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# Appeal Decision

Site visit made on 17 December 2019

**by David Carter BSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 02 April 2020**

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**Appeal Ref: APP/V4305/W/19/3230913**

**Land west of Coopers Lane, Knowsley Industrial Park, Kirkby L33 7UB**

- 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 EG Group against the decision of Knowsley Metropolitan Borough Council.
  - The application Ref 17/00745/FUL, dated 4 December 2017, was refused by notice dated 29 March 2019.
  - The development proposed is redevelopment to provide petrol filling station, drive through café and drive through restaurant, together with access, landscaping and various other infrastructure works.
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## Decision

1. The appeal is allowed and planning permission is granted for redevelopment to provide petrol filling station, drive through café and drive through restaurant, together with access, landscaping and various other infrastructure works at land west of Coopers Lane, Knowsley Industrial Park, Kirkby L33 7UB in accordance with the terms of the application, Ref 17/00745/FUL, dated 4 December 2017, and the plans submitted with it subject to the conditions set out in the schedule appended to this decision.

## Applications for costs

2. An application for costs was made by EG Group against Knowsley Metropolitan Borough Council. This application is the subject of a separate Decision.
3. A second application for costs was made by Knowsley Metropolitan Borough Council against EG Group. This application is also the subject of a separate Decision.

## Main Issue

4. The main issue is the effect of the development on employment land in Knowsley Industrial Park and on the supply of employment land in Knowsley Borough.

## Reasons

### *Knowsley Industrial Park*

5. The appeal site lies close to the junction of Coopers Lane with the A580 main road from Liverpool to Manchester, within Knowsley Industrial and Business Parks (KIBP) which form one of 6 Principal Regeneration Areas within Knowsley. KIBP is located on the eastern and southern edges of Kirby and

forms not only the largest concentration of employment in Knowsley, but also one of the largest concentrations in the wider region. The Knowsley Local Plan Core Strategy (2016) (CS) allows for an expansion of KIBP by c7 hectares as part of a sustainable urban extension to the east of Coopers Lane.

6. KIBP is designated as a "Primarily Industrial Area" in the CS. The appeal site has extant (part implemented) planning permission for offices although it has remained vacant for more than a decade.
7. The CS (in Policy CS4 7)) requires that land that is currently in use or allocated for employment development will be safeguarded from changes to other types of development, except where: there is no current or likely future demand for employment uses on the land; OR (my emphasis) where other uses would bring wider regeneration, environmental and amenity benefits. My interpretation is that any prospective developer of safeguarded existing employment land must, as a minimum, satisfy one of these policy requirements.
8. In respect of marketing, there initially appeared to be little dispute between the parties that a lack of demand had been demonstrated through sustained marketing of the appeal site. This is set out in an email from the Council dated 19 June 2018. Criticisms of the details of the marketing (for example on matters such as terms and price) arose later on. The marketing materials supplied from 2015 suggest that the preferred terms for the appeal site would be for the sale of a long leasehold but there would be nothing to prevent any interested party negotiating on the terms. While the marketing information pre-dates the CS, adopted in 2016, it did occur in the period during which the plan was being prepared and, while the appeal site lies within the KIBP, that designation would not necessarily rule out non-industrial uses. The Council also indicated that marketing had not been carried out during the 15-month planning application process and provided evidence from the Council's Business Growth Hub (set out as part of the papers for this appeal dated 4 October 2019) which suggests a pick-up in demand over the past 2 years. However, none of the demand highlighted related specifically to the appeal site.
9. The Council have identified a number of other appeal decisions they consider relevant to the determination of this appeal. In some of these decisions the proposals are dismissed, at least in part, due to the lack of detail given in respect of marketing on matters such as price. However, these decisions mainly relate to small-scale changes of use of, or within, existing buildings rather than substantial new construction on vacant land. In addition, most of the decisions identified relate to cases in other parts of the country where the underlying context is different. Therefore, I have determined this appeal on its merits and my focus has been on the circumstances of this specific proposal and locality which I consider should be the determining factors.
10. The appellants have included the report, "Delivering a New Future for Knowsley Industrial Park: Strategic Framework, (DTZ, Arup and Taylor Young, 2010) as part of their submissions. While I understand this report has not been adopted as a Supplementary Planning Document, it is referred to as part of Policy CS11 of the CS and its supporting text. These deal with the policy approach applying to the Principal Regeneration Area at KIBP. This document includes a framework plan for KIBP which identifies land, including the appeal site, as

falling within an area in the north-west quadrant of the A580/Coopers Lane junction suitable for ancillary uses including retail and leisure.

