
Appeal Decision

Site visit made on 6 June 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 06 July 2017

Appeal Ref: APP/C1625/W/16/3165854

Berkeley Heath Service Station, Berkeley Heath, Berkeley, Gloucestershire GL13 9ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by BWOC Limited against the decision of Stroud District Council.
 - The application Ref S.16/0191/OUT, dated 29 January 2016, was refused by notice dated 7 July 2016.
 - The development proposed is enhancement and extension of existing facilities and retention of petrol filling station to provide additional retail floorspace, a new commercial unit (Use Classes B2/B8) and 8 no. new residential units.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the purposes of accuracy and clarity I have taken the site address from the Council's Decision Notice.
3. The appeal was submitted in outline with all matters except for access and scale reserved for subsequent approval. I have dealt with the appeal on this basis, treating the submitted plans that show the accesses to the highway and the scale of the proposals as indicative insofar as it relates to layout, appearance and landscaping.
4. The appellant submitted additional financial information with the appeal. The Council have had the opportunity to comment on this information and as such it would not be prejudiced by my consideration of it. I have dealt with the appeal on this basis.

Main Issues

5. The main issues are:-
 - Whether the site would be a suitable location for the development having regard to the policies of the development plan and the National Planning Policy Framework (the Framework);
 - Whether the development would result in an impact on Sharpness Dock regeneration and its associated linkage to the wider rail network.

Reasons

Suitable location

6. The appeal site comprises an existing petrol filling station and associated convenience store, garage/workshop and used car lot. The site is adjacent to the A38 in close proximity to the junction with the B4066. There are a small number of dwellings and farms in the immediate vicinity of the site. The proposal would involve the redevelopment of the used car lot with 8 dwellings, a new commercial unit (B2/B8 use) and the extension of the retail part of the petrol filling station.
7. Paragraph 12 of the Framework makes it clear that the statutory status of the development plan as the starting point for decision making has not changed. Development that conflicts with an up-to-date development plan should be refused unless other material considerations indicate otherwise.
8. The Council have stated that they can demonstrate a 5 year supply of housing land (HLS) and this is not disputed by the appellant. In such circumstances, the Framework at paragraph 49 sets out that relevant policies for the supply of housing can be considered up-to-date and paragraph 14 sets out a presumption in favour of sustainable development. For decision taking this means *'approving proposals which accord with the development plan without delay'*.
9. Policy CP1 of the Stroud District Local Plan (DLP) states that when considering development proposals, the Council will take a positive approach that reflects the presumption in favour of sustainable development contained in the Framework. DLP Policy CP3 sets out a settlement hierarchy based on, amongst other matters, settlement size and their range of facilities and services. The development strategy of the plan aims to prioritise growth at sustainable locations, in accordance with this hierarchy. There is no dispute between the parties that the site is not within any settlement boundaries as defined by DLP Policy CP3. Therefore, in accordance with DLP Policy CP3, the site is to be treated as open countryside.
10. DLP Policy CP15 restricts development outside settlement development limits except where it complies with one or more of six identified principles. The appellant considers that the development would comply with criterion No 6 in that it would involve essential community facilities. However, even though the shop, petrol filling station and garage may be used by the residents who live within the vicinity it does not constitute a community facility as defined in the supporting text to DLP Policy CP15. Furthermore, I have no detailed evidence before me to demonstrate that the facilities provided at the site are essential to the community. As such, taking into account all of the above I do not consider that the development would meet any of the 6 identified principles of DLP Policy CP15.
11. The appeal site is around 2.5km from the services and facilities within Berkeley which is defined as a local service centre by DLP Policy CP3. Any pedestrians or cyclists would need to use the B4066 to reach Berkeley and this is a busy road as it is the main route between the A38 and Sharpness Docks and Berkeley. I noted at my site visit that, in the main, there are no pavements or lighting on the B4066 between Berkeley and the A38. The Transport

Statement (TS), submitted by the appellants, states that the B4066 is classified as being suitable for more experienced cyclists on the local cycle map.

