



Appeal Decision

Site visit made on 2 April 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 June 2019

Appeal Ref: APP/P3420/W/18/3219254

Builders Yard, New Farm, Cross Lane, Stoke on Trent ST7 8JQ

- 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 Mr Emery of CSTG Limited against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 18/00122/FUL, dated 14 February 2018, was refused by notice dated 9 October 2018.
 - The development proposed is demolition of existing builders yard and the erection of 7 dwelling houses with associated road and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing builders yard and the erection of 7 dwelling houses with associated road and landscaping at Builders Yard, New Farm, Cross Lane, Stoke on Trent ST7 8JQ, in accordance with the terms of the application, Ref 18/00122/FUL, dated 14 February 2018, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr G. Emery of CSTG Ltd against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. During the course of the appeal, I was provided with a completed legal agreement dated 15 April 2019 and made under section 106 of the Town and Country Planning Act 1990 (the S106 Agreement). I have taken this document into account in the determination of the appeal.
4. Although not referred to in the decision notice, Policy S3 of the Newcastle-Under-Lyme Local Plan (NLP)(2003) is referred to in the evidence and forms part of the development plan. Policy S3 seeks to control development in the Green Belt and allows the development of dwellings under certain circumstances. With respect to residential development, it is more restrictive than the Framework and does not fully accord with it. The Local Plan was prepared some time before the publication of the Framework and, given the above, I therefore give the conflict with Policy S3 very limited weight in my consideration of this appeal.

Main Issues

5. The Council advise that the site falls within an area of Green Belt. Accordingly, the main issues are:
 - whether the proposal would be inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework, having regard to the nature of the development and its effect upon the openness of the Green Belt; and
 - whether the appeal site is a suitable location for the proposed dwellings having regard to local and national planning policy; and
 - whether the proposal makes adequate provision for any additional need for open space and affordable housing arising from the development.

Reasons

Whether inappropriate development and effect upon openness

6. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 145 of the National Planning Policy Framework (the Framework) (2019) advises that the construction of new buildings should be regarded as inappropriate in the Green Belt other than in a limited number of exceptions. The partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt than the existing development is identified as an exception under this paragraph.
7. The appeal site comprises a series of buildings which are used as part of builder's yard business. This is disputed by interested parties. However, the site was evidently in use as a builder's yard during my site visit and, whilst I am advised that there have been no previous planning applications associated with the site since its use as a builder's yard, the Council has confirmed that the site has been in this use for well over 10 years.
8. The appellant has provided volume calculations of the existing buildings on the site and compared this with the proposed dwellings and their garages. There would be a reduction of 788 cubic metres which is equivalent to a 10% decrease in overall built volume as a consequence of the proposed development.
9. In addition to the buildings which are present within the site, I saw that a number of ISO containers and a portacabin are stored within the site along with building materials which, despite the fact that they are not permanent structures, given the nature of the site it is highly likely that such items would be stored on site much of the time, collectively all have an impact on the openness of the green belt.
10. Although the layout of the buildings would be different, given their lesser overall volume and the removal of the other paraphernalia associated with the builder's merchant business, the proposed development would not have a greater impact on the openness of the Green Belt than the existing development and is therefore not inappropriate development in the Green Belt.

Suitability for housing

11. The appeal site comprises a builder's merchant located approximately 600m outside the settlement of Audley. Within the site are a series of buildings of breeze block and timber construction which are generally in a poor state of repair. Building materials, plant, containers and other paraphernalia generally associated with a builder's merchant are stored externally and are visible from Alsager Road. The appeal site is located outside any defined development boundary and is in open countryside for the purposes of applying planning policy.
12. Policy H1 of the Newcastle under Lyme Local Plan (2003) seeks to direct residential development towards identified urban areas or within village envelopes and Policy SP1 of the Newcastle-Under-Lyme and Stoke-on-Trent Core Spatial Strategy (CSS) 2006-2026¹ sets out spatial principles of targeted regeneration and seeks to direct new housing to sites within identified areas. The appeal proposal would therefore conflict with policies H1 and SP1 in this regard.
13. The Framework supports the development of brownfield land². Although Policy SP1 aims to support regeneration, it is restrictive and is based upon a strategy which is undeliverable. I therefore conclude that the Policy doesn't accord with the Framework in this respect and therefore agree that the policy is out of date. Notwithstanding this, the general aim to reuse previously developed land and to locate development where it provides access to services and service centres by foot, public transport and cycling generally accords with the Framework and I afford this substantial weight.
14. The appeal site is approximately 600m from the edge of Audley which offers a range of services and facilities that could meet the day-to-day requirements of future occupants of the dwellings. I accept that facilities and services are located further in the village, approximately 1400m from the appeal site. However, there is a public footpath which runs along much of Alsager Road between the appeal site and Audley. A condition could be used to secure the provision of a new footway from the appeal site to the existing footway, as proposed by the appellant on drawing number 466-01/GA-03, removing the need for pedestrians to cross Alsager Road which would enable future occupants to walk into the village. Whilst there is likely to be some dependence upon private car, given the proximity of the site to Audley, future occupants would be able to make sustainable transport choices.
15. Paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Given the range of facilities offered by Audley, I consider it likely that future occupants would choose to use these facilities which would help minimise travel and help enhance the vitality of Audley.
16. Although the site is currently in use as a builder's merchant, a number of the buildings are in very poor condition and appeared to be underutilised at the time of my site visit. Although an intrusive investigation is required to confirm the presence and extent of contamination on the site the preliminary site

