

Appeal Decision

Hearing held on 24 January 2017

Site visit made on 24 January 2017

by S M Holden BSc MSc CEng MICE TPP FCIHT MRTPI

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

Decision date: 14 February 2017

Appeal Ref: APP/G2245/W/16/3159096

Westerham House, Fircroft Way, Edenbridge, Kent TN8 6EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Boldhurst Properties Ltd against the decision of Sevenoaks District Council.
 - The application Ref SE/15/00376/FUL, dated 5 February 2015, was refused by notice dated 29 April 2016.
 - The development proposed is redevelopment of the site comprising the demolition of the existing vacant industrial building and the erection of 36 affordable residential units, 50 car parking spaces, associated highways and landscaping works.
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Decision

1. The appeal is allowed and planning permission is granted for redevelopment of the site comprising the demolition of the existing vacant industrial building and the erection of 36 affordable residential units, 50 car parking spaces, associated highways and landscaping works at Westerham House, Fircroft Way, Edenbridge, Kent TN8 6EL, in accordance with application Ref: SE/15/00376/FUL, dated 5 February 2015, subject to the conditions set out in the attached schedule.

Costs

2. An application for costs was made by Boldhurst Properties Ltd against Sevenoaks District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The original application was submitted by Boldhurst Properties Ltd in partnership with Town and Country Housing. However, in February 2016 Town and Country Housing withdrew from their role as affordable housing partner. The application and the appeal have subsequently been progressed solely by Boldhurst Properties Ltd. This is reflected in the heading of this decision.
 4. As a result of amendments while the Council was considering the application the description of the development was changed from "the demolition of existing vacant industrial building and the erection of 37 affordable residential units, 55 car parking spaces, associated highways and landscaping works" to "the demolition of existing vacant industrial building and the erection of **36** affordable residential units, **50** car parking spaces, associated highways and landscaping works".
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5. I am satisfied that the revised plans have been fully consulted upon and illustrate the scheme which the Council subsequently determined. The number of units was reduced from 37 to 36 and the number of parking spaces was reduced from 55 to 50. I have dealt with the appeal on the basis of this revised proposal.
6. Since the submission of the appeal the Council has reconsidered its five reasons for refusal. It wrote to the appellants on 20 December 2016 advising them that it would not be seeking to present evidence to defend four of the five reasons set out in its decision notice. These related to loss of employment land, air quality, noise and pedestrian safety.
7. At the commencement of the hearing I was informed that the terms of a S106 agreement relating to the provision of affordable housing had been agreed between the parties. This would address the Council's final reason for refusal. However, although it was not presented as a completed agreement on the day, it has subsequently been submitted and I have taken it into account in my decision.

Main Issue

8. Notwithstanding the Council's position, it was clear from representations submitted on behalf of third parties that there were outstanding concerns about the proposal. I therefore consider that the main issues in the appeal are whether or not the proposal would:
 - a) result in the unacceptable loss of employment land;
 - b) provide a suitable mix of housing tenure to meet locally identified housing needs.

Reasons

9. The appeal site lies to the rear of Fircroft Way within what is known as the Station Road Industrial Estate of Edenbridge. The site occupies a backland position and is accessed via a short driveway on the corner of Fircroft Way. It is barely visible from the public realm due to the presence of other buildings fronting the street. The existing building is a large industrial premises with office accommodation on the upper floors. It was previously used as a printing works. It is now in a poor state of repair and has been subjected to vandalism. The remainder of the site is hard-standing.
10. Immediately to the north of the site is a substantial embankment supporting the railway which is on higher ground. To the east of the site is a residential housing estate, dating from the 1960s predominantly comprising rows of small, two-storey, terraced dwellings.

Loss of employment land

11. Policy SP8 of the Core Strategy¹ seeks to retain, intensify and regenerate existing business areas in its major settlements, including Edenbridge. Sites in business use will be retained '*unless it can be demonstrated that there is no reasonable prospect of their take up or continued use for business purposes during the Core Strategy period*'. Policy LO6 of the Core Strategy seeks to retain existing suitable employment sites with the opportunity for regeneration

¹ Sevenoaks District Council Core Strategy – adopted February 2011

and redevelopment to better meet the needs of business. The ADMP² sets out the Council's commitment to providing and preserving a range of employment sites for a variety of business uses and indicates that the majority of sites are still required, making it essential to protect designated employment land. Policy EMP1(v) identifies the Station Road area of Edenbridge as one such area.

