



Appeal Decision

Site visit made on 30 October 2019

by S Edwards MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2020

Appeal Ref: APP/L1765/W/19/3234053

Whiteley, Rookery Avenue, Whiteley, Hampshire PO15 7AJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Amsric Foods Limited against the decision of Winchester City Council.
 - The application Ref 18/02163/FUL, dated 11 September 2018, was refused by notice dated 16 April 2019.
 - The development proposed is the erection of a drive-thru restaurant (Class A3/A5 – Sui Generis) with associated advertisements, car parking, access, servicing, landscaping, engineering works and ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a drive-thru restaurant (Class A3/A5 – Sui Generis) with associated advertisements, car parking, access, servicing, landscaping, engineering works and ancillary works at Whiteley, Rookery Avenue, Whiteley, Hampshire PO15 7AJ, in accordance with the terms of the application, Ref 18/02163/FUL, dated 11 September 2018, and the plans submitted with it, subject to the attached schedule of conditions.

Procedural Matter

2. The appellant has submitted a signed Planning Obligation, dated 5 March 2020, pursuant to Section 106 (S106) of the Town and Country Planning Act 1990 (as amended), which would take effect should planning permission be granted. I shall return to this later in my decision.

Application for costs

3. An application for costs was made by Amsric Foods Limited against Winchester City Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues are the effect of the proposal on (1) the supply of employment land in the area and (2) the efficient operation of the highway network in the vicinity of the appeal site.

Reasons

Supply of employment land

5. The appeal site lies within the defined boundary of Whiteley, but outside of the town centre area. It comprises a piece of undeveloped land which forms part of

Solent 2, an area allocated for employment purposes. Policy SHUA3 of the Winchester District Local Plan Part 2: Development Management and Site Allocations¹ (LPP2) requires this area to provide for a range of employment uses within Use Classes B1 (Business), B2 (General Industry) or B8 (Storage and Distribution). Policy SHUA3 however allows for an exception in respect of development proposals providing significant employment opportunities which could not readily be provided elsewhere, especially within the established town centres. Additionally, Policy CP9 of the Winchester District Local Plan Part 1 – Joint Core Strategy² (LPP1) seeks to resist the loss of allocated employment land and floorspace, except in a set number of circumstances.

6. The town centre hierarchy set by LPP1 Policy DS1 is broadly consistent with paragraph 86 of the National Planning Policy Framework (the Framework), which requires main town centre uses to be located in town centres, then in edge of centre locations. The proposed development would result in the introduction of a main town centre use in an out of centre location. Therefore, a Sequential Test, followed by an Addendum, were submitted during the course of the planning application by the appellant, to demonstrate that there were no suitable sites available or expected to become available within a reasonable period.
7. In accordance with the requirements of LPP2 Policy DM9, new retail development is expected to be located within the Town Centre Boundary, before edge-of-centre and out-of-centre sites are considered. This is largely consistent with the approach set out by paragraph 86 of the Framework, which requires local planning authorities to apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. As stated within the Practice Planning Guidance³ (the PPG), the sequential test should recognise that certain main town centre uses have particular market and locational requirements, which mean that they may only be accommodated in specific locations. Where this is the case, robust justification will however need to be provided.
8. As set out within the Council's pre-application response, the scope of the appellant's sequential test focuses on the intended catchment area of the drive-thru restaurant, that is within or on the edge of Whiteley, Wickham, Denmead, Fareham and Locks Heath. The sequential test found no suitable sites which were available or likely to become available within a reasonable period of time to accommodate the appeal development in the catchment area. On this basis, the out-of-centre location for the proposed drive-thru restaurant is considered acceptable.
9. The Council have referred to the Employment Land Review undertaken in 2017, which recognises the predominantly rural character of the Winchester District as a whole and identifies the Solent Business Park as the sole Grade A employment premises within this area. That said, I also note that planning permission was recently approved by the Council for the erection of a Lidl food store⁴ on the adjacent site, which also lies on the area allocated for employment use. In the words used by Vail Williams in a letter dated 23 July 2019 to the appellant, it is clear that the implementation of this

¹ Adopted April 2017.

