



Appeal Decision

Hearing held on 11 and 12 January 2011

Site visit made on 12 January 2011

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 19 April 2011

Appeal Ref: APP/Q4625/A/10/2133554

114-118 Widney Manor Road, Solihull, West Midlands B91 3JJ

- 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 R Dunleavy against the decision of Solihull Metropolitan Borough Council.
 - The application Ref 2010/648, dated 26 April 2010, was refused by notice dated 15 July 2010.
 - The development proposed is 9 detached dwellings and 9 flats together with access road.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application is in outline with all matters reserved for subsequent approval.
3. Two unilateral undertakings were submitted by the appellant after the making of the appeal, concerning the provision of affordable housing. The appellant says that the first (dated 4 October 2010) was unlawful in that it omitted to refer to part of the appeal site. A second obligation, dated 21 December 2010, rectifies this omission, and it is the one to which I shall refer to below.
4. The Council officers attending the Hearing had not had sight of the second unilateral undertaking prior to the Hearing. In the light of concerns raised by the Council about the implications of one clause of the obligation, I allowed the Council an opportunity to make comments about the obligation after the close of the Hearing, and for the appellant to comment on them, and I shall refer to these representations below.

Main Issues

5. The main issues are:
 - i) the benefits or otherwise of including the site within the Green Belt and the weight which should be given to such arguments;
 - ii) the effect of the proposal on the openness of the Green Belt, and on any of the purposes for which it was designated;

- iii) the effect of the proposal on the character and appearance of the adjacent residential area
- iv) whether there is an up-to-date five year supply of deliverable housing sites, having regard to the development plan, the weight to be given to the Secretary of State's intention to abolish Regional Spatial Strategies (RSSs), other evidence on housing need and supply, and the weight to be afforded to such evidence;
- v) the effect of the proposal on highway safety,
- vi) whether the proposal makes satisfactory provision for affordable housing, and
- vii) whether there are material considerations which outweigh the harm to the Green Belt caused by inappropriateness, and any other harm, to amount to very special circumstances sufficient to justify the development.

Reasons

Benefits of including the site in the Green Belt

6. The appeal site comprises parts of the large gardens of the detached houses at 114, 114a, 116 and 118 Widney Manor Road. The site is bordered to the north and south by the gardens of adjacent houses, and to the west by a corridor of land alongside a deep railway cutting. The site lies within the Green Belt, the nearest boundary of which runs along Widney Manor Road.
7. There is no dispute that the proposal constitutes inappropriate development, which is, by definition, harmful. Planning Policy Guidance Note 2: *Green Belts* (PPG2) says that in view of the presumption against inappropriate development the Secretary of State will attach significant weight to harm to the Green Belt caused by inappropriate development.
8. The appellant argues that it is a material consideration that the boundary is an anachronism, and an accident of history. The appellant accepts that the appropriate mechanism for reviewing the position of Green Belt boundaries is as part of the development plan process. Nevertheless, the role of the appeal site having regard to the purposes of including land within the Green Belt is a material consideration.
9. The current boundary was proposed in the draft Solihull Green Belt Plan 1976 and formally established in the Solihull Green Belt Plan 1977. At that time, land to the west of the railway line had been earmarked for housing development, but it is clear from the wording of the explanatory text to the plan that the plan had adopted the rationale of the Structure Plan in force at the time of including within the Green Belt areas of mainly pre-war ribbon development which should be prevented from extending, mentioning Widney Manor Road amongst others.
10. The positioning of the Green Belt boundary along the road would only prevent the ribbon development extending to the west, i.e. between the road and the railway line, and thus it was a deliberate intention to prevent the infilling of this area which includes the appeal site. The Green Belt boundaries in Solihull have

twice been reviewed as part of the development plan process since 1977, but there have been no changes proposed in the vicinity of the appeal site.

