



Decision by Lorna McCallum, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2186.
- Site address: Allotments, Telferton, Edinburgh.
- Appeal by Avant Homes against the decision by City of Edinburgh Council.
- Application for planning permission in principle 15/05072/PPP dated 4 November 2015 refused by notice dated 15 April 2016.
- The development proposed: Formalisation and reconfiguration of allotment gardens, including provision of 40 allotment plots and 2 community plots and a new residential development with associated access, parking and landscaping works.
- Date of site visit by Reporter: 7 September 2016.

Date of appeal decision: 5 October 2016

Decision

I dismiss the appeal and refuse planning permission in principle.

Reasoning

1. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are:

- a) housing land supply;
- b) acceptability of housing at this site/ loss of open space; and
- c) whether there are any other material considerations that would justify granting or refusing to grant planning permission.

2. The site is made up of two areas of land to the east and west of “Telferton”, which is an access road to an industrial estate that lies to the south. Both areas are presently actively used as allotment gardens. Housing lies to the north and west of the site and a post office delivery depot lies to the east. Trees and shrubs lie along the southern and part of the eastern and western boundaries.

3. The proposals are in principle but indicative plans show a total of 28 residential units with eight detached dwellings fronting Telferton and two blocks of flats to the rear, one of which is two storeys in height and the other three storeys. The plans indicate that the existing allotments would be restricted to part of the land at the west of the site and reduced from 60 full sized to 42 half-sized plots. The plans also indicate that two of the plots are proposed for community use and that some improvement works would be undertaken



including a shared storage container to replace existing sheds. It is proposed that 25%, of the development would consist of affordable housing.

4. The development plan in this instance is comprised of the SESPlan Strategic Development Plan approved in June 2013 and the Edinburgh City Local Plan 2009 (ECLP). Relevant policies from SESPlan are Policy 6 (Housing Land Flexibility) and Policy 7 (Maintaining a Five Year Housing Land Supply). Relevant local plan policies are Hou 1 (Housing Development), Os 1 (Open Space Protection), Des 1 (Design Quality and Context) and Des 3 (Development Design).

Housing Land Supply

5. SESPlan Policy 6 requires planning authorities to maintain a five years effective housing land supply. In their submissions the council states that there is an effective five year housing land supply; this is disputed by the appellants. The appellants argue that the proposals are justified on the basis of the contribution that they would make to the land supply for housing. They have referred to recent appeal decisions relating to residential development on green belt sites within the Edinburgh area. I note that those appeal decisions support the appellants' position that there is a shortfall in the effective housing land supply. I am aware that the Report into the Examination of the Proposed Edinburgh Local Development Plan (July 2016) indicated that there is a significant shortfall in the anticipated effective land supply in the period to 2019. I find no reason, based on my assessment, to come to a different conclusion; SESPlan policy 7 is therefore applicable in this case.

6. SESPlan Policy 7 allows planning authorities to grant planning permission for unallocated, greenfield housing so long as the development will be in keeping with the character of the area; will not undermine green belt objectives and subject to provision by the developer of any additional infrastructure required. "Greenfield" is defined as land in a settlement or rural area which has never been developed, or where traces of any previous development are now such that the land appears undeveloped. The appeal site is undeveloped in so far as it has been utilised as open space for many years. It is located within an urban setting within a predominantly residential area and any infrastructure requirements are minor. In strategic terms, as an infill site within the urban area, the use of the site for housing would be compatible with this setting and not undermine green belt objectives.

7. I find that, in principle, residential development at this site complies with these strategic development plan policies. However this is only acceptable subject to detailed consideration of the impact of the development on the character of the area as will be assessed in relation to local plan policies. I shall turn next to look in detail at the acceptability of residential development on this site and the matter of loss of open space.

Acceptability of Housing at this Site/Loss of Open Space

8. In the ECLP Policy Hou 1 supports housing on suitable sites within the urban area that are not identified for housing in the local plan provided the proposals are compatible with other policies in the plan.

9. The site is principally designated as Open Space in the adopted local plan. The council refused permission as the proposals are contrary to policies in the existing and emerging local plan relating to open space. I shall confine my initial consideration to the adopted local plan and will address the emerging local development plan under other material considerations.

10. Policy Os 1 indicates that proposals involving loss of open space will not be permitted unless it is demonstrated that:

- a) there will be no significant impact on the quality or character of the local environment;
- b) the open space is a small part of a larger area or of limited amenity or leisure value and there is a significant over-provision of open space serving the immediate area;
- c) the loss of open space would not be detrimental to the wider network;
- d) that there will be a local benefit in allowing the development in terms of either alternative equivalent provision being made or improvement to an existing open space; or
- e) the development is for a community purpose and the benefits to the community outweigh the loss.

11. The representations received indicate that the local residents and plot holders find the allotments to be of value to the quality and character of the local area. From the submissions and my site inspection I note that they appeared to be a well-used green space within an otherwise busy urban area. I acknowledge that there is no right to a view but I agree that this area of open space makes a positive contribution to the amenity of the area. At present they form a vegetated buffer between the housing and the industrial estate and present a green frontage to this part of Telferton. The proposals would remove the majority of this buffer and would confine the remaining area of allotments to a part of the site that would be entirely surrounded by housing. The positive contribution of the allotments to the local environment would be notably reduced. I therefore consider that the proposals would have a significant impact upon the quality and character of the local environment.