² Adopted March 2013.

³ Town centres and retail, Paragraph: 012 Reference ID: 2b-012-20190722.

⁴ Local Planning Authority Reference 17/00164/FUL.

consent has effectively 'orphaned' the appeal site, making it 'far less viable for office or industrial purposes', notably by reason of its size and shared access with a retail unit. As a result, the submitted evidence has established that there is no demand for Class B uses on this site.

10. The appeal proposal would result in the loss of a relatively small (in terms of its size) employment site in an attractive location for high grade offices, but there is little evidence before me suggesting that there is a reasonable prospect of the site being developed for a Class B employment use. The proposal would generate 55 jobs and thus provide employment in accordance with the policies for the business areas of Whiteley, as noted by the Council's Strategic Planning Officer.
11. Having regard to the evidence before me, which has notably established the lack of demand for a Class B use on the appeal site, I therefore conclude on this issue that the effect of the proposal on the supply of employment land would be acceptable. Whilst the appeal development would not contribute towards the provision of a B1, B2 or B8 employment use on the site and would in that regard not fully accord with LPP2 Policy SHUA3 and LPP1 Policy CP9, this would be offset by the employment opportunities which would be derived from the proposal.

Capacity and efficiency of highway network

12. The proposal would be accessed by the road off Solent Way which was approved as part of the scheme for the adjacent Lidl foodstore. Solent Way connects to the wider network at the Rookery Avenue roundabout. A Transport Assessment (TA) carried out by Peter Evans Partnership⁵, as well as a number of subsequent Supplementary Transport Notes, have been submitted by the appellant during the course of the application, notably to ascertain the effect of the development on the highway network.
13. The evidence submitted by the appellant has established that many of the trips to the proposed KFC would already be on the road network, by being linked to other journeys. Whilst it is accepted that approximately 40% of trips would be new trips onto the network, this would nevertheless translate in a very limited impact, having regard to the net increase in the number of journeys made and the periods at which the majority of these would occur. The traffic analysis and capacity testing at the local junction confirms that the additional traffic generated by the proposal would not have a harmful effect on the operation of the local network, both prior and after the completion of the highway works at Parkway South Roundabout.
14. Whilst I appreciate that this area may be affected by traffic congestion, particularly at peak times, this is an existing issue which the Local Highway Authority (LHA) is seeking to address with Highways England, notably through improvements to junction 9 of the M27 and the Parkway South roundabout. Little evidence has however been presented by the Council or the LHA in order to ascertain the adverse effect that the appeal proposal would cause to the network.
15. Furthermore, limited information has been presented by the Council or the LHA regarding the Parkway South Roundabout improvement scheme, for which a

⁵ Dated August 2018.

financial contribution of £38,000.00 is being sought. It seems, having regard to the Council's submissions, that the financial contribution obtained as part of the Lidl scheme has been used as a starting point to justify the level of contribution sought as part of the current proposal. However, I have not been provided with details showing how the contribution for the Lidl superstore was arrived at.

16. On the basis of the available evidence, I am not satisfied that this contribution would be necessary to make the development acceptable in planning terms, directly related to the development, or that it would be fairly and reasonably related in scale and kind to the development. The contribution sought towards the Parkway South Roundabout improvement scheme would therefore not accord with the requirements of Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended).
17. A Travel Plan, dated 18 November 2018, was approved by the LHA during the course of the application, and has been appended to the submitted S106, which also includes a £5,750.00 financial contribution towards the monitoring and evaluation of the Travel Plan, as well as a £4,000.00 bond. In order for it to be effective, it is important that the Travel Plan is monitored, and the data reviewed. These measures would help ensuring that the sustainable transport objectives as detailed within the Travel Plan are met. As such, I am satisfied that these obligations would pass the statutory tests.
18. The Council and the LHA consider that the proposed 'KEEP CLEAR' markings shown at the site's access need to be included within the S106. Whilst the inclusion of such markings would be positive to prevent vehicles from blocking the access to the appeal site, I have not been provided with detailed evidence demonstrating why these measures are necessary to make the development acceptable in planning terms. Accordingly, I find that the inclusion of this measure within the S106 would not meet the statutory tests.
19. Furthermore, the PPG⁶ is clear that conditions requiring works on land that is not controlled by the applicant often fail the tests of reasonableness and enforceability. Although I understand that Lidl have agreed to the implementation of the 'KEEP CLEAR' markings, this is not substantiated by firm evidence. The suggested condition would not meet the relevant tests and has therefore not been included within the attached schedule.
20. Taking all of the above into account, I conclude that the effect of the proposal on the capacity and functioning of the highway network would be acceptable, and therefore find no conflict with LPP1 Policy CP10 and LPP2 Policy DM18. Amongst other things, these policies seek to minimise the impact of development proposals on highway infrastructure. The appeal scheme would also not be contrary to LPP2 Policy SHUA3, which notably requires proposals to contribute to infrastructure needed to make the development acceptable in planning terms.

