



Appeal Decision

Inquiry opened on 17 November 2015

Site visit made on 19 November 2015

by Martin Whitehead LLB BSc(Hons) CEng MICE

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

Decision date: 14 January 2016

Appeal Ref: APP/X4725/W/14/3001702

Land at Ouchthorpe Lane, Fieldhead, Wakefield WF1 2PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miller Homes against the decision of City of Wakefield Metropolitan District Council.
 - The application Ref 13/02618/FUL, dated 10 September 2013, was refused by notice dated 8 August 2014.
 - The development proposed is given on the application as: *the erection of 66 dwellings and associated works, including construction of access road from Ouchthorpe Lane with new field access, landscaping and ecological works, public open space, drainage features and pedestrian and cycle circulation*.
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Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. I opened the Inquiry on 17 November 2015 and it sat on 3 days, closing on 19 November 2015.
 3. The description of the development proposed is given on the application as above. However, the appellant has stated that, following discussions with the Council regarding affordable housing provision, the housing mix was amended, which resulted in an increase in the dwelling numbers on-site from 66 to 68 dwellings. This change was accepted by the Council and the application was re-advertised with the description changed to reflect the change in the number of dwellings. Consequently, I have determined the appeal on this basis.
 4. At the Inquiry the appellant submitted a signed and dated Section 106 Planning Obligation by Unilateral Undertaking (UU) that the Council has examined and agreed. The UU would secure the provision of a commuted sum of £49,708 towards the improvement and maintenance of off-site public open space in the area to compensate for the lack of a reasonably sized recreational public open space within the development, in accordance with Wakefield Local Development Framework (LDF) Core Strategy, 2009 (Core Strategy) policy CS11.
 5. The UU would also secure contributions that would be required to meet the shortfall of primary and secondary school places as a result of additional demand that would be generated by the future occupants of the proposed dwellings, amounting to £236,747, in accordance with the objectives in Core
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Strategy policy CS5. In addition, it would ensure the provision of 20 affordable houses in accordance with the 30% target set in Core Strategy policy CS6(b).

6. I am satisfied that the evidence that has been provided demonstrates that the obligations in the UU meet the tests in Community Infrastructure Levy Regulations 122 and 123 and I have taken them into account in my determination of this appeal. The inclusion in the UU of a £10,000 contribution towards the Council expenses in connection with making traffic regulation orders is necessary in the interests of highway safety and to accord with Core Strategy policy CS14.

Main Issues

7. The main issues are whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (Framework) and relevant development plan policies; its effect on the openness of the Green Belt and the purposes of including land in the Green Belt; its effect on the character and appearance of the surrounding area; and, if it is inappropriate development, whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Whether Inappropriate Development

8. The proposal would include the construction of 68 dwellings, 20 of which would be affordable, a drainage pond and an access road from Ouchthorpe Lane to the east. The access road would run for about 300m along the southern boundary of a field, adjacent to definitive public footpath 28 and the rear gardens of dwellings in Hatfield View, separated behind a security fence and planting that includes a row of trees that are protected by a Tree Preservation Order.
9. The part of the site that would accommodate the access road would be about 20m wide and would be on land within the Green Belt. It would include the public footpath and landscape buffers on either side. Although the proposed drainage pond and associated works would be located on land within the Green Belt to the north of the proposed dwellings, I am satisfied that it would amount to an engineering operation under paragraph 90 of the Framework that would preserve the openness of the Green Belt and would not conflict with the purposes of including land in the Green Belt. As such, the use of the land as a drainage pond would not represent inappropriate development.
10. In terms of the Green Belt land that would be used for the proposed access road, I agree with the Council's submissions at the Inquiry that it would be an engineering operation in accordance with paragraph 90 of the Framework. The appellant has suggested that it would be local transport infrastructure which can demonstrate a requirement for a Green Belt location in accordance with this paragraph. Although this is not defined in any national or local policy documents, the evidence provided at the Inquiry leads me to the conclusion that it would not represent such a form of development, as it would be included under engineering operations and the government's intentions indicated by the Impact Assessment for the Framework do not include an access road for a

limited number of houses within the examples given of this type of development. However, this does not make any significant difference to my determination of whether or not the proposal would represent inappropriate development.

