



Appeal Decision

Site visit made on 19 November 2024

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Appeal Ref: APP/U2370/W/24/3349578

Normoss Farm, 40A Normoss Road, Normoss, FY3 0AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Walbury Commercial Ltd against the decision of Wyre Borough Council.
- The application Ref is 23/00624/FULMAJ.
- The development proposed is the redevelopment of the site to deliver 21 no. homes.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Walbury Commercial Ltd against Wyre Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Since the Council's decision on the appeal application, and in the submission of this appeal, the appellant has made a number of alterations to the appeal proposal and submitted additional evidence. These include a revision to the proposed layout to address pedestrian connectivity issues within and beyond the site, also contained within a Refuse Strategy Plan. An updated Flood Risk Assessment (FRA) was also submitted. Within their Statement of Case, the appellant now describes the appeal proposal as being for 100% affordable housing. This contrasts with the application as originally submitted to, consulted on by, and determined by the Council, which proposed a policy-compliant level of affordable housing of 33%. The appellant has also submitted, with their Final Comments, a Shadow Habitats Regulations Assessment (SHRA). I will address the SHRA later in my decision.
4. The appellant has criticised the Council for making comments on the procedural correctness of the appellant's actions between the application decision and the submission of the appeal, outside the timescales normally allowed for during the appeal process. Whilst I accept that the Council did make an explicit submission on procedural issues beyond the normal time limits for submitting evidence, I do not consider that there was anything in that submission which was not already contained in their Statement of Case. In any event, the appellant was provided with opportunity to comment, so no unfairness arises.
5. In considering whether or not to accept the proposed alterations and late evidence, I have had regard to the refinement of the Wheatcroft principles through the Holborn Studios judgement.

6. The proposed alteration from 33% affordable housing to 100% affordable housing is clearly a substantial difference to the proposal, and to consider the appeal as such, would, in my opinion essentially result in me considering a different application to that considered by the Council. Plainly, such a proposal engages different policies, different tests and a different approach to the proposal. It should therefore be properly consulted on and considered by the Council in the first instance.
7. Although the appellant suggests that this alteration is within the scope of the description of development, as market housing and affordable housing are “homes”, I do not agree. It is clear from local and national policy that the two housing types are treated differently in considering development proposals.
8. Notwithstanding the failure of the appellant to provide any means of securing this amended offer, accepting this alteration would also cause significant procedural unfairness. As such, the appeal will be considered on the basis of the proposal (in terms of housing type, tenure and mix) which was before the Council when they made their decision.
9. These amendments are, to my mind, both procedural and substantive in terms of the tests in Holborn.
10. Although the appellant may be disappointed by this approach, I consider that it is consistent with their approach to the procedural or substantive acceptability of the latterly suggested changes to housing mix proposed by the Council.
11. The alterations to the site plan, the submission of a Refuse Strategy Plan and FRA are on their face acceptable, as they are evidence to address reasons for refusal and are relatively minor. I am satisfied that their being considered does not represent a substantial difference to the proposal, nor would they give rise to procedural unfairness. On that basis, I note that the Council considers that their third and fourth reasons for refusal (relating to highway safety, flooding and drainage), are no longer at issue and could be dealt with through the imposition of conditions.
12. As a result, my assessment of the proposal proceeds on that basis.

Main Issues

13. The main issues are therefore:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the proposal on the openness of the Green Belt.
 - The effect of the proposal on the character and appearance of the area and whether or not the proposal would result in satisfactory living conditions for future occupiers.
 - The effect of the proposal on protected species and sites.
 - Whether any 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 proposal.

