



Appeal Decision

Hearing held on 17 April 2024 and 12 July 2024

Site visit made on 12 July 2024

by Mark Caine BSc (Hons) MTPL MRTPI LSRA

an Inspector appointed by the Secretary of State

Decision date: 09 September 2024

Appeal Ref: APP/M0655/W/23/3329902

Land south of 2 Cuerdley Road and west of Cuerdley Road, Penketh WA5 2TY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Messrs Z & D Tourney against the decision of Warrington Borough Council.
 - The application Ref 2022/42289.
 - The development proposed is a residential redevelopment of land for between 5no. and 9no. affordable dwellings following demolition of existing buildings, together with associated infrastructure works and access(es) onto Cuerdley Road.
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Decision

1. The appeal is dismissed.

Applications for costs

2. Applications for costs have been made by both main parties. These applications are the subject of separate Decisions.

Procedural Matters

3. The appeal proposal is for Permission in Principle (PIP) in accordance with the Town and Country Planning (Permission in Principle) (Amendment) Order 2017. The Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development which separates the consideration of matters of principle from the technical detail.
4. The scope of the considerations for PIPs is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent Technical Details Consent (TDC) application if PIP is granted. I have determined the appeal accordingly.
5. The Council adopted the Warrington Local Plan 2021/22-2038/39 (the Local Plan) on 4 December 2023. A revised version of the National Planning Policy Framework (the Framework) was also published in December 2023. As a result, the policies that are cited in the reasons for refusal on the Council's decision notice have been superseded by policies within the Local Plan. I must base my decision on the development plan prevailing at the time of my determination. The main parties have had the opportunity to provide submissions in writing on the relevance of the new Local Plan and the revised Framework to the case, which I have had regard to in my decision.

6. During the Hearing on 17 April 2024, it became apparent that the Council and interested parties had not seen the appellants' supplementary statement of case. The Hearing was adjourned to allow further notification and comments to be made. The Hearing was resumed on 12 July 2024.
7. Since the Hearing closed, the Government published a consultation on proposed reforms to the Framework and other changes to the planning system. These documents do not constitute Government policy or guidance, and their status, being in the consultation phase, significantly limits the weight that I afford to them. Nonetheless, they are capable of being material considerations. Also on 30 July, the Secretary of State made a written ministerial statement (WMS) entitled "Building the homes we need". The WMS is an expression of Government policy and is, therefore, capable of being a 'material consideration' in appeal casework. As such, the main parties have also been given the opportunity to comment on these documents, which I have had regard to in my determination of this appeal.

Main Issues

8. With reference to the PPG advice on PIPs, and the Council's reasons for refusing the application, the main issues are whether the site is suitable in principle for residential development, in respect of its location, the proposed land use and the amount of development, having particular regard to:
 - Whether or not the proposed development would be inappropriate development in the Green Belt;
 - The effect of the proposed development on the openness of the Green Belt and its purposes; and
 - If the proposed development would be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to very special circumstances.

Reasons

Whether Inappropriate Development

9. The appeal site lies within the Green Belt. In accordance with national planning policy, Local Plan Policy GB1 sets out that within the Green Belt planning permission will not be granted for inappropriate development, except in 'very special circumstances'. Other forms of development defined in national planning policy to be an exception to inappropriate development within the Green Belt are supported by Policy GB1, subject to meeting other relevant Local Plan Policies and relevant Supplementary Planning Documents.
10. The Framework regards the construction of new buildings as inappropriate in the Green Belt subject to certain exceptions. The main parties agree that the exceptions pertinent to this appeal are those in paragraphs 154 f) and g). Namely paragraph f) limited affordable housing for local community needs under policies set out in the development plan. Paragraph g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use which would, not have a greater impact upon the openness of the Green Belt than the existing development or, not cause substantial harm to the openness of the Green Belt, where the development