11. In both of the above circumstances, to qualify as not inappropriate development in the Green Belt, the proposed access road would also have to preserve the openness of the Green Belt and not conflict with the purposes of including land in the Green Belt. In terms of openness, this is not defined in any national planning policy documents or guidance, but the Framework states in paragraph 79 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The Courts have given some indication of what needs to be considered and have indicated that the effect on openness is a matter of planning judgment for the decision-maker.
12. The proposal would not only include the construction of a 5.5m wide carriageway with an estimated maximum peak hour two way flow of 50 vehicles per hour but also an associated footway, street lighting, acoustic fencing, post and rail fencing and planting. Whilst some of these features would be associated with a rural setting, the overall impact would be to introduce an intrusion of urban development into the Green Belt countryside.
13. The acoustic fencing has been deemed to be necessary to ensure that the impact of traffic noise from vehicles using the access road would be acceptable within the rear gardens of properties in Hatfield View. The street lighting columns, 8 of which I understand would be sited in the Green Belt, would be about 5m high and designed to minimise light pollution but would still represent structures within the Green Belt. Even though street lighting columns are a feature of other highways in the Green Belt, including along Ouchthorpe Lane where they are higher than those proposed, this does not diminish the effect that the proposed street lighting columns would have on openness. Therefore, whilst I accept that the scale of built development in the Green Belt would not be great, the presence of the proposed access road and associated structures would in my opinion be sufficient to significantly harm the openness of that part of the Green Belt.
14. With regard to the 5 purposes of the Green Belt that are given in paragraph 80 of the Framework, as the proposed access road and associated works would be adjacent to the large built up area of Wakefield, the proposal would erode the area of Green Belt that seeks to check the unrestricted sprawl of such an area. Although it would represent a relatively small part of the Green Belt that has been designated in that area, the cumulative impact of such repeated encroachments could have a significant adverse effect on this purpose.
15. At the Inquiry, arguments were put forward as to whether or not the area of Green Belt prevents neighbouring towns merging into one another, which is given as one of the purposes. In terms of Wakefield and Outwood/Stanley, these settlements already appear to me from the plans provided to be attached by built development. As such, I find it hard to believe that the proposal would cause any significant harm to this purpose. However, the proposed area of the access road would be an encroachment into the Green Belt countryside, contrary to the purpose of assisting in safeguarding the countryside from such encroachment. It would also be contrary to Core Strategy Spatial Objective 9,

in that it would seriously erode the clear distinction that the Green Belt has made in that area between the town and country.

16. The appellant has referred to an appeal decision regarding development at Throop, Bournemouth¹ in support of its contention that the proposed access road would not be inappropriate development in the Green Belt. Having considered the information provided in that decision letter and by the appellant at the Inquiry, I find that it involved significantly different circumstances from the present appeal, including the relative location of the road in the Green Belt, its use, the width of the road and the lack of any acoustic fencing or street lighting columns. Although the road in the current appeal would be shorter than that in this other appeal, which also included a raised 'Bailey Bridge', I consider that the above differences make the current appeal road inappropriate development in the Green Belt. Also, that Inspector did not address whether the track would be local transport infrastructure and accepted that traffic along it, which in that case would have been very limited, would result in some visual impact on openness. Whilst I have noted the points made, I do not consider that this other appeal is directly comparable with the current appeal, which I have determined on its own individual planning merits in the light of prevailing policies and guidance.
17. At the Inquiry, the appellant submitted a recent Council decision notice to grant planning permission for the construction of a new access road to serve an existing sports club at the west of Dudfleet Lane, Wakefield, which it had indicated had been considered by the Council to be local transport infrastructure in the Green Belt. Based on the information provided at the Inquiry, the permitted road was associated with a different use from, and at a different relative location to, the appeal proposal. As such, the Council's decision carries limited weight in support of the current appeal.
18. Based on the above, I find that the proposed access road would be an engineering operation but would represent inappropriate development in the Green Belt, as it would fail to preserve the openness of the Green Belt and would conflict with 2 of the purposes of including land in the Green Belt, contrary to the requirements given in paragraph 90 of the Framework and development plan objectives.

