

Adran Tai ac Adfywio
Department for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Mr Ben Lewis
GVA
1 Kingsway
Cardiff
CF10 3AN

Ein Cyf/Our ref: qA1124629
Eich Cyf/Your ref: 07B107695
Dyddiad/Date: 8 May 2014

Dear Mr Lewis

**TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED): SECTION 78
APPEAL BY HARROW ESTATES PLC
RESIDENTIAL DEVELOPMENT TO PROVIDE UP TO 340 DWELLINGS AND
ASSOCIATED INFRASTRUCTURE AT SADBROOK PAPER MILL, SADBROOK ROAD,
CALDICOT, NP26 5XT.**

1. Consideration has been given to the report of the Inspector, Mr Emyr Jones BSc (Hons) CEng MICE MCMI, who conducted a public inquiry into the above appeal by your client. The appeal is against the refusal of Monmouthshire County Council, on 10 October 2012, to grant outline planning permission (all matters reserved except means of access) for residential development (Use Class C3) to provide up to 340 dwellings including: a reconfigured access and creation of new emergency access route; new internal roads, footpaths/cyclepaths, car parking and highway improvements; a network of public open spaces, including landscaping, recreation space, public realm and biodiversity enhancement; and other ancillary works and activities requiring: site preparation, demolition and clearance, treatment, re-profiling and the installation of new services and infrastructure at Sudbrook Paper Mill, Sudbrook Road, Caldicot.
2. On 24 January 2013 the then Minister for the Environment and Sustainable Development, one of the Welsh Ministers, directed that the appeal should be determined by the Welsh Ministers rather than by a Planning Inspector. The reason for this direction was because the proposal comprises residential development of more than 150 houses on more than 6 hectares of land, which falls within the recovery of appeals criteria listed in paragraph 3.11.2 of Planning Policy Wales (Edition 5, November 2012) (PPW) [now taken forward in Edition 6, February 2014]. Under the provisions of the Government of Wales Act 2006 the power to determine appeals made under section 78 of the Town and Country Planning Act 1990 ("the 1990 Act") has been transferred to the Welsh Ministers and, in this case, this power is being exercised by me, the Minister for Housing and Regeneration.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

Printed on 100% recycled paper

3. The appeal was dealt with via a public inquiry held on 23-25 July 2013 and a site visit was made on 25 July 2013. The Inspector's conclusions on the merits of the application are set out in paragraphs 93-118 and 121-124 of his report, a copy of which is enclosed. The Inspector recommended that the appeal be dismissed and planning permission refused. For the reasons given below I accept the Inspector's recommendation (albeit not for all the reasons he recommended).
4. In the Inspector's view, although a number of matters were raised with regard to the proposed development, the main considerations in this appeal, and those which were considered by the inquiry, were whether:
 - the proposals accord with the UDP's housing strategy and policies;
 - the site is an unsustainable location which is remote from any facilities and services, such that a development of up to 340 dwellings would lead to an over dependence on car journeys and an excessive level of commuting;
 - allowing the appeal would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context; and
 - the proposal satisfies the TAN 15 justification tests for development on zone C of the Development Advice Maps.
5. I agree that, at the time of the inquiry, these were the main considerations in this appeal.
6. When determining an application for planning permission, section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the decision maker, whether it be the local planning authority or the Welsh Ministers, shall determine the application in accordance with the development plan, unless material (planning) considerations indicate otherwise. The same principle applies to the Welsh Ministers when determining planning appeals.
7. At the time of the public inquiry the relevant development plan was Monmouthshire Unitary Development Plan (UDP) (January 1996 – January 2011).
8. After receipt of the appeal Inspector's report Monmouthshire County Council and the Welsh Government, received a copy of the Local Development Plan (LDP) Inspector's report into the Monmouthshire LDP on 30 January 2014. The site of the former Paper Mill, Sudbrook was identified as a protected employment site in the Monmouthshire UDP. During the LDP examination the allocation of the site came forward for around 190 units outside the floodplain which is part of the appeal site.
9. The LDP Inspector's report was considered to be material to the determination of the appeal and, in the interests of natural justice, the parties to the inquiry were provided with the opportunity to make further representations on this new evidence and its effect on the planning merits of the proposed development. Representations were received from your company on behalf of your client and from the Council.
10. The Council formally adopted the Monmouthshire LDP on 27 February 2014 and it is now the relevant development plan for the determination of this appeal.
11. As the Inspector's conclusions on the merits of the appeal were based on the relevant development plan being the UDP I have considered his conclusions on that basis. I have then considered those conclusions in the light of the relevant policies in the adopted LDP and the representations submitted by you and the Council.

