
Appeal Decision

Hearing held on 26 January 2016

Site visit made on 26 January 2016

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 16 February 2016

Appeal Ref: APP/R1845/W/15/3133945

Land at Station Yard, Off Lynwood Drive, Blakedown, Kidderminster DY10 3LF

- 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 Callow Oils Ltd against the decision of Wyre Forest District Council.
 - The application Ref 14/0661/OUTL, dated 27 October 2014, was refused by notice dated 22 July 2015.
 - The development proposed is 16 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. A finalised statement of 'Common Ground' (SoCG) was submitted at the hearing which erroneously suggests that the application is in outline with all matters reserved other than access. However, as it transpires that the Council had in any event directed that layout must be included and the appellant had acceded to this I take the application as I find it, as I explained at the hearing, namely that it is in outline with all matters reserved apart from access and layout, the latter being defined on Drawing No Zeb 843/010 Rev C.
3. By reference to the 'Wheatcroft principles'² the appellants requested at the opening of the hearing that a subsequent application (Ref 15/0683/OUTL) intended to address the Council's express concerns, which has been submitted to the Council for determination, be substituted for determination by me at this appeal. The Council contests this approach as not only has the site boundary changed but it is for a significantly different layout for a lesser number of houses. Moreover, the SoCG, at paragraph 2.10, confirms that the appellant is content to pursue the appeal as it currently stands.
4. Irrespective of the latter point, I do not consider the 'Wheatcroft principles', which would in this case rely on lack of potential and substantial prejudice to interested parties, could be extended to embrace the new proposal which would otherwise fall to be determined by the Council in the first instance in the usual fashion. Accordingly, I determine the appeal as I find it.

¹ By notice under Article 4(2) of the Town and Country Planning (Development Management Procedure) Order 2010 (as Amended) dated 4 December 2014

² *Bernard Wheatcroft Ltd v SSE* [JPL 1982 p37]

Main Issues

5. I consider the main issues to be as follows:-

- Whether the proposed development would conflict with and harmfully undermine the intentions of the development plan in respect of;
 - a) The Council's spatial strategy for housing development; and
 - b) The living conditions of future and existing residents with particular regard to noise, privacy and outlook
- If so, are there material considerations that would outweigh such conflict with the development plan?
- Whether it would represent sustainable development for the purposes of the National Planning Policy Framework ('the Framework').

Reasons

Physical and policy circumstances

6. The appeal site is a classically configured redundant railway yard occupying land alongside the main Birmingham to Worcester line, a busy strategic link in the network which carries many passenger and goods trains in the course of 24 hours³. Some passenger services stop at Blakedown Station, others pass straight through. An automated level crossing is situated on the road between the station yard and the station itself and a 'whistle board' is situated on the stretch of railway alongside the site.
7. The site, which was in the main previously used for oil storage and distribution, is on the same level as the railway but its overgrown south-western end, which appears to have been long abandoned, is at a level which is elevated above the houses at the head of Lynwood Drive and the equivalent area at the head of Swan Close, owing to the topography. The site as a whole has a long frontage to Lynwood Drive, off which the access is proposed. The current access to the yard, past Station Cottages, would be closed and the land opposite those dwellings would be used for a small increment of station parking. The circumstances of the site are such that the Council accepts that an element of affordable housing in accordance with policy objectives could not be viably provided.
8. The parties essentially agree that it is unallocated but previously developed land in a sustainable location (i.e. the village of Blakedown) looking for a beneficial use. Although it is within the settlement boundary, it is nevertheless outside the areas therein allocated primarily for residential development in the Council's Site Allocations and Policies Local Plan 2006 – 2026 (the 'Site Allocations Plan'). This was adopted in July 2013 having been independently examined and confirmed to be sound in the context of the Framework, which was published in March 2012.
9. The site falls outside the qualifying criteria of SAL.DPL1 of the Site Allocations Plan which aims to satisfy the bulk of the Council's housing development needs on previously-developed land in the main urban areas, primarily but not exclusively within Kidderminster.

