



Appeal Decision

Hearing Held on 20 April 2021

Site visit made on 21 April 2021

by Siobhan Watson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th April 2021

Appeal Ref: APP/U2370/W/20/3256711

Land adjacent to Building 18, Higham Side Road, Inskip, Preston, PR4 0TL

- 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 Taybridge Construction Ltd against the decision of Wyre Borough Council.
 - The application Ref 19/00567/OUTMAJ, dated 10 June 2019, was refused by notice dated 31 January 2020.
 - The development proposed is erection of B1c, B2 and B8 industrial units (outline).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal was submitted in outline and included details of access and layout for consideration but all other matters were reserved.
3. Following the submission of amended plans, the Council withdrew its reason for refusal in relation to highway safety. The plans also provided details of the extent of the removal of the hedgerow and where additional planting would be provided. As a result, the Council has also withdrawn the part of refusal reason 7 which reads *"the submitted site plan does not indicate the impacts of the proposed access to the site on the hedgerow that bounds Higham Side Road and therefore the impact on this habitat and potential requirement for mitigation cannot be fully assessed."*

Main Issues

4. The main issues are:
 - Whether the development would be an effective use of land in a location that would be accessible by a choice of sustainable transport modes.
 - The effect of the proposal on the character and appearance of the countryside.
 - Whether or not the development would be acceptable in respect of flood risk.
 - Whether the development would provide satisfactory surface water drainage.

- The effect of the proposed development on habitats and biodiversity with particular regard to the potential use of the site by geese and swans.

Reasons

Accessibility and the effective use of land

5. Eight industrial units, car parking and a new access off Higham Side Road are proposed. The site is fairly close to Inskip which is a main rural settlement but it is outside of the settlement boundary and is defined as being within the Countryside on the Policies map of the Wyre Local Plan (2011-2031) 2019 (LP).
6. LP Policy SP1 indicates that outside settlements, the amount of new built development will be strictly limited. LP Policy SP4 imposes strict controls over new development within the countryside and indicates that permission will only be granted in certain circumstances, one of which is the expansion of businesses in rural areas in accordance with LP Policy EP8. Policy EP8 allows for the expansion of existing businesses within the countryside where it is demonstrated that the scale and nature of the activity is not detrimental to the rural character of the area and any new building and supporting infrastructure is necessary. The appellant's stance is that the proposal is an expansion of an existing business and therefore falls into this circumstance. No case has been made that the proposal would fall into any of the other circumstances.
7. I heard at the Hearing that the appellant owns industrial units next to the appeal site which are used as offices and storage. Planning permission has also been granted for further buildings at the appellant's existing business premises but this has not been implemented. He explained that his business is construction contracting and property development. The appeal units would be constructed by the appellant to sell or lease to other parties but he might occupy a portion of the development himself. The parties confirmed that the appellant's adjoining existing buildings were for sale and under offer.
8. I do not dispute that the appellant has existing premises adjacent to the appeal site. However, that land is not edged in blue on the plans and the above details of this business only emerged at the Hearing. Moreover, the appellant's business has no firm plans to occupy the development.
9. I appreciate that property development is a business and that the creation of a business park for other users would be a property development venture as part of his enterprise. However, in planning terms, I do not consider that the proposal constitutes an expansion of an existing business in land use terms as there is no clear plan that there would be a functional relationship between the businesses on the two sites. The proposal is therefore not supported by LP Policies SP4 and EP8.
10. In coming to this conclusion I have had regard to a previous appeal decision in Poulton-Le-Fylde¹ which states that "*whether all the activities at the site are treated as one business for tax and accounting purposes is not relevant when assessing whether the proposal is an expansion of the existing commercial business. In land use planning terms, the key issue is whether*

¹ APP/U2370/W/20/3244933

there is any functional relationship between the proposed activities and the existing business."

