



## Appeal Decision

Hearing Held on 26 September 2018

Site visit made on 26 September 2018

**by John Morrison BA (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 October 2018**

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**Appeal Ref: APP/X4725/W/18/3194650**

**Land to the north of Asda superstore and associated district centre uses off Asdale Road, Wakefield**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full and outline planning permission.
  - The appeal is made by Sandal Property Company Limited against the decision of City of Wakefield Metropolitan District Council.
  - The application Ref 16/01292/HYB, dated 24 May 2016, was refused by notice dated 1 August 2017.
  - The development proposed is described as a hybrid Application: Full planning application for food retail unit (Class A1), provision of access, customer parking and associated works. Outline planning application for the erection of two non-food units (Class A1), retail unit (Class A1 &/or A3) and one unit (Class A3), provision of access and associated works.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The above description of development is taken, as it would normally be, from the planning application form. As was rightly pointed out at the hearing, the A5 element was removed from the proposed development prior to determination by the Council. Accordingly I have amended the description. I have determined the appeal on this basis.
3. At the hearing, query was raised on the matter of the completed planning obligation submitted by the appellant which was in the form of a Unilateral Undertaking (UU). This sought to provide a commuted sum for bio diversity enhancement. The query related to whether or not all interested parties were bound in accordance with section 106 of the Act<sup>1</sup>. The appellant was given additional time to confirm whether or not a party subject to a lease was required to be a signatory. It has since been confirmed that the relevant party is only subject to an agreement for lease which is conditional on planning permission being granted. They are not; it seems under this agreement, a leaseholder of the land subject of the appeal. From the point of view of all necessary parties being bound by the obligation therefore, I see nothing to stop me taking it into account.

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<sup>1</sup> The Town and Country Planning Act 1990

## **Main Issues**

4. There are three main issues. These are:

- Whether 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
- If the proposed development would be inappropriate development, 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 proposed development.

## **Reasons**

### *Inappropriate Development in the Green Belt*

5. Policy CS1 of the Core Strategy<sup>2</sup> considers the location of development. Amongst other things it sets out that, in the Green Belt, development will conform to national, regional and LDF policies relating to it. Subject to expressed exceptions, paragraph 145 of the Framework<sup>3</sup> explains that the construction of new buildings within the Green Belt should be regarded as inappropriate development. The appeal scheme would involve the erection of a number of new buildings and it was common ground between the Council and the appellant that said buildings would not fall within any of the expressed exceptions. Indeed, the appellant agreed that the proposed development would therefore be inappropriate development. I have no compelling reason to disagree.
6. Inappropriate development is, by definition, harmful to the Green Belt<sup>4</sup>. In respect of this main issue therefore, there is no conclusion to make other than that the appeal scheme would conflict with both Policy CS1 and the Framework.

### *The Openness of the Green Belt*

7. Openness is one of the essential characteristics of the Green Belt. As it has been established, openness has both a spatial and a visual aspect, the former can be taken to mean the absence of built form. The appeal site is an open and undeveloped tapering parcel of land to the rear of development associated with a district retail centre. It is clearly distinct therefrom and comprises overgrown areas of grass. It is used as an informal cut through that links a cycle way with the district centre. Landscaping plays a key part in the character of the site. The boundary to the north is formed by a dense and relatively tall tree belt which extends round the east. Further planting falls on the remaining boundaries but is less dense. Some close boarded timber fencing falls around the edges of adjacent car parking.
8. Whilst demarcated by its planted boundaries, the appeal site is more reflective of the open and soft rurality of the fields to the north than the built up hard surfaced surroundings of the district centre. The difference between the various buildings and their curtilages and the appeal site is clear and obvious.

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<sup>2</sup> Wakefield Metropolitan District Council Local Development Framework: Core Strategy 2009

<sup>3</sup> The National Planning Policy Framework 2018

<sup>4</sup> Paragraph 143 of the Framework

Indeed, the edge of the built development and associated hard surfacing follows the boundary of the Green Belt.