11. There is no doubt that the appeal site has lain vacant for many years. During this time, it is not disputed there have been several periods of marketing carried out. In the circumstances of this case, therefore, I do not find the Council's criticisms of the marketing carried out and of the absence of marketing during the application process compelling. While I accept the most recent reports of an uptake in interest but consider this, in itself, is insufficient to demonstrate non-compliance with the policy in respect of the appeal proposal. This is because the consideration of alternative uses on the appeal site would have arisen as a result of lack of interest shown in the extant office scheme and the potential that had been highlighted for non-employment uses on the site.
12. Moving on to consider the wider benefits of the proposed development. The Council acknowledge that a significant number of jobs (25 full-time and 60 part-time) would be created by the proposed development but suggest that the employment created would not deliver the type and quality of jobs that they aspire to through the Knowsley Industrial Park Strategic Framework (2010) report, referenced above. Notwithstanding this point the same report – as noted above – identifies this particular area as potentially suitable for non-employment uses that are the basis of the appeal proposal. Seen in that context the number and range of jobs which would be provided on the appeal site could be seen as a useful addition to the range of occupations available on KIBP to the local workforce.
13. There is no dispute between the parties that the appeal proposal would result in a well-designed development of a site that has been vacant for more than a decade in a prominent location. The development would not only be attractive to passing traffic on an important strategic route but also would help improve the offer of locally available services to those employed on the estate. Inclusion of HGV fuelling facilities in the proposals would also be potentially attractive for locally generated goods traffic.
14. The appeal proposal does not include provision for bringing forward adjacent land for development through a planning obligation. This possibility has been mentioned by the Council but does not form part of the proposals before me.
15. Given the context, the appeal proposal would result in a significant investment into the KIBP, in a location and for uses that have been identified in a strategic framework commissioned by the Council. In these circumstances the potential regenerative effect should be seen as significant and the supporting uses and facilities provided would add to the wider attractiveness of KIBP as a regionally significant business location.
16. In terms of environmental and amenity benefits of the appeal proposal, the quality of design and the proposed landscaping scheme are not at issue and the site can be successfully accessed and accommodated onto the local highway network. The Council has indicated that the levels of parking are acceptable. Buses pass the site and significant parts of KIBP would be within easy walking and cycling distance. New development and investment on this prominent and vacant site would significantly improve the environment whilst at the same time posing no threat to ecology, green infrastructure, designated sites, public health or flood risk.

17. In conclusion on this issue, I find that: the marketing of the appeal site for office development took place over an extended period; the level of marketing should be seen as sufficient to satisfy the policy requirement of CS Policy CS4 7); the form of development proposed in the appeal responds positively to the Strategic Framework Report (2010) for the KIBP and; in this context, the proposed development provides sufficient wider regeneration, environmental and amenity benefits to also satisfy the policy tests set out in CS Policy CS4 7). The Council have identified that the deletion of paragraph 22 from the 2012 version of the Government's National Planning Policy Framework (the Framework) has resulted in a more restrictive approach in relation to the loss of employment land. The focus in the current version of the Framework (paragraph 20) is to require that strategic policies should set out an overall strategy for the pattern, scale and quality of development, including employment. While I acknowledge these changes, the CS is up to date. I have applied the approach as set out in the CS in determination of this appeal.

*Employment land in Knowsley*

18. The main concern is that the loss of the appeal site to non-employment uses could adversely affect the supply of employment land in Knowsley, thus potentially undermining the policy requirement to deliver 164 hectares over the plan period. There is no up-to-date evidence before me on the supply of employment land. The Council have suggested the onus falls on the appellant to demonstrate that the loss of the appeal site would not affect the ability to deliver the overall CS target. The appellants have not done this and have, instead, relied on the information set out in the CS.
19. My understanding is that the CS has made provision for a minimum of 164 hectares of employment land to be developed over the plan period and, given adoption of the CS in 2016, that this requirement figure should be regarded as up-to-date. This is important because, over the first three years covered by the CS, the take up of land was running at about one-third of the policy requirement. However, development rates for economic development often vary significantly given the prevailing economic circumstances and the potential for large development to skew year-by-year figures.
20. Notwithstanding this, the supply of land at the time the CS was adopted is set out in Table 5.1 of the supporting text to Policy CS4. This demonstrated a significant over-supply of land which would allow both for discounting and for some allocations to stretch beyond the plan period. The discounting would, for example, allow for the loss of some employment land to other uses or for it to remain undeveloped. In addition, I note that Table 5.1 does not make any allowance for the recycling of employment land, thus potentially omitting an additional source of supply that might emerge over the course of the plan period. To be effective the CS (in Policy CS4 4)) requires that a sufficient readily available supply comes forward throughout the plan period. This requires a flow of sites which means that all of the land does not need to be available at the same time.
21. The appeal site is regarded as readily available for development and has been so for many years. In this context, its development for non-industrial uses would not mean that the ability to maintain the flow of sites to meet the overall target is necessarily compromised.