³ See, for example, Doc 4

10. The proposed housing also falls outside the qualifying criteria for Rural Housing set out in policy SAL.DPL2 of the Site Allocations Plan. Both this policy and SAL.DPL1 are policies relevant to the supply of housing but as the parties agree that there is currently a five year supply of deliverable housing sites for the purposes of paragraph 49 of the Framework (and I have no reason to disagree with that assessment) then it follows that they are up-to-date and the 'presumption in favour of sustainable development' is not specifically engaged by virtue of the circumstances set out in the second bullet point of that part of paragraph 14 of the Framework which concerns decision taking.
11. Whilst the parties agree that an adequate supply of deliverable housing sites does not preclude permission being granted for additional housing development that is sustainable⁴, there is dispute over whether such development in a sustainable location may be approved contrary to the strategic aims of an up to date development plan. That dispute is relevant in part to the first issue I have identified.
12. The other principal component of the development plan relevant to my determination is the Council's Core Strategy, adopted in 2010 prior to the publication of the Framework. Relevant policies include DS01 and DS04 which respectively concern development locations and rural regeneration. Insofar as they set the principles subsequently adopted on the basis of their soundness in that context in the Site Allocations Plan, I have no reason to find them inconsistent with the Framework for the purposes of this appeal.
13. Policy CP11 of the Core Strategy and policy SAL.UP7 of the Site Allocations Plan concern design quality and local distinctiveness, both attributes promoted by the Framework and are in varying degrees relevant, albeit less so in many respects than if the proposal was fully detailed. The Council's recently adopted *Design Guidance Supplementary Planning Guidance* ('the SPD') also merits significant weight, albeit not the weight to be accorded to the development plan itself. Again, however, the detail in the SPD is more readily applied to fully detailed proposals than issues of principle.
14. The Churchill and Blakedown Neighbourhood Plan was published for consultation purposes in October 2015 but, being at a relatively early stage in the processes leading to adoption, carries only limited weight.

Spatial strategy for housing development

15. The Council's spatial strategy for housing development is clearly set out in policies DS01 and DS04 of the Core Strategy and more particularly policies SAL.DLP1 and SAL.DPL2 of the Site Allocations Plan. The latter are very specific in the criteria that must be satisfied and on the basis that these are not met and not presented by the appellant as being met, there is prima facie a clear conflict with the intentions of the development plan regarding the spatial strategy for housing development; and I am clear that the development plan is up-to-date in all relevant respects and that the proposed development would not accord with it. By virtue of s38(6) of the Planning and Compulsory Purchase Act 2004, however, this of itself would not necessarily lead to refusal of planning permission, because material considerations are potentially capable of outweighing conflict with the development plan.

