



Appeal Decision

Site visit made on 20 November 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 29th November 2017.

Appeal Ref: APP/B0230/W/17/3181941

250 Toddington Road, Luton, Bedfordshire LU4 9DZ

- 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 Mr Sooren Chinnappa of Ground Construction Ltd against the decision of Luton Borough Council.
 - The application Ref 16/02050/FUL, dated 17 November 2016, was refused by notice dated 28 April 2017.
 - The development proposed is described as 'erection and use a tower crane with no over sail beyond the property and the crane being operated by remote from ground level. A current consent (15/00805/FUL) expires on 31st December and we are looking for a 10-year consent.'
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. On the 7 November 2017 the Council adopted the Luton Local Plan 2011-2031 (LP). This has superseded the previous Local Plan. My decision must be based on the most up to date policies in the development plan and therefore both the appellant and Council were afforded an opportunity to identify the relevant policies in the new LP to which I should have regard.
3. I requested further representations from the Council and appellant to clarify a number of points in respect of the existing tower crane and the temporary planning permission (reference 15/00805/FUL). I have had regard to the additional comments received.
4. The appellant has confirmed that the tower crane currently in situ at the appeal site is not that approved under application 15/00805/FUL. The existing tower crane is of a different design¹ to that approved and about four metres out of position. As such, the temporary planning permission has not been implemented and has expired. Thus, the existing tower crane within the appeal site appears to be unauthorised.
5. The appellant has confirmed that I should base my assessment on the tower crane shown in the appeal scheme drawings, rather than the one currently erected, as these show the tower crane that has been applied for. This is what I have done. Nevertheless, the tower crane that has been erected provides an

¹ The tower peak, fore and rear pendant are above the jib

indication of the effects that may occur from that proposed, as the jib and mast dimensions are the same.

6. The appeal scheme drawings demonstrate that the tower crane the subject of this appeal would be contained within the boundaries of the appeal site and therefore the correct ownership certificates have been completed. The appellant has confirmed that they are now seeking a permanent planning permission for the erection of a tower crane and not a temporary permission for ten years. I have considered the appeal on this basis.
7. During my site visit I observed the existing tower crane from 13 and 20 Bellerby Rise in accordance with the requests submitted in writing by the residents beforehand.

Main Issues

8. The main issues in this appeal are the effect of the proposed development on:
 - The living conditions of the occupants of nearby residential properties with particular reference to the visual effect and associated activities; and
 - The character and appearance of the area.

Reasons

The effect on the living conditions of the occupants of nearby residential properties

9. The appeal site is located towards the western end of Toddington Road and on its northern side. The section of Toddington Road in the vicinity of the appeal site is characterised by employment uses connected with a defined employment area. Development to the south of the appeal site broadly encompasses residential estates. The appeal site comprises a yard enclosed by metal fencing. Within the yard there are a couple of buildings but most of the space is given over to open storage of plant, including components of tower cranes.
10. The nearest residential properties to the appeal site include those located in Bellerby Rise and Barking Close. A handful of the properties in these streets, such as 13 Bellerby Rise, have a rear aspect towards the appeal site. There is a slight increase in land levels from north to south and therefore the appeal site is visible over the tree screen that is currently in place along the southern side of Toddington Road. The effectiveness of the tree screen is diminished when the trees are not in leaf.
11. When I was in 13 Bellerby Rise I observed that nearly the whole extent of the existing tower crane is highly prominent in the outlook from every room that has a window with a northerly aspect², as well as from the garden. The existing tower crane is also visible from the living room and garden of 20 Bellerby Rise. Having walked around the estate and read the submissions of residents it is also apparent that the tower crane has a prominent visual impact on the outlook from other properties, including some in Barking Close and Toddington Road.
12. The ability to see a structure does not always equate to a harmful impact. Nevertheless, in this instance the tower crane is a long structure that is much taller than nearby buildings. It has a strident and imposing appearance and is located reasonably close to the nearby residential properties. Furthermore, it

² Including the living room, kitchen, landing and two bedrooms

has moveable elements which would draw attention to it when it is being operated. As such, it has a harmful, unavoidable and over bearing presence in the outlook from nearby residential properties. This is unlike other structures in the industrial estate which are lower and consequently they do not harmfully obscure the aspect towards or beyond them.

13. The proposed tower crane would be of a comparable scale and design to the existing crane erected within the appeal site and it would be in a similar position. As such, it would have a very analogous visual effect that would harmfully impact upon the living conditions of those occupants of the properties in Bellerby Rise and Barking Close that are nearest to the appeal site.
14. It has been suggested that the existing tower crane omits an unacceptable level of noise and therefore the proposed crane would be likely to as well. The noise assessment submitted with the approved temporary planning permission suggested that the noise from any generator, upon which the noise assessment was focussed, would not be harmful given the high ambient noise levels from nearby roads.
15. However, it is unclear whether noises generated from the movements of the crane, which are emanating from an elevated position close to dwelling houses, would be unreasonable. The submissions from nearby residents suggest there have been some impacts in this regard. The temporary permission was granted for one year, in part, to enable noise impacts from the tower crane to be considered and reviewed. I have seen nothing to suggest the original acoustic report has been updated to consider the noise impacts of the existing tower crane whilst in situ. This would have been useful in gauging what the likely noise impacts of the proposed tower crane would be. The absence of this information is a notable omission.
16. As such, I am not satisfied that the body of evidence submitted by the appellant is sufficient to demonstrate that the proposed tower crane would be acceptable in respect of noise impacts. This is even when the existing ambient noise from the motorway, the appeal site and the wider industrial estate is factored in.
17. It is also important to note that the Council reached a balanced conclusion in approving the temporary planning permission. It considered that the installation of a tower crane could improve the living conditions of nearby residents by reducing the overall noise omitted at the appeal site³. However, there is no substantive evidence before me to suggest overall noise levels have reduced. As such, this is not a point in favour of the appeal scheme.
18. In addition to the visual and noise impacts, concerns have also been raised regarding privacy, as workers at the appeal site would be on the tower crane and perhaps in the cab and could therefore see into nearby properties. However, the proposed tower crane could be installed without a cab and controlled remotely from the ground. Moreover, the appellant has confirmed that it would only be necessary for workers to be on the jib for routine maintenance. This would be infrequent, normally once every six months. Thus, if the cab was removed then the proposal would not harmfully impinge on the privacy of nearby residents.