12. I acknowledge that a proposed footpath would link the site to the B4066 and cycling may be an option for some residents. There are bus stops within an easy walking distance of the site and whilst local schools appear to be well served by bus services there are only limited other services. The TS indicates that bus service 88 operates 5 services per day on a weekday and 3 on a Saturday and service 207 operates 2 services per day.
13. The retail element of the petrol filling station may provide some top-up goods but it is highly unlikely to meet the day-to-day needs of the future occupiers. It seems to me that, whilst some facilities may be reasonably accessible by bicycle, and notwithstanding the close proximity of bus stops, I consider that future occupiers would be likely to opt to use private cars rather than more sustainable transport modes in order to access day-to-day facilities, services and employment opportunities.
14. Paragraph 55 of the Framework sets out that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. The appellants consider that the proposed residential value of the site would facilitate the investment to maintain and enhance the vitality and viability of the existing facilities on the site. However, I have no appropriate planning mechanism before me to enable the financial return from the housing to be linked to the extension and improvement of the existing facilities. Furthermore, the contribution 8 new dwellings would make to the vitality of the rural community and the support they would give to services in nearby towns and villages would not be significant.
15. The appellants have stated that the existing petrol filling station, shop and garage employ 8 staff and the used car lot 5 staff. The car lot would be removed from the site with the loss of 5 jobs on this site. I acknowledge that the existing tenants lease expires in 2019 and is unlikely to be renewed. DLP Policy CP11 states that *"Existing employment sites will be safeguarded unless new proposals are put forward that intensify the employment use of the site, supported by enabling development as set out in other policies in the Local Plan"*. DLP Policy EI4 states that development on existing employment sites in the countryside will be acceptable provided that, amongst other things, the proposal facilitates the retention or growth of local employment opportunity.
16. However, there is no evidence before to me to indicate how many jobs would be created by the expansion of the shop or the new commercial unit. DLP Policy EI3 states that small employment sites will be protected from non-employment uses such as housing unless wholly exceptional circumstances can be demonstrated. Confidential financial evidence provided by the appellant indicates that the volume of fuel sold at the appeal site has fallen steadily over many years.
17. I noted at my site visit that the existing forecourt, canopy and the site in general does not have a well maintained appearance. I have no doubt that investment to improve the surfacing and landscaping of the forecourt, the maintenance of the buildings and the extension of the shop would increase revenue from the site. As it has done at the appellants' Brent Knoll site.

18. The appellants consider that the only form of development which can successfully raise the land values in order to justify the investment in the petrol station and ancillary facilities is residential development. They also consider that without the investment the existing uses on the site are not viable and would close resulting in the loss of 8 jobs and the site would become derelict. However, I have no information before me in relation to the viability of the existing or the proposed uses or to indicate that the amount of proposed development would facilitate the required investment.
19. Furthermore, as stated above, I have no appropriate planning mechanism before me to enable the financial return from the housing to be linked to the extension and improvement of the existing facilities. Consequently, I do not consider that wholly exceptional circumstances have been demonstrated by the appellants.
20. The appellants have submitted an Environmental Noise Planning Assessment Report which took background noise readings from three positions, one adjacent to the boundary with the A38 (shown as A), one adjacent to the boundary with the dairy farm (shown as B) and the third adjacent to one of the petrol filling station entry/exit points (shown as C). However, it only assesses the impact of the existing uses and the road traffic noise on the proposed dwellings.
21. It concludes that noise levels along the A38 are relatively high during the day but suitable internal noise levels within the dwellings could be achieved with relatively standard construction. Nevertheless, the report does not take into account the proposed commercial unit that would be likely to be closer to some of the proposed dwellings than the existing garage/workshop. I acknowledge that the report states that in the areas of gardens which are completely screened from the road noise levels are likely to be below the BS8233:2014¹ guideline level (55dB LAeq) at times when people are most likely to enjoy their gardens.
22. However, it is likely that one or more of the gardens would be in close proximity to the A38 as even though the layout is only indicative I consider that the density and site coverage shown on the drawings before me is representative of how a scheme of 8 dwellings could be accommodated on the site. The report does state that close boarded 1.8m fences would help to minimise noise levels in gardens which are not screened from the road by a house but it does not state what the predicted noise levels would be in those gardens with the mitigation in place.
23. For these reasons, therefore, while the report is of some value it is limited such that the information before me does not offer sufficient clarity and robustness to be able to conclude that the living conditions of future occupiers of the dwellings would not be unacceptably harmed by noise. I note the appellants' evidence that a condition controlling the hours of use of the commercial unit would provide sufficient mitigation. However, without a more comprehensive assessment the mitigation measures required cannot be adequately assessed and it would not address the issue of traffic noise within the proposed garden areas.

