



Appeal Decision

Site visit made on 26 November 2019

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 December 2019

Appeal Ref: APP/W1715/W/19/3234161

Land east of Knowle Lane, Fair Oak SO50 7DZ

- 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 PAR 16 Ltd against the decision of Eastleigh Borough Council.
 - The application Ref F/18/84480, dated 7 November 2018, was refused by notice dated 1 February 2019.
 - The development proposed is construction of office building (B1a Use Class) including parking, landscaping, bin enclosure, cycle store and associated works following demolition and clearance of site.
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Decision

1. The appeal is allowed and planning permission is granted for construction of office building (B1a Use Class) including parking, landscaping, bin enclosure, cycle store and associated works following demolition and clearance of site at Land east of Knowle Lane, Fair Oak SO50 7DZ in accordance with the terms of the application, Ref F/18/84480, dated 7 November 2018, and the plans submitted with it, subject to the conditions in the attached schedule.

Background and Main Issues

2. The application was refused by the council for four reasons. The third reason related to a lack of information to demonstrate that adequate visibility splays could be provided, to allow safe vehicular access from the site onto Knowle Lane. As part of their appeal, the appellants provided the results of speed surveys undertaken on Knowle Lane, which demonstrate that adequate visibility splays can be accommodated without reliance on third party land. The council has confirmed that this reason for refusal has been addressed.
3. The fourth reason for refusal related to a failure to secure infrastructure made necessary by the development. During the course of the appeal, a Unilateral Undertaking (UU) pursuant to Section 106 of the Act has been completed. The UU obliges the owner to pay a Sustainable Integrated Transport Contribution of £16,773.90 to the council prior to occupation. The council has confirmed that the UU overcomes the fourth reason for refusal.
4. Therefore, the main issues are:
 - a) Whether the site is a suitable location for the development having regard to the policies of the development plan, the accessibility of the site and its impact on the character and appearance of the countryside; and,

- b) The effect of the development on the living conditions of the occupants of the adjacent dwelling as a result of additional vehicle movements.

Reasons

Suitability of location

5. The appeal site lies on the eastern side of Knowle Lane. It is a level area of land, covered in hard core, and there is a range of dilapidated buildings adjacent to the road frontage. It is surrounded by green palisade fencing, which does not conceal the unattractive buildings and external storage on the site. The site is bordered to the north by a communications centre, comprising substantial buildings and satellite dishes. To the south is a dwelling and cattery, and on the opposite side of Knowle Lane is Deer Park Farm Industrial Estate and the Council Household Waste Recycling Centre. Land to the east of the site is more open. The site therefore lies on the urban fringe, in an area of mixed development.
6. The site lies outside the urban edge, within an area designated as countryside by the Eastleigh Borough Local Plan Review (2001-2011) (Adopted 2006) (the Local Plan). Policy 1.CO of the Local Plan seeks to protect the countryside, by restricting development outside the urban edge to specified categories; agriculture/forestry, outdoor recreation, public services, or development provided for by other policies. The proposed development does not fall within any of these exceptions, so would be contrary to Policy 1.CO. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires applications for planning permission to be determined in accordance with the development plan, unless other material planning considerations indicate otherwise.
7. The policies of the National Planning Policy Framework (the Framework) are material considerations that should be taken into account when determining applications and appeals. The Local Plan covered the period 2001-2011, and was adopted in 2006, so significantly pre-dates the Framework. Paragraph 213 of the Framework clarifies that existing development plan policies should not be considered out-of-date simply because they pre-date it, but due weight should be given to them according to their consistency with the Framework.
8. The urban edges that define the extent of the countryside, and therefore restrict housing and employment development, were based on housing and economic development needs at the time of adoption of the Local Plan, which is now over 13 years ago. They were only intended to cover the period until 2011, so they do not reflect current needs, and they pre-date the aims of Section 6 of the Framework to build a strong and competitive economy.
9. The Eastleigh Borough Local Plan 2016-2036 (the emerging Local Plan) is currently undergoing examination. It is not contested by the council that the emerging Local Plan identifies a requirement for 144,050 sq m of additional employment space over the plan period. It is unlikely that this level of growth could be accommodated within the confines of the existing urban edges. The emerging Local Plan also makes provision for a strategic growth location for two new communities on land that is currently countryside to the north and east of the appeal site, which would include employment development. However, as the emerging Local Plan has yet to be examined, I can only give it limited weight.

10. The evidence before me indicates that, in order to meet current development needs for both housing and employment, planning permissions have been granted for significant development on land that is designated as countryside to the north of the appeal site. I saw that some of this development was complete and occupied at the time of my visit. It is clear, therefore, that the urban edge that informs Policy 1.CO is out of date. I can therefore only apply moderate weight to the Policy, insofar as it places a blanket restriction on development in the countryside.
11. Policy 1.CO does not, therefore, carry determinative weight regarding the principle of the development. As the emerging Local Plan has not yet advanced to a stage where its policies carry substantial weight, the advice in the Framework assumes greater importance. Paragraph 80 says that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 84 says that planning decisions should recognise that sites to meet local business needs in rural areas may have to be found adjacent to or beyond existing settlements, and that the use of previously developed land, and sites that are physically well-related to existing settlements, should be encouraged where suitable opportunities exist.
12. The appeal site is physically well-related to the settlement of Fair Oak, being surrounded by existing development. Although land on the east side of Knowle Lane is beyond the defined urban edge, recent development to the north means that there is a continuous line of buildings that extends southwards, from the B3037, to include the appeal site and the adjacent dwelling, Sandelwood. The site accommodates a permanent building and therefore falls within the Framework definition of previously developed land. Although designated as countryside by the Local Plan, I saw that the site had a much closer relationship with the surrounding built environment, than it does with the more open land to the east.
13. Knowle Lane only assumes a rural character to the south of Sandelwood. The proposed building would be surrounded by existing development, and it would not appear incongruous alongside the established and recent housing and commercial buildings on this stretch of the lane. It would replace the existing semi-derelict buildings, so would result in a visual improvement on the current appearance of the site. I am mindful that paragraph 170 of the Framework advises that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. Despite being designated as countryside, however, the site does not make a positive contribution to the appearance of the area and its development would not harm the character of the wider countryside beyond.
14. The appeal site lies about 1.5 km from the centre of Fair Oak, where a range of services are available. It is also within easy walking distance of large areas of housing. The proposed footpath along the site frontage would enable visitors to cross safely to the existing footpath on the opposite side of Knowle Lane, which links to a continuous pavement to the centre of the settlement. Although the council raised concerns that provision of the footpath would result in the loss of the trees on the frontage, I saw that they had already been removed. Buses run along the B3037, allowing a sustainable travel option for employees or visitors from further afield.

15. The site is equally as accessible as the recent housing and employment developments immediately to the north. Although I recognise the council's concern that employees and visitors may still choose to access the site by private car, other more sustainable options would be available. I therefore conclude that the site represents an accessible location for the proposed development.
16. To conclude on this issue, the proposed development would be contrary to Policy 1.CO of the Local Plan, due to its countryside location. However, that policy is out of date, as it does not allow for current development requirements. It therefore only carries moderate weight. The development would be on previously developed land, on an accessible site that is well-related to the settlement, and it would not harm the character and appearance of the countryside. These are material considerations in favour of the development, which outweigh the conflict with Policy 1.CO, and I therefore conclude, having regard to these factors, that the site is a suitable location for the development.
17. The proposals would comply with Policies 59.BE, 100.T and 101.T of the Local Plan, which seek to ensure that development proposals take account of the character and appearance of the locality; are well served by public transport, cycling and walking; and contribute to the implementation of the Local Transport Plan. The proposals would also accord with the aims of Section 6 of the Framework to build a strong, competitive economy.

Living conditions

18. Sandelwood is a two-storey dwelling that lies to the south of the appeal site. Its vehicular access, off Knowle Lane, is positioned alongside the access to the appeal site, and serves a substantial parking area to the side of the house. The house itself is therefore some distance from the site boundary, which is marked by a high close-boarded fence. There are ground and first floor windows in the side elevation of the house that look over the parking area towards the site. A cattery building has recently been constructed to the rear of the car-parking area, so the outdoor amenity space for the house does not abut the appeal site boundary.
19. The appellants estimate that the proposed office use would generate 51 vehicle movements using the access per day, and this figure is not contested by the council. Over the course of a working day, this would mean a vehicle movement every 10 – 12 minutes, although it is unlikely that movements would be spread evenly throughout the day. I saw that Knowle Lane is already quite a busy road as a result of the established industrial estate opposite, and the more recent development to the north. The additional 51 movements, over the course of the day, would not, therefore, give rise to a noticeable increase in the overall amount of traffic using the road. Furthermore, as the proposed building would be for office use, most of these movements would comprise small vehicles.
20. During my daytime visit, I observed a significant level of existing background noise in the area. This resulted from general traffic using Knowle Road, but also the heavy vehicles attracted to the industrial and recycling centre uses opposite the site. The additional noise generated by small vehicles entering the site access, at low speeds, would therefore be unlikely to have any significant impact on noise conditions in the immediate area.

