



Appeal Decision

Site visit made on 20 August 2019

by P Wookey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th September 2019

Appeal Ref: APP/L3625/W/19/3223312

18 Brighton Road, Salfords, RH1 5BX

- 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 Gold Property Developments Ltd against the decision of Reigate & Banstead Borough Council.
 - The application Ref 18/00751/F, dated 20 March 2018, was refused by notice dated 24 August 2018.
 - The development proposed is described as 'Erection of Class B1a office building, with associated landscaping and parking'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the appeal site is a suitable location for employment development; and,
 - The effect on the risk of flooding.

Procedural Matter

3. The Council has indicated that the Reigate and Banstead Development Management Plan (DMP) is at an advanced stage and significant weight should be attached to it. However, as I have no further details with respect to the emerging Plan and as it is not yet adopted, I have attached little weight to it and have determined the appeal on the basis of the evidence before me.
4. There is a discrepancy on the floor area of the development with the Council¹ and appellant referring² to the development providing 360m² of office accommodation. However, the application form indicates a total gross internal floorspace of 336m² which is confirmed on the drawing submitted with the application³ and there is no indication that during the course of the planning process amendments to the plans resulted in a change in the floor area. I have therefore determined the appeal on the basis of the area shown on the application form.

¹ Reigate & Banstead Borough Council's Statement of Case

² Future Planning and Design Appeal Statement February 2019

³ Drawing 2017-111-02

Reasons

Suitable Location for Employment

5. Saved Policy EM10 of the Reigate and Banstead Borough Local Plan (2005) (LP) states that development outside of Employment Policy Areas will be resisted and only permitted if criteria contained within the policy are met. The appellant states that this policy is out of date and not consistent with the National Planning Policy Framework (2019) (The Framework) which seeks to create a strong competitive economy, and therefore should be afforded limited weight. However, policies should not be regarded as out-of-date simply because they were adopted before the Framework. In this case the policy is consistent with the Framework and therefore I attach significant weight to it for the purposes of this appeal.
6. The development proposed would provide approximately 336m² of B1(a) office floorspace on a site which is partly surrounded by a line of mature trees which run along Salfords Stream and a pumping station close to the boundary with the A23. The appeal site is currently unoccupied and was formerly part of a caravan sales site which has recently been developed for residential development. It is within a designated local shopping centre and separated from adjacent retail and residential uses by a wooden fence around its boundary.
7. Though previously in commercial use, the appeal site is currently a cleared site which is not part of a designated employment area and the Council states that the proposed development would not meet criteria (i), (ii) or (iii) of saved Policy EM10 of the LP and would result in the loss of some outside space for the residential development. The Council has raised no concerns with respect to Criteria iv) and v) and I have no reason to disagree.
8. With respect to saved Policy EM10 of the LP criteria (i) the proposal would need to comply with saved Policy EM2 of the LP, which amongst other things would seek to ensure the Council is satisfied that it has sufficient land and premises available for employment purposes.
9. The appellant has undertaken a detailed assessment of the commercial market based on the monitoring reports produced by the Council which formed part of the Sequential Assessment⁴ document. Based on the evidence before me, the Borough has had no net increase in employment space in each of the preceding six years and the Commercial Commitments Monitor (2018) identified a net loss of 13,009m² of office floorspace in the previous year. This in part results from the introduction of permitted development rights allowing the conversion of B1(a) space to C3 residential use.
10. On that basis, given the shortfall of suitable alternative sites and the significant loss of office floorspace identified in previous years, the development proposed would make a modest contribution to the Council's commercial space provision and therefore would meet criterion (i) of saved Policy EM2.
11. With respect to saved Policy EM10 of the LP criteria (ii) the Council's officer report does not raise any concerns with respect to the development proposed,

⁴ 18 Brighton Road, Salfords, RH1 5BX Sequential Assessment March 2018

impact on the character of the wider area or any harmful effects to the occupiers of the neighbouring properties. Therefore, as I have no reason to disagree, this criterion would be met.

12. Criteria (iii) of saved Policy EM10 of the LP states that no individual unit should exceed 300m² gross floorspace, unless it is for an existing firm wishing to extend or redevelop within its own curtilage or on land immediately adjacent for its own occupation.
13. Whilst the development proposed would provide two separate office units intended for separate occupation, with a net floor area of approximately 138m² and 150m², with shared entrance, core and WC's, these uses would be accommodated within a single building with a total gross internal floorspace of approximately 336m².
14. The amplification text to saved Policy EM10 of the LP states that the term individual unit means a structurally separate building of not more than 300m². Whilst the development proposed would make effective use of the land, it would be significantly bigger, being more than 10% of the threshold set out in criterion (iii).
15. Moreover, the appellant has provided no evidence which indicates that the appeal site would be occupied by an existing business or that it would meet the expansion needs of an existing firm and therefore it would not meet the requirement as defined by criteria (iii) of saved Policy EM10 of the LP. Further, it would be on land which is currently a cleared site which is not currently in use for employment uses.
16. I conclude that whilst I am satisfied that the development proposed would meet criteria (i) and (ii), (iv) and (v), it would not meet criterion (iii) and therefore it would be contrary to saved Policy EM10 of the LP, which amongst other things seeks to ensure office development does not take place outside of designated employment areas