Reasons

Whether inappropriate development

14. Policy SP3 of the Wyre Local Plan (2011-2031 incorporating partial update 2022)(the Local Plan) is consistent with the Framework in respect of development in the Green Belt. Namely that the construction of new buildings in the Green Belt is inappropriate development, and that planning permission for inappropriate development in the Green Belt will not be approved, except in very special circumstances.
15. The Framework, consistent with the Local Plan sets out exceptional cases where new buildings are not inappropriate in the Green Belt, and the appellant has suggested that the proposal complies with a number of these, namely those at paragraph 154 e), f) and g).
16. Taking those in turn, having had regard to the evidence and my site visit, I do not consider that the proposal represents limited infilling in villages. Even allowing for the case made by the appellant that the site lies close to, but not within Poulton-le-Fylde, but represents a settlement, I do not consider that it has the typical characteristics of a village. To my mind the site has an edge-of-settlement character and appearance, but I do not consider that its appearance, location, relationship to other developed areas, facilities or services could lead one to reasonably conclude that it lies within a village, or that it then represents limited infilling within that village.
17. For the reasons set out in my Preliminary Matters above, although the majority of the proposal is market housing, it does include affordable housing, for which there is a clear, and accepted need in the local area. The exception at paragraph 154f) could therefore apply. However, whilst the proposal includes limited affordable housing, and I accept there is a local community need, the policies in the development plan, including those for rural exception sites do not support the development of this site.
18. Further, whilst the May 2024 Housing Needs Assessment does identify a clear affordable housing need in the area, it also states that despite the level of need, it is not considered to indicate a requirement to increase the overall housing requirement to better address it, instead that the Council should maximise the delivery of affordable housing at every opportunity. Whilst it might be argued that this site represents such an opportunity, on the basis of the evidence before me now, I do not find that this proposal does so in such a way as to properly engage that exception. I do not consider it appropriate to calculate affordable housing need on the basis of any altered housing requirements which may come about through the emerging Framework, currently under consultation, as the final form of it is currently unknown.
19. For the same reason, I do not give any weight to the suggestion that the proposal be considered against the grey belt criteria set out in the emerging Framework.

20. The exception at paragraph 154g) of the Framework has several stages. Firstly, it requires that the site be previously developed land (PDL). The appellant and the Council have directed me to the definition of PDL in the Framework, which explicitly notes that it excludes land that is or was last occupied by agricultural buildings. Despite the intervening uses of the land for caravan and other storage, the Council describes the majority of previous buildings on the site as being agricultural, and the appellant does not dispute this. In addition, the Framework definition of PDL notes that land which was previously developed but where remains have blended into the landscape are also excluded.
21. Therefore, whilst there was previously development on this land, and it was in use for storage, it appears that many of the buildings were agricultural, and so do not wholly fall within the definition of PDL. In addition, the appeal site includes land and proposes development (drainage infrastructure, a play area and open space) beyond that area previously used and built upon. As such, the exception at paragraph 154g) does not apply.
22. The proposal is therefore inappropriate development in the Green Belt and would conflict with Policy SP3 of the Local Plan and the Framework.

Openness

23. Openness is an essential characteristic of the Green Belt. The proposal would introduce four, largely two-storey blocks of residential development into a currently open space, as well as formalise the remainder of the site as open space, with a play area and drainage attenuation lake. Notwithstanding the current fencing around the site, taken together, these aspects of the development would materially reduce both the visual and spatial openness of the Green Belt at the site, causing substantial harm to it. The Framework requires substantial weight to be given to this harm.
24. As such, even had I found that the site was PDL, the exception at paragraph 154g) would be disapplied by my findings on openness.
25. In addition, I am concerned that the proposal would harm the first three purposes of the Green Belt as set out in the Framework. To my mind, given the location of the site between Normoss and Poulton-le-Fylde, it appears to play an important role in those three purposes. I do not agree with the appellant that the site represents a gap in an existing frontage. Land to the east has an open frontage to Normoss Road, and the density of the residential development fronting Normoss Road to the west is not so high as to make the site appear as a gap.
26. For much the same reasoning, I do not agree that the settlements of Normoss and Poulton-le-Fylde have already effectively coalesced, such that the site would no longer serve a purpose in preventing it.
27. With regard to encroachment, I have accepted that part of the site was previously subject to agricultural development, but the proposal as a whole extends the developed area into the Green Belt. In addition, as a result of the clearance of the site, its development now would give the impression of the encroachment of residential development into the countryside.

