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## Appeal Decision

Hearing held on 16 December 2014

Site visit made on 16 December 2014

by **I Radcliffe BSc(Hons) MCIEH DMS**

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

Decision date: 19 January 2015

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**Appeal Ref: APP/W4705/A/14/2225842**

**Land west of Sandhill Fold, Idle, Bradford, West Yorkshire (Grid**

**Reference: Easting 417131 Northing 437306)**

- 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 Mr Wood, Mr Shaw and MGL Homes Limited against the decision of the City of Bradford Metropolitan District Council.
  - The application Ref 14/01727/MAO, dated 22 April 2014, was refused by notice dated 9 July 2014.
  - The development proposed is the construction of up to 70 dwellings including outbuildings and associated works, with all matters reserved except for access to the site (access within the site is reserved).
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### Decision

1. The appeal is allowed and outline planning permission is granted for the construction of up to 70 dwellings including outbuildings and associated works, with all matters reserved except for access to the site (access within the site is reserved) on land to the west of Sandhill Fold, Idle, Bradford, West Yorkshire (Grid Reference: Easting 417131 Northing 437306) in accordance with the terms of the application Ref 14/01727/MAO, dated 22 April 2014, subject to the conditions in the schedule at the end of this decision.

### Procedural matters

2. The application was submitted in outline, with only access into the site to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plans that have been submitted into account insofar as they are relevant to my consideration of the principle of the development on the appeal site. A section 106 agreement has also been submitted which I have taken into account.
3. Since the decision notice on the application was issued a Mineral Desk Study has been carried out on behalf of the appellants. The Council has confirmed that the Study has addressed the second reason for refusal which has now been withdrawn.

### Main Issues

4. The main issues in this appeal are;
  - whether the location of the proposed development would be in accordance with the development plan and the National Planning Policy Framework;

- the effect of the proposed development on the character and appearance of the Urban Greenspace; and,
- whether there are other material considerations, such as the sustainability of the proposed development and the supply of housing land, which would outweigh any conflict with the development plan and any other harm that would be caused.

## **Reasons**

### *Development plan*

5. The development plan for the area consists of the Replacement Unitary Development Plan (RUDP) for the Bradford District. The National Planning Policy Framework ('the Framework') is also an important material consideration. Policy OS1 of the RUDP states that the development of Urban Greenspace will not be permitted unless its open green character is retained. The justified reasoning to the policy explains that built development, such as new houses, would not be acceptable. Given that the proposed development is a residential scheme of up to 70 dwellings it is common ground that it would be contrary to the development plan. I agree with that position.
6. However, the policies of the RUDP were formulated some 9 years ago in the context of the now defunct Regional Spatial Strategy. As a consequence, and having regard to the advice in paragraph 215 of the Framework, whilst the RUDP remains the development plan the weight that should be given to its policies is dependant upon their consistency with the Framework. Accordingly I have considered the proposal against its policies, as well as those of the Framework, and I shall conclude on the weight I will attach to them in my overall planning balance towards the end of this decision.
7. The Community Strategy for Bradford (2011 – 2014) is a strategic document. It identifies that the need for housing needs to be balanced with protecting green spaces. This balance forms an integral part of the overall planning balance.
8. In terms of the Framework's definition of open space, the appeal site is in private ownership and used for horse grazing. However, the two footpaths that cross it provide an opportunity for recreation and its green open undeveloped nature is a visual amenity experienced from the footpaths and the surrounding area. It therefore constitutes open space as defined by the Framework.
9. The footpaths that cross the site would remain as part of the proposed development. In terms of the visual amenity that would be lost, the two hectare appeal site is enclosed on three sides by housing and it forms a very small part of the 98 hectares of mainly interlinked Urban Greenspace in the area. As a consequence, I agree with the appellant that the site makes a smaller contribution than any other part of the Idle Moor area of Urban Greenspace to visual relief provided and is not integral to the function of the Greenspace in this regard. The Bradford Open Space Assessment identifies that within Bradford North where the appeal site is located there are 60 natural and semi-natural green spaces with a combined area of 112 hectares. Such areas provide visual relief from the urban area as well as providing wildlife habitat. Good levels of provision therefore exist. This would remain the case if the appeal site was developed for housing. I therefore find that the proposed development would not materially harm the provision of open space in the area for the community and so would comply with the Framework in this regard.

