



Appeal Decision

Hearing Held on 27 March 2018

Site visit made on 27 March 2018

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 April 2018

Appeal Ref: APP/G5180/W/17/3180326

Faraday House, Faraday Way, Orpington BR5 3QT

- 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 Travis Perkins (Properties) Limited against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/17/00539/FULL3, dated 3 February 2017, was refused by notice dated 21 April 2017.
 - The development proposed is sub-division of existing building into 2 units, elevational alterations and change of use of unit 1 and external area from classes B1c, B2 and B8 to a mixed B8/A1 use, provision of mezzanine floor, parking for cars, vans and bicycles and refuse storage.
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Decision

1. The appeal is allowed and planning permission is granted for sub-division of existing building into 2 units, elevational alterations and change of use of unit 1 and external area from classes B1c, B2 and B8 to a mixed B8/A1 use, provision of mezzanine floor, parking for cars, vans and bicycles and refuse storage at Faraday House, Faraday Way, Orpington BR5 3QT in accordance with the terms of the application, Ref DC/17/00539/FULL3, dated 3 February 2017, subject to the conditions set out in the Schedule attached to this decision.

Preliminary Matters

2. Both parties refer to Draft Policies of the Bromley Draft Local Plan (Draft LP) which was submitted to the Secretary of State on 11 August 2017. Whilst I note hearing sessions have been undertaken I am told objections are outstanding and further public consultation is necessary. That said, consistent with the Inspector in the October 2017 appeal decision¹ I afford the policies of the Draft LP moderate weight.
3. An additional plan (Drawing No 13347-132 Proposed Cray Valley Road Fence) and an amended plan (Drawing No 13347-122A Proposed Site Layout) have been submitted with the appeal. These drawings show additional details of the proposed boundary treatment and do not significantly alter the proposal in any other regard. The Council have considered these details. I am satisfied that interested parties would not be prejudiced by my consideration of them and I have therefore considered them accordingly.

¹ Appeal Reference APP/G1580/W/17/3176504

4. Planning permission was granted in March 2016² for the sub-division of existing building into two units, elevational alterations and change of use of unit 1 and external areas from classes B1c, B2 and B8 to a builder's merchant (class sui generis) provision of mezzanine floor, parking for cars, vans and bicycle and refuse storage. This permission is extant and I am told that should the appeal fail this scheme will be implemented. Both parties agree that there is more than a theoretical prospect of this happening and there is no substantive evidence which leads me to believe otherwise. The fall-back position is therefore material and carries significant weight and I have compared its effects with the appeal scheme below.

Main Issues

5. The main issues are the effects of the proposed development on:

- the supply of employment land;
- highway safety, with particular regard to parking;
- the character and appearance of the area.

Reasons

Supply of employment land

6. The appeal site comprises a large vacant building and car park previously used for manufacturing electric engines. It is surrounded by commercial and industrial buildings within the St Mary Cray Business Area (SMCBA) as designated by saved Policy EMP4 of the London Borough of Bromley Unitary Development Plan (2006) (UDP).
7. The proposals would involve alterations and sub-division of the building into a mixed B8/A1 use unit (unit 1) occupied by Wickes Building Supplies and a second unit which would retain the existing use (unit 2). The Council has raised no objections with regard to proposed unit 2; I will therefore focus on the effects of proposed unit 1 which would occupy the same part of the appeal building as the builder's merchant use approved under the extant permission.
8. Policy EMP4 of the UDP states that only uses falling within Classes B1, B2 or B8 will be permitted in such locations. Furthermore, Policy 2.17 of the London Plan³ (LP) designates the SMCBA as a Strategic Industrial Location (SIL) making clear that development proposals in SIL's should be refused unless, among other things, they fall within the broad industrial type activities outlined in paragraph 2.79 of the LP which do not include either a mixed B8/A1 use or sui generis builder's merchant.
9. Policy 2.17 of the LP also states development within SIL's should not compromise the integrity or effectiveness of these locations in accommodating industrial type activities. Moreover, Draft LP Policy 81 states proposal involving non Class B uses on these sites should provide employment generating uses that reinforce the role of the SIL.
10. I have considered the detailed evidence with regard to the supply of industrial land and whether or not there is demand for sites such as the appeal site.

² Council Reference 15/04575

³ The London Plan– The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (2016)

However, a builder's merchant sui generis use is not a pure industrial use. Thus even though a mixed B8/A1 use is also not a pure industrial use, given the fall-back position the industrial land use on the relevant part of the site has already been lost.