28. Taking a wider, spatial view of the site and its surroundings, including the location of other housing, the distribution of open land and development, as well as the relationship of nearby settlements to each other, the context adds further weight to the importance of the site to those first three purposes of the Green Belt.
29. I note that there is residential development close to the site, fronting onto Normoss Road, and I also note the housing on Southfield Drive to the west. However, the existence of that housing does not alter my conclusions on the effect of this proposal on this site.

Character, appearance and living conditions

30. The proposal would result in a relatively dense form of residential development, dissimilar to any other nearby residential development. However, as this has been designed to reflect the character and appearance of former agricultural buildings on the site, I do not find it to be unacceptable. However, that dense form of development also gives rise to living conditions concerns, particularly in terms of the close relationship between the blocks.
31. The frustration of the appellant with the Council now finding living conditions for future occupiers of the proposal unacceptable, is understandable, given that the Spacing Guidance for New Housing Layouts, Supplementary Planning Guidance, adopted September 1998 to which they refer has not changed since the previous planning permission was granted in 2017.
32. However, that does not alter the national or local policy requirements for good design, and for good design which results in suitable living conditions for future occupiers. In addition, the other considerations in the application have changed since that time, notably the housing land supply position, the consideration of which then may have had a bearing on reasoning around factors such as this.
33. In any case, in my assessment of the proposal, I am concerned at some of the very short separation distances proposed, and the close relationships, particularly of two to one storey elements of the proposal. Whilst I accept that the design has been driven by the desire to mimic a courtyard appearance, I am not persuaded that the appeal proposal is the only way to achieve this, or that the potential compromises with respect to living conditions in terms of separation distances are essential to deliver that design aspiration.
34. Whilst obscure glazing conditions could address the direct overlooking issues relating to the close-relationship of the proposal, I do not consider that they would address the likely overbearing and dominating effects that the blocks could have on each other.
35. Given that, in spite of the previous planning permission on the site, whilst I find that the design of the proposal would not harm the character and appearance of the area, it would not give rise to suitable living conditions for future occupiers. As such, the proposal would conflict with Policy CDMP3 of the Local Plan.

Protected species and sites

36. The site lies within Natural England's SSSI Impact Risk Zone for Morecambe Bay and Duddon Estuary SPA/Ramsar sites. It is considered that without mitigation, the appeal proposal would have a likely significant effect on the sites as a result of increased recreational pressure. A Habitats Regulations Assessment Stage 1 was carried out which concluded that risks from the proposed development to the protected sites cannot be dismissed owing to the existence of pathways from it to significant adverse effects on the integrity of the European site.
37. An SHRA was also submitted inappropriately late to the appeal process, at a point in the timetable when there is no further opportunity for comments from the Council. The Procedural Guide: Planning appeals – England is very clear that no new evidence is allowed at the final comments stage, and the SHRA is plainly that.
38. Although the SHRA is before me and seeks to undertake a screening survey to investigate the potential effects on the surrounding sites of value, identifies a likely significant effect on the protected sites, and then sets out potential mitigation measures, as I am dismissing the appeal for other substantive grounds, it is not necessary for me to address this matter in any further detail.

Whether very special circumstances exist

39. There are other considerations which potentially weigh in favour of the appeal proposal. Part of the site was previously developed for agricultural purposes, the proposal could deliver some affordable housing, for which there is a need, and there could be public benefits including construction and occupation related local expenditure, contributions towards off site infrastructure, on site open and play space as well as new planting.
40. There was a previous planning permission on this site for the same development as proposed in this appeal. That application was submitted in 2015 and determined in 2017. It is unfortunate for the appellant that the previous planning permission for residential development on this site was allowed to lapse. However, that permission was granted subject to a condition requiring it be implemented within three years of the date of decision, not indefinitely. So, whilst that planning permission is clearly material to this decision, the circumstances before me are now plainly different and the positive weight I afford it is somewhat limited.
41. The housing land supply position of the Council has apparently changed since 2017, with the Council now able to demonstrate a healthy level of supply. The site is now clear and open, but for some areas of hardstanding and the fencing which encloses it. In any event, regardless of need, I am conscious that in the three-year period granted for implementation of the planning permission previously, the site was neither developed, or, on the evidence of the Council, lawfully implemented. Given that, the weight I give to the deliverability of the site is somewhat limited, as I do not see that there is a realistic prospect of delivery.

