



Appeal Decision

Site visit made on 25 February 2019

by **Caroline Mulloy BSc (Hons) DipTP MRTPI**

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

Decision date: 5 April 2019

Appeal Ref: APP/Z4718/W/18/3208743

Former railway cutting between Walkley Terrace and Brunswick Street, Heckmondwike

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant part full, part outline planning permission.
 - The appeal is made by Andrew Redmile obo Ernest Gordon Ltd against the decision of Kirklees Metropolitan Borough Council.
 - The application Ref 2017/62/93488/E, dated 9 October 2017, was refused by notice dated 15 February 2018.
 - The development proposed is described as "hybrid application with full planning consent for the engineered fill of the railway cutting and the formation of the urban greenway through the site running between Walkley Terrace and Brunswick Street, with outline consent sought for residential use of the new plateau with most matters reserved. We seek consent for the new access off Horton Street and the spine road to adopted standards".
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal proposal is a hybrid application which seeks full planning permission to landfill the site and to create a cycle/pedestrian link to the current spur from the Spen Greenway. Outline planning permission is sought for the erection of 96 dwellings with all matters reserved except for the access. I have, therefore, dealt with the appeal on this basis treating the site plan as illustrative.
3. After the submission of the appeal, on 19 February 2019, the Government published information relating to the "Housing Delivery Test" (HDT) and also published a revised National Planning Policy Framework (2019) (the Framework) and updates to the Planning Practice Guidance (PPG). I sought the views of parties on those documents; however, no response was received. I have based this decision on the up-to-date Framework and PPG.
4. The Kirklees Local Plan (KLP) was adopted on 27 February 2019 which supersedes the Kirklees Unitary Development Plan. I have sought parties' views on the implications of the adoption of the KLP for the appeal and their responses have been taken into account in my Decision. I have determined the appeal on the basis of the KLP policies. A consolidated version of the KLP has not yet been produced and I have, therefore, used the policy numbering/reference contained in the publication draft of the Plan.

Main Issues

5. The main issues in this case are:

- The effect of the proposal on highway safety with specific reference to the suitability of Walkley Terrace and its junction with Walkley Lane for the regular movement of heavy goods vehicles.
- The effect of the proposal on air quality.
- The effect of the proposal on the living conditions of existing occupiers with specific reference to noise and dust;
- The effect of the proposal on the ecology of the area; and
- Whether the proposed houses and surrounding properties would be safe from flooding.

Reasons

The appeal site

6. The appeal site is around 2.7 ha and is located around 335m south-east of the centre of Heckmondwike. The site comprises a redundant railway cutting which accommodated the former branch line which served Heckmondwike. The cutting has been closed for more than 50 years and has naturally regenerated with self-seeded trees and rough grassland. The surrounding area is mainly residential although there are some commercial premises to the west and south west and an area of open land is located to the east. A public right of way (PRoW) runs in a north/south direction adjacent to the eastern boundary of the site.

Highway safety

7. The proposed access for the residential element would be formed off Horton Street. The Council consider that the proposed access is acceptable in principle and that more detailed concerns can be resolved by way of a reserved matters application. From everything which I have seen in submissions and on my site visit, I have no reason to disagree.
8. The proposed temporary access for the landfill element would be from Walkley Terrace at the south eastern corner of the site. A compound area within the site would be provided close to the access in order to allow two HGVs to park off the highway and manoeuvre to allow forward egress.
9. Walkley Terrace is a relatively steep residential cul-de-sac serving around 29 dwellings situated off Walkley Lane. Walkley Terrace has no parking restrictions and cars park either side of the road. The proposed temporary site access would be situated to the east of the Walkley Lane junction. Walkley Terrace is around 7.2m in width with 2m footways to either side of the carriageway.
10. A Transport Statement (2017) (TS) was provided in support of the application. The applicant has estimated that the landfill operation would operate five days a week outside peak traffic hours (0930-1530) and result in around 18 deliveries per day. The site would take approximately 114 weeks to fill.
11. Figure 5, Appendix D shows the swept path analysis based on the largest vehicle expected to visit the site regularly. It is clear from the analysis that HGV lorries would have to use almost the entire width of Walkley Terrace in order to access or

leave the site compound. Furthermore, the egress manoeuvre would have to be started before the driver could see whether it could be completed, including giving way to vehicles on Walkley Lane. Indeed, an HGV lorry would have to cross over the centre of Walkley Lane to egress from Walkley Terrace.

