

Appeal Decision

Hearing held on 13 September 2016, 2 November 2016 and 3 November 2016

Site visits made on 13 September 2016 and 3 November 2016

by Beverley Doward BSc BTP MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/H1033/W/16/3147202

Birch House, Spinnerbottom, High Peak, Derbyshire, SK22 1DH

- 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 & Mrs Bobby Lawton against the decision of High Peak Borough Council.
 - The application Ref HPK/2015/0283, dated 12 May 2015, was refused by notice dated 29 September 2015.
 - The development proposed is the demolition of existing buildings and replacement with 3 No detached dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by High Peak Borough Council against Mr & Mrs Bobby Lawton. This application will be the subject of a separate decision.

Procedural Matters

3. The Hearing opened on 13 September 2016 and was adjourned until 2 November 2016 to allow the Council to provide an up to date position in relation to housing completions. I undertook an accompanied site visit on 13 September 2016 and an unaccompanied site visit on 3 November 2016.
 4. The planning application subject to this appeal was determined under the provisions of the saved policies of the High Peak Local Plan 2008. The High Peak Local Plan 2016 (Local Plan) was adopted on 14 April 2016 and now forms the relevant development plan for the area. Accordingly, I have determined the appeal on this basis.
 5. The appellants were given the opportunity to provide a further statement on the implications for the appeal of the relevant adopted policies of the Local Plan prior to the Hearing.
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Main Issues

6. Having regard to all that I have read and the discussion at the Hearing the main issues in this case are:
- whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework);
 - the effect of the proposal on the character and appearance of the Green Belt and the surrounding area, including the implications for the retention and health of protected trees on the site; and
 - whether the continued use of the site for employment uses is viable or appropriate.

Reasons

Whether the proposal would be inappropriate development in the Green Belt

7. The appeal site lies within the North West Derbyshire Green Belt. It comprises part of a heavily wooded parcel of land containing a number of vacant buildings used in connection with the use of the site as an abattoir/knackers yard. The appeal proposal involves the demolition of the existing buildings on the site and the erection of three detached dwellings with garden areas. Vehicular access would be provided by an existing access drive off Spinnerbottom which would be altered to provide two passing places and an area dedicated for visitor parking which could also serve as a passing place when not occupied by parked vehicles.
8. Policy EQ 4 of the Local Plan indicates that the Council will seek to protect the Green Belt and maintain its openness and permanence. It also indicates that within the Green Belt, planning permission will not be granted for development unless it is in accordance with national planning policy.
9. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It indicates, at paragraph 89, that the construction of new buildings should be regarded as inappropriate in the Green Belt unless they fall within certain specified exceptions. One of these exceptions relates to *"the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land) whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development"*.
10. There is no dispute between the parties that the site comprises previously developed land and that accordingly the proposal would comprise the redevelopment of a previously developed site. Therefore, in considering whether the proposal would be inappropriate development in the Green Belt for the purposes of the Framework it is necessary to go on to consider whether it would have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development.
11. In relation to the consideration of whether the appeal proposal would have a greater impact on the openness of the Green Belt than the existing

development my attention has been drawn to an appeal¹ decision for residential development on the site which post dates the Framework and in which the Inspector concluded that based on an estimate of the floorspace of existing buildings on the site and the proposed dwellings it was reasonable to assume that the volume of built development on the site would be reduced as a result of that proposal and that therefore it followed that the proposal would increase the openness in this part of the Green Belt, which weighed in favour of the proposal.