9. The proposed development would comprise a number of buildings. Whilst not excessively tall they would, cumulatively, occupy a substantial land take. The scheme also includes subsuming a significant proportion of the land for car parking and servicing which would include the regular containment of vehicles. The intention to retain and enhance boundary trees would all but obscure the proposed development from wider views from the north and east although one would be able to clearly make out both the buildings and the operations associated therewith from land located south. Primarily the curtilages of the other retail and commercial uses making up the district centre. The proposed development would be located in an area currently, and very obviously, open and undeveloped. There is, in essence, a clearly recognisable 'line in the sand' as far as the boundary of the Green Belt is concerned.
10. With this in mind, development of a substantial scale would be clearly visible in the Green Belt. It therefore follows that there would be a reducing effect on its openness from a visual perspective. I accept that this would be reduced to some degree by the aforementioned trees but not to a point that would make it acceptable.
11. The scale of the appeal scheme would also, somewhat unavoidably, reduce the spatial aspect of the Green Belt's openness by virtue of its very presence. A scale described above and taken as a whole in terms of built form and its operation. With these factors in mind, the proposed development would reduce the openness of the Green Belt, accordingly resulting in harm to one of its essential characteristics. This harm would lead to further conflict with Policy CS1 and the Framework. This would be additional harm to that which would be caused by virtue of the inappropriateness of the proposed development.

#### *Other Considerations*

12. Before coming on to other matters presented by the appellant to weigh in favour of the proposed development, I note paragraph 134 of the Framework which identifies the five purposes the Green Belt serves. Amongst other things, these purposes seek to check the unrestricted sprawl of large built up areas, assist in safeguarding the countryside from encroachment, and to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
13. The proposed development, by virtue of it taking place beyond a clearly identifiable built edge and into an open and undeveloped land parcel, would encroach onto land beyond the existing built up area. This would be into the countryside since the appeal site sits beyond the settlement boundary as the development plan defines it. The appeal site, along with additional Green Belt land to the north, clearly serves the purposes of checking and restricting how much further the district centre, as part of the existing urban area, can sprawl. Whilst I accept the proposed development is not predicated on the redevelopment of a brownfield site, it is nonetheless relevant to highlight the fact that in so looking to develop an open an unmolested section of the Green Belt it would by definition fail to assist in encouraging the recycling of urban land which would negate the need to take up Green Belt land.

14. For these reasons, it seems clear to me that the appeal scheme would run contrary to the functions the Green Belt is there to serve. Consequently, as well as harming openness and being inappropriate, the proposed development would conflict with the purposes of including land within the Green Belt. This would represent a further harm arising out of the appeal scheme.
15. There is a substantial body of evidence that has highlighted a need for further retail development. Some of that need was predicated on suggestions that the existing Asda store was over trading. I was able to experience car park capacity on two occasions, these were both early and later afternoons of a mid-week day. Whilst I accept that weekends would naturally be busier, the car park seemed to have sufficient capacity and was almost empty along its fringes. Having experienced the layout of the store it did not strike me as being overstocked, crowded or cramped. Asda representatives who attended the hearing confirmed this and advised that the store was trading well. I feel this is a fairly accurate reflection of the existing situation albeit I acknowledge that there is no current topical data available.
16. The study on which the appellant relies for their conclusions that there is a need is of some age (2013). Some five years have now passed since. The Council's evidence points to a number of other retail developments that have been approved since the study which, it seems eminently possible, would take up some of any over trading there may have been since the 2013 study.
17. I acknowledge the sequential assessment undertaken by the appellant to identify the site as being preferable. However this was to ensure compliance with retail policy, based also on the requirements of the likely end user. As was discussed at the hearing, the identification of a sequentially preferable retail site that would sit squarely with retail policy does not necessarily align with the restrictive nature of Green Belt policy. In addition, and taking on board other reasons for the need for further retail development, these needs are not necessarily specific to the individual parcel of land that is the appeal site. I.e. the need does not state explicitly that it has to be the appeal site that is developed to fulfil it.
18. The district centre appears, on evidence of the variety of commercial uses that make it up as an entity, to be performing well. Uses are diverse and they differ in scale which makes for what, in its face, seems to be a vibrant and well used area. There is limited evidence to suggest that the centre itself is in need of further expansion for viability or vitality reasons.
19. If I were to take it that there was a compelling and overriding need for new retail development, on the appeal site itself, then this would arguably apply to the retail elements of the appeal scheme. It is important to note that said need does not necessarily extend to the non-retail uses that form other elements of the proposed development.
20. I accept that the appeal site is directly adjacent to the existing district centre. Thus retail development thereon would accord with the principles of sustainable patterns of new development. It would be a destination in its own right, but one that already acts as such given other uses surrounding. Following these principles would represent accordance with parts of the development plan. Positive an element though this would be, it would be an expectation in order for the appeal scheme to be acceptable in other planning terms.

