
Appeal Decision

Hearing held on 25 January 2017

Site visit made on 25 January 2017

by Elaine Worthington BA (Hons) MTP MUED MRTPI

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

Decision date: 6th April 2017

Appeal Ref: APP/W4325/W/16/3154827

Riverside Park, Riverwood Road, Bromborough, CH62 3QT

- 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 Riverside Park Limited against the decision of Wirral Metropolitan Borough Council.
 - The application Ref OUT/15/01129, dated 10 August 2015, was refused by notice dated 20 January 2016.
 - The development proposed is an outline application (access only) for a residential development of up to 75 apartments with landscaping, parking and associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters except access reserved for future consideration. However, an indicative masterplan was provided to which I have had regard.
3. The Council has confirmed that the third reason for refusal on the original decision notice relating to highway safety was included in error and subsequently superseded by an alternative reason (concerning the impact of the proposal on employment development in the wider area) on an updated decision notice. I confirm that I have considered the appeal on this basis.

Main Issues

4. The main issues in this case are:
 - Whether the proposal would be a suitable site for development having regard to national and local policies which seek to safeguard employment land; and
 - The effect of the proposal on the level of risk to public health and safety having regard to its proximity to a building with a hazardous substances consent; and
 - Whether the proposal would provide adequate living conditions for future occupiers with particular reference to amenity space and privacy; and
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- The effect of the proposal on biodiversity and protected species; and
- Whether the future occupiers of the proposed development would have acceptable access to local services and facilities.

Reasons

Employment land

Policy background

5. The appeal site is within a Primarily Industrial Area (PIA) as identified by the adopted Wirral Unitary Development Plan (UDP) adopted in 2000 and forms part of the Wirral International Business Park (WIBP). UDP Policy EM8 relates to development in PIAs and is permissive only of uses falling within Classes B1, B2 or B8 of the Use Classes Order. The Council also refers to UDP Policies EM6 and EM7 but as these relate to new employment development, rather than residential development, I do not regard them to be relevant.
6. Although it was adopted some time ago, UDP Policy EM8 is consistent with the aim of the National Planning Policy Framework (the Framework) to build a strong and competitive economy, and with the economic role of sustainable development (described at paragraph 7 of the Framework) which sets out the need to build a strong, response and competitive economy, by ensuring that sufficient land of the right type is available in the right places.
7. However, Paragraph 22 of the Framework also expects planning policies to avoid long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. It advises that where there is no reasonable prospect, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable communities.
8. Policies in the Proposed Submission Draft Core Strategy (Core Strategy) are referred to by the Council. Modifications to this were published for consultation in 2013 and, subject to the completion of on-going work in relation to economic viability, the Council intends to undertake further consultation on the Core Strategy in September 2017 with a view to submitting it for examination in December 2017. Given this relatively early stage of preparation, and since the Core Strategy remains subject to consultation and has not yet been examined, the weight I attribute to its policies is very limited.
9. Nevertheless, Core Strategy Policy CS17 (as modified) seeks to safeguard designated employment areas, with provision for compatible alternative uses in a number of circumstances. These include: that the site has been continuously marketed for employment uses at realistic prices for at least 12 months and there is no reasonable prospect of it being re-used for employment purposes; that an ongoing supply of available, suitable, developable employment would be retained; and that the uses proposed are compatible with the character of the surrounding area, would not restrict the operation of other employment uses and would contribute towards more sustainable patterns of development. It seems to me that these are useful criteria to establish if there is a reasonable prospect of the site being used for employment purposes (in accordance with paragraph 22 of the Framework).

