

KELLEN HOMES

LAND AT CASTLETON SIDINGS

ADVICE

Introduction

1. I am instructed by WSP on behalf of Kellen Homes to advise on the planning strategy and prospects for an application for 191 new homes, an area of public open space and provision of land to facilitate the East Lancashire Railway.
2. I have a very full and helpful set of Instructions. In addition to the clear and helpful Instructions as to the advice sought, I have assessed a full suite of application documents which assess and explain the effects of the proposed development. There is also a collection of materials which explain the position in respect of the emerging development plan, namely the strategic plan for the conurbation – *Places for Everyone* ('PfE').
3. On 7th March I attended a site view with those Instructing. It was a bright morning and we were able to spend time viewing all parts of the site. I took the opportunity to visit the surrounding areas.

The Issues

4. This is a Green Belt case. The proposed development is inappropriate development in the Green Belt which would cause harm by reason of that inappropriateness. Substantial weight would be given to that harm by the decision maker. Planning permission would not be granted unless the potential harm to the Green Belt including by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations, i.e. very special circumstances have to be shown per paragraphs 147 and 148 of the NPPF. This question is the question in the case. It is determinative of the application.

5. The site is a proposed allocation in PfE. It is the subject of Policy JPA 20 – Castleton Sidings. This fact raises the issues of its materiality to the main issue in the case and as to the optimum planning arguments and timing of the application.
6. Those Instructing seek advice on these issues and prospects locally and at appeal.

The Site

7. The site has many striking features in the context of the main issue, namely:
 - a. It is derelict. It is what its name describes – Castleton Sidings. It is located adjacent to and connecting to the built-up area of Castleton, protruding as a lozenge shape towards the SE and Heywood. By reason of its former use as sidings, the site is heavily affected by track, hardstanding and other railway infrastructure.
 - b. It has been derelict for sufficient time for scrub and small trees to have established in parts of the site.
 - c. On its northern boundary, part of the site adjoins a golf course.
 - d. To the SE there is the Leeds-Manchester railway, which is accessible via Castleton station, which is an 8-9 minute walk from the site¹.
 - e. The M62 passes parallel to the site, to the SSE and can be heard from the site
 - f. There is no public access to the site.
 - g. The surrounding land is not elevated. Views into the site are modest in scope. Pennine hills are distant. There is a detailed LVIA, but the site is not difficult to assess.
8. The questions which immediately occur on viewing the site is “What is the future use of this site; what built development is most appropriate, and; why has it been left for so long?”

¹ §5.5.1 of the Croft draft TA dated 15.12.22

The Development Plan

9. There is little that needs to be said about the extant development plan. Policy G4 of the Rochdale Core Strategy 2016 which emphasises that the Green Belt will be protected to prevent neighbouring towns from merging². It expressly refers to Heywood.
10. The Core Strategy does not repeat national Green Belt policy but explains that is because it is not appropriate to do so³.
11. The upshot is that the determinative policies are those in Chapter 13 of the Framework, with particular emphasis on the topic of preventing neighbouring towns from merging⁴.
12. There is also a Supplementary Planning Document ('SPD') for Castleton adopted in March 2022 . This document is supplementary to the Core Strategy.
13. It highlights a four-part vision for Castleton:
 - High quality, residential led development that integrates employment, social and community infrastructure that supports the future growth and development of Castleton.
 - Defining a focused local centre for Castleton that is centred around maximising the grouping of the station, canal, square and historic buildings , with a focus upon enhanced facilities and services for the existing and future community;
 - Creating a gateway experience to Castleton that is integrated with the town's tourism offer through the extension of the East Lancashire Heritage Railway, Tram-Train links and through the revitalisation of the Rochdale Canal and historic buildings;
 - Creating a multimodal movement network that has sustainable travel, accessibility and local connections with walking and cycling at its heart; by

² Page 93 of the Core Strategy

³ Supporting text at §10.21

⁴ §138 b) of the Framework, read alongside Policy G4 of the Core Strategy

making the area more pedestrian friendly as well as redirecting large vehicles away from the main centre.

14. The SPD is supportive of and seeks to facilitate the East Lancashire Heritage Railway by allowing its extension from its current Heywood Terminus to Castleton. That proposal has reached Governance for Railway Improvement Projects (GRIP) Stage 2 with a number of options identified to deliver a new platform interchange with the national rail network at Castleton⁵.

