



Appeal Decision

Hearing Held on 11 February 2020

Site visit made on 11 February 2020

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th March 2020

Appeal Ref: APP/Q3115/W/19/3228501

Daf Trucks Ltd, Eastern Bypass, Thame OX9 3FB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline and full planning permission.
 - The appeal is made by Angle Property PCDF IV (Thame) LLP against the decision of South Oxfordshire District Council.
 - The application Ref P18/S3143/O, dated 10 September 2018, was refused by notice dated 27 February 2019.
 - The development proposed is described as "Hybrid planning application with: Outline planning permission (all matters reserved except for access) sought for demolition of existing buildings and development of 1511 sqm (gross) of offices within Class B1 and up to 129 dwellings within Class C3 and associated works. Full planning permission sought for erection of a 68 bed care home within Class C2 and associated access, vehicular parking, landscaping, ancillary infrastructure and other works."
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Decision

1. The appeal is allowed and outline/full planning permission is granted for a hybrid planning application for outline planning permission (all matters reserved except for access) sought for demolition of existing buildings and development of 1511 sqm (gross) of offices within Class B1 and up to 129 dwellings within Class C3 and associated works; and full planning permission for erection of a 68 bed care home within Class C2 and associated access, vehicular parking, landscaping, ancillary infrastructure and other works at Daf Trucks Ltd, Eastern Bypass, Thame OX9 3FB, in accordance with the terms of the application Ref P18/S3143/O, dated 10 September 2018, and subject to the conditions set out in the attached schedule.

Procedural Matters

2. As detailed above, the development proposed is for a hybrid scheme for full and outline planning permission. Outline planning permission is sought with all matters reserved except access. I have determined the appeal on this basis.
3. A Section 106 Legal Agreement was submitted at the Hearing however, this Agreement was not signed due to an issue with a signatory being unavailable. I allowed a period up to the 28 February 2020 for the appropriate signatures to be added. The final signed Agreement was submitted within the prescribed time.

4. I also allowed a similar timescale for parties to agree and submit a suggested condition relating to a footway link. This condition was also submitted within the prescribed time.
5. The Council have referred to Policy EMP3 of the emerging South Oxfordshire Local Plan (LP) in their statement of case. I have given this policy limited weight in the determination of this appeal as the emerging LP has not yet been adopted.

Main Issues

6. The main issues are the effect of the proposals on employment land and whether the proposals make appropriate provision for affordable housing and on and off-site infrastructure.

Reasons

Employment land

7. The appeal site comprises primarily of a vacant warehouse unit and a vacant office building which sits within an area of mixed uses, including residential and commercial. The site is an existing employment site and is subject to Policy E6 of the South Oxfordshire Core Strategy 2012 (SOCS). The site is also identified as an employment site in the Thame Neighbourhood Plan 2013 (TNP) and thus covered by Policy WS12 of the TNP.
8. Policy E6 of the SOCS and Policy WS12 of the TNP both state that proposals for the redevelopment of redundant land or buildings in employment use to non-employment uses will be permitted if the existing use is no longer viable. These policies require sites to be marketed at a reasonable price for at least a year.
9. A marketing exercise for the warehouse part of the appeal site has been undertaken which covers a period in excess of a year. This marketing exercise concluded that there was a lack of demand for B class employment use for the warehouse area of the site. The Council consider the marketing exercise to be appropriate in scope and nature in terms of its reference to the warehouse element.
10. The office building part of the appeal site has not been included in the marketing exercise. It has therefore not been demonstrated that the whole of the appeal site is no longer economically viable, and the proposal would fail to be supported by Policy E6 of the SOCS and Policy WS12 of the TNP.
11. However, the office building benefits from an extant Prior Approval¹ for the conversion of the office building into 45 flats under Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015. The appellant has referred to this as a "fall back" position and cited it as the reason for not including the office building within the marketing exercise. This extant Prior Approval does not include any pre-commencement planning conditions and does not expire until September 2020. Whilst there is little evidence of a house builder attached to this Prior Approval scheme, the office building is currently empty, and it is a real possibility that building works can commence prior to September 2020 in order to convert the office building

¹ Local Planning Authority Reference: P17/S2624/PDO

into residential flats. On this basis, I attach significant weight to the extant Prior Approval scheme.

12. Section 38(6) of the Planning and Compulsory Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, I conclude that whilst the proposal would conflict with Policy E6 of the SOCS and Policy WS12 of the TNP, this is outweighed by the fact that the office building part of the appeal site benefits from an extant Prior Approval and the submitted marketing exercise demonstrates that the warehouse part of the site is no longer viable.
13. I have had regard to comments made by Thame Town Council (TTC) including employment land in the Thame and surrounding area, the viability of the appeal site for employment use, the marketing of the site and loss of jobs. I have considered these matters carefully however, they do not alter my findings as discussed above.
14. The TTC also made reference to a Court of Appeal Judgement². However, I do not consider the scheme subject of this Judgement to be directly comparable with the scheme subject of this appeal, particularly in regard to type of development. In any case, I have determined the appeal on its own merits.

Affordable housing and infrastructure

15. A completed Section 106 Agreement has been submitted which details obligations for affordable housing and on and off-site infrastructure including highway junction works, public transport services, travel plan monitoring, public rights of way, on-site open space and play areas, refuse and recycling provision, street naming and numbering, section 106 monitoring, public art provision and local health care provision.
16. It is necessary that I consider these obligations against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. All new housing developments brings about demand for affordable housing, open space and play areas, refuse and recycling provision and health care. Given the scale of the development and comments from specialist officers from the Council, there would be a need for highway junction works, contributions towards public transport, travel plan monitoring, street naming and numbering, section 106 monitoring and public art provision. I am therefore satisfied that the proposed contributions would be necessary to make the development acceptable in planning terms. Furthermore, on the evidence before me, they would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The obligations therefore meet the relevant tests and I am satisfied that the proposal adequately contributes to affordable housing and infrastructure in the area.

Other matters

17. Concerns have been raised from the TTC and from neighbouring residents and adjacent businesses, which include noise, housing density, effect on trees and ecology, parking provision and effect on surrounding road network. I have given careful consideration to these matters, some of which would be capable of being addressed by planning conditions or at reserved matters stage in any

² New World Payphones Limited v Westminster City Council & SSCLG [2019] EWCA Civ 2250

event, but they do not lead me to a different overall conclusion on the main issues.

Conditions

18. The conditions imposed are those that were agreed by the appellant and the Council at the Hearing. In the interests of precision and clarity I have undertaken some minor editing and rationalisation where necessary.
19. Conditions relating to timeliness, the submission of reserved matters, the overall quantum of development, and the identification of plans are necessary in the interests of proper planning and to provide certainty. In the interests of highway safety conditions are imposed in relation to access arrangement, parking and turning areas. To ensure the development does not compromise the character and appearance of the area, conditions are necessary in relation to materials, levels, housing mix, arboricultural details and landscaping. To safeguard the living conditions of neighbouring occupiers, conditions are necessary in relation to noise protection, hours of operation and restrictions on the use of the proposed buildings. A condition for the submission of a construction method statement would also safeguard living conditions of neighbouring occupiers and be in the interest of highways safety. To prevent undue risk to the local environment it is necessary to attach conditions relating to drainage, contamination and ecological matters. In the interests of encouraging sustainable modes of travel, conditions are imposed relating to cycle parking provision, vehicle electric charging points, Sustainable Travel Information Packs and a footway pedestrian link.

Conclusion

20. For the reasons given above I conclude that the appeal should be allowed subject to the appropriate conditions and the relevant terms of the submitted Section 106 Agreement.

Chris Baxter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

R Warren QC	Counsel
E Ledwidge	Planning Consultant – Montagu Evans
J Good	Appellant – Angle Property
A Dolan	Duncan Bailey Kennedy
D Gannon	Care UK
C Prior	Care UK

FOR THE LOCAL PLANNING AUTHORITY:

R Green	Counsel
T Smith	South Oxfordshire District Council
P Yoward	South Oxfordshire District Council

INTERESTED PERSONS:

G Markland	Thame Town Council
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DOCUMENTS SUBMITTED AT THE HEARING:

1. Court Judgement - New World Payphones Limited v Westminster City Council & SSCLG [2019] EWCA Civ 2250
2. South Oxfordshire District Council Compliance with Community Infrastructure Levy document
3. Section 106 legal agreement (unsigned)

Schedule of Conditions

Full Planning Permission

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Numbers 178963-1008D; PL02 Rev E; PL03 Rev A; PL04 Rev A; PL05; PL06 Rev A; PL07 Rev A; PL08 Rev A; 24020 8086 0001 29 001 Rev 5; MBSK180223-5 Rev B.
- 3) No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until detailed plans showing the existing and proposed ground levels of the site together with the slab and ridge levels of the proposed development, relative to a fixed datum point on adjoining land outside of the application site, have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved details.
- 5) No development shall commence until the existing means of access on to the site has been improved (to include tactile surfacing and dropped kerbs) and laid out and constructed strictly in accordance with the local highway authority specifications and all ancillary works specified shall be undertaken. The existing bellmouth access should be modified to give radii of between 6-10m.
- 6) No development shall take place until specification details for a turning area and car parking spaces to be provided within the curtilage of the site have been submitted to and approved in writing by the Local Planning Authority.
- 7) No development of the care home site shall commence (including any works of demolition), until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be complied with throughout the construction period, and shall provide details of the following:
 - (i) A construction traffic management plan;
 - (ii) Vehicle parking facilities for construction workers, other site operatives and visitors;
 - (iii) Site offices and other temporary buildings;
 - (iv) Loading and unloading of plant and materials;
 - (v) Storage of plant and materials used during construction;
 - (vi) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (vii) Wheel washing facilities;
 - (viii) Measures to control the emission of dust and dirt during construction;

- (ix) A scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - (x) Measures for the protection of the natural environment.
- 8) No development shall take place until a detailed sustainable drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted and approved by the Local Planning Authority in writing. This should be based on Flood Risk Assessment reference A/APTHAME.10 prepared by Mayer Brown. The scheme should include:
- i) Maintenance and management plan for SuDS features (including details of who will be responsible for maintaining the SuDS and landowner details);
 - ii) Sizing of features – attenuation volume;
 - iii) Infiltration tests undertaken in accordance with BRE365;
 - iv) Detailed drainage layout with pipe numbers (to include direction of flow) and SuDS features;
 - v) Network drainage calculations with consideration given to the worst case 1:100 yr + 40% event;
 - vi) Phasing plans; and
 - vii) Detailed site and floor level plans to include information on exceedance routing.
- Development should be carried out in accordance with the approved details.
- 9) No development shall take place until details of foul drainage provision have been submitted to and approved by the local planning authority in writing. The development and shall be carried out in accordance with the approved details.
- 10) No development shall take place until a detailed scheme for protecting the care home development from the external noise environment of the area [and from internal noise arising from any ventilation plant associated with the development] has been submitted to and approved in writing by the Local Planning Authority. The scheme itself shall be designed, specified and constructed so that the sound insulation performance of the structure, and the layout of the bedrooms, is such that the indoor ambient noise levels do not exceed the values detailed in Table 4 of BS 8233:2014 "Indoor ambient noise levels for dwellings". Thereafter the development shall not be carried out other than in accordance with such approved scheme which shall be completed before any part of the accommodation hereby approved is occupied, unless the Local Planning Authority otherwise agrees in writing.
- 11) No development, including any site works or operations relating to the development hereby permitted, until an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period has been submitted to and approved in writing by the Local Planning Authority.

Written approval must be obtained prior to commencement of any site works including demolition. The matters to be encompassed within the arboricultural method statement shall include the following:

- i) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities;
- ii) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection;
- iii) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage;
- iv) The means of demolition of any existing site structures, and of the re-instatement of the area currently occupied thereby;
- v) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees;
- vi) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels;
- vii) The details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the RPA, which is to be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage;
- viii) Provision for the supervision of ANY works within the root protection areas of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development, and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

- 12) The care home development shall not be commenced until a scheme for hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a timetable for implementation and a schedule for future maintenance and shall include boundary treatment details. Development shall be carried out in accordance with the approved scheme. Any trees or plants which within a period of 5 years from the completion of the residential 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.

