
Appeal Decision

Hearing and site visit on 24 November 2015

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 2 December 2015

Appeal Ref: APP/W3005/W/15/3035794

Quantum Clothing Group Limited, North Street, Huthwaite, Sutton-in-Ashfield, Nottinghamshire NG17 2PE

- 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 Quantum Clothing Group Limited against the decision of Ashfield District Council.
 - The application ref V/2014/0447, dated 4 September 2014, was refused by notice dated 27 January 2015.
 - The proposal is an outline planning application with all matters reserved for the development of up to 83 dwellings incorporating access and landscaping.
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Application for Costs

1. An application for costs was made by Quantum Clothing Group Limited against Ashfield District Council. That application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Preliminary Matters

3. The outline planning application sought approval for the principle of redeveloping the site, which is currently occupied by substantial buildings, with up to 83 dwellings. All matters relating to access, appearance, landscaping, layout, and scale would be reserved for subsequent approval, and it was confirmed at the hearing that the "**proposed site masterplan**"¹ was submitted with the application for illustrative purposes only rather than as a formal part of the proposal. I have dealt with the appeal accordingly.
4. An incorrect ownership certificate was submitted with the appeal form. However, once the appellant became aware, notice was served on the owner of the site and the correct certificate was provided². The appellant has also confirmed that the site owner was aware of the planning application. Neither the owner nor the Council has expressed any concern about this procedural irregularity, and I am **satisfied that no party's interests have been prejudiced**.

¹ Plan ref (08)001 rev E.

² Notice served to T M Trustees on 27 October 2015.

5. Since the application that led to this appeal was refused, the Council has granted prior approval for the demolition of all of the buildings on the site subject to compliance with a demolition methodology document and the submission and implementation of a programme of historic building recording³. The Council confirmed at the Hearing that this approval was granted in accordance with the relevant legislation and did not reflect a change in its position with regard to the desirability of retaining some of the existing buildings. The two main parties disagree over the likelihood of the site being cleared in the absence of a planning permission being in place for its redevelopment. I return to this matter later in my decision.
6. A completed section 106 agreement has been submitted at the appeal stage. This would ensure that no less than 10% of the dwellings to be constructed on the site were affordable as defined in the National Planning Policy Framework ("NPPF"). Whilst this would be a slightly greater proportion than required by policy HG4 of the Ashfield Local Plan Review (2002), it would be in accordance with the Council's more recently adopted Affordable Housing Supplementary Planning Document (2009) and ensure that an important part of the proposal were delivered in an appropriate manner. I am satisfied that it meets the necessary legal and policy tests⁴ and have, therefore, taken it into account in coming to my decision.

Main Issues

7. The main issues are:
 - the effect that replacing the existing buildings on the site with up to 83 dwellings would have on the character and appearance of the area, having regard to the heritage significance of the existing buildings; and
 - whether appropriate provision would be made for any additional need for public open space and education facilities arising from the development.

Reasons

8. The appeal relates to a 2.45 hectare site that is occupied by factory, warehousing and associated office buildings that have been disused since the Quantum Clothing Group Limited vacated them in 2014. There is a parking area and mature trees close to **the site's** northern boundary beyond which lies Brierley Forest Park, a large area of public open space on the site of a former colliery that closed in 1989.
9. Along its southern and much of its eastern frontages with High Street and North Street respectively, stands a large and imposing L-shaped, red brick building that was erected in the early 20th century to allow the Cooperative Wholesale Society to re-locate its hosiery manufacturing business from Leicester to Huthwaite⁵. Other buildings on the site were erected subsequently at various times during the last century as the hosiery business developed. The Cooperative Wholesale Society left the site in 1969 when it was employing around 1,500 people and it was taken over by another company that subsequently became Quantum Clothing.

³ Application ref V/2015/0089 approved 8 April 2015.

⁴ NPPF paragraph 204 and regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).

⁵ The L-shaped building has a 110 metre frontage to High Street and 140 metre frontage to North Street.

10. The surrounding area is predominantly residential in use and includes a variety of dwellings in terms of age, scale, design and layout. Sutton Road is around 70 metres to the south of the site along which are a number of local facilities including shops, Huthwaite Welfare Park, and bus stops providing access to services to Sutton town centre and other destinations.