12. The development plan as a whole is therefore strongly supportive of retention of sites within existing industrial areas. It is for the developer to demonstrate that there are exceptional circumstances to permit a change of use on the basis of robust and extensive evidence. It was apparent from the hearing and what I have read that the appellant recognised the need to meet the test set out in Policy SP8. As part of this process there was evidence that there had been extensive engagement with Council's officers responsible for economic development and planning policy.
13. Starting in 2012 the site was marketed for two years through a local agent using a variety of advertising channels. The price was adjusted during the period and the property was offered for letting on a flexible licence basis at a nominal rent. Whilst there were some enquiries only four offers were made, three of which were withdrawn early in negotiations. Whilst third parties asserted that the price was too high, there was no convincing evidence to suggest that this was the case. In any event it was open to anyone with a serious interest in using the site for employment purposes to make an offer considerably less than the asking price. There was no evidence that anyone did so. It therefore seems to me that a robust and reasonable marketing exercise was carried out prior to the appellant's purchase of the site in 2014.
14. The configuration of Westerham House is an inflexible building that is unsuitable for modern industrial operations. It was originally built to meet the bespoke requirements of the occupants, a printing business, an industry which has been declining in importance in this area over recent years. It has a restricted amount of space within the ground floor due to the presence of columns and the loss of headroom from ducting and services. It has more space on the upper floors than most operations require.
15. The location of the site, surrounded by other industrial buildings, a residential area and the railway makes it unattractive to potential purchasers, such as a warehouse operator, who require a customer-facing location. In addition, the ADMP suggests that there will be a reducing requirement for industrial floorspace over the plan period whereas the demand for storage and distribution floorspace is expected to grow. All these factors contributed to the lack of interest in the site for on-going business use.
16. The appellant also undertook a series of tests considering the possibility of partial or complete redevelopment. A redevelopment into smaller units was found to have a residual value of -£1.4m, whilst clearing the site was found to provide a marginally positive value of only £70k. A series of sensitivity tests were carried out to assess the effects on residual values of different input assumptions. None of these resulted in a fundamentally different outcome. On the basis of this work the Council concluded that redevelopment of the site for employment use was unlikely to be viable.

² Sevenoaks District Council Allocations and Development Management Plan – adopted February 2015

17. In summary, the appellant undertook a thorough marketing exercise, provided an economic statement and carried out an assessment of the potential viability of the redevelopment of the site for on-going employment use. I am therefore satisfied that there is no reasonable prospect of the existing building being used for employment/ business purposes. It has also been demonstrated that redevelopment of the site for such uses would not be viable. The proposed change of use therefore meets the requirements of the exceptional circumstances set out in Policy SP8 of the Core Strategy.
18. I therefore conclude that the proposal would not result in an unacceptable loss of employment land and would not conflict with Policies SP8 and LO6 of the Core Strategy or Policy EMP1 of the ADMP. In addition paragraph 22 of the National Planning Policy Framework advises that long term protection of sites allocated for employment uses should be avoided where there is no reasonable prospect of a site being used for that purpose. In such cases applications for alternative uses of land or buildings should be treated on their merits. The proposal would accord with this advice.

Affordable housing

19. There is a demonstrable need for affordable housing to meet identified local need in Edenbridge and across the district as a whole. The scheme would provide 36 units for shared ownership and would therefore help deliver a form of housing that is in particularly short supply within the District.
20. Policy SP3 of the Core Strategy requires housing developments of 15 units or more to deliver 40% of the units as affordable housing. This would equate to 14 units in this case, but the policy seeks to split this in favour of affordable units for rent (65%/35%). This would result in 9 units for rent and only 5 shared ownership units. However, Policy SP3 allows for an alternative mix of provision where the Council is satisfied that this would meet a proven need.
21. The Council has subsequently agreed that it would be prepared to accept 15 shared ownership units subject to an appropriate planning obligation. From what I have read there is no doubt that the scheme would help to meet an acute need for affordable housing in the district. The agreement would ensure that 40% of the development as a whole is in the form of affordable shared ownership units which are managed by a registered provider. The units would also be a mix of 1, 2 and 3 bedroom dwellings and would meet the differing needs of individuals, couples and families. The scheme would therefore comply with the requirements of Policy SP3.
22. A S106 agreement securing the provision of these 15 units in perpetuity was presented after the close of the hearing. I am satisfied that the obligation meets the statutory tests of Regulation 122 of the Community Infrastructure Levy Regulations and the requirements of Paragraph 204 of the Framework. I have therefore taken it into account in my decision.
23. I conclude that the proposal would provide a suitable mix of housing tenure to meet locally identified housing needs in compliance with Policy SP3 of the Core Strategy. It would also accord with the Framework's objectives of helping to deliver a wide choice of high quality homes, including affordable housing that meets the needs of different groups in the community.