12. Unlike the previous appeal proposal, which was in outline form with all matters other than access reserved, the current appeal proposal is in full. There is no dispute between the parties that the appeal proposal would result in a reduction in both the total floorspace and volume of the existing permanent built development on the site and I see no reason to take an alternative view. The proposal would also result in the removal of a number of non permanent structures on the site including a vehicle shelter and cabin. However, the Council contends that the issue of the impact on openness is not just a question of considering the footprint and/or volume of the proposed development compared to that of the existing development but involves wider considerations such as the scale and height of the proposed dwellings, the reduction in tree cover and its impact on the appearance of the area and the use and occupation of the curtilage of the proposed dwellings by residential paraphernalia.
13. The openness of the Green Belt has both a spatial and visual aspect. However, given that the appeal proposal would result in a reduction of both the total footprint and volume of permanent built development on the site and that the dwellings and their gardens would be sited within the existing commercial development apron of the site, I am satisfied that notwithstanding the scale and height of the proposed dwellings, any associated residential paraphernalia or the loss of some trees the development would not have a materially greater impact on the openness of the Green Belt than the existing development.
14. Paragraph 80 of the Framework sets out the purposes of including land within the Green Belt. These include to assist in safeguarding the countryside from encroachment.
15. The appeal site is elevated above Spinnerbottom and is physically constrained by the topography of the area and the mature woodland which surrounds it. In so far as the proposed dwellings would be sited within the existing commercial development apron which comprises permanent structures and their associated curtilages and would be of a lesser footprint and volume, they would not physically encroach into the countryside any more than the existing built development. The proposal would also result in the removal of a number of non permanent structures associated with the former uses within the curtilage areas as well as the removal of other non permanent buildings which lie outside the site but within the wider parcel of land which is in the ownership of the appellants and included within the land edged blue. Accordingly, in this respect there would be some enhancement of the purpose of including land within the Green Belt.
16. Notwithstanding the rural setting of the site a number of the existing buildings on the site are permanent structures which despite being somewhat utilitarian

¹ APP/H1033/A/13/2193485

in appearance are not insubstantial in terms of their bulk and mass. They are also somewhat urban in form, particularly the knacker's yard, incinerator and abattoir including the incinerator chimney. Accordingly, I am not persuaded that having regard to the siting of the three proposed dwellings within the existing commercial development apron of the site they, along with any residential paraphernalia that may accompany them, would have any greater urbanising impact than that which exists at present. I am also mindful that there would be activity and paraphernalia associated with the continued existing lawful use of the site.

17. I am mindful that the Inspector in his decision on the 2013 appeal considered the effect of residential development on the site on the purposes of including land within the Green Belt and also that the proposal in that case was in outline form with all matters other than access reserved for future approval. Nevertheless, from my reading of that decision it seems to me that his conclusion in this respect was informed by the submitted indicative layout drawing which showed five sizeable detached dwellings and garages set on spacious plots. The Council has also referred me to an earlier appeal decision² dated 3 December 1991 for a proposal to build five new dwellings and to rebuild an existing chalet on the site and to the Inspector's findings in relation to the issue of the Green Belt in his report to the Secretary of State. However, this was an outline proposal for six dwellings as opposed to the current detailed proposal for three dwellings. Moreover, it was considered in the light of previous national planning policy as set out at that time in PPG2. Therefore, the circumstances are not the same as in this case.
18. Consequently, in the light of all of the above I consider that the proposal would not be inappropriate development within the Green Belt for the purposes of the Framework. Accordingly, it would not conflict with policy EQ 4 of the Local Plan in this respect.

Character and appearance

19. The appeal site is located outside the settlement boundary of Birch Vale within the countryside. It lies in a well-wooded rural landscape characterised by steeply sloping valley sides, linear development, sporadic housing and farmsteads. The site is elevated above the linear residential development along Spinnerbottom and, as indicated above, the proposed dwellings would be sited within the existing commercial development apron of the main body of the site. The two dwellings in the northern part of the site would be two storeys in height and comprise integral garages and 5 bedrooms. Their respective gardens would be located to their east and west respectively. The existing stone retaining wall which runs along the northern boundary of the appeal site would be retained and made good and would run to the rear of the dwellings. The dwelling to the south would be split level with a separate detached garage to the north east and its garden to the west.
20. The appellants indicate that the dwellings would be constructed of stone and slate. This would be in-keeping with many of the residential properties in the surrounding area. Furthermore, notwithstanding the essentially linear form of the settlement of Birch Vale they would, by forming a cluster of buildings, appear akin to the scattered stone farmsteads which are indicated in the Council's Landscape Character Supplementary Planning Document as being a

² EMP/1030/219/18

key characteristic of the Dark Peak: Settled Valley Pastures landscape within which the site is located. In this respect the proposed development would also accord with the Council's Residential Design Supplementary Planning Document which indicates that an understanding of the wider landscape is important for all those who are involved with shaping the built environment. Accordingly, in terms of their scale, design and layout the proposed dwellings would not appear out of keeping with the character of the surrounding area.