Character and Appearance

11. The site is not within a conservation area, and it was decided in 2014 that it did not meet the necessary national criteria for inclusion on the List of Buildings of Special Architectural or Historic Interest⁶. However, the site is included on the **Council's local list of heritage** assets in accordance with published guidance⁷. That guidance recognises the textile industry, along with coal mining, as making an important contribution to the historic distinctiveness of the district not least by providing employment for women. By the 1960s, twelve productive collieries, and around 40 textile factories employing 60% of the female labour force, meant that households in Ashfield had amongst the highest average incomes of any industrial area in the country⁸.
12. Whilst the L-shaped building, and others on the site, are of relatively simple design and many windows have been replaced or blocked up, they retain their essential structure and characteristics meaning that they are clearly representative of their industrial past. **The appellant's** evidence indicates that the building is of local historic interest due to its associations with a known architect and the Cooperative Wholesale Society, and because it dates back to the start of the symbiotic relationship between the textile and coal mining industries in the town⁹. The Association of Industrial Archaeology advises that the original building is one of the largest pre first world war hosiery factories and that it promoted good practice in layout and use. The entrance on the corner of High Street and North Street, which has an impressive stone canopy, adds interest to the building and provides a visual focal point when seen from Sutton Road or approaching from the south along North Street.
13. The scale of the buildings and their location within the town, close to the site of a former colliery and to housing and local facilities that would no doubt have been used by workers and their families, add to their significance. So too does the fact that many other former textile buildings have been lost from the district in the last few decades; the Council advised at the Hearing that there is no other such large building remaining. For these reasons I consider the site to be a heritage asset that is of considerable local significance.
14. Despite their scale, the buildings are not prominent in the town due to their location on residential side roads. However, they make an important contribution to the local street scene, and are also seen from certain vantage points in the adjoining Brierley Forest Park as well as from Sutton Road along North Street. The Council, and interested parties, describe it as a **"landmark building"** in the town, and I consider that to be appropriate given its historic and visual importance.

⁶ English Heritage letter (28 November 2014).

⁷ ***Criteria for Local Heritage Asset Designation*** (Ashfield District Council 2013).

⁸ ***Criteria for Local Heritage Asset Designation*** (Ashfield District Council 2013) paragraph 5.2.

⁹ ***Heritage Assessment and Statement*** (CAMplan, September 2013).

15. One of the core principles of national planning policy is that heritage assets should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations¹⁰. In order to achieve this, it is desirable to put heritage assets to viable uses consistent with their conservation¹¹.
16. In this case, the appellant has clearly given thought to various options for the future of the site. The Council agrees that the size and nature of the buildings mean that they are highly unlikely to be attractive to another business, and that conversion to smaller scale employment uses would almost certainly be unviable.
17. The appellant is also firmly of the view that none of the buildings on the site, including the L-shaped building, could viably be converted to residential use. It was apparent from my visit to the site and tour of the inside of the buildings that their length, depth and ceiling heights would present significant challenges in terms of creating residential accommodation. The appellant has also pointed out that the value of development is relatively low in the local area, and that the demand is for new family homes with gardens rather than apartments or other **"non standard" forms of accommodation. It is for these** reasons that the appellant did not consider it necessary or appropriate to carry out detailed viability work or attempt to market the site on the basis that the buildings are suitable for conversion to residential use.
18. Whilst national policy and associated guidance does not require marketing to be carried out to demonstrate the redundancy of a non-designated heritage asset¹², I am required to have regard to the scale of any harm or loss, and the significance of the non-designated heritage asset¹³. In this case, the proposal would almost certainly lead to the total loss of all of the buildings on the site, some of which I have found to have considerable local significance in heritage terms. In the absence of more specific evidence that all reasonable efforts have been made to retain some of the buildings, or even parts of them such as the facades to High Street and North Street or simply the corner entrance feature, in any redevelopment scheme, I am not satisfied that this is justified.
19. There is, of course, the possibility that the site could be cleared even if this **appeal were to be dismissed, not least because it is surplus to the appellant's** requirements and now represents a liability in terms of on-going maintenance and security. **However, the appellant's** viability evidence suggests that the site and buildings have a current value of around £0.55 million, and that demolition would cost around £0.4 million. On the other hand, the estimated value of the cleared site, assuming it had planning permission for residential development, is around £0.7 million. On the basis of these figures, it seems more likely to me that, if this appeal were to be dismissed, the appellant would either attempt to sell the site as it is or explore further the possibility of a residential development scheme that retained some **of the site's heritage significance**.
20. As all matters are reserved for subsequent approval, there is no reason why the Council could not negotiate a detailed scheme that complied with relevant design policies and guidance. However, whilst initial design work has been carried out,

¹⁰ NPPF paragraph 17, 10th bullet point.

