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## Appeal Decision

Site visit made on 11 July 2016

**by Kenneth Stone BSc (Hons) DipTP MRTPI**

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

**Decision date: 27 July 2016**

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**Appeal Ref: APP/C4615/W/16/3147547**

**Cookley Works, School Lane, Brockmoor, Dudley DY5 3UR**

- 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 Tata Steel (UK) Limited against the decision of Dudley Metropolitan Borough Council.
  - The application Ref P15/1022, dated 30 June 2015, was refused by notice dated 5 October 2015.
  - The development proposed is described as 'Outline planning application for the erection of up to 70 dwellings with all matters reserved apart from means of access'.
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### Decision

1. The appeal is dismissed.

### Background and procedural matters

2. The application is submitted in outline with all matters reserved for future consideration with the exception of access. The plans accompanying the application included an illustrative master plan for the layout of the development and a location plan. As part of the appeal the appellant provided an updated location plan to include some additional areas of land within their control. This plan was the subject of further consultation and does not affect the issues in dispute in this appeal, I have therefore taken it into account in the determination of this appeal. The latest details of the access arrangements are set out in appendix C to the appellants Highways evidence, and this has been available for public scrutiny and comment. It does not significantly alter the proposal and I have taken this into account as the details of the access arrangements. For the sake of clarity I have treated the illustrative master plan as just that, illustrative.
  3. The Council refused planning permission for one reason, that being related to highway safety and in particular the restricted visibility to the west of the proposed access caused by an existing railway bridge parapet. In the appellants grounds of appeal they have raised concerns that the Council cannot demonstrate an adequate supply of housing sites to meet the 5 Year requirement in the National Planning Policy Framework (the Framework) and that the site is sustainably located and therefore the principle of development is acceptable. They also contend that the provision of affordable housing would make the scheme unviable; they therefore do not propose to make any provision for affordable housing. The Council contest the appellant's five year housing land supply position and contend that it can demonstrate such.
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Furthermore the Council do not accept the appellant's viability assessment and contend that in the absence of any affordable housing the scheme should be refused on that ground also.

### **Main Issues**

4. On the basis of the above the main issues are:
  - (a) Whether the Council can demonstrate a five year supply of housing land and the acceptability of the principle of housing development having regard to the Framework and the development plan;
  - (b) The effect of the proposals on the safety and convenience of users of the adjacent highway network, with particular regard to visibility at the junction of the site access and Leys Road; and
  - (c) Whether the proposals makes adequate provision for the supply of affordable housing.

### **Reasons**

5. The appeal site is presently a vacant disused industrial site with the buildings having been demolished some time ago. The site retains extensive areas of concrete hard standing and is overgrown by invasive shrubs. Around the boundaries there are areas of mature trees. The site sits in a wider area of mixed development with residential roads and streets predominating to the east and a more industrial character to the west. A disused railway line separates the site from the areas to the west and it is over this that the existing bridge and parapet span. To the north the site is bounded by the Stourbridge canal.
6. The development plan for the area comprises the Black County Core Strategy, adopted 2011 (Core Strategy) and the saved policies in the Dudley Unitary Development Plan, adopted 2005 (UDP). The Council has an emerging document, the Dudley Borough Development Strategy, which has been through public examination but I have not been informed of any Inspector report or adoption date, this therefore reduces the weight that I give to the policies in this document.

#### *Five year Housing land supply and principle of housing development*

7. The site is identified in the Core Strategy as falling within a regeneration corridor with a strategic emphasis on housing growth the site also being shown in an indicative area for housing growth within that corridor in a broad locations diagram. The Council point to policy DEL2 in relation to managing the balance between employment land and housing if the release of employment land is to be acceptable. However, they note that the previous industrial buildings have been demolished and that there would be no requirement for the appellant to demonstrate a relocation strategy. Given the regeneration corridor emphasis and identification for land for housing in the Core Strategy, along with the identification of the site as a Housing site within the Strategic Housing Land Availability Assessment (SHLAA) produced as part of the evidence base for a site allocations and development management policy document, it is evident that the Council view this site as an appropriate residential site. A point further emphasised by its inclusion in the 5 year housing land supply figures, as confirmed by the Council.

