The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2020

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2020

Appeal Ref: APP/L2250/W/19/3238976
Land at Park Farm Road, Folkestone, Kent CT19 5EB

- 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 Ravensbourne Investments Ltd against the decision of Folkestone and Hythe District Council.
- The application Ref Y18/1576/FH, dated 6 December 2018, was refused by notice dated 12 June 2019.
- The development proposed is the redevelopment of the site to provide a hotel (Use Class C1) together with a new vehicular access and pedestrian access from Park Farm Road, parking, servicing and all hard and soft landscaping.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the development on:

    - The supply and delivery of floorspace for employment and other uses on land at and adjacent to the appeal site.
    - The character and appearance of the site and the surrounding area.
    - Protected species.

Reasons

Supply and Delivery of Floorspace for Other Uses

3. The appeal site is part of a wider plot of land that has been cleared of most buildings and is unused. Part of the wider plot benefits from planning permission[1] for the erection of a hotel and a pair of restaurants/cafes with associated 'drive through' facilities that was promoted as Phase 1 of the redevelopment of the overall site. This proposal would see the erection of a 131 bedroom hotel at the appeal site, with it being clear from the submissions of the appellant that the intention is for the proposed hotel to be provided in addition to the abovementioned hotel.

4. The development plan in effect at the appeal site includes the Shepway Core Strategy Local Plan 2013 (LP13) and the Shepway District Local Plan Review 2006 (LPR). The main parties both acknowledge that the adopted development plan limits the permissible uses at the site to those that fall within classes B1

[1] As approved under the terms of applications Y18/0066/SH, Y18/1043/FH and Y18/1264/FH.

and B8 of the Town and Country Planning (Use Classes) Order 1987 (UCO). Policy SS4 of the LP13 states that mixed use development on employment land may be acceptable subject to the development complying with various requirements including, amongst others, the provision of new premises that would be used for purposes falling within Class B of the UCO and the delivery of a range of small new and replacement industrial premises.

5. As this proposal is solely for the erection of a hotel, it does not constitute a mixed use development and would not meet the stated requirements. Even when considered in addition to the approved Phase 1 development, no floorspace falling within Class B of the UCO would be delivered. As such, the proposal would be contrary to the policies of the adopted development plan.

6. Existing policies should not be considered out-of-date simply because they were adopted prior to the publication of The National Planning Policy Framework (The Framework) and taking steps to replace policies does not necessarily render existing policies out-of-date. However, the main parties agree that the site will not be developed exclusively for purposes falling within Class B of the UCO. As such, changes to circumstances since their adoption indicate that the development plan policies that limit the use of the site to employment uses alone are out-of-date. Moreover, policy SS4 does not reflect paragraph 120 of The Framework which addresses circumstances where there is no reasonable prospect of an application coming forward for the allocated use and indicates that proposals should be supported where they address an unmet need. However, out-of-date policies can still be afforded weight.

7. The Framework indicates that weight can also be afforded to emerging policies according to the stage of preparation of the emerging plan, the extent of unresolved objections and the level of consistency with the Framework. The Shepway Core Strategy Local Plan Submission Draft 2019 (ECS) has been the subject of public consultation but has not been submitted for examination and as such, I consider that this should only be afforded limited weight. However, the Council's emerging Places and Policies Local Plan Submission Draft (EPP) has been the subject of an examination and has been deemed to be relevant by both parties. The weight I afford to the policies of the EPP is set out below.

8. Policy E1 of the EPP states that the provision of 10,000 square metres of floorspace falling within Class B1 of the UCO is protected at the overall site. However, this policy also allows 25% of such floorspace allocations to be put to other uses, subject to justification being provided and the uses adding to the attractiveness and function of the respective employment sites. Policy RL11 of the EPP allocates the site for mixed use development comprising of up to 10,000 square metres of office space (Use Class B1), 3,100 square metres of non-food retail floorspace and supporting leisure, restaurant and cafe uses and a hotel. As far as is relevant to this proposal, emerging policy SS4 of the ECS is similar to policy SS4 of the LP13.

9. The Council's Appeal Statement suggests that, following its examination, no modifications to policy RL11 of the EPP have been deemed necessary and none are intended. However, the appellant has indicated that their objection remains unresolved. Whilst I have had regard to the comments of the appellant in respect of the content of policy RL11 of the EPP and how it could be changed, it is outside the scope of this appeal to consider how the policy might be altered. As such, any weight that is to be afforded can only be to the

policy as it has been drafted. In this case, noting that the plan and the policy could be challenged, but that they have been the subject of public consultation, the policies are generally consistent with The Framework and demonstrate that the Council is supportive of the site being developed in a manner that does not accord with its current allocation, I give policies E1 and RL11 of the EPP substantial weight.

10. Whilst policy RL11 of the EPP includes the words 'up to' which indicates that the floorspace targets should be taken as a maximum, policy E1 of the EPP secures the provision of 10,000 square metres of Class B1 floorspace at the site, subject to the 25% reduction referred to above. As such, it is clear that the plan, as a whole, is intending to achieve the delivery of Class B1 floorspace at this site. Policy RL11 is also clear that the primary focus of the policy is to deliver office and non-food retail floorspace, with any other developments being supportive of those uses.

