

Appeal Decisions

Site visit made on 7 June 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 13 July 2017

Appeal A - Ref: APP/P1940/W/17/3169392 Hertford Place, Denham Way, Maple Cross WD3 9AB

- 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 James Brackenbury against the decision of Three Rivers District Council.
 - The application Ref 16/2290/FUL, dated 27 October 2016, was refused by notice dated 22 December 2016.
 - The application sought planning permission for continuation of use of offices on ground, first and second floors without compliance with condition 2 of planning permission ref 8/238/80 without complying with a condition attached to planning permission Ref 8/38/87, dated 26 February 1987.
 - The condition in dispute is No 1 which states that: The floor space the subject of this permission shall be used as offices and / or light industry (as defined in Classes II and III respectively of the Town and Country Planning (Use Classes) Order 1972) and / or for the purpose of research and development and for no other purpose whatsoever without the prior permission in writing of the local planning authority.
 - The reason given for the condition is: Permission is granted having regard to the specific use described in the application and the existing uses of the building known as Hertford House and Hertford Place, and the local planning authority would wish to reconsider the position in the event of a change in circumstances.
-

Appeal B - Ref: APP/P1940/W/17/3169394 Hertford Place, Denham Way, Maple Cross WD3 9AB

- 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 James Brackenbury against the decision of Three Rivers District Council.
 - The application Ref 16/2291/FUL, dated 27 October 2016, was refused by notice dated 28 December 2016.
 - The application sought planning permission for change of use of third floor to offices without complying with a condition attached to planning permission Ref 8/710/86, dated 30 October 1986.
 - The condition in dispute is No 2 which states that: The floor space the subject of this permission shall be used as offices and/ or light industry (as defined in Classes II and III respectively of the Town and Country Planning (Use Classes) Order 1972) and / or for the purpose of research and development and for no other purpose whatsoever without the prior permission in writing of the local planning authority.
 - The reason given for the condition is: Permission is granted having regard to the specifications described in the application and the existing uses of the building known as
-

Hertford House and Hertford Place, and the local planning authority would wish to reconsider the position in the event of a change in circumstances.

Decisions - Appeals A & B

1. The appeals are dismissed.

Procedural matter

2. The Supreme Court judgement in relation to two cases (*Suffolk Coastal DC v Hopkins Homes Ltd and SSCLG, Richborough Estates Partnership LLP and SSCLG v Cheshire East BC [2017] UKSC 37*) was issued on 10 May 2017. The parties to this current appeal were invited to comment on the bearing the judgement may have on the appeal. The comments received have been taken into account in this decision.

Main Issue

3. The contested condition in both appeals was originally attached in the 1980s having regard to the proposed office use, the existing use of the building and to give the Council control over its future use in the event of a change in circumstances. However, my consideration of the appeals must be based on the present situation. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO') allows offices to change use to dwellinghouses without planning permission. The Council states that given the Employment Allocation of the site and the need for office accommodation over the plan period the contested condition in both appeals is reasonable and relevant. The appellant disagrees and seeks its removal in order to allow the offices to be converted into residential dwellings. If the appeals were allowed new permissions would be created without the contested condition attached and the original permissions would remain extant and unaltered.
4. The main issue in both appeals therefore is whether the contested condition is necessary, reasonable and relevant having regard to the need for office accommodation over the plan period.

Reasons

5. The development plan for the district includes the Three Rivers Core Strategy and the Three Rivers Site Allocations Local Development Document (SALDD). Policies CP1 and CP6 of the Core Strategy seek to maintain high levels of economic growth and employment by continuing to focus employment use within key employment areas. This includes Maple Cross Business Park, where Hertford Place is located. Policy SA2 of the SALDD confirms this position by identifying this business park as an allocated employment site which is to be safeguarded. In the event that there is expected to be a surplus to employment needs across the plan period to 2026, as indicated by an up to date Employment Land Study, policy CP6 allows the release of office space from employment use.
6. The National Planning Policy Framework (the Framework) is an important material consideration. Paragraph 19 advises that planning should encourage sustainable growth. Paragraph 22 advises that the long term protection of sites allocated for employment use should be avoided where there is no reasonable prospect of a site being used for that purpose.
7. The South West Hertfordshire Economic Study (SWHES) was published last year. As such, it is an up to date study of demand for employment land. It

assessed the requirement for office floor space from 2013 to 2031 and 2036 and concluded that there will be a significant increase in demand. It points to the need for a 40% increase in office space across South West Hertfordshire as a whole and, under its preferred employment led scenario, identifies a requirement for an extra 56,400 sqm of office floor space within Three Rivers District. The study concludes that even if all the intensification and redevelopment opportunities are pursued there would still likely be a shortfall of employment land available to meet the needs of the economy. As a result, it states that there is a pressing need for additional employment sites to be identified. On the basis of this employment land study no surplus in office space exists and in accordance with policy there is a need to retain such space. In response, the appellant has produced a Commercial Market Analysis / Viability Report (CMAVR) to support its contention that there is no reasonable prospect that the office space at Hertford Place will come back into use.

