
Appeal Decision

Site visit made on 29 September 2020

by Guy Davies BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2020

Appeal Ref: APP/N0410/W/20/3249207

7 Gore Road, Burnham, Buckinghamshire SL7 8AA

- 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 TJI Properties Ltd against the decision of Buckinghamshire Council – South Bucks Area.
 - The application 18/00500/FUL, dated 9 March 2018, was refused by notice dated 20 September 2019.
 - The development proposed is demolition of existing buildings and erection of 2, 2-storey buildings to provide 12 self contained flats with associated external works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal, the Local Planning Authority, formerly South Bucks District Council, merged with other councils to form Buckinghamshire Council.
3. A submission version of the Chiltern and South Bucks Local Plan 2036 was submitted for examination in September 2019. Examination has been delayed due to Covid-19 restrictions and a concern around whether the duty to cooperate has been met. Because it is still at a formative stage in its preparation, I place little weight on the emerging Plan.
4. The application is accompanied by a legal agreement that secures one on-site affordable housing unit and a payment of £45,000 for off-site affordable housing provision. The Council is satisfied that these contributions meet its affordable housing requirements and no longer wish to contest the second reason for refusal. I therefore shall not consider this issue any further.
5. The application is also accompanied by a unilateral undertaking which secures a financial contribution towards a strategic access management and monitoring strategy aimed at mitigating potential harm to the Burnham Beeches Special Area of Conservation. I consider this in more detail under other matters.

Main Issue

The main issue is whether the development would result in the loss of employment land, and if so whether there are any material considerations to justify such a loss.

Reasons

6. The site was last used for a number of commercial activities, including motor car repairs, workshops, storage and a fuel depot. It is now vacant, other than for the top floor of the building at the front of the site, which is used as a residential flat. Prior approval has been granted for two further residential flats in a building at the rear of the site, but not implemented at the time of this appeal.
7. Core Policy 10 of the South Bucks Core Strategy sets out a general presumption that non-designated employment sites will be retained in employment use. In limited circumstances, including where there is no reasonable prospect of a site being used for the permitted purpose, the priority will be for the site to be reused or redeveloped for an alternative economic use (being one which provides employment, generates wealth or produces an output or product).
8. The appellant has argued that there is a lack of demand for the site in its current form and has presented marketing details in support of that claim. The marketing began in May 2017, initially offering the existing buildings and yard for let and more recently, from October 2019, for sale or let. The Marketing and Employment Viability Report¹ submitted with the appeal concludes that there has not been any good quality tenant interest that would take a reasonable length lease on full repairing and insuring terms.
9. However, that view is contradicted by representations made on the application. Two businesses, which occupied parts of the site at the time, indicate that they were content with their premises and were happy to continue to operate from them. I also note that interest has been shown from other businesses through the marketing exercise, including car sales, car storage and car valeting. While I can appreciate that previous and prospective tenants such as these may not be as profitable as some other commercial uses, and considerably less than residential use, that reflects the nature of the site and the premises on offer.
10. I also have concerns about the marketing that has been carried out. The Council has published a guidance note² which sets out its expectations on marketing where an alternative use of employment land is sought. The marketing that has been carried out does not follow the guidance in a number of respects. The site was marketed only for let initially, it was marketed while tenanted, the more recent marketing for sale or let has not been for a minimum period of 12 months, there is no comparable evidence on the price offered, and according to the Council the site has at times not been available to view online on the relevant marketing website. Having regard to these deficiencies I am not satisfied that the marketing exercise has been as comprehensive or robust as expected by the published guidance.
11. The appellant has also argued that the existing buildings are coming towards the end of their useful lives, and that redevelopment of the site for employment purposes would be uneconomic. I acknowledge that the energy efficiency ratings of the buildings are poor, and are likely to place restrictions on letting in the future if regulatory standards are raised further. I also note that asbestos is present in one of the units and would need to be remediated,

¹ Chandler Garvey, Marketing and Employment Viability Report, March 2020

² South Bucks District Council Guidance Note: Implementation of Core Policy 10 (Employment), November 2013

and that there may be contamination of the site, although no evidence has been provided to demonstrate that is definitely the case.