- 13) Prior to the first occupation of the development, the turning area and car parking spaces shall be provided within the curtilage of the site so that motor vehicles may enter, turn around and leave in a forward direction and vehicles may park off the highway. The turning area and parking spaces shall be constructed, laid out, surfaced, drained and completed to be compliant with sustainable drainage (SuDS) principles in strict accordance with the approved specification details.
- 14) Prior to the first use or occupation of the care home, covered cycle parking facilities shall be provided on site in accordance with details in drawing PL02 Rev E. Thereafter, the covered cycle parking facilities shall be permanently retained and maintained for the parking of cycles in connection with the development.
- 15) Prior to the occupation of the development, copies of the Sustainable Travel Information Packs (STIP) for the care home, shall be submitted to and approved in writing by the Local Planning Authority. The approved STIP shall then be provided to each resident and employee of the care home and shall include information on the alternatives to single occupancy car use available to residents, walking and cycle route maps, discounts, and public transport information.
- 16) The care home development hereby permitted shall not be occupied until all works specified in the Delta Simons (2018), Remediation and Verification Strategy, Kingsmead Business Park, Thame, OX9 3FB, dated September 2018, relating to the care home development, have been carried out in full and a validation report confirming completion of these works has been submitted to and approved in writing by the Local Planning Authority.
- 17) The hours of operation for construction and demolition works shall be restricted to 08:00 – 18:00 Monday to Friday and 08:00 – 13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written authority of the Local Planning Authority.
- 18) The premises shall be used for care home use only and for no other purpose (including any other purpose in Class C2 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Outline Planning Permission

- 1) Details of appearance, landscaping, layout and scale (hereinafter called “the reserved matters” shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) In the case of any reserved matter, application for approval must be made not later than the expiration of 18 months beginning with the date of the grant of outline planning permission.
- 3) The development hereby permitted shall take place not later than 12 months from the date of approval of the last of the reserved matters to be approved, or in the case of approval on different dates, the final approval of the last such matter to be approved.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Numbers 178963-1008D; MBSK180223-5 Rev B.
- 5) The reserved matters for the scheme shall be designed to secure an appropriate market housing mix and shall include a Thame specific affordable housing and dwellings mix strategy to demonstrate how the proposal meets identified housing needs in Thame.
- 6) No development of the either the residential or office site shall commence (including any works of demolition), until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be complied with throughout the construction period, and shall provide details of the following:
 - (i) A construction traffic management plan;
 - (ii) Vehicle parking facilities for construction workers, other site operatives and visitors;
 - (iii) Site offices and other temporary buildings;
 - (iv) Loading and unloading of plant and materials;
 - (v) Storage of plant and materials used during construction;
 - (vi) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - (vii) Wheel washing facilities;
 - (viii) Measures to control the emission of dust and dirt during construction;
 - (ix) A scheme for recycling/disposing of waste resulting from demolition and construction works; and
 - (x) Measures for the protection of the natural environment.
- 7) No development shall take place until a detailed sustainable drainage scheme based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development has been submitted and approved by the Local Planning Authority in writing. This should be based on Flood Risk Assessment reference A/APTHAME.10 prepared by Mayer Brown. The scheme should include:
 - i) Maintenance and management plan for SuDS features (including details of who will be responsible for maintaining the SuDS and landowner details);
 - ii) Sizing of features – attenuation volume;
 - iii) Infiltration tests undertaken in accordance with BRE365;
 - iv) Detailed drainage layout with pipe numbers (to include direction of flow) and SuDS features;
 - v) Network drainage calculations with consideration given to the worst case 1:100 yr + 40% event;
 - vi) Phasing plans; and

vii) Detailed site and floor level plans to include information on exceedance routing.

Development should be carried out in accordance with the approved details.