¹¹ NPPF paragraph 131, 1st bullet point.

¹² NPPF paragraph 133 and Planning Practice Guidance (PPG) ID18a-016.

¹³ NPPF paragraph 135.

in the absence of a worked up scheme or indeed any interest by a specific developer, I cannot attach any weight to the possibility that redevelopment would be of such quality that it would outweigh the harm that would be caused by the total loss of the heritage asset.

21. I conclude on this issue that the proposal, by leading to the total loss of a non-designated heritage asset, would cause significant harm to the character and appearance of the area. The evidence before me does not demonstrate that the development of up to 83 dwellings on the site would be of a standard of design that would compensate for that harm. The proposal would, therefore, be contrary to the objectives of national policy¹⁴ and local plan policy ST1(b) which collectively seek to ensure that development does not adversely affect the character, quality or amenity of the environment, and that account is taken of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation. Furthermore, national policy is clear that planning permission should be refused for development that fails to take the opportunities available for improving the character and quality of an area¹⁵.

Public Open Space and Education Facilities

22. Local plan policy HG6 states that on sites of two hectares and above, 10% of the gross housing area should be provided as open space unless this is not appropriate in which case a financial contribution would be sought to improve existing or provide new open space elsewhere, or undertake community woodland planting or appropriate natural habitat schemes.
23. The indicative masterplan shows that at least 10% of the site could be provided as open space in a scheme for 83 dwellings, and the Council accepted at the Hearing that this may well be possible to achieve when a detailed scheme is worked up. Notwithstanding that, **the Council's representatives confirmed** that, rather than provide open space on site, the proposal should include a financial contribution of £2,500 per dwelling. This would allow improvements to be made to Brierley Forest Park and Huthwaite Welfare Park as both of these areas of public open space are within a short walk of the site and would be likely to be used by future residents.
24. It is clear from evidence presented at the Hearing that improvements to these areas are planned by the Council¹⁶ and there is, therefore, a realistic prospect that the financial contributions would be used and that public benefits would result. However, it seems clear to me that such improvements would be desirable irrespective of whether the development were to go ahead, and there is no substantive evidence that I have seen or heard to indicate that the increased use that would be likely to result from 83 additional households living nearby would make a material difference to ongoing maintenance requirements or lead to any need to increase capacity or the types of facilities available in those open spaces.
25. I am not convinced, therefore, that a financial contribution is required for public open space facilities meaning that such a planning obligation would fail to meet

¹⁴ NPPF paragraph 17, 10th bullet point; paragraphs 131 and 135; and section 7.

¹⁵ NPPF paragraph 64.

¹⁶ Documents H4 and H5 submitted during the Hearing and listed in Annex A.

one of the three tests set out in the NPPF¹⁷. Furthermore, the Council has not provided clear evidence to show that there have not been more than four other planning obligations that make financial contributions for improvements to those **particular areas of open space meaning that I cannot be sure that the "five obligation limit" would be complied with**¹⁸.

26. The Council also requires a financial contribution of £194,735 which would be used to increase capacity at one of the primary schools in Huthwaite. According to information provided by Nottinghamshire County Council, none of the local primary schools have spare capacity, and additional spaces would need to be created to accommodate the expected number of children that would be likely to use them if the development were to go ahead. The size of the contribution is based on a formula **set out in the County Council's published guidance**¹⁹ and appears to be fairly and reasonably related in scale and kind to the development. However, the County Council has not been able to advise on which particular school the contribution would be spent on or confirm definitively how many planning obligations have been entered into that relate to primary schools in **Huthwaite. I cannot, therefore, be sure that the "five obligation limit" would be complied with.**
27. The appellant has provided evidence that the viability of the proposal is marginal, and that if the financial contributions sought by the Council had to be paid it would be unlikely that the scheme would go ahead²⁰. Whilst the Council has questioned the reliability of the viability appraisal work in the absence of a fully worked up scheme, it seems to me that it provides reasonable evidence about the costs and value of an appropriate form of development that is representative of that which is likely to take place if permission were to be granted.
28. National policy is clear that there ought to be flexibility in the requirement for planning obligations in order to prevent development being stalled²¹. As the viability evidence before me indicates that this could well be the case, this reinforces my view that the contributions sought by the Council would not be consistent with the advice in the NPPF.
29. I conclude on this issue that, based on the evidence before me, it has not been demonstrated that the proposal fails to make appropriate provision for the additional need for public open space and education facilities that would arise from the development.

