APPEAL REF: APP/B1930/W/24/3338501

Bricket Wood Sports and Country Club, Paintball Site and Bricket Lodge, Lye Lane, St Albans

COUNCIL’S OPENING STATEMENT

Introduction

1. This is an appeal against non-determination of the Appellant’s application for outline planning permission (with all matters reserved apart from access) for development on a 3.2 ha site at Bricket Wood Sports and Country Club, Paintball Site and Bricket Lodge, Lye Lane, St Albans (“**the Site**”). The development comprises:

“The demolition of existing buildings, the construction of up to 115 dwellings, the creation of a new access and associated highways improvements”

1. The Council resolved that it would have refused planning permission. The Officers’ report (“**OCR**”) is at CD3.1. There were seven putative reasons for refusal. Of these:
   1. Reason for refusal 6 (impact on nearby SSSIs) has been withdrawn following revised advice from Natural England.
   2. Reason for refusal 5 has been addressed in part. Further details in relation to the site access, Lye Lane/West Riding junction and a proposed passing bay on Lye Lane south of the M25 overbridge have now been submitted including vehicle swept path analyses and a revised Stage 1 Road Safety Audit with associated designers’ response. The latter was however only received by the Council and Herfordshire County Council (“**HCC**”) on 5 June 2024. HCC are reviewing the RSA and hopes to be able to provide a formal response by the end of this week. Subject to any issues being raised the RSA review, Mr Carr will confirm that the swept path analyses are themselves considered to be adequate and that any minor required changes can be addressed through the s.278 process.
2. The other five reasons for refusal remain extant. I will first address the two remaining technical reasons, before turning to the Green Belt and landscape matters.

Whether the proposed development would support active and sustainable modes of travel

1. The Council, as advised by HCC, continue to object to the scheme on highway sustainability grounds.
2. It is agreed that the appeal site in currently unsustainable and requires off-site improvements to be able to comply with the NPPF and local policies.
3. To address this, the Appellant proposes a footway alongside Lye Lane to the south, connecting to the West Riding road and on to Bricket Wood.
4. There are a number of problems with this.
5. First, HCC’s view is that the provision of a footway does not go far enough because (i) the site will still have no compliant cycle access and (ii) the public transport sustainability even with a connection to the bus services at Bricket Wood is modest.
6. Second, HCC as highways authority do not consider that there is sufficient evidence to show that the footway can itself be effectively implemented.
   1. First, the proposals are entirely dependent on the culverting of large sections of an existing ditch. The LLFA have made is clear (through the evidence of Ms Waters) that this is very unlikely to be acceptable and their consent under the Land Drainage Act would be a precondition for the details of the footway being approved under s.278.
   2. Second, the proposals trace the edge of the ancient woodland shown on DEFRA’s magic map resource. In order to avoid TPO protected specimens within and outside the ancient woodland the footway already narrows at multiple places to what appears to be 1.2m in width[[1]](#footnote-1). However, they still involve development within what would be the root protection areas of these trees. The Appellant’s rely on notes from their arboriculturist which suggest that different root protection areas are appropriate due to the influence of the existing ditch and road but (i) no full survey of the trees has yet been done (ii) the root protection areas actually relied upon in preparing the general arrangement plans have not been provided (iii) there are a number of issues and uncertainties in the materials which have been provided and (iv) the Council’s tree officer has responded to indicate why the approach taken is unlikely to be appropriate. Even if this issue were resolvable at the detailed design stage it is likely that it will either be at a cost of some harmful impact to the ancient woodland, or some further reduction in the width of the footway – which is already significantly below standard. This may mean that the footway ceases to effectively support sustainable connections to Bricket Wood.
   3. Third, as Mr Carr will explain there are further barriers to implementability and unanswered questions including a suitable lighting scheme (which will need to strike a balance between ecological and highways safety concerns) and a need for common land consents.
7. In addition to questions over the feasibility of the footway, there are also questions as to what ecological, landscape and arboricultural impacts will arise. These need to be taken into account in deciding whether to grant permission.
8. The Appellant has already made much of the fact that the application is in outline. However, it should be remembered that access to the site is not a reserved matter. As defined in the Town and Country Planning (Development Procedure Management) (England) Order 2010 this includes accessibility to the site:

“access”, in relation to reserved matters, means the accessibility to and within the site, for vehicles, cycles and pedestrians in terms of the positioning and treatment of access and circulation routes and how these fit into the surrounding access network; where “site” means the site or part of the site in respect of which outline planning permission is granted or, as the case may be, in respect of which an application for such a permission has been made;”

1. It follows that, while conditions can be applied in order to require submission of further details, they should only be used where the Inspector is satisfied that the principle of the access is acceptable. The Council’s position is that the information available is simply insufficient to reach this threshold.

The effect of the proposed development on flood risk

1. The Council also considers, relying on the advice of the LLFA, that it has not been satisfactorily demonstrated that the proposed development will not increase flood risk off site.
2. This is something which needs to be determined as part of the principle of developing the site for 115 dwellings.
   1. While it is accepted that the details of the attenuation and drainage of surface water from the site will need to be worked out at a later stage (if permission is granted) the basic issue is that the Appellant has failed to establish even the principle of an acceptable sustainable drainage option.
   2. The application materials (CD1.8 and CD1.9) identified that infiltration was not viable and that there were no watercourses, surface water sewers or combined sewers to which discharge could be made in the immediate vicinity of the site.
   3. As such the only sustainable option identified is to pump water to a watercourse some 240m north west of the site. However, there is no information provided as to (i) whether third party land consents would be provided (ii) of the environmental impacts of laying a pump through the intervening woodland and (iii) of the potential impacts in flood risk terms of discharging additional water into that watercourse.
   4. As Ms Waters will explain, there is no information to show that there is capacity within the watercourse and some to suggest that there is already a flood risk to which additional discharges will add. Any additional water to this catchment may increase flood risk to others and not be viable without significant off-site mitigation.
   5. There are also knock on effects. The use of pumping requires back up storage on site to deal with critical storm events. If it were to be identified that there is capacity in the watercourse, it might still be that the discharge rate needs to be significantly reduced from the 5.1 l/s currently envisaged.
3. This last point of additional import because, as the Council’s second reason for refusal identifies, and Mr Hughes will explain the Appellant has singularly failed to show that provision of 115 dwellings on the site can be achieved whilst delivering acceptable design, layout etc. While it is recognised that these are reserved matters, the grant of outline permission would entail an acceptance that 115 dwellings (not 109, or 113) is an acceptable quantum of development: see Dove J in ***R (Village Concerns) v Wealden DC*** [2022] EWHC 2039 (Admin)[[2]](#footnote-2)at para 47 (my emphasis):

“47. The logic of this position is that in granting outline permission for “up to” a given number of dwellings it has been accepted by the local planning authority that the number of dwellings specified in this formula is an acceptable quantum of development. As a matter of interpretation of such an outline planning permission firstly, any application for the specified number of dwellings would be within the scope of the outline but, secondly, it is open to the applicant for reserved matters to provide details for a smaller number of dwellings. What is not available to the local planning authority is to refuse an application for the specified number of dwellings on the basis that the site is not capable of accommodating that number in principle. By the same token it is open to the local planning authority to refuse a reserved matters application for the specified number of dwellings on the basis that it does not amount to the best means of achieving the delivery of the specified number of dwellings on the site of the outline planning permission.”

Additional requirements for on-site attenuation or other equipment will further reduce a developable area which is already heavily constrained by (i) the need to respect a buffer to the ancient woodland and (ii) the landscape mitigation which the Appellant relies upon.

1. Despite these points having been flagged early in the process, it is striking that the Appellant has done nothing to address them or provide further reassurance. If there were answers to these points, it begs the question why they have not been provided.

Effect of the proposal on the landscape character of the area

1. This issue arises as an additional harm within the planning balance. Mr Hughes will explain the Council’s position which is that the evidence advanced by Ms Williams understates the effects that will arises and mischaracterises them as positive.
2. Both witnesses also deal with the visual component of openness.

Whether the proposal would represent inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant Development Plan policies

1. This will be addressed by Mr Hughes for the Council. The Appellant seeks to rely on NPPF 154(g) which provides that the complete redevelopment of previously developed land (“**PDL**”) is not inappropriate development where it would

“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.”

1. The Council accepts that the proposal contributes to affordable housing need and does not contest the evidence of Ms Gingell. The main issue on NPPF 154 is therefore whether substantial harm to openness arises. Mr Hughes and the Council will explain both why the Appellant’s approach to this question is misconceived and why the facts of this case plainly demonstrate that substantial harm should be found.

If the proposed development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

1. The very special circumstances balance will be addressed via the evidence. The Council will show that there is substantial harm to openness and conflict with the purposes of the green belt. These must be given substantial weight on their own, but the inquiry will also hear that there are a range of other harms which also stack high against the appeal scheme. While it is recognised that the delivery of housing and affordable housing both carry very substantial weight in the planning balance the inspector will be asked to note that the site is not one which has been identified for allocation in the emerging plan. The very special circumstances test remains the highest bar to development in the planning system – the Council will show it is not met here.

Matthew Dale-Harris

Landmark Chambers

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11 June 2024.

1. The Appellant’s evidence is contradictory on this point. Mr Ferguson and Mr Hartfree say the footway is never below 1.5m, but the sections at CD2.11.13 and in Mr Clark’s Arboricultural Method Statement at CD2.4.3 show otherwise. [↑](#footnote-ref-1)
2. CD6.20 [↑](#footnote-ref-2)