
Appeal Decision

Site visit made on 18 October 2016

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 8th November 2016

Appeal Ref: APP/B1605/W/16/3152390

**Land rear of Nuffield Hospital, Hatherley Lane, Cheltenham,
Gloucestershire, GL51 6PN.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Grovefield Car Parking Ltd. against the decision of Cheltenham Borough Council.
 - The application Ref. 15/01048/OUT, dated 15 June 2015, was refused by notice dated 17 December 2015.
 - The development proposed is residential development of up to 27 dwellings.
-

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 27 dwellings at Land rear of Nuffield Hospital, Hatherley Lane, Cheltenham, Gloucestershire, GL51 6PN, in accordance with the terms of the application, Ref. 15/01048/OUT, dated 15 June 2015, and the plans submitted with it, as amended, subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

3. The application is in outline format with the 'access' 'scale' and 'layout' of the development to be considered at this stage. Other matters concerned with the 'appearance' of the development and its 'landscaping' are reserved for subsequent consideration.
 4. The application was made initially for the erection of 30 dwellings but this was subsequently reduced to no more than 27 dwellings with an amended layout plan.
 5. A formal Unilateral Undertaking, made under section 106 of the Act, dated 10 October 2016 and signed by the appellant company, is submitted with the Appeal. In summary, the Undertaking covenants the developer to make a specified financial contribution to the provision of education and libraries off site, and ensure an affordable housing provision of 40% of the dwellings to be built, if planning permission is granted on appeal and commenced. I have had regard to the Undertaking as a material consideration.
-

Main Issues

6. The main issues are:

- whether there is an over-riding need to retain the land for business development with employment benefits;
- whether the proposed residential development makes appropriate provision for affordable housing, and education and library facilities.

Reasons

Background

7. The appeal site is about 0.5ha in extent and comprises an open area of land lying in an area of relatively new development on the eastern edge of Cheltenham and located off the A40 and to the west of the M5. The land has the appearance of a cleared site and is enclosed by a high solid security hoarding. The southern part of the site borders a narrow valley with a stream, with some stone gabions enclosing land on the site at a higher level, and with existing residential development further to the south. To the east is a large retail supermarket and the closest part to the appeal site is the service yard. Immediately to the north of the appeal site is a three storey office building and further north is the Nuffield Hospital. Finally, the land to the north-west of the appeal site is a vacant site.
8. It is apparent that the appeal site was previously part of a large scale engineering/industrial complex which has now been cleared away. The Council refers to various elements of the planning history which show that outline planning permission was granted for the erection of B1 employment development and ancillary services on the land in 2008, and mixed development with B1 office space and a retail store was permitted in 2010 and as this has been partially built the Council says the permission is extant.
9. It is proposed to develop the land residentially and up to 27 dwellings are proposed. The site plans indicate a three storey building incorporating 15 apartments on the north-east part of the site and an arc of 12 semi-detached and terraced 3 storey town houses leading off a centralised driveway with courtyard parking.
10. The development plan includes the Council's Local Plan - Second Review adopted in 2006. The proposals map of the Local Plan shows the site as being within the principal urban area of Cheltenham but with no other designation applying to the site. The relevant saved policy is EM2 and I am satisfied that this is broadly in accordance with the National Planning Policy Framework (NPPF) and so should be given significant weight. It is also apparent that the Council is in the process of preparing a Joint Core Strategy (in conjunction with Tewkesbury Borough Council and Gloucester City Council) with a Submission Version of the JCS submitted to the Secretary of State in Nov. 2014. Hearings were held from May 2015 until April 2016 and the Examining Inspector issued an Interim Report on the JCS on the 26 May 2016. It is apparent that Main Modifications to the JCS are now being prepared and are subject to further public consultation and Council consideration. Finally the Council are at the very early stage of preparing a new local plan to replace the adopted plan.