¹ "Sound insulation and noise reduction for buildings"

24. The appellants refer to the brownfield categorisation of the site and the potential visual improvements to the site. I am mindful, in this regard, that one of the core principles of the Framework is to encourage the effective use of land by re-using land that has been previously developed, provided that it is not of high environmental value – the appeal site comprises a hard surfaced used car lot and there is nothing in the evidence before me, or from what I saw during the site visit, to suggest that the site is of high environmental value. However, it is not necessarily appropriate to redevelop all such brownfield land.
25. Taking into account all of the above I consider that based on the evidence before me it has not been demonstrated that the proposal would comply with DLP Policies CP11, EI3, EI4, ES3 and CP14. These policies seek development that does not harm the amenity of occupiers of nearby properties, is readily accessible by public transport, bicycle and foot, protects small employment sites from non-employment uses, facilitates the retention or growth of local employment opportunity and does not result in an unacceptable level of noise sensitive development in locations where it would be subject to unacceptable noise levels.
26. These policies are underpinned by paragraph 28 of the Framework that explains that local development plans should support the sustainable growth and expansion of all types of businesses in rural areas. However, as I have found that the proposal would not comply with DLP Policies CP11, EI3, EI4, ES3 and CP14 I do not consider that it would constitute sustainable growth.
27. Furthermore, as the proposal falls outside any of the settlements identified in DLP Policy CP3 and fails to satisfy any of the principles set out in DLP Policy CP15, the proposal would fail to accord with the Council's housing strategy, as embodied by DLP Policies CP1, CP3 and CP15. There would also be conflict with the Framework which seeks to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling.

Sharpness Dock regeneration

28. DLP Policies SA5, EI12, EI14 and EI15 in combination seek to consolidate the dock operation, allocate land for mixed uses, develop strategic transport infrastructure including rail stations, halts and freight facilities. DLP Policy SA5 does state that *"the disused rail line will be protected, should it prove feasible to reinstate the Docks rail link"* and DLP Policy EI12 states that *"proposals which are likely to prejudice the future development of strategic transport infrastructure will not be permitted"*.
29. I note that the Council have stated that the line of a former railway, which runs through the appeal site, is the disused rail line specified in DLP Policy SA5. However, I have not been provided with an approved masterplan for the Sharpness Docks Estate or any other document that identifies the '*disused rail line*'. Policies Map 4: Parish Clusters² does not identify any land with the appeal site as being 'safeguarded for railway facility'.
30. Whilst, it may be aspirational to have a direct rail link to and from the south, the information before me does not demonstrate that the feasibility of the reinstatement of the Docks rail link has been proven. As such, even if I was to accept that the former railway line across the appeal site was the '*disused rail*

² Provided within the appellants' Statement of Case

line' the protection afforded by DLP Policy SA5 only comes into force 'should it prove feasible to reinstate the Docks rail link'.