Risk to Flooding

17. There is no dispute that the appeal site is located partly within Flood Zone 3 and partly within Flood Zone 2 according to the Environment Agency flood maps. This would indicate that part of the site has a high probability of flooding.
18. The Framework, Paragraph 155 states that inappropriate development in areas of flood risk should be avoided by directing development away from areas of highest flood risk, but where development is necessary, making it safe without increasing flood risk elsewhere. The Framework advises that development should not be permitted if there are reasonably available sites appropriate for the proposed development with a lower probability of flooding.
19. Paragraph 157 of the Framework indicates that a Sequential Test should be applied to proposals for new development. This will involve a risk based sequential approach to determine the suitability of land for development, where possible on land that has a lower flood risk. This does not mean that development should not be permitted within Flood Zones but that sites in areas of lower flood risk should be developed first.

20. The appellant submitted a flood risk assessment and no objection was raised by the Environment Agency, subject to conditions if the development proposed was allowed. Further the Council states that there is no objection to the technical design which means that the development could be made safe for its lifetime without increasing flood risk elsewhere and as a result it would meet part of the Exception Test as set out in the Framework. Nevertheless, the Sequential Test must be passed before any Exception Test can be engaged.
21. The Council's concern is that the assessment submitted by the appellant has failed to comply with the requirements of the Sequential Test even though a technical solution has been proposed and that there would be preferable alternative sites available to which the development proposed could be directed.
22. I note that the methodology for the Sequential Test Assessment had been agreed following pre-application discussions between the parties and that it considered all sites across the Borough and of all sizes that could accommodate Class B1(a) floorspace with respect to availability, suitability and viability. Sites likely to come forward beyond five years were considered not to be reasonably available for the development proposed. I note that within the assessment the appellant included a site advanced by the Council, referred to as the North West Sector site.
23. On the basis of the evidence contained within the Sequential Test Assessment⁵, whilst some suitable sequentially preferable sites were available, there would be a significant shortfall of land for Class B1 (a) office use, given that the Policy CS5 of the Local Plan Core Strategy (2014) (CS) has plans for the development of at least 10,000m² Class B1(a) floorspace by 2027. Whilst the Council states that the DMP will achieve the overall requirement its timing is not certain and as this is not yet adopted, I attach little weight to it.
24. In the absence of any further evidence to indicate otherwise, these preferable alternative sites would make a small contribution to the Council's projected requirement for new office floorspace set out in Policy CS5 of the CS to 2027 and therefore there would be insufficient land in alternative preferable locations to which the development proposed could be directed. Further, the North West Sector site which the Council considers would be a suitable alternative, forms part of a wider development in which the appellant has no involvement and is still in the planning process, therefore its timing is uncertain and cannot be relied upon. In any case given the scale of the Council's requirement for commercial floorspace and the significant net losses in office floorspace, as evidenced by the Council's monitoring report⁶ and even if it was deliverable within the next five years, it would make a modest contribution to the provision of office floorspace within the Borough.
25. I have regard to the Council's statement that windfall sites provide a consistent and reliable source of commercial floorspace within the Borough and whilst they may be in Flood Zones 1 and 2, it has not identified such sites. Further, whilst the Council states that DMP identifies a number of small-scale employment opportunities within its site allocations including a strategic employment site south of Horley, no further details have been submitted as evidence for me to consider.

⁵ 18 Brighton Road, Salfords, RH1 5BX Sequential Assessment March 2018

⁶ Commercial Commitments Monitor covering period 1 April 2016 – 31 March 2017

26. Given that the Council is unable to identify windfall sites at this stage and the DMP is not yet adopted, I am not persuaded that there are sufficient preferable alternative sites available within the Borough and as a result the development proposed could not be directed towards areas with a lower probability of flooding.
27. I conclude that the development proposed would comply with policies Ut4 of the Reigate and Banstead Borough Local Plan (2005) (LP) and CS10 of the CS and the Framework, which when taken together seek to ensure inappropriate development is directed away from areas of highest flood risk.

Other Matters

28. I have had regard to the comments raised by interested parties including loss of privacy, poor access, impact on wildlife habitat, conflict with covenant and overshadowing and all other comments raised, but as the appeal is dismissed and these have not been raised as a concern by the Council, I have not pursued them further.
29. The appellant has stated that the development proposed would provide a range of benefits including the proposal being compatible with the adjacent residential dwellings, would provide adequate parking provision and would have no harm to trees on the site. I note that these have not been contested by the Council and I have no reason to disagree.

Conclusions

30. Whilst I have found that the development proposed would meet the requirement of the Sequential Assessment test, would have no harmful effect on flood risk and would be safe for its lifetime, it would represent development outside of the designated employment areas.
31. The appeal, for the reasons set out above, is dismissed.

Paul Wookey

INSPECTOR