The Wirral International Business Park (WIBP) and the appeal site

10. WIBP was designated by the former North West Development Agency as a Strategic Regional Site. The Wirral Employment Land and Premises Study Refresh (September 2012) (Employment Land Study) identifies it as the Wirral's premier business park with good access to the A41 and M53 Motorway. It finds that it has a good range of modern industrial and warehouse buildings and is fit for purpose and will have a clear economic role now and over the next 20 years. The WIBP is identified as a primary focus for new jobs to support economic revitalisation in the emerging Core Strategy. Core Strategy Policy CS2 sets out the broad spatial strategy and Policy CS7 seeks to maximise the economic contribution of WIBP at Bromborough.
11. UDP Policy URN1 concerns development and urban regeneration and advises that the local planning authority will be guided by the general principles of the urban regeneration strategy which seeks to achieve significant relative improvement in the physical, economic and social conditions experienced by those Wirral residents who are disadvantaged. The Council confirms that the eastern side of the Wirral takes in the borough's most deprived areas, where people are in the greatest need of employment and training, and remains the primary focus for development. The Council's Investment Strategy seeks to increase the number of jobs and employment opportunities in the borough.
12. The appellant advises that in the north west region Bromborough is not recognised as one of the premier or established office locations and refers to numerous other better quality and located sites, including Chester Business Park and Daresbury Business Park in particular. Despite its standing within the wider region, at a more local level the WIBP is nevertheless an employment area of strategic importance due to its good quality and location and is a key part of the borough's employment land portfolio. Accordingly the WIBP has been a focus for significant amounts of European funding in the past and has benefited from public investment in roads and infrastructure. This has been so despite the WIBP being an amalgamation of historic, existing and proposed uses that has no common ownership or collective legal status and, despite the signage at its entrances, enjoys no coordinated management or marketing. From the Council's perspective there are no better placed areas in the borough for employment development.
13. The appeal site is located at the southern end of the WIBP and is accessed from the A41 (via Old Hall Road) through an older part of the industrial estate and then via a more recently constructed road with a cycle route. It forms part of a wider site owned by the appellant which was granted outline planning permission in 2001 for 7 office buildings, 3 of which have been built and are known as Riverside Park. The Eastham Country Park, an area of woodland and open space adjoins the site to the east. A previous application for residential development on the appeal site was dismissed by the Secretary of State on appeal in 1999¹.
14. The appellant regards the appeal site to be on the periphery of the WIBP, beyond Riverwood Road, in a transitional area that leads to surrounding woodland and open space. Even so, there is a variety of other employment uses nearby, including the immediately adjacent high quality Riverside Park offices and industrial development on Power Road opposite. Additionally the WIBP extends further to the north and east where Riverwood Road continues.

¹ APP/W4235/A/97289139

15. In this context, I consider the appeal site to relate well to the rest of the WIBP and am not persuaded that it is in a particularly marginal part of it. Indeed the site's particular location could attract some users. The appellant accepts that the site has a main frontage to Riverwood Road with easy access to the regional and national road network and is complemented by good public transport links.
16. Taking into account these factors, and given that it is also a relatively rare example of a greenfield site within the WIBP, I agree with the Council's view that the appeal site has a number of positive features which count in its favour as an employment site. The appellant refers to better located sites on the Wirral that would be absorbed by the market before demand focused on the appeal site. However, other than that they have been recently sold, I have seen nothing to explain why the sites identified would necessarily be preferred for employment development above the appeal site.

Marketing

17. One of the criteria of Core Strategy Policy CS17 includes the need for 12 months of marketing at realistic prices. The existing offices have been marketed from 2004 and, whilst some have been let, the buildings remain under occupied (up to 43% of the overall floorspace is vacant and further occupants are to be lost next year). The appellant's Employment Land and Economic Benefits Analysis Report prepared by Regeneris and supporting documents from Worthington Owen (the appellant's property agent) set out the extensive marketing of the existing offices at Riverside Park.
18. However, with regard to the appeal site specifically, it is explained that marketing has been primarily through the appellant's property agent's connections in the marketplace and speaking to potential developers. The submitted Marketing Strategy refers to mail shots, direct mailing and online publications but I have seen no copies of marketing brochures or sales particulars relating to the appeal site. Whilst I appreciate that the appellant would be open to offers in relation to the appeal site, I have not seen any indications as to the prices that the site has been offered at.
19. Although the sign board on site at the time of my visit refers to available land, a subsequent sign, indicated to have been in place since 2008 and pictured in the Regeneris Report, refers only to the offices. At the hearing I was provided with adverts placed in The Estates Gazette and whilst the advert dated March 2016 refers to land available and pictures the appeal site, that dated February 2015 refers only to the offices. I have seen no examples of the local adverts referred to in the Marketing Strategy.
20. Even though some interest has arisen for the appeal site, nothing has come to fruition. In 2010 EA Technology began discussions with the appellant about the site, but ultimately remained at their existing premises. More recently in 2016 a printing firm expressed interest in the appeal site, but took up an alternative site within the WIBP. As such, whilst limited in scale, the appeal site has not been completely without interest.
21. Overall, I do not doubt that the appellant has sought to develop the site for employment purposes and understand that it is in his interest to have the existing offices occupied and the appeal site developed. I also appreciate that the appellant's property agent has considerable knowledge and experience of

the market, has worked consistently with the appellant, is well known in the area with numerous contacts and is working within a difficult economic climate.

22. Notwithstanding these factors, from the information before me, marketing efforts appear to have been focused primarily on the existing offices rather than the appeal site itself. In my view the evidence presented is not compelling and does not conclusively indicate that there is no demand for the employment use of the appeal site.