would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

11. It is common ground between the main parties that the proposal would have a greater impact on the openness of the Green Belt than existing development. As such, it would not comply with the first limb of paragraph 154 g). Both paragraph 154 f) and the second limb of 154 g) require new buildings to provide affordable housing for local community needs or to meet an identified need within the area of the local planning authority respectively. The needs for and likely delivery of affordable housing in this Green Belt location are therefore relevant issues to the 'in principle' matters that are required to be assessed at PIP stage.
12. The main parties do not dispute that historically, the Council has underdelivered on meeting the affordable housing needs of the Borough. It is also not contested that there is an increasing waiting list for affordable houses in Warrington. From all I have read and heard there is a pressing need for affordable housing in the Borough.
13. There is no specific affordable housing development plan policy for local community needs, and at the Hearing I was told that the overall housing target, distribution, and stepped trajectory are borough wide. This is set out in the supporting text to Policy DEV1 of the Local Plan. Local Plan Policy DEV2 also sets out the Council's approach to affordable housing. Affordable housing need was therefore assessed as part of the examination of the recently adopted Local Plan, and previous Planning Inspectors were satisfied that the proposed level of delivery could be achieved.
14. Whilst this supply includes strategic sites for housing, the Warrington Local Plan, Inspectors Report October 2023 states that in addition to the affordable housing that would be delivered as a part of market housing developments, there is likely to continue to be a supply by Registered Providers and the Council's Housing Company. As such, I am satisfied that the stepped housing requirement figures are not a ceiling to housing delivery, and I have no reason to conclude that the recently adopted Local Plan is not consistent with the Framework. Indeed, the Council accepted at the Hearing that had they been provided with certainty that a genuine affordable housing scheme would be delivered it would be a material consideration that they would have to attribute weight to in any planning balance and decision.
15. The aim of PIP is to give up-front certainty on the core matters underpinning the basic suitability of a site but based on the minimum technical detail. I have had regard to the letters of interest from local developers, and the options and ranges put forward which include 3 and 4 bedroom detached houses, 2 and 3 bedroomed semi-detached dwellings and bungalows for old age living. Nonetheless, these plans and schemes are indicative and there are no fixed parameters or firm details in respect of layout, scale, type of affordable housing, or terms of occupation before me. There is also no substantive evidence of any direct Registered Social Landlord interest in the site.
16. The appellants consider it to be too early to be looking at these details and that they should be determined at TDC stage. A solicitor's letter which cites a previous appeal decision and the PPG's approach to securing planning obligations at PIP stage has also been submitted in support of their case. However, the description of the proposed development alone would not provide

me with the necessary certainty that affordable housing would be delivered. Accordingly, under the terms of this type of application, and on the basis of the evidence before me, I am unable to be confident that the proposed affordable housing, including any first homes, would be secured in perpetuity, delivered, and positively contribute towards meeting the need.

17. With regard to previously developed land (PDL) the main parties disagree about the existing lawful use of the land. Nonetheless, if the appellants want to ascertain whether the use is lawful it is open to them to apply for a determination under sections 191/192 of the Town and Country Planning Act 1990 (the Act). In addition, it is not within my remit, in the context of an appeal under S78 of the Act, to formally determine whether development has begun under planning permission Ref: 2023/01138/FUL. There is also little before me to demonstrate that this permission was granted for the continued use of the land for equestrian purposes.
18. Moreover, even if I were to find that the appeal site constituted previously developed land, given my concerns about securing affordable housing, and my findings in respect of the harm that the proposal would cause to the openness of the Green Belt below, the proposed development would not qualify as an exception under paragraph 154 (g) of the Framework. My conclusions in respect of securing affordable housing would also result in the proposal failing to satisfy paragraph 154 (f).
19. The proposed development would thereby constitute inappropriate development in the Green Belt. Accordingly, I find the location and proposed land use to be unacceptable having regard to Local Plan Policies DEV1, DEV2 and GB1. Amongst other matters, these seek to distribute, deliver, and secure housing that meets the needs of all of the Borough's existing and future communities, and to maintain the general extent of the Borough's Green Belt land.