8. Maple Cross is an out of town office park. Businesses tend to prefer locations with good access to public transport and amenities that locations such as town centres offer. No new offices have been built on the park for a number of years and with a post office, shop and café, Maple Cross has a limited range of local amenities within walking distance. Nevertheless, with the excellent access that the business park has to the strategic road network, on-site parking provision, regular bus service and landscaped grounds it is an attractive location that meets a number of important criteria for an office park. The presence of two companies occupying the two other office buildings within the park along Denham Way supports this contention.
9. Hertford Place has a total floor area of 5,350 sqm. There is a good choice of new offices of this size in the wider area and the vast majority of demand for office space in the District is from small to medium enterprises that require less than 1850sqm. Given that each of the four floors of the building has an area less than 1850sqm (1,183 to 1,368sqm) the building is capable of offering such accommodation, even if, in relation to small businesses not occupying a full floor, this would involve a less than ideal layout .
10. Hertford Place was originally built in the late 1960s. Since then it has been extended and a glass atrium was added in the late 1990s. The take up of office space is focussed on new or refurbished Grade A accommodation. Hertford Place is categorised by the CMAVR as Grade B accommodation which is not as popular. It defines such accommodation as any offices over 10 years old that does not have all the elements of a Grade A specification. A viability appraisal of refurbishing the offices to a good Grade B standard has been submitted that concludes that it is unviable to do so. However, the appraisal is not supported by detailed evidence and there is inadequate information as to where the figures it uses are derived. I am therefore not in a position to determine whether its conclusions are realistic. As a result, I attach little weight to its findings.
11. The building was occupied by a single company that vacated the building in June 2008. It was marketed as a single headquarters opportunity and on a floor and part floor basis. It remained empty during the recession. Unisys agreed a lease for the third floor in 2010 and left 5 years later in 2015. In 2012 Bahlsen agreed a lease for part of a floor and occupied the building for several years. Whilst since 2008 the building has been no more than 30% occupied there has been some demand for its office space. On the basis of the

- recent SWHES, the marketing results do not alter the position that this demand is likely to increase in the medium to long term.
12. In my judgement, notwithstanding it's out of centre location, given the predicted significant shortfall of office space to meet demand, and for the reasons I have given above, there is a reasonable prospect that the office space at Hertford Place will come back into use.
 13. The site has been illegally occupied by travellers who caused damage to the building and fly tipped refuse. This necessitated a clean-up, and, in order to prevent a recurrence, concrete blocks have been installed around the front boundary of the site and security has been improved. Whilst the concrete blocks detract slightly from the appearance of Hertford Place, its grounds are tidy and the building externally is in reasonable condition. As a result, these measures are having only a minimal adverse impact on the character of the area, and I am not persuaded that they are materially harming the operation of the business park and its ability to retain existing employers.
 14. Permissions for the adjoining Skanska office building and other developments have been referred to where no condition restricting the change of use was attached. However, these permissions were granted in light of the relevant policy and other considerations that existed at that time. This included, for example, in relation to planning permission ref 07/140/FUL for a hotel on employment land, the 2005 Employment Land Study which found that, unlike at present, there was an oversupply of office space in the District. Reference to these permissions and the conditions attached to them therefore has not altered my findings in relation to this appeal.
 15. In terms of the use of conditions, I find that the contested condition in both appeals complies with the other tests of paragraph 206 of the Framework and the advice in Planning Practice Guidance.
 16. For all of these reasons, I therefore conclude that the condition at issue in both appeals is necessary, reasonable and relevant having regard to the need for office accommodation over the plan period. Removal of the condition would allow under the GPDO the change of use of the offices to residential use without planning permission. This would result in the loss of office floor space on an allocated employment site when there is a reasonable prospect of it coming back into use, contrary to policies CP1 and CP6 of the Core Strategy, policy SA2 of the SALDD and the Framework.
 17. As I have noted, if the appeals are allowed and new permissions are issued without the contested condition it is the intention of the appellant to change the use of Hertford Place from office use to residential use using permitted development rights in the GPDO. The view of the appellant is that the Council has significantly less than a five year housing land supply and that residential use of the building would help address this issue.
 18. I appreciate that the housing targets in the Local Plan are out of date and that the Strategic Housing Market Assessment indicates that the objectively assessed need for housing (OAN) may be far greater than the housing targets in the Local Plan. However, the OAN has yet to be assessed through the Local Plan process and it is not for me, in the context of a section 78 appeal, to carry out some sort of local plan process as part of determining the appeal, so as to arrive at a constrained housing requirement figure. There is little evidence of sufficient robustness before me on which to reach an evidence-based conclusion about objectively assessed need against which I could assess any

shortfall in supply to meet that need. In the absence of such evidence, I cannot conclude with any degree of certainty or confidence that, in relation to this appeal, less than a five year housing land supply exists.

19. It is stated that residential use of Hertford Place would help reduce the pressure to release land from the Green Belt for residential purposes. However, by reducing the supply of employment land it could, it seems to me, also increase the pressure on the Green Belt for employment use.
20. In the overall balance, even if there is currently less than a five year housing land supply, I am of the view that the harm that would result from the loss of employment land would significantly and demonstrably outweigh any benefit in terms of additional housing that could be provided within the building at this time. A change of use from offices to residential would therefore not be a sustainable development. This consideration therefore does not alter my conclusion in relation to the contested condition in either appeal.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, the appeals should be dismissed.

Ian Radcliffe

Inspector