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## Appeal Decision

Site visit made on 3 September 2019

**by Helen B Hockenhull BA (Hons) B.PI MRTPI**

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

**Decision date: 17<sup>th</sup> October 2019**

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**Appeal Ref: APP/L3245/W/19/3220769**

**Caterpillar Shrewsbury Ltd, Lancaster Road, Shrewsbury, SY1 3NX**

- 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 Mr Steven Brown, Caterpillar Shrewsbury Limited against the decision of Shropshire Council.
  - The application Ref 16/04559/OUT, dated 4 October 2016, was refused by notice dated 1 November 2018.
  - The development proposed is the demolition of existing building (Building 1) and construction of residential development comprising up to 150 dwellings, access roads, public open space and associated highways, engineering and accommodation works.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building (Building1) and construction of residential development comprising up to 140 dwellings, access roads, public open space and associated highways, engineering and accommodation works at Caterpillar Shrewsbury Limited, Lancaster Road, Shrewsbury, SY1 3NX in accordance with the terms of the application, Ref 16/04559/OUT, dated 4 October 2016, subject to the conditions in the attached schedule.

### Procedural Matters

2. The description of development I have used in the banner heading above is taken for the original planning application form. During the consideration of the proposal by the Council, the scheme was revised to up to 140 dwellings. I have considered the appeal on this basis and referenced the revised scheme in my decision.
3. The appeal proposal is in outline with all matters reserved for later approval except for access. The submitted site layout plan and landscape proposals are for indicative purposes only and I have considered them accordingly
4. A signed and dated agreement pursuant to section 106 of the Town and Country Planning Act 1990 was submitted after my site visit. This provides obligations regarding affordable housing and open space management and financial contributions towards off site public open space and travel plan monitoring.

### Main Issues

5. The main issues in this case are:

- the effect of the proposed development on the supply of employment land in the borough;
- the effect of the proposal on highway safety in particular congestion on the surrounding road network;
- whether the development makes appropriate provision for public open space.

## **Reasons**

### *Employment Land*

6. Outline planning permission is being sought for a residential development on around 4.3 hectares of land forming part of the Caterpillar Shrewsbury site. The development of this land, located in the Lancaster Road Employment Area, would lead to a loss of employment land.
7. Policy MD4 of the Shropshire Council Site Allocations and Management of Development Plan (SAMDev) 2015 seeks to manage and deliver proposals for economic development. Proposals for alternative uses are required to demonstrate that there are no other suitable sites, the development would provide significant employment opportunities or other sustainability benefits for the community and that development would not adversely affect the range and choice of employment sites. Policy MD9 aims to protect employment areas and complements Policy MD4. In addition, where alternative uses which would lead to the loss of employment land are proposed, it requires evidence of marketing over a sustainable period to demonstrate the land is no longer commercially viable.
8. The appellant has outlined that following an appraisal of the company's operations, the proposed development would enable reinvestment in the existing site, upgrading the equipment and buildings to modern standards of energy efficiency. The appeal proposal would involve the demolition of Building 1 on the site, with Buildings 2 and 3 retained to meet current and future business needs. The scheme would provide cost savings and enable improvement works and an extension to Building 3, for which planning permission was granted in August 2018.
9. With regard to the criteria in Policies MD4 and MD9, I accept that there are no alternative sites in the appellant's ownership which could provide the long-term investment needed to benefit the future of the company. The proposed development would secure the existing jobs at the site and with the expansion of Building 3 there would be the potential for further jobs. The purpose of Policy MD9 is not only to protect the amount of employment land but also to assist strategic and local employers to secure their operational base and meet their business development needs for growth and expansion. The appeal scheme would achieve this objective.
10. The surplus land the subject of this appeal, instead of being developed for housing, could be released for further employment uses. The site is in an accessible location, close to residential development and community uses and is served by public transport. It would be likely that buffer areas would be required to limit the impact of any new employment uses bearing in mind the location of the site on the southern edge of the employment area next to

existing dwellings. This would reduce the developable area and the sites contribution to providing further employment uses.

11. The Shropshire Core Strategy aims to deliver around 290 hectares of employment land between 2006-2026. The 2016/17 Annual Monitoring Report suggests there is a supply of 368 hectares of employment land. Therefore, the loss of around 4.3 hectares, which may not all be developable, would not undermine the overall employment land requirements in the borough.
12. A formal marketing exercise as required by Policy MD 9 has not been undertaken for the site. I am advised by the appellant that a valuation exercise was undertaken which demonstrated that a residential use of the surplus land would generate the greatest return. I do not doubt that this is the case, however it does not test the market as required by the policy to see if there is any demand for employment uses on the site.
13. In summary, the appeal scheme would result in the loss of employment land and in principle fail to comply with the criteria in SAMDev Policies MD4 and MD9.