Openness

20. The Framework advises that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is an essential characteristic of the Green Belt and has a spatial and visual aspect. Matters relevant to openness in any particular case are a matter of planning judgement, not law.
21. The appeal site is an irregular shaped piece of land that is enclosed by hedgerows and trees. Whilst there is a small area of hardstanding, and a few structures to its southern end, the remainder of the site predominantly comprises open grass land. The lawful status of the land is disputed; however, the Council accept that the structures to the south of the site are now likely to be immune from enforcement action. As such, they form part of the baseline for the purposes of an assessment of impact on Green Belt openness in this instance.
22. The arrangement, size, and design of dwellings on the site are ultimately a matter for the TDC stage. Nevertheless, considering the site shape, area and the proposed range of development, it is likely that the proposed houses would occupy larger footprints and be of greater amount and scale than existing structures and would spread further across the site. Likely parking areas, gardens, outbuildings and boundary treatments would add to the extent to

which the site would be developed. These factors would result in built development in large areas of the site where there is presently none and a significant spatial reduction to the openness of this part of the Green Belt. The additional activity associated with the comings and goings and vehicle movements to and from 5-9 dwellings would undermine the openness of the Green Belt further.

23. Long-distance views of the site are restricted; however, any development would be clearly visible along Cuerdley Road and from the windows of several residential properties along this highway. As such, it would appear significantly more urbanised than is presently the case and be likely to give rise to a considerable spatial and visual loss of openness on the site. The retention of hedgerows would not overcome this harm.
24. On the basis of the evidence before me, and under the terms of this type of application, I conclude that the proposed development would cause substantial harm to openness, in both visual and spatial terms. As such, the amount of development proposed is not acceptable.

Purposes

25. Paragraph 143 of the Framework sets out the 5 purposes of the Green Belt. The appeal site is within a zone and parcel that the Council previously considered in its Green Belt Assessment in 2016 and scored the overall purpose value of these to be strong.
26. The appeal site only forms a very small part of these large areas and is not centrally located within them. There are also residential properties on the opposite side of Cuerdley Road and on Farnworth Road, with some other buildings and urban influences nearby. However, the appeal site is located outside of the core shape and built form of Penketh. There is also a wider network of agricultural fields directly to the west of the site and the prevailing character of the immediate area is rural, dominated by open agricultural fields, hedgerows and trees. As the appeal site comprises mainly undeveloped grassland, with mature vegetation along its boundaries, its character is consistent with adjacent open agricultural land and countryside.
27. I have had regard to the appellants' overall score in their own Green Belt Impact Assessment. The proposal would not result in the merging of settlements nor impact upon the setting or special character of historic towns. There is also little substantive evidence before me to suggest that the development of this site would disincentivise the urban regeneration of sites elsewhere. Nonetheless, the extent of sprawl would likely increase. Accordingly, the appeal scheme would have an adverse impact on purpose a) of checking unrestricted sprawl of large built-up areas. In light of the appeal site's character, it follows that the proposal would also conflict with the Green Belt purpose c) of safeguarding the countryside from encroachment. The conflict with these purposes leads me to conclude that the amount of development proposed would not be acceptable.

Other Considerations

28. I have been informed that the proposed dwellings would comply with Building Regulations Part M4(2), would be adaptable for persons with mobility difficulties and would meet Lifetime Homes standards. It has also been put

forward that the proposal would satisfy the Government's nationally described internal space standards and would result in the creation of a SuDs Pond, a wildflower meadow and native landscaping, and the installation of bird and bat boxes, which could improve biodiversity and provide some ecological net gains. However, matters of design and landscaping would be for future consideration at TDC stage and are only qualified by indicative plans. I am therefore unable to attribute these factors any more than very limited positive weight.