12. Nevertheless, buildings on the site were occupied until recently, which demonstrates to me that they do have a use notwithstanding their current form. I also note that the first floor of one building has been converted to a residential flat, and prior approval granted for two more flats, which demonstrates that the buildings can be put to a viable use. The marketing exercise shows there is commercial demand for the yard. Because of the deficiencies in the marketing exercise, I also remain to be convinced that there is no reasonable prospect of the site being redeveloped for employment or economic purposes.
13. Redevelopment of the site for residential purposes would conflict with Core Policy 10. It would result in the loss of employment land, and it would not provide an alternative economic use in the sense that term is used in the policy. From the evidence before me, it appears that there is demand from employment generating uses for the site. I am also not satisfied that the site has been properly marketed in the manner set out in the Council's guidance note. Because of these matters, I consider there is insufficient justification to depart from the provisions of Core Policy 10 of the South Bucks Core Strategy, which seeks to maintain a supply of employment land in the area to support new and existing businesses and retain a local employment base.

Other Matters

14. The proposed development would provide 11 net additional residential units, one of which would be for affordable housing, and there would be a contribution toward the provision of affordable housing elsewhere in the area. I acknowledge that these benefits would help meet demand for housing, and I consequently place some weight on them.
15. The site lies within the zone of influence of the Burnham Beeches Special Area of Conservation. This area is noted for its beech and oak wood pasture, with many old pollards and rare invertebrates and mosses that form part of the ecosystem. The area is protected under the Conservation of Habitats and Species Regulations 2017.
16. Having regard to the evidence provided by the Council I consider that the development could, in combination with other development in the area, have a significant adverse effect on the Special Protection Area through added recreational pressure causing disturbance to the woodland. It is therefore necessary to assess whether the potential adverse impact could be adequately mitigated so as to avoid any significant adverse effect on the conservation objectives of the Special Protection Area.
17. The Council, in partnership with statutory conservation bodies, including Natural England, has developed an approach to mitigation based on the implementation of a strategic access management and monitoring strategy. Residential development between 0.5-5.6km from the Special Protection Area can mitigate its potential adverse impact by making a financial contribution towards this strategy.
18. The appellant has provided in a unilateral undertaking to make a financial contribution to the strategic access management and mitigation strategy. I

consider that the undertaking meets the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 and therefore carries weight. I am satisfied that this contribution would result in suitable mitigation such that the development would avoid having any significant adverse effect on the Special Protection Area.

19. Subject to the relevant financial contribution, I consider that the development would not harm the Burnham Beeches Special Protection Area and would therefore comply with Core Policy 9 of the South Bucks Core Strategy, which seeks to protect sites of nature conservation importance. It would also accord with the Conservation of Habitats and Species Regulations for the reasons set out above.
20. The majority of the site lies adjacent to Burnham Conservation Area, with a small part of it (a warehouse) lying within the Conservation Area. The significance of the Conservation Area lies in the historic nature of this part of the village, with a tight knit pattern of buildings centred on the High Street, containing a mix of different uses. The Council considers that the development would have no adverse impact on either the Conservation Area or its setting. Having regard to the development proposed and its relationship with the Conservation Area I agree with that view and conclude that the proposed development would preserve and enhance the character and appearance of the Burnham Conservation Area and its setting.

Conclusion

21. While I have found that, subject to the unilateral undertaking, no adverse impact would be caused to the Burnham Beeches Special Area of Conservation, and the character and appearance of the Burnham Conservation Area would be conserved, these are neutral matters in so far as they do not result in harm.
22. The loss of employment land conflicts with Core Policy 10 of the South Bucks Core Strategy. While redevelopment of the site for residential purposes would provide additional dwellings, including an element of affordable housing, that would help meet a need in the area, I consider this benefit does not outweigh the loss of employment land, which is equally needed to support the local economy and ensure a balance of land uses in the area. I therefore find that there are insufficient material considerations to justify departing from the Development Plan, taken as a whole.
23. I conclude that the appeal is dismissed.

Guy Davies

INSPECTOR