Other Matters

Highway and pedestrian safety

24. Concerns have been expressed about the safety of pedestrians walking through the industrial estate to the proposed housing development. Fircroft Way may not carry large volumes of traffic, but there are numerous deliveries and large vehicles entering and leaving the various premises along its length. In addition, in common with many similar areas, there are vehicles parked on both sides of the street making it more difficult for large vehicles to manoeuvre safely.
25. Whilst I appreciate these concerns, from what I heard, read and saw on my site visit these minor problems exist at the moment. Anyone walking through the estate can do so using the footways which are provided adjacent to the industrial uses. In any event the site operated for many years as a commercial enterprise with more than 60 parking spaces. It seems likely that the proposal would generate fewer movements than the previous occupant. There was no substantiated evidence to demonstrate that traffic and pedestrian movements generated by the proposed development would result in any significant deterioration of the existing or previous conditions.
26. I note that the highway authority was satisfied that the proposal would not give rise to concerns in relation to highway or pedestrian safety and did not raise any objection to the level of parking which would be provided to accommodate the needs of residents and visitors. I see no reason to come to a different view. There are therefore no highway reasons for rejecting the scheme.

Site security

27. On the western side of the site there would be an area of shared parking and a terrace of dwellings with small, shallow rear gardens. The adjoining site is occupied by A W Champion, a timber merchant, the owners of which are concerned about the security of their site. At the moment the boundary comprises a wire mesh fence topped by barbed wire which is effective in deterring intruders. At the hearing it was agreed that the security of the site could be addressed by imposing a condition requiring details of an appropriate boundary treatment to be agreed and implemented. I will return to this later.

Protected species - bats

28. The ecological assessment submitted with the application was undertaken in accordance with Natural England's standing advice. It was predicated on surveys carried out in 2014 which assessed the potential effects of the proposed development on protected species, including bats. On the basis of the condition of Westerham House at that time it was concluded that, although the building had a medium potential for roosting bats, it was highly unlikely to support such a population.
29. However, the report concluded that if works had not commenced by May 2016, an updated assessment would be recommended. The building has subsequently been vandalised and it now appears that there are several potential entrances into the roof void, which were not identified in the original survey. A local resident suggested that bats are now living in the building, although it was not possible to verify this on the basis of evidence presented at the hearing. Although the appellant has subsequently expressed the view that

bats are not present, there was no convincing evidence before me to support this assertion. In these circumstances I cannot be certain that the proposal would not adversely affect a species protected under the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2010.

30. Paragraph 99 of Circular 06/2005³ advises that the presence or otherwise of a protected species and to what extent that they are affected by the proposed development must be established before planning permission is granted. The need to ensure that ecological surveys are carried out should only be covered and required by condition in exceptional circumstances. However, as the original survey would have been up-to-date at the time that the Council determined the application in April 2016, I consider that a condition requiring an update would be reasonable in this case.
31. I am also aware that if this updated survey was to find that bats are now roosting in Westerham House, it would be necessary for the appellant to prepare a mitigation plan and secure a licence to prevent harm to the protected species. Natural England is the licencing authority and would consider three tests when assessing whether or not a licence should be granted. It is therefore necessary for me to have regard to these tests in order to consider whether or not it would be reasonable to impose a condition that would allow the appeal to succeed.
32. It seems to me that it would not be in the public interest for Westerham House to continue to deteriorate and for the site to remain derelict, particularly as there would be significant social benefits arising from the provision of the affordable housing. I have found that there is no prospect of the existing building being reused for employment purposes and there are therefore no satisfactory alternatives to its demolition. The ecological assessment recorded a low level of bat activity in the area, mainly from the area adjacent to the railway embankment to the north of the site. In view of this, and the urban nature of most of the surrounding area, there is nothing to suggest that demolition of the building would be detrimental to the maintenance of the local bat population.
33. I therefore consider it is likely that, subject to the appellant preparing an appropriate mitigation plan if it was found to be necessary, the tests would be met. The exceptional circumstances that would permit the granting of planning permission, subject to a condition have therefore been satisfied. I have consulted the parties on a potential condition which would prevent the development proceeding without an updated ecological survey and the prior acquisition of a licence under the procedure set out in Section C of Circular 06/2005, in the event that such a licence was found to be necessary. They have agreed that this is acceptable and I will impose it accordingly.

Design, noise, air quality and infrastructure

34. I am aware of the representations made by third parties in relation to the design of the development, the effect of the proposal on the living conditions of future occupants and the lack of contributions to local infrastructure.

