



Appeal Decision

Site visit carried out on 16 February 2015

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 5 March 2015

Appeal Ref: APP/H1840/A/14/2222275

**D H Commercials Limited, Station Road, Hartlebury,
Kidderminster DY11 7YJ**

- 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 David Higgs against the decision of Wychavon District Council.
 - The application No W/14/00030/OU, dated 18 December 2012, was refused by a notice dated 4 April 2014.
 - The development proposed is described as the erection of 26 dwellings: mix of 2 and 3 bed homes.
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Decision

1. For the reasons that follow, the appeal is dismissed.

Preliminary and Procedural Matters

2. This is an outline application with all matters reserved for future consideration. Notwithstanding the number of dwellings referred to in the description of development set out above, which is taken from the application form, the scheme was amended before it was determined by the Council. Although there is reference to a scheme of 22 dwellings in the heading to the planning officer's report, the development considered comprises 21 dwellings, as confirmed later on in the report. Whilst details of a layout for 21 dwellings have been submitted, it is confirmed that they are indicative only. I have dealt with the appeal on that basis.
3. Notwithstanding the officer's delegated report setting out that the application should be refused, a notice of approval was issued on 4 April 2014, although the 'conditions' listed thereon were actually the reasons for refusal. Some weeks later, at the end of April, the appellant was issued with a refusal notice dated 4 April 2014. The Council advises that the original notice was issued due to an administrative error. Whether that original decision notice is valid or not is not for me to determine as part of this appeal. Moreover, my decision in relation to this appeal would have no bearing in relation to any formal consideration as to the validity of the original notice. For the avoidance of doubt, I confirm that I have dealt with the appeal scheme on its own merits.
4. Subsequent to the site visit, the Government released the 2012-based household projections for England 2012-2037. However, no reliance was placed by either of the main parties on the previous 2011 based projections in support of the respective cases. Since the figures introduce no new considerations over and above which are addressed in the written submissions, there was no need to refer back to the parties on this matter. In any event, as

is clear from my reasoning below, the appeal fails on matters unrelated to housing land supply.

Main Issues

5. I consider the main issues in this case to be:
- whether the proposal comprises inappropriate development, having regard to the Green Belt policies of the development plan and the National Planning Policy Framework;
 - whether living conditions for future occupiers would be acceptable, having particular regard to noise, smell and vibration;
 - the effect of the development proposed on local infrastructure and affordable housing provision in the absence of a planning obligation;
 - and, if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Green Belt

6. The appeal site, and the surrounding development, lies within Green Belt, beyond the development boundary for Hartlebury as defined by saved policy GD1 of the Wychavon District Local Plan (June 2006). Local Plan policy SR7 is permissive of certain types of development in the Green Belt, provided it would not detract from the openness of the Green Belt and would not conflict with the purposes of including land in it. Since the development proposed does not fall within any of the specified types of development, it would be inappropriate and thus would conflict with the development plan.
7. Policy SR7 differs from the Green Belt section of the National Planning Policy Framework (the Framework). Of relevance to the appeal scheme is the final bullet of Framework paragraph 89. This allows for the limited infilling, or the partial or complete redevelopment, of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
8. The 0.68 hectare appeal site runs north/south alongside the adjacent railway line. It has a narrow frontage to Station Road and was, I understand, a railway goods yard originally. It is laid to hardcore at present and is currently used for caravan repairs and maintenance (Morval) and for commercial vehicle sales and repairs (D H Commercial). The officer's report acknowledges that the site comprises 'brownfield' (previously-developed) land. Given those current uses, which I have no reason to suppose are unlawful, I have no reason to disagree. The site is well contained, sandwiched between the railway and the Weinerberger brickworks beyond to the east, residential development to the west, and by the old station buildings on the opposite side of the road, which have been converted to a public house and a restaurant. It does not extend any further to the north than the adjacent residential development or the brickworks site. I agree with the Council therefore, that there would be no

harm to any of the purposes of Green Belt as a consequence of the development proposed.

