
Appeal Decision

Site visit made on 6 October 2020

by D.R McCreery MA BA (Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 26 October 2020

Appeal Ref: APP/Y3615/W/20/3250004

**5 Guildford Business Park, Guildford Business Park Road, Guildford
GU2 8XG**

- 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 Pavilion Trustees Ltd and Pavilion Property Trustees as joint Trustees of Eagle Unit Trust against the decision of Guildford Borough Council.
 - The application Ref 19/P/00407, dated 27 February 2019, was refused by notice dated 29 January 2020.
 - The development proposed is redevelopment to provide purpose built student accommodation including 360 bed spaces, support ancillary student services (such as study spaces, gymnasium, games rooms, lounge areas, student hub) car and cycle parking, access and landscaping arrangements.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Pavilion Trustees Ltd and Pavilion Property Trustees as joint Trustees of Eagle Unit Trust against Guildford Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are whether the proposed development would result in the loss of a site that should continue to be available as a strategic employment site and whether it would make adequate provision for local infrastructure improvements.

Reasons

Availability as an employment site

4. It is common ground between the Appellant and the Council that the appeal site, currently used as surfaced car parking, is defined within the Guildford Local Plan (Local Plan) as forming part of a Strategic Employment Site (SES) and that the proposed development would result in the loss of employment land from it. In such circumstances, Policy E3 of the Local Plan indicates that change of use to a non- employment use will only be acceptable if evidence is provided of active and comprehensive marketing.

5. The requirements in Policy E3 around the marketing of sites for their current and alternative uses are covered separately in subparagraphs 10 and 11. Reference to 'consideration' of alternative uses in subparagraph 11 is undefined in the Local Plan and is to therefore be given its ordinary meaning. However, it must also be read in the context of the sentence in which it appears which includes specific reference to comprehensive and active marketing as defined in Appendix 4.
6. The requirement for marketing is consistent with the aims of Policy E3 to sustain and enhance employment by protecting the sites set out in the policy, including those within the SES such as the appeal site. Subparagraphs 10 and 11 have common objectives in seeking to achieve this overall aim.
7. Considering the specific wording of the policy and the wider context in which it appears, it is sufficiently clear that the active and comprehensive marketing required under the policy applies to both current and alternative suitable B class employment uses and other employment generating uses. I am not persuaded that the differences in wording and presentation between subparagraphs 10 and 11 implies that they are intended to have different effects or that a different exercise for alternative employment uses should apply.
8. Notwithstanding this, the detailed description of the marketing to be undertaken described in Appendix 4 is subject to an element of flexibility and, as with any policy requirement, should be applied in a rational way depending on the specifics of the case. As the detail in Appendix 4 is intended to apply generally it also logically follows that elements of it will be less relevant in some cases. As such, Appendix 4 does not in my view impose absolute requirements. However, the overall outcome of the marketing exercise undertaken should as a matter of judgement be regarded as active and comprehensive.
9. How the marketing requirements of Policy E3 have been met is principally described in the Appellant's Test of Marketing Report. In respect of alternative uses, in my opinion an 'All Enquiries' approach to marketing is capable of indicating with sufficient clarity that the land is also available for alternative uses, which would include other B class and employment generating uses. As such, it is not fatal that the Appellant has not marketed the site for specific alternative uses.
10. Notwithstanding this, the evidence put forward appears to focus on marketing the site for development of the extant planning permission for office use, which in this regard is comprehensive. The site being available for other uses as part of an 'All Enquiries' approach is not consistent in the evidence, in particular within the published marketing material. As such, on the evidence presented, the marketing undertaken in respect of alternative uses appears to lack prominence and consistency and therefore falls short of being regarded as adequate as part of a comprehensive and active exercise.
11. Evidence of prospective non office users of the site coming forward indicates a level of success in the marketing that was undertaken. However, without more consistent evidence of marketing using the 'All Enquiries' approach it does not demonstrate with sufficient certainty that there is not the market demand for other B class and employment generating uses necessary to justify loss of employment land from the SES.

12. The preamble to Policy E3 indicates that the Council had been unable to identify sufficient employment land within the area, which made it necessary to allocate new employment sites to ensure that there is sufficient choice and flexibility in the local market to meet current and future needs.
13. The appeal site is currently used as a surfaced car park. As such, existing employment floor space would not be lost due to the proposed development. However, it would result in the loss of employment land from the SES that has been allocated in the Local Plan to meet the needs of the area looking forward, with a consequent loss of diversity in the provision of employment land. Permissions granted for development of other buildings on the business park do not adequately mitigate the loss of the appeal site within the SES to a housing use, due to the overall effects of the proposed development on the availability of employment land.
14. I have considered the applicability of Policy E3(15) which is a positively worded policy that seeks to support complementary ancillary uses on the SES. As the proposed development is not argued to be a complementary ancillary use this policy is of limited relevance.
15. For the reasons discussed above, the proposed development would result in the loss of a site that should continue to be available as a strategic employment site. Consequently, I find conflict with Policy E3 of the Local Plan, which includes the requirement for a comprehensive and active marketing exercise that includes alternative suitable B class and other employment uses.