³ Biodiversity and Geological Conservation: Statutory Obligations and their impact within the planning system

35. The proposed layout and design would create an appropriate link between the proposed dwellings and the existing housing development to the east of Fircroft Way. It would also make a visual connection with the surrounding industrial buildings through the long linked gable roof of the terraces. The officers' report concluded that the proposal would respect its setting and I see no reason to come to a different view.
36. The design has ensured that there would be acceptable relationships between existing and proposed development and adequate amenity space for future occupiers. I concur with the officers' assessment that potential noise and disturbance could be addressed by the imposition of an appropriate condition.
37. Whilst the pressure that additional residents could place on local facilities and services is an understandable concern, developments for affordable housing are exempt from CIL payments. None of the matters raised by third parties are therefore determining issues in this case.

Conditions

38. The Council did not provide a list of potential conditions for me to consider in the event that the appeal was allowed. However, the officers' report included a recommendation to approve the scheme, subject to a series of conditions. These were the basis of discussion at the hearing, although the issue of a condition to secure the protection of bats was not addressed in any detail at that time.
39. A condition specifying the plans is required in the interests of certainty. Conditions are required to control details of materials, levels and landscaping in the interests of the appearance of the development. A condition requiring a boundary treatment on the western side of the site is necessary to provide security to the business of the adjoining occupier. Conditions to secure acoustic protection and mitigation, the remediation of the site and a design that complies with the principles of Crime Prevention through Environmental Design are justified in the interests of the safety and living conditions of future occupants of the development. In order to reduce the risk of flooding a condition is needed to ensure satisfactory drainage.
40. A condition requiring an update of the ecological assessment before development can commence is essential in order to safeguard a protected species. If bats are found to be roosting in the building the condition also deals with the essential requirements for a licence. A condition to secure other ecological protection and enhancement measures are required in the interests of biodiversity.
41. Requirements to provide access and parking are necessary in the interests of highway safety. A construction method statement is reasonable in view of the location of the site within the industrial estate and its proximity to residential development.
42. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. However, in order to protect the living conditions of the future occupants of adjoining properties, and to avoid the development becoming cramped, I am satisfied that removal of permitted development rights is justified in relation to this development.

Conclusions

43. The Government is seeking to significantly boost the supply of housing and requires applications for housing development to be considered in the context of the presumption in favour of sustainable development. The proposal would result in the loss of a site which is allocated for employment use in the development plan. However, I have found that the exceptional circumstances required to justify releasing it for other purposes have been met in this case.
44. The scheme would provide 36 units of affordable housing on a shared ownership basis; 15 of which would be secured in perpetuity through a S106 agreement. The proposal would therefore provide significant social benefits.
45. I have had regard to the other concerns raised by third parties but am satisfied that these can be adequately mitigated through the imposition of appropriate conditions, including the safeguarding of bats as a protected species.
46. I therefore conclude that the appeal should be allowed, subject to conditions.

Sheila Holden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mike Washbourne MRICS:	Partner, Porta Planning LLP
Mark Thomson MRTPI	Senior Planner, Porta Planning LLP
Ian McDonald MA DipTP MRTPI	Strategic Planning Advice Ltd
Dominic Gwyn-Jones	Boldhurst Properties Ltd
Simon Maine-Tucker	Marsh & Parsons Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Claire Shearing MRTPI	Principal Planning Officer
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INTERESTED PERSONS:

Stuart McGregor	Chairman Edenbridge Town Council
Alan Layland	Town and District Councillor
Adrian Keal RIBA MRTPI	Nexas Planning on behalf of A W Champion
Michael Griffiths	on behalf of John Surtees
David King	Local resident

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

- 1 Letter and photographs from David King regarding environmental matters
- 2 Statement by Adrian Keal
- 3 Statement by John Surtees
- 4 Statement on behalf of Edenbridge Town Council
- 5 Schedule of employment sites currently on the market
- 6 Sevenoaks District Council's shared ownership protocol
- 7 Draft S106 agreement