Other Matters

30. The proposal would lead to the creation of up to 83 new homes, 10% of which would be affordable. This would deliver social and economic benefits by helping to meet housing needs and through additional support for local businesses and services both during the construction phase and in the long term. As the proposal would make use of a currently disused site in a reasonably accessible location the

¹⁷ NPPF paragraph 204.

¹⁸ Community Infrastructure Levy Regulations (2010, as amended) regulation 123.

¹⁹ Document H2 submitted during the Hearing and listed in Annex A.

²⁰ *Employment Land Viability Assessment* (Chesterton Humberts, August 2014); *Affordable Housing Viability Assessment* (Chesterton Humberts, June 2014); *Viability Statement* (Humberts, September 2015); and Matthew Wade's oral evidence at the Hearing.

²¹ NPPF paragraph 205.

proposal would have some environmental benefits relative to the provision of housing in some other parts of the district.

31. Given the scale of the proposal, and because the Council is unable to demonstrate a five year supply of deliverable housing sites as required by national policy²², I attach significant weight to the benefits that the proposal would deliver.
32. A number of other issues have been raised by interested parties. However, having regard to technical evidence submitted by the appellant and the views of consultees, the Council is satisfied that there are no highway safety, transport, flooding, ecological, or other constraints that could not be overcome. There is no substantive evidence before me to lead me to a different conclusion.
33. It was agreed at the Hearing that local plan policy ST1 is consistent with the NPPF and can therefore be regarded as being up to date despite its age.

Overall Assessment

34. By virtue of the conflict that I have found with local plan policy ST1, the development would not be in accordance with the development plan. Planning permission should not, therefore, be granted unless material considerations indicate otherwise²³.
35. I have found that the proposal would deliver a number of important benefits to which I attach significant weight.
36. However, it has not been demonstrated that these benefits could not be achieved in a manner that would involve the retention of at least part of a heritage asset that has considerable local significance. Furthermore, I am not persuaded that the significant harm that would be caused by the total loss of the heritage asset would be outweighed by the benefits, particularly bearing in mind the absence of any meaningful evidence that the redevelopment of the site would be of a high standard of design.
37. My findings in relation to the second main issue, and to the other matters raised by interested parties, do not weigh in favour of the proposal but rather have a neutral impact on the overall planning balance.
38. Overall, therefore, material considerations do not indicate that planning permission should be granted for a proposal that fails to accord with the development plan.

Conclusion

39. For the reasons given above, I conclude that the appeal should be dismissed.

William Fieldhouse

INSPECTOR

²² NPPF paragraph 47.

²³ NPPF paragraph 11.

Appearances at the Hearing

For the Appellant

Mark Bassett	Freeths LLP
Matthew Wade	Humberts

For the Local Planning Authority

Mark Penford	Planning Officer
Nigel Harris	Major Projects Officer
Simon Britt	Conservation Officer

Documents Submitted at the Hearing

- H1. Criteria for Local Heritage Asset Designation (Ashfield District Council, February 2013).
- H2. Planning Obligations Strategy (Nottinghamshire County Council, April 2014).
- H3. Email from Nottinghamshire County Council Conservation Project Support Officer including Justification for Education Contributions (23 November 2015).
- H4. Information relating to Financial Contributions for Improvements to Brierley Forest Park and Huthwaite Welfare Park (Ashfield District Council, 23 November 2015).
- H5. Sutton Locality Plan 2014-2019 Draft Year 2 Update (Ashfield District Council, 2015).
- H6. Letter from Barclays Bank (23 November 2015).
- H7. Executed section 106 Unilateral Undertaking (24 November 2015).
- H8. Application for Costs (Mark Bassett for Quantum Clothing Group Ltd, 23 November 2015).
- H9. Response to Application for Costs (Ashfield District Council, 24 November 2015).

End of Annex A

Costs Decision

Hearing and site visit 24 November 2015

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 2 December 2015

Costs application in relation to Appeal Ref: APP/W3005/W/15/3035794 Quantum Clothing Group Limited, North Street, Huthwaite, Sutton-in-Ashfield, Nottinghamshire NG17 2PE

- 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 Quantum Clothing Group Limited for a partial award of costs against Ashfield District Council.
 - The appeal was made against the refusal of an outline planning application with all matters reserved for the development of up to 83 dwellings incorporating access and landscaping.
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Decision

1. The application for an award of costs is refused.

Preliminary Matters

2. A written application for an award of costs was submitted on behalf of the appellant at the start of the Hearing, and the Council provided a written response later in the day. These documents were then discussed, and the **appellant's representative confirmed that what was being sought was a partial, rather than full, award of costs.** I have dealt with the application accordingly.