#### *Highway safety*

14. The highway network in the vicinity of the appeal site suffers from congestion at peak times. I observed at my site visit, vehicles queuing from the traffic light-controlled junction of Mount Pleasant Road and the A5191 Ditherington Road.
15. The site is proposed to be accessed from two points; a new dedicated access onto Lancaster Road and through the existing access to the site from Mount Pleasant Road. The existing employment site access from Lancaster Road would remain. The two proposed routes would not be connected for vehicular traffic to prevent rat running. Two accesses onto different roads would also assist to distribute traffic on the surrounding road network. The site is served by public transport and is located within an area with an established network of footpaths and cycle routes.
16. The transport evidence submitted with the appeal, indicates that the development would generate 89 vehicle movements in the am peak hour (0800-0900) and 82 in the pm peak hour (1700-1800). Based on an assessment of the trips generated from 150 dwellings, the number of homes proposed in the original scheme, it is concluded that this would result in one extra vehicle every 2 minutes in the morning peak hour going through the Mount Pleasant Road /Ditherington Road junction and one extra vehicle every 5-6 minutes in the afternoon peak hour. Therefore, the effect on queuing on Mount Pleasant Road would be minimal.
17. The Transport Assessment also considers the likely traffic impact of further employment development on the site against the impact of residential development. A residential scheme whilst generating an increase in cars would not result in an increase in heavy good vehicles on the highway. Furthermore, a residential use would mean that the flow of traffic at peaks times would be in the opposite direction, with traffic travelling away from the site in the morning and returning in the evening. The development of an additional employment use on the site could potentially double the amount of employment traffic to and from the site. I note that the Highway Authority concludes that a

residential use would be preferable in overall traffic terms and raise no objection to the scheme.

18. The development proposes the widening of the southern footway and hence carriageway narrowing under the railway bridge on Mount Pleasant Road. This would be of benefit to pedestrian's safety but would have the effect of reducing the road to single lane width under the bridge. This would marginally increase the length of queues back from the junction but not the number of vehicles within the queue.
19. It is acknowledged by all parties that there is an existing issue of congestion at peak time on the local highway network. Any further development on the appeal site would therefore have some impact. The National Planning Policy Framework (the Framework) in paragraph 109, states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe. Bearing in mind the nature of residential traffic flows compared to employment flows, as well as the minimal increase in queuing at the Mount Pleasant Road /Ditherington Road junction, I consider that based on the evidence before me, the proposal would not result in a severe residual cumulative impact.
20. Whilst the Council's reason for refusal does not refer to transport policies, the appeal scheme would comply with Policy CS6 of the Shropshire Core Strategy and section 9 of the Framework which aim to maintain highway safety and promote sustainable means of travel.

#### *Provision of open space*

21. The Council's reason for refusal makes reference to a shortfall in public open space on the site contrary to Policy MD2 of the SAMDev.
22. The appeal scheme is in outline and the matters of layout and landscaping are reserved for later approval. The submitted layout plan is indicative. The provision of public open space is therefore not a matter before me in this appeal.
23. It is likely that the scheme submitted at reserved matters stage could meet the policy requirement. In any event the appellant has submitted a section 106 agreement which makes provision for the payment of a commuted sum towards the upgrading of nearby open space.

#### **Planning Balance**

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that I determine the appeal in accordance with the development plan unless material considerations indicate otherwise. I have found that the appeal scheme would fail to comply with SAMDev Policies MD4 and MD9 as it would result in the loss of employment land. Therefore, as the appeal scheme would conflict with the development plan, I must give consideration to other material considerations in this case.
25. The proposal would act as an enabling development, delivering economic benefits including securing the future operation of the company at this location. It would safeguard skilled jobs and support the local supply chain. Furthermore, bearing in mind the current supply of employment land in the

borough, it would not lead to a deficiency in the provision of employment land undermining the requirement set out in the Core Strategy.

26. The proposal for 140 dwellings would contribute to the supply of housing in the borough and the provision of 14 affordable homes on the site would assist to address local housing need.
27. Turning to environmental matters, the scheme involves the removal of a number of trees on the site most of which are of moderate quality. Whilst the matter of landscaping forms a reserved matter, I am satisfied that an appropriate scheme could be provided retaining curtilage trees and providing mitigation planting. The scheme would also provide the opportunity for biodiversity enhancement.
28. I have concluded that the scheme would not cause harm to highway safety and the residual cumulative impacts on the highway network would not be severe.
29. Taken together, I consider that the factors I have outlined above which weigh in favour of the scheme, provide the material considerations to grant planning permission other than in accordance with the development plan.