42. It is also important to note that despite the appellant relying on it to secure many of the benefits they ascribe to the proposal, including affordable housing and other contributions, no completed planning obligation was before me to secure those benefits at the time of my decision. Indeed, the planning obligation before me was at best, an early draft, despite the requirements of the Procedural Guide. As such, the weight afforded to any of those benefits is also limited.
43. I have found that the proposed development would constitute inappropriate development in the Green Belt and would have a significantly harmful impact on the openness of the Green Belt. These matters carry substantial weight. I have also found that there would be harm in terms of living conditions for future occupiers, such that there is conflict with the development plan. This adds further considerable weight to that harm already identified. The effect of the proposal on protected species and sites is unresolved at this time so carries very little weight either for or against the proposal.
44. This has to be balanced against the factors in favour of the proposed development (the other considerations) as outlined above. Whilst I acknowledge those, in this particular case I do not consider that the harm to the Green Belt by reason of inappropriateness and the other harm resulting from the proposal is clearly outweighed by other considerations. As such, very special circumstances required to allow the appeal do not exist.

Conclusion

45. Taking all of the above together, I find that the proposal would significantly conflict with the development plan. Whilst there are material considerations which weigh in favour of the proposal, they are not sufficient to outweigh the harm and associated development plan conflict I have found.
46. The decision should therefore be taken in accordance with the development plan, and the appeal should be dismissed.

S Dean

INSPECTOR



Costs Decision

Site visit made on 19 November 2024

by **S Dean MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 December 2024

Costs application in relation to Appeal Ref: APP/U2370/W/24/3349578 Normoss Farm, 40A Normoss Road, Normoss FY3 0AL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Walbury Commercial Ltd for a partial award of costs against Wyre Borough Council.
- The appeal was against the refusal of the Council to grant planning permission for the redevelopment of the site to deliver 21 no. homes.

Decision

1. The application for a partial award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant alleges that in failing to engage in preparing a Statement of Common Ground (SOCG), a draft of which was sent to them before submission of the appeal, the Council has caused the applicant to incur unnecessary and wasted expense.
4. The applicant's Appeal Form requested that the appeal follow the written representations procedure. The Procedural Guide: Planning appeals – England clearly states that for an appeal where the appellant wants to proceed by a hearing or an inquiry the appellant must provide a draft SOCG when making their appeal.
5. It does not require the same for appeals such as this one, carried out by the written representations procedure.
6. The Document Management page of the applicant's Statement of Case makes plain that their appeal had been in preparation for some 4 months before submitting it. Why then the matter of collaborating with the Council on, or even needing an SOCG was left until the week before submitting the appeal is unclear, particularly as it was the applicant who requested the appeal be determined by written representations where the Procedural Guide does not require an SOCG.
7. Combined with the very late submission of evidence throughout the appeal, it seems to me that any fault in terms of incurring unnecessary or wasted expense in this matter lies with the applicant, not the Council.

8. To me, the evidence is clear that the Council did not, for understandable reasons, and in spite of the suggestion in the Procedural Guide, wish to deploy resources on any SOCG in advance of an appeal being submitted. The 30 July email from the Council Officer is consistent with this.
9. The PPG does note the failure to agree an SOCG in a timely manner as a type of behaviour which may give rise to a procedural award of costs against a local planning authority. However, there is nothing within the PPG, nor indeed would one reasonably expect, for this to apply to appeals such as this one where there is no requirement for an SOCG.
10. Therefore, unreasonable behaviour on the part of the Council has not occurred.
11. As a result, there has been no unnecessary or wasted expense and an award of costs is not warranted.
12. The application should therefore be refused.

S Dean

INSPECTOR

Richborough