Character and Appearance

19. The evidence indicates that the appeal site is located within the Coalfield Landscape Character Area as defined by Natural England. The site consists of agricultural land that is adjacent to the settlement boundary of Wakefield, with the part of the site proposed for housing development within the urban area. The access and drainage areas of the site are outside the boundaries of Wakefield urban area. To the north and north east of the site are agricultural fields, south east is Fieldhead Hospital, and to the south is a relatively new residential area. The part of the site for the proposed access road abuts the boundaries with the Hospital and the gardens of houses in Hatfeild View and 80 Ouchthorpe Lane.
20. I have noted the findings of the Landscape and Visual Impact Assessment (LVIA) that has been carried out by TPM Landscape Ltd for the appellant. This identifies the area of landscape where the proposed access road would be

¹ Appeal Ref APP/C1245/A/14/2221524

located as 'rolling countryside' with a landscape value of 'moderate' and sensitivity of 'medium'. The users of the public rights of way are classed as 'high sensitivity' receptors. In the case of footpath 28, which would run alongside the proposed access road, the landscape change in view to pedestrians is assessed as 'medium' due to them experiencing a more urbanising experience along the access road. At the Inquiry, the appellant's landscape expert witness accepted that, using Table 2.12 in the LVIA to determine the visual effects, these effects would be 'moderate/substantial'. Whilst he indicated that the effects would be mitigated by planting, I have been given insufficient evidence to show how this would significantly reduce that impact, as the access road would in places be very close to the footpath, minimising the scope for planting to separate them.

21. At the Inquiry, the appellant's landscape expert indicated that the proposed planting to the north of the access road would take 3 to 5 years to make a visual impact and that, as it would be a 'living entity', it would be a 'potential' impact. As such, the planting would only provide an adequate screen from views of the access road after a significant period of time and, if and when sufficiently established, it would have the potential to prevent views from footpath 28 over the surrounding countryside. At my site visit I observed that wide expansive views over the countryside and surrounding area are currently available and I am concerned that these could be harmed due to some of the planting being on higher ground than the footpath.
22. At my site visit, I viewed the appeal site from some of the surrounding area, including footpath 36. I accept that, when established, the planting would hide from these views the security fencing around the NHS land at Fieldhead Hospital and at the rear of the Hatfield View gardens. However, in the interim period vehicles would be visible along the proposed access road and the planting would be unlikely to ever reach a sufficient height and density to hide the roofs of the houses in Hatfield View that are currently visible. Also, I observed that some of the security fencing is already screened by planting that would be most effective during the summer months and that in many of the views the fencing is hidden behind the higher land along the ridge on which the proposed access road, street lighting and additional planting and fencing would be located.
23. Taking account of the above, whilst there would be benefits to visual amenity from the proposed planting, particularly in the long term, they would not be sufficient to outweigh the harm that I have identified that would be caused to the rural character and appearance of the surrounding area due to the urbanising effect of the proposed access road and the activity from vehicles using it close to a ridgeline that is currently open field. As such, the proposal would fail to accord with Wakefield LDF Development Policies Document, 2009, policy D9, which requires new development to make a positive contribution to the environment and amenity of its locality by virtue of high quality design, layout and landscaping, as the location and layout of the access road would not respect the character of the locality and key views from footpaths in the area.

Other Considerations

24. Having found that the proposal would be inappropriate development in the Green Belt, I have considered the other considerations that have been put forward by the appellant.

25. In terms of the houses that the proposal would deliver, the Council has accepted that it cannot currently demonstrate a 5 year supply of deliverable housing sites as required by the Framework. It has provided evidence, which has not been tested at the Inquiry, that demonstrates that it could have the potential to satisfy its 5 year supply. This is based on its Strategic Housing Land Availability Assessment, which is contested and has not been finalised. The appellant has questioned the methodology used by the Council, particularly with regard to whether the 20% buffer to address persistent under delivery should be applied to the backlog as well as the base requirement, and how much windfall allowance should be included, based on past levels of windfall. I have therefore given very little weight to the Council's claim to potentially be able to meet the 5 year housing land supply requirement.
26. The appellant has not suggested an alternative calculation to provide a figure for a 5 year housing supply. As such, the extent of the shortfall has not been agreed, except that the inclusion of the dwellings on the appeal site would be insufficient to address this shortfall, particularly as the site has been included in the LDF Site Specific Policies Local Plan, 2012, (SSPLP) as housing allocation HS1 to provide 104 dwellings within the plan period.
27. The proposal would be in accordance with the Framework's aim to boost significantly the supply of housing. However, although part of the appeal site is allocated for housing development, the access to the site is not referred to in the allocation. If it had been intended that the site should be accessed through the Green Belt at that time, I would have expected that it would have been mentioned. It was promoted in an advocacy report as being accessed from Hatfeild View and was allocated and removed from the Green Belt on the basis of there being no infrastructure or other constraints that would prevent the anticipated housing delivery. The appellant has stated that the option of an access over hospital owned land from the western end of Hatfeild View is no longer available.
28. Sanderson consulting engineers, on behalf of the appellant, has undertaken an Access Review Study, which was updated in January 2014, to examine potential access routes. The Council and appellant have agreed that the Access Review Study demonstrates that there are no other suitable or deliverable access routes into the allocated housing site other than those in the appeal proposal. Although objectors have queried the findings of the Study and have suggested other access options, they have provided insufficient supporting evidence to demonstrate that any of their suggested access arrangements would be feasible and deliverable at the current time. As such, I accept the position that has been agreed between the Council and the appellant that the proposed road is required to ensure that the housing land could be accessed by vehicular traffic.
29. Some of the objectors have expressed concerns about the safety of the junction of the proposed access road with Ouchthorpe Lane. In this respect, I have noted the findings of the Transport Statement² and Safety Audit³ undertaken on behalf of the appellant and the agreed Statement of Common Ground related to highway issues. Taking account of these, together with my observations on site, I am satisfied that adequate visibility splays could be