11. The long, largely open gardens of the houses on Widney Manor Road constitute a substantial area of land. Along with the railway cutting itself, which is a wide, mostly well-vegetated open area, the gardens are almost wholly devoid of built development of any significance. The land between the railway line and Widney Manor Road continues to serve a useful purpose in preventing sprawl, i.e. from dense urban development spreading from the west of the railway line towards the east. The thin line of houses along Widney Manor Road constitutes a ribbon of development extending from the built-up core of Solihull to the north, and can be readily distinguished from the consolidated urban development to the west of the railway line.

12. I therefore consider that the Council's arguments about the merits of the inclusion of the appeal site within the Green Belt are the stronger, and I attach little weight to the appellant's criticisms of it.

Effect on the openness and other attributes of the Green Belt

13. The erection of 10 large, two and two and a half storey buildings, and the provision of roads and car parking would lead to a loss of openness. As the buildings would be distributed around much of the site, albeit with space around them, the loss of openness would be significant. I recognise that the extent to which this loss would be discernible from the public realm along Widney Manor Road would be limited, because of the screening effect of the existing houses and tree planting within the site and the gardens of the frontage houses. However, the impact on openness would be seen from the gardens and windows of neighbouring and nearby houses, both on Widney Manor Road and from the larger number of houses, albeit at a greater distance, on the western side of the railway embankment.

14. Whilst the extent to which openness can be appreciated from public and private viewpoints is a material consideration, openness is an intrinsic quality of the land itself, relating to the absence of built development, and this quality is not dependent on whether it can be seen by the public. As openness is the most important attribute of the Green Belt, the loss of openness in this case would result in serious harm, and would conflict with Policy C2 of the Solihull Unitary Development Plan (UDP) 2006, which deals with control of development in the Green Belt.

Housing land supply

15. The appellant argues that the proposal should be considered favourably as advocated in paragraph 71 of Planning Policy Statement 3 (PPS3): *Housing* in circumstances where a local planning authority cannot demonstrate a 5 year supply of deliverable housing sites. It is common ground that the housing requirements set out in the UDP carry little weight, because the plan is on the verge of expiry. The Regional Spatial Strategy (RSS) for the West Midlands, approved in 2004, is currently part of the development plan, although the Secretary of State has announced that it is to be revoked in forthcoming legislation. Both parties agree that there is sufficient housing land to meet the extant RSS annual housing rate for Solihull of 470 dwellings from 2011 to 2021.

16. Irrespective of the arguments about the weight which should be afforded to the Secretary of State's intention to abolish RSSs, the appellant says that there is other evidence of housing need which should be afforded greater weight than the adopted RSS housing targets. On approval of the RSS, a number of issues were identified for further work; Phase 1 related to the Black Country and has been carried out. Phase 2 deals with housing and employment and a review has been carried out and the Examination in Public Panel has completed its report to the Secretary of State. In March 2010 the Government advised the West Midlands Regional Assembly that proposed changes would be likely to be published in July 2010. In the light of the Government's stated intention to abolish the RSS, it is likely that the review will go no further.
17. Even so, the evidence base of the review, which included Government household projections, is of relevance, and in respect of housing supply, the Panel concluded that whatever option is adopted, "the only way is up". In respect of Solihull, the Panel recommended a total provision of 10,500 dwellings over the period 2006-2026, equating to an indicative annual average provision of 525 dwellings. Since then, more recent Government household projection figures have been published which shows an even greater need for housing in the area.
18. The draft Solihull Core Strategy largely adopts the Panel Review recommendations, and aims to provide 10,000 net additional dwellings during the plan period, and a further 500 dwellings if sites can be identified within the town centre, providing 10,500 in total. The appellant accepts that for the purposes of this appeal, the figure of 10,500 would be appropriate, notwithstanding that other evidence, subsequent to the Panel report, suggests a greater need for housing.
19. The background to the RSS and subsequent evidence of housing need, together with the fact that the Council has adopted the 10,000 - 10,500 figure is a significant acceptance that the need for housing is greater than that set out in the adopted RSS, and thus there are good reasons why these other indicators should be afforded greater weight.
20. The Council says that it can meet the Core Strategy figure without reliance on windfall sites referring to the Strategic Housing Land Availability Assessment dated September 2010. However, in order to so, it relies heavily on the delivery of housing from the North Solihull Regeneration Partnership (NSRP), a large scale public-private partnership, which is underway, and aims to provide 4000 new dwellings (net), of which 1036 are to be delivered between 2010 and 2017.
21. However, the details of the housing delivery of this project are provided in a rolling Business Plan. The specific sites are not identifiable, as the scheme is a sensitive one, and the Business Plan is subject to commercial confidentiality. Whilst the reasons for this are understandable, it means that the housing sites do not meet the criteria set out in PPS3 for inclusion in the 5 year housing supply. The Council also refers to windfall sites, of which there are many likely to come forward, but PPS3 warns against reliance on such sites unless there is robust evidence of local circumstances to justify it. As this is likely to be tested in the forthcoming Core Strategy examination, it is inappropriate for me to accept such sites on the basis of the limited evidence before me. I therefore find that there is not a 5 year supply of housing for the borough.