29. The Framework seeks to significantly boost the supply of homes. It also advises that small and medium sized sites can make an important contribution to meeting the housing requirement of an area and are often built-out relatively quickly. I heard that the site was 'shovel ready' and that it could be delivered promptly, and much faster than strategic sites, without any major infrastructure or highway improvements being necessary. Nonetheless, if this appeal was allowed a detailed scheme would need to be designed and TDC would need to be obtained. I therefore attribute limited weight to the provision of housing. Also, given my concerns in respect of securing 100% affordable housing, I attribute very limited weight to the potential for its provision.
30. It is not in dispute that the proposal would be in an accessible location, within walking distance of a number of local services and public transport. However, this is not a factor that carries more than limited weight in the scheme's favour. There is also no development plan or national policy requirement for a sequential test of alternative sites outside of the Green Belt but closer to the settlement centre to be undertaken. As such, the suggested lack of available alternative sites attracts very limited weight.
31. Furthermore, the lack of Council objection in respect of the quantum of development on the site, the effect on the landscape, highway safety, noise, air quality, flood risk, ecology, archaeology, tree protection, heritage, footpaths, land quality and coal mining legacy are neutral factors that do not weigh in the scheme's favour. Although the proposal would result in the removal of unattractive buildings, so would the development permitted under planning permission 2023/01138/FUL. In any case, neglect of land does not in itself justify the grant of permission for an otherwise unacceptable proposal.
32. The possibility of 2023/1138/FUL forming a fall-back position was briefly touched upon at the Hearing. Nonetheless, the extant permission is for a much less amount of built development than the appeal scheme. The application site for this permission is also smaller than that of the appeal site. The approved scheme would therefore not be equally or more harmful than the appeal proposal. These factors limit the weight that I attribute to the extant permission as a fallback position.
33. A number of appeal decisions have been referred to me. These are in respect of the need for and delivery of affordable housing in Warrington, older age living, equestrian uses, and the assessment of openness for the redevelopment of PDL and the application of the 'tilted balance' in the Green Belt. Various reasons why certain factors should or should not be afforded different levels of weight in my decision have been cited. Nonetheless, these cases involved a mixture of different policy considerations, main issues and site characteristics which were subsequently considered in the respective planning balances and attributed weight dependant on the circumstances of each case. Each application and appeal must be determined on its own merits, and that is what I have done in

this case. As such, they do not attract any positive weight in the overall Green Belt balance.

34. I have also had regard to the objectives within the recently published WMS, and the contents of the draft Framework. Nevertheless, given my concerns in respect of securing affordable housing and the level of harm that would be caused to the Green Belt, these do not alter my overall conclusion. Similarly, I have taken account of all the caselaw cited by the appellants, nevertheless, there is nothing that I have read or heard that would lead me to reach a different decision.
35. The Council's decision notice refers to Policy QE7 of the Adopted Local Plan Core Strategy 2014 which was superseded by Local Plan Policy DC6. As this policy primarily relates to matters of design and layout, I find no conflict with it in the assessment of the main issues of this case for PIP. However, this does not attract any positive weight or alter my findings.

Green Belt Balance and Conclusion

36. I have concluded that the proposal would be inappropriate development in the terms set out by the Framework, and to substantially harm the openness of the Green Belt. I have also found there to be conflict with 2 of the Green Belt purposes in relation to checking the unrestricted sprawl of large built-up areas and safeguarding the countryside from encroachment. The Framework requires me to give these collective harms substantial weight. Further, I have concluded that the site would not accord with the development plan in respect of its location, proposed land use and the amount of development. As such, even when taken together, the other considerations reviewed above do not clearly outweigh the harm that the proposal would cause. The very special circumstances required to justify the proposed development therefore do not exist.
37. The appeal scheme consequently conflicts with the development plan and there are no material considerations including the Framework that warrant taking a decision otherwise than in accordance with it. The appeal should therefore be dismissed.

Mark Caine

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Daniel Matthewman	Managing Director, County Planning Ltd
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FOR THE LOCAL PLANNING AUTHORITY:

Nikki Gallagher	Development Manager
Angela Forsyth	Senior Planning Officer
Jonathan Smith	Head of Housing
Kevin Usher	Principal Policy & Strategy Officer

INTERESTED PERSONS

Joseph Rotherham	Local Resident
Chris Wells	Local Resident
Dave Arthur	Local Resident
Glenda Wilkie	Local Resident
Andrew Taylor	Local Resident
Jackie Taylor	Local Resident
Jacqueline Anderson	Local Resident

DOCUMENTS

1. HSE land use consultation matrix document.
2. Statement of Common Ground 16 April 2024 (Rev A).
3. Extract from WBC Immediate and High Risk Surface Water flood risk map.
4. Extract from WBC Critical Drainage area map.
5. Appellants' application for costs.
6. Council's draft response to appellants' application for costs.
7. Council's application for costs.