Inspector's Conclusions

12. The Inspector concluded, at paragraphs 121-123 of his report, that:

"In my consideration of individual issues, I have identified conflict with the UDP's housing strategy and policy MV1 as well as TAN 15 and concluded that allowing the appeal would predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context.

However, I have also noted that UDP policies do not provide a 5 year housing land supply. Nonetheless, a 4.4 year supply is available such that the shortfall is limited and it will in all probability be addressed through the adoption of the LDP which is anticipated to be early in 2014. Although TAN 1 notes that the need to increase supply should be given considerable weight when dealing with planning applications, this is conditional on the development otherwise complying with national planning policies. In this case, refusal on prematurity grounds is supported by PPW and the proposal does not satisfy the TAN 15 justification tests.

In the particular circumstances of this case, I do not consider that the current limited shortfall in the 5 year housing land supply and the other benefits of the proposal are sufficient to outweigh the matters referred to in paragraph 121 above. I have taken account of all other matters raised but nothing outweighs the considerations that have led me to my main conclusion that the appeal should be dismissed."

The Inspector recommended that the appeal be dismissed.

Consideration of the Inspector's Conclusions

UDP housing strategy and policies

13. I note that while the site was allocated under policy E2 'Protection of Industrial Sites and Premises' in the adopted Monmouthshire UDP, which was the up to date development plan for the area when the application was submitted to the local planning authority, it was agreed between the principle parties that policy E2 is not a matter for debate. They considered that the principle of the redevelopment of the site for some residential development is acceptable and in accordance with the aims and objectives of national and local planning policy. The main issue between the parties was the quantum of the residential development.
14. The Inspector considers that policy H3 is the most relevant UDP policy insofar as this proposal is concerned with Sudbrook being one of the villages listed. Policy H3 states that planning permission will be granted for new residential development in four towns and 24 villages including Sudbrook. The Inspector recognises that as the policy contains no limits on scale and the proposed housing would be within the village boundary, there is no conflict with this permissive policy. Nonetheless, the Inspector notes, planning applications must be considered in light of the strategy, as well as the individual policies, in the adopted development plan. I agree with this view.
15. The Inspector notes that the UDP's development strategy is to direct most residential growth towards sites within or on the edge of the main urban areas. It also supports some new housing in those villages which are relatively sustainable and where new development may help to retain existing facilities. The Inspector takes the view that only relatively modestly sized developments, rather than a trebling in size, as is the case here, are likely to have been envisaged in such villages. In the Inspector's view, such a

large development at Sudbrook clearly goes against the UDP's housing strategy and the proposal, therefore, conflicts with the plan when read as a whole. I also agree with that conclusion.

Sustainability of location

16. The Inspector, in considering whether Sudbrook is a sustainable location, considered the site's distance from key services and community facilities. For the average person approximately 20 minutes, which equates to 1.5-1.6km, is the acceptable walking distance for most purposes. For greater distances the car becomes the predominant mode of travel.
17. The Inspector points out that Sudbrook is not an existing centre and that it cannot be said to be highly accessible by public transport, cycling and walking, in the same way as a site within or on the edge of the main urban areas would be, even with the proposed improvements, which conflicts with policy MV1 of the UDP. Nonetheless, he is of the view that in comparison with many settlements in Monmouthshire it could be made reasonably accessible with the improvements proposed (bus service and increased accessibility for pedestrians and cyclists). Also, the site has reasonable access by foot and cycle to a wide range of facilities in Portskewett and Caldicot and access to bus services and two railway stations. As a result, the Inspector concludes, that the proposal would not lead to an over dependence on car journeys or an excessive level of commuting. I see no reason to disagree with that conclusion.