Market signals and grant funding

23. The appellant refers to a report commissioned by the Council in 2001 (by Turley Associates) which found the appeal site at the southern end of the WIBP to be unsuitable for general B2 or B8 uses. The appellant also outlines abnormal conditions on the appeal site (including Japanese knotweed) which indicate that its development for industrial purposes (B2 and B8) would generate a loss. Although it questions some of the costs, the Council does not dispute these findings and accepts that the site would not be viable for B2 or B8 uses. However, the Council emphasises that such a situation is not unusual, and that without grant funding, employment development is not generally viable on the Wirral.
24. The existing offices at Riverside Park were constructed speculatively and the appellant has found them difficult to occupy. They were built with the assistance of considerable European grant funding (around £6 million) and the appellant has not pursued the construction of the remaining permitted offices for financial reasons. The Council accepts that speculative industrial development has been unlikely to take place in recent years without grant assistance.
25. That said, the Council refers to market signals which indicate that economic circumstances and the prospects for employment development in the area are improving. Based on its monitoring reports the Council cites improvements in the Wirral's economy (measured by gross value added GVA) and an increase in both the number of jobs in the area and new business start-ups. Although the appellant questions the contribution of employment development specifically to the figures, he accepts that the indicators used are positive for the Wirral.
26. There is some ongoing development on WIBP and examples where permission has been recently granted for employment uses, including in its eastern sections. A Council owned site nearby is subject to discussions with a developer and other Council land is being sold for development. Notwithstanding the appellant's concerns that these developments represent the displacement of jobs from elsewhere in the local area, I saw a number of sites within the wider WIBP at my visit where development activity was clearly taking place.
27. Furthermore, the appeal site is identified as a key strategic business investment opportunity in the Liverpool City Region Spatial Investment Plan. It is within an area where grant assistance is available, in particular from the Single Investment Fund (SIF) which runs until 2020/21.

28. The appellant advises that the first round of bidding (now closed), which covers six local authority areas, was heavily over-subscribed. He questions whether the appeal site would qualify for the funding which requires schemes to demonstrate clear market demand and avoid displacement from across the City Region. Nonetheless, the SIF has been established to fund the delivery of the Liverpool City Region's Growth Strategy and remains a primary source of grant aid in the area.
29. The Council confirms that SIF funding has been granted for employment development at a site on nearby Thermal Road and is aware of another application at a site on Riverview Road. Whilst I am not aware of the full details of those bids, and note the appellant's reservations regarding them, I have seen no substantiated evidence to indicate that this avenue of funding has been pursued for the appeal site, or to demonstrate that it would not necessarily meet the funding criteria for future bidding rounds (the focus and scale of which have not yet been announced).

The supply of employment land in the area

30. A further criterion of Core Strategy Policy CS17 is that that an ongoing supply of available, suitable, developable land sufficient to meet the needs identified in Policy CS13 would be retained. Despite the information submitted by both parties on this matter, the Council confirmed at the hearing that it does not oppose the scheme on this ground. The borough's employment land supply situation is more appropriately considered in the context of the future Examination of the emerging Core Strategy, and it is not possible to reconcile the difference between the parties on this matter in the context of this S78 appeal. Despite this, and notwithstanding the disagreement between the parties as to previous take up rates and what land should be included in the supply figures, based on the information before me I am content that there is a surplus of supply and that the loss of the 0.49 hectare appeal site would not have a significant impact on the quantity of supply of employment land within the WIBP or the borough as a whole. This criterion would therefore be met.

Effect on the character and purpose of the area

31. Another criterion of Core Strategy Policy CS17 is that the uses proposed are compatible with the character of the surrounding area and would not restrict the operation of employment uses. Paragraph 123 of the Framework advises that planning policies and decisions should aim to recognise that development will often create some noise and existing businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established.
32. The Council considers that the introduction of housing to the appeal site would be incompatible with the surrounding uses and would undermine the purpose and future growth of the PIA. Whilst the residential use of the appeal site would be generally compatible with the adjacent offices at Riverside Park, it would not sit so comfortably alongside the existing manufacturing, engineering and warehousing uses on Power Road opposite the site and on the other side of Riverwood Road to the north east. These are not remote from the appeal site, and such industrial uses could be reasonably expected on these and other nearby areas within the PIA in this part of the WIBP.

33. I have some sympathy with the Council's concerns that in practice there would be a risk of complaints from the future occupiers of the apartments arising from living relatively close by to such uses, particularly with regard to noise and disturbance. It also follows that the presence of housing in such a primarily industrial area could act as a deterrent to other uses and limit the prospects of employment development coming forward nearby. This could serve to stifle business expansion and limit the type and nature of uses that would be appropriate in the area in the future. As such, I do not regard the proposal to be compatible with the character of the surrounding area and have concerns that it would restrict the operation of employment uses. Thus, this criterion of Core Strategy Policy CS17 would not be met.
34. I have also had regard to the Council's argument that the current proposal would set a precedent for other similar development with the WIBP. Whilst each application and appeal must be treated on its individual merits, I can appreciate the Council's concern that the approval of this proposal could be used in support of such similar schemes. The Council referred at the hearing to two nearby sites that it considers to be vulnerable to approaches for housing. Whilst the appellant argues that these are Council owned and could be sold with covenants to prevent residential development, this would not be the case in all instances. The Council also refers to the potential for pressure for housing on the remaining undeveloped land adjacent to the appeal site to the south.
35. I do not regard these concerns to be generalised. Allowing this appeal would make it more difficult to resist further planning applications for such proposals, and I consider that their cumulative effect would exacerbate the unsatisfactory implications for the PIA that I have identified above and harm the prospects of the comprehensive development of the PIA for employment purposes.