¹ Adopted October 2009

² Paragraphs 63, 68, 117, 118, 119, 137

investigation found that it is likely that contamination, particularly asbestos, will be present on the site, exceeding residential thresholds. The proposal would therefore make use of brownfield land which is supported by Paragraph 118 c) of the Framework which states that decisions should support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land and d) which promotes and support the development of under-utilised land and buildings. This is a matter to which I attach substantial weight.

17. Thus, whilst I have identified conflict with Policies H1 and SP1, for the reasons given above, I consider that the site is a suitable location for the proposed development and would enhance the vitality of Audley.

Affordable Housing and Open Space

18. Paragraph 56 of the National Planning Policy Framework (NPPF) and Regulations 122 and 123 of the Community Infrastructure Levy Regulations (CIL) state that planning obligations can only be sought where they are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
19. Policy CSP5 of the Newcastle-Under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (the Spatial Strategy), adopted in 2009 states that developer contributions will be sought to provide a key funding source to meet the needs of new residents and for the delivery of Newcastle's Leisure Needs and Playing Pitch Strategy, Stoke's Sport and Physical Activity Strategy and the Urban North Staffordshire Green Space Strategy and any approved revisions or replacement strategies.
20. Paragraph 63 of the Framework states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). Policy CSP6 of the Spatial Strategy states that new residential development within the rural areas, on sites of 5 dwellings or more will be required to contribute towards affordable housing at a rate equivalent to a target of 25% of the total dwellings to be provided.
21. The appellant has provided a Development Appraisal which concludes that the appeal scheme is not viable with financial contributions for affordable housing and Public Open Space (POS). The Council advise that independent advice from the District Valuer came to a similar conclusion. Nevertheless, the appellant has submitted a planning obligation as part of the appeal which would secure provision for this matter to be reviewed in the event substantial commencement of the development does not occur within 12 months of the date of the planning permission.
22. The Newcastle-Under-Lyme Borough Council Developer Contributions SPD (September 2007) sets out the approach the Council will take with respect to securing contributions. In relation to viability, it acknowledges that in some circumstances, an applicant may believe that what is being asked for will render a development unviable. In such circumstances, for the Council to be persuaded to reduce its requirements, the onus will be on the applicant to justify why and how special circumstances apply.

23. Given the nature of the site and the time and investment likely to be required to get the development to the point where substantial commencement is achieved, the requirement to review the development appraisal would introduce unnecessary uncertainty and cost for the appellant and would therefore not pass the test of reasonableness. Moreover, the Planning Practice Guidance advises that viability assessments should be informed by current costs and values wherever possible, nor is there any requirement set out within Policies CSP5 or CSP6 of the Spatial Strategy for applicants to review the viability of a development.
24. For these reasons, therefore, the proposed development would accord with relevant local and national planning policy in respect to affordable housing and open space without the relevant obligation of the S106 Agreement.

Other Matters

25. Reference has been made by interested parties regarding similar development on Nantwich Road which have been refused. However, I have no substantive details of these schemes before me and, moreover, I must consider the appeal on its own merits.
26. Concern have been raised regarding noise during the construction period and the effect of the proposed development on drainage and flooding. A condition restricting hours of construction would help address concerns regarding noise and a condition to secure details regarding drainage would address concerns regarding drainage and flooding.
27. Whilst I note concerns regarding highway safety, I am satisfied that a satisfactory access can be provided onto Cross Lane. The number of vehicle movements which would be generated by the proposal would be modest and would therefore be unlikely to significantly affect the capacity of the highway. I note that the Highway Authority did not object to the proposal, subject to the inclusion of conditions.

Conditions

28. I have considered the conditions put forward by the Council and other parties against advice in the Framework and Planning Practice Guidance. As a result I have amended some of them for consistency, clarity and omitted others. In the interests of certainty and proper planning I have included conditions relating to commencement, plans and materials. It is also necessary, in the interests of certainty, to secure details of finished floor levels.
29. I agree that, given the location of the proposed development it is necessary to secure details of access, surface water and foul drainage in the interests of highway safety and to prevent flooding. I have also included a condition to secure the provision of a new footway from the appeal site to the existing footway to enable future occupants to walk into the village.
30. Given the previous use of the site and the recommendations contained within the Preliminary Risk Assessment submitted with the application I agree that there is the potential for contamination. I have therefore included a condition to secure further investigation in respect of contamination and, in the event that contamination is identified to secure remediation.