8. On this basis I see no reason other than to conclude the site is acceptable for residential development in principle and that this would accord with the provisions of the development plan.
9. The Council's identification of the site within the housing led regeneration corridor also recognises the locational sustainability of such sites in the urban area. The site is close to schools, shops and other facilities and as such I accept the locational sustainability credentials of the site.
10. The issue therefore in the context of the 5 year housing land supply does not affect the principle of the housing site or whether it should be used for housing but rather the context within which the decision should be taken and the appropriate test against which to judge the development proposals. In that, in the absence of a 5 year housing land supply, those policies for the supply of housing would be out of date and I should engage paragraph 14 of the Framework which would require that any adverse impacts of approving the development would have to significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework.
11. The Council are of the view that they can demonstrate a 6.25 year supply of housing which they express as a 125% of the 5 year supply target. But they have accepted that there should be a 20% buffer and as such the figure is in effect only 5% above what they would be required to provide in the context of the Framework with a 20% buffer. The Council's latest statement identifies that the reworked objectively assessed need has regard to figures from 2012 and that these figures exceed those in the latest work they are carrying out in terms of the background papers for the emerging plan for the wider area and taking account of potential increased need arising from Birmingham, an adjacent Authority with which they would have to co-operate under the duty to co-operate. On this basis they are satisfied that the figures are robust.
12. The appellant on the other hand is concerned that the basis of the figures is founded in the revoked Regional Spatial Strategy and that the figures contain a fundamental flaw adding the 20% buffer to the supply rather than the requirement. Whilst not going into a detailed assessment of individual site appraisals and trajectory assessments the appellant is concerned that there are areas within the supply side, including a lack of a discount for sites in the SHLAA coming forward that would make the assessment less than robust. They contend that even on the Council's figures a 10% discount in respect of SHLAA sites would mean the Council would fall below the 5 year land supply level.
13. I find that Council's argument that the conservative assessment of site capacity in the SHLAA would address any issues in this regard weak. To take forward all of the sites from the SHLAA, with the degree of certainty that is implied, is flawed. There is a discount applied to sites further forward in the development process, those with planning permissions, and I am unsure why a similar discount is not applied here. When taken together with the older baseline figures and that an up to date full objectively assessed need has not been provided, compliant with the Framework, I am less than convinced, on the basis of the evidence before me, that the Council has a robust 5 year supply of housing land available. For the purposes of my consideration of the appeal I therefore conclude that the Council has not demonstrated a 5 year supply of housing land and therefore paragraph 14 is fully engaged

14. For the reasons given above I conclude that the Council cannot demonstrate a five year supply of housing land and that paragraph 14 of the Framework is engaged. However even had this not been the case the principle of housing development on the site would be acceptable having regard to the policies in the development plan, in particular Core Strategy policies 11b and DEL2 and given the locational sustainability of the site. Whilst these may be out of date I continue to afford them some weight as they support the residential development in a sustainable urban location.

