regard to light, outlook and privacy;

and, with regard to Appeal B only:

- whether the proposed development complies with the requirements of local planning policy for the delivery of unallocated housing sites.

## Reasons

### *Character and Appearance*

6. The Council's primary concerns in this regard, as set out in the decision notices, relate to the density of the proposed development and, with regard to appeal A, the layout of it.
7. With the exception of Havenside Close, the area around the appeal site is typically characterised by terraced and semi-detached dwellings set back from the road behind front gardens. Although the area does not appear or feel particularly low density there is, nonetheless, a reasonable amount of space between dwellings. This is typically of around two car widths due to the accommodation of driveways or garages, such that views are possible between dwellings and one does not feel particularly 'hemmed in' by development.
8. The scheme proposed under Appeal A would be around 30 or 31 dwellings per hectare. The development along the eastern boundary would be well spaced. However, it is evident from the submitted plans and my site visit that, notably when compared with the nature of development that backs onto the site from Havenside Close and Haugh Hill Road, the density of the appeal scheme along these boundaries would be greater.
9. An increase in development density when compared with a surrounding area does not necessarily equate to harm. However, in my judgment, the density of the appeal scheme is such that the dwellings proposed along the boundaries with Haugh Hill Road and Havenside Close would appear squeezed into the site. They would have narrow plots, with very little space between them, presenting an almost continuous built frontage to the street and a commensurately dense rear to the extant dwellings behind them. This would result in a form of development that would be at odds with the established character of the immediate area, compromising to a notable extent the sense of openness that is derived from more generous side-to-side distances.
10. Layout is a reserved matter in relation to Appeal B, although some indicative layouts have been provided. Although these indicate some increased spacing of the development on the site's northern boundary, it is difficult to see how the loss of one dwelling would result in such a reduction in density that the situation overall would be significantly improved.

11. Other recent developments in the Borough that have been built at a much higher density were drawn to my attention. Of these, a number appear to be in areas where high densities are prevalent and, as such, cannot be regarded as directly comparable. Most pertinent is the site currently under construction further down Haven Lane<sup>1</sup>, for which permission was granted for a development of around 31 dwellings per hectare in 2013. However, although permission was granted at this density, the site is not as clearly influenced by bordering development as the appeal site. I also note that the site is being built out at a much lower density. Thus, it cannot be regarded as a comparable development on the ground.
12. It is suggested that the Appeal A layout does not attempt to follow the 'regimented' and 'over-engineered' layout of surrounding estates and would add variety to the design and layout of the area. However, with the possible exception of the dwellings on the eastern edge of the proposed development, the scheme appears very much a regimented and uniform layout, in large part due to the constraints imposed by the proposed density.
13. It is further suggested that the site would reflect the cul-de-sac developments in the wider area and would only be glimpsed from Haven Lane. However, the site is clearly visible from the public realm and views up the access road would remain open. Even if this were not so, character and appearance is not solely about what can be seen from the public realm and I have considered this matter above.
14. The National Planning Policy Framework (the Framework) states, at paragraph 60, that it is proper to promote or reinforce local distinctiveness. The appeal proposals relate poorly to their wider context and so would not achieve this. Paragraph 64 is clear that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
15. I conclude, therefore, that the proposed developments would have an adverse impact upon the character and appearance of the area. They would conflict with policies 9 and 20 of the Oldham LDF Joint Development Plan Document (the LDF). These seek, among other things, to ensure that new development is not harmful to the visual amenity of the area and reflects its character.

#### *Highway Safety*

16. The access for both appeal schemes would be directly onto Haven Lane. The Council's Traffic Section originally objected to the scheme subject to Appeal A on highway safety grounds. This objection was withdrawn late in the determination process. It appears from the Traffic Section's correspondence<sup>2</sup> that this was on the basis of the appellant entering into a S106 agreement to fund a Local Safety Scheme on Haven Lane, 'which would take the form of speed cushions and speed tables with associated signing and lining'. No objection was made in relation to the scheme under Appeal B. It is reasonable to consider that this was as a result of the discussions in relation to Appeal A.
17. There are, however, numerous third party objections to both appeal schemes on highway safety grounds, including substantive technical submissions by SCP Transport. These relate chiefly to the appellant's speed data, which is regarded

<sup>1</sup> Referred to as Haven Lane South

<sup>2</sup> Internal Memo dated 11 February 2015

as being inadequate by failing to comply with Department for Transport requirements in relation to sampling and having been recorded at an incorrect location, as well as the apparent failure of the Road Safety Audit to address the interaction between, and implications of having, several residential highways access within close proximity of each other. No submissions have been made by the appellant in relation to these points, the last of which broadly accords with the initial concerns of the Traffic Section.

18. I am mindful that the Council has, apparently, agreed a solution with the appellant, as noted above. However, there are no plans of this solution before me, nor, it would appear, in the public domain, to demonstrate that it would be feasible. Nor is there any evidence of whether the sum proposed through the S106 agreement would be sufficient to fund the suggested solution. I cannot be certain, therefore, that a Local Safety Scheme that would overcome the concerns raised could be successfully implemented.
19. The proposed access onto Haven Lane is also predicated on the assumption that no other access is available. However, undisputed third party representation suggests that access off Havenside Close would be achievable over land in their ownership, of which the appellant is aware, but that no approach has been made in relation to it.
20. On the basis of the evidence before me, therefore, I conclude that there can be no certainty that the proposed developments would not have an adverse impact upon highway safety. As such a precautionary approach is appropriate and I consider that the proposed schemes would fail to accord with LDF policy 9, which seeks, among other things, to ensure that new development does not harm the safety of road users.

#### *Living Conditions*

21. Although not a reason for refusal made by the Council, a number of neighbouring residents, chiefly on Haven Lane and Havenside Close, objected to the appeal schemes on the basis of impact upon living conditions. These related to light, outlook and privacy. My site visit included accompanied visits to 162 Haven Lane and to numbers 1 and 4 Havenside Close.
22. The rear garden of 162 Haven Lane is small and contained, with the only open aspect from it over the appeal site on its southern boundary. The only boundary treatment here is a low stone wall and a five bar gate. In addition, the dwelling itself is very tight to the boundary. The outlook from the kitchen, the large window to which is situated in very close proximity to the boundary, has an uninterrupted outlook over, and can be clearly seen into from, the appeal site. The same is true of the bedroom windows on the first floor.
23. The scheme subject of Appeal A would situate a garage right up against the boundary with No 162, with a two storey house close behind it. The rear gardens to proposed plots 1 and 2 would back directly onto that of No 162. Given the nature of the boundary treatment that exists, the size and contained nature of No 162's rear garden and the very close proximity of No 162 to the appeal site, the proposed development could not fail to appear overbearing and oppressive upon the outlook from No 162.
24. In addition, the almost completely open boundary would result in a very significant loss of privacy to the garden and kitchen, with a lesser impact upon

the bedrooms. I am not persuaded that a reduction of a single dwelling as per Appeal scheme B would provide sufficient flexibility within the site to address these concerns. It may be that new boundary treatment could address the concerns in relation to privacy, at ground floor level at least, but the commensurate impacts with regard to light and outlook would be severe given the juxtaposition of No 162 with the appeal site.

25. Turning to light, the rear elevation of No 162 is southeast facing. As such, it is likely to have sunshine for much of the day on sunny days. The proximity of the proposed garage in relation to Appeal A is, in my judgment, likely to result in a loss of both daylight and sunlight to the garden and kitchen of No 162.
26. The rear gardens and elevations of Nos 1 – 5 Havenside Close back onto the appeal site. The gardens are short and are separated from the appeal site by only low hedges and/or post and wire fences. There is some taller vegetation but this is very limited in extent and the outlook from the rear gardens is very open, over the appeal site. The windows to kitchens and the patio doors to lounge/diners look out over the rear gardens and the appeal site beyond. In addition, Nos 2 and 3 have ground floor rear extensions and No 4 has a conservatory, bringing the downstairs living space even closer to the rear boundary.
27. The introduction of six dwellings along this boundary, as proposed by Appeal scheme A, would result in a very significant change in outlook from Nos 1 – 5. The open boundary and short gardens, combined with the rising land levels away from Nos 1 – 5, would mean that new development would appear oppressive upon the existing open outlook. In addition, privacy of both rear gardens and ground floor rooms could not fail to be significantly compromised by having new development in such close proximity to an open boundary. There would be a lesser impact at first floor level.
28. As above, I am not persuaded that a reduction of a single dwelling as per Appeal scheme B would provide sufficient flexibility within the site to address these concerns. Again, it may be that new boundary treatment could address the concerns in relation to privacy, at ground floor level at least, but the commensurate impacts with regard to light and outlook are also likely to be adverse, given the change in land levels and the proximity of the dwellings to their rear boundaries.
29. With regard to light, Nos 1 – 5 face southeast. However, I do not consider that the proposed dwellings would be so close as to cast shadows over either the rear gardens or elevations of them.
30. I conclude, therefore, that the appeal schemes would have an adverse impact upon the living conditions of the occupiers of neighbouring dwellings, with particular regard to light (for No 162), outlook and privacy. They would conflict, therefore, with LDF policy 9, which seeks, among other things, to ensure that new development does not cause significant harm to the amenity of existing neighbouring occupants.

