



Appeal Decision

by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 16/05/2024

Appeal reference: CAS-03085-G5L0Q6

Site address: Land off Radyr Court Close, Danescourt, Cardiff (Grid ref 314644E 178783 N)

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Wales and West Housing against the decision of Cardiff Council.
 - The application Ref 22/02806/FUL is dated 22 November 2022.
 - The development proposed is Erection of 14 affordable houses together with access, landscaping, drainage, engineering, and other associated works.
 - A site visit was made on 16 April 2024.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Procedural Matters

2. The Council did not determine the planning application within the prescribed timeframe and the dual jurisdiction period has expired. During the appeal the Council has indicated that it would have refused the application for three reasons. The appellant has had an opportunity to respond to these grounds of objection and I have considered the appeal on this basis.
3. Since the appeal was made, a new version of Planning Policy Wales (PPW) has been published (edition 12). As this largely consolidates previously published content it does not raise any new matters which would alter my decision. Whilst the application is not specifically supported by a green infrastructure statement (GIS) as sought by PPW, I am dismissing the appeal and so did not invite the submission of a GIS.

Main Issues

4. I consider the main issues in this case to be:
 - The effect of the proposal on the provision of functional open space,
 - The effect on the character and appearance of the River Taff corridor, and
 - Whether the proposal would accord with local and national policy to avoid unacceptable flood risks and consequences.

Reasons

5. The appeal relates to two sites lying to either side of the junction of Radyr Court Close and Radyr Court Road. Both sites are mainly laid to grass but accommodate a limited

number of trees. The sites have been profiled into mounds and the larger of the two ('the northern site') is surrounded by railings, with gated access restricted to residents of properties managed by Wales and West Housing. Dwellings and flats which form part of a planned development dating from the 1970s lie to the south and west of the sites. Older residential development bounds one side of the northern site. East of Radyr Court Road, the River Taff lies beyond a landscaped bund.

Open space

6. The appeal scheme would subdivide the northern site into residential plots and a parking area, with the remaining limited areas of public open space having a primarily visual amenity function. In its current form, the sloping nature of the northern site limits its use for certain types of recreation such as ball games. During my site visit I observed only dog walkers utilising the site, although its size and containment could also facilitate some other types of informal play and recreation. Whilst the space is not strictly publicly accessible, performs only a local function and is of little significance in historic or ecological terms, it evidently holds functional value for nearby residents.
7. According to the Council, based on its 2020 Open Space Survey (OSS) Llandaff ward has an existing deficit of recreational open space. There is no dispute between the main parties that the development of the northern site would further reduce the quantum of informal, functional open space available within the local area. LDP policy C4 states that, in such situations, satisfactory compensatory provision shall be provided. Further advice is provided in the Council's 'Planning Obligations' and 'Green Infrastructure' Supplementary Planning Guidance (SPG), to which I have had regard.
8. The OSS classifies the smaller of the two appeal sites ('the southern site') as amenity space. The appellant proposes to partly compensate for the identified loss of functional space by fencing, landscaping and equipping this smaller open space for informal play and recreation. Irrespective of the southern site's actual surface area, I saw that it is of sufficient size to facilitate various play and recreation opportunities, partly compensating for the quantitative loss. Although there would be a minor breach of the advisory 20m separation distance in the Green Infrastructure SPG, the indicative plans provide assurance that formal play areas could be adequately separated from dwellings, avoiding unacceptable levels of noise and disturbance to residents arising from the site's use. Fencing the space would provide security to open space users. Any impacts on parked vehicles would be little different to those which may currently arise on the northern site.
9. As there would remain a quantitative reduction in functional open space, the appellant has prepared a Unilateral Undertaking (UU) which includes a financial contribution towards the provision of off-site public open space. The appellant has evidently sought to engage with the Council to establish where compensatory provision might be secured. The Council's two suggested locations, Insole Court and Bishop's Palace, lie some distance away and any enhancements to these spaces would not offer informal, proximate recreation opportunities to residents currently living near to the northern site. Nonetheless, the size of the financial contribution would have the potential to deliver enhancements to open spaces, even if those benefits would accrue to communities in areas deficient in certain types of open space elsewhere within Llandaff ward.
10. Moreover, given the absence of recreation facilities or features on the northern site, the proposed reconfiguration of the southern site would, to my mind, have the potential to enhance the quality of the functional open space available to the local population. The provision of equipped play would, in particular, promote local play opportunities for children. Any reduction in opportunities for active recreation, including dog walking, would