#### *Highway Safety*

15. The principle area of concern in terms of the negative effects of the development revolves around the access arrangements of the proposals. The existing access to the site is located close to a bridge carrying two-way traffic over a disused railway cutting. The bridge has parapets either side running the width of the span. The road provides for two way traffic movement and has a single footway on the southern side, that opposite the proposed site access.
16. The parties do not contest that adequate visibility can be provided to the east, where the road rises. To the west, the road has a slight bend and falls away. The site access is located on the outside of the bend.
17. The road has a 30mph speed limit and average speeds where recorded in excess of the speed limit by both parties. Although there were some differences these were not materially so. The suggested sightline stopping distance of the parties varies between 55m, suggested by the Council, and 52m suggested by the appellant. Again I am of the view that this is a not material difference in the context of this appeal.
18. The crux of the issue relates to the visibility of the driver emerging from the minor arm in this T junction scenario. The forward visibility for drivers travelling from the west, beyond the bridge, in an eastward direction along Leys Road, the major arm, would enable drivers to see the front of a car waiting to enter the carriage way for some distance and visibility of the front of the car would not be restricted by the bridge parapet as they approach that vehicle.. On the other hand for a driver sitting in a car, taken as being in a position 2.4m back from the inside running lane of the carriageway, there would be restricted visibility within the visibility splay at a critical point when vehicles approaching would be within some 24m to 26m. Whilst there may be some visibility of the outside edge of vehicles parapet would intrude within the general visibility restricting views, particularly of smaller two wheeled vehicles, approaching, which may be closer to the bridge parapet. The restriction in visibility could lead the driver in the minor arm to edge forward to improve visibility and restrict the running lane of the nearside carriageway. As the restricted visibility occurs close to the junction this may come as a surprise to drivers of vehicles travelling along the main arm, who may have expected the drivers of the waiting vehicle to have seen them and would not be expecting the vehicle to pull out. This to me would result in an unsafe manoeuvre and one which could increase the potential for accidents in this location.
19. Both parties have referred to Manual for Streets and Manual for Streets 2 (MfS2). The X distance, which is where the driver would be located, is normally suggested as 2.4m in urban areas. At this point the restrictions described above apply. The appellant contends that by reducing this to 2.0m the appropriate visibility can be achieved. MfS2 acknowledges that such a

reduction can be acceptable where there are slow speed situations when flows on the minor arm are low but acknowledges that this would result in vehicles protruding into the running carriageway of the major arm. The advice continues that the ability of drivers to manoeuvre around the protruding vehicle without undue difficulty should be considered. In my view the vehicle flows on the minor arm are not low. This is not referred to as a comparative figure between the minor and major arm but as an absolute figure, taken as an absolute figure there are a significant number of vehicle movements from the minor arm through this junction on a daily basis. The restricted carriageway width resultant from the tightening road width from the railway bridge, and other distractions that may attract drivers' attention, associated with vehicles approaching in the opposite direction would reduce the ability to make such manoeuvres which would be constrained and would not therefore be without undue difficulty. This to my mind would be unsafe.

20. There is some dispute between the parties about the proportions of larger vehicles and HGV's travelling through the area, but given the numbers of either party, there would still be a significant number. I also noted a number during my sight visit, including some servicing the industrial units on the opposite side of the bridge. The location of industrial units in close proximity would mean that there is HGV manoeuvring in the area, and in some instances adding to the potential hazards and distractions in the immediate area. Adding a residential access for up to 70 units in close proximity to a railway bridge providing restricted visibility would result in material harm to highway safety in the locality.
21. The appellant cites the lack of accidents for pedestrian and cyclists in the area at and around this junction. However given its historical use and the surrounding area that is not to be unexpected. The proposed development for up to 70 dwellings including family units in a sustainable location would be likely to significantly increase the use of this area by pedestrians and cyclists, including school children, given the proximity to nearby schools. This would exacerbate and amplify the concerns that I have identified above.
22. The Framework requires that safe and suitable access to the site can be achieved for all people and that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. In my view the proposals do not provide for safe and suitable access and that the potential for increased accidents would be increased and thereby the residual effects would be severe. For these reasons I conclude that the proposals would materially harm the safety and convenience of users of the adjacent highway network, with particular regard to visibility at the junction of the site access and Leys Road. This would conflict with the Framework and policies TRAN2 and DEL1 in the Core Strategy, policy DD4 in the UDP and emerging policy S17 which all seek to ensure safe and convenient arrangements for access are provided.

#### *Affordable Housing*

23. Policy HOU3 in the Core strategy seeks affordable housing provision on developments in excess of 15 dwellings at 25% of the total number of units. The policy acknowledges the potential impact on viability and allows for the provision of affordable units to be varied based on viability. The Council also have a supplementary planning document related to affordable housing.