Highway safety

22. The access to the site from Widney Manor Road would be in a wide gap between Nos 116 and 118. Widney Manor Road in the vicinity of the site is subject to a 30 mph speed limit. There are no officially recorded accidents within 100m of the site of the proposed access. It is proposed to improve visibility by the provision of a splay measuring 2.4m by 90m to the south and 2.4m by 71m to the north, the latter requiring the removal of a section of boundary wall and hedge.
23. The Council has no objection to the proposal on highways grounds. However, local residents referred to numerous accidents which had occurred nearby, some of which resulted in fatalities. From what I was told at the Hearing, this concern is deeply felt by local people. However, the conditions along this stretch of road are not uniform, and the obtainable visibility varies from individual accesses and along the road itself, and there are bends in the road and gradients which affect visibility, and therefore it is appropriate to assess each access proposal on the basis of its own circumstances.
24. I was also told by residents of the common incidence of speeding cars along this stretch of road. The 30 mph limit is reinforced by the presence of a speed detecting flashing sign, located to the north of the bend on the north side of the proposed access.
25. The visibility splays proposed are those which Government guidance in the Design Manual for Roads and Bridges says are suitable for a design speed of 50 kph (about 30 mph) in respect of the splay to the north and 60 kph (approximately 37 mph) relating to the one to the south. More recent advice in Manual for Streets 2 indicates that research has shown that smaller visibility splays have little effect on accident rates. The southern splay would be across a highway verge and would require no removal of walls or hedges, and it appears likely that even greater visibility could be obtained across this verge. The proposed visibility in this direction would be satisfactory.
26. I noted on my visits that a significant proportion of southbound vehicles caused the sign to warning sign to flash, and this suggests to me that the speed limit is regularly exceeded as vehicles approach the appeal site access. I have some reservations about the appropriateness of the northern visibility splay, as no speed survey has been carried out to ascertain the actual traffic speeds.
27. However, it seems likely that although some vehicles may trigger the warning sign, they may slow as they round the bend. Moreover, a 71m visibility splay would be to the nearside edge of the northbound carriageway, and this would allow southbound traffic using the other carriageway to be seen at an even greater distance. Local residents referred to instances of drivers greatly exceeding the speed limits, but it would not be appropriate to design for extreme and rare events. In the absence of substantive evidence to show that the proposed visibility splay would not be suitable for the traffic speeds, I find that this is an insufficient reason to dismiss the appeal.
28. I saw on my visit that morning peak northbound traffic was heavy. The appellant pointed out that there had been a closure on the M42 that morning, and that this may have affected traffic conditions. Regardless of this, the traffic was free flowing, albeit slow, and drivers readily let emerging traffic from private accesses enter into the stream of cars, or gave way to let them

cross onto the opposite carriageway. Whilst the presence of slow moving cars has some effect on visibility, large gaps, combined with the ability to see further as drivers enter the carriageway, are sufficient to ensure satisfactory conditions.

29. I therefore find on this issue that the proposal would not result in material harm to highway sufficient to justify dismissing the appeal.

