
Appeal Decision

Inquiry Held on 22-25 October 2019 and 8-9 January 2020

Site visit made on 10 January 2020

by Kevin Ward BA (Hons) MRTPI

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

Decision date: 15th May 2020

Appeal Ref: APP/N2739/W/19/3231656

**Gascoigne Wood Interchange, Lennerton Lane, Sherburn in Elmet
LS25 6LH**

- 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 Harworth Group PLC against the decision of Selby District Council.
 - The application Ref 2018/0818/EIA, dated 16 July 2018, was refused by notice dated 27 March 2019.
 - The development proposed is described as outline planning application with all matters (scale, appearance and layout) except access and landscaping reserved for the demolition of existing colliery buildings and the construction of up to 186,000sqm (approx. 2,000,000sqft) of Class B2/B8 and associated Class B1 floorspace, with supporting container storage area and associated buildings, trackside facilities, access and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs were made by Harworth Group PLC against Selby District Council (the Council) and Samuel Smith Old Brewery (Tadcaster). An application for costs was also made by Samuel Smith Old Brewery (Tadcaster) against Harworth Group PLC. These applications are the subject of separate decisions.

Preliminary Matters

3. The appeal concerns an application for outline planning permission including details of access and landscaping. Scale, appearance and layout are reserved for later consideration. The application was accompanied by a number of plans and documents including a Proposed Parameters Plan and Design Guidance Document. These were updated during the course of the appeal to address specific issues and concerns and provide clarification. I have taken account of these updated versions¹ in determining the appeal.
4. The issue of whether the appeal proposal constitutes the construction or alteration of a rail freight interchange under the terms of Section 26 of the

¹ Proposed Parameters Plan 11921-127 T and Design Guidance Document 11921-DGD01S

Planning Act 2008 and therefore whether it should be dealt with under the Nationally Significant Infrastructure Projects regime was raised by one of the Rule 6 Parties, Samuel Smith Old Brewery (Tadcaster) and was the subject of submissions. Given my conclusion that the appeal should be dismissed, it is not necessary for me to pursue this matter further in this decision. It is addressed in the decision relating to the application for costs by Samuel Smith Old Brewery (Tadcaster) however.

5. A duly executed planning obligation in the form of an agreement under S106 of the Planning Act 1990 between the Appellant, the Council and North Yorkshire County Council (NYCC) was submitted. This concerns sustainable transport measures and off-site highway works. A duly executed obligation in the form of a unilateral undertaking concerning monitoring and control of vehicle trips was also submitted by the Appellant. I deal with these in more detail below.

Main Issues

6. In my pre-Inquiry case management note and at the start of the Inquiry I identified the main issues as I saw them at that stage. After hearing and taking account of the evidence before me I have refined them as follows:
 - a) Whether the proposed development is appropriate in principle in this location in light of relevant development plan and national policies, particularly those concerning the spatial development strategy, the countryside and employment provision.
 - b) The effect on and relationship to transport infrastructure and the accessibility to public transport.
 - c) The effect on the character and appearance of the area.
 - d) The effect on best and most versatile agricultural land.
 - e) If there is a conflict with the development plan, whether there are material considerations which justify granting planning permission.²

Reasons

The principle of the proposed development in this location

7. Policy SP2 of the Selby District Core Strategy Local Plan (the Core Strategy) sets out the spatial development strategy including a number of principles on which future development will be based. It makes it clear that the majority of new development will be directed to the towns and more sustainable villages depending on their future role as employment, retail and service centres, the level of local housing need, and particular environmental, flood risk and infrastructure constraints.
8. Selby is identified as the Principal Town which will be the focus for new housing, employment, retail, commercial and leisure facilities. Sherburn in Elmet and Tadcaster are designated as Local Service Centres where further housing, employment, retail, commercial and leisure growth will take place appropriate to the size and role of each settlement.

² This includes consideration of whether the policies which are most important for determining the application/appeal are out of date and the benefits of the proposed development.