22. On the basis of the limited information made available to me, I conclude that the development of the appeal site for non-industrial uses would not adversely affect the supply of employment land to the extent that the CS target could not be achieved over the plan period. This position is reinforced by my observations and conclusions under the preceding section. Accordingly, the proposed development is consistent with the provisions of CS Policy CS4 in respect of the overall scale and distribution of employment land (CS4 2)) and the requirement to make available a range of suitable and available sites looking ahead over 5 years (CS4 4)).

### **Other matters**

23. The Council have acknowledged that the form of development proposed cannot be accommodated within the town centre and that no suitable edge of centre sites can be identified.
24. Having agreed this position with the appellant, the Council have suggested in their statement that although the proposal would have insufficient impact to justify refusal on retail grounds, it would have a minor negative impact on the vitality and viability of Kirby town centre.
25. Given the roadside nature of the proposal and the relatively small-scale of retail development and the other uses proposed, I find that these are consistent with the approach towards the location of town centre uses as set out in CS Policy CS4 5).

### **Conditions**

26. The focus of this appeal is on the principle of the proposed development. On a range of other matters the Council have confirmed that the proposed development raises no major issues in respect of design, waste management, security, highways, provision for electric vehicles, on the amenity of nearby occupiers, ecology, arboricultural matters and HSE Exclusion Zone and I find no reason to disagree.
27. The Council have provided suggested conditions in the event I was minded to allow this appeal. The appellant has considered these and in their final comments offered observations on two of the proposed conditions that relate to electric vehicle charging and landscaping. While the appellant initially made no comments on pre-commencement conditions, they have subsequently given their written agreement to Conditions 3,4, 6 and 7. The appellants considered that it would not be necessary for Condition 8 to be pre-commencement and, on reflection, I agree. However, I remain of the view that Condition 5 relating to sustainable travel should remain as a pre commencement condition. I have taken account of all the appellant's observations in setting out the conditions on the attached schedule. I have also made some changes to the Council's suggested conditions in order to ensure that the development is carried out satisfactorily, meeting the six tests set out in-paragraph 55 of the Framework.
28. Conditions 1) and 2) relate to time period and approved plans and documents and are required as this provides certainty.
29. The pre-commencement conditions cover the following matters: Condition 3) sets out the required steps in relation to contaminated land in order to protect future users; Condition 4) requires the preparation of a Construction Management Plan to protect the interests of nearby occupiers including the

Copper Pot pub which includes an outdoor space; Condition 5) requires details of cycle and motorcycle parking facilities to encourage sustainable travel; Condition 6) requires a sustainable drainage scheme to prevent increased risk of flooding by ensuring the satisfactory storage of and disposal of surface water from the site; Condition 7) seeks submission of a Waste Management Plan to comply with Policy WM8 of the Merseyside and Halton Waste Joint Local Plan.

Other conditions include: Condition 8) ensures that odours, smoke and grease releases are properly controlled; Condition 9) requires details of lighting to minimise light pollution and protect the use of the astronomical observatory. Condition 10) covers the provision of electric vehicle charging points to promote sustainable travel in accordance with the CS. I have amended the wording to take account of the appellant's comments but consider the scale and specification of provision should be agreed in writing with the local planning authority. Condition 11) requires a Management and Maintenance Plan for the sustainable drainage system for protection against flood risk over the lifetime of the development; Condition 12) requires implementation and subsequent maintenance of the landscaping scheme set out in the approved plans. This is required to ensure a satisfactory development; Condition 13) requires submission of details of pedestrian access including that with the Copper Pot pub. This is necessary in the interests of public highway safety; Condition 14) requires the provision of solar panels to ensure that the electricity requirements of the buildings are met in the interests of sustainable development; Conditions 15) and 16) require details of fixed plant noise and hours of construction respectively, both are required to protect neighbouring interests and finally; Condition 17) ensures that works affecting birds are protected during the breeding season.