10. The Framework gives strong protection to green areas designated as Local Green Space in local and neighbourhood plans. However, it is common ground that the Urban Greenspace, of which the appeal site forms a part, is too large to constitute such a space. I agree with that assessment. The Framework and its policies in section 8 in relation to open space and green areas therefore do not add to or alter the protection to the appeal site provided by policy OS1 of the RUDP.
11. A draft Core Strategy has been submitted for examination. Prepared in light of the Framework its policies in principle are more consistent with the Framework than the RUDP. However, there are unresolved objections to it and it has not yet been subject to examination. I therefore attach only limited weight to the draft Core Strategy and its policies.
12. In the context of the large numbers of houses that the draft Core Strategy seeks to deliver the proposed development is small scale. As a result, it would have a minimal impact on the spatial strategy of the draft Core Strategy. In accordance with Planning Practice Guidance the proposed development would not therefore be premature.

*Character and appearance*

13. The Inspector who examined the RUDP identified that the Urban Greenspace had an atmosphere of tranquillity and a peaceful quality that provided relief from the urban area. He also identified that it had a separating and open break function. I agree with that assessment.
14. The appeal site is rectangular parcel of pasture land two hectares in size. It lies in the south eastern corner of the Idle Moor part of the Urban Greenspace and is enclosed on three sides by suburban development. Owing to the relative closeness of houses on three sides it has a far less tranquil and peaceful atmosphere than the rest of the Greenspace to the west. In relation to Idle it has some value as a separating open break. However, owing to the greater separation distance involved between Idle and the other nearby urban areas of Wrose and Windhill that about the Greenspace it has little value as a separating open space.
15. A Landscape and Visual Appraisal of the proposed development has been carried out by the appellants. It found that in the medium to long distance views of the appeal site from for example Idle Hill residential development of the site would not harm the character and appearance of the area. Having viewed the appeal site from such distances to the west I concur with these findings. In closer views from Sandhill Fold, the footpaths that cross the site and the Greenspace close by to the west, the loss of the open green nature of the site to development would be readily apparent. This adverse effect would also be apparent in private views from the houses that surround the site. This would result in harm to the character and appearance of the Urban Greenspace.
16. With the control that exists at reserved matters stage there is no reason why residential development could not be designed in order to complement neighbouring residential development in terms of scale and appearance or in order to protect privacy. In terms of landscaping and layout, a drystone wall forms the western boundary of the site. With careful thought a suitable transition between the development and the Greenspace could be achieved.

17. The Idle and the Green Conservation Area is a designated heritage asset whose significance is architectural and historical. The Conservation Area is focussed on the centre of the settlement. As the appeal site is located out of view up hill some 500m to the south west from the asset, development of the site would not adversely affect views into or out of the Conservation Area.
18. Concern has been expressed that the proposal would result in piecemeal development. This is because the site could almost wholly be occupied by housing and would not form part of a comprehensive approach that would be taken if development of a wider part of the Urban Greenspace occurred. However, a far larger scheme resulting in the development of far more land would be likely to cause far more harm to the Greenspace. As a consequence, under the existing development plan and the Framework it is by no means clear that such development would take place. The draft Core Strategy proposes that after previously developed land greenfield opportunities within settlements should be the next location for development. However, for the reasons already given limited weight can be given to this document. I therefore attach little weight to this concern.
19. Notwithstanding my latter favourable findings in relation to the proposal this does not overcome the earlier adverse effects that I have described. I therefore conclude that the proposed development would cause some harm to the character and appearance of the Urban Greenspace, contrary to policy OS1 of the RUDP.

*Other material considerations*

*Housing land supply*

20. Paragraph 47 of the Framework advises that Local Planning Authorities should have sufficient deliverable sites to provide 5 years of housing against their housing requirements. The Council's latest assessment is that it has a 2.3 year supply. In the appellants' view the supply is less than 2 years. By either measure a considerable shortfall therefore exists.
21. The development plan and its policies seek to deliver a five year supply but are not doing so. At present with a timetable, subject to no delays or revisions, of adoption of the draft Core Strategy at some point in 2015, and adoption of the Site Allocations development plan document not until November 2017, there can be no certainty that the shortfall will be addressed shortly. Against this backdrop this is a deliverable site which would contribute towards addressing the housing shortfall.