Conclusion on employment land

36. I have found that the proposal would not accord with a number of the criteria of Core Strategy Policy CS17. As set out, whilst the emerging Core Strategy is of very limited weight, I consider these to be useful criteria for the purposes of this appeal. Having regard to all the matters considered above, for the reasons given, I am not persuaded that there is no reasonable prospect of the appeal site being used for its allocated employment purpose.
37. Although the Council has afforded the appeal site long term protection through its planning policies, it has reviewed its approach to employment land through its emerging Core Strategy Policy. Notwithstanding that the Core Strategy is yet to be examined, Policy CS7 continues to identify priorities for Bebington, Bromborough and Eastham and seeks to maximise the economic contribution of WIBP at Bromborough (criterion 2). Consequently, I see no conflict with paragraph 22 of the Framework.
38. I therefore conclude on this issue that the proposal would not be a suitable site for development having regard to national and local policies which seek to safeguard employment land. It would be contrary to UDP Policies EM8 and URN1 and at odds with the aims of the Framework relating to economic growth.

Health and safety

39. The appeal site is within the Health and Safety Executive's (HSE) consultation zone for development near notifiable hazards. The SAFC Hitech Ltd (formerly Epichem Ltd) site on nearby Power Road latterly made microchips and closed in May 2015, but is subject to hazardous substances consents² (the latest version of which was granted in 2009). These allow the storage and use of a variety of chemicals including amounts of Chlorine, very toxic substances and toxic substances. The consents run with the land and whilst they are still in place allow chemicals to be stored at any time in the future.
40. The HSE defines the appeal scheme as significant housing which is a sensitivity level 3 development since it is located in the inner zone of the consultation distances for SAFC Hitech Ltd. It finds that there is a significant level of residual risk of exposure to toxic substances. This being so, the HSE advises against the development of the appeal site for housing on public safety grounds in order to prevent incompatible land uses and with a view to mitigating the effect of a major accident.
41. UDP Policy PO9 concerns criteria for development near notifiable hazards and advises that particular regard will be had to; the size and nature of the development proposed; including its compatibility with the existing installation (i), whether the proposal would lead to a material increase in the number of people working within or visiting the consultation zone (ii), the vulnerability of those people, in terms of ease of evacuation and other emergency procedures (iii) and the nature of the hazard to which those people would be exposed (iv). Proposals will only be permitted which would not expose significant numbers of people to unacceptable levels of risks or require the modification or revocation of an existing hazardous substances consent.
42. In respect of public safety from major accidents, paragraph 172 of the Framework indicates that planning policies should be based on up to date information on the location of major hazards and on the mitigation of the consequences of major accidents.
43. The Planning (Hazardous Substances) Act 1990 provides the Council (as the Hazardous Substances Authority) the power to revoke such consents. The HSE confirms that if this were to happen in respect of the SAF Hitech Ltd site, it would not advise against the proposed development. I understand that the appellant has been in contact with the Council to seek the revocation of the consents for some time. However, the Council is of a view that the consents may be utilised by a new user of the site and is concerned that a user requiring such consents may not succeed elsewhere. It also considers that the introduction of housing to the appeal site could restrict the potential future use of the SAF Hitech Ltd site. This being so, the Council does not wish to revoke the consents.
44. The HSE confirmed at the hearing that the consents applying to the SAF Hitech Ltd site are quite rare, and I am conscious that any potential users of that site would need a demand for the particular chemicals concerned. The Council has provided no evidence of any such potential users. The HSE explained at the hearing that whilst it is generally aware of companies looking for sites in the Liverpool area, it has matched none in particular to the SAF Hitech Ltd site.

