
Appeal Decision

Site visit made on 12 December 2016

by Rachel Walmsley BSc MSc MRTPI

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

Decision date: 22 February 2017

Appeal Ref: APP/W0340/W/16/3158415

Beale Park, Lower Basildon, Reading RG8 9NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Brian Smith against the decision of West Berkshire Council.
 - The application Ref 16/01730/OUT, dated 21 June 2016, was refused by notice dated 26 August 2016
 - The application sought planning permission for Thames Heritage Boat Museum at Beale Park, Lower Basildon, Reading RG8 9NW without complying with condition 5 attached to planning permission Ref 13/00575/OUT, dated 11 June 2014.
 - The condition in dispute is No 5 which states that: *The building hereby permitted shall achieve Excellent rating under BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme). The building shall not be brought into use until a final Certificate has been issued certifying that a BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating of Excellent has been achieved by the development and a copy of the Certificate has been provided to the local planning authority.*
 - The reason given for the condition is: that it would pass all of the six tests on the imposition of conditions in paragraph 206 of the Framework.
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Decision

1. The appeal is allowed and planning permission is granted for Thames Heritage Boat Museum at Beale Park, Lower Basildon, Reading RG8 9NW in accordance with application Ref 16/01730/OUT dated 21 June 2016, without compliance with condition 5 previously imposed on planning permission ref 13/00575/OUT dated 11 June 2014 but subject to a substituted condition and to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and as set out in the schedule at the end of this decision.

Main Issue

2. This is whether the condition is necessary, relevant to planning and to the development permitted and reasonable in all other respects, having regard to the development proposed.

Reasons

3. The museum building proposed includes a wet dock and an area of hardstanding for maintenance, display and workshop purposes.
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4. The Inspector, at the time of deciding the appeal relating to planning application 13/00575/OUT, considered that a condition to ensure that the development achieved a BREEAM rating of Excellent was appropriate as it met the tests within paragraph 206 of the Framework.
5. Policy CS15 of the Core Strategy¹ requires all development, from 2013, to achieve BREEAM Excellent. To remove condition 5 therefore would remove any assurance that the development would be acceptable in planning and environmental terms and therefore on this basis, the condition is necessary and relevant to planning.
6. The appellant suggests that the museum building cannot be certified under BREEAM for two reasons; because the proposed building does not fall directly within the classifications of buildings covered by BREEAM and because the building does not fall under Part L 2A of the Building Regulations. Under table 2 in BREEAM UK New Construction², museums are listed under *other – non-residential institutions* and as buildings that can be assessed using BREEAM. With regards to Building Regulations, BREEAM assesses beyond the energy requirements of Building Regulations (for example it covers matters including materials, waste, land use innovation and transport). Whether the building falls under Part L 2A of Building Regulations therefore is not an argument to justify the relevance of BREEAM to the development proposed. I find therefore that the condition is relevant to the development proposed.
7. Nevertheless, whilst I have found condition 5 to be necessary and relevant to planning and to the development proposed, I am satisfied from the evidence presented that a BREEAM rating of Excellent would not be achievable. A covered wet dock and an unregulated system of climate control would make it difficult to achieve some of the more highly rated scores. It has been demonstrated, however, that BREEAM Good is a more realistic target. The Council have indicated a willingness to consider downgrading the BREEAM rating, but not until the building has been designed and the more detailed aspects of the proposal have been finalised. Based on the evidence before me I find sufficient grounds to accept a reduction in the BREEAM rating at this stage of planning to Good.
8. In all, therefore, to remove condition 5 and not require compliance with a BREEAM assessment would be contrary to the Core Strategy and to the sustainability aims of the Framework. I have found, however, that a BREEAM rating of Excellent is not a reasonable target given the form of development proposed. To modify condition 5 with a BREEAM standard of Good would result in a more reasonable condition that could continue to deliver the environmental objectives of policy CS15 and the Framework.

Conclusion and Conditions

9. For the reasons given above, I conclude on balance that the appeal should succeed, subject to condition 5 of planning permission 13/00575/OUT being removed and replaced with an appropriately worded condition to reflect the revised BREEAM standard of Good.
10. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also

¹ West Berkshire Local Plan, West Berkshire Core Strategy (2006-2026). Version for adoption, July 2012.