12. The difficulty HGVs would experience in manoeuvring the site access onto Walkley Terrace could lead to vehicular conflict within Walkley Terrace itself with HGVs having to utilise both sides of the road. It could also disrupt the free-flow of traffic on Walkley Lane.
13. Moreover, the appellants estimate of deliveries assumes that there would be a constant source of infill material over that period; however, there may be intense periods of HGV deliveries to the site when developers seek to dispose of material quickly. As there is only enough room within the proposed compound to park and manoeuvre two HGVs there could be queuing onto the highway, including Walkley Lane, a busy route into and out of the town centre.
14. For the reasons stated above, the proposed temporary access could lead to vehicular conflict and disrupt the free flow of traffic to the detriment of highway and pedestrian safety.
15. The appellant has provided details to improve the temporary access which would involve the use of traffic lights to manage HGVs entering and leaving the site. However, the potential effect of the suggested traffic light system on the operation of the road network has not been fully assessed in the context of existing and future traffic flows on Walkley Terrace and Walkley Lane. Consequently, it is not possible to assess the implications of the traffic light system on the road network and whether the proposed system would overcome the concerns.
16. The TS indicates that a Construction Traffic Management Plan (CTMP) could be required by condition which would set out details to manage and regulate the traffic arriving and departing the site, including details of vehicle times, types, delivery routes and signage. However, due to the significant potential adverse effects on highway safety, I would not be prepared to leave the acceptability of the matter to conditions.
17. For the reasons stated, I conclude that the proposal would have a harmful effect on highway safety with specific reference to the suitability of Walkley Terrace and its junction with Walkley Lane for the regular movement of heavy goods vehicles.
18. The proposal would, therefore, be contrary to Policy PLP21 of the KLP which seeks, amongst other things, to ensure that proposals can be accessed effectively and safely by all users and ensure the safe and efficient flow of traffic within the development and on the surrounding highway network. Conflict also arises with Policy PLP44 of the KLP which seeks to ensure that proposals for waste management facilities which seeks to demonstrate, amongst other things, the adequacy of the highway network and the safety of access and egress arrangements. The proposal would involve the disposal of inert waste within a landfill site and I, therefore, consider that Policy PLP44 applies to the landfill element of the proposal. However, even if I am wrong, the proposal conflicts with Policy PLP21.
19. The Policies are consistent with paragraph 108 of the Framework which requires that a safe and suitable access to the site can be achieved for all users.

Air Quality

20. The landfill element of the proposal has the potential to generate significant amounts of emissions and particulate matter into the atmosphere. Three main sources of emissions could arise: vehicular movements to and from the site would generate exhaust emissions and have the potential to carry dust and mud onto the highway, particularly during periods of dry weather; dust and particulates arising from the preparation of the site and operational processes including the tipping, processing, placement and compaction of waste material; and emissions from exhausts from the operational plant and equipment. The dust, particulates and emissions have the potential to have a significantly harmful effect on air quality in the area.
21. The appellant suggests that: the fill material would be 'clean'; that a strict procedure for water mist spraying fill could be adopted; and that there would be a limited number of vehicle movements in and out of the site. Consequently, they consider that the potential for dust generation would be limited and could be controlled by condition. However, the scale of the infill operation would be significant with an estimated 138,000 tonnes of imported material required to fill the site taking an estimated 114 weeks to complete. This would require 18 deliveries per day resulting in 36 HGV vehicular movements a day, equivalent to 4 movements per hour.
22. I acknowledge that there are some mechanisms which could be controlled by condition or through a Construction Management Plan, such as wheel washing facilities which would help to mitigate the potential for dust and emissions. However, particulates and emissions could arise across the site as a result of working and compaction of waste and associated machinery not just at the initial point of delivery.
23. There is no qualitative assessment of the potential sources of emissions and particulates arising from the operation and only a very limited attempt to quantify and assess the potential effects of the operations on air quality or how any adverse impacts could be mitigated. I am, therefore, unable to conclude that the proposal would not have a harmful effect on air quality. Moreover, in the absence of this information, the scale of the operation and the proximity of residential properties, it would not be reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.
24. Consequently, I am unable to conclude that the proposal would not have a harmful effect on air quality with regards to dust, particulates and emissions. The proposal would, therefore, be contrary to Policies PLP51 and PLP52 of the KLP which seek to ensure that development protects environmental quality and does not result in an increase in air pollution which would unacceptably affect or cause a nuisance to the natural and built environment or to people. These policies are consistent with criterion e of paragraph 170 of the Framework which seeks to prevent new development from being put at unacceptable risk from or being adversely affected by unacceptable levels of air pollution.