21. The Council refers to the findings of the Inspector in the 2013 appeal which indicated in that case that the proposed residential development would cause harm to the character and appearance of the area and the visual amenity of the Green Belt. However, as indicated above, notwithstanding that the proposal was in outline form, from my reading of the appeal decision it seems to me that the Inspector's findings in this respect were informed by the submitted indicative layout drawings which showed five sizeable detached dwellings and garages set on spacious plots. Furthermore, there is no indication that the Inspector had the benefit of a Landscape and Visual Assessment (LVA), as is the case here, nor did he have the benefit of the lengthy discussion that took place on this issue at the Hearing, the previous appeal having been dealt with by written representations.
22. On my two site visits, which both took place during the autumn months, the latter one being in November as the leaves were starting to fall from the trees, I viewed the site from a number of view points within the surrounding area. I saw that the site was screened by both the topography of the landscape and the surrounding trees. The LVA indicates that even in the winter months views of the buildings in the main body of the site are limited and filtered by the surrounding trees and that it is only the barn and the stables which are the most exposed buildings that can be viewed from any public vantage point. I see no reason to disagree with these findings.
23. In the light of the LVA and from what I saw on my site visits it seems to me that, notwithstanding the scale and height of the dwellings, views of them and any associated residential paraphernalia from the surrounding area would be restricted by the screening afforded the site by its woodland surroundings such that they would not appear as a prominent intrusion within the countryside or be detrimental to the character and appearance of the Green Belt or the surrounding area.
24. The mature trees which screen the site form part of a woodland which benefits from a Tree Preservation Order (TPO). The protected woodland is mainly outside the appeal site on land which is in the ownership of the appellants within the land edged blue. Some trees which lie close to the access and the existing buildings would be removed for health and safety reasons. However, it is likely that these would need to be removed for these reasons regardless of the proposed residential development as they pose a risk to the owners of the site and/or people at their place of work should the site be used again for its existing lawful use. The appellants indicate that they would be willing to retain these trees as standing columns in order to retain their biodiversity benefits.
25. The Council suggests that depending on the method of construction there may be some additional tree loss to accommodate the access improvements and passing places, to remove any trees near to the proposed properties where they would pose an unacceptable risk and as part of an ongoing management

plan. However, it accepts that if a suitable woodland management scheme could be secured then this would potentially benefit the woodland as a whole which has had little or no active management for a number of years. The parties have agreed the wording of a condition to secure such a scheme in the event that the appeal was to succeed. Accordingly, it seems to me that notwithstanding the potential loss of the trees referred to above the proposal by virtue of the proposed woodland management scheme would be likely to improve the amenity value of the woodland as a whole.

26. I note the concerns of the Council in relation to the co-existence of the trees and the proposed dwellings, given their proximity and the likelihood for there to be pressure from future residents of the dwellings for further tree removal due to the perceived risk of trees falling and/or over shading of the dwellings and their gardens. However, in my view the people that are likely to purchase the proposed dwellings, in an existing woodland setting, would also be likely to accept and appreciate this setting and are unlikely to seek to remove further trees. In any case the TPO, together with the provisions of the woodland management scheme, would protect the trees from being felled by individual residents without justification and the dense woodland setting is such that the necessary loss of a limited number of further trees, would not be likely to harm the group value of the woodland or be detrimental to the overall character and appearance of the area.
27. Having regard to all of the above therefore, I consider that the proposal would not materially harm the character and appearance of the Green Belt and the surrounding area. Accordingly, overall it would comply with policies S 1, EQ 2, EQ 3, EQ 6 and H 3 of the Local Plan which when taken together seek to ensure that development respects and protects the character and distinctiveness of the locality and the surrounding landscape. Furthermore, it would comply with policy EQ 9 of the Local Plan in so far as it seeks to protect existing trees and woodland.

Whether the continued use of the site for employment uses is viable or appropriate

28. Policy E 4 of the Local Plan indicates that proposals for the redevelopment of existing business or industrial land for non-employment uses will only be permitted in certain circumstances. These include where the continuation of the land or premises in industrial or business use is constrained to the extent that it is no longer suitable or commercially viable for industrial or business use as demonstrated by marketing evidence commensurate with the size and scale of development and the proposed use is compatible with neighbouring uses.
29. This policy is consistent with the advice at paragraph 22 of the Framework which indicates that where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.
30. The planning application subject to the appeal was accompanied by a marketing report which provided evidence of the marketing exercise undertaken on the site. It concluded that there was no interest in the site for a viable commercial purpose and that, given the problems associated with the market in general and more specifically with the site due to the condition of its buildings, changes of level and restricted access, the premises would never be

a viable commercial proposition and would remain vacant. It also indicated that the landowners had been advised to consider alternative non-commercial uses, such as residential, which it was considered would be in-keeping with adjoining properties.