Other Matters

21. The appeal site forms part of a Site of Importance for Natural Conservation (SINC) known as Whiteley Meadow 3, which is designated for its agriculturally unimproved grassland. The Preliminary Ecological Appraisal⁷ prepared by RPS

⁶ Paragraph: 009 Reference ID: 21a-009-20140306.

⁷ Ref.ECO00373_871, dated September 2018.

found that the site was however more typical of semi-improved grassland, and recommended further surveys to be carried out to determine the presence or likely presence of a number of protected species. The abundant presence of slow worms and common lizards across the site was ascertained by the subsequent Reptile Survey Report⁸, which recommended an ex-situ translocation of the reptiles. Slow-worms and common lizards are protected from the intentional and reckless killing and injury under the provisions of the Wildlife and Countryside Act 1981.

22. The appellant's Reptile Mitigation Strategy⁹ prepared by RPS acknowledges that the relocation of species and off-site translocation are viewed by Natural England as measures which should be considered as a last resort. However, in this particular instance, it is accepted that there would be insufficient suitable green space or habitat within the development site to facilitate the long-term viability of the reptiles under an in-situ translocation. A suitable receptor site has therefore been identified within relative proximity to the appeal site.
23. As well as a financial contribution of £22,000 towards the maintenance and management of the remaining SINC, the submitted S106 includes a schedule in respect of the reptile receptor site. I find that this obligation accords with the relevant tests. Additionally, I have been provided with a copy of the Reptile Relocation and Management Agreement, dated 10 February 2020, between the appellant and the owner of the receptor site. The appellant would also be agreeable to the imposition of a condition to ensure that the detailed measures are adhered to and the relocation of the reptiles is implemented. These would constitute suitable mitigation measures and, on this basis, I am satisfied that the appeal development would not have a harmful impact on protected species.
24. Concerns have been raised by interested parties in respect of the adverse effect of the development on healthy eating habits, notably by reason of the site's proximity to a primary school. However, little evidence has been presented to show conclusively that the presence of the appeal development would prevent access to healthy eating options or that it would significantly harm the health and wellbeing of the community. I have also had regard to the comments made regarding the effect of the development on the amenities of neighbouring occupiers. However, I am satisfied that the imposition of appropriately worded conditions would address these particular matters.

Conditions

25. The Council has drawn my attention to the conditions as listed within their appeal statement, which were agreed with the appellant during the application process. The appellant has confirmed his agreement to these, including pre-commencement conditions. I have considered the suggested conditions, making minor amendments where necessary, to ensure compliance with the tests as set within the Framework and the PPG.
26. In addition to the standard time limit, I have imposed conditions specifying the relevant drawings which have to be complied with. These conditions are required to provide certainty and clarity. Conditions requiring the submission of a full acoustic report, a scheme to control the emission of odour, a lighting strategy and restricting the opening hours of the premises are considered

⁸ Ref.ECO00373, dated 18 March 2019.

⁹ Ref.ECO00373, dated 17 July 2019.

necessary to protect the amenities of neighbouring occupiers. Detailed arboricultural condition are necessary to safeguard trees.