11. The submissions of the appellant to the Examination in Public relating to the EPP acknowledge that the policy refers to a single hotel being proposed at the site. Therefore, even if all other elements of the allocation are subsequently provided, the inclusion of a second hotel would result in the mix of uses not complying with policy RL11.

12. In the absence of any office or non-food retail uses being proposed or approved, it is not possible to agree that the proposed hotel would be supportive of those uses. Whilst this was also true of the Phase 1 developments that were approved, the circumstances are substantially different as that proposal was in line with the emerging policy. Conversely, in this case the provision of a second hotel would cause the resultant scenario to not be compliant with policy RL11 and the development would erode the space available at the site to deliver the intended office and non-food retail floorspace.

13. In this regard, whilst plan 0301 Revision P-00 shows the provision of 5 other buildings at the wider site, they do not form part of the proposal and no mechanism is in place to secure their delivery. Furthermore, as the submitted plan does not demonstrate the floorspace or uses of those buildings, this does not represent a 'comprehensive approach' to the development of the site which is also required by policy RL11. As such, the proposal could limit the opportunities to provide the employment floorspace that is deemed to be required by policies E1 and R11 in the interests of enabling economic development.

14. Whilst the appellant has identified that the Framework does not require out-of-centre retail uses to be allocated, neither does it prevent such an allocation being made. In this instance, although the appellant has identified that the retail sector has had recent difficulties, it has not been quantifiably or conclusively demonstrated that additional retail floorspace is not required. As such, the evidence before me does not demonstrate that the emerging allocation would not be brought forward during the plan period.

15. For the reasons given above the proposed development would neither comply with the adopted development plan nor be able to be supported under the terms of the emerging policies. However, it remains necessary to consider whether other material considerations should lead to a different conclusion being reached.

16. The appellant has indicated that the development of the site for office purposes would be financially unviable. It has also been suggested that the site would be unattractive to developers given a perceived preference within the market towards a potential development at Otterpool Park and sites in more accessible, town centre locations. Although anecdotal evidence has been provided to suggest that there is an absence of interest in this site, this has not been supported by the submission of any evidence, such as a sustained marketing campaign.

17. The appellant's evidence concludes that that an office development at this site would not be viable due to the out-of-town location being unattractive to occupiers, difficulties financing development, limited financial returns and potential changes to build costs. In this context, paragraph 120 of The Framework indicates that proposals that would address an unmet need should be supported if an allocated use is unlikely to come forward. However, whilst the appellant has identified that a hotel chain has been identified to operate from the appeal site, this is not, in itself, evidence of there being an unmet need. Even if this were accepted to be an unmet need, it has not been demonstrated that the hotel would be required at this site. As such, the support for development of unrequired land would not be reason to support this proposal.

18. Paragraph 80 of the Framework indicates that significant weight should be afforded to the economic benefits of a proposal. Accordingly, I have had regard to the number of jobs that the appellant states would be created during and after construction, the increased spending within the local economy and the business rates income that would be derived. Paragraphs 117 and 118 of The Framework also promote and require substantial weight to be afforded to the effective use of previously developed land and as such this is a positive factor of the proposal. However, as these would also be benefits of a development that complies with the development plan or the emerging policies, this does not lead me to conclude that planning permission should be granted for a development that does not accord with either the development plan or the emerging policies.

19. For the reasons given above, the development would have an unacceptable effect on the supply and delivery of floorspace for employment and other uses on land at and adjacent to the appeal site. The proposal would therefore be contrary to policy SS4 of the LP13 which requires that mixed use re-development of employment land delivers uses falling within Class B of the UCO. The proposal also conflicts with emerging policies E1 and RL11 of the EPP which combine to seek the delivery of 10,000 square metres of office floorspace, 3,100 square metres of non-food retail floorspace and supporting leisure, restaurant and café uses and a hotel.

20. Emerging policy SS4 of the ECS is similar to policy SS4 of the LP13 and, for the reasons set out above, the proposal is also contrary to that policy. However, as this policy is at an early stage of preparation, I only afford the conflict with this policy limited weight.

Character and Appearance

21. The largely vacant appeal site sits within an area of mixed commercial and retail uses, with the built form having an appearance that reflects the function of the enterprises occurring within the locality. Due to the changing ground

levels of the area, views into the site are possible from the elevated section of the nearby M20 and the nearby Kent Downs AONB.

22. Although not present at the time of the site visit, the submitted plans indicate that the first phase of the development of the wider site would see the erection of a pair of restaurant or café buildings with associated "drive through" routes that would front Park Farm Road. A hotel building is also proposed at the corner of the wider site that is adjacent to retail warehouses.