The Emerging Development Plan

15. PpE is at examination, and that examination is at an advanced stage. Green Belt remains a live topic in some respects – tomorrow it considers Green Belt additions.
16. Policy JPA 20 ('the Policy') would have the effect of removing the site from the Green Belt.
17. The Policy is supported by evidence. In particular, an assessment of the Green Belt has been undertaken and included in the 'Green Belt Topic Paper and Case for Exceptional Circumstances to amend the Green Belt Boundary', dated July 2021. As is normal for such documents, it presents a strategic level (Appendix 1) and local level case (Appendix 2) for exceptional circumstances.
18. The strategic case considers:
 - The need to identify an appropriate growth and spatial option having considered other reasonable alternatives;
 - The need to identify sufficient employment land to meet the overall economic growth strategy for the joint plan area;

⁵ SPD at §2.5, page 7

- The need to identify sufficient land to meet the local housing need for the joint plan area;
- The site selection process for identifying strategic allocations in the PfE;
- An assessment of the overall harm caused by the releases from the Green Belt;
- Opportunities to help increase the beneficial use of remaining Green Belt, including interventions that meet green infrastructure and biodiversity net gain objectives.

19. At the local level, the assessment finds, in respect of the site:

- Makes a moderate contribution to checking the sprawl of Greater Manchester preventing the merging of Castleton and Heywood
- Makes a relatively limited contribution to preventing encroachment.
- Release of the Allocation would constitute moderate harm to Green Belt purposes, would increase the containment by inset development of retained Green Belt land to the north but would only have a minor impact on adjacent Green Belt.
- Strengthening the boundary of land proposed to be released within the Allocation and land proposed to be retained within the Allocation could potentially increase the future distinction between inset land and retained Green Belt land, limiting the weakening of this retained Green Belt land.

Very Special Circumstances

20. I consider that very special circumstances ('VSC') can be shown.

21. VSC cases are a planning balance. The starting point is to understand the harm:

- a. There is harm by reason of inappropriateness
- b. There would harm to openness by reason of new built form
- c. There would a encroachment and reduction in the Green Belt buffer with Heywood, i.e. the Policy G4 point as to merging of towns

- d. There would therefore be harm to specific Green Belt purposes, subject to further consideration of those purposes, read as a whole.

22. It is worthwhile to say something further about Green Belt purposes.

23. Paragraph 138 of the NPPF says:

“Green Belt serves five purposes:

- a) to check the unrestricted sprawl of large built-up areas;
- b) to prevent neighbouring towns merging into one another;
- c) to assist in safeguarding the countryside from encroachment;
- d) to preserve the setting and special character of historic towns; and
- e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.”

24. The proposal would cause harm in respect of a), b) and c). The proposal is neutral on d).

25. As to e), the policy is in tension with the facts. The policy presumes that Green Belt land is not derelict and in need of regeneration. The policy seeks to encourage urban regeneration by constraining development in the Green Belt, assuming that the urban area is not Green Belt. Here, the converse applies. The Green Belt is derelict and in need of regeneration. Purpose e) is well served by the development.

26. I therefore consider that it is arguable that there is no net harm in respect of Green Belt purposes, or that such harm is low. The harms and benefits to Green Belt purposes balance out. There is no deliverable way to make this Green Belt site have any beneficial planning function without built development.

27. The principal harms are therefore by reason of inappropriateness and to openness.

28. Harm to openness may be visual or otherwise by reason of built form. However, in this instance it seems to me that the real assessment is as against the current visual baseline

and the derelict built form. It is rather artificial to simply look at harm to openness without considering both the baseline and the beneficial aspects of the proposal.

29. The assessment of visual effects and Green Belt harms therefore run together and are inseparable. This is because the derelict nature of the site is one of its defining visual characteristics. Its lack of public access is also a defining characteristic which is relevant to visual assessment because the receptors would change if the site was re-developed – people would benefit from the amenity, including visual amenity, of the large area of open space. The proposal is to remedy that dereliction and to provide an a large area of open space with public access. The change from the baseline to the completed form of development is one which has to be assessed by reference to all of the Green Belt purposes and to the use of the Green Belt.
30. In that latter regard, paragraph 145 of the Framework is relevant in that local planning authorities should plan positively to enhance beneficial use, such as opportunities to provide access and to enhance visual amenity or to improve derelict land.
31. Having regard to the assessments which have been undertaken of the proposals and their effects, I do not consider there to be ‘any other harm’ to put in the VSC balance.
32. The benefits appear to me to be substantial and likely to attract significant weight⁶. In my view, it is quite obvious that the site will remain derelict, unused, inaccessible, a drag on the amenity and ambience of the town and a waste of planning opportunity without built development. VSC is and always will be a very high hurdle to clear but I do consider that the balance falls in favour for a proposal such as this..
33. In addition, the following should form part of the VSC argument:
 - a. Encroachment and merging with Heywood is limited by the Eco Park
 - b. That limitation arising from the Eco Park is a real benefit, endorsed by the PfE evidence base

⁶ I do not think that there is a real difference between ‘substantial’ and ‘significant’ weight, though some Inspectors do distinguish the two terms.