² HSC/2000/7062, HSC/2003/6255 and HSC/2008/6256

45. I understand that the SAFC Hitech site has been recently sold to the owner of the adjoining site to the north on Power Road. The appellant advises that the new owner is a non-chemical user who has bought the site for expansion purposes and intends to retain the office building on the site frontage only. Additionally the appellant refers to Section 17 (1) of the Planning (Hazardous Substances) Act 1990 whereby a consent is revoked if there is a change in the person in control of part of the land to which it relates. Whilst I note his view that this situation could be triggered should the new owner seek to lease out some of the site, it has not been put to me that this has occurred or is necessarily the intention of the new owner.
46. I am aware that the zoning of the appeal site also has implications for its use for employment purposes and would have affected the development of the neighbouring offices at Riverside Park. However, no consultation with the HSE was undertaken for that planning application and no objections were raised by the Council. As such, I accept that there appears to have been some inconsistency in the Council's approach. However, notwithstanding all these matters, as things stand, the consents remain in place.
47. The HSE suggests the proposal could be approved subject to the imposition of a Grampian condition to prevent the proposed flats being occupied prior to the formal revocation of the consents. It confirms it would withdraw its objection to the proposal on this basis. Although the appellant supports this approach the Council considers the proposed condition's reliance on a third party (the owner of the SAF Hitech Ltd site) to apply for the consents to be revoked, and the subsequent requirement for the Council to go through the revocation process and obtain approval from the Secretary of State, to be unreasonable.
48. Planning Practice Guidance (the Guidance) sets out the circumstances when conditions relating to land not in control of the applicant can be used. It advises that conditions that require the consent or authorisation of another person or body often fail the tests of reasonableness and enforceability. Whilst it may be possible to use a condition worded in a negative form (a Grampian condition) to prohibit development until a specified action has been taken, such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission.
49. The Guidance is clear that where the specified action (in this case the revocation of the consents) is within the control of the local authority, the authority should be able to present clear evidence that this test will be met before the condition is imposed. In this instance, the Council is opposed to the revocation of the consents, and accordingly I have seen no such evidence. Whilst the HSE confirms that such a condition has been used successfully elsewhere, it confirmed at the hearing that this has been so only in circumstances where there is no disagreement between the parties concerning revocation.
50. Since I have seen nothing to demonstrate that the Council intends to revoke the consents, it seems to me that there are no prospects at all of the consents being revoked within the time limit that would be imposed by any permission for the appeal scheme. Therefore, in my view the Grampian condition suggested is not an acceptable solution in this case and would not overcome the harm that would be caused by the development.

51. Bringing matters together, the SAF Hitech Ltd site remains an officially hazardous installation with extant consents. I have seen no substantive evidence to establish what the future of that site will be and have been provided with no assurances concerning the revocation of the consents. Thus, the re-use of the SAF Hitech Ltd site for the permitted consents cannot be prevented and the storage of toxic chemicals cannot be ruled out. The proposal would lead to a substantial increase in the number of people living within the consultation zone where the HSE finds that there is a significant level of residual risk of exposure to toxic substances. This situation would be harmful to public safety and the HSE's objection to the scheme remains.
52. Paragraph 71 of the Guidance advises that in view of its acknowledged expertise in assessing the off-site risks presented by the use of hazardous substances, any advice from the HSE that planning permission should be refused for development for, at or near to a hazardous installation should not be overridden without the most careful consideration. The supporting text to UDP Policy PO9 also recognises that where the HSE clearly indicates that a development should be refused in the interests of the safety of the existing installation or of the safety of people likely to be attracted by the proposal, planning permission will not normally be granted. For the reasons given, the approval of the appeal scheme would be contrary to the advice of the HSE, and in my view would not be justified.
53. I therefore conclude on this issue that the proposal would have a harmful effect on the level of risk to public health and safety having regard to its proximity to a building with a hazardous substances consent. This would be contrary to UDP Policy PO9 and the advice in the Framework and the Guidance.

Living conditions future occupiers

54. The proposal is in outline with all matters reserved except access. Despite this, the indicative masterplan layout shows an L shaped building positioned back from the road along the south and east boundaries of the site with areas of private amenity space around its perimeter.
55. Supplementary Planning Document 2 Designing for Self Contained Flats Development and Conversions (SPD) advises that garden space should be accessible to each flat and have a size, shape and location to be useful to its occupiers. As a general guide, one third of the site should remain available as private landscaped communal areas. The Council considers that the indicative layout shows that these requirements could not be achieved. Additionally it is concerned that the L shaped design of the building would not meet the required separation distances in the SPD and so would give rise to overlooking between habitable rooms (particularly between the two wings at the building's inner corner).
56. The proposal seeks outline permission for up to 75 units. Matters of the layout, scale, and appearance of how this would be achieved are reserved for future consideration. The appellant advises that the submitted plans were drawn up using design principles intended to take on board the SPD guidelines and would maintain existing boundary features, and include linear landscape areas, private balconies, roof terraces as well as a 10 metre landscape buffer zone on the eastern boundary. Even so, the appellant also confirms that the submitted plans are indicative and were produced as a starting point only. Alternative plans and the possibility of a lesser scheme could be considered through

reserved matters. I am conscious that the appellant is not tied to the submitted plans and there may be alternative ways of developing the site. Consequently, I see no reason why an acceptable scheme that would provide satisfactory amenity space and levels of privacy having regard to the Council's standards is not capable of being advanced at reserved matters stage.