### **Planning Obligation**

30. The appellant has submitted an executed planning obligation pursuant to section 106 of the Town and Country Planning Act 1990. In order to ensure that the appeal scheme serves as an enabling development for the appellant's further investment proposals on the wider site, the obligation requires the submission of a delivery scheme which includes triggers for the occupation of the proposed dwellings linked to the implementation of the refurbishment and expansion works on the adjacent Caterpillar site.
31. The requirement for the provision of 10% affordable housing in the scheme is necessary to accord with Core Strategy Policies CS9 and CS11.
32. The obligation provides for a financial contribution towards off site public open space. This is required to comply with SAMDev Policy MD2 to ensure that adequate open space would be provided in the vicinity of the site for future occupiers. It is also necessary that the management of on-site open space is ensured through an agreed scheme.
33. The payment of a travel plan monitoring contribution is necessary to deliver sustainable transport objectives in line with Core Strategy Policies CS6 and CS7. A fee for the monitoring of the section 106 is also required to ensure to obligations are implemented.
34. The above obligations are necessary to make the development acceptable in planning terms, are directly related to the development and fairly and reasonably related in scale and kind to the development. Therefore, they meet the tests within Regulation 122 of the CIL Regulations and paragraph 56 of the Framework. I have taken these obligations into account in my decision.

### **Conditions**

35. I have considered the conditions put forward by the Council in light of the requirements of the Framework and national Planning Practice Guidance. I have revised the wording where necessary in the interests of clarity and to better reflect the guidance. The appellant agreed in writing to those which I

have imposed which require compliance prior to the commencement of the development.

36. In addition to the standard timeframe condition I impose a condition specifying the approved plans for the avoidance of doubt. In order to safeguard and protect biodiversity, conditions are necessary to require the submission of a construction environmental management plan (condition 5), the submission of details of reptile avoidance measures (condition 7), lighting plan (condition 8), the provision of bat boxes (condition 9) at reserved matters stage, and a site inspection to check for the presence or absence of badgers (condition 16) prior to the occupation of the dwellings.
37. In the interests of maintaining the character and appearance of the area and to promote biodiversity, condition 6 requires the first reserved matters submission to include a landscaping plan. Condition 14 is required to ensure that the site is properly drained in accordance with sustainable urban drainage principles.
38. I impose conditions requiring the submission of a construction method statement (condition 10) and sound attenuation (condition 13) to protect the living conditions of nearby residents. Furthermore, to protect the amenity of future residents' and to reduce the risk of pollution to groundwater and ecological systems, condition 11 requires site investigations to establish the extent of contamination on the site and the preparation of a remediation strategy if necessary.
39. In the interests of highway safety and the promotion of sustainable travel, condition 12 requires the preparation of a Travel Plan. Condition 15 requires the provision of appropriate visibility splays at the junctions of Mount Pleasant Road and Lancaster Road and condition 16 requires the construction of the agreed footpath improvement works prior to the first occupation of the dwellings.

### **Conclusion**

40. For the reasons given above and having had regard to all other matters raised, I conclude that the appeal should succeed.

*Helen Hockenhull*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Planning Boundary Plan Outline Scheme – Drawing No. 14253/P003 Rev A, Proposed Site Plan 14253/P004 Rev F, Land Use Plan 14253/P012, Existing Building Plans Building 1 - Drawing Ref 14253/P021, Existing Building Elevations Building 1 - Drawing No. 14253/P031, Existing Building Elevations Building 1 - Drawing No 14252/P032, Proposed Footway widening - Drawing no. 17021-05-3 dated May 2017, Proposed Pedestrian Crossing Drawing No 17021-05-2.
- 5) The first submission of reserved matters shall include a Construction Environmental Management Plan. The submitted plan shall include:
  - a) An appropriately scaled plan showing 'Wildlife/Habitat Protection Zones' where construction activities are restricted, where protective measures will be installed or implemented and where ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog-friendly gravel boards and amphibian-friendly gully pots) will be installed or implemented;
  - b) Details of protective measures (both physical measures and sensitive working practices) to avoid impacts during construction;
  - c) Requirements and proposals for any site lighting required during the construction phase;
  - d) A timetable to show phasing of construction activities to avoid harm to biodiversity features (e.g. avoiding the bird nesting season);
  - e) The times during construction when an ecological clerk of works needs to be present on site to oversee works;
  - f) Identification of Persons responsible for:
    - i. Compliance with legal consents relating to nature conservation;
    - ii. Compliance with planning conditions relating to nature conservation;
    - iii. Installation of physical protection measures during construction;
    - iv. Implementation of sensitive working practices during construction;

- v. Regular inspection and maintenance of physical protection measures and monitoring of working practices during construction; and
- vi. Provision of training and information about the importance of 'Wildlife Protection Zones' to all construction personnel on site.

g) Pollution prevention measures.

All construction activities shall be implemented strictly in accordance with the approved plan.