Living conditions

25. The appeal site is situated in close proximity to residential properties to the west of the site at Brunswick Place, Walkley Drive, Walkley Avenue and Walkley Lane and also Walkley Terrace to the south east.

26. A Noise Impact Assessment (NIA) (2017) was submitted in support of the application which assessed the ambient noise climate at the application site, the potential impact of the external noise climate on the proposed development and provided recommendations for a scheme of sound attenuation works for the residential development. It also considered the potential impact on local commercial premises associated with introducing a residential receptor at the site.
27. However, the NIA did not assess the landfill phase of the proposal which would involve a significant number of heavy vehicles including open skip and tipper lorries transporting waste to the site. The noise would arise from the heavy vehicles arriving and leaving the site and compound, exacerbated by the difficult manoeuvring on Walkley Terrace. Noise would also be generated by the loading and unloading of the waste, the working and processing of waste on site and compacting activities. The vehicular noise would be keenly felt by occupiers in properties in Walkley Terrace which is situated close to the temporary access and site compound.
28. In the absence of a Noise Impact Assessment for the landfill phase of the development there is no evidence before me to suggest that any such noise would be attenuated. Given the proximity of residential properties and the scale of the landfill operation it would not be reasonable to leave the acceptability of any such noise measures to be approved by way of a planning condition. I, therefore, conclude that the proposal would have a harmful effect on the living conditions of surrounding occupiers with regards to noise.
29. As discussed above, the landfill element of the proposal has the potential to generate significant amounts of emissions, particulate matter and dust to the atmosphere associated with vehicular movements, operational plant and equipment and the tipping, processing, placement and compaction of waste material. The emissions and dust have the potential to have a harmful effect on the living conditions of existing occupiers surrounding the site in terms of health and general nuisance. For the reasons set out above, there is no evidence before me to suggest that any such harm would be mitigated.
30. In conclusion, the proposal would have a harmful effect on the living conditions of existing occupiers with specific reference to noise and dust. It would, therefore, be contrary to Policies PLP51 and PLP52 of the KLP which seek to ensure that development protects environmental quality and does not result in an increase in air pollution which would unacceptably affect or cause a nuisance to the natural and built environment or to people. These policies are consistent with paragraph 170 of the Framework and also paragraph 180 which seeks to ensure that development takes into account the likely effects of pollution on health, living conditions and the natural environment.

Ecology

31. The site is a former railway cutting; however, over time it has naturally regenerated and, therefore, has the potential to provide habitat opportunities for local wildlife. It is identified as part of the Strategic Wildlife Network in the Local Plan.
32. The applicant has submitted a Preliminary Ecological Appraisal (PEA)¹ in support of the application. It identifies that the key ecological features on the site are the presence of habitats requiring protection and mitigation, the presence of

¹ Preliminary Ecological Appraisal, Middlemarch Environmental, June 2017

cotoneaster species and the potential presence of badger, bats, birds, invertebrates, reptiles and terrestrial mammals.

33. The Phase 1 Habitat Survey identified that the land was comprised of rough semi-improved grassland, scattered scrub and tall ruderal vegetation, with areas of dense scrub also present. The PEA identified that these habitats would be lost to development, but that they are not habitats of principal importance or Local BAP habitats. Some of the semi-improved grassland contained species associated with Lowland Meadows and the scrub is identified as a priority habitat in the Kirklees Biodiversity Action Plan and is capable of supporting a range of birds. The site has remained undisturbed, and so it is capable of supporting a range of wildlife and the PES, therefore, recommends that biodiversity enhancement measures be incorporated into a landscaping scheme to maximise the ecological value of the site.
34. In terms of protected species, no direct evidence of badgers was recorded on site during the field survey; however, mammal trails were recorded across the site and although no setts were identified, the dense scrub was considered suitable to support sett-building badgers and suitable foraging for badgers. It was recommended that further survey work would be required to fully assess the impacts of the proposed works on badger.
35. No invertebrates or reptiles were found on site due to the nature of the habitat the PES considers it likely that the site supports a range of invertebrates and also the presence of reptiles cannot be discounted. The PES, therefore, recommends further survey work in order to fully assess the potential impacts of the development on reptiles. It also recommends habitat enhancement for invertebrates.
36. The application is in outline, however, on the basis of the indicative layout, the proposal would result in a significant loss of existing habitat. I acknowledge that some of the PES recommendations could be addressed at the detailed design stage and through the imposition of conditions. Nevertheless, the PEA recommends that further survey work should be carried out in order to fully assess the potential impacts of the proposal on badgers and reptiles. Reptiles are identified as a Species of Principal Importance and some are European Protected Species.
37. The appellant considers that the additional survey work could be required by way of a condition. However, without the additional survey work, I am unable to determine whether badgers and reptiles are present on site and if so the effect that the proposal would have on them and whether any adverse impacts could be mitigated. Furthermore, given the scale of the proposal and the potential effect on Species of Principal Importance and European Protected Species, it would not be reasonable to leave the acceptability of any such measures to be approved by way of a planning condition.
38. Furthermore, paragraph 175 a) of the Framework states that if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts) adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
39. Attention has been drawn to a subsequent outline planning application² for up to 74 dwellings which was approved by the Council 2 January 2019. As part of the

