
Appeal Decision

Site visit made on 23 June 2014

by Jean Russell MA MRTPI

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

Decision date: 11 July 2014

Appeal Ref: APP/R4408/A/14/2215005

Land west of Wakefield Road, Mapplewell, Barnsley.

- 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 Pipestone Ltd against the decision of Barnsley Metropolitan Borough Council.
 - The application ref: 2013/1073, dated 24 September 2013, was refused by notice dated 27 January 2014.
 - The development proposed is residential development of up to 300 dwellings, provision of access and associated works including open space and structural landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address was not set out on the planning application form and so I have quoted that given by the Council. The outline application was made with details of the means of access to the proposed development. The matters of appearance, landscaping, layout and scale were reserved for future consideration.
3. During the course of the application, the appellant agreed to reduce the scale of the proposed development, so that the proposal is for up to 250 dwellings; this is confirmed in an email from the Council dated 3 January 2014. The appellant also submitted a revised plan, D09 4198 100 REV A, to the Council on 13 January 2014. The plan, which is illustrative, shows changes to the draft site layout in relation to a part of the site that is subject to an easement. The Council considered the application on the basis of these amendments and I have done likewise.
4. The appellant submitted a revised plan with the appeal, 14/113/TR/003, to address the reason for refusal concerning the proposed means of access. There are no changes to the scheme but the revised plan gives more information. I shall take it into account since the Council and third parties have had opportunity to consider it.
5. The Council has not contested this appeal, but sought the imposition of conditions on any permission granted. On 15 April 2014, the Council made a conditional grant of outline permission (ref: 2014/0249) for up to 250 dwellings on the appeal site; I shall refer to this as 'the 2014 permission'. All matters were reserved in respect of that scheme, including means of access.
6. I have also had regard to planning permissions recently granted for major housing developments in the wider area: at the former North Gawber Colliery site; land to the north of Lee Lane, Royston; and Dearne Hall Road, Low Barugh.

Main Issues

7. I consider that the main issues are: whether the proposed development is acceptable in principle; its effect on highway safety; and whether it would be necessary for the development to include provision for local education facilities.

Planning Policy

8. The development plan comprises the *Barnsley Local Development Framework Core Strategy* (CS) and saved policies of the *Barnsley Unitary Development Plan* (UDP). I attach weight to relevant CS and UDP policies according to their degree of consistency with the *National Planning Policy Framework* (NPPF).
9. The NPPF sets out a presumption in favour of sustainable development. This means approving proposals that accord with the development plan without delay. Where the plan is absent or silent, or relevant policies are out of date, permission should be granted for development unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Reasons

Principle of Development

10. The Council accepted the principle of development when granting the 2014 permission, but I shall address the representations from third parties. The site is greenfield land for planning purposes and local residents object that it should not be developed for housing. They point out that the site was designated in the UDP as Urban Land to Remain Undeveloped (ULTRU) due to lack of infrastructure in the area. They are concerned that this problem has not been addressed although other housing developments have been approved.
11. I shall consider the adequacy of existing infrastructure in my deliberations on the other main issues. In principle, the proposed development would conflict with UDP Policy GS11, which only permits existing uses of ULTRU until the UDP is reviewed. However, the NPPF seeks to boost significantly the supply of housing and it requires housing applications to be considered in the context of the presumption in favour of sustainable development.
12. The NPPF describes that there are three dimensions to sustainability: economic, social and environmental. In environmental terms, local residents are concerned that the development would cause a loss of valued green space, but the site is not designated for its landscape beauty or for leisure use. Existing public footpaths would be retained – and public open space would be provided on the site.¹ The NPPF discourages but does not prohibit the development of greenfield land.
13. The Council accepts that the site is within walking distance of nearby bus stops on Bar Lane, if not shops and services in Mapplewell. Subject to a condition requiring improvements to the public rights of way leading from the site, the development would afford good access to local amenities and public transport, in accordance with CS Policy CSP25 and the NPPF. Another condition could secure a Travel Plan to encourage future occupiers to use public transport. The development could be sustainably constructed in respect of matters such as energy efficiency to accord with CS Policies CSP2 and CSP5.
14. The proposed development would be sustainable in social and economic terms, since it would increase the supply of much-needed housing, as discussed below, and thus it would support growth. Local residents object that it would not provide