Prematurity

18. At the time of the public inquiry into the refusal of planning permission, the emerging Monmouthshire Local Development Plan (LDP) had been submitted for examination and the hearing sessions started in May 2013. Accordingly the appeal Inspector considered that one of the main considerations in this appeal related to prematurity which may arise where an LDP is in preparation but the plan has not yet been adopted. Planning Policy Wales (PPW) (Edition 5, November 2012) [now carried forward in Edition 6, February 2014] states that to grant planning permission during the preparation of an LDP may predetermine decisions about the scale, location or phasing of new development which ought properly to be taken in the LDP context. In the Inspector's opinion permitting such a large increase in the size of this relatively small village at this stage in the LDP process would prejudice consideration of the options and alternatives available to provide the LDP's required housing numbers. The Inspector considered that the proposal ought properly to be taken in the LDP context. I agree with the Inspector's conclusion on this issue.

Flood risk

19. In considering the potential for flooding the Inspector concluded that part of the site (7.1 ha), including 38% of the area proposed for development, lies within zone C1 of the TAN 15 Development Advice Maps with the remainder being in zone A.
20. The principal parties agreed that the key issue in relation to flood risk was compliance with the justification tests at section 6 of TAN 15. To accord with the tests in TAN 15, land identified as being in zone C1 would only be considered appropriate for development if it is necessary to assist, or be part of, a local authority regeneration initiative or a local authority strategy (the development plan for the area) required to sustain an existing settlement. It was agreed that, if the application is found to accord

with Policy H3 and the UDP housing strategy, then it will meet the justification test and reason for refusal 5 will fall away. As I have agreed with the Inspector's conclusion that the proposed development does accord with Policy H3 but not with the UDP Housing Strategy I take the view that this proposed development does not meet the justification test.

Consideration of the LDP Inspector's Report and the adopted Monmouthshire LDP

21. The LDP Inspector concluded at paragraph 6.61 of her report into the LDP:

'The site of the former paper mill was originally identified in Policy SAE2 as a protected employment site. The allocation of the site for around 190 dwellings has come forward during the examination and is the efficient use of a brownfield site which will make a helpful contribution to the County's housing requirement. These benefits outweigh concerns regarding the small size of the settlement and the distance from facilities and services.'

22. The LDP Inspector went on to consider at paragraph 6.62 of her report into the LDP:

'The remainder of the site would no longer be a Policy SAE2 designation and the Council has recommended that the settlement boundary be drawn contiguous with the allocation. Its retention where it is now might make it easier to remediate the remaining land to the benefit of the settlement as a whole; it would not necessarily open the door to further residential development beyond the allocation.'

23. Policy SAH7 of the Monmouthshire LDP states that 6.6 hectares at the Former Paper Mill, Sudbrook, are allocated for residential development for around 190 new dwellings i.e. part of the appeal site has been allocated for residential development. The housing allocation lies outside the floodplain.

24. The LDP Inspector at paragraph 4.31 of her report states that a 5 year supply of housing land will be available at least during the first years following adoption.

Consideration of Further Representations following receipt of the LDP Inspector's Report

25. In your representations you raise the issue that the word "around" in policy SAH7 is not a definitive figure and does not set the maximum development capacity for the site. I agree that the number is meant to be indicative rather than prescriptive. I note that Policy S2 states that the housing provision includes a 10% flexibility allowance, which supports the assumption that the word "around" in policy SAH7, and all the housing allocation policies, refers to a flexibility level of +/- 10%. On this basis I consider that the maximum number of houses that may be acceptable on the appeal site which is allocated for "around" 190 dwellings may well be in excess of 190 dwellings (the range is 170 – 210) but that the proposal for 340 dwellings would be significantly in excess of this figure.

26. Policy DES1 of the LDP states that the minimum net density for residential development should be 30 dwellings per hectare. You submitted that the site can deliver up to 340 dwellings on 9.6ha (previously developed area of the appeal site) providing a density of around 35 dwellings per hectare and the strategic allocation for the former Paper Mill would be just below this minimum density threshold. Notwithstanding this, the +/- 10% would enable the strategic site to meet this target (minimum density threshold) and make the most effective use of the brownfield site.

27. You also state that the LDP Inspector supported your client's view that the area of the appeal site not subject to the strategic site allocation should be retained within settlement limits. You suggest that the LDP Inspector did not seek to prevent further residential development on the area of the site which lies outside the LDP housing allocation but within settlement limits.