Character and appearance

30. The proposal would result in a marked increase in density of housing in this particular stretch of Widney Manor Road. In saying that, the area includes a mix of dwelling and garden sizes, and the part of the road which consists of houses with the largest gardens does not possess a clearly discernible and distinctive character of its own, as the size of the rear gardens is not wholly obvious from public views, and there is generally little space between dwellings, the most notable exceptions being in the space between Nos 114A and 116, and between 116 and 118, where it is proposed to place the access to the development. Whilst the houses tend to be larger in this stretch, they form part of the wider mix, which includes some smaller houses with smaller gardens.
31. Private garden land is no longer classed as brownfield land; this does not mean that there should be no development of such sites. It means that they no longer attract the priority for development that they previously enjoyed. The Council accepts that garden land will continue to play a role in providing new housing in the borough. Furthermore, the advice in PPS3 continues to require that an efficient use be made of land. In this case, the proposal would group the 9 houses and the apartment block around the site, providing a density of some 18 dph. There would remain a spacious feel to the site, particular when viewed from the access. Although the apartment block would be visible from this point, there would be intervening trees and planting and its location towards the back of the site would ensure that it would not be prominent in views, or out of character with the area.
32. The proposed dwellings would be visible from the rear facing windows, particularly at first floor level, from several of the nearest neighbouring properties. Whilst there would be a clear change in the appearance of the site from these houses, they are private viewpoints and, other than in the case of 112 Widney Manor Road, the proposed dwellings would be separated from others by long gardens, commensurate with the existing character.
33. Plots 3, 4 and 5 would sit nearer to the house at No 112 than to other nearby dwellings. No 112 is a large dwelling set well back from the Widney Manor Road frontage, at a point where most dwellings and garden sizes are smaller than those to the south. Even though these houses would be closer to the house at No 112 than the others, there would still be a reasonable degree of separation, and they would form part of a discrete area of land with its own character, which would not be harmful to the wider character of the area.
34. Three of the dwellings would be set at an angle compared to the more regular positioning of the others. As the dwellings would occupy large plots, with intervening planting in some cases, this would not be an obvious feature of the development, but in any event, the layout would not be seen from any public place in the same vista as the more uniformly sited dwellings on Widney Manor

Road. The proposal would have an identity of its own, which would relate satisfactorily to its context.

35. The block of apartments would be a substantial building, but it would be seen in public views at a distance, between two of the larger houses on this part of Widney Manor Road. It would have a two and a half storey form, in a cruciform shape to break up its bulk. Trees between it and the road would also filter views of it from the public realm, but regardless of that, the block would appear similar to a large single dwelling. There are no apartments along this stretch of the road, and whilst there would be more comings and goings associated with the apartments compared to houses, nine flats would be unlikely to generate a level of activity that would markedly alter the prevailing character.
36. The proposal would result in the loss of some trees, but the site is generally well planted, notwithstanding the removal of some trees which has occurred recently. Most of the trees, some of which are imposing specimens, would remain, and further planting would occur, and this would ensure that the more verdant character of this part of the area would be maintained.
37. The access road into the site would be the only access on the west side of Widney Manor Road for some distance to the north and south. The line of houses along the road is, in the main, closely grouped, so that there is little space between. The appeal site, together with the property to the north, is an exception to this general form, and thus whilst a new, larger access would not accord with the general pattern, it would not appear out of place in such a gap.
38. Moreover, the varied design and sizes of houses, together with the different front garden treatments would enable the access to fit in to this diverse scene without clear harm to local distinctiveness or character. The access would result in a change in the appearance of the stretch of road but not to a degree that would cause material harm. Landscaping and appropriate treatment of the access would assist in its assimilation.
39. The visibility splay to the north would require the removal of a stretch of wall and hedging behind it, but a set back wall and replacement planting would ensure that the appearance of the road frontage would not be harmed. No trees would be lost to achieve this.
40. There would be limited natural surveillance of the access road; there would be some view of the road from the upper windows of the houses on either side, and whilst it is likely that bedrooms would not be used for much of the day, the windows would nevertheless give the perception of overlooking the access. There would also be windows in the apartment block which would face the access road. Whilst I recognise that a greater degree of overlooking would be beneficial, it would not be so poor as to be uninviting, threatening or a significant deterrent to its use by pedestrians or cyclists.
41. I recognise that this is a question of balance, but I consider that in respect of this issue, the appellant's arguments are the stronger. Although the Council's case officer who dealt with this proposal expressed a change of heart on this matter at the hearing, the lack of objection on this issue in the officer's report to committee reinforces my findings. I therefore find that the proposal would not harm the character and appearance of the surrounding area or conflict with UDP Policy H5, which deals with density, design and quality of development.