² Planning application reference no: 2018/60/91661

application an updated PEA and reptile survey was submitted. The appellant's summary of the updated PEA is that it concludes that the new application would have no impacts on habitats or biodiversity; however, the revised ecological assessment included the necessary survey work and this evidence is not before me.

40. I acknowledge that there could be potential ecological benefits associated with the urban greenway; however, this would not outweigh the potential harm to Species of Principal Importance and European Protected Species or other wildlife which may be present on site.
41. In summary, for the reasons stated above and on the evidence before me, I am unable to conclude that the proposal would not have a harmful effect on the ecology of the site. The proposal would, therefore, be contrary to Policy PLP30 of the KLP which seeks to protect and enhance the biodiversity and geodiversity of Kirklees, including the range of international, national and locally designated wildlife and geological sites, Habitats and Species of Principal Importance and the Kirklees Wildlife Habitat Network. The proposal also conflicts with paragraph 175 of the Framework. I see no inconsistency between Policy PLP30 and the Framework.

Flood Risk

42. The appeal site lies within Flood Zone 1 and the risk of river flooding is assessed as having less than a 1 in 1000 annual probability of river or sea flooding in any year. However, due to the site's topography, flood maps held by the Environment Agency indicate there is a 1 in 30 chance of flooding from overland surface water along the full length of the base of the cutting.
43. The applicant has provided a Flood Risk Assessment³ (FRA) and Drainage Strategy (DS)⁴. The water company would only accept surface water/highway drainage if it can be demonstrated that Sustainable Drainage Systems are not a viable option and there are no suitable watercourses to receive highway drainage.
44. The FRA indicates that the appeal site is located on undifferentiated strata with the upper stratum likely to be weathered to a cohesive material (clay). These soils are likely to have poor infiltration characteristics and the known flow of water over land during times of flood would suggest that the soils would not allow infiltration. Consequently, the FRA concludes that soakaways would be an impracticable solution for surface water discharge at the site.
45. As soakaways or other infiltration systems are not appropriate, the DS explored the potential for connection to a watercourse. It is likely that there are watercourse tributaries within the site to the River Spen situated around 500m to the south. There is potential to connect to a culverted watercourse which passes under the site; however, the culvert is deep and was blocked some time ago. The DS identifies another potential option - a surface water culvert off Walkley Lane to the Greenway. However, as these options have not been fully investigated, I am unable to conclude that they would be a feasible solution for surface water drainage. Moreover, I am unable to assess the implication of the proposal for land and properties downstream.

³ Flood Risk Assessment, ARP, 10 November 2017

⁴ Drainage Strategy January 2018

46. Furthermore, the proposed surface water discharge rate is 12.9l/s based on a calculation of site size and an estimate of the developable area. This would be higher than the recommended greenfield discharge rate of 5l/s/ha.
47. The FRA recommends a variety of methods to mitigate for surface water overflow including: A 1650mm diameter surface water culvert would be required to be laid at a constant grade between the levels under Brunswick Street bridge and Walkley Lane bridge to accommodate overland surface water during times of storm; properties would be raised a minimum of 600mm above the soffit of the new culvert and be designed without basements; properties shall be designed without basements. Nevertheless, the fact remains that there is no established means of surface water drainage for the site.
48. The FRA and DS conclude that that soakaways or other infiltrations systems are not appropriate. Whilst some potential for connection to a watercourse has been identified, these are not fully explored and remain uncertain. Moreover, Paragraph 7.4 of the FRA states that outfall into the combined sewers to the south of the site is being negotiated with the water company at this time and that the design, details and calculations should be submitted to the LPA for approval prior to construction on site. However, correspondence from the water company indicates that the local public sewer network does not have capacity to accept any surface water from the proposed site.
49. Consequently, the feasibility and suitability of a surface water drainage solution is not established. Due to the uncertainty of the connection; the absence of a readily achievable alternative system; and the risk to land and property from flooding, I would be unwilling to leave the acceptability of this matter to a condition.
50. I am aware the surface water drainage issues and flood risk have now been deemed acceptable in principle in relation to the more recent application (2018/60/91661). However, the evidence supporting this application is not before me and I must determine the matter on the evidence in this appeal.
51. In conclusion, based on the evidence before me, I cannot be certain that the principle of development is acceptable in terms of flooding or that the proposal would not increase the risk of flooding elsewhere. The proposal would, therefore, be contrary to Policy PLP27 of the Kirklees Local Plan which requires that proposals must demonstrate that the proposal will be safe throughout the lifetime of the development and must not increase flood risk elsewhere. The proposal is also contrary to paragraph 163 of the Framework which requires that development would not increase the risk of flooding elsewhere.