Reasons

3. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably, in either a procedural or substantive way, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process¹. I shall, therefore, consider whether that has occurred in this case.
4. **The Council's decision to refuse planning permission was based on a comprehensive delegated report.** This includes relevant information about the non-designated heritage asset, and acknowledges that the building does not have statutory protection from demolition. As planning permission was refused before prior approval for the demolition of the buildings on the site had been granted, I do not consider it unreasonable for the report to have not dealt with that potential fall back position in greater detail.
5. The report makes it clear that as the application is in outline with all matters

¹ PPG ID16-028 and 029.

reserved, the submitted masterplan is for illustrative purposes only but that it demonstrates that the proposal could be accommodated on the site at an appropriate density. The benefits of the proposal are set out, and the conclusion that these would not outweigh the harm that would be caused by the total loss of a heritage asset is based on a judgement that appears to have been made in light of relevant information and national and local planning policies.

6. The first reason for refusal is clear and specific, and refers to a relevant policy in the Ashfield Local Plan Review (2002) and the National Planning Policy Framework (NPPF). As policy ST1(b) is consistent with the NPPF it would not have been appropriate for the Council to apply the test of whether the harm would demonstrably and significantly outweigh the benefits.
7. **The Council's second reason for refusal is also clear and specific, and is based** on relevant policy and guidance and information set out in the delegated report which includes reasonable analysis of the viability evidence submitted with the planning application. Whilst I reached a different conclusion about whether financial contributions would be required for improvements to off-site public open space and education facilities, this was a balanced judgement based on all of the information that was available before me, some of which was different to that before the Council at the time that it determined the planning application.
8. **Therefore, I do not consider that either of the Council's two reasons for refusal** were unreasonable. Furthermore, the Council has provided additional written evidence to substantiate both of its reasons for refusal at the appeal stage, and three Council officers gave oral evidence at the Hearing. The Council has not, therefore, acted unreasonably in any substantive way.
9. The Council has expressed concern at the appeal stage that the fact that the proposal is in outline means that there is no reliable evidence about the quality of the design to weigh against the harm that would be caused by the loss of the heritage asset. This does not, to my mind, involve **an "about turn" in relation to** the delegated report as it was clear from the discussion at the Hearing that it was not due to concerns about the scale of the development being inappropriate, but rather the absence of any specific scheme to assess. This is a material consideration, and one that is clearly related to the first reason for refusal. I do not, therefore, consider it unreasonable for the Council to have raised it, nor is there any evidence to lead me to conclude that this matter led to additional costs being incurred by the appellant.
10. Whilst some of the evidence relating to the second reason for refusal could have been submitted by the Council earlier, it was prepared in response to my specific request and made available during the Hearing. It is not part of the **applicant's case that the timing of the submission of this material resulted in** additional costs, and it was clearly helpful in enabling me to come to an informed judgement.
11. It is clear that there were discussions between representatives of the applicant and the Council during consideration of the planning application, after it had been determined, and at the appeal stage. Whilst this did not lead to the outcome that the applicant was seeking, this does not **mean that the Council's behaviour was unreasonable. The delegated report had set out the Council's**

assessment of the viability evidence submitted with the application, and this was discussed further after the application had been determined. This led to further viability evidence being provided by the applicant. Whilst the Council did not respond to this in any detail prior to preparing its evidence for the Hearing, it set out its position clearly in the statement submitted in October. This was essentially that it attached little weight to the viability evidence given that there is no specific scheme upon which it is based. This was not an unreasonable view to take given that all matters were reserved, notwithstanding the fact that I was able to come to a more specific conclusion.

12. Furthermore, it seems to me that the further viability work carried out on behalf of the applicant was in response to legitimate queries raised by the Council at the planning application stage, and to ensure that up to date information was available at the Hearing. I have not been provided with any specific information to demonstrate that the nature of this work would have been any different if further dialogue had taken place with the Council after June 2015.

13. Therefore, I do not agree that the Council acted unreasonably in a procedural **way by failing to cooperate with the applicant's representatives**, or that the behaviour of the Council resulted in additional expense for the applicant in terms of preparing viability evidence.

Conclusion

14. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Accordingly, the application for costs is refused.

William Fieldhouse

INSPECTOR