24. In principle the Core Strategy and affordable housing supplementary planning document make a convincing case for the necessity of affordable housing within housing developments in this housing market area.
25. The appellant has contended that the scheme would be unviable with the provision of any affordable dwellings and has therefore not made provision for such or provided a mechanism for securing such.
26. The Council's preliminary assessment of the appellant's viability information has raised a number of issues with the most significant implications arising from the land value, build costs, marketing and finance arrangements. The appellant has sought to address these matters and provided additional information including in relation to the marketing and adjusted their assessment to include changes to the financing. I accept the appellant's position on these latter matters as a reasonable position.
27. In terms of build costs I have no robust direct evidence from the Council on the build cost figure they have employed and the concerns of the appellant concerning the additional costs associated with the differing scales of development would increase the per unit cost. Their figure is in line with the lower end of the BICS cost estimates and I see that as reasonable.
28. In terms of the land value the appellant criticises the Council's value as fundamental flawed on the basis that the viability assessment is only triggered should I find the access acceptable therefore the constrained access arrangement should not weigh heavily on the land value. I do not see that. The existing use value would relate to the land as it presently stands including its constrained access and the fact there are no buildings on it. This is then enhanced by an uplift to take account of the potential residential use value, which given the development plan is not unreasonable. Whilst I accept that the Council's value would appear excessively low the comparative site values for other sites are not so comparable to this site to give a strong correlation and comparative value. I would suggest that the existing use value plus hope value would therefore sit between the two values provided. This would improve the viability of the scheme and increase the profit level of the scheme. This would increase above the 17% suggested in the appellant's assessment and in my view to a level that would not discourage development of the site as it is above that which the developer has suggested would be viable. There would therefore be some additional residual value available to contribute towards affordable housing..
29. I note that the policy also suggests that a mechanism for claw back should be secured on sites where provision of affordable housing is reduced due to viability, to take account of the potential for any increase in value further improving the viability of the scheme during its implementation. No such mechanism is before me.
30. The level of profit is currently at a level where, according to the appellant, the scheme would be viable. With the increased positive balance resultant from a reduced existing use value within the model and the potential for increasing prices improving the situation over the implementation of the development there is a reasonable potential that the site could viably make provision for a financial contribution towards affordable housing. There should also be a mechanism for securing any further uplift in value that may arise.

31. As neither of these matters are secured by an appropriate mechanism I conclude that the proposals before me do not make adequate provision for the supply of affordable housing, in line with the requirements of policy HOU3 of the Core Strategy and the affordable housing Supplementary Planning Document.

### **Other matters**

32. The appellant has identified a number of positive benefits that would arise from the scheme that I should take into account in the planning balance. In terms of positive benefits I agree that the supply of housing, given my conclusions on the five year housing land supply, is a significant positive benefit of the scheme. I also accept that there are environmental benefits that would accrue from the redevelopment of this previously developed land, the sustainable location of the site, improvements to biodiversity and the enhancements of the canal corridor. I also accept that economic benefits would result from construction jobs, the new homes bonus and the additional spending power from the residents if the development were to proceed.

33. The appellant has identified that issues related to amenity, noise, contamination, landscaping and flood risk would be neutral factors. These are matters that would be addressed during any reserved matters submission and would seek to address the effects of the development, as such they are not positive benefits and I would agree they are neutral factors and would not therefore have weight in my balance.

34. The appellant has suggested that affordable housing should also have a neutral weight but given my conclusions above I find that this has a negative weighting, as does the issue of highway safety.

35. Local residents have raised the issue of the potential effect of the layout and landscaping on their future amenity. However, these are matters that could be addressed through a future reserved matters submission had permission been forthcoming and I am satisfied that there would be no insurmountable issues in this regard.

### **Overall conclusions**

36. I am satisfied that the material harm that would arise as a result of the effect of the development on highway safety would be severe and when added to the material harm that would arise as a result of the lack of adequate provision being made for affordable housing the adverse impacts of the scheme would significantly and demonstrably outweigh the benefits of it, when assessed against the policies in the Framework taken as a whole. The scheme would not therefore amount to sustainable development.

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

*Kenneth Stone*

INSPECTOR