¹ CS Policy CSP35 sets out requirements for public open space, which are detailed further in the Council's *Supplementary Planning Document: Open Space Provision on New Housing Development*. It is also the case that part of the site cannot be developed since it is crossed by electricity lines.

a properly planned sustainable community but instead cause the loss of Mapplewell's village identity. However, the site is designated as being in Urban Barnsley which is identified by CS Policy CSP8 as a priority settlement for growth.

15. The revised illustrative layout plan suggests that the proposed development would be contained by existing housing to the south east and south west, and by open land including allotments to the north and northwest. In my view, it would be a modest urban extension which would not overwhelm the nearby settlement. The Council accepts that, given constraints, the site could be developed to a suitable density. The development would include a mix of housing sizes and types, and 25% affordable housing, so as to create an inclusive and sustainable community in accordance with CSP Policies CSP14 and CSP15, and the NPPF.
16. The NPPF requires local planning authorities to identify and update annually a supply of specific deliverable sites sufficient to provide five years worth of housing against their requirements, with a buffer to ensure choice and competition in the market. If there are insufficient sites, then relevant policies for the supply of housing should not be considered up to date. The Council concedes that it does not have a five year supply of deliverable sites with regard to the housing target set out in CS Policy CSP9, so UDP Policy GS11 cannot be considered up to date.
17. I conclude that the proposed development would be acceptable in principle; it would be sustainable and the Council cannot demonstrate a five year supply of deliverable housing sites. The development would conflict with the outdated UDP Policy GS11, but it would comply with CS Policies CSP2, CSP5, CSP8, CSP9, CSP14, CSP15, CSP25 and CSP35, and with the NPPF, which should prevail in my view.
18. In reaching this conclusion, I have noted that Council is preparing its *Development Sites and Places Development Plan Document* (DPD). The draft document seeks to allocate the appeal site for housing development. The DPD is at a very early stage of preparation and the Council has received numerous objections to the proposed allocation. Thus, the DPD carries very little weight as a material consideration – but such weight as there is adds to the balance in favour of the appeal since it affirms that the Council currently accepts the principle of development.

Highway Safety

19. Wakefield Road is a busy classified road (A61) which serves as a main arterial route to Barnsley town centre from the wider strategic highway network, including the M1 motorway. The proposed development would be served by one vehicular access leading from Wakefield Road to a loop road within the site.
20. The appellant's Transport Assessment (TA) notes that accidents on Wakefield Road in the past five years were generally related to driver behaviour and not the existing highway geometry. The proposed access would be constructed in the form of right-turn ghost island off Wakefield Road. The Council found that it could accommodate the traffic generated by 300 let alone 250 dwellings; turning movements in and out of the site need not cause unacceptable harm in respect of safety or the flow of traffic on Wakefield Road. *Design Manual for Roads and Bridges* (DMRB) recommends the use of ghost islands to segregate turning and flowing traffic, because they are effective at reducing delays and improving safety.
21. The speed limit on Wakefield Road by the site frontage is 40mph and the visibility splays required at the site junction would be 2.4m x 120m in both directions.² The original plans showed that these sightlines could be provided when measured along the ground – in the horizontal plane. The Council's sole reason for refusal was that

² The 2.4m figure refers to the X distance – the distance back along the 'minor arm' (the site access) from which visibility is measured. The 120m figure refers to the Y distance, being the distance that a driver who is about to exit the minor arm can see along the major arm.

it has not been demonstrated that an appropriate means of access in terms of visibility and safe vehicular movement could be achieved in the vertical alignment.