⁴ SoCG paragraph 2.11

Living conditions

16. As far as noise from the railway is concerned it is of course the case that many houses in the village are close to the railway and indeed that is the case throughout the country. This site, by virtue of its shape and dimensions would place conventional two storey houses with gardens in particularly close proximity to a notably busy line with regular soundings of the locomotives' warning devices being added to the generality of noise from the passage of the rolling stock. Whilst the evidence from the acoustics report is clear that within the dwellings an acceptable level of noise attenuation could be achieved, the short rear gardens of plots 1-10 in particular would be dominated by the 2.5m acoustic fence required to achieve a predicted residual noise level of 59.9dB. In practical terms this would exceed the BS 8322:2014 'upper guideline value' by some 5dB, an exceedance typically considered to be of moderate significance according to the appellant's acoustic consultants.⁵
17. It is important to appreciate the British Standard's recognition that 55db is not always achievable in external amenity spaces in such situations and that a pragmatic approach is sometimes required if potential housing development land is not to be sterilised, notably *"in higher noise areas such as city centres or urban areas adjoining the strategic transport network" where "compromise between elevated noise levels and other factors, such as the convenience of living in these locations or making efficient use of land resources to ensure development needs can be met might be warranted"*. The BS 8322:2014 guidance continues with the advice that *"In such a situation, developments should be designed to achieve the lowest practicable levels in these external amenity spaces but should not be prohibited."*
18. In this instance, however, the proposed dwellings are in a village environment and the current adequacy of the residential land supply does not place an overriding premium on maximising efficiency of land use. Nevertheless, I accept that, given the lack of an absolute standard, the potential for disturbance could be seen as to some degree a matter of consumer choice, whereby noisy external space might be traded off for the convenience of living in a rural area but very close to a station providing good access to a range of urban destinations. That would in some respects be a logical extension of the principle embodied in the BS 8322:2014 guidance. However, I also acknowledge the force of the Council's argument that the World Health Organisation recommends that noise exposure in outside amenity areas should not exceed 55dB, and that the Worcestershire Regulatory Services guidance⁶ deploys 55dB as the *Significant Observed Adverse Effect Level* (SOAEL) for the purposes of railway noise in daytime in outdoor living space, using the terminology of the *Noise Policy Statement for England*, published in 2010; albeit it is clear from this that there is no objective noise-based measure that defines SOAEL that will be applicable to all sources of noise in all situations and that, consequently, the SOAEL is likely to be different for different noise sources, for different receptors and at different times.
19. It seems to me that the Worcestershire Regulatory Services guidance is a considered approach locally to addressing that difficulty and therefore merits weight as a material consideration, as of course does the Planning Practice Guidance (PPG). This advises that *"if external amenity spaces are an intrinsic*

⁵ Doc 2

⁶ *Noise control Technical Guidance – Development Control 1st Edition: November 2013*

part of the overall design, the acoustic environment of those spaces should be considered so that they can be enjoyed as intended”.

20. All things considered, the outcome in the plots 1 -10 would be houses facing very short rear gardens dominated by an acoustic fence verging on being unacceptably oppressive from both habitable room windows and a small amenity area in which the noise levels would noticeably exceed the relevant SOAEL. Of itself, that exceedance of the guidelines would not be decisive but the proposed layout does not, bearing the above considerations in mind, represent good design and that of itself is contrary to the intentions of not only Policy CP11 of the Core Strategy and policy SAL.UP7 of the Site Allocations Plan, together with the SPD, but also those of the Framework and the PPG, both of which advocate high quality design.
21. Although the noise potential of the railway does not in my estimation present an insurmountable obstacle to residential development in principle, it certainly weighs heavily against it in the absence of design solutions that are unsatisfactory, as in the currently proposed layout. The living conditions of most future residents would be unsatisfactory by reason of noise and outlook combining to create a living environment that would be considerably less than ideal and certainly not as good as might be achieved by more creative design. The Framework 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 and the way it functions.
22. The layout as proposed would also compromise the living conditions of certain existing residents by reason of harm to both outlook and privacy, notably the occupants of 69 Lynwood Drive and 19 Swan Close. I was able to visit the former property and, although I was unable to visit the back garden of 19 Swan Close, I was nevertheless able to walk into the overgrown south-western extremity of the appeal site where units 15 and 16 are proposed. From this vantage point the effect of the marked difference between the lower lying area in which Swan Close and the head of Lynwood Dive have been constructed and the track bed of the railway and adjacent appeal site is very apparent. Units 15 and 16, the latter in particular, would visually dominate the rear gardens of the nearest existing properties on each street to create an overbearing presence that would be unacceptably harmful to the living conditions of their occupants.
23. The proximity and change of level is such that physical means to screen the proposed dwellings on Plots 15 and 16 for the sake of privacy in the rear garden of 19 Swan Close in particular, but also 69 Lynwood Drive, would themselves very likely be wholly unacceptable and, without such means, the intrusive overlooking that would be possible would certainly be so. No doubt the proposed houses could be designed so as to prevent outlook from the relevant windows; but this is unlikely to be a satisfactory situation for prospective occupants and would not address the visual dominance that would be experienced by the nearby existing residents.
24. In my estimation the obvious difficulty with this part of the layout as proposed cannot be satisfactorily overcome by the imposition of planning conditions. Moreover, I doubt that the south western extremity of the site could be re-graded to bring it down to a level compatible with the adjacent established dwellings without compromising the stability of the main rail bed beyond.