² Transport Statement prepared by Sanderson Associates (consulting engineers) Ltd, dated January 2014

³ Stage 1 Road Safety Audit by Sanderson Associates (consulting engineers) Ltd, dated January 2014, included as Appendix G to the Transport Statement

- provided in accordance with the recommendations in Manual for Streets 2 and that there would be no significant risk to highway safety at that junction, particularly with the proposed provision of vehicle activated warning signs.
30. Based on the above, the evidence suggests to me that part of the appeal site was allocated for housing without knowing that it would require access through the Green Belt, which was only evident to the appellant after the publication of the Inspector's SSPLP examination report. Also, the proposal would provide 68 dwellings, the deliverability of which has not been contested, which would be significantly less than the allocation figure. I find that the proposed provision of housing, including the affordable housing that would be provided to meet the policy requirements, carries significant weight. However, the weight that I have given to this consideration is not as great as it would have been if the road had provided access to more housing development and facilities than are proposed.
31. Paragraph 49 of the Framework indicates that housing applications should be considered in the context of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. I have found that the Council cannot demonstrate a 5 year supply of deliverable housing sites. However, as the access road would be within the designated Green Belt, specific policies in the Framework indicate that development should be restricted, in accordance with footnote 9 to paragraph 14 of the Framework. Therefore, although relevant policies should be considered to be out-of-date, this does not necessarily mean that planning permission should be granted.
32. With respect to the sustainability of the proposal, the appellant has suggested that the appeal site is in a sustainable location and the proposal would be a sustainable form of development. Whilst I accept that the location of the proposed dwellings is sustainable, that is not the test for sustainable development. I have found that the proposed vehicular access arrangement would have an adverse impact on the environment and would therefore not represent sustainable development.
33. The construction jobs and new expenditure that would be brought into Wakefield's economy would be those provided by any new housing development within or adjacent to Wakefield. Whilst the appellant has given an indication of how much this would be, I attach moderate weight to these benefits, which is a similar level to that given by the appellant. However, the New Homes Bonus can be given very little weight as it is an incentive to Councils to provide much needed housing.
34. The provision of open space and contributions towards open space and education are mitigation and so only minimal weight can be given to these considerations. I agree with the appellant that limited weight should be ascribed to the improvements in accessibility of public footpaths and ecological improvements due to the proposed landscaping. However, the landscaping would act as mitigation and I have found that, taking it into account, there would still be harm to visual amenity due to the access road. Therefore, even though the landscaping would help to reduce many of the detrimental effects that the road would have on the appearance of the area, I have not included it as a positive consideration with regard to visual amenity.