11. The Council argue the fall-back use would represent an employment generating use that would reinforce the role of the SIL, whereas the appeal proposal would not. However, one of the fundamental aims of the SIL is to generate employment and the proposed mixed B8/A1 use would provide the equivalent of 40 full time jobs whereas the fall-back sui generis use would only provide 20.
12. Even though the fall-back scheme would involve Travis Perkins relocating from another site in the SIL, there is no substantive evidence before me to suggest that the vacated site with the SIL would not be redeveloped to provide a level of employment equivalent to that which it currently provides.
13. I acknowledge the Council's concerns with regard to introducing retail into this location and the blurred nature of the proposed mixed B8/A1 use. However consistent with the Inspector's findings in the Sutton appeal decision⁴, I have to consider the proposal as applied for. I note the appeal site is centrally located within the SIL. However, without any substantive evidence to the contrary in my view a builder's merchant and the proposed Wickes Building Supplies would have equivalent visual effects on the SIL.
14. The survey evidence shows the main customers of a Wickes Building Supplies would be people working in construction or maintenance. This is not dissimilar to the customer base for a builder's merchant. I accept that other members of the public would be more likely to visit the proposed use given the more extensive display and sales area. However, non-trade members of the public could also visit and purchase from a builder's merchant without restriction.
15. Furthermore, there is no substantive evidence before me which suggests that either trade or non-trade customers visiting the appeal site would lead to any conflict with nearby uses or that it would discourage any other small or large scale industrial use from moving to the SIL in the future.
16. Moreover, the appellant is agreeable to the imposition of a planning condition to ensure only DIY, home improvement and building materials/items are sold from the proposed ground floor and that the proposed mezzanine floor is only used as a kitchen and bathroom showroom. With this condition imposed the proposed use would be very similar to the fall-back use. Furthermore, the Council would be able to monitor and investigate whether the B8 element was still taking place or whether the goods on sale were within the limitations of the condition.
17. Overall on the basis of the evidence before me I am led to the conclusion that the proposed mixed B8/A1 use and the fall-back builder's merchant sui generis use would result in an equivalent loss of industrial land and comparable effects on the industrial character of the SIL and neither would discourage other industrial uses of any size from moving into the SIL. However, the proposed B8/A1 use would create 20 more jobs than the fall-back use having a

⁴ Appeal Reference APP/P5870/A/12/2187187

significantly greater positive effect on reinforcing the role of the SIL than the fall-back scheme.

18. Thus, given the fall-back position, I find the proposed development would not harm the supply of employment land in the area and is therefore in accordance with the aims of Policies EMP4 of the UDP, Policy 2.17 of the LP and Policy 81 of the Draft LP which seek to protect employment land from redevelopment to non-employment uses and reinforce the role of SIL's as strategic economic development locations.

Highway safety

19. Appendix 2 of the UDP and Policy 6.13 of the LP require proposals to be considered in accordance with maximum parking standards. Proposed units 1 and 2 would share 64 parking spaces including 4 disabled bays, 8 spaces for vans and 1 car and trailer space.
20. There is no maximum parking standard for a mixed B8/A1 use. However, assuming a 50% split between A1 and B8 floorspace the maximum parking standard would be between 39 and 86 spaces. Assuming 100% of the floor area would be A1 use the maximum parking standard would be between 69 and 125 spaces.
21. The Transport Statement acknowledges that due to the nature of the proposed mixed B8/A1 use and the high volume of trade customers that almost no customers will use public transport. However, it notes trade customers often make bulk purchases reducing the number of trips. Furthermore, surveys have been undertaken at existing Wickes Building Supplies and demonstrate no more than 50 vehicles parked at any given time. With the absence of substantive evidence to the contrary, in my view these findings are reasonable and point towards a parking demand towards the lower end of the ranges.
22. The appeal site has a moderate (3) PTAL⁵ rating. It is close to cycle routes, on reasonable walking routes close to residential areas and the proposal would provide an appropriate amount of cycle parking. Although I acknowledge it is in high demand, on-street parking is also available on streets immediately nearby and there is no substantive evidence before me to suggest there are any highway safety issues arising from on-street parking in the area.
23. Thus overall, I conclude that the proposal would provide parking broadly within the range of the maximum parking standards and if there is a shortfall this would be relatively minor and infrequent such that it could be met off-site without harming highway safety.
24. In reaching these conclusions I note the survey evidence only relates to Wickes Building Supplies stores and parking demand may not be the same for another operator which could trade from the site if Wickes Building Supplies were to vacate it. However, any operation would need to operate within the mixed B8/A1 use permitted and the conditional limitation on the type of goods to be sold. There is no substantive evidence before me which suggests that any future operator within these limitations would generate levels of parking demand significantly more than a Wickes Building Supplies.