9. Moving on then to openness (which is a quite separate concept to that of character and appearance). The Framework states that the essential characteristic of Green Belts is their openness and permanence. Although the term openness is not defined in the Framework, the courts have found that it means the absence of buildings and development¹ not, as asserted by the appellant, an unobstructed or open view. In this case, the only built development on the site comprises two small buildings on the site frontage used in connection with the existing businesses. Whilst the Council seeks to equate the siting of lorries and caravans etc on the rest of the site to the reference to temporary buildings in Framework paragraph 89, the siting of such is a use of land, not a building, temporary or otherwise. In any event, my reading of that part of the Framework is that the reference to 'excluding temporary buildings' relates to the categorisation of land as previously-developed: the exclusion of temporary buildings chimes with the definition of previously-developed land in the Glossary to the Framework, which confirms that previously-developed land is land which is, or was occupied by a *permanent* structure and its curtilage (my emphasis).
10. However, I find nothing in the Framework to indicate that development involving the siting of vehicles and caravans should be excluded from considerations of openness. Indeed, as the appellant points out, the siting of caravans is regularly held to impact on the openness of Green Belts. That said, although the lawful use of the land is permanent, the associated vehicles and caravans upon it will come and go. More importantly, however, it seems to me that the erection of 21 dwellings, with ridge heights in the region of 8 metres and widths varying from 4 – 9 metres (as set out in the Design and Access Statement) would have a materially greater impact on openness than the current use of most of the appeal site for the siting of caravans and lorries etc. I am of the view, therefore, that the appeal scheme would result in this part of the green belt being considerably less open than it is at present and, as a consequence, the proposal amounts to inappropriate development when considered against the provisions of the Framework.

Living Conditions for Future Occupiers

11. A two track railway line runs along the eastern site boundary, the rail service running between Droitwich and Kidderminster. The acoustic report submitted with the planning application found that, without attenuation measures, the noise from rail traffic would be intrusive to bedrooms having opening windows. The report concludes however, that a noise barrier along the boundary with the railway line could provide suitable attenuation. That is a matter that could be secured by conditions were the appeal to succeed.
12. However, Worcestershire Regulatory Services recommended that a vibration survey be carried out, given that the indicative layout shows that all but one of the properties would be located within 15 - 30 metres of the railway line (the exception being the dwelling on plot 21 which would be closer). No such survey was submitted prior to determination of the planning application. Whilst the appellant's final comments refer to a survey having been carried out,

¹ Timmins & Anor v Gedling Borough Council [2014] EWHC 654 (Admin)

no details of any formal survey are before me as part of the appeal submissions. In the Grounds of Appeal, the appellant relies on the anecdotal evidence of the acoustic engineer, who simply noted that there '*was no significant ground vibration at the proposed location of the new dwellings.*' Moreover, although the appellant refers to empirical data showing that vibration has no significant impact on buildings 15 metres from the tracks, no such evidence to that effect is before me.

13. With regard to the nearby brickworks, I understand that operational levels on the site were reduced in 2008, with the acoustic report (dated February 2013) recording that the brickworks were redundant. However, the Council advises that operations at the brickworks are now increasing. Indeed, the appellant confirms that Weinerberger Limited have advised that the premises have not been running at full capacity since the economic downturn, but hope to return to increased production soon. The Council also concerns in this regard, in relation to noise and smell.
14. The appellant suggests that all these matters could be dealt with by condition. However, paragraph 109 of the Framework makes it clear that the planning system should contribute to and enhance the local environment by preventing new development from being put at unacceptable risk from, or being adversely affected by unacceptable levels of noise pollution. In addition, paragraph 123 advises that companies wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. All in all it seems to me, that to allow residential development in a location such as this, without having at least some measure of reassurance that vibration from adjacent rail traffic, and noise/smell from the nearby brickworks could be mitigated sufficiently, would be contrary to the thrust of the Framework. I have given consideration as to whether the condition suggested by the appellant, to ensure that the dwellings would be constructed to comply with BS:8233 and WHO guidelines in relation to noise, would be reasonable. However, I have no way of knowing what that might entail and whether any measures would be acceptable, for example, in terms of visual impact. It would not, in any event, address potential issues as a result of vibration or smell.