Whether Very Special Circumstances Exist

35. The Framework states in paragraph 88 that substantial weight should be given to any harm to the Green Belt. In addition to this, I have found that overall there would be significant harm to the character and appearance of the surrounding area. This is weighed against the significant benefit that I have identified due to the supply of market and affordable housing, the moderate weight that I have given to the benefits to the economy, the limited weight that I have attached to the improvements to accessibility and ecological benefits, together with the minimal weight that I have given to some of the other considerations put forward. Based on this, and having regard to the advice given in the written Ministerial Statements of 1 July 2013 and 17 January 2014, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusions

36. For the reasons given, I have found that the proposed access road would reduce the openness of the Green Belt and would have an adverse effect on the purposes of including land in the Green Belt. As such, it would represent inappropriate development in the Green Belt having regard to the Framework and development plan objectives. It would also cause significant harm to the character and appearance of the surrounding area. Other considerations do not clearly outweigh the harm to the Green Belt by reason of inappropriateness and the other harm identified, and the very special circumstances necessary to justify the development have not been demonstrated. The proposal would conflict with policies in the Framework and development plan policies and would fail to represent sustainable development in accordance with the Framework. Therefore, having regard to all matters raised, I conclude that the appeal should fail.

M J Whitehead

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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| Martin Carter | Of Counsel, instructed by Kevin Winter, Solicitor, Legal Manager, Planning, Highways and Local Land Charges, Wakefield Metropolitan District Council |
| He called Sam Dewar BSc MA | Planning Manager, DPA Planning Ltd |

FOR THE APPELLANT:

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| Andrew Piatt | Solicitor and Partner, Gateley plc |
| He called Rob Greenwood IEng FIHE | Associate Director and Team Leader, Sanderson Associates (Consulting Engineers) Ltd |
| Kit Patrick BA(Hons) DipLa CMLI | Director, TPM Landscape |
| David Rolinson BA(Hons) MRTPI DipPEL | Chairman, Spawforths |

INTERESTED PERSONS:

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| Katie Atkinson MA BA DipTP MRTPI | Director, KVA Planning Consultancy on behalf of the Yorkshire and Humber regional branch of CPRE |
| Councillor David Dews CEng BSc(Eng) MICE ACGI | Wakefield Councillor |
| Councillor Jacqui Williams | Local Councillor |
| Councillor Matthew Morley | Wakefield Councillor |
| Kevin Swift | Local resident and on behalf of Wakefield Civic Society |
| Mark Fudge BSc(Hons) CEng MICE | Local resident |
| John Gravett | Local resident |

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson, submitted by the appellant at the Inquiry on 17 November
- 2 Rebuttal Statement of Sam Dewar's Proof of Evidence by David Rolinson- Appendices, submitted by the appellant at the Inquiry on 17 November
- 3 Opening Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 17 November
- 4 Opening Statement on behalf of the Local Planning Authority, submitted by the Council at the Inquiry on 17 November
- 5 Letters, date 10 July 2015 and 23 September 2015 from Andrea Jenkyns MP, submitted by Nick Prior at the Inquiry on 17 November
- 6 Statement read at the Inquiry by Councillor David Dews, submitted by Councillor David Dews at the Inquiry on 17 November
- 7 Statement read at the Inquiry by Councillor Jacqui Williams, submitted by Councillor Jacqui Williams at the Inquiry on 17 November

- 8 Statement read at the Inquiry by Katie Atkinson, submitted by Katie Atkinson at the Inquiry on 17 November
- 9 Copy of the grant of planning permission for the construction of new access road to serve existing sports club at West Of Dudfleet Lane, Horbury, Wakefield, submitted by the appellant at the Inquiry on 18 November
- 10 Council's note on Community Infrastructure Levy and S106 contributions, submitted by the Council at the Inquiry on 18 November
- 11 Statement read at the Inquiry by Mark Fudge, submitted by Mark Fudge at the Inquiry on 19 November
- 12 Heat mapping plan from a bat transit survey for the resubmission of the planning application, submitted by Mark Fudge at the Inquiry on 19 November
- 13 Copy of signed and dated Section 106 Unilateral Undertaking Planning Obligation, submitted by the appellant at the Inquiry on 19 November
- 14 Closing Submission of the Local Planning Authority, submitted by the Council at the Inquiry on 19 November
- 15 Closing Statement on behalf of the appellant, submitted by the appellant at the Inquiry on 19 November

PLANS SUBMITTED AT THE INQUIRY

- A Drawing No 766-01 Rev C- Proposed Improvements, submitted by the appellant at the Inquiry on 18 November
- B Drawing No 7566-016 Rev D- Indicative Junction Layout with Junction Visibility Splays, submitted by the appellant at the Inquiry on 18 November

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

- 1 Photograph of Ouchthorpe Lane, submitted by Mark Fudge at the Inquiry on 19 November
- 2 Photograph of Footpath 28, submitted by Mark Fudge at the Inquiry on 19 November