⁵ Public Transport Access Level

25. For these reasons, I find the proposal would not harm highway safety with particular regard to parking. It would therefore accord with saved Policy T18 of the UDP; Policy 6.13 of the LP and Policy 32 of the Draft LP which seek to ensure new developments do not compromise highway safety and make appropriate provision for parking.

Character and appearance

26. The Council's concerns relate to the proposed herringbone fence adjacent to the Clay Valley Road. The buildings and boundary treatments in the area are of a variety of styles giving the area a varied and commercial character and appearance.
27. I acknowledge the proposed fencing would be tall and of relatively solid appearance. However, it would be set back from the road behind landscaping and of a natural timber finish with gaps in the timber allowing for climbing plants to be grown.
28. Furthermore, I have imposed a condition which requires a scheme of landscaping to be agreed and implemented which would soften its appearance. Overall, with landscaping the proposed fence would blend into its setting and would not appear out of place in a varied and commercial context.
29. For these reasons the proposed boundary treatment would not harm the character and appearance of the area. The proposal would therefore accord with the good design aims of saved Policy BE1 of the UDP, Policy 7.4 of the LP and Policy 37 of the Draft LP.

Other Matters

30. I have attached limited weight to the Wickes in Anerley⁶ and the photographs of the B&Q in Sydenham as the full circumstances of these examples are not before me. Furthermore, both are some distance away from the appeal site and not within SMCBA.

Conditions

31. The conditions imposed are those which have been suggested by the Council but with some variation in the interests of clarity and precision having regard to the advice on imposing conditions in the Planning Practice Guidance.
32. In addition to the standard timescale condition, I have imposed a condition specifying the relevant drawings as this provides certainty. A separate condition requiring the development to be undertaken in accordance with the tree protection drawing is not necessary as this drawing is listed in the approved plans condition.
33. For the reasons given above a condition is also necessary to control the goods sold, restrict sub-division and control alternative uses from unit 1 to ensure the proposed use does not harm the integrity of the SIL. However, I do not find it necessary to require any future operator to submit a transport statement as they would need to operate within the description of development and in accordance with the condition which limits the type of goods sold.

⁶ Council Reference DC/14/00957/FULL3

34. As requested by the Council I have also imposed conditions to ensure the finishing materials are those stated on the application form and the approved plans, the racking storage does not exceed the height of the boundary fence and a landscaping scheme is agreed and implemented all in the interests of safeguarding the character and appearance of the area. For the same reasons and to safeguard trees and to ensure appropriate landscaping, conditions which require tree protection measures and a landscape maintenance plan to be agreed and put in place are also necessary.
35. In the interest of highway safety and sustainable transport conditions requiring the parking spaces to be laid out, cycle parking provision and changing and showering facilities to be put in place before the use commences are also necessary.
36. A condition requiring details of loading and storage during construction is necessary to minimise noise and disturbance and ensure highway safety during construction. To safeguard trees and in the interest of avoiding environmental harm a condition which controls burning construction waste is also necessary. Furthermore, a condition requiring the development is undertaken in accordance with the submitted Energy Statement is necessary to ensure sustainable energy use and to meet the requirements of the development plan.
37. Finally, a condition which restricts the hours of operation is necessary in the interest of safeguarding nearby resident living conditions. However, an additional condition to control the hours in which vehicles can move on site is not necessary given the hours of operation restriction.

Conclusion

38. For the reasons set out above, having had regard to all other matters raised, I therefore conclude that on balance the proposal would accord with the development plan and the appeal should therefore be allowed.