*Sustainable development*

22. Sustainable development is at the heart of the Framework. Paragraph 49 advises that housing applications should be considered in the context of the presumption in favour of sustainable development. The centre of Idle, which is within walking distance of the appeal site, has some shops and services. It is therefore capable of meeting some of the day to day needs of its residents. Shipley and Bradford are located approximately 3 miles away from the appeal site and between them have a full range of shops, services and facilities. Given the location of the appeal site within an urban area served by public transport these facilities are within easy travelling distance by bus, bicycle or by other means. It is therefore in an accessible location for development.
23. Turning to the economic aspects of sustainability, the construction of the proposed development would generate employment. Post completion the

spending of up to an additional 70 households would benefit the economy of the area. In terms of the social aspect of sustainability, the proposed development would make a contribution towards helping address the shortage of housing, including affordable housing, in the District. In contrast, in relation to the environment, whilst biodiversity on the site could be enhanced development of the site would cause a moderate amount of harm to the character and appearance of the Urban Greenspace by urbanising a small part of it.

24. Taking all these factors into account, I conclude, based upon the overall balance of considerations, that the proposal would be a sustainable development. This is a significant factor in favour of the development.

#### *Local infrastructure and services*

25. A signed and dated unilateral undertaking in relation to the provision of local services and infrastructure was submitted after the close of the hearing. The provisions sought have been assessed having regard to the tests in paragraph 204 of the Framework and the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended).
26. The undertaking has been drawn up having regard to policy CF2 of the RUDP. I have taken this policy into account in the assessment of the educational provisions of the obligation. Policy OS5 of the RUDP states that new residential development needs to make provision for recreational open space. A contribution was initially sought by the Council in relation this matter. However, it was confirmed at the hearing that this request had been withdrawn as the Council found that it was unable to justify it.
27. In terms of affordable housing there is an established unmet need in the District. The Framework requires that such housing is provided as part of a new housing development. Given the extra traffic that would be generated by the development, and the comments of the Council's highway department regarding the speed of traffic on roads that lead to the appeal site, the provision of traffic calming measures is also necessary.
28. The local primary schools are full and so are not large enough to cater for the additional children that it has been calculated would live in Idle as a result of the housing proposed on the appeal site. Similarly, the local secondary schools have insufficient capacity to cater for the development. A financial contribution is therefore necessary to mitigate the effect of the development by expanding school provision.
29. The contributions have been calculated in relation to affordable housing and traffic calming based upon the based upon the cost of carrying out these works. In relation to education, the contribution has been calculated based upon the additional demand the development is likely to generate and the cost of increasing the capacity of the schools. The sums sought therefore are reasonably related in scale and kind to the proposed development. In relation to all these matters it is also clear that the sums sought would be spent on an identified programme of local infrastructure provision. As a consequence, all the contributions sought satisfy the tests in the Framework and accord with the Regulation. All the provisions of the section 106 agreement therefore need to be taken into account in order to mitigate the harm that the development would otherwise cause.

#### **Other matters**

### *Ecology*

30. Although local residents report a variety of wildlife within the Urban Greenspace an appraisal of the appeal site found that the site itself had little ecological value. Bats have been seen foraging on the site but based on the report there are no structures or trees suitable on the site for bats to roost in. This is not contested by the Council. Based upon my observations during the site visit I have no reason to disagree with those conclusions. If the proposed development went ahead ample foraging area would remain off site. Opportunities also exist for enhancing biodiversity on site through, for example, the planting of native trees and the erection of bird and bat boxes. Securing where possible net gains in biodiversity is a policy of the Framework. The proposed enhancements could be secured by condition.

### *Highway congestion and safety*

31. A Transport Assessment was carried out in relation to the proposed development. It found that there would be no significant transport impact either in terms of safety or on highway capacity. Following further work required by the Council these findings were accepted by the local planning authority. Subject to the provision of traffic calming measures and junction realignment the Council has no objection to the proposal on highway safety or congestion grounds. I saw no reason why such works could not be carried out and I have no reason to disagree with those conclusions.

### *Land stability*

32. In the past there has been mining and quarrying in the area. A preliminary risk assessment has concluded that intrusive site investigations should be carried out. The investigation would inform any mitigation measures required to allow houses to be safely constructed on the site. This matter could be dealt with by condition.