11. The appellant claims the site is previously developed land and drew my attention to historic development on the site. However, I noted at my visit that although some small remnants of hardstanding can be seen on the site, these are only apparent on close inspection and have blended into the landscape. Therefore, the site does not fall into the definition of previously developed land as set out in Annex 2 of the Framework.
12. There is no dispute between the parties that the site is not well served by public transport, the nearest bus stop being about half a mile away, and that there is a lack of pavements and streetlighting on Higham Side Road. The surrounding land is fairly flat so it would be possible to cycle to the site but the appellant accepts that the main mode of transport for future employees would be by a motor vehicle.
13. The appellant has drawn my attention to Paragraph 84 of the Framework which advises that planning decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport. It indicates that in these circumstances it will be important to ensure that development is sensitive to its surroundings and exploits any opportunities to make a location more sustainable (for example by improving the scope for access on foot, by cycling or by public transport).
14. Firstly, in relation to Paragraph 84, there is no evidence before me that there is a shortage of employment land in the borough and I heard that the Nightjar site next to the appeal site is protected employment land. I note the appellant's comments that there will be 85 new dwellings built in Inskip and that the proposed industrial units would provide employment opportunities for the future occupants. The proposed industrial units would, in his opinion, allow Inskip residents to have shorter journeys to work, avoiding commuting to further afield centres such as Preston.
15. However, this new housing is a result of an allocation in the LP where the employment allocations were also made. I note the appellant's comments at the Hearing that the employment allocations are in the wrong place but these too, have been determined within the Local Plan process. In any event, whilst Inskip is the nearest settlement, this does not mean that employees would necessarily be from Inskip.
16. I note the appellant's evidence that there have been enquiries in relation to the proposed units, which means that there is a demand for them and I have no reason to doubt that people would want to take on the proposed units. However, given that there is no shortage of employment land, I have no convincing evidence that the development of the site would meet an identified local business need.
17. Secondly, in relation to Paragraph 84, there is no substantive proposal to make the site more sustainable although the appellant has offered to provide electric charging points for cars. The availability of electric charging points might encourage workers to use an electric vehicle but it would not prevent non-electric vehicles being used or reduce the reliance on car journeys to and from the site.

18. I conclude that the site would not make an effective use of land in a location which would provide a choice of modes of travel as it is not easily accessible by walking or public transport. Therefore, the proposal would conflict with LP Policies SP1, SP2 and CDMP6 which, in combination, indicate that new development should take place within settlement boundaries unless supported by another policy in the plan; maximise the use of previously developed land; ensure accessible places and minimise the need to travel by car.
19. It would also conflict with Paragraphs 102 and 103 of the Framework which indicates that the planning system should actively manage patterns of growth in support of certain objectives, including opportunities to promote walking, cycling and public transport use.

Character and Appearance

20. The site is agricultural land in an area with a predominantly open and rural character. I accept that there is sporadic development in the wider area. The most notable of these developments is the group of industrial units known as "Nightjar" adjacent to the site. There are also very tall and large defence masts nearby and the appellant's own industrial units are next to the site. However, existence of sporadic development is not uncommon within countryside areas.
21. The appellant's submitted Landscape Assessment argues that the site is visually contained by the existing surrounding development and that views of the appeal site are limited to a fairly localised area due to intervening woodland, hedges and buildings.
22. At my visit I was able to see the site in the context of the surrounding land, vegetation and buildings. The site and surrounding land is fairly flat and although other buildings can be seen alongside it, the site itself does not have a high degree of enclosure as it is mostly adjacent to large expanses of other fields from which the site is visible. It is also highly visible from Higham Side Road. There is a hedge on the boundary with the road but this hedge is not tall enough to screen the site and any new buildings and even if it were, the site would still be visible through the new access and from surrounding land.
23. Within the above landscape context, the proposed development would erode the predominantly open nature of the area and change the site's rural appearance to one of a more urban character. The proposal would be an obvious visual intrusion within the rural landscape.
24. I conclude that the development would harm the character and appearance of the countryside and conflict with Policies SP2, SP4, EP8 and CDMP3 of the Wyre Local Plan (2011-2031) 2019 (LP) which in combination seek to protect the landscape, the local context and the rural character of the countryside.