Local infrastructure provision

16. It is proposed that financial contributions would be made towards the delivery of a footbridge over the railway line to link the Guildford Business Park to the University of Surrey and is the subject of a separate extant planning permission. A mechanism is also proposed to prevent practical operation of the development prior to the footbridge being in place and to restrict its future use. The Appellant has submitted a planning obligation with the appeal that aims to cover these items.
17. Although the site is within the urban area of Guildford, it's out of centre business park location and the wider context of the busy road network and railway line means that it is physically and functionally isolated from other areas of housing and the University. This disconnection is contrary to the aims of Local Plan Policy D1 which seeks to promote the development of high quality places with appropriate connections between spaces.
18. In the absence of the footbridge, future occupants of the proposed development reliant on the University would access it on foot or bicycle via the main road. This would involve a more extensive journey time than on foot took me between 10 and 15 minutes when I visited the site. Along the busiest sections of main road I observed wide footways that also served to provide a segregated cycleway. Whilst not attractive in places due to the busy roads, the route felt safe and secure.

19. The provision of the footbridge connecting the site with the University would go some way to improving the physical and functional connection between the site and other areas beyond the business park. A more convenient and attractive route to the university would assist in encouraging more sustainable transport choices, although I find it to be less necessary in this regard.
20. However, taking these two matters together, I am satisfied that an obligation of the nature submitted with the appeal is necessary to make the development acceptable in planning terms and would meet the other tests set out in paragraph 56 of the National Planning Policy Framework (the Framework).
21. The Council raise a number of queries on the detail of the obligation which the Appellant has responded to. In relation to wider public access of the footbridge, I note that this would be restricted during night time hours for security reasons. Whilst this would limit the wider public benefits of the footbridge to a degree, the need for the restriction is understandable. During these hours suitable provision would also be made for students and other users of the University to access the bridge through the use of a key card or similar mechanism. As such, the limitation would not prevent the footbridge from mitigating the impacts of the development in terms of improving connectivity for its users.
22. Other matters on the obligation raised by the Council, including those relating to third party agreements, are of a legal and technical nature. Given the wider conclusions of this decision it is not necessary for me to go on to conclude on these matters which would remain issues between the Council and the Appellant should a planning application be submitted at a later date.
23. In conclusion, the overall aims of the submitted obligation would make adequate provision for local infrastructure improvements. Consequently, I do not find conflict with the objectives of policies H1, D1 and ID3 of the Local Plan in relation to promoting high quality places with appropriate connections between spaces and sustainable transport choices.

Planning balance

24. For the reasons discussed above, I find harm in relation to the loss of a site that should continue to be available as a strategic employment site and consequent conflict with Local Plan policy.
25. The degree of harm should be weighed against the potential benefits of the proposed development. It is common ground between the parties that additional student housing would be a welcome benefit, both in terms of its direct provision and also the indirect benefits of freeing up housing elsewhere in the area. This provision attracts positive weight, also paying regard to the emphasis the Government places on the delivery of housing in the Framework. I also note the Appellants points about other benefits, including the possible wider public use of the footbridge that would be facilitated as part of the development.
26. Whilst these matters attract positive weight, they do not outweigh the harm that would result from loss of employment land from the SES, given the purpose of the designation to provide for the current employment needs of the area and looking forward.

Other Matters

27. The appeal site lies within the buffer zone of the Thames Basin Heaths Special Protection Area (SPA), a European designated site. Whilst not a reason for refusal on the decision notice, in line with the Conservation of Habitats and Species Regulations 2010 I must as competent authority ascertain that the development would not have an adverse impact on the integrity of the SPA, alone or in combination with other plans and projects, either directly or indirectly, before granting planning permission. I note that the Appellant has included financial contributions towards provision of alternative green space and management and monitoring in their planning obligation. In light of my finding of harm in respect of other matters, I do not need to conclude on the adequacy of these contributions.
28. The COVID 19 pandemic is likely to have a number of far reaching effects going forwards, which may include demand for employment space and also different types of housing provision. As the long term effects of the pandemic cannot be reasonably judged at present, I am unable to afford this consideration significant weight.

Conclusion

29. For the above reasons the appeal is dismissed.

D.R. McCreery

INSPECTOR