27. I have also imposed conditions regarding materials for the external surfaces of the development and landscaping details, which are needed in the interests of the character and appearance of the area. The submission of a waste management plan is considered necessary for the same reason. A condition requesting the submission of a scheme for the disposal of foul and surface water is needed to ensure that a satisfactory drainage system is implemented.
28. Additionally, it is considered necessary to impose conditions requesting the submission of a Construction Method Statement and Traffic Management Plan and details of vehicle cleaning measures are considered necessary to minimise the impact on the surrounding network during the construction of the development and in the interests of highway safety. Conditions regarding biodiversity enhancement measures, recommendations contained within the Preliminary Ecological Appraisal and implementation of the Reptile Mitigation Strategy are necessary for ecological reasons, including protected species.

Conclusion

29. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

S Edwards

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:
 - Location plan received 14.09.2018
 - Proposed site plan [drawing 0000/2018/G121 revision D] received 14.09.2018
 - Proposed external elevations [drawing 0000/2018/G211 revision D] received 14.09.2018
 - Proposed roof plan [0000/2016/G128] received 14.09.2018
 - Proposed shell plan [0000/201/G127] received 14.09.2018
 - Proposed site landscaping plan [drawing 0000/2018/G124 Revision C] received 14.09.2018
 - Proposed site signage plan [drawing 0000/2018/G123 Revision] received 14.09.2018
 - Signage details [drawing 0000/2018/G132] received 14.09.2018
 - Mechanical layout [drawing E5118] received 14.09.2018

- Noise Impact Assessment [project number 1818170 dated 16.08.2018]
 - Odour Impact Assessment [reference 2382r2 dated 31.08.2018]
 - Tree Survey and Arboricultural Impact Assessment Report [reference JSL3141_770A dated October 2018 and received 14.09.2018]
 - Tree Survey Report by RPS [reference JSL3141 dated August 2018]
 - Drainage Statement by Stuart Michael Associates [reference 6133.DS dated August 2018] received 14.09.2018
 - Preliminary Ecological Appraisal [reference ECO00373_871 dated September 2018] received 14.09.2018
- 3) Detailed proposals for the disposal of foul and surface water must be submitted to and approved in writing by the Local Planning Authority in consultation with Southern Water before the commencement of the development hereby permitted. The development must then proceed in accordance with the approved details and be fully implemented prior to the use of the proposal hereby permitted.
- 4) Before externally mounted mechanical equipment is installed and operated on the premises, a full acoustic report (with a scheme of attenuation measures) shall be submitted to and approved in writing by the Local Planning Authority. The equipment shall be installed and maintained in accordance with the approved scheme.
- 5) Prior to the commencement of the development on site, details of biodiversity enhancement measures must be submitted to and approved in writing by the Local Planning Authority.
- 6) Protective measures, including fencing and ground protection, in accordance with the Tree Survey and Arboricultural Impact Assessment Report [reference JSL3141_770A dated October 2018] shall be installed prior to any demolition, construction or groundwork commencing on the site.

The Arboricultural Officer shall be informed once protective measures have been installed so that the Construction Exclusion Zone (CEZ) and ground protection can be inspected and deemed appropriate and in accordance with Tree Survey and Arboricultural Impact Assessment Report [reference JSL3141_770A dated October 2018].

The Arboricultural Officer shall be informed prior to the commencement of construction of special surfacing under tree canopies so that a pre commencement site visit can be carried out.

No development, or site preparation prior to operations which has any effect on compacting, disturbing or altering the levels of the site, shall take place until a person suitably qualified in arboriculture, and approved as suitable by the Local Planning Authority, has been appointed to supervise construction activity occurring on the site. The arboricultural supervisor will be responsible for the implementation of protection measures, special surfacing and all works deemed necessary by the approved arboricultural method statement. Where ground measures are deemed necessary to protect root protection areas, the arboricultural supervisor shall ensure that these are installed prior to any vehicle movement, earth moving or construction activity occurring on the site and that all such measures to protect trees are inspected by the Local

Planning Authority Arboricultural Officer prior to commencement of development work.