22. However, the revised plan 14/113/TR/003 indicates that there need not be barriers to the required splays at a height exceeding 1.05m – that is, at the eye level of a driver. Wakefield Road slopes up to the left, but drivers seeking to exit the site and oncoming drivers descending the brow of the hill would see each other in time to slow, stop and avoid collision. I saw that visibility to the left of the access point is restricted by the hedgerow on the site frontage, but this could be partially removed without causing unacceptable harm to the character and appearance of the area.³ The proposed access would be designed to an acceptable standard.
23. As noted above, local residents object that the proposed and nearby housing schemes would result in unacceptable pressure on local infrastructure. It is suggested that roads in the area are already so busy as to cause queuing and minor accidents, particularly in Mapplewell. The TA was drafted at such a time that it took account of the North Gawber but not the Lee Lane or Dearne Hall Road schemes. However, the Lee Lane TA included data relating to the appeal proposal. The Council considered the 2014 application with regard to its cumulative impacts.
24. Given the likely levels of traffic generated and the directions in which occupiers of the appeal and other sites would travel, the Council's view is that the proposed development would create a need for improvements to the Lee Lane/Wakefield Road junction; it would be necessary to widen the junction to facilitate right and left turn lanes for drivers waiting to turn onto Wakefield Road.⁴ The appellant accepts that the works would be necessary, and so as to justify the imposition of a condition preventing development from proceeding until a scheme is agreed.
25. In other respects, the Council is satisfied that the proposed development would not cause unacceptable cumulative congestion on the highway network sufficient to require mitigation. I have no reason to dispute this assessment. The proposed development would be large scale but drivers would enter and exit the site at different times, to and from different directions. With the works described, the development need not result in unacceptable queuing and risk of accident in the area. Adding weight to this view, and subject to footpath improvements, future occupiers of the site need not rely upon the car for all of their day-to-day trips.
26. I conclude that, subject to conditions, the proposed development would be unlikely to cause any unacceptable loss of highway safety. It would be built to provide safe, secure and convenient access for all road users; avoid highway safety problems; and maintain the efficiency of the network. It would comply with CS Policy CSP26, the NPPF and DMRB.

Local Education Facilities

27. The Council seeks to secure a planning obligation from the appellant, under s106 of the *Town and Country Planning Act 1990*, for the provision of off-site education facilities. Planning obligations may only be considered where they would meet the tests set out under Regulation 122 of the *Community Infrastructure Levy (CIL) Regulations 2010*: be necessary for the development to proceed, and directly related to, and fairly and reasonably related in scale and kind to the development.
28. The Council gave pre-application advice that the proposed development would result in a need for additional pupils to be accommodated at local schools. The Council's reports in respect of the appealed application and the 2014 permission also indicate that a contribution would be required to provide additional school accommodation. The concern is that future residents would prefer their children to attend Wellgate or Mapplewell primary schools, but they are over-subscribed.

³ The Council does not object to the localised removal of short sections of the hedgerow to form the site access.

⁴ Similar works are required at the Shaw Lane/Wakefield Road junction as part of the Lee Lane permission.

Local residents also suggest that the proposed and nearby developments would increase pressure on local schools.