9. The countryside is defined as areas outside of Development Limits. Part A(c) of the policy limits development in the countryside to the replacement or extension of existing buildings, the re-use of buildings and well designed new buildings of an appropriate scale, which would contribute towards and improve the local economy and where it will enhance or maintain the vitality of rural communities, in accordance with Policy SP13 of the Core Strategy, or meet rural affordable housing need or other special circumstances.
10. Policy SP13 gives support to developing and revitalising the local economy in all areas including by providing for an additional 37-52ha of employment land across the District in the period up to 2027. Figure 12 of the Core Strategy sets out an indicative distribution of this employment land which focusses on Selby and its hinterland (22-27ha) with 5-10ha each for Sherburn in Elmet and Tadcaster and 5ha for Rural Areas.
11. Part C of Policy SP13 expresses support for sustainable development in rural areas on both greenfield and previously developed sites which brings sustainable economic growth through local employment opportunities or expansion of businesses and enterprise. It identifies several examples of such development.
12. Part D of the policy makes it clear that in all cases, development should be sustainable and be appropriate in scale and type to its location, not harm the character of the area and seek a good standard of amenity.
13. Policy EMP2 of the Selby District Local Plan states that new employment development will be concentrated in and around Eggborough, Selby, Sherburn in Elmet and Tadcaster and that encouragement will also be given to proposals for small-scale development in villages and rural areas in support of the rural economy.
14. The appeal site is outside the Development Limit for Sherburn in Elmet. Given this, the appellant accepts that it is in the countryside for the purposes of Policy SP2. It is not allocated for development.
15. The appeal site lies some 2km south east of Sherburn in Elmet (as defined by the Development Limit). It is separated from it by the A162, railway lines, areas of open countryside and the Sherburn Aeroclub which is predominantly open land incorporating runways. Sherburn in Elmet is surrounded by the Green Belt with a narrow strip of Green Belt to the east between the A162 and railway line. Whilst the southern part of the appeal site is previously developed, containing structures and infrastructure associated with its previous mining use, the northern part of the site is made up of open, greenfield land, predominantly in agricultural use.
16. The Sherburn Industrial Estate occupies a substantial area of land to the east of Sherburn in Elmet. Planning permission has been granted for additional employment development which would extend the industrial estate further eastwards (Sherburn 2). Although the land between the appeal site and the existing and approved development at Sherburn Industrial Estate/Sherburn 2 contains some buildings and structures including those associated with the Aeroclub, the land in question is largely open. In particular the area containing the runways is a significant expanse of open land and provides a clear sense of physical and visual separation from the existing Sherburn Industrial Estate, across to the appeal site.

17. Given the distance and intervening physical features and taking account of the definition of the countryside in relation to Development Limits the appeal site is not in or around Sherburn in Elmet. Even if the term "in or around" was intended to also refer to significant areas of existing and/or permitted employment development beyond Development Limits, I consider that the appeal site would not fall into that category. It is physically and visually separated from existing and permitted employment development and the appeal proposal would result in a significant encroachment of built development into open countryside some considerable distance from the settlement.
18. For the purposes of considering the appeal proposal in light of relevant development plan and national policies, the site is in the countryside and in the rural area.
19. The appeal site covers approximately 101ha. Of this approximately 44ha is made up of the previously developed land associated with the former mining operations and associated infrastructure and a further 14ha approximately is taken up by existing landscape bunds surrounding this part of the site. The remaining area of approximately 43ha is the greenfield land forming the northern part of the site.
20. The appeal proposal would involve the clearance of existing buildings and structures on the site and the construction of a series of new, very large buildings along with container handling and storage facilities. It would provide for up to 186,000sqm of new floorspace spread across both the previously developed and greenfield parts of the site and would result in built development covering a significantly greater area than at present. It would not represent the replacement, extension or re-use of existing buildings.
21. The proposed development is clearly not small-scale either in terms of the site area or buildings. It also goes well beyond what I consider would be an appropriate scale for development in such a location given the clear focus on steering growth to the Principal Town of Selby and the Local Service Centres of Sherburn in Elmet and Tadcaster, the relatively limited role envisaged for the countryside and rural areas and the examples of development set out in policy which are considered appropriate in such areas.
22. My view on this matter has been further informed by the scale of employment land provision set out in the Core Strategy. The figures for the District in Policy SP13 are set out as a range and have not been regarded or used as a maximum for the amount of employment land that can come forward. I return to the issue of employment land requirements and supply later in my decision. However, the figures in Policy SP13 and Figure 12 of the Core Strategy give a reasonable indication at least of the overall scale of employment land and its distribution which is envisaged.
23. Even making a generous allowance for flexibility, the scale of development proposed in the appeal scheme is substantially in excess of that envisaged for all Rural Areas in total (5ha) and indeed the indicative figure for Sherburn in Elmet (5-10ha). Just in respect of the greenfield element of the site, the development of some 43ha of additional employment land would in itself broadly provide for the whole of the District's needs (as identified in Policy SP13). This does not factor in development that has already taken place within

the plan period and other sources of supply which I deal with later in my decision.

24. Taking all of the above into account, the proposed development is not of a scale which is appropriate to its location. I assess the merits of the appeal proposal and the benefits it would bring in more detail below. However, I do not consider that there are special circumstances which would justify the scale of development proposed in such a location.
25. The proposed development is not appropriate in principle in this location and in this respect conflicts with Policies SP2 and SP13 of the Core Strategy and Policy EMP2 of the Selby District Local Plan. It is inconsistent with the objectives for sustainable development set out in the National Planning Policy Framework (NPPF) insofar as they seek to ensure that sufficient land of the right types is available in the right places and contribute to protecting and enhancing the natural environment, including making effective use of land.

The effect on and relationship to transport infrastructure and the accessibility to public transport

26. The Council's reason for refusal does not refer to issues relating to highway safety or the impact on the road network. These are matters of concern to others however and were the subject of evidence presented at the Inquiry.
27. The Council's position on highways and transport matters has been informed by the views of NYCC as the Local Highway Authority. NYCC are satisfied that subject to the proposed mitigation, there would not be unacceptable impacts on highway safety or capacity and the cumulative residual impacts would not be severe. NYCC has entered into a statement of common ground with the Appellant on this basis.
28. The Appellant discussed the proposals with NYCC and agreed the approach to assessing impacts, including the approach to estimating trip generation. The position of NYCC and ultimately the Council was informed by the Transport Assessment (TA) produced by the Appellant, supplemented by the WSP Technical Note – Create Yorkshire-Cumulative Traffic Impact Assessment produced in February 2019 (CD2.6). This latter document considered the cumulative impacts of the appeal scheme along with the proposed "Create Yorkshire" development at Church Fenton and other committed and identified schemes.
29. The TA estimates trip generation including HGVs using the assumption that all of the proposed floorspace would be Class B2 use. The application was for Class B2/B8 uses (along with other associated uses). It is common ground that the inclusion of Class B8 uses would reduce trip generation, compared with a scheme made up of entirely Class B2 use. The estimate of trip generation in the TA is a worst case scenario therefore.
30. It is the Appellant's intention for the proposed development to operate predominantly as a rail related facility, utilising the railway and sidings at the southern end of the site and including necessary improvements and infrastructure to facilitate this. The suggested conditions seek to ensure that at least 87.5% of the floorspace would be rail related. The implications of a rail related development for HGV trip generation do not appear to have been specifically factored into the TA or the WSP Technical Note. There are differing

views as to whether a rail related development would be likely to increase or decrease the amount of HGV movements to and from the site, compared with an entirely road based development.

31. There are no directly comparable examples of development elsewhere to sufficiently inform this judgement. The particular scale and nature of a development and activities on site, the mix of uses, frequency of trains and relationship to the Strategic Road Network are key factors which would have a significant effect on HGV movements.
32. Given the evidence before me I am unable to reach a definite conclusion on this particular matter. However, it would seem possible in principle to impose a restriction on the number of vehicle movements including HGVs, either through a condition or planning obligation. This could limit vehicle movements to that assessed in the TA and WSP Technical Note. The potential for such controls were discussed at the Inquiry and the unilateral undertaking submitted by the Appellant addresses this matter. This undertaking satisfies the tests set out in the CIL Regulations and the NPPF and I have attached weight to it accordingly in reaching my decision. Likewise, I have also attached weight to the S106 agreement entered into by the Appellant, the Council and NYCC insofar as it relates to off-site highway works.
33. On this basis and subject to necessary mitigation and improvements, I am satisfied that there would not be unacceptable impacts on highway safety or capacity and the residual cumulative impacts on the road network would not be severe. These improvements would need to include specific, workable arrangements for safe turning of HGVs at the junction of New Lennerton Lane and the B1222.
34. The Appellant estimates that when fully developed the appeal proposal could generate up to 4,646 FTE jobs. Given the distance from the appeal site to residential areas of Sherburn in Elmet and South Milford, it is likely that only a very small proportion of journeys to work would be entirely on foot or by cycle, even with improvements to pedestrian and cycle routes proposed as part of the appeal scheme. The scale of the proposal in relation to the populations of these settlements and the nature of businesses and jobs created make it likely that significant numbers of workers would need to travel from further afield in any case.
35. There are no current bus routes directly serving the appeal site. The nearest route links the Sherburn Industrial Estate with Pontefract, however services only run every two hours approximately. There are train stations at Sherburn in Elmet and South Milford, but these are some distance from the site (approximately 2km and 3km as the crow flies respectively). Even with proposed improvements to pedestrian and cycle routes, travelling by a combination of train/walking or train/cycling is only likely to be a viable or attractive proposition for a small proportion of those working on the site.
36. The S106 agreement would require the Appellant to make a "Sustainable Transport Payment" of £200,000 towards the implementation of "Sustainable Travel Enhancement Schemes". The intention is that this sum would go into a wider pot to fund enhancements in public transport in the locality. It is not clear at this stage however what such enhancements would be and what specific effect they would have on the connectivity of the appeal proposal to

the train stations and its accessibility by public transport generally. A degree of uncertainty regarding the delivery of enhancements was accepted by the Appellant³.