## **Conclusion**

30. For the reasons stated above I allow this appeal subject to conditions.

*David Carter*

INSPECTOR

**SCHEDULE OF CONDITIONS [17 in total]**

1) The development must be begun not later than the expiration of three years beginning with the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

- Location Plan (drawing no. 17.106.006)
- Proposed Site Plan (drawing no. 17.106.001 Rev J)
- Detailed Site Plan (drawing no. 17.106.002 Rev C)
- PFS Elevations (drawing no. 17.106.003)
- Drive Thru Coffee Elevations (drawing no. 17.106.004)
- Drive Thru Hot Food Building (drawing no. 17.106.005)
- Landscape Layout 1 of 2 (drawing no. 3858.01B)
- Landscape Layout 2 of 2 (drawing no. 3858.02B)
- Proposed Site Layout – Swept Path Analysis (drawing no. ATR001 Rev A)
- Crime and Security Statement

3) No development shall take place until an assessment of the risks posed by any contamination has been submitted to and approved in writing by the Local Planning Authority.

Where land affected by contamination is found which poses unacceptable risks, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority.

The approved remediation scheme shall be implemented during the course of the development and a verification report shall be submitted to and approved in writing by the Local Planning Authority prior to the development (or relevant phase of development) being brought into use.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported immediately to the Local Planning Authority. Development on the part of the site affected must be halted and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These shall be implemented as soon as the development resumes.

No soil is to be imported to the site until a suitable methodology for testing this material has first been submitted to and agreed by the Local Planning Authority and the analysis has been carried out and evidence submitted to and approved in writing by the Local Planning Authority.

4) No part of the development hereby permitted shall be commenced until a Construction Management Plan has been submitted to and agreed in writing by the Local Planning Authority that details the means of mitigation of construction effects. All site works shall then proceed only in accordance with the approved management plan.

5) No development shall take place until a scheme for the provision of cycle and motorcycle parking, in accordance with the Council's current standards, has been submitted to and approved in writing by the Council as Local Planning

Authority. The scheme shall be implemented as approved before any part of the development is brought into use and shall be retained as such thereafter.

6) Prior to the commencement of development, a scheme for the provision and implementation of a surface water sustainable drainage scheme to manage the risk of flooding from both overland flow and from the sewer network, has been submitted to and agreed in writing, by the Local Planning Authority. The agreed scheme shall be implemented in full prior to the first occupation of the development and permanently retained thereafter.

7) Prior to the commencement of development a Site Waste Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The Site Waste Management Plan shall be implemented in full during the course of development.

8) No part of the development shall be occupied until a scheme has been submitted to and approved in writing by the local planning authority detailing how smoke, odour and grease will be controlled. The approved scheme shall be fully installed and operating prior to the development hereby permitted being first brought into use. It shall thereafter be retained and operated to the manufacturer's specification whenever the permitted use is in operation.

9) Prior to the erection of any lighting, full details of its position, height and specification, along with details of the measures taken to minimise light pollution for the occupiers of nearby buildings and users of the observatory shall be submitted to the local planning authority for its written approval. The details agreed by the local planning authority shall then be implemented in full (before any lights become operational) and shall be permanently retained hereafter.

10) No building shall be occupied until dedicated parking spaces fitted with communal electric vehicle recharging points have been provided in accordance with details previously agreed in writing by the local planning authority, and these shall be permanently retained thereafter.

11) Prior to the first occupation of the development, a Management and Maintenance Plan for a sustainable drainage system relating to the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority.

The plan shall be implemented in accordance with the agreed timeframes contained within it and permanently retained thereafter.

12) Prior to occupation of any part of the development the landscaping scheme set out as part of the proposals shall be implemented and maintained thereafter.

13) None of the buildings hereby permitted shall be occupied until pedestrian access to the site has been provided in accordance with details that have first been submitted to and approved in writing by the Local Planning Authority, and this shall be permanently retained thereafter.

14) Prior to occupation of any building Solar PV Panels shall be fitted in accordance with details that have first been submitted to and approved in writing by the local planning authority, and these shall be permanently retained thereafter.

15) Fixed plant and machinery associated with the development should be installed and maintained to a level that is at least 5dB(A) below the existing LA90 background noise level as measured during the relevant time period in accordance with details and design that has previously been submitted to and approved in writing by the local planning authority, and these shall be permanently retained thereafter.

16) No construction work shall take place outside the hours of 08:00-18:00 hours Monday to Friday, 08:00 - 13:00 hours Saturday and not at all on Sundays/Public Holidays.

17) No tree felling or scrub clearance shall take place during the period 1 March to 31 August inclusive. If it is necessary to undertake works during the bird breeding season then trees and scrub are to be checked first by an appropriately experienced ecologist to ensure no breeding birds are present. If present, all work must cease until details of how they will be protected have been submitted to and approved in writing by the local planning authority. Work can then commence in accordance with the approved details.

END OF SCHEDULE