57. I therefore conclude that the proposal would provide adequate living conditions for future occupiers with particular reference to amenity space and privacy. Thus I see no conflict with UDP Policy HS4 which sets out criteria for new housing development or the advice in the SPD.

Biodiversity and protected species

58. The Council is concerned about the effect of the proposal on the Old Hall Road Woods and Eastham Woods and Long Plantation (part of the Eastham Country Park) which are Sites of Biological Importance (SBIs) and adjoin the appeal site to the east. These contain bat roosts, notably in the boundary oak and sycamore trees from where bats feed on the surrounding land. The area is also known to be used by kestrels for breeding and the Council indicates that birds nest in the gorse scrub on the appeal site itself.
59. The standing advice from Natural England for bats advises that short and long term impacts can arise from human activity, increased noise and external lighting. The Council also refers to its statutory duty under section 40 of the Natural Environment and Rural Communities Act of 2006 to have regard to the purpose of conserving nature conservation.
60. The appellant submitted a preliminary Ecology Appraisal (Urban Green June 2015) with the planning application and an additional Bat Survey Report (Bowland Ecology June 2016) with the appeal. This advises that optimal foraging habitat for bats is offered by the large expanse of woodland to the south and east of the appeal site and records bat activity levels on the eastern boundary of the appeal site adjacent to the Eastham Woods SBI. In terms of birds, the appellant's ecologist confirmed at the hearing that the birds listed as being important in the SBI nest in trees, not on the ground, and the appeal scheme will not result in the loss of any trees. The appellant also suggests a number of mitigation measures including secure planting, the provision of a buffer zone, the retention of hedgerows, the provision of bat roosts, and controls over external lighting.
61. Wirral Wildlife continue to object to the scheme, mainly with regard to the effect of residential lighting on the adjacent bat populations. That said, the appellant intends to control external light sources and this could be secured via a planning condition. Whilst internal light sources cannot be reasonably controlled, given that matters of layout, scale, and appearance are reserved for future consideration, I see reason why the proposed buffer zone could not be provided or why it could not be designed to preclude or discourage access by the future occupants of the appeal site and their pets. Nor am I persuaded that the windows of the proposed building would necessarily be in close proximity to the adjacent SBIs given the separation distances that would be provided by the buffer zone.

62. I am also mindful that the site is within a PIA and earmarked for employment development. I note the previous Inspector's findings that on balance, greater protection to the adjacent land would be available from an employment use. Whilst this may well be the case, as I see it the development of the site for employment purposes would also have some impact in terms of lighting and noise. Taking all this into account, subject to the proposed mitigation measures which could be secured via planning conditions, I am not convinced that the impacts arising from the appeal scheme would go significantly over and above those that would be likely to arise from an employment use. As such, I do not regard this in itself to be a reason to resist planning permission for the appeal scheme.
63. I therefore conclude on this issue that the proposal would cause no harm to biodiversity and protected species. Thus there would be no conflict with UDP Policy NC5 which concerns the protection of sites of local importance for nature conservation or with UDP Policy NC7 which concerns species protection. Nor would the proposal be at odds with paragraph 118 of the Framework which requires local planning authorities to conserve and enhance biodiversity.

Access to services and facilities

64. The Council estimates the appeal site to be around 1.2 km from the shopping area in Bromborough town centre and around 1.4/1.5 km from the nearest primary schools. These are reached on foot along Old Hall Road, the industrial estate road through the WIBP, and then by crossing the A41. Croft Retail Park is 1.5 km to the north and accessed via the industrial estate roads along Bassendale Road or Stadium Road and is estimated by the appellant to be approximately a 10 minute walk from the site. Eastham Park and its sports clubs are also located to the east of the A41.
65. The site is served by a limited hail and ride bus service that runs on Riverside Road during the day, but not in the evenings or at weekends. There are no bus stops on the A41, although bus services run through Bromborough town centre and from Eastham Ferry to Birkenhead. There are a number of on-road and off-road cycle routes nearby and the site connects with the Wirral Circular Trail and is on the National Cycle Way. The appellant advises that Bromborough and Bromborough Rake railway stations are within 3 km cycling distance to the west where cycle parking and storage is available.
66. The appellant considers that 2 km is widely recognised as being an acceptable walking distance and refers to guidance in the Manual for Streets. The footways that would be used by the occupiers of the proposed flats are all made up to an acceptable standard. Even so, the future occupiers would be required to walk considerable distances along relatively isolated industrial roads, at times busy with large commercial vehicles, to reach shops, services and wider public transport opportunities. A good deal of these journeys would also mean crossing the heavily trafficked A41. This being so, in practical terms I have reservations that the future occupiers of the proposed flats would be likely to walk such distances, particularly during bad weather and at times of darkness. Thus, it seems likely to me that, even taking into account the opportunities that exist for cycling, they would for the most part be reliant on the private car to meet their day to day needs.