37. The agreement would also require the provision of a shuttle bus service linking the proposed development to the train stations. Whilst the details of such a service would be agreed through the Travel Plan Steering Group, be subject to review and may evolve over time, an indicative route and timetable for an initial 18 seat minibus type service were set out by the Appellant⁴. Such a service would undoubtedly improve the accessibility of the proposed development by public transport and in particular, connectivity to train services. However, it would have limited capacity and the practicalities and cost of increasing capacity and frequency and co-ordinating with train services are not clear.
38. Whilst the agreement would improve the situation regarding public transport accessibility, it is not sufficiently clear that it would fully address the concerns and make the development acceptable in planning terms. In this respect it does not in my view fully satisfy the tests set out in the CIL Regulations and the NPPF and I am therefore unable to attach weight to it in reaching my decision insofar as it relates to sustainable travel enhancements and the shuttle bus.
39. The appeal site is currently poorly served by public transport. Despite the range of proposed improvements and the commitments set out within the Travel Plan, there is insufficient evidence to demonstrate that this situation would change substantially. There would be a very significant reliance on the private car for those working on the site. Notwithstanding the rural location of the site, I consider that the proposed development is contrary to national policy as set out in Paragraph 103 of the NPPF which states that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. This adds further to my concern in relation to the principle of the proposed development in this particular location.

The effect on the character and appearance of the area

40. The Council's reason for refusal does not refer specifically to issues relating to the character and appearance of the area. The Statement of Common Ground between the Appellant and the Council confirms the Council's position that the landscape and visual impact from the appeal proposal would be minimal. These are matters of concern to others however and were the subject of evidence presented at the Inquiry.
41. During my own unaccompanied visits and the accompanied site visit after the close of the Inquiry, I saw the appeal site and its surroundings from a wide range of viewpoints.
42. The southern, previously developed part of the site includes the very large covered stockyard building, other buildings and structures associated with the former mining operations and related infrastructure. It contains significant areas of derelict and despoiled land and overall has an unattractive visual

³ Mr Murphy's proof of evidence, rebuttal proof and cross examination

⁴ Appendix G to Mr Murphy's proof of evidence

character. However, it is well contained visually by the landscape bunds and vegetation which surround this part of the site along with the reclaimed spoil heap to the east and so does not currently have a significant adverse impact in views from the wider area.

43. The northern, greenfield part of the site is relatively flat open land, largely in agricultural use with some areas of woodland. It is not covered by any national or local landscape designations.
44. The proposed development would result in a very significant change to the character and visual appearance of the appeal site through the introduction of large scale industrial/warehouse buildings, container storage, roads and vehicle parking areas. This would particularly be the case for the northern part of the site where the current open character would be lost and there would be a substantial encroachment of built development into the countryside. This would be very apparent in close range views from the access road and public right of way which run along the eastern boundary of the site, from the north along Lennerton Lane/New Lennerton Lane and from the Aeroclub to the west and north-west.
45. Additional landscape bunding and planting would help to screen and soften the visual impact of the proposed development from these close range views however. Subject to the details of the container storage and associated activities and additional landscaping, the proposed development would not be visually prominent in close views immediately to the south from Common Lane.
46. Longer range views of the proposed development from the north, south and east would be limited by topography, existing landscape bunds and trees and the additional landscaping and screening proposed. The proposed development would be more visible in longer range views from the west, particularly from elevated ground associated with the Magnesians Limestone Ridge. From such viewpoints the encroachment of industrial development into the currently open countryside would be apparent, although the significance of this and the perception of change to the landscape would be moderated by the distance involved and the context provided by the existing Sherburn Industrial Estate.
47. The redevelopment of the southern previously developed part of the site would provide the opportunity to tackle areas of dereliction and generally tidy up its appearance. It would introduce a substantial new building⁵, container storage and vehicle parking areas. However, subject to appropriate additional landscaping, I consider that on balance this element of the proposed development would have a positive effect on the visual appearance of this part of the site.
48. Insofar as it relates to the northern, greenfield part of the appeal site the proposed development would have an adverse visual impact, through the introduction of large buildings and the encroachment of a substantial area of built development into currently open, predominantly undeveloped countryside.
49. Taking the proposed development as a whole, it would result in some harm to the character and appearance of the area. The significance of this harm is moderated by the limited number of visual receptors at close range, the limited visibility from much of the surrounding wider area and the fact that clearer

⁵ Based on the Proposed Parameters Plan

views from elevated ground to the west are at some distance. It remains a factor which counts against the proposed development however.

The effect on best and most versatile agricultural land

50. The northern part of the site includes 15.6ha of best and most versatile (Grade 3a) agricultural land. It also includes agricultural land of lower quality (21ha Grade 3b and 6ha Grade 4) along with 1ha of woodland. There is a significant amount of best and most versatile agricultural land in the District with an estimated 59.6% of the District being classified as Grade 1 or 2⁶. There are examples where the Council has granted planning permission for development on the best and most versatile agricultural land.
51. A comparison of the plan showing agricultural land classification (Plan KCC2 of CD1.5) and the Proposed Parameters Plan indicates that although some of the Grade 3a land would remain as areas of landscaping/greenspace, a significant proportion of it would be lost through the proposed development. As such the proposed development would be contrary to Policy EMP9 of the Selby District Local Plan.

If there is a conflict with the development plan, whether there are material considerations which justify granting planning permission

52. The proposed development conflicts with the development plan as a whole. As set out above, it conflicts with Policies SP2 and SP13 of the Core Strategy and Policies EMP2 and EMP9 of the Selby District Local Plan. As a consequence, and in light of the conflict with the NPPF, it is also contrary to Policy SP1 of the Core Strategy which sets out an overarching approach to sustainable development. The above policies are the most important for determining the application/appeal.
53. The Core Strategy was adopted in 2013. Policy SP1 remains consistent with the NPPF and is not out of date.
54. In September 2019, the Council decided to begin work on the preparation of a new Local Plan. There were a number of reasons cited for this course of action, including the need to take account of up to date evidence on employment land requirements and to reflect the Council's strategies and priorities for the economy. The fact that the Council is embarking on the preparation of a new Local Plan is not in itself a reason to conclude that existing policies are out of date. The Council is required to review policies at least every five years and update them as necessary.
55. The process of preparing the new Local Plan is in the very early stages and no decisions have been taken as to how or indeed whether the existing spatial strategy should be amended and what the approach to employment land provision and employment development should be.
56. In terms of a requirement for strategic policies to look ahead over a minimum 15 year period from adoption, Paragraph 22 of the NPPF relates to plans submitted for examination after 24 January 2019⁷. This clearly does not apply to the Core Strategy or Selby District Local Plan. In terms of quantified

⁶ App 4 to Ms Kent's proof of evidence and noting that Grade 3 is not subdivided in the assessment

⁷ See Paragraph 214 of the NPPF

development needs, the Core Strategy covers the period up to 2027, which allows time for the policies to be reviewed and a new Local Plan to be adopted.

57. In relation to large scale transport facilities, Paragraph 104 of the NPPF refers to such facilities that need to be located in the area. Footnote 42 of the NPPF explains that policies for such large scale facilities should, where necessary, be developed through collaboration between strategic policy making authorities and other relevant bodies. Whilst I deal with the matter in more detail below, there is no substantive evidence which demonstrates a specific need for such a facility in the District or quantifies the requirement for employment land related to such a facility. At this early stage in the preparation of the new Local Plan, it is not clear that collaboration between strategic policy making authorities would result in such a policy approach.
58. The figures for employment land provision in Policy SP13 and Figure 12 of the Core Strategy are based on analysis which is now dated, being rolled forward in 2010 from a 2007 Employment Land Study. The most up to date assessment of employment land requirements specifically for the District is set out in the Employment Land Review 2016 (with sites update 2018). Based on different scenarios this identifies a range of needs for the District of 13.97ha to 59.99ha up to 2027. It disaggregates this between different functional economic areas (FEAs). FEA1 covers a large area in the west of the District including Tadcaster, Eggborough, Kellingley and Sherburn in Elmet. The range of employment land needs for FEA1 is 7.68ha to 32.99ha.
59. The indicative distribution between FEAs is not directly comparable with that in the Core Strategy given the different geographies used although it does suggest a greater emphasis on the west of the District including Sherburn in Elmet. At the District level however, the upper end of the range (59.99ha) is not substantially greater than that in the Core Strategy (52ha).
60. The Leeds City Region Strategic Employment Land Review does not identify specific employment land requirements for the District or other individual local authority areas.
61. At this point in time, I consider that there is no basis to reach the conclusion that the employment land provision figures in the Core Strategy have been superseded by more up to date, specific and substantive evidence. As noted above, they have been used with flexibility and have not been regarded as a maximum for the amount of employment land that can come forward.
62. The spatial development strategy and the approach to development in the countryside set out in Policy SP2 and the approach to economic growth including in rural areas set out in Policy SP13 are consistent with the NPPF. Given all of the above I consider that these policies are not out of date.
63. The Selby District Local Plan was adopted in 2005 and clearly the evidence base used to prepare it is now very dated. Policies EMP2 and EMP9 were saved and not superseded by policies in the Core Strategy however.
64. Policy EMP2 includes a number of site allocations for employment use. I understand that these have generally been taken up and the situation regarding employment land sites in the District has clearly moved on. Notwithstanding this, the strategic, locational approach set out in the policy remains valid and is consistent with the NPPF.