Whether an over-riding need to retain the land for employment purposes

11. Saved Policy EM 2 of the Local Plan states that a change of use of land or buildings in an existing employment use, or if unoccupied, to use outside of Classes B1, B2 or B8¹, will not be permitted except where stated criteria are met. These criteria include (b) that "the retention of the site for employment purposes has been fully explored without success". The other criteria listed are not relevant to the issues in this appeal. Further, the reasoned justification for the policy refers to the limited opportunities for the development of new employment sites in the urban area of Cheltenham and states that the town cannot afford to lose existing employment land to alternative uses. Because of this limited supply, the background justification says employment land will be safeguarded. In respect of the interpretation of criterion (b) there is an accompanying 'Note 1' to the policy to the effect that "Evidence will be required to demonstrate demand; this may include details of past advertising, vacancy levels and rent levels" but points put that further information may be requested.
12. In assessing the proposed redevelopment for housing, it is necessary to take into account relevant government advice as a material consideration. The Council accepts that at the moment it cannot demonstrate a five year supply of deliverable new housing sites in accordance with paragraph 47 of the National Planning Policy Framework (NPPF). The appellant's team says that the shortage is significant in that the Council is about 2 years short of a five years supply. Therefore, paragraph 49 is engaged and polices for the supply of housing should not be considered to be up-to-date. Although Policy EM2 is not solely and explicitly concerned about a change to housing, it implicitly restricts housing as an alternative to employment use and as such, at least in part, I find that it affects housing supply.
13. In addition to significantly boosting the supply of housing through sustainable development, the NPPF also indicates the government's commitment to securing economic growth in order to create jobs and prosperity. The NPPF advises in paragraph 19 that significant weight should be placed on the need to support economic growth through the planning system. Nevertheless, this guidance goes on to state in paragraph 22 that " planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose." The paragraph also refers to the need for a regular review of the allocation and to have regard to market signals and the relevant needs for different land uses.
14. In this case the appellant's team submitted with the original application details of site marketing through professional agents with a copy of the marketing brochure and on-site advertisements. It is stated that the marketing of the site for employment purposes has continued since 2003.
15. The information on marketing was considered by the Council officers as sufficient to comply with saved policy EM 2(b) as demonstrating that retention of the site for employment purposes had been fully explored without success and that there was no over-riding need to retain the site for employment uses. Officers concluded that the price sought for the sale or rent land over time was not uncompetitive. However, this recommendation of approval was not

¹ As defined in the Town and Country Planning (Use Classes) Order 1987 as amended,

accepted by the Planning Committee when the application was decided. In these circumstances, the onus is on the Council to provide clear evidence of the anticipated likely success in the further marketing of the site as per the policy so as to result in a reasonable prospect of employment development coming forward.

16. The only reason put forward by the Council about why the marketing exercise was defective is that it is alleged that potential B2 uses on the site are prevented by a covenant and therefore the potential demand has been stifled. However, given the recent hospital, retail and B1 office development that has taken place locally, it is a reasonable argument that general B2 industry is no longer appropriate for the site. Further, there is no evidence put forward of approaches made to the Council from developers or employers expressing an interest in sites for any form of new office or alternative employment development, other than a single recent application to build B1 offices in the town centre. Therefore, it is not clear that potential demand is being unreasonably stifled.
17. The Council says that the period of marketing should be continued for a further period of 12 months to cover a potential improvement in market conditions, but there is little evidence submitted to substantiate this hope or that it is based on an expert assessment of the market and supported by relevant professional organisations such as the Local Enterprise Partnership or the Cheltenham Development Taskforce. In addition, the hope over the outcome of a future period of marketing has to be balanced with the lengthy period in which marketing has already been undertaken.
18. The Council also says that the supply of business land and premises is being reduced by other factors including the relatively recent changes made by the government to 'permitted development rights' enabling owners/operators to make a change from office to residential use², but the exercise of such 'Class O' rights could be regarded as a market signal of the lesser demand for employment development.
19. Overall on this issue, I find that it has not been demonstrated by the Council that the marketing of the site to retain it for employment purposes has not been fully explored and therefore the scheme put forward reasonably complies with part (b) to justify an exception to saved policy EM 2. Further, the evidence does not show that there is a reasonable prospect of the site coming forward for employment development in the near future. I am therefore satisfied that the proposal meets the test set out in paragraph 22 of the NPPF.
20. I note that the Council refers to part of an (un-numbered) appeal decision related to another site in Cheltenham where an Inspector concluded that as the provision of housing would come at the expense of a reduction in employment land, it was not a factor that weighs in favour of granting planning permission. However, I have considered the evidence submitted in respect of whether the relevant policy in the development plan is satisfied and the degree of accord with government advice in the NPPF. I cannot be certain that these circumstances are the same in the case described and therefore I have not been able to place much weight on the comparison with that decision.