12. The appeal site is not part of a larger area of open space. The proposed housing would occupy around half of the total area open space at this site. Although the council's Open Space Audit 2009 does not identify a deficiency in accessible open space in this location neither does it identify that there is a significant over provision of open space. The council's Open Space Strategy 2010 sets standards for and estimates need for various types of open space. It is intended to be used to inform the use of policy Os 1, particularly in relation to criterion b) in terms of whether there is overprovision of open space. The document notes that demand for allotment gardening is increasing. In 2010 there was a list of 2,367 people waiting for 1,233 plots and a waiting time of between four and seven years, depending on the area of the city. It identifies a need for new sites for allotments and that there is an outstanding requirement for land for a further 650 plots. The allotments committee has advised that they presently have 30 people on their waiting list and that the council's waiting list is currently at around 3,000. The proposals would reduce the area used for allotments at this site by about 50 % and no replacement facilities are proposed elsewhere. I therefore cannot conclude that there is a significant over provision of open space and that the loss of open space would not be detrimental to the wider network.

13. The appellants propose improvements to the remaining allotments including upgrading of paths, erection of boundary fencing and the installation of a water butt and

standpipes. They state that these will improve facilities for the community at this site. I note that the council's allotments officers have not objected to the proposals but state that transferring ownership of the proposed allotments to the council would not constitute an improvement. They also point out that the net reduction in the number of plots would result in increased numbers on the council's waiting list. The allotment association has advised that there are presently four plots for community use and two communal sheds and that the plots are actively administered, regulated and maintained to a similar standard as council allotments. It considers that the existing community facilities exceed what are proposed as part of the development. It seems to me that the physical works proposed by the appellants are fairly minor. I am not persuaded that they would form a significant improvement to the existing open space whereby allowing the development would benefit the local community.

14. Taking these matters into account I therefore find it has not been demonstrated that the proposals meet the requirements of policy Os 1. Consequently I find that they are also contrary to policy Hou 1.

15. Policy Des 1 indicates that permission will be granted where a proposal will create or contribute towards a high quality, sustainable living environment. Permission will not be granted for proposals that would be damaging to the character or appearance of the surrounding area. Policy Des 3 indicates that development will be permitted subject to compliance with various criteria relating to detailed design matters, including the height and positioning of a development, privacy and access. It also indicates that proposals must demonstrate a positive impact on their setting and not harm the amenity of neighbouring properties having regard to the impact on views and immediate outlook.

16. Although the proposals are in principle I note that a Design and Access Statement has been prepared based on the preferred housing layout shown on the indicative plans. It is therefore appropriate that I consider the proposals contained within the submissions. I acknowledge that the area surrounding the appeal site is urban in character and that three and four storey flats are present in the wider vicinity. The site is a relatively narrow, linear shape and the development would extend to the rear of the adjacent established residential properties, some of which are single storey in height. Although the layout shows that adequate separation distances could be achieved to maintain privacy I am not convinced that the three storey flats proposed are appropriate within this confined setting. I do not agree that the layout proposed would be in keeping with the scale and format of development in the immediately surrounding area. I acknowledge that the application is in principle and that detailed consideration of design, layout and impact on the surrounding area could be assessed and addressed in a further detailed application. Nevertheless, I consider that the loss of open space and development proposed would reduce existing levels of amenity experienced by adjacent residents. I find that they would not contribute to a high quality, sustainable living environment or have a positive impact on the setting of neighbouring properties.

17. In terms of other detailed design matters I note that local residents are concerned at the increased traffic that would be generated by the proposed development but that the Transportation officer notes no objections subject to conditions. At the time of my site inspection I observed that Telferton is a very busy access to the industrial estate and that there was on street parking on both sides of the road up to Inchview Terrace. The on street parking would severely impede driver visibility at the proposed accesses; the submissions

do not address this matter. I have concerns that the access arrangements proposed may lead to road safety issues unless this matter is addressed.

18. The submitted noise assessment identifies potential need for noise mitigation due to the proximity to nearby industrial units. The council's Environmental Health Officer notes that noise impact would require to be designed out and that a "windows open" solution is required. I note that the noise assessment proposes mitigation in the form of double glazing with trickle vents and a 2.5 metres high fence. I have some concerns that a development of the layout and height proposed on the indicative plans would not meet the council's standards in relation to noise mitigation with windows open. However I am not presented with any evidence that some form of housing, whereby noise could be suitably mitigated and addressed by conditions, cannot be accommodated.

19. There are other local plan policies relating to archaeology, flooding/drainage, tree protection and biodiversity. On the basis of the evidence before me none of these raise issues that could not be addressed by conditions had I been minded to allow this appeal.

20. Taking account of the above, while the application is in principle I find that it has not been demonstrated that the development would have a positive impact on its setting and would not harm the amenity of neighbouring properties. In respect of these matters I therefore conclude that the development as proposed does not comply with policies Des 1 and Des 3.