be alleviated by the presence of existing open spaces along the river corridor which I saw lie within walking distance and are well suited to such activities.

11. Given the circumstances of the case, in particular the acute deficiency of equipped play facilities within Llandaff ward and the immediate locality, the provision of such facilities on the southern site is a considerable factor in favour of the proposal. Whether this, in combination with the off-site financial contribution, would secure compliance with LDP policy C4 is a matter to which I return in 'Other Matters and Conclusions'.

River Taff corridor

12. Policy EN4 seeks to ensure that development protects, promotes and enhances certain features associated with river corridors. The Council's principal concern in relation to this policy relates to the proposal's effect on the character of the Taff river corridor rather than on factors such as natural heritage. The Council also does not specifically allege conflict with this policy in relation to the proposal's effect on facilitating sustainable access and recreation within the river corridor. I have no reason to find otherwise.
13. The supporting text to policy EN4 confirms that the designated corridors include adjoining open spaces and land which together form strategically important corridors of mixed open spaces within the heart of the urban area. The Council's Green Infrastructure SPG provides further advice in this regard, noting that whilst not all publicly accessible, the amenity value of some open spaces is important both locally and in the context of the whole city, and that proposals which could cause unacceptable harm to the integrity of these areas will be opposed.
14. The appeal sites afford the immediate area a spacious character. Their size and openness is, however, uncharacteristic of the general pattern of built form along this part of the river corridor. For much of its length, Radyr Court Road, which runs parallel to the river, is bounded to the west by residential development. Dwellings are separated from the road by naturally landscaped banks, verges and gardens, with some also lying to the rear of subsidiary accessways. Whilst these unbuilt spaces form part of a chain, there is little coherence to the way in which they link to one another. The diversity of open spaces, with dwellings facing over them and towards the river, defines this part of the river corridor and contributes to its character.
15. Although the proposal would significantly reduce the openness of the northern site, the northernmost dwellings would largely align with the older properties to the north and would similarly face towards the river. The retained embankment bordering Radyr Court Road would provide visual continuity between the garden north of the northern site and the open space to the south and would be of sufficient depth to alleviate the bulk of the dwellings, which would be elevated above the highway. The retention of existing mature trees would also provide visual relief in this regard and would screen the flank wall of the easternmost dwelling in plot 7. Dwellings in this southeastern block would positively frame both the junction with Radyr Court Close and the area of open space opposite.
16. To my mind, the resulting townscape would be more legible than that which currently exists, and critically, the siting of the dwellings would not harm the visual integrity of linked spaces which are of strategic or individual importance to the character of this part of the river corridor. I therefore conclude that the proposal would protect, promote and enhance the river corridor, in accordance with LDP policy EN4 and the aims of the Council's Green Infrastructure SPG.

Flooding

17. Amongst other things, LDP policy EN14 states that within flood plains, development will not be permitted unless it can be demonstrated that the site is justified in line with

national guidance and that a technical assessment demonstrates that the development has been designed to alleviate flood risks and consequences over its lifetime. I consider this policy to be in general accord with the extant version of Technical Advice Note (TAN) 15 'Development and Flood Risk' and the aims of PPW.