23. The proposed building would be positioned at the opposite side of the main estate road to the approved restaurant/café building with its front elevation, which would feature a canopy and a 'frame' projection, facing the hotel car park. The elevation facing the estate road would include windows and a shallow projection that would extend above the buildings flat roof. A further upstand and a line of windows would be provided on the elevation facing the closest part of Park Farm Road. As a result of this arrangement, whilst the external materials would include some variety, the two most prominent elevations of the building would have almost no activity and minimal visual interest. The orientation of the building would therefore cause it to have an uninteresting appearance that would become a negative feature of the wider site once redeveloped.

24. Given the bulk and scale of built form within the locality and the commercial character of the area, the size of the hotel would not cause it to appear unduly large or incongruous within its setting. Furthermore, the inclusion of a 'frame' feature, a canopy and extensive ground floor glazing affords the front elevation sufficient interest to break up the massing of the building. The variety to the cladding would also assist with this. However, despite these positive attributes of that elevation of the proposed building, the most interesting features have been poorly utilised and would face away from the most active parts of the public domain. As such, the building does not make a suitably positive contribution to the character and appearance of the site and the surrounding area.

25. The submissions show that areas of soft landscaping would be provided around the building and the car park in a manner that is largely consistent with the remainder of the site. Whilst the tree planting appears a little thin in some areas compared to other parts of the wider site, this aspect of the proposal could be enhanced through the imposition of a condition. As such, I do not share the concerns of the Council in this regard, but this does not represent a reason to reach a different conclusion in respect of the visual effect of the development overall.

26. Whilst I have had regard to the benefits that would arise from the redevelopment of this vacant site, the current condition of the site does not represent a reason to support design that would not be satisfactory in its setting.

27. For the reasons set out above, the development would have a harmful effect on the character and appearance of the site and the surrounding area. The proposal is therefore contrary to policies SD1 and BE1 of the LPR and policies DSD and SS3 of the LP13 which combine to require that development, amongst other things, includes a high standard of design and layout, contributes to local place shaping and improves environmental conditions. Although mentioned in

the reason for the refusal of the application, policy SS1 of the LP13 appears to be of minimal relevance to this issue.

28. The proposal would also conflict with paragraphs 127 and 130 of The Framework which require that development will function well and add to the overall quality of the area over the lifetime of the development, establishes a strong sense of place using the arrangement of streets and building types to create attractive, welcoming and distinctive and takes the opportunities available for improving the character and quality of an area and the way it functions.

29. Emerging policies SS1 and SS3 of the ECS and policy HB1 of the EPP include similar requirements of development as the adopted policies and policy RL11 of the EPP also emphasises the importance of development being of high quality design. As such, the emerging policies do not represent a reason to reach an alternative conclusion.

30. The proposed development would not affect the character or setting of the countryside. I note that this view is shared by both main parties despite a reference to such an effect within the reason for refusal. This does not, however, alter my overall conclusion.

Protected Species

31. Section 40 of the Natural Environment and Rural Communities Act 2006 includes a duty to have regard to the purpose of conserving biodiversity. The necessary survey work that was absent at the time that the application was determined has now been provided, identifying that the site has low bat activity, in the form of foraging rather than roosting.

32. Paragraph 170 of The Framework encourages the provision of net gains for biodiversity. Therefore, as there has been some use of the site by protected species, although the appellant's Bat Emergence Survey states that it is not required, it would be reasonable to secure proportionate measures within the development that encourage use of the site by protected species through the imposition of a condition. Subject to this, the proposal would not cause harm to biodiversity.

33. The development would not, therefore, have an unacceptable effect on protected species and would accord with policy CO11 of the LPR and policy CSD4 of the LP13 which combine to require the protection and enhancement of species and habitats. The proposal would also accord with the similar requirements that are set out within emerging policy NE2 of the EPP.

Other Matters

34. Whilst it has been suggested that the current condition of the site has attracted vandalism and unauthorised occupation, no evidence of this was provided and there are other mechanisms to prevent such events other than implementing the proposed development.

Planning Balance

35. Paragraph 11 of the Framework states that where the most relevant policies within the development plan are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably

outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

36. For the reasons set out above, the proposed development would undermine the supply and delivery of floorspace for employment and other uses in a manner that would conflict with both the development plan and the emerging policies of the EPP. Whilst neither of these can be afforded full weight, as paragraphs 20 and 80 of The Framework combine to require that strategic policies make sufficient provision for employment development and that economic growth is supported, I afford significant weight to the harm that would result in this regard. Moreover, as a result of the harm identified in relation to the effect on the character and appearance of the area, the proposal would neither represent good design, which is a key aspect of sustainable development, nor the creation of high quality buildings and places which is fundamental to what planning and development should achieve.

37. Therefore, whilst the proposal would avoid conflict with the development plan in some respects and avoid harm in others and would represent the efficient use of previously developed land in a manner that would derive some economic and employment benefits, I consider that the harm identified above would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies in The Framework as a whole. Accordingly, the conflict with the development plan is not outweighed by other considerations including The Framework.

Conclusion

38. For the reasons set out above, I conclude that the appeal should be dismissed.

Ian Harrison

INSPECTOR