### **Overall Conclusions: The Planning Balance**

33. For the reasons that I have set out earlier the proposal would be contrary to the development plan. This is because it would not comply with policy OS1 of the RUDP which seeks to prevent built development within Urban Greenspaces.
34. Such a contravention is a consideration that normally weighs heavily against a proposal. However, the Council does not have a 5 year housing land supply. As a consequence, paragraph 49 of the Framework directs that development plan policies relevant to housing land supply should not be considered up to date. It was accepted by the Council at the hearing that policy OS1 was relevant to housing land supply. I agree with that assessment. As a consequence, it should not be considered to be up to date. Furthermore, on the evidence before me, I find that there is more than a limited degree of conflict between the Framework and the approach of the development plan on the issue of residential development and housing land supply. In these circumstances, full weight may not continue to be given to relevant policies of the development plan, as paragraph 215 of the Framework makes clear. This is an important material consideration in this appeal.
35. The Framework further states that housing proposals should be considered in the context of the presumption in favour of sustainable development. I have found that the development would constitute a sustainable development. Where relevant policies, as in this instance, are out of date paragraph 14 of the Framework is clear. It states that planning permission should be granted

unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.

36. The principle of housing on the appeal site would be contrary to the development plan for the area. The proposed development would also cause a moderate amount of harm to the open character and appearance of the Urban Greenspace. However, given the conflict between the Framework and the approach of the development plan on the issue of residential development and housing land supply these considerations are of limited weight in favour of dismissing the appeal.
37. In terms of benefits, the proposed development would be a sustainable development in an accessible urban location. A development of up to 70 houses would make a contribution towards addressing the undersupply of housing in the District. With up to 11 of these dwellings being affordable homes it would also help provide houses for those who have been priced out of the private housing market. Collectively these factors weigh heavily in favour of allowing the appeal.
38. Concerns have been expressed that if permission was granted that it would set a precedent that would make similar development proposals difficult to resist. However, each application is assessed on its merits. As the appeal site is a small part of a far larger Urban Greenspace and is enclosed by development on three sides I consider that the site is sufficiently different from the rest of the Urban Greenspace for this concern not to be well founded. For this reasons a generalised concern of this nature does not justify withholding permission in this case.
39. My overall conclusion in this case, having considered all the matters raised, is that the adverse impacts of the proposal are limited and they do not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole. The appeal should therefore be allowed. In reaching this decision the views of local residents and councillors have been taken into account.

#### *Conditions*

40. For the avoidance of doubt and in the interests of proper planning, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans in respect of the matters not reserved for subsequent approval. In order to ensure that the density of development on the site complements other nearby development the number of dwellings on the site needs to be limited to 70.
41. Conditions in relation to reserved matters need not be attached at outline stage. However, I consider that it is beneficial if they are. This is because the better informed an applicant is as to what is required when outline permission is granted, the less the amount of work that has to wait until after reserved matters stage. On this basis in order to ensure that the development complements its surroundings the submission of samples of materials to be used on external surfaces and further details on landscaping are required. Furthermore, any of the existing trees that are to be retained also need to be protected.
42. To safeguard against flooding and minimise the risk of flooding elsewhere the findings of the Flood Risk Assessment need to be implemented and the

potential for a sustainable drainage scheme investigated. To ensure that the site is stable, free of contamination and safe a site investigation is necessary and, if deemed appropriate, a remediation strategy prepared and implemented. Arrangements also need to put in place in case unexpected contamination is encountered and to verify that soils imported onto the site are of suitable quality for residential use.

43. In the interests of public health, provision for the disposal of foul water needs to be made. In the interests of highway safety, the site access needs to be laid out. To enable this to happen a section 278 agreement needs to be entered into to facilitate some minor yet necessary works to the highway before development on the site commences. Both parties are aware of the need for this agreement. Given these considerations, whilst the advice of Planning Practice Guidance<sup>1</sup> is that the use of a condition to require the applicant to enter into an agreement under other powers should normally not be used, in this instance it would be acceptable to do so. In accordance with the Framework, measures to provide net gains in biodiversity are also necessary.
44. I have required all these matters by condition, revising the conditions suggested by the Council and appellant where necessary to reflect the advice contained within Planning Practice Guidance.

