
Appeal Decision

Site visit made on 6 July 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th October 2020

Appeal Ref: APP/W4325/W/20/3245284

Land adjoining 54 Old Bidston Road, Duke Street and Cleveland Street, Birkenhead, Wirral CH41 8BL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Michael O'Sullivan against Wirral Metropolitan Borough Council.
 - The application Ref APP/19/01510, is dated 8 October 2019.
 - The development proposed is erection of nine light industrial (B1) units.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of nine light industrial units at land adjoining 54 Old Bidston Road, Duke Street and Cleveland Street, Birkenhead, Wirral CH41 8BL in accordance with the terms of the application, Ref APP/19/01510, dated 8 October 2019, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Michael O'Sullivan against Wirral Metropolitan Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. This appeal is against the non-determination of the planning application by the Council. The case for the Council is based on its outstanding concerns relating to highway safety which it considers have not been adequately addressed. The appeal site lies within a Primarily Industrial Area as designated within the Wirral Unitary Development Plan adopted 2000 (UDP). The principal of development is not in dispute. UDP Policy EM8 permits use classes B1, B2 or B8 in Primarily Industrial Areas.
4. On 1 September 2020, the Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into force, amending the Town and Country Planning (Use Classes) Order 1987. These Regulations amend and simplify the system of Use Classes. The amendments to the Use Classes Order includes a new broad 'Commercial, business and service' use class (Class E) which incorporates the previous shops (A1), financial and professional services (A2), restaurants and cafes (A3) and offices and other business uses (B1) use classes.

5. Notwithstanding this change, since the appeal proposal was submitted, or was deemed to be submitted, to the local planning authority which referred to uses or use classes which applied in relation to England and were specified in the Schedule to the Use Classes Order on 31st August 2020, that proposal must be determined by reference to those uses or use classes.
6. The addition of Class B1 was added to the description of development during the appeal stage. Since this clarifies the nature of the intended use of the proposed units, I have included the revised description above and determined the appeal on this basis.

Main Issue

7. The main issue relates to outstanding concerns on highway safety matters.

Reasons

8. The appeal site lies within a Primarily Industrial Area as designated within the adopted Wirral Unitary Development Plan adopted 2000 (UDP). While the site lies adjacent to some terraced housing on its north-western boundary, the Council has not identified outstanding objections to the proposed development other than those relating to highway safety.
9. In relation to highway safety, the Highways Engineer commented early on that there were no significant traffic issues with the scheme. Clarification on the outstanding points raised was provided by the appellant and correspondence from the Highways Engineer suggests that the arrangements were acceptable in respect of sight lines onto Cleveland Street, vehicle tracking and the proposed location of the bin store. I am satisfied that the other matters covering cycle storage and proposed signage for the one-way system could be satisfactorily covered by appropriate conditions. The Engineer also mentioned the area behind parking space 9 but it appears to me there would be adequate space for manoeuvring.
10. Accordingly, I conclude that the proposed development would be acceptable in principle and, subject to appropriate conditions could address outstanding matters of concern relating to highway safety. The Council has not drawn my attention to any relevant policies relating to highway safety. Nevertheless, there would be no conflict with paragraph 109 of the National Planning Policy Framework, which states that development should only be refused on transport grounds if there would be an unacceptable impact on highway safety.

Conditions

11. The Council have provided suggested conditions in the event I allow this appeal. I have made some additions and changes in order to ensure that the development is carried out satisfactorily, meeting the six tests set out in paragraph 55 of the Framework. The appellant has been consulted and has agreed to the pre commencement conditions (Conditions 4 and 8).
12. Conditions 1) and 2) relate to time period and approved plans and are required as this provides certainty. Condition 3) requires details of materials to be used on external surfaces. I appreciate there is some indication in this regard on the submitted plans, but this condition would be appropriate in the interests of protecting the character and appearance of the area. Condition 4) requires the preparation of a Site Waste Management Plan to ensure both the re-use of limited

resources and, that the amount of waste for landfill is minimised. Condition 5) requires details of the arrangements for cycle parking in the interests of sustainable travel. Condition 6) requires approval of the details of signage for the proposed one-way system for access and egress in the interests of public highway safety. Condition 7) sets out the proposed trading hours for the proposed units to protect the amenity of nearby occupiers. Conditions 8) and 9) ensure that separate sustainable drainage for surface and foul water are provided to manage the risk of flooding and pollution.

Conclusion

13. For the reasons stated above, I allow this appeal and grant planning permission subject to conditions.

David Carter

INSPECTOR

SCHEDULE OF CONDITIONS [9 in total]

- 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 drawing Nos:
 - i. Site Location Plan: Ref 6461/01
 - ii. Existing Site Layout Plan: Ref 6461/03A
 - iii. Proposed Building Layout Plans and Site Layout Plan: Ref 6461/04B
 - iv. Proposed Elevations: Ref 6461/05A.
- 3) Before any construction above slab level commences, samples of the materials to be used in the external construction of this development shall be submitted to and approved in writing by the local planning authority. The approved materials shall then be used in the construction of the development.
- 4) No development shall take place until a Site Waste Management Plan, confirming how demolition and construction waste will be recovered and reused on the site or at other sites, has been submitted to and approved in writing by the local planning authority. The approved Plan shall be implemented in full unless otherwise agreed in writing with the local planning authority.
- 5) The development shall not be brought into use until space and facilities for cycle parking have been submitted to and agreed in writing by the local planning authority. The facilities shall be permanently retained thereafter unless otherwise agreed with the local planning authority.
- 6) Before the development hereby permitted is brought into use details (including the location) of signage for the one-way system shall be submitted to and agreed in writing with the local planning authority. The agreed details shall be implemented in full prior to first use and be permanently retained thereafter.
- 7) The units hereby permitted shall be used only between the hours of 0800 and 1800 Monday to Saturday and at no time on Sundays
- 8) No development shall commence until a surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The drainage scheme must include:
 - (i) An investigation of the hierarchy of drainage options in the National Planning Practice Guidance (or any subsequent amendment thereof). This investigation shall include evidence of an assessment of ground conditions and the potential for infiltration of surface water;
 - (ii) A restricted rate of discharge of surface water agreed with the local planning authority (if it is agreed that infiltration is discounted by the investigations); and
 - (iii) A timetable for its implementation.

The approved scheme shall also be in accordance with the Non-Statutory Technical Standards for Sustainable Drainage Systems (March 2015) or any subsequent replacement national standards.

The development hereby permitted shall be carried out only in accordance with the approved drainage scheme.

- 9) Foul and surface water shall be drained on separate systems.

END OF SCHEDULE