31. The marketing report indicates that for the period between May 2014 and May 2015 the site had been marketed by, and displayed within, the local office of a firm of commercial agents, advertised in the local press and through other advertising media. It indicates that during the period of marketing four parties had expressed interest in viewing the site and that an offer from a former employee of the abattoir/knacker's yard that had previously operated on the site was made at the end of May 2014. The evidence indicates that the offer was made at the asking price and was confirmed in writing in September 2014 and supported by confirmation of the necessary funds, copies of accounts, a cash flow statement and a projected balance sheet but that in the absence of a comprehensive business plan it was rejected.
32. The appellants do not dispute that the offer was genuine or that the interested party had the necessary finances to complete the transaction but rather they contend that the condition of the buildings and their current energy efficiency rating is such that the amount indicated in the prospective purchasers documentation for improvements was inadequate to bring the property back into a useable state. Nonetheless, it is clear that an offer to purchase the freehold of the site was made at an early stage in the marketing of the site and, as accepted by the appellants at the Hearing, this offer was in excess of the open market value of the site. Accordingly, it seems to me that its rejection was somewhat unreasonable, particularly in the light of the evidence provided in the financial viability appraisal and property report prepared by the appellants for the appeal on the viability of the proposed residential development. This indicates a level of development profit which, at just over £173,000 or 11.57% of GDV, is agreed by both the parties as being such as to conventionally render a scheme unviable, albeit I note that the appellants indicate that because in this case they have owned the site for several years they would be able and willing to undertake the development. Furthermore, written evidence provided at the Hearing indicated that the party that made the previous offer on the site was still interested in purchasing it on an existing condition basis for the use that it has previously been put to.
33. As indicated above a financial viability appraisal and property report was prepared by the appellants for the appeal. In relation to the viability and appropriateness of the continuing use of the site for employment uses there is no dispute between the parties that its redevelopment for employment uses would be unlikely to be viable. However, there is disagreement between the parties on the suitability and viability of the continued use of the site and buildings for either the existing lawful use or low grade B2 employment uses.
34. The structural appraisal of buildings on the site indicates that the buildings within cluster 1 (the abattoir and incinerator buildings) are in a poorer state of repair and require more significant reinstatement works than those in cluster 2 (the knacker's yard buildings) which are indicated as being in generally good condition and require only minimal significant repair works. I appreciate that the appraisal was undertaken some months ago, the report being dated February 2016. However, from the evidence and from what I saw on my site visits it seems to me that whilst the buildings are clearly in a state of disrepair

their condition is not such as to warrant being considered derelict as suggested by the appellants.

35. The extent of the work necessary to refurbish the buildings to bring them back into use will undoubtedly depend upon the nature of the intended future use and the continuing interest expressed from the party that made the previous offer on the site would seem to indicate that their condition is not such as to be a deterrent to the site continuing to be used for its existing lawful use.
36. The appellants refer to the supporting text to policy E 5 of the Local Plan which is titled regenerating an industrial legacy and acknowledges that some employment sites and premises in High Peak are the legacy of a bygone era and that consequently some of the existing stock is heavily constrained by poor access, conflicts with adjacent uses, contamination, environmental issues and buildings in poor condition or even obsolete. It is contended that the appeal site by virtue of its sole means of access and the condition of the buildings is reflective of the description in the supporting text to that policy. However, I note that the appeal site is not identified in that policy as one of the sites that the Council will seek to maximise the potential of because it considers it is no longer suited to meeting the needs of modern businesses in their present form.
37. I am mindful that the access to the site was used by vehicles serving the previous use on the site for more than 20 years and that there is no evidence of any accidents from its use. Accordingly, from the evidence I am not persuaded that it could not continue to be used to serve an employment use on the site. Furthermore, whilst I appreciate that the site is in a relatively remote location it seems to me that, in addition to the existing lawful use it would be suitable for other low grade employment uses which may benefit from such a location so as not to cause harm to the living conditions of immediate residential neighbours. In relation to whether or not any re-use of the site for employment uses would accord with policy EQ 10 of the Local Plan which relates to pollution control would depend on the specific nature of any future use and whether or not it required planning permission.
38. The appellants refer to the availability of other more attractive employment sites nearby. However, both parties agree that there is a demand for sites which could accommodate low grade employment uses. Therefore, it seems to me that despite not being one of the Borough's best employment sites the appeal site could perform an important function in accommodating such uses.
39. Taking all of the above into account therefore on the basis of the evidence, I am not satisfied that the continued use of the site for employment generating purposes is not viable or appropriate. Accordingly, the appeal proposal would be contrary to policy E 4 of the Local Plan which is consistent with the advice in the Framework.