Flood Risk

25. The site is mainly in Flood Zone 1 but the access road and much of the parking would be located in Flood Zones 2 and 3. The Framework, in Paragraph 155, says that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future). Paragraph 158 says that development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower

risk of flooding. It also indicates that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

26. I note the appellant's comments that the access road and parking is on the extremities of Flood Zone 2 and 3. However, neither the Framework nor the Planning Practice Guidance (PPG) make any differentiation between areas in the middle of, or the extremities of, the flood risk zones.
27. I heard from the appellant that there has been no flooding during the 13 years he has owned the site. Nevertheless, the PPG sets out that the risk of flooding in Flood Zone 2 is between as 1:100 and 1:1000 annual probability of river flooding and between 1:200 and 1:1000 annual probability of sea flooding. Flood Zone 3 is more than a 1:100 annual probability of river flooding and more than 1:200 annual probability of sea flooding. Hence, flood risk is calculated over a far longer time-period than 13 years.
28. I heard at the Hearing that the appellant did not undertake a sequential test because his view is that the proposal constitutes an expansion of an existing business and therefore, there are no other sites that could accommodate the development. However, I have already found that the proposal does not constitute an expansion of an existing business in terms of Planning Policy. In addition, both parties agree that there is no shortage of employment land in the borough. Therefore, the sequential test should have been undertaken and passed.
29. I note that the buildings would be in Flood Zone 1 but it is important that workers can get home or be rescued in a flooding event. Notwithstanding the fact that a sequential test has not been passed, as the access and parking is in Flood Zone 2/3, this would hinder the escape from the site. Paragraph 163 of the Framework states that developers must demonstrate that safe access and escape routes are included but this has not been done.
30. The Framework and the PPG are clear that the Exception Test should only be applied following the application of the Sequential Test. It says that an applicant will need to show that both elements of the Test can be satisfied. This procedure has not been followed. I appreciate that the Environment Agency did not object to the proposal but it did advise that the Council should determine the sequential test.
31. I conclude that the proposed development would be subject to an unacceptable flood risk. It would therefore conflict with LP Policy CDMP2 which indicates that where development is proposed in areas at risk of flooding, unless specifically proposed in the Local Plan, it must be demonstrated that the Sequential Test has been applied and there are no reasonable available alternative sites at lower risk, considering the nature of flooding and the vulnerability of the development. It would also be contrary to advice in the Framework and the PPG.

Surface Water Drainage

32. LP Policy CDMP2 indicates that a sustainable drainage system should be incorporated into new development and only as a last resort, there should be controlled discharge into the combined sewerage network where United Utilities have indicated acceptance. Development will be required to minimise the rate of discharge to the public sewerage system as much as possible.

Furthermore, the PPG advises that new development should only be considered appropriate in areas at risk of flooding if priority has been given to the use of sustainable drainage systems.

33. The proposed sustainable drainage plan includes swales to store water. The appellant's drainage report indicates that the maximum storage requirement is 490 cubic meters and the drainage plan indicates a total storage potential as 600 cubic meters in swales. However, 250 cubic meters of this would be stored in a swale outside of the site. The Council has pointed out that the swale outside of the site would be an engineering operation requiring planning permission and therefore, it cannot be considered as part of the proposal as it is outside of the red line area. I have no reason to disagree with this position. Therefore, the proposed development would not accommodate the complete sustainable drainage system.
34. I appreciate that neither the Council's Drainage Engineer nor United Utilities objected to the planning application. However, neither consultees had the proposed drainage scheme before them when they were consulted. I have already found that the site has an unacceptable flood risk. Given this identified risk, and the fact that the appellant has not been able to demonstrate that a sustainable drainage system can be fully accommodated within the site, I conclude that the proposal does not provide a satisfactory drainage system and conflicts with LP Policy CDMP2 and the PPG.