31. Furthermore, there is little detailed evidence before me to indicate that the aspiration of increasing the freight traffic on the rail line from Sharpness Dock would be prejudiced if the reinstatement of the disused rail line was not achievable.
32. Consequently, based on the evidence before me, I consider that the proposal would not conflict with DLP Policies SA5, EI12, EI14 and EI15.

Other matters

33. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The appellants have stated that Pickwick Farmhouse, which is on the opposite side of the A38, is a grade II listed building. I have no reason to dispute this and I noted on site that the proposal would have a neutral impact on the setting of Pickwick Farmhouse given the separation of the appeal site to the listed building. Therefore, I am satisfied that the proposal would preserve its setting.
34. My attention has been drawn to appeal decisions and other developments that have been built or approved in the area. However, I do not have the full details of these schemes and so cannot be certain that the circumstances are the same and as such I can only give them limited weight. In any case I am required to consider the appeal proposal on its own merits.
35. The Council's Officer Report states that 30% of the dwellings should be affordable housing but no details or draft legal agreement had been received at that time. It also states that a financial contribution in lieu of on-site play space has not been offered or investigated. However, no development policy or other justification is before me in support of these matters and no legal agreement has been submitted with the appeal.
36. Moreover, the Planning Practice Guidance³ states that contributions for affordable housing and tariff style planning obligations should not be sought on developments of 10 dwellings or less. Therefore, the affordable housing provision has not been proven to be necessary to make the development acceptable in planning terms. Nevertheless, even if I took the benefit of affordable housing into account it would not outweigh the harm that I have found.
37. I am satisfied that subject to the control that exists at reserved matters stage, the dwellings could be designed to be sensitive to local character and architectural styling. However, the lack of harm in this respect is a neutral consideration. The development could improve the overall visual appearance of the site and this would be a benefit of the scheme. However, as stated above, without an appropriate planning mechanism the residential development could be undertaken without any investment or improvements to the petrol filling station. As such, the benefits would be limited.

³ 031 Reference ID: 23b-031-20161116

Overall Balance and Conclusions

38. As set out in S38(6) of the Planning and Compulsory Purchase Act 2004, if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. I have found that the development would be in conflict with DPL Policies CP1, CP3, CP11, CP14, CP15, EI3, EI4 and ES3 and this outweighs my findings in relation to DPL Policies SA5, EI12, EI14 and EI15. Accordingly the proposal would fail to comply with the development plan when read as a whole. The Framework establishes, as a core planning principle, that planning should be genuinely plan-led.
39. I acknowledge that the proposal would contribute to the economic role by generating employment opportunities during development and by encouraging economically active residents into the area. The proposed commercial unit and the expanded retail unit would create jobs but there would be job losses with the removal of the used car lot. The development could retain the existing services, facilities and jobs but without an appropriate planning mechanism the residential development could be undertaken without any investment or improvements to the petrol filling station. As such, I consider that the economic benefits would be modest.
40. The new homes bonus and increased Council tax receipts would bring additional resources to the Council, although I consider these matters to be incentives for Councils to provide housing rather than attracting weight in the planning balance.
41. The creation of additional dwellings would provide a social role. Environmental benefit would be gained through the potential visual enhancement of the site but this has to be weighed against the reliance of future occupiers and workers on the private motor car. As such, the development would be neutral in environmental terms.
42. The failure to comply with the development plan leads me to conclude that the proposal would not be sustainable development and to accord substantial weight to that conflict. I recognise that there are benefits, both socially and economically, associated with the proposed development, notably the potential to boost the supply of housing generally. Such benefits are by no means insignificant.
43. Nevertheless, there are no material considerations of such weight to lead me to the conclusion that the proposal should be determined other than in accordance with the development plan. Taking all of the above into account I consider that the site is not a suitable location for the proposal. Having regard to all other matters raised therefore, I conclude that the appeal should be dismissed.

D. Boffin

INSPECTOR