Other matters

40. It was put to me at the Hearing that in so far as the proposal lies outside and does not adjoin the defined built up area it would not comply with policy H 1 of the Local Plan which relates to the location of housing development. However, as indicated above the site lies within the Green Belt and as such the proposal for the redevelopment of a previously developed site falls to be considered under the more stringent local and national Green Belt policies. Accordingly, I consider that this policy is not directly relevant to this case.

41. The appellants refer to the level of housing completions which have been delivered between April 2011 and September 2016 and suggest that the appeal proposal would make a useful contribution as a windfall towards meeting the housing requirement. However, they do not dispute the Council's ability to demonstrate a five year supply of deliverable housing land as required by the Framework. Accordingly, there is nothing in the evidence to lead me to conclude that the Council's policies for the supply of housing should not be considered up-to-date or that paragraph 14 of the Framework is engaged.
42. The appellants suggest that the continued use of the appeal site for its existing lawful use would have the potential to generate considerably more activity than the proposed development and that the proposal provides the opportunity to eliminate a bad neighbour use. However, there would appear to be an inherent contradiction in this argument and the appellants' contention that the resumption of that use is no longer viable. In any event there is nothing in the evidence to indicate that the activity associated with the previous use of the site had caused harm to the living conditions of nearby residents.

Conclusion

43. To conclude therefore the proposal would not be inappropriate development in the Green Belt and would not have a significantly harmful effect on the character and appearance of the Green Belt or the surrounding area. However, these factors, along with the local support expressed for the proposal, by way of the petition which was submitted by the appellants to the Hearing or the contribution of an additional three dwellings to the supply of housing locally, do not serve to outweigh the harm that I have identified above in relation to the continued use of the site for employment generating purposes. Accordingly, the proposal would be contrary to the development plan as a whole.
44. I have found no material considerations which would warrant making a decision other than in accordance with the development plan. Therefore, for the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Beverley Doward

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Kevin Leigh of Counsel
Susan Jones
Philip Kelly

The Susan Jones Consultancy
Eddisons

FOR THE LOCAL PLANNING AUTHORITY:

John Barrett of Counsel
Karen Taylor MSc URP MRTPI
Hilary Senior BA MCD MRTPI
Monica Gillespie
Chris Thomas

High Peak Borough Council
High Peak Borough Council
High Peak Borough Council
Thomas Lister

DOCUMENTS SUBMITTED AT HEARING

1. Letter from Emma Podmore DEP Landscape Architecture dated 9 September 2016 titled 'Response to Arboricultural Officers Appendix to LPA Statement
2. Table titled High Peak Borough Council 5 Year Land Supply Assessment March 2016 (350) Liverpool inc 20% buffer
3. Letter from Emma Beeson dated 11 September 2016
4. List of LPA Proposed Conditions
5. List of Council Appendices
6. Copy of signed Statement of Common Ground
7. Email dated 25 October 2016 from Susan Jones to PINS and attachment of comments on behalf of the appellants on suggested conditions by the Council received on 17 October 2016
8. Letter from Susan Jones dated 24 October 2016
9. Petition from residents of Spinnerbottom
10. Plans accompanying planning application on site subject to previous appeal
11. Policy EQ 10 of High Peak Local Plan
12. Policy DS 15 of High Peak Local Plan
13. Extract of Local Plan proposals map
14. Emails dated 21 October 2016 from Emma Podmore to Susan Jones
15. Final Comments on behalf of High Peak Borough Council
16. Suggested wording of condition related to woodland and landscape management plan
17. Application for costs from High Peak Borough Council