67. In terms of connections to the wider area the Eastham Ferry Port is less than half a mile away and the A41 provides a good link to Liverpool, Birkenhead and Chester and to reach the M53. However, even in this context, I cannot see that the proposal would minimise the need to travel or reduce reliance on the car. This reliance of the future occupiers of the proposed flats on the use of the private car to meet their day to day needs would be at odds with the aim of the Framework to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling and focus significant development in locations which are, or can be made sustainable.
68. The previous Inspector found that it was a long way from the site to the facilities in Bromborough or along the A41. He concluded that, given the need to cross the very busy A41 trunk road and on the way to traverse a busy industrial estate access road, many if not most households would inevitably use their car. Since that decision a new pedestrian crossing has been provided at the end of Old Hall Lane. However, the Council advises that traffic flows on the A41 have almost doubled (to 29,000 on a daily basis) in the intervening period. Notwithstanding the crossing I still regard this road to be a significant barrier to reaching the services and facilities in Bromborough itself. The other circumstances of the site's relatively isolated location within an industrial area remote from other dwellings and facilities remain unchanged.
69. I am aware that paragraph 2.4 of the signed Statement of Common Ground states that the parties consider the site to be within an accessible walking distance of Bromborough town centre. At the hearing the Council disputed that this matter is agreed. In any event, despite this discrepancy, I confirm that I have made my own assessment on this issue.
70. I therefore conclude on this issue that the future occupiers of the proposed development would not have acceptable access to local services and facilities. As such, the proposal would not contribute towards establishing a more sustainable pattern of development as required by the final criterion of Core Strategy Policy CS17. It would also be contrary to the core planning principle of the Framework to actively manage patterns of growth to make fullest possible use of public transport, walking and cycling.

The Planning Balance

71. The parties agree that the Council is unable to demonstrate a five year supply of deliverable housing land, and that in accordance with Paragraph 49 of the Framework the relevant policies for the supply of housing should not be considered up-to-date. However, I do not regard UDP Policy EM8 to be a policy relevant to the supply of housing. Its purpose is not to protect the environment by preventing or limiting development, or to constrain housing supply, rather it intends to safeguard employment land from other forms of development and is specific in this purpose.
72. I have also found that despite its age, UDP Policy EM8 is consistent with the Framework and its focus on economic growth, and that in this case, it does not seek to protect a site that has no reasonable prospect of being used for employment purposes, and so accords with paragraph 22 of the Framework. Thus, the development plan is in compliance with the Framework and therefore is not out-of-date and I therefore afford it significant weight in this instance. Accordingly, I have had regard to the third bullet point of paragraph 14. However, since I have concluded that the proposal is in conflict with the

development plan, paragraph 14 of the Framework, and the presumption in favour of sustainable development, does not apply. As such the weighted balance at the fourth bullet of paragraph 14 of the Framework does not come into play in this appeal.

73. Nevertheless, the standard planning balance remains necessary. I have considered the proposal against the three limbs of sustainable development set out at paragraph 7 of the Framework to determine whether the development is sustainable and have also assessed its benefits.
74. With regard to the economic role of sustainable development, the appellant estimates that the construction phase of the appeal proposal would create 100 full time jobs over the build period. He also refers to other indirect job opportunities along with the benefit of private investment to the local supply chains and the generation of additional spend in the locality. The proposal would generate funds from the New Homes Bonus and the future occupants would provide support for local facilities and services. These are benefits of the scheme.
75. These economic gains must be considered alongside the loss of an area of allocated employment land within a primarily industrial area. The proposal would be significantly at odds with the Council's adopted policies for safeguarding employment land within defined areas and would seriously undermine its well established and on-going strategic and local approach to economic development and regeneration. It would also fail to align with the government's focus on building a strong and competitive economy. Paragraph 19 of the Framework places significant weight on the need to support economic growth through the planning system.
76. This being so, as a whole the proposal would fail to ensure that sufficient land of the right type is available in the right places at the right time to support growth and innovation, and would not contribute to building a strong responsive and competitive economy. Thus it would not meet the economic role of sustainable development.
77. In terms of the social role of sustainability, the proposal would provide homes against the backdrop of a lack of housing land supply and would support the Framework's aspiration to significantly boost housing. It would provide a significant element of affordable housing units which the appellant advises is rarely achieved on housing schemes on the Wirral, and at 25%, would exceed the level normally expected by the Council or required by UDP Policies HSG2 and HSG6. The resultant mix of apartments would help to diversify the local housing offer and provide a type of housing that the market can deliver in this location. Market research undertaken by the appellant indicates the appeal scheme would be a commercially attractive location for people wanting to get a foothold on the property ladders in a location with easy access to Chester, the Wirral, North Wales and Liverpool. These are considerable benefits of the scheme which weigh in its favour.
78. However, although it has the potential to allow people to live close to where they work, the proposal's social role is tempered by the isolated nature of the site in relation to nearby residential areas and lack of integration with existing communities. Although the appellant refers to a prior approval application to change the use of some of the existing offices at Riverside Park to dwellings, it was confirmed at the hearing that this has not yet been submitted. As such I