*Ian Radcliffe*

Inspector

**Schedule**

- 1) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) Details of the access within the application site, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: DWG 01, 14-0301 001 Rev A, NEA1279-P-001 Rev 3, but only in respect of those matters not reserved for later approval.
- 5) The number of dwellings accommodated on the site shall not exceed 70.
- 6) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

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<sup>1</sup> Planning Practice Guidance 'Use of Planning Conditions' ref ID 21a-010-20140306 Last updated 06 03 2014



- 7) Prior to the commencement of development a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens, shall be submitted to and approved by the local planning authority. The landscape management plan shall be carried out as approved.
- 8) The development shall not begin, nor shall there be any demolition, site preparation, groundworks, tree removal, or materials or machinery brought onto the site until a tree protection plan that complies with BS 5837 (2012) (or its successor) for any trees that are to be retained on or adjacent to the site has been approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 9) The development hereby permitted shall be carried out in accordance with the approved flood risk assessment (FRA) dated 25 March 2014. The mitigation measures detailed within the FRA shall be fully implemented prior to occupation or in accordance with the timing / phasing arrangements embodied within the scheme, or within any period as may subsequently be agreed in writing by the local planning authority.
- 10) No dwelling hereby permitted shall be occupied until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
  - ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) Prior to the commencement of development a site investigation and risk assessment report to assess the nature and extent of any contamination, mining and quarrying risks affecting the site shall be submitted to and approved in writing by the local planning authority. The survey shall include
  - i.) a survey of the extent, scale and nature of contamination;
  - ii.) a survey to identify all mining / quarrying related features relevant to the site;
  - iii.) an assessment of the potential risks posed by both site contamination and identified mining / quarrying related features;
  - iv.) an appraisal of remedial options;

- v.) identification of the preferred remedial option.
- 12) Prior to development commencing a detailed remediation strategy, including how it shall be validated that the works required have been carried out, shall be submitted to and approved in writing by the Local Planning Authority. The remediation strategy shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.
  - 13) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable. Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme agreed in writing by the local planning authority.
  - 14) A methodology scheme for the quality control of any material brought to the site for use in filling, level raising, landscaping and garden soils shall be submitted to, and approved in writing by the Local Planning Authority prior to material being brought to site. Development shall be carried out in accordance with the approved details.
  - 15) None of the dwellings hereby permitted shall be occupied until works for the disposal of foul water have been provided on the site in accordance with details to be submitted to and approved in writing by the local planning authority.
  - 16) Prior to the commencement of development the access shall be laid out, hard surfaced, sealed and drained within the site to base course level in accordance with the approved details and completed to a construction specification approved in writing by the Local Planning Authority.
  - 17) No development shall take place until an agreement with the local authority has been made under s278 of the Highways Act 1980 to provide the new junction / highway realignment works shown on the Access Design (drawing number NEA1279-P-001 Rev 3) and the works specified in the agreement have been carried out.
  - 18) No dwelling hereby permitted shall be occupied until details of a scheme incorporating biodiversity enhancements and the timetable for their implementation has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

**APPEARANCES**

FOR THE APPELLANT:

Mr Cartwright	Heritage Planning Design
Mr Spence	MS Environmental

FOR THE LOCAL PLANNING AUTHORITY:

Mr Joy Senior Planning Officer	City of Bradford Metropolitan District Council
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INTERESTED PERSONS:

Councillor Sunderland	ward councillor
Councillor Fear	ward councillor
Mr Needham	local resident
Mrs Verity	local resident
Mr Thelwell	local resident
Miss Jack	local resident

**DOCUMENTS REQUESTED AT THE HEARING AND SUBMITTED AFTERWARDS**

- 1 Idle & the Green Conservation Area Assessment and Appraisal
- 2 Bradford Community Strategy

**PLANS SUBMITTED AT THE HEARING**

- 1 Proposals Map for Bradford North - Replacement Unitary Development Plan (RUDP) for the Bradford District 2005.
- 2 Identification of surrounding settlements – annotated extract from the Proposals Map for Bradford North 2005.

**PHOTOGRAPH SUBMITTED AT THE HEARING**

- 1 Aerial photograph of the appeal site and its surroundings.