Schedule of Conditions

1. The development hereby permitted shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - a) *Site location, block and existing plans*
0399 F 0 001 Rev 01, 0399 F 0 002 Rev 01, 0399 F 0 100 Rev 00,
0399 F 0 200 Rev 00, 0399 F 0 201 Rev 00, 0399 F 0 202 Rev 00
 - b) *Proposed plans*
0399 D 0 100 Rev 05, 0399 D 0 101 Rev 06, 0399 D 0 102 Rev 06,
0399 D 0 103 Rev 05, 0399 D 0 110 Rev 05, 0399 D 0 200 Rev 02,
0399 D 0 201 Rev 02, 0399 D 0 202 Rev 02, 0399 D 0 203 Rev 02,
0399 D 0 204 Rev 02, 0399 D 0 205 Rev 02, 0399 D 0 206 Rev 03,
0399 D 0 207 Rev 03, 0399 D 0 300 Rev 02, 0399 D 0 301 Rev 02,
0399 D 0 400 Rev 03, 0399 D 0 401 Rev 02, 0399 D 0 410 Rev 01.
3. No development shall take place until samples of the materials to be used in the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
4. No development shall take place until full details of hard and soft landscaping works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) the materials to be used in the surface finishes of all hard surfaces;
 - ii) details of the materials to be used for the cycle and bin stores;
 - iii) a planting plan identifying all existing plants, any plants and trees to be retained and proposed new planting.
 - iv) a schedule of plants (noting species, size of stock at time of planting and proposed densities)
 - v) details of the means of enclosure and boundary treatments;
 - vi) an implementation programme.
5. No development shall take place until full details of a secure boundary treatment, including a timetable for its implementation, on the western side of the site have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details.
6. No development shall take place until the ecological assessment has been updated, as recommended by paragraph 4.5 of the ECOSA Ecological Assessment, dated May 2015, and submitted to and approved in writing by the local planning authority. In the event that the updated assessment finds that there are bats roosting in the existing building, no development shall take place until Natural England has granted a licence to approve mitigation measures under the Conservation of Habitats and Species Regulations 2010. The development shall be carried out in accordance with the licence.

7. No development shall be carried out until details of ecological protection and enhancement measures arising from the updated survey have been submitted to and approved in writing by the local planning authority. The measures shall be carried out in accordance with an approved implementation programme prior to first occupation of the development hereby permitted.
8. No development shall take place until details of acoustic protection measures have been submitted to and approved in writing by the local planning authority. The scheme must demonstrate that the private amenity spaces and habitable rooms within the development hereby permitted would meet World Health Organisation (WHO) Community Noise guidance. The submission shall include details of environmental noise levels, calculations of attenuation and specification for glazing, powered and passive ventilation and acoustic barriers or fences to meet the WHO requirements. The measures shall be implemented in accordance with the approved details prior to first occupation of any unit of the residential development hereby permitted and shall be retained thereafter as approved.
9. No development shall take place until a detailed remediation plan, based on the recommendations of the Phase 1 and Phase 2 Site Investigation Reports by Soil Environmental Services Ltd, and including specifications for protection membranes and services, shall have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details. No unit of residential accommodation shall be occupied until a verification report has been submitted to and approved in writing by the local planning authority detailing all investigation, remediation measures and certificates for removed and imported soils.
10. No development shall take place until details of a surface water drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) An assessment of the potential for disposing of surface water by means of a sustainable drainage system, with connection to a combined sewer as the least preferable option;
 - ii) Information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - iii) If connection to a combined sewer is sought, details of the ownership and use of the system as well as the sewer condition and invert levels if it is not a public sewer;
 - iv) A timetable for implementation;
 - v) A management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker or any other arrangements to secure the operation of the scheme throughout its lifetime.

- 11.No development shall take place until the details of the measures to meet the requirements of Crime Prevention through Environmental Design (CPDED) have been submitted to and approved in writing by the local planning authority. The measures shall be implemented in accordance with the approved details prior to first occupation of any of the units of residential accommodation hereby permitted and retained thereafter as approved.
- 12.No development shall take place until details of the existing land levels and proposed floor levels and proposed site levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 13.No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The approved Construction Method Statement shall be adhered to throughout the construction period and shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) access and turning facilities for construction vehicles, including measures to prevent vehicles reversing out of the site unless under the supervision of a banksman;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction works;
 - viii) scheme for recycling/disposing of waste resulting from construction works;
 - ix) delivery and construction working hours.
- 14.No unit of residential accommodation in the development hereby permitted shall be occupied until the car parking and turning areas shown on the approved plans have been provided. Seven parking spaces shall be specifically marked for visitor parking. These areas shall be kept available at all times for the parking and turning of vehicles.
- 15.No unit of residential accommodation in the development hereby permitted shall be occupied until the vehicle and pedestrian access, including the pedestrian crossover to the east of the site, has been constructed in accordance with the details which have first been approved by the local planning authority. The accesses shall be retained thereafter as approved.
- 16.Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order with or without modification), no extensions or alterations as defined within Classes A and B of part 1 of Schedule 2 of the order, shall be constructed on any of the dwellings hereby permitted.

End of Schedule of Conditions