- 6) The first submission of reserved matters shall include a landscaping plan. The submitted plan shall include but not be limited to:
- a) Planting plans, creation of wildlife habitats and features and ecological enhancements (e.g. hibernacula, integrated bat and bird boxes, hedgehog friendly gravel boards and amphibian-friendly gully pots);
  - b) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment);
  - c) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate;
  - d) Native species used are to be of local provenance (Shropshire or surrounding counties);
  - e) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works (most notably Tree 42A as shown on the arboricultural assessment accompanying the outline planning application);
  - f) Implementation timetables.

The landscaping shall be carried out as approved by the plan.

7. The first submission of reserved matters shall include the submission of a herptile reasonable avoidance measures method statement. All works shall then be carried out in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.
8. The first submission of reserved matters shall include a lighting plan. The plan shall:
- a) identify those areas/features on site that are particularly sensitive for badgers and bats, where lighting is likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example for foraging; and
  - b) show how and where external lighting shall be installed (through provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places. All external lighting shall be installed in accordance with the specifications and locations set out on the plan, and thereafter retained for the lifetime of the development. Under no circumstances should any other external lighting be installed

without prior consent from the local planning authority. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust's *Artificial lighting and wildlife: Interim Guidance: Recommendations to help minimise the impact artificial lighting (2014)*.

9. The first submission of reserved matters shall include details for the provision of bat and bird boxes. The following boxes shall be erected:
- a) A minimum of 30 artificial nests, of either integrated brick design or external box design, suitable for a range of bird species;
  - b) A minimum of 15 external bat boxes or integrated bat bricks suitable for nursery or summer roosting for small crevice dwelling bat species.

The boxes shall be sited in accordance with the latest guidance and thereafter retained for the lifetime of the development.

10. Prior to the commencement of the development, including any works of demolition, a Construction Method Statement shall be submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.
11. Contaminated land
- a) No development, with the exception of demolition works where this is for the reason of making areas of the site available for site investigation, shall take place until a Site Investigation Report has been undertaken to assess the nature and extent of any contamination on the site. The Site Investigation Report shall be undertaken by a competent person and conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'. The Report is to be submitted to and approved in writing by the local planning authority.
  - b) In the event of the Site Investigation Report finding the site to be contaminated, a further report detailing a Remediation Strategy shall be submitted to and approved in writing by the local planning authority. The Remediation Strategy must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
  - c) The works detailed as being necessary to make safe the contamination shall be carried out in accordance with the approved Remediation Strategy.
  - d) In the event that further contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a) above, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b) above, which is subject to the approval in writing by the local planning authority.
  - e) Following completion of measures identified in the approved remediation scheme a Verification Report shall be submitted to and approved in writing by the local planning authority that demonstrates the

contamination identified has been made safe, and the land no longer qualifies as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land.

12. Prior to the commencement of the development a Travel Plan demonstrating measures to promote greater use of sustainable transport measures shall be developed and submitted to and approved in writing by the local planning authority. The Travel Plan shall be implemented in accordance with the approved details.
13. No development shall take place until a detailed scheme of sound attenuation has been submitted to and approved in writing by the local planning authority. The scheme shall show measures to be undertaken to protect the living conditions of future residents living in proximity of the Shrewsbury to Crewe railway line and the rest of the Caterpillar site on Lancaster Road. The development shall be implemented in accordance with the approved scheme and the scheme of sound attenuation measures shall be retained thereafter.
14. No development shall proceed until full drainage details, plans and calculations of the surface water drainage proposals consistent with sustainable urban drainage principles have been submitted to and approved in writing by the local planning authority. The details shall include a maintenance regime for any sustainable drainage system on the site including who will manage it for the lifetime of its operation. The development shall thereafter be undertaken and maintained in accordance with the details approved.
15. Notwithstanding the fact that access has been approved, no development shall take place until details of visibility splays between the development and the junctions with Mount Pleasant Road and Lancaster Road have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until that junction has been constructed in accordance with the approved details. The junctions and visibility splays shall thereafter be retained free of obstruction.
16. Prior to the occupation of any residential unit the agreed off-site footpath improvement works, shown on drawing no. 17021-05-3 dated May 2017, shall be constructed and brought into use in line with a scheme for adoption that shall be agreed in writing with the local planning authority.
17. Within 90 days prior to the commencement of development, a badger inspection shall be undertaken by an experienced ecologist and the outcome reported in writing to the local planning authority. If new evidence of badgers is recorded during the pre-commencement survey then the ecologist shall provide an update to the Badger Method Statement (Middlemarch Environmental, September 2016). All development, demolition, site clearance, landscaping and biodiversity enhancements shall occur strictly in accordance with the Badger Method Statement (Middlemarch Environmental, September 2016) or any update as approved. Works shall be overseen and undertaken, where appropriate, by a licensed, suitably qualified and experienced ecologist.