A pre-commencement meeting will be held on site before any of the site clearance and construction works begin. This will be attended by the site manager, the Arboricultural consultant and the Local Planning Authority Arboricultural Officer.

- 7) No development shall take place until a Construction Method Statement and Traffic Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Statement must include details of:
- i) the parking of vehicles of site operatives and visitors;
 - ii) construction traffic access;
 - iii) the provision of a turning area for delivery traffic within the confines of the site;
 - iv) designated areas for the loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development;
 - vi) wheel washing facilities;
 - vii) measures to control the emission of dust and dirt during construction;
 - viii) delivery, demolition and construction working hours.
- The approved Construction Method Statement and Traffic Management Plan shall be adhered to throughout the construction period for the development.
- 8) Full details of the vehicle cleaning measures proposed to prevent mud and spoil from vehicles leaving the site must be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The approved measures must be implemented before the development commences and adhered to throughout the construction period. No vehicle shall leave the site unless its wheels have been cleaned sufficiently to prevent mud and spoil being carried on to the public highway.
- 9) Before the use hereby permitted begins, equipment to control the emission of odour from the premises shall be installed in accordance with a scheme to be first submitted to and approved in writing by the Local Planning Authority. The scheme shall include odour abatement levels specified in section 4.2 of the Odour Impact Assessment submitted by Redmore Environmental, dated 31 August 2018. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the approved scheme and retained for so long as the use continues.
- 10) Details of any external lighting of the site shall be submitted to and approved in writing by the Local Planning Authority prior to the use hereby permitted commencing. This information shall include a layout plan with beam orientation and a schedule of equipment in the design (luminaire type, mounting height, aiming angles and luminaire profiles). The lighting shall be installed, maintained and operated in accordance

with the approved details unless the Local Planning Authority gives its written consent to the variation.

- 11) A Waste Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to the use hereby permitted commencing. The Waste Management Plan shall include the following details:
- i) The location of any refuse storage;
 - ii) A projection of food waste volumes and demonstration of a suitable and sufficient waste storage capacity;
 - iii) Refuse collection details, including times and days of waste collections;

The approved Waste Management Plan shall be implemented and adhered to for as long as the use continues.

- 12) The materials to be used in the external surfaces of the development hereby permitted must be in accordance with Proposed External Elevations [Drawing 0000/2018/G211 Revision D received 14.09.2018], unless otherwise agreed in writing by the Local Planning Authority.
- 13) The soft and hard landscaping details must be completed in accordance with drawing 0000/2018/G124 Revision C, unless otherwise agreed in writing by the Local Planning Authority. All hard and soft landscape works shall be carried out in accordance with the approved details. Hard landscaping works shall be completed prior to the use of the proposal hereby permitted commencing. The soft landscaping scheme shall be carried out in the first planting season following the occupation of the building or the completion of the development whichever is the sooner. If, within a period of 5 years from the date of planting, any trees, shrubs or plants die, are removed or, in the opinion of the Local Planning Authority, become seriously damaged or defective, others of the same species and size as that originally planted shall be planted at the same place, in the next planting season, unless the Local Planning Authority gives its written consent to any variation.
- 14) The premises shall only be open for customers between the following hours: 0700-Midnight.
- 15) The recommendations contained within the Preliminary Ecological Appraisal [reference ECO00373_871, dated September 2018] and Reptile Mitigation Strategy [reference ECO00373 revision B, dated 17 July 2019] must be adhered to. No development shall commence until written confirmation is provided by the Local Planning Authority that the requirements of the approved Reptile Mitigation Strategy (with respect to the translocation of reptiles to a reptile receptor site) have been completed.
- 16) No arboricultural works shall be carried out to trees other than those specified and in accordance with the Tree Survey and Arboricultural Impact Assessment Report [reference JSL3141_770A dated October 2018] received 14.09.2018. Any deviation from works prescribed or methods agreed in accordance with the Tree Survey and Arboricultural Impact Assessment Report [reference JSL3141_770A dated October

2018] received 14.09.2018 shall be agreed in writing to the Local Planning Authority.

END OF SCHEDULE