- 8) No development shall take place until details of foul drainage provision have been submitted to and approved by the local planning authority in writing. The development and shall be carried out in accordance with the approved details.
- 9) For every 10 residential homes built and 1000m² of non-residential development (i.e. care home and office) there shall be at least 1 'rapid charge' EV charging point installed. Where on-site parking is provided for residential dwelling, EV charging points for each parking space shall be made.
- 10) No development shall take place (including any ground works or site clearance) until a method statement for reptile protection and translocation has been submitted to and approved in writing by the Local Planning Authority. The content of the method statement shall include the:
- i) Purpose and objectives for the proposed works;
 - ii) Detailed design(s) and/or working method(s) necessary to achieve stated objectives;
 - iii) Extent and location of proposed works including on-site and off-site translocation shown on appropriate scales maps and plans;
 - iv) Trigger points for the transition between on-site and off-site translocation;
 - v) Timetable for implementation, demonstrating that works are aligned with the proposed phasing of construction;
 - vi) Persons responsible for implementing the works;
 - vii) Initial aftercare and long-term maintenance for on-site and off-site receptor areas;
 - viii) Disposal of any wastes arising from works;
 - ix) Details of population monitoring post translocation for a period of two years to be submitted to LPA.

The translocation and long term maintenance of on-site and off-site receptor areas shall be carried out strictly in accordance with the approved details and shall be retained in that manner thereafter.

- 11) No development shall take place until a detailed scheme for protecting the dwellings from the external noise environment of the area [and from internal noise arising from any ventilation plant associated with the development] has been submitted to and approved in writing by the Local Planning Authority. The scheme itself shall be designed, specified and constructed so that the sound insulation performance of the structure, and the layout of the dwellings, is such that the indoor ambient noise levels do not exceed the values detailed in Table 4 of BS 8233:2014 "Indoor ambient noise levels for dwellings". Thereafter the development shall not be carried

out other than in accordance with such approved scheme which shall be completed before any part of the accommodation hereby approved is occupied, unless the Local Planning Authority otherwise agrees in writing.

- 12) No development or any site works or operations relating to the development hereby permitted, shall take place until an arboricultural method statement to ensure the satisfactory protection of retained trees during the construction period shall be submitted to and approved in writing by the Local Planning Authority. Written approval must be obtained prior to commencement of any site works including demolition. The matters to be encompassed within the arboricultural method statement shall include the following:

- i) A specification for the pruning of, or tree surgery to, trees to be retained in order to prevent accidental damage by construction activities;
- ii) The specification of the location, materials and means of construction of temporary protective fencing and/or ground protection in the vicinity of trees to be retained, in accordance with the recommendations of BS 5837 'Trees in relation to design, demolition and construction' and details of the timing and duration of its erection;
- iii) The definition of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage;
- iv) The means of demolition of any existing site structures, and of the reinstatement of the area currently occupied thereby;
- v) The specification of the routing and means of installation of drainage or any underground services in the vicinity of retained trees;
- vi) The details and method of construction of any other structures such as boundary walls in the vicinity of retained trees and how these relate to existing ground levels;
- vii) The details of the materials and method of construction of any roadway, parking, pathway or other surfacing within the RPA, which is to be of a 'no dig' construction method in accordance with the principles of Arboricultural Practice Note 12 "Through the Trees to Development", and in accordance with current industry best practice; and as appropriate for the type of roadway required in relation to its usage;
- viii) Provision for the supervision of ANY works within the root protection areas of trees to be retained, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified to the Local Planning Authority, prior to the commencement of development, and provision for the regular reporting of continued compliance or any departure there from to the Local Planning Authority.

Thereafter the development shall be carried out in accordance with the approved details with the agreed measures being kept in place during the entire course of development.

- 13) The development shall not be occupied until all works specified in the Delta Simons (2018), Remediation and Verification Strategy, Kingsmead Business Park, Thame, OX9 3FB, dated September 2018 have been carried out in full and a validation report confirming completion of these works has been submitted to and approved in writing by the Local Planning Authority.
- 14) The hours of operation for construction and demolition works shall be restricted to 08:00 – 18:00 Monday to Friday and 08:00 – 13:00 on a Saturday. No work is permitted to take place on Sundays or Public Holidays without the prior written authority of the Local Planning Authority.
- 15) The total number of dwellings shall not exceed 129.
- 16) The premises shall be used for offices and for no other purpose (including any other purpose in Class B1a of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
- 17) Prior to occupation of the seventy fifth residential unit details of the footpath connection through the approved housing development linking the section of footpath that runs south from Towersey Road to the application site behind properties fronting on to Towersey Drive to public footpath 383/13 and the Phoenix Trail shall be submitted to and approved in writing by the local planning authority. The footpath shall be developed in accordance with the approved details.