L Fleming

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No 13347-100A Location Plan; Drawing No 13347-101 Existing Block Plan; Drawing No 13347-102A Existing Site Plan; Drawing No 13347-103 Existing Ground Floor Plan; Drawing No 13347-104 Existing First Floor Plan; Drawing No 13347-105 Existing Elevations; Drawing No 13347-121 Proposed Block Plan; Drawing No 13347-122A Proposed Site Layout; Drawing No 13347-123 Proposed Ground Floor Plan; Drawing No 13347-124 Proposed First Floor Plan; Drawing No 13347-125 Proposed Elevations; Drawing No 13347-126 Indicative External Storage Details; Drawing No 13347-127A Indicative Internal Layout of Unit 1; Drawing No 13347-128 Indicative Trolley Bay Details; Drawing No 13347-132 Proposed Cray Valley Road Fence; Drawing No DLA-1664-L01 3 Tree Removal/ Retention Plan; Drawing No DLA-1664-L02 3 Tree Protection Plan; Drawing No DLA-1664-L03 3 Landscaping (Softworks); Drawing No 2814_E_100 P1 External Lighting Plan.
- 3) The ground floor of unit 1, as shown on Drawing No 13347-123 Proposed Ground Floor Plan, shall only be used for the sale of DIY, home improvement and building materials/items and the mezzanine floor of unit 1, as shown on Drawing No 13347-124 Proposed First Floor Plan shall only be used as a showroom for the sale of kitchens and bathrooms. Unit 1 hereby approved shall not be subdivided either vertically or horizontally and shall not be used for any other purpose in Class A1 or Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that in any statutory instrument revoking, re-enacting or modifying that order).
- 4) The materials to be used for the external surfaces of the building shall be as set out in the planning application form and drawings.
- 5) The use hereby permitted shall not operate before 0600 or after 2000 on Monday to Saturday nor before 1000 or after 1600 on Sundays.
- 6) The racking within the external storage areas shall not exceed the height of the proposed fence enclosure.
- 7) Details of a scheme of landscaping, which shall include the materials of paved areas and other hard surfaces shall be submitted to and approved in writing by the local planning authority before the commencement of the development hereby permitted. The approved scheme shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die; are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species to those originally planted. The landscaping scheme once agreed shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development whichever is the sooner.

- 8) Before commencement of the use of the land or building hereby permitted parking spaces and turning space shall be completed in accordance with the approved details and thereafter shall be kept available for such use and used for no other purpose.
- 9) Before commencement of the use of the land or building hereby permitted, bicycle parking (including covered storage facilities where appropriate) shall be provided at the site in accordance with details to be submitted to and approved in writing by the local planning authority, and the bicycle parking/storage facilities shall be permanently retained thereafter.
- 10) Before commencement of the use hereby permitted, details of changing facilities and showers for cyclists in accordance with the standards set out in the Parking Addendum to Chapter 6 of The London Plan– The Spatial Development Strategy for London Consolidated with Alterations Since 2011 (2016) and the guidance set out in the London Cycle Design Standards (or subsequent revisions) shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided at the site prior to first occupation of the development and shall be permanently retained thereafter.
- 11) Whilst the development hereby permitted is being carried out, provision shall be made to accommodate operatives and construction vehicles off-loading, parking and turning within the site in accordance with details to be submitted to and approved in writing by the local planning authority and such provision shall remain available for such uses to the satisfaction of the local planning authority throughout the course of development.
- 12) The destruction by burning, of materials within the site shall not take place within the canopy extent of any tree or group of trees to be retained on the site or on land adjoining the site. Similarly, no building materials, equipment, vehicles, plant, oil or other petroleum products shall be stored or allowed to stand within the branch spread of the trees to be retained on site.
- 13) The measures outlined in the submitted Energy Assessment and Strategy ESP, January 2017 including the provision of air source heat pumps at the site, shall be implemented prior to first occupation and shall be retained thereafter in operational working order.
- 14) Prior to the commencement of the use of the land or building hereby permitted a landscape management and maintenance plan, including details of management objectives and responsibilities, sustainable irrigation systems and maintenance schedules shall be submitted to and approved in writing by the local planning authority. The landscape management and maintenance plan shall be carried out as approved.

APPEARANCES

FOR THE APPELLANT

Jonathon Best	Montagu Evans
Kirill Malkin	Montagu Evans
John Stephenson	Grant Mills Wood
Matt Laing Williams	Grant Mills Wood
Aqleem Khokar	Travis Perkins (Appellant)

FOR THE COUNCIL

Karen Daye	The Council of the London Borough of Bromley
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DOCUMENTS SUBMITTED AT THE EVENT

1. Photographs of B&Q Sydenham
2. Final Signed Statement of Common Ground
3. Appeal Decision Reference APP/G5180/W/17/3176504