65. Part 4) of Policy EMP9 sets out a more definitive approach to the loss of best and most versatile agricultural land compared with Paragraph 170 of the NPPF and Policy SP18 of the Core Strategy. Policy SP18 refers to steering development to areas of least environmental and agricultural quality. I acknowledge that in this particular respect, Policy EMP9 is not fully consistent with the NPPF. However, overall the policy sets out an approach to the expansion and/or redevelopment of existing industrial or business uses outside development limits and established employment areas which is broadly consistent with the NPPF.
66. In light of the above I consider that Policies EMP2 and EMP9 are not out of date.
67. Taken as a whole, the development plan policies which are most important for determining the application/appeal are not out of date therefore. Given this, Paragraph 11d) of the NPPF does not apply in this case.
68. There would be significant economic benefits as a result of the proposed development both during the construction and operational phases in terms of direct and indirect jobs, economic output and wider investment and revenue generation in the area⁸.
69. There would also be benefits arising from the redevelopment of the previously developed part of the appeal site. The proposed development would make more effective and efficient use of this part of the site and as noted above provide the opportunity to tackle areas of dereliction and generally tidy up its appearance.
70. The proposed development would provide the opportunity for the improvement and creation of habitats within the site and an enhancement in terms of biodiversity interest and value.
71. The opportunity and commitment to developing the site predominantly as a rail related facility is an important factor. Given the scale and nature of the proposal and subject to appropriate conditions, it would result in a substantial rail freight interchange. The need for such facilities and networks of them and the economic, social and environmental benefits of enabling and supporting increased use of rail as a mode of transport is recognised at a national level⁹. Increasing rail use, improving rail connections and rail freight facilities is also a key element of Transport for the North's Strategic Transport Plan. Notwithstanding the uncertainty as to the specific localised effects on road based trips to and from the site, there would be clear advantages in facilitating greater use of rail and a modal shift away from long distance road based transport on a wider strategic level.
72. Subject to necessary improvements and upgrading, the proposed development would be capable of handling 4-6 trains a day. It could accommodate W10 and W12 gauge trains with lengths of 775m. Given this, along with the scale of land available and its position in relation to the wider rail network, the site would appear to offer significant locational advantages for a development of the type envisaged. I note the support for the proposal from Network Rail¹⁰.

⁸ As summarised in Paragraph 10.43 of Ms Kent's proof of evidence

⁹ For example - National Policy Statement for National Networks, National Rail Freight Strategy, Network Rail Freight Network Study and Network Rail Freight and National Passenger Operations Route Strategic Plan

¹⁰ Letter of 23 September 2019 – Appendix to Mr Baker's proof of evidence

- There is no evidence that a facility of this particular type and scale could be realistically and viably accommodated on an alternative site within the District.
73. In light of the above I consider that the proposed development would bring significant benefits in terms of the provision of a rail related facility/rail freight interchange.
74. Notwithstanding the flexibility applied to the employment land provision figures in the Core Strategy, it is still important to consider the proposed development within this context and in light of the supply of employment land in relation to these figures. The Appellant and the Council were unable to reach a common position on the supply of employment land.
75. The Council considers the total supply to be approximately 177ha whereas the Appellant's position is that it is 58-66ha approximately¹¹ and that the supply should be calculated as of 31 March 2018. A significant element in the difference between the parties is the Council's inclusion of the site at Kellingley Colliery (approximately 57ha) which was granted planning permission after this date and the site at Church Fenton (approximately 28ha) where the Council has resolved to grant planning permission subject to a planning obligation, again after this date.
76. I note the concerns over including these sites and the need for a comprehensive assessment of supply including adjustments for recent losses and lapsed consents etc. However, it is reasonable in my view to at least take account of the site at Kellingley Colliery in reaching a conclusion as to the supply of employment land as things currently stand. Even just including that site would increase the Appellant's figure to approximately 115-123ha. This tallies broadly with the figure of 118ha referred to by Mr Gent in response to questions at the Inquiry on the overall supply of employment land. This figure would take account of the concerns over the deliverability of the Olympia Park site at Selby and the amount of employment land that should be included for it. The site at Kellingley Colliery has rail connections although these have limitations due to the length of sidings, gauge restrictions and location in relation to the wider strategic rail network.
77. Returning to Policy SP13 and recognising again that the employment land provision figure should be treated with some flexibility, the current supply for the District is considerably in excess of this, even taking the Appellant's position (with the addition of Kellingley Colliery). It is also considerably in excess of the requirements set out in the Employment Land Review 2016 (with sites update 2018). The current supply for Sherburn in Elmet (taking account of the planning permission for 35ha of land at Sherburn 2) is well in excess of the indicative figure of 5-10ha in the Core Strategy and greater than the requirement for the whole of FEA1 set out in the Employment Land Review 2016 (with sites update 2018).
78. Whilst completions between 2011 and 2018 only took up some 26ha, the existing supply of committed sites provides significant potential for further development, well in excess of identified needs up to 2027. The site at Sherburn 2 is currently being developed.

¹¹ Final Position Statement as of 12 January 2020

79. Although the appeal proposal would add to the range and choice of employment land, it would result in an overall supply very substantially in excess of identified requirements. Given the available specific evidence on overall employment land requirements, there is no quantifiable need for the proposed development. There is no substantive evidence which clearly demonstrates a specific need for such a facility in this particular location, the District as a whole or indeed the surrounding area. The need for employment land connected to a rail freight interchange has not been quantified. The scale and nature of the proposed development makes it of strategic importance which would be more appropriately considered through the plan making process and involve collaboration with other strategic policy making authorities and relevant bodies. It is of note that Paragraph 104 of the NPPF relates to planning policies in relation to the provision of large scale transport facilities.
80. Paragraph 6.34 of the Core Strategy expresses the Council's support for the reuse of the former Gascoigne Wood mine, provided this is directly linked to the use of the existing rail infrastructure that exists at the site. This is not set out in a policy however and the land in question is not allocated for development on the Policies Map. In any case, the appeal proposal is not just for the reuse of the former mine site, it goes well beyond that. The proposed development would be on a substantially larger scale, covering a much larger site including some 43ha of greenfield land to the north of the former mine site. Given my findings in relation to the conflict with policies, there is no support for the proposed development within the Core Strategy or the development plan as a whole. Whilst there would be particular benefits associated with a proposal limited to the redevelopment of the former mine site, this is not what is proposed.
81. The Selby District Economic Development Framework (CD6.23) identifies "Gascoigne Interchange" as one of five key development sites in the District although it goes on to say very little as to the future of the site and the approach to it. It is referred to as a 283ha site and it is not clear what this larger area contains and how it relates to the appeal site. The Economic Development Framework is not part of the development plan. The Employment Land Review 2016 (with sites update 2018) recognises Gascoigne Wood as a potentially strategic site for freight based/environmental industries. The site is referred to as being 70.66ha however. It is one of a number of potential sites identified and recommended for further consideration as part of the plan making process. It is also clearly recognised that supply exceeds quantified demand in FEA1.
82. Evidence was submitted by the Appellant regarding the viability of the proposed development¹². The appraisals considered two development scenarios, one based on the development of a single unit of 850,000 sq ft within the previously developed part of the site (Phase 1) and the other based on the proposed development as a whole phased over an 8 year period. The appraisals and subsequent analysis indicate that whilst the proposed development as a whole would give a profit on cost just below that typically expected of speculative development, it would be viable on the basis of a design and build scheme. On the other hand they indicate that the profit on cost for the Phase 1 scenario would only be 1.41%, making the development unviable. In both scenarios the estimated costs of remediation and the

¹² See Mr Gent's proof of evidence and particularly Appendices 3 and 4

upgrading and provision of infrastructure for rail connectivity were included in the appraisals.

83. Whilst I note the conclusions of these appraisals and analysis, they only assess one specific alternative scenario to the proposed development i.e. a single unit of 850,000 sq ft with full rail connectivity. There is no evidence which demonstrates that the redevelopment of the previously developed part of the site could not be undertaken viably in principle, with a different scale or form of development or with a different approach to rail connectivity or accessibility generally. Likewise, there is no evidence to demonstrate that the existing and permitted uses on the site could not continue viably. The very large covered stockyard on the site has been used for the storage of Gypsum imported to the site by rail since 2011 and until very recently.
84. The Council has granted planning permission for employment development (or is minded to) on other significant sites elsewhere in the District despite there being an adequate supply of employment land compared with requirements and in some cases where a conflict with the development plan has been acknowledged¹³.
85. The circumstances relating to these other developments were noticeably different to the current appeal proposal however in terms of their location, site characteristics and the situation at the time in respect of the overall supply of employment land. The Council's decisions were based on judgements taking account of the particular circumstances relating to the specific proposals at that time.
86. Whilst it is also the case that officers of the Council gave support to the proposed development, a planning performance agreement was entered into and officers recommended approval of the planning application, it is the actual decision of the Council which is of key importance. Officers recognised that the proposed development was contrary to development plan policies. The Planning Committee made a judgement that material considerations did not justify the grant of planning permission in this case.
87. Policy EMP11 of the Selby District Local Plan allows for large scale business or industrial development in exceptional circumstances. It specifically relates to such development for occupation by a single large operator however. It is not claimed that this is the case with the appeal proposal and the policy is therefore not directly relevant.
88. I appreciate that the "spirit" of the policy was referred to in the case of the development proposal at Church Fenton. However, the circumstances relating to that proposal were different to the current appeal scheme before me, particularly in terms of the nature of intended uses. I note that despite recommending approval of the current appeal proposal, officers did not refer to Policy EMP11 or suggest that the proposal was in accordance with it, even in spirit.
89. I have fully considered the benefits of the proposed development and other factors in its favour and given them appropriate weight. In particular I have given significant weight to the economic and job creation benefits, the benefits and opportunities created by a rail related development/rail freight interchange

¹³ Key examples being Sherburn 2, Church Fenton and Kellingley Colliery

and the benefits of redeveloping a significant area of previously developed land and putting it to more effective use. However, I have considered these in the context of evidence relating to the overall requirements for and current supply of employment land. I have also taken account of the lack of substantive evidence which clearly demonstrates a specific need for such a facility in this particular location, the District as a whole or the surrounding area and the lack of evidence quantifying the need for employment land connected to a rail freight interchange.