*Compliance with local planning policy (Appeal B)*

31. Although the appellant has raised some issues with regard to the Council's approach to the establishment of its housing land supply, there is no explicit

- suggestion that there is a lack of a five-year supply of deliverable housing sites in the Borough.
32. This being so, given that the appeal site is not allocated for development, the penultimate section of the Managing the Release of Housing Land section of Policy 3 of the LDF applies. This states that applications for residential development on non-allocated sites will be considered favourably when a deliverable five-year supply of housing cannot be demonstrated; they contribute to the delivery of the Borough's regeneration priorities; and they contribute to the delivery of affordable housing that meets the local affordable housing needs.
33. Notwithstanding the indicative timespan in the Strategic Housing Land Availability Assessment of when the appeal site could come forward, were it to be allocated for residential development, the LDF does not appear to contain a phasing policy. Nor, indeed, should the presence of a five-year supply of deliverable housing sites be seen as an in principle cap on development. The provision of additional housing on the site would be of social benefit in significantly boosting housing supply and delivering a choice of homes in the Borough, in line with the aims of the National Planning Policy Framework (the Framework) and policy 11 of the LDF.
34. However, the Framework also supports a plan-led approach and it does not automatically follow that just because a housing target figure is a minimum it must be exceeded, whether generally or in relation to a specific settlement, particularly where such proposals would result in conflict with the development plan. Also, in my judgment, the existence of a five-year supply of deliverable housing land in the Borough reduces the weight to be given to the social benefit of any housing provision.
35. There is not, in my judgment, anything about policy 3 that is inherently inconsistent with the requirements of the Framework. The latter requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements; to identify a supply of specific, developable sites, or broad locations for growth for years 6 – 10 and, where possible, for years 11 – 15; and to illustrate the expected rate of housing delivery through a housing trajectory for the full plan period<sup>3</sup>. It does not preclude them from establishing policy mechanisms for considering applications for development outwith this process. The Site Allocations document has yet to come forward, but the Core Strategy still provides a framework within which to assess development proposals and I do not consider that this renders the development plan as a whole silent or absent. Nor is it of itself grounds for the unfettered release of housing land, notably where there is, as here, a five-year supply of deliverable housing sites.
36. This being so, it is reasonable for the Council to take a view on whether the appeal scheme meets the criteria in LDF policy 3. Insofar as it is not disputed that there is a five-year supply of deliverable housing sites, the appeal scheme fails to meet the first criterion.
37. With regard to the second criterion, the Borough's regeneration priorities are not readily apparent. However, the Officer's report, and supporting text to

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<sup>3</sup> Paragraph 47

policy 3, makes reference to other Borough documents that set out ambitions to improve the quality and variety of housing in the area. It is reasonable to consider that 'housing' does not refer solely to bricks and mortar, but to the overall quality of new residential development. Based on my considerations in relation to the first and third Main Issues above, I am not persuaded that the appeal proposals could be said to result in an improvement in the quality of housing in the area.

38. Neither scheme makes a contribution towards affordable housing. This appears to be for reasons of viability but, nonetheless, the lack of affordable housing provision means that neither scheme satisfies the requirements of the final criterion.
39. I note the position taken by the Council in relation to policy 3 and the permitted scheme further along Haven Lane. As noted above, however, the immediate site context appears to be different to that of the appeal site and there is no suggestion that that scheme is not making an affordable housing contribution in some form. Even were that not so, the Council is free to assess each scheme that comes before it on its individual merits against the relevant policy criteria and the prevailing circumstances at the time.
40. I conclude, therefore, that the appeal proposal fails to comply with the relevant requirements of LDF policy 3 as set out above.

#### **Other Matters**

41. It is stated that development of the appeal site would not undermine the Council's ambition for 80% of new development to be on brownfield sites and that the site may be in a sustainable location. This may be so, but these are not points disputed by Council.
42. Unilateral Undertakings were provided in relation to both schemes. However, as I am dismissing the appeals for other reasons there is no need for me to address their provisions here.

#### **Conclusion**

43. I have found that the proposals would cause harm to the character and appearance of the area and to the living conditions of the occupiers of neighbouring dwellings, with particular regard to light, outlook and privacy. I have also found that a precautionary approach is appropriate with regard to highway safety and that scheme B fails to accord with LDF policy 3. I give these harms and the conflicts with the development plan significant weight.
44. The appeal schemes would be of some benefit in delivering additional housing in what may be a sustainable location in the Borough, which, for the reasons set out above, is a matter to which I give moderate weight.
45. Placing these factors and all of the relevant material considerations in the balance, I find that the adverse impacts of the proposed developments would significantly and demonstrably outweigh the benefits. In the circumstances I conclude that the proposals would not represent sustainable forms of development. Thus, for the reasons given above, and taking all other matters into consideration, I conclude that Appeal A and Appeal B should be dismissed.

*Richard Schofield* INSPECTOR