18. The latest Development Advice Map (DAM), which supports the current version of TAN 15, indicates that the proposed dwellings would lie within flood zone C1; that is, within the floodplain but defended by significant flood defence infrastructure. For proposals in zone C1, the four 'justification tests' set out at paragraph 6.2 of TAN 15 are relevant. The Council does not raise any concerns in relation to tests (i), (ii), and (iv) and, in the light of the submitted Flood Consequence Assessment (FCA) and the assessment of it by Natural Resources Wales (NRW), I have no reason to find otherwise.
19. Test (iii) indicates that for development to be justified, the site in question should comprise previously developed land (PDL). PPW defines PDL as land which is or was occupied by a permanent structure and associated fixed surface infrastructure. It explicitly excludes from the definition previously developed land subsequently put to an amenity use, and parks and recreation grounds, even where these contain urban features such as paths.
20. Plans relating to the original planning permission, which date from 1974-5, provide no indication as to whether the northern site was previously developed prior to the construction of the Radyr Court Close development. The appellant has not provided any evidence of the site's former use and on my site visit I saw no visual clues to indicate the prior presence of development and supporting infrastructure. Irrespective of the sites' topography and location, there is therefore no basis for me to conclude that they constitute PDL.
21. A letter to CPOs from the Welsh Minister in December 2021 notes that planning authorities should recognise that it may be appropriate to take the best and more recent information into account as a material consideration. The letter adds that the Flood Map for Planning (FMfP), which will support a revised edition of TAN 15 in the future, is publicly accessible and provides better and more up to date information than the DAM, which is no longer being updated. Also of relevance in this regard are the modelled flood extents within the FCA, which align far more closely with the zonal FMfP map included within the FCA than with the DAM.
22. The appellant notes that since the FCA was prepared the FMfP has been revised. Indeed, having regard to the FMfP as updated in November and December 2023, much of the northern site appears to have been removed from Flood Zones 1 and 2. Nonetheless, whilst the appellant contends that the limited areas of the site which are identified at being of risk of flooding would remain as public open space, based on the submitted information it seems to me that the defended floodplain, as identified in the most recent FMfP, includes areas which would accommodate built form, particularly towards the southeastern extent of the northern site.
23. The evidence therefore indicates that the northern site incorporates PDL which would be subject to development, and which lies within the defended floodplain, whether based on the DAM or the FMfP. Consequently, the proposal would conflict with the aims of PPW in regard to flood risk and test (iii) in the TAN, and with LDP policy EN14. The conclusions of the FCA would not outweigh the identified harm caused by the unjustified development of PDL within the floodplain.

Other Matters and Conclusions

24. Whilst the UU submitted by the appellant has been prepared as a bilateral agreement, having regard to the advice in the Council's Planning Obligations SPG and the nature of the obligations contained therein, I consider a UU to be an appropriate form of undertaking in this case. However, as the appellant has not signed or dated the UU, it is not a fully executed legal document and I can attribute no weight to it.
25. In the light of this, there is currently no legal mechanism before me with which to secure a financial contribution for off-site public open space. In the absence of this, I conclude that the proposal would not acceptably compensate for the reduced quantum of open space, in conflict with LDP policy C4 and the general aims of the Council's Planning Obligations SPG and Green Infrastructure SPG.
26. I have no reason to dispute the appellant's contention that the waiting list for affordable family housing is considerable. The development as described would provide 14 affordable houses, potentially making a meaningful contribution towards the LDP's affordable housing target of 554 units per annum. Nonetheless, although the appellant is a Housing Association and the UU confirms that the dwellings would comprise social rented accommodation in accordance with the planning permission, there is no legal mechanism before me which would secure the units within an affordable tenure in perpetuity. Consequently, I attach only moderate weight to the housing benefits of the proposal.
27. There would also be limited benefits to the local economy arising from the scheme's construction. Other factors, including in relation to the river corridor and potential biodiversity enhancements secured via condition, are neutral factors which weigh neither for nor against the proposal. I have had regard to other matters raised, including by residents, but these have little bearing on my conclusions on the main issues.
28. Overall, I conclude that the proposal's benefits would not outweigh the conflict with national and local policy arising from the reduced quantum of open space and the flooding risks and consequences associated with developing on PDL within the defended floodplain. I shall therefore dismiss the appeal.
29. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

Paul Selby

INSPECTOR