Affordable housing

42. The Council's Supplementary Planning Guidance (SPG) *Affordable Housing*, adopted in 2003 sets out the Council's objectives in respect of the provision of affordable housing. The SPG was adopted after public consultation and although it predates the adoption of the current UDP, it is referred to in Policy H4 of that plan; I afford it significant weight. Neither the amount of affordable housing, nor its method of provision on site is in dispute.
43. The SPG sets out how it expects developers to provide on-site affordable housing, either by constructing suitable units and transferring them to a housing association, or by offering fully serviced land to a housing association.
44. The appellant has submitted a unilateral undertaking which would require that the appellant offer 7 of the proposed flats to a Registered Social Landlord (RSL) as affordable housing. Some local residents queried whether the site was an appropriate location for affordable housing, but having regard to the emphasis in PPS3 towards providing mixed communities with variety of housing, particularly in terms of tenure and price and a mix of different households such as families with children, single person households and older people, I conclude that there is no compelling reason not to seek on-site affordable housing in this instance.
45. However, there is a matter at issue between the main parties as to the terms of the transfer to the RSL. The Council objects to the definition of "The Price", being the price at which the affordable housing flats would be offered to a RSL. The appellant wishes to link the price to interest rates, seeking 5.4% above Bank of England base rate, up to a cap of 7.9%. I understand that this is to ensure that the developer achieves a sufficient return on the capital expended on constructing the units, which might not be recouped if the price was linked to target rents alone.
46. The Council has provided me with reported views of three RSLs and an independent property consultant; whilst the Council characterises the definition of the "The Price" as being "unhelpful", that does not necessarily signify that it would be unacceptable. However, the view which has been expressed by those that the Council consulted that the definition might make it impossible for a RSL to purchase the dwellings concerns me. Whilst it is right that the developer should not be required to provide an unlimited subsidy towards affordable housing, the Council's SPG makes it clear that developers will be expected to fund the gap between the costs of providing the units and the amount which an RSL could raise based on net rents.
47. Whilst the unilateral undertaking provides as a fallback the prospect of providing intermediate housing, this would not achieve the principal aim of UDP Policy H4 in securing affordable housing from new residential developments. The Council also identifies what it sees as other problems with the wording of the obligation, but these are not as serious as that relating to the definition of "The Price". As it stands, on the limited evidence available to me, it appears that appellant's preferred means of providing affordable housing and the wording of the obligation run a risk that no affordable housing might be provided, and this would conflict with the objective of UDP Policy H4. It may be that the Council's fears are unfounded, but there is sufficient doubt for me to apply a cautious approach, and for me to find that the obligation does not make satisfactory provision for affordable housing.

Other matters

48. A number of neighbours expressed concerns about overlooking, loss of outlook, noise and disturbance and loss of security. It is undeniable that the proposal would be likely to change conditions, and that there would be some overlooking, a different outlook and some additional noise. However, a combination of adequate distance and angles between windows and proposed dwellings would be sufficient to ensure that there would be no material harm to neighbours' living conditions. Security concerns could be dealt with by the imposition of conditions regarding means of enclosure.
49. There is evidence of a badger sett near to the site, but none on the site itself. The nearest sett is some way down the railway cutting to the west of the site, and is likely to be a subsidiary sett. On the basis of what I saw and the ecological evidence given at the Hearing, I am satisfied that nature conservation interests would not be materially harmed by the proposal.