- c. Locational sustainability is high both as a high tier settlement and in terms of its location within Castleton, particularly with respect of Castleton Station
 - d. The site is not tranquil – see adjacent railway and M62 and the fact of dereliction. The proposal would remedy that in various ways – inside the site you would no longer feel like you are proximate to the railway and M62. At the moment the site is ‘nowhere’ – it would become ‘somewhere’
 - e. Regeneration benefits including that such re-development would be an important signal as to the direction of travel for Castleton and its people
 - f. Conversely, to leave it in its current state is harmful to Castleton’s vision (per the SPD)
 - g. The only deliverable route to these VSC is development
 - h. The costs associated with the site are substantial, arising from the state of the land the foundation’s required. There is no viable alternative to bringing the site back into beneficial use.
34. I have read the Mytham Road and World of Pets appeal decisions. They do not add anything to the arguments which need to be advanced here. Moreover, they are cases in which policies in the development plan were out of date and in authorities which were struggling with housing land supply. They cannot be preyed in aid of any decision here, but they are a useful indicator that an appropriate case may receive support from an Inspector. It is possible, but difficult, to demonstrate VSC for substantial built development in the Green Belt.

Access

35. The design panel of PlacesMatter said this⁷:

“This is an unusual and interesting site and the decision to access it through the two existing spur roads is somewhat peculiar, though the Panel understands the reasons for this. The effect though is that the access doesn’t feel like the entrance to what is a significant development. There is also a lack of integration between the land parcels and you need to blend these more and merge the whole thing with the area to the North.”

⁷ Page 5 of their Report dated 1 September 2022

36. I agree that the access is peculiar for the reasons given by the Panel. It is an approach which will generate some local resistance and which may be an impediment to a prompt decision locally.

37. I have not seen an assessment of any alternative. I can take the point no further.

Application and Appeal

38. I agree that a hybrid application should be submitted. It is not possible to define the operational development required for the heritage railway. The Schedule to a s106 agreement should be drafted for submission with the application which sets out terms of the transfer of the land. It is an important element of the VSC case and must be secured by legal agreement.

39. Both the emerging Policy and the underlying evidence are each and separately material to any decision. In my view, reliance should first of all be placed on the PfE evidence. The development of the site is supported for strategic reasons as set out in the Topic Paper and its development is further supported at a site-specific level. Those materials should be prominent in the application. The local planning authority subscribes to that evidence and it is therefore common ground.

40. I agree that the Policy attracts only limited weight at this stage and will continue to do so until an Inspector's report or positive interim letter is received. At that stage, it is appropriate to give the policy significant weight.

41. Conversely, if the PfE is found to be not sound, but the reasons for that finding are unrelated to the Green Belt issues, then the evidence base continues to attract weight as a material consideration.

42. I see no advantage in waiting for the PfE to complete its statutory stages and do see some real disadvantages, namely that the policy wind is currently in the right direction. To wait may be tactically unwise because the wind might turn.

43. I noted the BNG discussion during the site view. There is also the question of affordable housing provision. There is evidently significant cost associated with remediation,

provision of a large area of open space, construction on peat and other matters. There is, however, sufficient capacity in local schools so that an off-site contribution which appears unlikely to be necessary or justified.

44. I understand that policy-compliant BNG and affordable housing provision is currently considered to be viable, though there is no report or detailed discussion of viability in the Instructions. A viability report is only necessary if less than policy compliance is contended for. To fail to meet policy compliance in these respects would be a harm to add to the VSC balance. Policy compliance would be seen by the planning authority as neutral. At appeal I would be prepared to argue that provision of affordable housing at policy-rates is indeed a benefit and in my view that position should be taken in the Planning Statement in order to preserve and reserve that position for any future argument.
45. The same reasoning applies to BNG and sustainable forms of construction.
46. If the local planning authority do not determine the application within 13 weeks, then the question of appeal against non-determination arises. I consider that the proposal is sufficiently strong to merit appeal. Subject to the point about access and developing the planning argument as discussed above, the application documents appear to be in a state which is suitable for appeal. The planning authority should be told what the planning strategy is, i.e. it should be made expressly clear that if it appears that a decision is not imminent at the 13 week stage, and there is no good reason for that, then the applicant will appeal to the Secretary of State. The position should be kept under review.
47. I advise accordingly. In the event that any particular questions arise from the above, those Instructing should not hesitate to contact me via any convenient means.

RICHARD KIMBLIN KC

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