21. Retail offer would be expanded albeit there is a reasonable range on the district centre already through an Aldi and an Asda store. I have already made comment regarding how clearly demarcated the boundary of the existing built up area is and how the appeal site relates in character terms to the wider countryside to the north despite its degree of enclosure. The proposed development would create a boundary to the district centre, but one already exists that separates built form from the Green Belt.
22. The appeal scheme proposes bio diversity enhancements for part of the site. This would be positive although far from a benefit of significant weight given that it is required by policy to mitigate impact arising out of new development. The appellant also points out that the proposed development would make use of a site which has no agricultural value, is vacant and underused. Be this as it may, said land forms part of the Green Belt and by virtue of being kept permanently open and undeveloped it serves a purpose in Green Belt policy terms.
23. Economic growth, the creation of jobs and increase in local expenditure more generally would be a benefit. I attach some weight to this on the positive side of the balance. In addition, the creation of a publicly available pedestrian and cycle link between existing infrastructure and the district centre would be advantageous, and encourage the use of sustainable transport means.

### **Other Matters**

24. The Council did not refuse planning permission with regard to highway safety and its advisors were content the existing infrastructure was sufficient (with some improvements) to be able to adequately serve the proposed development. Representation was made however at the hearing that expressed concerns about junction capacity modelling. Specifically that as part of the technical information that was submitted to and considered by the Council, sufficient consideration was not given to junction capacity as a whole and how each one influences the next. The junctions were modelled and found to be capable to support the access requirements of the proposed development based on looking at them individually only.
25. There was no Council highways advisor present at the hearing who may have been able to offer a response to this concern and place that in the context of their conclusions insofar as them not objecting to the appeal scheme from a highway safety perspective. I am therefore not in a position to make a conclusion on this matter.
26. In the event that I found the conclusions of the Council sound in this regard and agreed that the proposed development would not be harmful in respect of highway safety it would not change what I have found in respect of the main issues in the determination of this appeal.
27. Proceedings heard representation by the Council's local member for south ward (where the appeal site is located) which took into account a number of comments from local residents who supported the proposed development. Specific concern was expressed over access for disabled residents in that it would be improved over the existing city centre store. I acknowledge views in this respect and afford them some weight. However, I do not feel that they would be so weighty as to be capable of overcoming multiple harms to the Green Belt and subsequent conflict with the development plan.

## **Conclusion**

28. I have found harm to the Green Belt in terms of the proposed development being inappropriate; it would adversely affect both the visual and the spatial aspects of its openness and conflict with the purposes of including land within it. These harms should be ascribed substantial weight<sup>5</sup>. There would also be conflict with the development plan as I have identified.
29. The benefits I have found would be so but accordingly limited in their scale and scope against harm that should be apportioned such weight. There are matters on which I have found the appeal scheme to be acceptable albeit this represents a lack of harm which is neutral in the balance and consequently cannot be used to weigh against harm. As a consequence, the very special circumstances that are required to justify development in light of the above harms have not been demonstrated.
30. Whilst having regard to all other matters that have been raised, it is for the reasons I have set out above that the appeal is dismissed.

*John Morrison*

INSPECTOR

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<sup>5</sup> Paragraph 144 of the Framework

## APPEARANCES

### FOR THE APPELLANT:

Mr Jeremy Williams	ID Planning
Mr Melvyn Woodhead	Appellant
Mr David Woodhead	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Rob Pearson	Nexus Planning
Mr James Singer	Nexus Planning

### OTHER PARTIES:

Cllr Mrs Monica Graham	Council Ward Member (South)
Miss Charlotte Ovenden	TPS Consultants
Mrs Katherine Sneedan MRTPI	Jigsaw Planning
Mr Paul Tucker QC	Kings Chambers

### Documents submitted at the hearing:

- x3 letters from local residents expressing support for the proposed development
- x2 A3 plans showing the extent of the maintained highway
- x2 A3 plans showing boundary of the Green Belt in relation to the appeal site