Habitats and biodiversity

35. In order for a development to be screened out at the Stage 1 part of the Habitats Regulations Assessment (HRA) process there must be no doubt that the scheme will not have any harmful impacts on the special interest of any European Site.
36. In response to the appellant's Stage 1 Screening, Natural England (NE) advised in its response to consultations from both the Council and myself that the bird survey information was incomplete as no local bird data had been included. It advised that information should be gathered from the local bird groups to help determine whether the application site and surroundings are being used by significant numbers of bird species from European designated sites. This information would make the submitted evidence more robust and would inform whether further survey work should be undertaken. NE did not dispute any of the findings already contained within the report.
37. A revised Stage 1 Screening report was submitted shortly before the Hearing, to include the additional information from Fylde Bird Club. The Club provided records of birds in the tetrads (2km by 2km squares) within 2 kilometres of the centre of the appeal site.
38. The report identified that, based on the relative distance to the European designated sites, and in consideration of the potential pathways of impact, the European designated sites which are potentially vulnerable to impact are the Ribble and Alt Estuaries Special Protection Area (SPA) and Ramsar Site; Morecambe Bay Special Area of Conservation (SAC) and Ramsar Site; and Morecambe Bay and Duddon Estuary SPA.

39. These sites are designated for their intertidal estuarine flats of international significance for wintering wading birds and national significance for wintering wildfowl. The site is also within NE's Impact Risk Zone for Goose and Swan.
40. The report demonstrated that the surrounding area beyond the site has been used by 20 of the qualifying bird species at the Ribble and Alt Estuaries and/or the Morecambe Bay and Duddon Estuary SPA, with 9 of these qualifying species recorded in the tetrad which contains the site. This suggests that the immediate wider area may be used as functionally-linked land by the relevant qualifying species.
41. However, based on the distances involved and the presence of the existing road network which separates the site from the tetrads where Fylde Bird Club have reported the records, it was concluded in the revised report that the resultant development would be unlikely to cause the displacement of these 20 species from the fields in the wider area.
42. In addition, even in the event that flocks of birds were deterred from using the fields in close proximity to the site during the construction period there are other large similar fields in the wider area where the qualifying species can be displaced to beyond the site.
43. The report also assessed whether there would be combination effects of other development and found that there would be no risk of a likely significant in-combination effect either. The absence of in-combination effects has not been disputed by any party.
44. For the above reasons, I exclude the potential for likely significant effects on the integrity of birds including goose and swan or on the integrity of the habitats sites. Therefore, there would be no need to move onto the next stage of the HRA process. I conclude that there would be no harm to ecology or biodiversity. As such, I find no conflict with LP Policy CDMP4 which seeks to protect ecology.

Other Matters

45. The appellant has referred to numerous legal cases in support of his interpretation of planning policy, particularly in respect of development in rural areas. The judgements have not been provided by the appellant but I note his commentary. Nevertheless, as the decision maker, I have applied the relevant planning policies as I understand them and have found conflict with policies in both the LP and the Framework in respect of rural development. I have considered all other material considerations but none outweigh the conclusions I have reached.

Conclusion

46. Although I have found no harm to ecology, I do find harm in respect of all the other main issues. Therefore, the proposed development would conflict with the development plan as a whole and the appeal is dismissed.

Siobhan Watson

INSPECTOR

APPEARANCES

For the Appellant:

Mr Gary Petherbridge – Appellant

Mr Chris Wheetman BA(Hons), DMS MRTPI – Planning Consultant

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Dean Blackhurst, BA (Hons), MSc, CMLI – Director, ReLandscape Ltd

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For the Council:

Miss Lucy Lowcock BSc – Wyre Borough Council

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