Balancing exercise

50. The Green Belt harm caused by inappropriateness and loss of openness, together with the harm resulting from the inadequacy of the arrangements for the provision of affordable housing needs to be weighed against other considerations, the foremost of these being that the proposal would make a contribution to meeting the 5 year land supply. Paragraph 71 of PPS3 says that where Local Planning Authorities cannot demonstrate an up-to-date five year supply of deliverable sites they should consider favourably planning applications for housing, having regard to the policies in the PPS.
51. I have found against the Council on the 5 year housing supply point, and have not allowed housing coming forward as part of the NSRP to be counted as part of that supply, because of the Council's inability to identify publicly specific sites. However, when balancing housing need against harm, it is nevertheless a relevant consideration that the NSRP has brought forward significant numbers of houses in times of challenging market conditions, and is likely to continue to do so. So, whilst the failure to demonstrate a 5 year supply of housing sites would normally attract significant weight, in this case, that weight is reduced because of a background of an active programme of housing delivery, which is a priority for the Council, which means that the need for new housing is not as pressing as the failure to show a 5 year supply might suggest.
52. When balanced against the significant harm that would be caused by reason of inappropriateness and through loss of openness, I find that the harm caused by the failure to provide a 5 year supply of deliverable housing sites does not clearly outweigh that harm. I have found further harm from the inadequacy of the arrangements for the provision of affordable housing, but the harm to the Green Belt is sufficient on its own to outweigh the housing supply position. I therefore find that there are no very special circumstances which justify the development.
53. For the reasons given above, I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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MRTPI

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FOR THE LOCAL PLANNING AUTHORITY:

Mrs Kim Adams, MRTPI

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Principal Planning Officer, Solihull MBC

Mr John Pitcher

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INTERESTED PERSONS:

Mr RW Batchelor

Local resident

Mr J Dufficy

Local resident

Mrs Gilda Embley

Local resident

Mr Embley

Local resident

Mr Brian Garman

Local resident

Ms Rebecca Hess

Local resident

Mr Gareth Jones

Tyler Parkes Partnership

Mr Ashley Mitchell

Local resident

Mrs Lisa Mitchell

Local resident

Mr DR Patterson

Local resident

Mr Bruce Richard

Local resident

Mrs Maryann Richard

Local resident

Mr Tony Robertson

Local resident

Mr Martin Smith

Local resident

Mr Denis Sullivan

Local resident

Councillor Joe Tildesley

Solihull MBC

Mrs Viv Lewis

Local resident

DOCUMENTS

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| Document | 1 | Accident information submitted by Ms Hess |
| Document | 2 | E-mails and letter relating to unilateral undertaking submitted by Mr Woodhams |
| Document | 3 | List of Widney Manor Road Action Group members submitted by Mr Jones |
| Document | 4 | Extract from Solihull Green Belt Plan submitted by Mr Barlow |
| Document | 5 | Housing Supply calculations submitted by Mr Woodhams |
| Document | 6 | Extract from Report into the Examination of the Lambeth Core Strategy submitted by Mr Woodhams |
| Document | 7 | M42 traffic report 12/01/11 submitted by Mr Woodhams |

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING

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| Document | 8 | Letter from the Council dated 17 January 2011 |
| Document | 9 | Letter from Mr Woodhams dated 21 January 2011 |

DOCUMENTS

- Document 1 Accident information submitted by Mr. Hoss
- Document 2 E-mails and letter relating to unilateral undertaking submitted by Mr. Woodham
- Document 3 List of Widney Manor Road Action Group members submitted by Mr. Jones
- Document 4 Extract from report of the 2005 Plan submitted by Mr. Barlow
- Document 5 Housing Survey comments submitted by Mr. Woodham
- Document 6 Extract from report into the Examination of the Lambeth Core Strategy submitted by Mr. Woodham
- Document 7 M25 traffic report 12/01/11 submitted by Mr. Woodham

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE HEARING

- Document 8 Letter from Mr. Woodham dated 27 January 2011
- Document 9 Letter from Mr. Woodham dated 31 January 2011