90. The appeal proposal would be a very significant development in the countryside, on a site poorly connected to public transport. It would be contrary to the spatial development strategy and other key development plan and national policies. It would involve a scale of development way in excess of established employment land requirements.
91. The scale and nature of the proposal is such that it is likely to have wider implications for employment land provision in the District and further afield and would be more appropriately considered through the plan making process which would involve collaboration and co-operation with other authorities and organisations.
92. Taking all of the above into account I conclude that the material considerations in this case do not justify granting planning permission.

Other matters

93. From the evidence submitted and what I saw during the accompanied site visit, Sherburn Aeroclub is an important facility which accommodates significant numbers of flights. It relies very heavily on the main tarmac runway running broadly east/west at the southern end of the Aeroclub site. I saw that planes approaching this runway from the east descend as they travel over the appeal site.
94. Notwithstanding the technical assessments undertaken, the lack of objection from the Civil Aviation Authority and the view of the Council, I appreciate the concerns of the Aeroclub in terms of the effect on flights and its operations generally. The specific impacts of such a proposed development on the Aeroclub and the need for particular mitigation could only realistically be assessed at reserved matters stage however when the details of buildings and layout were clear.

Conclusion

95. The proposed development is not appropriate in principle in this location. There would not be unacceptable impacts on highway safety or capacity and the residual cumulative impacts on the road network would not be severe. However, the appeal site is currently poorly served by public transport and there is insufficient evidence to demonstrate that this situation would change substantially.
96. There would be some harm to the character and appearance of the area and a loss of some best and most versatile agricultural land.
97. The proposed development conflicts with Policies SP1, SP2 and SP13 of the Core Strategy and Policies EMP2 and EMP9 of the Selby District Local Plan. It conflicts with the development plan as a whole. It conflicts with the NPPF in

relation to promoting sustainable transport and achieving sustainable development.

98. Taken as a whole, the development plan policies which are most important for determining the application/appeal are not out of date. Notwithstanding the benefits of the proposed development and other factors in its favour, material considerations do not justify granting planning permission in this case.
99. For the above reasons and taking account of other matters raised I conclude that the appeal should be dismissed.

Kevin Ward

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Stephanie Hall

She called
Richard Wood

Director – Richard Wood Associates Ltd

FOR THE APPELLANT:

Gregory Jones

Queen's Counsel

He called
Claire McHarrie

Associate Landscape Architect – Barton Willmore
LLP

David Baker
Andrew Gent
Richard Murphy
Claire Kent

Partner – Baker Rose Consulting LLP
Director – Gent Visick Ltd
Director – Mosodi Ltd
Planning Director – Barton Willmore LLP

FOR SAMUEL SMITH OLD BREWERY (TADCASTER):

Peter Village

Queen's Counsel

He called
Joshua Peacock

Associate Landscape Planner – Lizard Landscape
Design and Ecology

John Russell
Joseph Cunnane

Regional Director – Motion Ltd
Senior Partner – Cunnane Town Planning

FOR MESSRS STOKER AND LAMB

Brian Bartle

Bartle & Son

INTERESTED PERSONS:

Dale Petty

Sherburn Aeroclub

INQUIRY DOCUMENTS (submitted at Inquiry)

- 1- List of appearances on behalf of Appellant
- 2- Judgement Canterbury City Council Vs SSCLG and Gladman Developments Ltd [2018] EWHC 1611 (Admin)
- 3- Opening statement on behalf of Appellant
- 4- Opening statement on behalf of Council
- 5- Opening statement on behalf of Samuel Smith Old Brewery (Tadcaster)
- 6- Statement on behalf of Messrs Stoker and Lamb
- 7- Summary of proof of evidence from Mr Peacock
- 8- Position statement of Samuel Smith Old Brewery (Tadcaster) on jurisdiction
- 9- Note correcting calculation in Mr Murphy's rebuttal proof
- 10- Updated schedule of suggested conditions
- 11- Speed survey data submitted by Mr Russell
- 12- Detailed TRICS data- Warwickshire site
- 13- Detailed TRICS data- Angus site
- 14- Additional information regarding TRICS data
- 15- Data on night working
- 16- Homes England letter regarding funding for Olympia Park
- 17- Olympia Park illustrative masterplan
- 18- Extract from Environmental Statement on Olympia Park
- 19- Detailed costs information used in viability appraisal by Mr Gent
- 20- Updated summary table of landscape and visual effects – Mr Peacock
- 21- Extract from website with marketing information for Sherburn Rail Freight Terminal
- 22- Extract from Design Manual for Roads and Bridges
- 23- Signed and dated unilateral undertaking from Appellant concerning monitoring and control of vehicle trips