² As in Class O of Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Provision for affordable housing, and education and library contributions

21. The Council advises that the scale of development proposed gives rise to a need to make provision for 40% of the residential units to be affordable housing, and to make contributions to the development of education and library provision to cope with the additional population arising from the development as related to saved policies HS 4 and CP 8. The appellant has not contested the principle of such provision and indicated at the application stage that a formal agreement under s106 of the Act would be entered into to ensure implementation of the Council's stated requirements. However, the Council says that the appellant has not provided an assessment of the economic viability of the housing scheme to establish that the provision requested can be delivered. The Council points to the ability of an appellant to subsequently vary a formal agreement in justifying the requirement for a financial viability assessment of the development 'up front' at the time of decision. So the issue is not about the requirements themselves but the need for a financial viability appraisal to show that the development will be sound with the agreed level of affordable housing and other contributions.
22. The Council refers to saved Policies HS 4 and CP 8, however, there is nothing within these policies, or the Supplementary Planning Guidance made in 2004 and linked to policy HS 4, that supports the need for financial viability to be demonstrated where the requirement of policy are being met. Moreover, the national Planning Practice Guidance (PPG) says in paragraph 16 regarding 'Viability' that "decision taking on individual applications does not normally require consideration of viability. However where the development may be compromised by the scale of planning obligations and other costs, a viability assessment may be necessary".
23. In this case, the appellant does not argue that the requested scale of provision of affordable housing and other contributions will make the scheme unviable and a formal Unilateral Undertaking has been submitted to put that into effect. A material change in circumstances may result in the requirements of any formal agreement being reviewed and that would need to be considered on the individual circumstances at that time, and the fact that a scheme may have been shown to be viable earlier would not prejudice a subsequent review.
24. Overall on this issue I find that there is no support for the Council's insistence on a financial viability assessment of the scheme now in either the development plan or the national planning guidance and the proposal now separately makes formal provision for affordable housing, and for education and library development in accordance with the relevant policies in the development plan. Moreover, there is no evidence before me to indicate that the terms of the Obligation do not meet the restrictions imposed in the NPPF and the CIL Regulations in terms of being necessary to make the development acceptable in planning terms; and being directly, fairly and reasonably related to the development. Nor is the evidence that the limit on pooled contributions would be exceeded. I can therefore take the Undertaking into account.

Planning balance

25. Bringing together my conclusions on the main issues, I have found that the appellant's evidence reasonably demonstrates that the marketing of this employment site for such purposes has been fully explored over a long period and that the use of the land for housing is now justified as a recognised

exception within saved policy EM 2. Further, it has not been demonstrated that there is a reasonable prospect of the land coming forward for employment development and this outweighs the weight to be given to its retention to aid economic growth. Further, the proposal is now accompanied by a formal mechanism to achieve a level of affordable housing and to make provision for the development of education and library services that are in line with the saved policies in the development plan and do not require an assessment of economic viability to justify the proposal. The Council's present position regarding housing land supply and the addition that the proposal would make to the supply side adds further weight to the proposal.

26. Overall, I find that the development accords with the provisions of the development plan and the national policy in the NPPF when this is read as a whole. Further, the beneficial contribution to housing supply and the delivery of affordable housing adds significant weight to the proposal. I will therefore allow the appeal in accordance with paragraph 14 of the NPPF.

Conditions

27. In terms of conditions the Council recommends six which I will consider under the same numbering. In addition to the statutory conditions on the implementation of the scheme and the submission of the reserved matters (No's 1 and 2) the Council requests that the plans to be approved are listed and the development shall be undertaken in accordance with these plans. This is reasonable and necessary in the interests of clarity and to ensure that the development fits in with the surroundings of the site (No. 3). Further details of surface water disposal are required and need to be implemented in order to avoid flooding (No.4). The submission of a landscaping scheme is also necessary as part of the reserved matters to ensure a good residential environment (No.5). Finally given the site's proximity to the service yard of a large retail development, it is reasonable and necessary that details of an acoustic wall to the eastern boundary of the site are agreed with the Council and that this wall is built before any residential units are occupied in order to ensure acceptable living conditions. I will therefore impose these conditions.

Conclusions

28. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the appearance and landscaping of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing numbers 21405/07 received on 15 June 2015, 21405 08 and 15084.102 Rev B received on 29 October 2015.
- 4) Prior to the commencement of development, the surface water drainage system shall be designed in accordance with the principles of Sustainable Drainage Systems (SUDS). This shall include a maintenance strategy and full details (including calculations) shall be submitted to and approved by the Local Planning Authority. Prior to the first occupation of any part of the development, the surface water drainage system shall be completed in all respects in accordance with the details approved and shall be retained as such thereafter.
- 5) The landscaping 'reserved matters' shall include a landscaping and planting scheme to be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a survey of all existing trees on the land showing the size and species and identifying those trees, if any, it is proposed to remove. In addition it shall show in detail all proposed tree and shrub planting, hard surfacing (which should be permeable or drain to a permeable area) and areas to be grassed.
- 6) Prior to occupation of the dwellings hereby permitted, full details of the proposed acoustic wall to the eastern boundary of the application site shall be submitted to and approved in writing by the Local Planning Authority. The acoustic wall shall also be fully installed prior to the occupation of any dwelling hereby approved and shall be retained in full, as permitted, thereafter.