³ As the tower crane could reduce the need to regularly use fork lift trucks with beeper alarms. White noise alarms would present issues with health and safety.

19. CCTV cameras have been installed on the existing tower crane. It is unclear whether they would be installed on the proposed crane. A planning condition could have been imposed in the event the appeal was upheld to secure details of the position and angle of any cameras so as to ensure the privacy of nearby residents would be maintained.
20. Nearby residents have suggested that the appeal site generates a lot of dust that spills across into the housing estate. The submissions indicate that much of the dust deposits follow the manufacture and movement of concrete products at the appeal site. These may be activities that are outside the lawful scope of what the appeal site can be used for. Nevertheless, I have not been presented with substantive evidence that dust is being deposited in unacceptable levels or that this is a result of the tower crane and its use.
21. My conclusion on this main issue is that the appeal scheme would have an unacceptable visual impact on the outlook from nearby properties. As such, the proposal would result in inadequate living conditions for nearby residents. The appellant has also failed to demonstrate that the proposed tower crane would not result in harmful noise impacts. As a consequence, the appeal scheme would be at odds with the aims of Policy LLP14 of the LP, which seeks to protect amenity, and Paragraph 17 of the National Planning Policy Framework, which states that the planning system should always seek good standards of amenity for the future occupants of land and buildings.

The effect on the character and appearance of the area

22. As already established, the tower crane would be a long structure that would be much higher than those around it. It would have a similar effect on the appearance of the area as the existing tower crane, which is visible from some distance along Toddington Road, the surrounding housing estates and the M1.
23. The proposed tower crane would be particularly prominent in views from Toddington Road as the appeal site adjoins the back edge of the road and there are limited structures or landscaping in place to screen or filter views of it. The tower crane would be a strident feature and would harmfully dominate the street scene. A lattice design and position back from the road would not mitigate for this as the existing crane has this design and siting and is still unduly prominent due to its height and length. This is a strong indication that the appeal scheme would have a similar harmful impact on the street scene.
24. The proposed tower crane would also be unduly prominent from the nearby housing estate to the south. This would result in the structure being an incongruous visual intrusion of industrial plant into a residential area. This would harm the residential character of the estate.
25. In coming to the view above, I accept that the appeal site is within a large industrial estate where plant and utilitarian structures are common place. However, these tend to be lower in height and are not particularly visible outside the immediate environs of the industrial estate. The proposed tower crane on the other hand would have a much wider visual envelope. It would also be located on the periphery of the industrial estate where its presence would be more conspicuous. For these reasons its permanent installation at the appeal site would be unacceptable.

26. The Council have previously given a one year temporary planning permission for the erection of a tower crane at the appeal site and when doing so it did not conclude the would be harm to the character and appearance of the area. Tower cranes can often be found in urban locations but they tend to be erected for short periods relating to a specific purpose, such as the construction of a building. In such instances the visual impact can be tolerated because it would be short lived. However, the appellant is seeking a permanent permission for the tower crane and therefore the harmful visual impact would have no apparent end date. I consider this to be unacceptable for the reasons already given. As a result, the previous grant of a temporary planning permission for one year is not a determinative point in favour of the appeal scheme.
27. I therefore conclude that the appeal scheme would harm both the character and appearance of the area and consequently it would conflict with those aspects of Policies LLP1 and LLP25 of the LP that seek to protect the character and appearance of the borough.

Other Matters

28. The appeal scheme would allow the appellant to optimise his operations within the appeal site and reduce carbon emissions. The LP also seeks to support business development within employment areas and therefore the principle of a tower crane is not unacceptable. As a consequence, the appeal scheme has the potential to support the local economy. However, the benefits arising from this are not sufficient to outweigh the harm I have identified and the subsequent conflict with the development plan. If the crane is not used then other means of moving plant around the yard would be required. This could result in greater noise impacts and may not be as safe for workers. However, any noise impacts, as well as the health and safety of workers, are matters that can be controlled by other legislation and therefore these impacts should not become unacceptable.
29. Temporary planning permissions have been granted in the past for the erection of tower cranes at the appeal site that were taller than that now proposed. Nevertheless, I draw a distinction between a temporary permission, albeit renewed, and a permanent permission. By definition, the implementation of the latter would result in harmful effects with no end date. Moreover, there was a building in place along the Toddington Road frontage and I understand this provided both screening and sound attenuation. The building was demolished in 2005 and therefore the mitigation it apparently provided would not be available to the appeals scheme.

Conclusion

30. The appeal scheme would be contrary to the development plan taken as a whole and material considerations do not indicate planning permission should be forthcoming in spite of this. Accordingly, the proposal is not sustainable development and for this reason, the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR