



Appeal Decision

Site visit made on 10 February 2020

by Zoe Raygen Dip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th February 2020

Appeal Ref: APP/R0660/W/17/3190993

Land off Earl Road/Epsom Avenue, Handforth Dean, Cheshire SK9 3RL

- 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 Orbit Investments (Properties) Limited against the decision of Cheshire East Council.
 - The application Ref 16/5678M, dated 17 November 2016, was refused by notice dated 7 June 2017.
 - The development proposed is demolition of existing buildings and erection of five units to be used for use class A1 (non-food retail) purposes, and two units to be used for use class A1 (non-food retail or sandwich shop) and/or use class A3 and/or use class A5, creation of car park and provision of new access from Earl Road, together with landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of five units to be used for use class A1 (non-food retail) purposes, and two units to be used for use class A1 (non-food retail or sandwich shop) and/or use class A3 and/or use class A5, creation of car park and provision of new access from Earl Road, together with landscaping and associated works at land off Earl Road/Epsom Avenue, Handforth Dean, Cheshire SK9 3RL in accordance with the terms of the application, Ref 16/5678M, dated 17 November 2016 subject to the conditions set out in the schedule to this decision notice.

Background and Main Issue

2. On 12 June 2019 the Secretary of State (SoS) allowed an appeal¹ and granted planning permission for the demolition of existing buildings and erection of five units to be used for Class A1 (non-food retail) purposes, and two units to be used for Use Class A1 (non-food retail or sandwich shop) and/or Use Class A3 and/or Use Class A5, creation of car park and provision of new access from Earl Road, together with landscaping and associated works on the appeal site.
3. The appeal before me is regarding the Council's refusal of a planning application for the same development². There is no dispute between the parties that the proposed development has been found acceptable by the SoS. As there has been no material change in circumstances since the determination of

¹ APP/R0660/W/16/3155191 (the previous appeal)

² 16/5678M

the previous appeal, and based on the evidence before me, I see no reason to disagree with this view.

4. The area of disagreement relates to one of the planning obligations within the Unilateral Undertaking (UU) submitted under Section 106 of the Town and Country Planning Act 1990 (as amended) which was considered alongside the previous appeal. The obligation in question states that an Employment Contribution defined as the sum of £282,000 shall be paid by the Owner to the Council in accordance with the terms of the undertaking towards employment generation or employment sites in Cheshire East but preferably in Handforth or as close to the site as practical. The appellant now disputes that such a contribution is necessary to make the development acceptable in planning terms. Therefore, a revised UU has been submitted for my consideration without the obligation relating to the Employment Contribution contained within it, but the same in all other respects to the UU associated with the previous appeal.
5. Within that context the main issue is:
 - Whether or not an Employment Contribution is necessary to make the development acceptable.

Reasons

6. With regard to the previous appeal, at paragraph 33 of his decision letter, the SoS agrees with the Inspector's conclusion that the obligations, including the Employment Contribution, comply with Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations) and the tests at paragraph 56 of the National Planning Policy Framework (the Framework).
7. At the time of the former previous appeal, the appellant offered the Employment Contribution in the sum of £282,000 based on a bespoke piece of evidence³. This appropriately demonstrates how the sum is calculated based on the loss of seven jobs at Gradus Carpets (Gradus), the company which occupies the warehouse on the appeal site which would be demolished. Indeed, the Inspector states that the UU provides a sum of £282,000 as compensation for the loss of the seven Gradus jobs to be applied towards employment generation in the locality⁴.
8. At the time of the previous appeal, both the Inspector and the SoS made reference to the seven jobs being transferred to new local premises⁵. In addition, the Council in its statement of case refers to various parts of part 3 of the Inspector's Report (IR). While this summarises the evidence of the appellant rather than any assessment by the Inspector, it is clear that it was the intention at that time that Gradus would move to premises at Lyme Green. However, when the SoS made his decision, even though he was aware that planning permission had been granted for new premises at Lyme Green with the intention of accommodating Gradus, there was no conclusive evidence that this would definitely happen. As the Inspector states at paragraph 9.57 of his IR the evidence clearly shows that the relocation of Gradus to Lyme Green, Macclesfield has a *high degree of probability* and that the existing warehouse will be vacated by mid-2019. However, at the time of my site visit it was still

³ Cost per Job Review – Amion Consulting 2018

⁴ Paragraph 9.306 of IR

⁵ Paragraphs 9.57 & 9.302 of IR and paragraph 37 of DL

occupied by Gradus. Therefore, the Employment Contribution was justified as at the time of the determination of the previous appeal as there was potential for the loss of seven employment jobs. Moreover, it was on that basis that the commuted sum was calculated.

9. The appellant has now submitted a legally binding agreement for lease between the appellant and Gradus relating to the delivery of new premises. The appellant is therefore, now committed to delivering the new warehouse building at Lyme Green for Gradus to occupy. At the time of my site visit it was apparent that work has commenced on site at Lyme Green close to an existing building already occupied by Gradus. This would allow the relocation of the seven jobs and therefore they would not be lost as a result of the proposal. Consequently, the payment of an Employment Contribution in this respect is not necessary to make the development acceptable in planning terms.
10. At paragraph 9.307 of the IR he states that in terms of necessity in respect of the Employment Contribution, he has found that the loss of an employment use would be contrary to CELPS Policy EG 3. He goes on to state that, the sum could, in principle, provide mitigation, for example by investment in promoting skills, and, in that regard, it would be directly related to the development. Even if I were to accept that the conflict with Policy EG 3 was the principle reason for the necessity of the Employment Contribution, the Inspector found that limited weight attaches to the conflict with Policy EG3 and that the proposal was in accordance with the development plan as a whole. Therefore, even though the proposal before me now would still be in conflict with Policy EG3, solely based on conflict with Policy, the payment is not necessary to make the development acceptable in planning terms as it is in accordance with the development plan as a whole.

Unilateral Undertaking

11. The UU otherwise contains the same obligations as those in the UU accompanying the previous appeal. These include the requirement for the submission of an employment and skills plan, together with the payment of contributions towards highways, junction improvement works and public transportation.
12. I have seen nothing to suggest that the situation has changed since the SoS considered that those obligations met the relevant tests in the CIL Regulations and the Framework. Consequently, I am also satisfied that they meet the relevant tests.

Conditions

13. The previous appeal was allowed subject to a suite of conditions. Both parties agree that, should I allow the appeal, the same conditions should be applied without modification except for updating plan references within condition Nos 2 and 20. I see no reason to disagree with that view. Therefore, I have imposed the same conditions for the following reasons.
14. There is a requirement for the development to be carried out in accordance with the approved plans for certainty (Condition 2); and subject to the use of specified materials to ensure an appropriate form of development (Condition 3).

15. The approved units are subject to restrictions precluding sub-division and maximum unit floorspace, to reflect the manner in which the proposal has been assessed and to prevent unacceptable changes to the development (Conditions 4 and 5).
16. Schemes for the management of waste, minimisation of dust emissions and ground investigation and actions to avoid ground contamination are necessary for environmental reasons; and measures for sustainable travel, including cycle parking, a travel plan, and electric vehicle infrastructure are justified (Conditions 6 to 13).
17. The protection of wildlife and vegetation and appropriate drainage are essential environmental measures (Conditions 14 to 19); the completion of car parking facilities prior to occupation of the development is required in the interests of highway safety; and making good the south elevation of the Stanley Court offices is vital following the demolition of the existing warehouse (Conditions 20 and 21). Condition 22 is required to protect existing town centre stores.
18. Conditions 10, 11, 17, 18 and 19, relating to minimising dust emissions, assessment of ground conditions, protection of trees, construction method statement and site drainage are pre-commencement conditions, necessary to ensure the matters are appropriately dealt with before development starts on site.

Conclusion

19. The SoS has already found that the identical proposal, save for the issue of the Employment Contribution, despite limited conflict with specific development plan policies, would be in accordance with the development plan as a whole. Furthermore, there were no material considerations which indicated that the proposal should be determined other than in accordance with the development plan. Both parties are agreed that the situation has not changed since that time, and, based on the evidence before me and my observations on site, I see no reason to disagree.
20. Therefore, for the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Zoe Raygen

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall commence within 3 years of the date of this permission.
- 2) The development hereby approved shall be carried out in total accordance with the following approved plans:- 787-PLA-2102, 787-PLA-2103, 787-PLA-2104, 787-PLA-2105, 787-PLA-2106, 787-PLA-2107, 787-PLA-2108, 787-PLA-2109, 787-PLA-2110, 787-PLA-2111, 30-2.01
- 3) The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing

with the Local Planning Authority. Development shall be carried out in accordance with the approved details.

- 4) There shall be no subdivision of retail units hereby approved.
- 5) The total Class A1 (retail) floorspace shall not exceed the following gross internal areas at any time:-

Unit 1 - 2,240 square metres

Unit 2 - 744 square metres

Unit 4 - 744 square metres

Unit 5 - 744 square metres

Unit 6 - 1,134 square metres

And

The total Class A1 (retail) / Class A3/A5 (restaurants and cafes / hot food takeaways) floorspace shall not exceed the following gross internal areas at any time:-

Unit 3 - 315 square metres

Unit 7 - 114 square metres

- 6) Prior to the first occupation of the development hereby approved, a scheme, and a timetable for implementation for the management of waste arising from the A3/A5 uses, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.
- 7) Prior to the first occupation of the development hereby approved, parking facilities for at least 15 cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter, in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
- 8) Within 6 months of first occupation of any of the units hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include the provision for the appointment of a Travel Plan Coordinator, targets, a timetable, an enforcement mechanism and arrangements for monitoring progress. The Travel Plan shall be implemented in accordance with the timetable set out in the plan.
- 9) Prior to the first occupation of any of the units hereby permitted, Electric Vehicle Infrastructure shall be provided on site in accordance with details first submitted to and approved in writing by the Local Planning Authority.
- 10) Prior to the commencement of development, a scheme to minimise dust emissions arising from demolition / construction activities on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The demolition / construction phase shall be implemented in accordance with the approved scheme, with the approved dust suppression measures being maintained in a fully functional condition for the duration of the demolition / construction phase.

- 11) Prior to the commencement of development:
- i) A site walkover investigation and review of historical site investigation data in relation to the current and proposed layout shall be carried out and submitted to and approved in writing by the Local Planning Authority. If such an assessment identifies any data gaps then:
Post demolition but prior to any further development commencing:
 - ii) A post demolition Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the Local Planning Authority and:
 - iii) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the Local Planning Authority.
- Prior to the occupation of the development:
- iv) The remedial scheme in the approved Remediation Strategy shall be carried out.
 - v) A Verification Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the Local Planning Authority, prior to the occupation of the development.
- 12) Any soil or soil forming materials to be brought to site for use in soft landscaping shall be tested for contamination and suitability for use prior to importation to site. Prior to the first occupation of the development, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority.
- 13) If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation shall be provided to the Local Planning Authority that no such contamination was found, and if so what remedial measures were agreed and implemented.
- 14) Prior to undertaking any site clearance works between 1 March and 31 August in any year, a detailed survey shall be carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4 metres exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.
- 15) Prior to the first occupation of the development, proposals for the incorporation of features into the scheme suitable for use by breeding birds, including house sparrow and starling, shall be submitted to and

approved in writing by the Local Planning Authority. The approved features shall be installed prior to the first occupation of the development hereby permitted and retained at all times thereafter.

- 16) No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within 5 years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.
- 17) (a) Prior to the commencement of development or other operations being undertaken on site, a scheme for the protection of the retained trees produced in accordance with BS5837 (Trees in Relation to Construction 2005: Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.
- (b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction machinery), until the protection works required by the approved protection scheme are in place.
- (c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.
- (d) Protective fencing shall be retained intact for the full duration of the development works hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.
- 18) Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening, or any operations involving the use of motorised vehicles or construction machinery), a detailed Construction Specification / Method Statement for the car park and hardstanding areas within Root Protection Areas of retained trees shall be submitted to and approved in writing by the Local Planning Authority. This shall provide for the long term retention of the trees. No development or other operations shall take place except in complete accordance with the approved Construction Specification / Method Statement.

- 19) No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:
- i) Information about the design's storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
 - ii) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant;
 - iii) Flood water exceedance routes, both on and off site; and
 - iv) A management and maintenance regime for any sustainable drainage systems.

The development shall be carried out in accordance with the approved scheme.

- 20) The approved development shall not be occupied until space has been laid out within the site for the parking of 244 cars in accordance with drawing 787-PLA2107 (Proposed site plan). Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.
- 21) Prior to demolition of the warehouse building on site, a scheme shall be submitted to and approved in writing by the Local Planning Authority providing full details of works necessary for making good the external wall (south elevation) of Stanley Court. This permission does not authorise the demolition of the Stanley Court office building.
- 22) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015, or any order amending, revoking or reenacting either Order, no more than 15% of the total floorspace in any one unit hereby permitted shall be used for the sale of the following goods:-
- i) A1 Food and drink with the exception of sandwich and coffee shops
 - ii) Fashion clothing, fashion footwear, fashion accessories and jewellery
 - iii) Pharmaceutical goods

There shall be no sale of these goods other than in accordance with the 15% threshold stated.

*****END OF CONDITIONS*****