28. I note that the LDP Inspector in her report states the retention of the existing boundary (rather than the settlement boundary being drawn contiguous with the allocation) might make it easier to remediate the remaining land to the benefit of the settlement as a whole; it would not necessarily open the door to further residential development beyond the allocation. Furthermore, the Council only provided around an additional 700 dwellings in comparison with the Inspector's preliminary findings which expressed a shortfall of 900 dwellings (remaining shortfall of 200 dwellings). Notwithstanding this, the LDP Inspector did not consider it appropriate to extend the allocation boundary at the former Paper Mill. Rather additional sites were put forward by the Council and the LDP Inspector recommended the allocation of an additional site at Drewen Farm, Monmouth which will be an extension to the Wonastow Road site. This indicates, to me, that the LDP Inspector did not consider it appropriate to increase the area of the site or number of dwellings on the site at the former Paper Mill. The Council make a similar point stating it is noteworthy that the LDP Inspector was seeking an additional 4,950 plots to meet Monmouthshire's housing requirement of 4,500 dwellings by 2012, but still concluded that the Sudbrook Paper Mill site should only be allocated for the 190 dwellings the Council had proposed. I see no reason to disagree with those views.

Overall Conclusion

29. Following the adoption of the Monmouthshire LDP I consider the issue of prematurity and compliance with the UDP's housing strategy and policies to be no longer relevant to the determination of the appeal.

30. As to the LDP, the planning application proposal is for 340 dwellings and, as such, is contrary to policy SAH7 of the LDP. Furthermore, in considering the question of whether the proposed development would be premature in light of the impending LDP the Inspector commented on the large increase in size of this relatively small village that would occur should the development proceed. I, too, acknowledge that increase and consider that the scale of the proposal would be unacceptable and inappropriate given the existing size of Sudbrook.

31. In my opinion as there is now a recently adopted development plan and a 5 year housing land supply, the justification for housing in zone C1 provided in sections 6 and 7 of TAN 15 is not applicable to this appeal. Policy SD3 of the LDP also states that proposals for highly vulnerable development (including residential development) will not be permitted in areas which are liable to flooding unless a number of criteria are satisfied, none of which are applicable in this case.

32. I have taken into account the environmental information as defined by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (as amended) in reaching my decision on this appeal.

33. Other than the additional representations received from the appellant's agent and the Council following receipt of the Inspector's report into the LDP, I have received no further representations relating to the planning merits of the appeal since the inquiry closed.

34. On all the information before me, I consider that the policy objections identified above to the proposed development are such as to warrant planning permission being refused. I have taken into consideration all other issues raised but am satisfied that they do not override the objections I have identified above. Consequently, I agree with the Inspector's recommendation that the appeal be dismissed and planning permission refused, albeit not for all the reasons relied on by the Inspector.
35. In light of the change in the relevant development plan since the Inspector reported on the inquiry held into the appeal, I have considered whether, as part of this appeal, it would be open to me to consider whether planning permission should be granted for residential development of that part of the appeal site the subject of LDP Policy SAH7. I have concluded, however, that what I would then be considering would be a materially different project to that which was the subject of the appeal and that, as such, any proposals in that respect would need to be determined by the local planning authority in the first instance.

FORMAL DECISION

36. For the reasons given above, and in exercise of the power referred to in paragraph 2 of this decision letter, I dismiss your client's appeal (Planning Inspectorate Ref. APP/E6840/A/12/2186032/WF) and hereby refuse outline planning permission (all matters reserved except means of access) for residential development (Use Class C3) to provide up to 340 dwellings including: a reconfigured access and creation of new emergency access route; new internal roads, footpaths/cyclepaths, car parking and highway improvements; a network of public open spaces, including landscaping, recreation space, public realm and biodiversity enhancement; and other ancillary works and activities requiring: site preparation, demolition and clearance, treatment, re-profiling and the installation of new services and infrastructure at Sudbrook Paper Mill, Sudbrook Road, Caldicot.
37. A copy of this letter has been sent to Monmouthshire County Council and those who were entitled to appear at the public inquiry and did so.

Yours sincerely,



CARL SARGEANT AM
Minister for Housing and Regeneration,
one of the Welsh Ministers.

Enc: Leaflets 'HC' & 'H'