31. Since a landscaping scheme and tree protection measures have been submitted as part of the application it is not necessary to secure their submission via condition. I have, however, included a condition to secure implementation of the landscaping scheme and tree protection measures.
32. The EHO has requested the submission of a construction environmental management plan. I do not consider it would be necessary to secure matters which would be addressed by other legislation. However, I agree it is necessary to restrict hours of construction and have included a condition to that effect.

Planning Balance and Conclusion

33. The appellant is not seeking to challenge that the Council can demonstrate a 5 year supply of housing. Nevertheless, it is asserted that Paragraph 11(d) of the Framework is engaged because the policies of most importance in determining this appeal are out of date. My attention has been drawn to an appeal decision at Gravel Bank, appeal reference APP/P3420/W/18/3199376, which, as a consequence, the Council advise that conflict of the proposed development with Policy H1 and ASP6 should only be given limited weight and that paragraph 11(d) of the Framework should now be engaged. I agree that limited weight should be given to the conflict with Policies H1 and ASP6.
34. It is, however, disputed that Policy SP1 is out of date. The Council assert that Policy SP1 of the CSS was not said to be out of date by the Inspector and continues to apply. In this case the Inspector concluded that Policies H1 and ASP6 were out of date but did not comment on Policy SP1 in this regard. However, the Gravel Bank site was predominantly a greenfield site and the Inspector gave weight to the conflict between the proposed development and Policy SP1.
35. I have concluded that Policies H1 of the NLP and ASP6 and SP1 of the CSS are out of date. In such circumstances, the Framework states that where the policies which are most important for determining the application are out of date, that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
36. There would be environmental and economic benefit from redeveloping brownfield land. The Council assert that the provision of new housing should only be given limited weight because it is able to demonstrate a 5.45 year supply of housing. However, given the Government's objective of significantly boosting the supply of homes I consider that the proposal would deliver moderate social benefits through the provision of 7 dwellings. I acknowledge that there would be conflict with Policies H1 and ASP6 which seek to direct new development to within development boundaries and village envelopes and Policy SP1 of the CSS which seeks to direct new housing towards identified sites. However, the village of Audley would be accessible on foot or by bicycle, there would therefore be sustainable transport opportunities. As such, I consider the policy conflict would be minor, and the proposal would accord with the development plan as a whole.
37. In the context of paragraph 11 of the Framework, the adverse impacts of the development would not significantly and demonstrably outweigh the benefits. Therefore, the development benefits from the presumption in favour of

sustainable development which points towards the grant of planning permission.

38. Thus, for the reasons given above, and having regard to all matters raised, the appeal is allowed.

M Savage

INSPECTOR

Schedule 1

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 466-01/GA-01, 0895-103 Rev B, 1297-P1, 1297-L1, M17/1297/01 Tree Protection, 0895-115B, 0895-110, 0895-111, 0895-112 and 0895-113.
- 3) The development hereby permitted shall not be commenced until details of the finished ground and floor levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) The development hereby permitted shall not be commenced until details of the provision of a footway linking the site access to the existing footway on Alsager Road as illustrated on drawing no 466-01/GA-03 have been submitted to and approved in writing by the local planning authority. The details shall be constructed in accordance with the approved details prior to the first occupation of the development.
- 5) The development hereby permitted shall not begin until a detailed foul and surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved prior to first occupation of the dwellings.
- 6) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 7) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan.

- The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 8) No development hereby permitted above slab floor level shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 9) No development hereby permitted above slab floor level shall take place until full details of surfacing materials for the parking areas have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 10) Visibility splays, which shall be kept free of all obstructions to visibility over a height of 600mm above the adjacent carriageway level, access, internal road and parking and turning areas shall be provided in accordance with the approved plans, reference 466-01/GA-01 and 0895-115B prior to first occupation of the dwellings hereby approved. The visibility splays shall thereafter be retained for the lifetime of the development.
 - 11) The development hereby permitted shall be carried out in full accordance with the scheme for the protection of the retained trees set out on the Design Strategy Report on Landscape and Tree Issues, dated July 2017.
 - 12) All planting, seeding or turfing comprised in the approved landscaping scheme, shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. For the avoidance of doubt, the approved landscaping scheme comprises Plans 1297-L1 and 1297-P1 and the Design Strategy Report on Landscape and Tree Issues, dated July 2017.
 - 13) No construction work shall take place outside of the following times:
Weekdays: 08:00-18:00
Saturdays: 08:00-13:00
 - 14) The garages shown on the approved plans shall be retained for the parking of motor vehicles and cycles.

END OF SCHEDULE