29. CS Policy CSP42 requires development to contribute as necessary to meet all on- and off-site infrastructure requirements to enable development to take place satisfactorily. The Council's *Planning Advice Note 33* (PAN33) indicates that planning applications for new homes will be refused unless local schools have sufficient capacity to accommodate pupils from the development or enough extra places can be created.⁵ The NPPF seeks to ensure that a sufficient choice of school places is available to meet the needs of existing and new communities, and great weight is given to any need to expand or alter schools.
30. In my view, it would be necessary to secure the provision of school places to serve the proposed dwellings, and this would be directly related to the development. The appellant is willing to enter into a planning obligation to this end – but has not done so. The Council recommends that, if permission is granted, a condition is imposed to prevent development from commencing until the obligation is made.
31. However, the Government's *Planning Practice Guidance* (PPG) advises that a negatively worded condition which limits the development that can take place until a planning obligation has been entered into is unlikely to be appropriate in most cases.⁶ Entering into an obligation *prior* to a grant of permission is the best way to deliver sufficient certainty for all parties about what is being agreed, and to encourage timeliness and transparency. In exceptional circumstances, a negatively worded condition requiring a planning obligation may be appropriate – where there is clear evidence that the delivery of complex and strategically important development would otherwise be at serious risk.
32. I have seen no evidence of any exceptional circumstances as to justify the use of a condition to prevent the proposed development from proceeding until a planning obligation is entered into. The scheme may be complex and strategically important but it cannot be said that delivery is at serious risk when there is a separate grant of outline planning permission and the Council's consideration of any reserved matters application will be informed by my conclusions regarding highway safety.
33. The PPG also recommends that where consideration is given to using this type of negatively worded condition, the Council and the applicant should discuss the heads of terms of the planning obligation prior to permission being granted. In this case, the appellant accepts the Council's request for a £250k contribution to secure the additional school facilities required. This figure was recommended by Education Officers, presumably with regard to the revised 250 dwelling scheme, since the same figure was requested in relation to the 2014 permission.
34. However, PAN33 advises that single bedroom and other forms of housing would not be required to make education contributions. The Design and Access Statement confirms that the proposed development would include one bedroom dwellings but the number is to be finalised. There is no certainty as how many houses will be built at all – 'up to' 250 – and so I cannot say how many school places will be needed. A planning obligation could be drafted to ensure that the education contribution would be commensurate to the development as it may be approved at reserved matters stage, but it has not been shown that £250k would be a sum that is fairly and reasonably related in scale and kind.
35. I also note that the suggested condition seeks 'a s106 agreement substantially in the form of the draft attached' – but no draft has been provided. Although imposed on the 2014 permission, I find that the condition would be unreasonable and would fail to comply with the tests for conditions set out in the NPPF.

⁵ PAN33 dates from March 2005 and it refers to local and national policies that are now superseded, but its general relevance is not contested and I do not consider it determinative.

⁶ PPG paragraph 010 Reference ID: 21a-010-20140306

36. I conclude that it would be necessary for the proposed development to make provision for local education facilities as would be fairly and reasonably related in scale and kind to the development. However, the appellant has not entered into a planning obligation to this end and it would be unreasonable to impose a condition to secure the obligation. The development would conflict with CS Policy CSP42, PAN33, the NPPF and the PPG.

Other Matters

37. Local residents have concerns that the proposed development would adversely affect the character and appearance of the area and living conditions at adjacent properties. These matters would be considered at reserved matters stage. I am satisfied that the development need not cause unacceptable noise or air pollution.
38. Local residents suggest that local surface and foul water drainage systems are running at capacity, leading to localised flooding in bad weather. The development would connect to a watercourse which is said to lead to a substandard drain – but the proposed sustainable drainage system would serve to reduce surface water run-off. If necessary, at reserved matters stage, any need for improvements to the culvert could be considered – and so the development would not exacerbate local flooding problems. Subject to a suitable site layout, it would neither have an unacceptable impact on the public sewerage system.
39. The appellant's Ecological Assessment (EA) indicates that there are no statutory sites of nature conservation importance on or within 1km of the appeal site. It advises that reptile surveys should be required at reserved matters stage, but there is low potential for such species to be present on the site and translocation could be possible. The EA found that bats may forage along the site hedgerows and the land is likely used by nesting birds, but the development need not have unacceptable adverse impacts on these when it is proposed to retain most hedgerows and provide sustainably drained open space. I am satisfied that the development need not cause unacceptable harm in respect of protected species.
40. Finally, I am not aware of any proposal for development of land on the other side of Wakefield Road. Allowing this appeal would not set a precedent for any other scheme, since planning applications should be considered on their merits and with regard to contemporaneous circumstances. This decision is made with regard to the current housing supply and site-specific sustainability and access issues.⁷

Conclusion

41. Notwithstanding my conclusions with regard to the principle of development and highway safety, I consider that the lack of provision for local educational facilities is an overriding concern. For the reasons given above and with regard to all the other matters raised, I conclude that the appeal should be dismissed.

Jean Russell

INSPECTOR

⁷ If the UDP Proposals Map is still extant, the land opposite the appeal site will be in designated Green Belt.