I have no evidence to suggest that my doubts in this respect are not well founded. Whilst the proposed layout appears to work here in two dimensions, it is very clear, on thorough examination of the site and its environs, that it does not do so in three.

25. For these reasons, I consider the consequence of developing the site as proposed would be unacceptable harm to the living conditions of the occupants of the existing properties I have referred to. This would represent unacceptably poor design contrary to policy CP11 of the Core Strategy and policy SAL.UP7 of the Site Allocations Plan, as well as the intentions of the SPD and the Framework. The latter is clear not only on the importance of good design but also on the importance of amenity.

Material considerations and sustainability

26. The proposed housing development is in a notably sustainable location and would make beneficial use of previously developed land which is currently vacant, unsightly and potentially afflicted by significant contamination⁷. There would be economic benefit as is generally the case when new houses are developed, and the provision of market housing does have social benefits (albeit these would be greater if affordable housing were a practicable component of the proposed scheme of development). Therefore there would be benefits across the three dimensions of sustainable development.
27. However, there would also be significant harm in terms of conflict with an up to date development plan spatial strategy, and the intention that development should be plan-led is a core principle of the Framework. In any event there would be harm in terms of conflict with development plan policy for good design for acceptable living conditions for existing residents, notably in respect of privacy and overlooking. The position in respect of railway noise impacting on prospective residents is less clear cut but, on the basis of the layout proposed, there would be harm nonetheless, adding weight in the balance to the other harms I have identified.
28. For all the above reasons, I am clear that the scheme of development as presently conceived would conflict significantly and harmfully with the development plan, so as to undermine its intentions. I have taken into account all other matters raised but no material considerations sufficient to outweigh that harm have been identified. At its core the Framework conceives of sustainable development as being plan-led unless material considerations indicate otherwise. On that basis, therefore, the scheme as currently proposed cannot be said to represent sustainable development for the purposes of the Framework.

Overall conclusion

29. The proposal conflicts with an up to date development plan and does not otherwise represent sustainable development as a consequence of material considerations outweighing that conflict. It follows that the appeal must fail.

Keith Manning

Inspector

⁷ Phase 1 Desk Study

APPEARANCES

FOR THE APPELLANT:

Mr G Sibley MRTPI	RCA Regeneration Ltd
Mr R Csondor MRTPI MRICS	RCA Regeneration Ltd
Mr S Jones MSc	RCA Regeneration Ltd
Mr G Bowland BSc MIOA	Hepworth Acoustics

FOR THE LOCAL PLANNING AUTHORITY:

Mr P Round PGDipTP MRTPI	Principal Development Control Officer
Mr P Barker	Senior Officer, Worcestershire Regulatory Services
Mrs R Brown BA (Hons) MRTPI	Planning Policy Manager
Mrs E Anning BA (Hons) MA MRTPI	Senior Development Control Officer

INTERESTED PERSONS:

Mr Shade	Local Resident
Mr & Mrs M & L Robson	Local Residents
Mr M Cox	Local Resident
Mrs M Lomas	Local Resident

DOCUMENTS

- 1 Council's notification letter and list of those notified
- 2 Letter dated 14 January 2015 from Hepworth Acoustics to RCA Regeneration
- 3 Statement of Common Ground dated January 2016
- 4 'Realtime Trams' printout for Blakedown for 25 January 2016