have seen nothing to demonstrate that there will be housing nearby in the future or that the nature of the area in the vicinity of the appeal site will change. Added to this is the reliance of future occupiers on the car to access services and facilities to meet their day to day needs. Thus, the location of the site would to some extent limit the proposal's benefits in terms of the social role of sustainable development.

79. Moreover, the proposal would have a harmful effect on the level of risk to public health and safety having regard to its proximity to a building with a hazardous substances consent. The approval of the appeal scheme would be contrary to the advice of the HSE, which having regard to paragraph 71 of the Guidance, carries great weight, and would not in my view be justified. Taking all of this into account, the proposal would fail to support strong, vibrant and healthy communities and would not perform well against the social role of sustainable development.
80. Turning to the environmental role, the proposal would utilise a vacant site and make efficient use of land that would reduce pressure to release Green Belt land for housing. However, since residents would be reliant on private car journeys for most services and facilities, the proposal would not foster sustainable modes of travel and would not help to minimise pollution or mitigate and adapt to climate change, including moving to a low carbon economy, as required by the environmental role of sustainable development.
81. In terms of the other main issues, I have found that the proposal would provide adequate living conditions for future occupiers (with particular reference to amenity space and privacy) and would not have a harmful effect on biodiversity and protected species. The absence of harm in these regards counts neither for, nor against the proposal.
82. The appellant cites other schemes where planning permission has been granted elsewhere in the WIBP for housing in similar locations. In particular a former driving range site to the north is referred to. However, the Council confirms that unlike the appeal site, that site is identified in the Employment Land Study as having no chance of coming forward and is in any event located closer to local services and facilities than the appeal site.
83. The appellant also refers to residential development at Upton which was approved around the time that the appeal scheme was refused. That site scores highly in the Employment Land Study and the Council accepted that insufficient marketing had taken place. Additionally that scheme did not provide affordable housing and is located close to a supermarket service yard. That said, the Council agreed in that instance that there was no reasonable prospect of the site coming forward for employment purposes, and also found the site to be well connected to the residential area of Upton.
84. I have not been provided with any further information regarding those developments and I am not aware of the full circumstances that led to them. Consequently, and given the comments provided by the Council, I am not persuaded that they are directly comparable with the appeal scheme. In any event, each planning application and appeal must be determined on its own individual merits. As such, I do not regard these developments to add any material weight in favour of the appellant's case.

85. Taking all these matters into account, even when considered together, in my view the benefits of the scheme are insufficient to outweigh the harm that I have identified and I do not regard the proposal to be sustainable development. The proposal would not be in accordance with the development plan as a whole and, in the absence of material considerations to indicate otherwise, planning permission should not therefore be granted.

Conclusion

86. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed

87. There is a possibility that the Council may be liable under section 16 of the Planning (Hazardous Substances) Act 1990 to pay compensation if the hazardous substances consents on the SAF Hitech Ltd site were to be revoked. The appellant has submitted a planning obligation which includes the payment of a compensation sum to the Council to cover its costs should such a claim be made. Because this obligation mitigates the effect of the development, it attracts no positive weight in support of the scheme. Since I am dismissing the appeal on its substantive merits it has not been necessary for me to consider whether this undertaking would meet the tests set out at paragraph 204 of the Framework and Section 122 of the Community Infrastructure Regulations 2010.

Elaine Worthington

INSPECTOR

APPEARANCES

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Wirral Council
Wirral Council

OTHER INTERESED PARTIES:

Stuart Reston
James Rutherford
Harvey Tucker
Martin Goose

Health and Safety Executive
Health and Safety Executive
Health and Safety Executive
Local resident

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed Statement of Common Ground
- 2 Unilateral Undertaking
- 3 Core Strategy Timetable
- 4 Legal advice provided to the Council (email dated 18 January 2016)
- 5 Notices of Hazardous Substances Consent x 3 at Power Road
- 6 Copies of Estates Gazettes adverts x 2 (February 2015 and March 2016)
- 7 Copy of UDP Proposal Map provided by the Council for the purpose of the site visit