21. I saw that the windows in Sandelwood facing the appeal site are a considerable distance from the boundary. Furthermore, the main outdoor amenity area for the occupants of Sandelwood lies to the south of the house, away from the appeal site. These factors, combined with the existing background noise levels, the relatively small increase in traffic movements, and the likelihood that most of the traffic will comprise small vehicles, leads me to conclude that there would not be harm to the daytime living conditions of the occupants of Sandelwood, as a result of the development.
22. Background conditions are likely to be much quieter at night time, such that the noise of traffic using the site access, manoeuvring on the site, and car doors slamming could be intrusive. A condition limiting the hours of use of the offices would therefore be justified, to maintain the night time living conditions of the adjoining occupants.
23. With the imposition of such a condition, I conclude that the additional vehicle movements resulting from the development, would not harm the living conditions of the occupants of the adjacent dwelling. The proposals would therefore comply with Policy 59.BE of the Local Plan which seeks, amongst other things, to ensure that developments do not unduly disturb nearby uses in terms of noise. The proposals would also accord with paragraph 127 of the Framework that seeks to create places with a high standard of amenity for existing users.

Conditions

24. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a condition specifying the relevant plans, as this provides certainty. The council has submitted a schedule of suggested conditions to cover other matters. The appellant has suggested the imposition of conditions requiring the provision of a footpath on the site frontage and limiting the hours of use of the building. I have considered all the suggested conditions against the advice in the Planning Practice Guidance (the PPG). Where I have agreed that the conditions are necessary, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.
25. The submitted Desk Study and Preliminary Risk Assessment report identified that the proposed development has some potential contaminated land issues requiring further investigation. I agree with the Council that conditions are required to ensure that this investigation is carried out.
26. Submission of details of the external materials to be used is necessary, to ensure that the building sits comfortably in its context. In the interests of protecting the appearance of the area and maximising sustainable travel options, a condition requiring provision and retention of the bin and cycle storage facilities is necessary.
27. As set out above, a condition limiting the hours of use of the building is necessary, to avoid disturbance to the neighbouring dwelling when background noise levels are low. For the same reason, a limitation on the hours of construction work is necessary. In order to ensure that off-site trees are not harmed during the construction process, a condition is necessary to ensure that development proceeds in accordance with the recommendations of the submitted Arboricultural Implications Assessment and Method Statement.

28. In order to ensure highway safety, and to encourage sustainable travel options, it is necessary to impose conditions requiring provision of visibility splays and a footpath, and to ensure that the off-street parking is provided and retained.
29. I have considered whether the Council's suggested condition requiring a construction method statement is necessary. Paragraph 55 of the Framework says that pre-commencement conditions should be avoided unless there is a clear justification. The development proposed is of a relatively modest scale, so the construction period is unlikely to be prolonged. Any temporary disturbance to residents and/or inconvenience to traffic would therefore be for a limited duration. The condition limiting construction hours would protect night time living conditions for the occupants of the adjoining dwelling. I am not therefore persuaded that a pre-commencement condition requiring approval of a construction method statement is clearly justified or necessary.

Conclusion

30. For the above reasons, I conclude that the appeal should be allowed.

Nick Davies

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: 18-1067-001-1st; 18-1067-101-1st; 18-1067-050-A; 18-1067-051-A; 18-1067-010-B.
- 3) No development shall commence until the local planning authority has approved, in writing, a full scheme of works for the provision of a footway linking the site to the existing footway on the western side of Knowle Lane. The building shall not be occupied until work has been completed in accordance with the approved scheme.
- 4) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;

- adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 5) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out, and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority, before the development is occupied.
- 6) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) Prior to building works proceeding above damp-proof course level, details or samples of the materials to be used in the construction of the external surfaces of the building hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details or samples.
- 8) The building shall not be occupied until the bin and cycle stores have been completed in accordance with the approved drawings. These stores shall thereafter be retained and kept available at all times for the storage of bins and cycles respectively.
- 9) The building shall not be occupied until the access has been provided in accordance with the approved drawings, and the visibility splays have been provided as shown on Drawing No 18-1067-050-1st, attached to the appellant's statement of case. Thereafter nothing over 0.6m in height above the level of the carriageway shall be permitted to remain within the approved visibility splays.
- 10) The building shall not be occupied until the car parking spaces have been completed in accordance with the approved plans. Thereafter the spaces shall be kept available at all times for the parking of motor vehicles associated with the approved use of the building and shall not be used for any other purpose.

- 11) The development hereby permitted shall be carried out in accordance with paragraph 5.1.2 of the Arboricultural Implications Assessment and Method Statement reference 181076 – AIA, dated 30 October 2018.
- 12) Demolition or construction works shall take place only between 0800 to 1800 Mondays to Fridays or 0900 to 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 13) The use of the building hereby permitted shall only take place between the following hours:
 - 0730 - 1830 Mondays - Fridays
 - 0800 - 1330 Saturdays
 - and not at all on Sundays and Bank and Public Holidays.