Planning Obligation

15. Policy GD3 of the District Local Plan sets out the Council's approach to the delivery of sustainable communities and the broad policy basis for Section 106 obligations. It is supported by numerous policies in the District Local Plan and the Council's Supplementary Planning Guidance on Affordable Housing and Developer Contributions Towards Service Infrastructure, and a Supplementary Planning Document relating to Education Contributions.
16. Pursuant to the policies and guidance, the Council seeks to secure affordable housing provision and contributions towards education facilities, sports and leisure facilities, public open space, recycling, transport infrastructure and cycling.
17. The provision of an element of affordable housing on the site could be secured by an appropriately worded planning condition. However, it is well established that financial contributions cannot be secured by the same means. They can only be provided for via a planning obligation under the provisions of Section 106 of the Town and Country Planning Act 1990 (as amended). In this regard,

the Planning Inspectorate's 'Procedural Guide: Planning Appeals – England' makes it clear that if a planning obligation is to be taken into account by the Inspector, it must be executed and a certified copy submitted no later than seven weeks from the start date.

18. The Council provides no detail as to how the contributions sought have been calculated and what, exactly, they would be spent on. I have no reason to suppose, however, that the development proposed would not increase demand for local services and facilities. In the absence of any means of mitigating that impact, there would be harm in this regard.

Other Considerations

19. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances. The Framework confirms that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
20. The appellant suggests that the existing use is causing harm, relying on the Council's confirmation that it raises no objection to the loss of this employment site. However, the Council confirms simply that the loss of the site for employment purposes would not have a material impact on employment generally, or on the availability of employment sites and premises in the area, since the uses on the appeal site would be relocated to one of two sites owned by the appellant on the nearby industrial estate. That is not, it seems to me, an indication that existing operations on the appeal site are causing harm.
21. The application was accompanied by a Landscape and Visual Impact Assessment, which confirms that views of the site locally are limited and that, in wider views, it is the brickworks that is the prominent feature. On that basis, it concludes that there would be no material harm in terms of the character and appearance of the surrounding area as a consequence of the development proposed. The Council takes no issue on this point and I have no reason to disagree. However, that is an absence of harm, rather than a consideration which of itself attracts positive weight. I do recognise however, that there is the potential to provide some enhancement through the introduction of planting onto the site and habitat creation. Those considerations attract some weight, although that is tempered by the absence of any existing harm that needs to be addressed.
22. The appellant urges that I have regard to the housing land supply situation as it was at the time that the application was lodged. However, I am required to make my decision in the light of the current situation. The Council has drawn my attention to a recent appeal decision in which the Inspector concludes that the Authority has a probable supply of 5.3 years.² On that basis, I have no reason to suppose that there is a current shortfall in supply which might weigh in favour of the proposal. Even were that not the case, a Written Ministerial Statement of 1 July 2013 confirms, among other things that, in relation to conventional housing, *'the single issue of unmet demand is unlikely to outweigh harm to the Green Belt and other harm to constitute the very special circumstances justifying inappropriate development in the Green Belt.* I do

² Appeal ref APP/H1840/14/2217607

recognise, however, that the site could provide some much needed affordable housing, a consideration to which I afford some weight.

23. The development would also result in some jobs being created during the construction phase although, by definition, those jobs would be of relatively short duration. It would also assist the local economy through, for example, increased local spend.

Conclusion

24. Whilst the appeal scheme relates to previously-developed land, I have found that it would have a greater impact on the openness of the Green Belt than the existing use and is thus, inappropriate development. The Framework confirms that substantial weight is to be given to any harm to the Green Belt by reason of inappropriateness and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
25. All in all, I find that even in their totality, the combined weight of those other considerations that attract positive weight do not clearly outweigh the substantial harm to the Green Belt by reason of inappropriateness and the associated loss of openness and permanence of Green Belt. Therefore, for the reasons set out above I conclude, on balance, that appeal should not succeed.

Jennifer A Vyse

INSPECTOR

Richborough Estates