Other Material Considerations

Scottish Planning Policy

21. The adopted local plan is more than five years old and it does not reflect the requirement in SPP for a 5-year effective housing land supply. The presumption in favour of sustainable development is therefore a significant material consideration in this case. The appellants argue that their proposals constitute sustainable development. I agree that the location of the site within the urban area and with access to sustainable transportation links and other facilities fits with this aim of SPP. However SPP also seeks to protect open space and indicates that a strong justification is required for unrelated development on land allocated as green infrastructure. The definition of green infrastructure includes allotments. Furthermore, SPP requires that local development plans should safeguard existing and proposed allotment sites to ensure that local authorities meet their statutory duty to provide allotments where there is proven demand.

22. This is a relatively small infill site and would make only a limited contribution to the housing land supply and SPP indicates that the planning system should aim to achieve the right development in the right place; not to allow development at any cost. I accept that the development would contribute to the required supply of housing in a sustainable location; however, this does not outweigh my concerns regarding the loss of open space and the failure to safeguard existing allotment sites as required by SPP. I also have concerns that the development as proposed is not appropriate at this location due to the impact on its setting and the amenity of surrounding residential properties. Overall, I consider that SPP does not contain support for the proposals that would justify allowing this development which fails to comply with local plan policies.

Proposed Local Development Plan

23. The Second Proposed City of Edinburgh Local Development Plan was published in June 2014. The relevant policies are Hou 1 (Housing Development) and Env 18 (Open Space Protection). Policy Hou 1 supports housing on sites within the urban area subject to compliance with other relevant local development plan policies. Policy Env 18 continues to seek to protect both public and privately owned open space and sets criteria for assessing the loss of open space which reflect those in the adopted local plan.

24. The emerging local plan policies have been considered in The Report into the Examination of the Proposed Edinburgh Local Development Plan which was published in July 2016. Given the stage that this plan has reached I consider that it carries some weight as a material consideration.

25. As referenced above the examination concluded that there is a shortfall in the effective land supply in the period to 2019. The examination report recommends an early review of the plan and provision through a revised policy Hou 1 for additional land to come forward. However I note that it indicates, and I agree, that any shortfall in the housing land supply, whilst carrying considerable weight, does not over-ride other considerations, such as the protection of open space. This is reflected in the conclusions of the examination that, despite the identified shortfall in housing land, loss of this area of open space for housing development was not justified. This position reflects my conclusions above. In terms of the proposed local plan the position remains that housing is not supported at all costs.

26. In considering the proposals against the emerging local plan I find that, as set out in relation to policy Os1 of the adopted local plan, it has not been demonstrated that the loss of open space is justified. I therefore conclude that the development fails to comply with policies Hou 1 and Env 18 of the Second Proposed Development Plan.

Other matters

27. In support of their case the appellants emphasise that the site owners have not authorised the use of the plots via any formal tenancy arrangements and that the proposal would offer security of tenure for the plot holders. However, I note that no mechanism is proposed to ensure that the plots would be transferred at no cost to the council or to guarantee security of tenure for the plot holders. The representations submitted indicate that under the Community Empowerment (Scotland) Act 2015, there will shortly be powers for the community to purchase the site at a fair price and the allotments committee are investigating the possibility of community ownership. Although I note the position of the parties these are legal matters and are not land use planning considerations. Moreover, land may be designated and protected as open space irrespective of whether it is in public or private ownership.

28. I acknowledge that the proposals have attracted a number of representations; including opposition from three community councils. The representations indicate that the allotments are an important community facility, valued for 93 years and regularly used by many people. They note that the site is worked and managed by volunteers as a registered

charity and they obtained a certificate of lawful use in 2015. The community wish to continue to manage the allotments and consider that they are well placed to make their own improvements. I am of the opinion that the strength of feeling expressed in the representations demonstrates the importance of this area of open space and that there will not be a local benefit in allowing the development.

29. Planning Advice Note (PAN) 65 (Planning and Open Space) recognises the social, environmental and economic value of such open space. It indicates that the planning system plays an important role in protecting valuable and valued open space. Taking account of the submissions relating to the demand for allotments in the Edinburgh area and the value placed on them by the local community I find that the proposals run contrary to the government advice contained in the PAN.

30. The appellants have referred to a Court of Session decision and other appeal decisions. Although I note that the recent appeal decisions support their position regarding housing land supply, each application must be considered on its own merits taking account of the particular circumstances of the individual case.

Conclusions

31. I acknowledge that the appellants appear to be offering a compromise rather than seeking to develop this entire site for housing. However, the physical improvements proposed are minor and do not, in my opinion, provide adequate justification for the significant reduction in the amount of open space presently used as allotments. I consider that the small contribution that the development would make to the five year effective housing land supply does not outweigh its failure to comply with local plan and SPP policies in relation to the protection of open space.

32. I therefore conclude, for the reasons set out above, that the proposed development does not accord overall with the relevant provisions of the development plan and that there are no material considerations which would still justify granting planning permission. I have considered all the other matters raised, but there are none which would lead me to alter my conclusions.

Lorna McCallum

Reporter