² BREEAM UK New Construction: Non-domestic Buildings (England) Technical Manual SD5076:5.0-2014

repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other planning conditions imposed on the original permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

11. Condition 2 of planning permission 13/00575/OUT refers to the time by which an application for reserved matters should be made to the local planning authority. Section 73(5) makes it clear that *planning permission must not be granted under this section to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which (a) a development must be started; (b) an application for approval of reserved matters (within the meaning of section 92) must be made*. Granting this permission, therefore, does not extend the time for the application for reserved matters and I have attached a condition accordingly, to reflect this.

R Walmsley

INSPECTOR

SCHEDULE OF CONDITIONS

1. Details of appearance, landscaping and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of reserved matters shall be made to the local planning authority not later than the expiration of a period of 3 years beginning 11 June 2014;
3. No development or site clearance shall take place until a detailed biodiversity mitigation and enhancement scheme based on Table 4 of the Arbtech Extended Phase 1 Habitat Survey dated 9 December 2013 and the email from Brian Smith, dated 6 December 2013 and entitled 'ecology matters at Beale Park', has been submitted to and approved in writing by the local planning authority. The building hereby approved shall not be brought into use until the approved scheme has been implemented in full and shall thereafter be maintained in accordance with the approved details.
4. No development or site clearance shall take place until full construction details and details of the location of the access road and path, re-routed permissive path and new footbridge and the method and removal of spoil removal and disposal have been submitted to and approved in writing by the local planning authority. Thereafter, all works must be carried out in accordance with the approved details.

5. The building hereby permitted shall achieve Good rating under BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme). The building shall not be brought into use until a final Certificate has been issued certifying that a BREEAM (or any such equivalent national measure of sustainable building which replaces that scheme) rating of Good has been achieved by the development and a copy of the Certificate has been provided to the local planning authority.
6. The hereby permitted development shall be carried out in accordance with the approved Flood Risk Assessment (FRA), revised on 6 December 2013 as compiled by B W Smith of The Consuta Trust and the following mitigation measures detailed within the FRA:
 - a. Finished floor levels are set no lower than 42.14 metres above Ordnance Datum (mAOD);
 - b. All excavated material will be taken off site outside of the floodplain;
 - c. No ground-level raising will be undertaken; and
 - d. All of the building (including walls and doors) will be water permeable up to 41.84 mAOD.

The building hereby approved shall not be brought into use until the mitigation measures have been implemented or in accordance with the timing/phasing arrangements embodied within the scheme.

7. No development or other operations shall commence on site until a detailed scheme of landscaping for the site has been submitted to and approved in writing by the local planning authority. The details shall include schedules of plants noting species, plant sizes and proposed number/densities, an implementation programme and details of written specifications including cultivation and other operations involving tree, shrub and grass establishment. The scheme shall ensure completion of the approved landscaping scheme within the first planting season following completion of the development. Any trees, shrubs or plants that die or become seriously damaged within five years of planting shall be replaced in the following year by plants of the same size and species.
8. No development (including site clearance and any other preparatory works) shall commence on site until a scheme for the protection of trees to be retained has been submitted to and approved in writing by the local planning authority. Such a scheme shall include a plan showing the location of the protective fencing and shall specify the type of protective fencing, all in accordance with B.S. 5837:2012. Such fencing shall be erected prior to any development works taking place and at least two working days' notice shall be given to the local planning authority that it has been erected. It shall be retained and maintained for the full duration of the works. No activities, fires or storage of materials whatsoever shall take place within the protected areas.
9. No development or other operations shall commence on site until details of the proposed access, hard surfacing, drainage and services providing for the protection of the root zones of trees to be retained has been submitted to and approved in writing by the local planning authority.

10. No development or other operations shall commence on site until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. The statement shall include details of the implementation, supervision and monitoring of all temporary tree protection and any special construction works within any defined tree protection area. Thereafter all works must be carried out in accordance with the approved details.
11. Prior to the commencement of development, details of the location, design and materials of fencing to be erected to incorporate the hereby permitted museum into the confines of Beale Park shall be submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before the hereby permitted building is first brought into use and shall be retained and maintained thereafter.