Other Material Considerations

52. I acknowledge that the proposal would deliver both market and affordable housing and contribute to the Government's objective of significantly boosting the supply of homes. However, this is a policy compliant level of provision which could be secured on any site for residential development. Nevertheless, the provision of market and affordable housing is a benefit of the proposal to which I attach significant weight.
53. The scheme would provide jobs during the construction phase of the development; however, these benefits would be short-term. In the longer term, new households would introduce expenditure into the local economy. However, the economic benefits of the proposal would be generic and would arise with any

housing development. Consequently, I can only attach moderate weight to the economic benefits in my Decision.

54. The scheme proposes several links to the existing footpath to the east of the site and the creation of a 400m long fully accessible Urban Greenway linking the southern end of the Spen Valley Greenway to the Urban Greenway to the north of the site. The footpath links and cycleway would be a benefit of the scheme to which I attach significant weight in my Decision.
55. The proposal would include a wildlife strip to both sides of the proposed cycle link which would be a benefit of the scheme. However, based on the evidence before me, I cannot be certain of the effects of the proposal on the existing ecology of the site. I am, therefore, unable to determine whether the proposal would result in net gains in biodiversity. Consequently, this would only attract neutral weight in my Decision.

Other matters

56. A number of matters have been raised in relation to the effect of the development on: property prices; privacy; land stability; capacity of local infrastructure; heritage and right of access. Furthermore, the appellant has raised a number of issues relating to the Council's handling of the application. However, none of those matters would lead me to reach a different conclusion in respect of the main issues.
57. Attention is drawn to a more recent application (2018/60/91661) for residential development which has been approved by the Council. However, the nature of this application is very different to the appeal proposal which reduces the weight which I can attach to it in my Decision.

Planning Balance

58. Paragraph 11 of the Framework states that plans and decisions should apply a presumption in favour of sustainable development. Paragraph C states that for decision-taking this means approving development proposals that accord with an up-to-date development plan without delay. Paragraph d goes on to say that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting planning permission unless the application of policies in this Framework that protect areas of assets of particular importance provides a clear reason for refusing the development proposed; or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
59. I have determined the appeal on the basis of the policies in the recently adopted Kirklees Local Plan. I have concluded that the policies which are most important for determining the appeal are consistent with the Framework and, therefore, not out of date. Furthermore, the most important policies in this appeal are not policies for the supply of housing.
60. At the time the Council decided the application, parties agreed that the Council did not have a five-year supply of deliverable housing sites. However, the Kirklees Local Plan has now been adopted and it is, therefore, probable that the Council has a five-year supply of housing. However, this has not been confirmed by the Council and there is also no evidence that the Housing Delivery Test has been recalculated as it should. It is, therefore, possible that the appellant is right, and

the Council has a continued need for housing and so paragraph 11d of the Framework could be triggered.

61. I have concluded that the proposal would result in significant harm to highway safety and the living conditions of surrounding occupiers. I am also unable to conclude that the proposal would not have a harmful effect on the ecology of the site; air quality or that the principle of development is acceptable in terms of flooding and that the proposal would not increase the risk of flooding elsewhere. Consequently, the proposal would result in significant harm and conflict with the development plan as a whole.
62. I accept that the proposed development would increase the supply of both market and affordable housing – which the Framework seeks to boost significantly – and help support the local economy. The proposal would also have significant benefits in terms of the provision of the cycleway and wildlife corridor. The considerations in favour of the development, therefore, collectively carry significant weight. Nonetheless, I conclude that the substantial adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
63. For the reasons stated, and with regard to all other matters raised, I conclude that the appeal should be dismissed.

Caroline Mulloy

Inspector

Richborough Estates